
(2002) 09 RAJ CK 0016
In the Rajasthan High Court
Case No : CW. Petition No. 626 of 2000

Ganpat Raj Mehta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 5 WLC 17 : (2003) 2 WLN 192

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties. The petitioner who was serving as Executive Engineer, was served with a charge-sheet on 2.1.1995, before which he was suspended on 28.6.1994. The petitioner challenged the suspension order by filing the Writ Petition No. 2489/1996. It was decided by this Court by order dated 14.2.1997 wherein this Court directed respondents to complete the domestic enquiry within a period of six months and in case, by any reason whatsoever, the departmental enquiry is not concluded by that date, suspension order shall be deemed to be automatically vacated. Thereafter the respondents submitted an application for extension of time which was dismissed on 12.10.1998 which appears to be due to reason that suspension order was revoked and, therefore, it was thought that application for extension of time has become infructuous. It is relevant to mention here that as per order dated 14.2.1997, the only consequence of not completing the domestic enquiry was an automatic revocation of suspension order. Ultimately the enquiry was completed by the Enquiry Officer and enquiry report dated 30.7.1997, was sent to the Disciplinary Authority. Copy of enquiry report is Annex. 1. The Disciplinary Authority issued show cause notice to the petitioner on 12.8.1997 vide Annex. 11. The enquiry report was also supplied to the petitioner. The petitioner submitted detailed reply to the show cause notice, copy of which is Annex. 12. Ultimately on 14.5.1999, an order was passed holding the petitioner guilty and his five grade annual increments were with-held with cumulative effect. The

petitioner has challenged the above order of punishment dated 14.5.1999 (Annex. 13) as well as enquiry report itself.

2. According to learned Counsel for the petitioner, on 21.2.1994, the then Chief Minister took the special meeting of the District Administration and issued necessary direction and called upon the District Administration to immediately commission new tube wells and execute the repair work for revival of the hand-pumps in all the villages of the District positively by the end of 31.3.1994 in order to facilitate supply of drinking water to the public at large. Delinquencies alleged against the petitioner are that the petitioner purchased some material during this period upto 31.3.1994 in either small lot or without obtaining N.O.C. and in higher rates in violation to rules. The circumstances in which the alleged purchases were made, have been given in the writ petition justifying the action by saying that purchases were in accordance with law, materials were purchased in market rate or even in less than rate which were prevailing in the market and no loss has been caused to any action of the petitioner. Not only this but in fact all the purchases were made by the concerned A. En.'s only and not by the petitioner.

3. According to learned Counsel for the petitioner, enquiry report itself is illegal because of the fact that this is a case of no evidence inasmuch as there were two witnesses of the department, one Sh. G.M. Khan and another is Sh. V.P. Soni. Sh. Khan deposed nothing against the petitioner and Sh. Soni did not appear for cross-examination and his evidence was closed by the enquiry officer, therefore, entire enquiry report is based upon no evidence. It is also argued by learned Counsel for the petitioner that because of the fact that petitioner was not permitted to cross-examine Sh. Soni, his case was seriously prejudiced. From Sh. Soni's cross-examination itself, petitioner could have proved that no case is made out against the petitioner from the witness of department itself. According to the petitioner, only evidence available on record was the statement of witness Sh. G.M. Khan and this evidence supports the petitioner, but enquiry officer did not consider this evidence in its enquiry report. Therefore, inquiry report is based on no evidence against the petitioner and also vitiates due to non-consideration of evidence of witness Sh. G.M. Khan.

4. learned Counsel for the petitioner submits that Disciplinary Authority relying upon the above enquiry report passed the order of punishment and when the enquiry report itself is liable to be set aside, the order of punishment also deserves to be set aside. learned Counsel for the petitioner tried to refer number of documents produced alongwith writ petition and tried to justify the action of petitioner in acting upon the direction which was issued by Chief Minister at that time. It is also stated that allegation of delinquencies in purchase of material is relating to the month of March 1994 only; whereas the meeting was taken by Chief Minister in the last week of Feb. 1994, therefore, the petitioner acted as an officer who was required to act in accordance with directions issued by the Government and thus fact has not denied by the respondent in reply to the writ

petition.

5. It was also pointed out that on 22.8.2001, this Court directed the Government to "file additional affidavit stating all the reasons why enquiry against other responsible officers could not be held under Rule 18 of the Rajasthan Civil Services (Classification Control and Appeal) Rules". The State submitted an affidavit on 18.9.2001 stating therein that since one of the person was from the Accounts Services, therefore, joint enquiry including that officer was not possible for the State. The enquiry against one Sh. Sunil Singhal, A. En. to whom charge-sheet was issued, was dropped after getting his explanation and so far as enquiry against Ashok Chakravarti is concerned, it is still pending. It is relevant to mention here that Sunil Singhal and Ashok Chakravarti are the Assistant Engineers who were working under the petitioner at the relevant time.

6. The petitioner submitted reply to the affidavit and point out that in affidavit it has not been disclosed when the charge-sheet was served upon Sunil Singhal and what was his reply. According to learned Counsel for the petitioner, both these Assitant Engineers purchased the entire material by issuing purchase orders and none of the items were purchased by the petitioner himself and once these two persons were served with charge-sheet with respect to purchase of goods, then the charge-sheet against the petitioner for the same charge of purchase of goods cannot survive, therefore, in view of subsequent event also, the entire proceedings deserve to be quashed.

7. Mr. R.P. Vyas, learned Addl. Advocate General, appearing for State vehemently submitted that there were sufficient material before the Enquiry Officer and finding recorded by Enquiry Officer is based on evidence and even if no opportunity of cross-examination was given to the petitioner to cross-examine one of the witnesses, even then enquiry report cannot be set aside. It is further submitted by learned Counsel for respondents that even incase the Court comes to any conclusion that there is some lacunae in the enquiry, then at the most after setting aside the order of punishment and enquiry report, matter may be left open for enquiry from the stage where there was illegality. It is also submitted that power of State Government to hold enquiry should not be taken away and lacunae in the enquiry itself is not sufficient to exonerate the employee. The learned Counsel for the respondents relies upon the judgment of Hon''ble Apex Court reported in Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat and others, and State of U.P. Vs. Ravinder Nath Chaturvedi and Another,

8. In reply to the contention of learned counsel for the respondents, learned Counsel for the petitioner submitted that in this case, departmental enquiry was conducted by the Government because of the fact that disciplinary Authority as per Rule 15 is the State Government. The Disciplinary Authority who had a power to order for de-novo enquiry under Rule 16(9) in case it is found that there is some lacunne in the enquiry proceedings but the Disciplinary Authority did not find any lacunae in the enquiry proceedings and proceeded to decide the

departmental enquiry finally by implication, holding it that there is no need to order for de-novo enquiry, by deciding the departmental enquiry. Therefore, the State Government itself has decided not to go for de-novo enquiry despite knowing the fact that evidence of witness of State Government itself was closed and no opportunity of cross-examination was given to the petitioner, therefore, this witness evidence will not be read against the petitioner. Once State as Disciplinary Authority decided not to go for de-novo enquiry, cannot be permitted hold de-novo enquiry that too by granting relief in the writ petition filed by the petitioner. learned Counsel for the petitioner further submitted that if an authority permits a thing to proceed in a particular way and who itself had power to undo the alleged wrong, did not choose to undo the wrong, subsequently cannot get it undone indirectly.

9. After considering the facts and circumstances of the case, what comes out is that no opportunity of cross-examination witness V.P. Soni was provided to the petitioner by Enquiry Officer and V.P. Soni evidence was closed, but at the same time, facts mentioned in enquiry report are relevant. It was observed by Enquiry Officer that after examination in chief of the witness Sh. V.P. Soni, he did not appear on 19.7.1997, therefore, a notice was given to Mr. Soni to appear on 23.7.1997. On 23.7.1997, he did not appear and sent a telegram and requested that he will not be in position to attend the enquiry because he is an officer Incharge in the contempt petition pending before High Court. The Enquiry Officer had no option because he was required to conclude the enquiry by 31.7.1997, therefore, in these circumstances, evidence of witnesses was closed. It is true that opportunity of cross-examination was not provided to the petitioner, and therefore, in view of the fact that if evidence of this witness goes, no oral evidence against the petitioner remains in the Enquiry. This fact is not in dispute. In these circumstances, the finding based on this enquiry report of Disciplinary Authority cannot be allowed to stand because it has prejudiced the case of the petitioner and petitioner was deprived to demonstrate even from the evidence of V.P. Soni after cross-examination of this witness that either no case is made out against the petitioner from the evidence of the department or petitioner could have proved his defence from the cross examination of departmental witness itself. The order dated 14.5.1999 based upon above enquiry report also cannot stand deserves to be required to be set aside, hence enquiry report dated 30.7.1997 as well as order dated 14.5.1999 are set aside.

10. The serious dispute arises thereafter, with respect to procedure which can be adopted after setting aside the enquiry report and order dated 14.5.1999. According to learned Counsel for the respondents, matter after setting aside the order of punishment, matter can be sent back to the department for holding enquiry from the stage where illegality was found and relying upon the above mentioned two judgments i.e. Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat and others, and State of U.P. Vs. Ravinder Nath Chaturvedi and Another, learned Counsel for the respondent reiterated his arguments which are mentioned above.

11. The contention of learned Counsel for the petitioner is that since the State is Disciplinary Authority and no order was passed under Rule 16(9) for de-novo enquiry by the Disciplinary Authority, it is to be presumed that Disciplinary Authority who is Government, decided, not for de novo enquiry nor found the enquiry lacunic. The argument of learned Counsel for the petitioner may be attractive but a close scrutiny shows that this is a writ petition wherein the Court is required to see the legality of the order in its supervisory jurisdiction. Even if the petitioner proves his case with respect to challenge to the order and it is found that order is required to be set aside, then duty is cast upon the Court to see what relief is appropriate in the facts of the case which can be granted. It is true that there is power vested with the Disciplinary Authority to order de novo enquiry under Rule 16(9). It is true that Disciplinary Authority did not exercise that power and proceeded to decide the matter finally but when the matter is examined under Article 226 of the Constitution by the High Court and when it appears to the Court that enquiry report is lacunic and the Disciplinary Authority has committed mistake in not ordering de novo enquiry then the High Court while exercising powers under Article 226/227 of the Constitution of India has ample power to do the justice by moulding relief. It is true that order of Disciplinary Authority has not been challenged by the State Government, even then this Court can examine whether disciplinary authority has committed any mistake by proceeding with lacunic enquiry report. If the order of Disciplinary Authority is under challenge then it can be examined whether the Disciplinary Authority has committed illegality in not ordering de-novo enquiry and it can be done even in the writ petition filed by the employee against the enquiry report and order of disciplinary authority.

12. Another ground which supports above view is that when order has been passed in favour of State by the Disciplinary Authority, the State could not have any grievance and could not have raised any grievance with the closure of evidence of witnesses of department, which was wrongly ordered by the Enquiry Officer. It may be pointed out that departmental enquiry is not a proceeding of nature of regular civil suit and, therefore, such procedural technicalities cannot be entertained. When there is a provision for de novo enquiry, then order for de novo enquiry which could have been passed by Disciplinary Authority, can be passed by the Court also. I do find support from the Judgments of Hon'ble Supreme Court referred to above.

13. learned Counsel for the petitioner relies upon the Judgment of Hon'ble Supreme Court reported in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, wherein Hon'ble Supreme Court held that once the candidate was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. This proposition of law cannot be stretched to the extent upto extent to which learned Counsel for the petitioner wants to stretch. Even if

the authority who could have passed the order of de novo enquiry but failed to pass such order due to any reason and even if authority is precluded from subsequently passing such order then it preclude the authority and not the Court who has jurisdiction to hears the challenge to order passed by the Disciplinary authority. Therefore, it cannot be held that once the Disciplinary Authority proceeds with the enquiry report which ultimately found to be lacunic, no de-novo enquiry can be ordered by this Court and it also not correct to say that only course open for the Court is to set aside the enquiry report and the order passed by the Disciplinary Authority.

14. In the result, writ petition of the petitioner is partly allowed. The order dated 14.5.1999 (Annex. 13) is set aside. The enquiry report dated 30.7.1997 is also set aside. The State will be free to proceed with the enquiry from the stage from where the evidence of witness Sh. V.P. Soni was closed. The order of closure of evidence of witness Mr. Soni passed by Enquiry Officer is set aside. Matter is remanded back to the Enquiry Officer with a direction to proceed with the enquiry from the stage of evidence of V.P. Soni. The petitioner may take his defence which became available to the petitioner after filing of this writ petition and in consequence of the order dated 28.8.2001 passed by this Court, before the Enquiry Officer as petitioner's new defence cannot be entertained in this writ petition. The departmental enquiry since already ordered by this Court in earlier writ petition, to be completed in given time and much more time has already elapsed, therefore, it is ordered that departmental enquiry be completed within a period of three months from the date of receipt of certified copy of this order by the respondents. The petitioner shall be entitled for all consequential benefits of setting aside of punishment order.