
(2008) 12 RAJ CK 0012
In the Rajasthan High Court

Gautam Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 17

Citation : (2009) 2 RLW 1772 : (2009) 3 SLJ 252 : (2009) 3 SLR 65

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—All the three writ petitions involve common question of law and facts and therefore, with the consent of learned Counsel for the parties, they are heard and decided together taking the facts of S.B. Civil Writ Petition No. 6372/05 as a leading case.

2. Petitioner Gautam Jain at the relevant time was holding the post of Sub-Inspector of Police and was posted at Police Station Shivganj, District Sirohi. In the midnight of 12/13th January, 2000, he was directed by the concerned Station House Officer (for short "the SHO" hereinafter) P.S. Shivganj to proceed along with Head Constable on a secret information received by him through Mukhbir that illicit liquor is being transported in a jeep bearing No. RJ 22-C 1673. An entry to that effect was recorded in the Rojnamcha at 12.10 A.M. of the midnight of 12/13.1.2000. Petitioner Himmatdan Charan in SBCW No. 1,345/05 was Circle Inspector at the relevant time and was SHO of the said police station Shivganj and petitioner Tulsha Ram was Head Constable posted to said police station. The copy of Rojnamcha has been placed on record as Annex. 1. On the instructions of the SHO, petitioner Gautam Jain and Head Constable Tulsha Ram with their subordinate staff arranged a Nakabandi at the site. While holding Nakabandi, the Jeep bearing No. RJ 22-C 1673 in respect of which secret information was received by the SHO through Mukhbir, came. The petitioner and other

subordinate police staff tried to stop the said jeep, however, the driver of the jeep fled away with the jeep which was carrying illicit liquor. The jeep was chased and ultimately the driver of the jeep stopped the jeep near to a river at Woodland Hotel and fled away in bushes and could not be traced. The jeep containing illicit liquor was brought to the police station and FIR to that effect was recorded being FIR No. 09/2000. The usual investigation was carried out including seizure of the said jeep and the liquor lying therein and statements of witnesses u/s 161 Cr.P.C. were recorded. It appears that another FIR being FIR No. 11/2000 was registered at the instance of some liquor smugglers regarding committing theft of the jeep punishable for the offence u/s 379 IPC, whereas in respect of very jeep, FIR for the offence punishable u/s 19/54 of the Excise Act was registered which was prior in time and in that FIR the jeep was seized along with the illicit liquor which the jeep was found to have been carrying. Both the FIRs were investigated. Initially the matter was investigated by Additional Superintendent of Police, Bali namely Uchhavlal Chhanval, however, subsequently the investigation was transferred to CID (CB) and ultimately the Additional Superintendent of Police, CID (CB) namely Harish Chandra Singh investigated the matter. When the investigation was carried out by CID (CB), it revealed that the police received secret information which was recorded in the Rojnamcha and thereafter the police proceeded to hold Nakabandi and Nakabandi was held, the jeep was intercepted and ultimately it was seized found carrying illicit liquor and the liquor was also seized. However, from the statement of the witnesses recorded by the Investigating Officer it revealed that the driver of the jeep stopped the jeep at Woodland Hotel near river and thereafter ran away in the bushes. A notice was served to the registered owner of the jeep u/s 138 of the Motor Vehicles Act, 1988, in reply thereto, the owner of the jeep stated that he has handed over the jeep to one Narpat and Ramesh, at any rate, they were not found and ultimately the police submitted final report on the ground that the accused not found. The other FIR lodged by so called liquor smuggler also came to be investigated and Investigating Officer concluded that no, such occurrence has taken place and therefore, a negative final report to the effect that no such occurrence as recorded in the FIR has taken place. At any rate, both the FIRs ultimately resulted in final report, one lodged by petitioner on the ground of accused not traceable and other lodged by liquor smuggler on the ground of no such occurrence took place. A departmental inquiry was initiated against all the three petitioners under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "CCA Rules" hereinafter). The FIR lodged by petitioner Gautam Jain is Annex.2 dated 13.1.2000 being FIR No. 09/2000 for the offence u/s 19/54 of the Rajasthan Excise Act and the other FIR being FIR No. 11/2000 lodged by Narpat Mewada is Annex.3 for the offence u/s 379 IPC. The memorandum of charges was served to the petitioner vide Annex.4. The petitioner submitted an explanation in the form of reply vide Annex.5 denying the charges. By order Annex.6 dated 22.11.2000, the disciplinary authority, Superintendent of Police, Sirohi concluding the inquiry, came to the conclusion that the explanation submitted by the petitioner is

satisfactory and agreed with the explanation submitted by the petitioner and held that the charges levelled against the petitioner are not proved and therefore, exonerated the petitioner. After the petitioner having been exonerated by the disciplinary authority vide order Annex.6, the Inspector General of Police by order Annex.7 dated 27.2.2001 initiated second inquiry on the same set of facts and allegations as mentioned in Annex.7. The charges in Annex.7 and as mentioned in Annex.3 and Annex.6 are almost identical. A reply/explanation to the second charge sheet was submitted by the petitioner vide Annex.8 giving the details of the investigation carried out by the Additional Superintendent of Police, CID (CB), the conclusion arrived at by him which supported the explanation given by the petitioner and requested to drop the inquiry as no delinquency is made out. By order Annex.9 dated 5.10.2001 the Deputy Inspector General of Police held that the charges against the petitioner stands proved and visited him with penalty of stoppage of one annual grade increment for two years without cumulative effect. The petitioner filed an appeal before the appellate authority vide Annex. 10 which came to be dismissed by order Annex. 11 dated 13.08.2002 against which the petitioner filed a review petition vide Annex. 12 before His Excellency the Governor of Rajasthan, Jaipur which also came to be rejected by order Annex. 13. Hence these writ petitions.

3. I have heard learned Counsel for the parties. Carefully gone through the material available on record.

4. A reply to the writ petition has been filed by the respondents mainly taking the stand that the said jeep while transporting the illicit liquor was intercepted by the raiding party of the liquor contractor and brought to the police station and thereupon the police seized the said jeep and the liquor lying therein and therefore, according to the respondents the story of Nakabandi as set up by the petitioners was not correct. However, the respondents even did not dispute that the jeep was seized while it was transporting illicit liquor and crime report for the offence u/s 19/54 of the Rajasthan Excise Act was registered.

5. It is contended by learned Counsel for the petitioners that firstly the occurrence as has been recorded by the petitioner in the Crime Report No. 9/2000 fully finds support from the Rojnamcha entry recorded in the concerned police station, the statements of the witnesses recorded u/s 161 Cr.P.C, seizure of the jeep as well as the illicit liquor which the said jeep found transporting. This fact has thoroughly been investigated by the Additional Superintendent of Police, CID (CB), Jaipur and investigating agency came to the conclusion that the occurrence has taken place. Only the question was that the accused persons who alleged to have been transporting the illicit liquor in the said jeep could not be identified therefore, in absence of identification of those accused persons, final report has been submitted, but the final report is indicative of the fact that the occurrence has taken place as stated by the petitioners and therefore, according to learned Counsel for the petitioners, the disciplinary authority was justified in exonerating the petitioners in the departmental inquiry. It is further contended

by learned Counsel for the petitioners that there being no power of review provided by the Statute. Once the disciplinary authority has accepted the final report and exonerated the petitioners, it was not open for any other authority to review the same unless the statute provides power to review and no such power exists. So far as Rule 32 of the CCA Rules is concerned, according to learned Counsel for the petitioners, it does not apply to the facts and circumstances of the case. Rule 32 of the CCA Rules reads as under:

Rule 32. REVISION AND REVIEW

The authority to which an appeal against an order imposing any of the penalties specified in Rule 14 lies may, if no appeal has been preferred therefrom of its own motion or otherwise, call for and examine the records of the case in a disciplinary proceeding held by an authority subordinate to it and after making further investigations, if necessary, revise any order passed in such a case and after consultation with the Commission where such consultation is necessary.

- (a) confirm modify or set aside the order;
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order.
- (c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as it considers proper in the circumstances of the case; or
- (d) pass such order as it deems fit:

Provided that.:

- (1) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;
- (2) If the appellate authority proposes to impose any of the penalties specified in Clause (iv) to (vii) of Rule 14 in a case where an inquiry under Rule 16 has not been held, it shall, subject to the provisions of Rule 19, direct such an inquiry to be held and thereafter on consideration of the proceedings of such inquiry, pass such orders as it deems fit.
- (3) no action under this rule shall be initiated more than 6 months after the date of order to be revised.

6. The power to revision or review lies to the appellate authority against the order imposing any of the penalties specified in Rule 14 of the CCA Rules. In the instant case, firstly the disciplinary authority did not hold the petitioners guilty as the charges were not found proved and exonerated the petitioners and therefore, the question of imposing penalty would not have arisen and therefore, the order passed by the disciplinary authority was not appealable and secondly if the order is appealable and no appeal is preferred therefrom then on its own motion or

otherwise, the appellate authority may call for and examine the record of the case in a disciplinary proceeding held by the authority subordinate to it and after making further investigation, if necessary, revise any order passed in such a case and after consultation with the Commission where such consultation is necessary. In the instant case, Rule 32 of the CCA Rules has wrongly been invoked by the Inspector General of police while serving a second charge sheet on same set of facts which ultimately came to be culminated in exoneration of the petitioners. Learned Counsel for the petitioners further contended that the investigation carried out by Additional Superintendent of Police Shri Uchhavlal stands superseded by the investigation carried out by Additional Superintendent of Police Harish Chandra Singh vide Annex. 14 and even the investigation carried out by Additional Superintendent of Police Shri Uchhavlal also do not indicate that the jeep was not seized or it was not found transporting the illicit liquor. In the instant case, the jeep which was found to be transporting illicit liquor was seized, illicit liquor was also seized and therefore, to this extent, viewed from any stand point, the fact remains undisputed, more particularly when on a report lodged by Narpat Mewava regarding theft of the jeep, the police after thorough investigation came to the conclusion that no such occurrence of theft has taken place. In that view of the matter, according to learned Counsel for the petitioners, the charges levelled against the petitioners were otherwise unfounded. Learned Counsel for the petitioners further submits that when the disciplinary authority exonerated the petitioners and thereafter on a second charge sheet, on same set of charges, the inquiry proceeded, in that eventuality the petitioners ought to have been provided the opportunity to cross-examine the witnesses, more particularly Additional Superintendent of Police Shri Uchhavlal on the basis of whose investigation, the second charge sheet was served. Learned Counsel for the petitioners has relied on decision of Hon''ble Supreme Court in O.K. Bhardwaj v. Union of India and others, 2001 (9) SCC 180 wherein Hon''ble Supreme Court held that even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employees, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

7. So far as the point of review is concerned, the learned Counsel for the petitioners has relied on a decision of Hon''ble Supreme Court in Canara Bank and Others Vs. Swapan Kumar Pani and Another, . In that case, departmental proceedings for charges of misconduct were initiated against respondent, an accountant in appellant bank. The charge was that he unauthorisedly removed special bearer bonds worth Rs. 2 lacs which were pledged by a party as collateral security. He was not found guilty in the enquiry and was exonerated by the disciplinary authority by order dated 29.03.1989. A second charge sheet on the same facts but with charge that the respondent failed to protect bank''s interest was issued and the enquiry commenced. The Managing Director, Reviewing

Authority came to know from CBI investigation that 5 bonds out of 20 were disposed of by respondent through a private person and after a show cause notice, reviewed the first order which had exonerated respondent by an order dated 26.10.95. The appellant bank issued a fresh charge-sheet on 31.1.1996. The respondent therein filed a writ petition challenging the validity and legality of the charge sheet. The High Court refused to pass interim stay order. In the disciplinary proceeding, the respondent was found guilty and punishment of dismissal was passed. However, the Division Bench of the High Court, set aside the order of dismissal holding therein that review by Authority was unauthorised and charge-sheet was liable to be quashed. On an appeal before the Hon''ble Supreme Court, it has been held by Hon''ble Supreme Court that power of review under Regulation 18 could have been applied only where matter had not attained finality. The respondent having been exonerated, no fresh charge sheet could have been issued in absence of any statutory power in this behalf and on these premises, the judgment of the Division Bench was held to be unassailable to that extent.

8. In *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, , Hon''ble Supreme Court held that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.

9. Lastly, learned Counsel for the petitioners contended that the conclusion arrived at by the Inspector General of Police on a second charge sheet is without any material or evidence and therefore, on that count also, the order impugned Annex.9 and consequential orders on appeal and review deserve to be quashed. Learned Counsel for the petitioner has relied on decision of Hon''ble Supreme Court in *Union of India and others Vs. Kamath Holiday Resorts Pvt. Ltd.*, and in *Nand Kishore Prasad Vs. State of Bihar and Others*, .

10. In *R.P. Bhatt v. Union of India and Ors.* (supra), while considering the expression "consider" observed that it implies "due application of mind. Rule casts a duty on the appellate authority to consider the relevant factors set forth. In that case there was no indication in the impugned order dismissing an appeal against the order of removal from service preferred by the employee of Border Road Organisation, that the Director-General, the appellate authority, was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. Further there was also no finding on the crucial question as to where the findings of the disciplinary authority were warranted by the evidence on record and the Director General only applied his mind to the requirement of Clause (c) of Rule 27 (2), viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the case, and on these premises, the Hon''ble Supreme Court held that there being non-compliance with the requirements of Rule 27(2), the impugned order was liable to be set aside.

11. Similarly, in *Nand Kishore Prasad v. The State of Bihar and Ors.* (supra), the Hon'ble Supreme Court held that disciplinary proceedings before domestic tribunal are of a quasi judicial character, therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

12. In the instant case, firstly, there being no power of review vested with the authority reviewing the order Annex.6 passed by the disciplinary authority dated 22.11.2000 exonerating the petitioner. Rule 32 of the CCA Rules cannot be pressed into service for the reason that it has no application, at any rate in the facts and circumstances of the present case, do not confer the power of review or revision to the Inspector General of Police. Even in the first inquiry, the disciplinary authority has taken into consideration every piece of material and concluded that charges have not been proved and exonerated the petitioners. In the instant case, the undisputed facts remains that the jeep No. RJ22/C-1673 was found transporting illicit liquor in the midnight of 12/13.1.2000, the said jeep and the illicit liquor lying therein were seized. The Rojnamcha report corroborates the occurrence that petitioner Himmat Dan Charan who was holding the post of SHO being Inspector of the said police station recorded the secret information having received from Mukhbir. Had the occurrence as shown by the petitioner been not correct, then there could not have been a seizure of jeep and illicit liquor. The fact remains that the jeep was found transporting illicit liquor and it was seized as also the illicit liquor was seized and even after thorough investigation carried out by Additional Superintendent of Police, Shri Harish Chandra Singh C.I.D. (CB), it was revealed that the occurrence has taken place as stated in the FIR lodged by the petitioner Sub-inspector Gautam Jain. The only ground for submitting the F.R. is that the accused persons could not be identified and found. It is the case of the petitioners that it was a dark in the midnight of 12/13.1.2000 and on Nakabandi being arranged, the jeep driver did not stop the jeep and fled away with the jeep and the illicit liquor and it was chased and ultimately, the Jeep driver stopped the jeep near to a river at Woodland Hotel and fled away in bushes. In the circumstances, therefore, merely because the accused persons could not be identified and traced, it cannot be a ground to assume that the entire case has been falsely instituted, more particularly when the FIR filed by Narpat Mewada regarding theft of jeep was found to be totally false as no such occurrence took place, in that event it cannot be said that the petitioners have falsely concocted a criminal case with regard to seizure of the jeep as well as the illicit liquor and therefore, in my view, the disciplinary authority rightly came to the conclusion that the charges have not been proved vide Annex.6 and there being no fresh material and there being no power of review vested with the Inspector General of Police in issuing a second charge sheet and concluding against the petitioners. Even if in the second charge

sheet when the petitioners came with a case of denial of the allegations and the fact that in earlier inquiry on the same set of facts the petitioners were exonerated, it was incumbent on the disciplinary authority in second charge sheet to have provided an opportunity of hearing to the extent providing the opportunity of cross-examination of witnesses which in the instant case has not been done. In the instant case, from the order of the appellate authority as well as the reviewing authority, it nowhere appears that the authorities have considered the matter by due application of mind as both the orders are not indicative of the fact that there exists sufficient material to conclude against the petitioners. In the circumstances, therefore, viewed from any stand point, in my view, the orders impugned cannot sustain and are liable to be set aside.

13. Consequently, all the three writ petitions are allowed and the orders impugned dated 5.10.2001 (Annex.9), 13.08.2002 (Annex.11) and 26.4.2005 (Annex.13) in SBCW No. 6372/05, impugned orders dated 5.10.2001 (Annex.2) and 27.12.2002 (Annex.5) in SBCW No. 4331/03 and orders impugned dated 5.10.2001, 13.08.2002 and 10.5.2004 in SBCW No. 1345/05 are quashed. Stay petitions stand disposed of. No order as to costs.