

(2017) 02 RAJ CK 0111
In the Rajasthan High Court
Case No : 1640 of 1996

Gopal Singh Sisodia & ors.

APPELLANT

Vs

The State of Rajasthan & anr.

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

[Rajasthan Civil Services \(Classification, Control and Appeal\) Rules, 1958](#), [Rule 16](#) -
[Rajasthan Co-operative Societies Act, 1965](#), [Section 74](#), [S](#)

Citation : (2017) 02 RAJ CK 0111

Hon'ble Judges : Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : C.P. Sharma, Bhuvnesh Sharma

Judgement

1. The petitioner has preferred this writ petition making the following prayers:- i) issue an appropriate writ, order or direction in the nature thereof and thereby quash and set aside the impugned order dated 14-02-1994 (Annexure-4);

ii) issue an appropriate writ, order or direction in the nature thereof thereby direct the Respondents to reinstate the petitioner in service with all consequential benefits;

iii) issue any other order or direction which the Hon''ble Court deems just and proper may also be passed in favour of the humble petitioner and cost be also awarded."

2. The facts noted in this writ petition by this court are that the petitioner was initially appointed as Assistant Inspector in Cooperative Department on 18.01.1965 and was thereafter promoted as Inspector Executive in 1979. The petitioner was then sent on deputation in the year 1983 to the Cooperative Bank as Assistant Executive Officer (Marketing). The petitioner was served upon a charge-sheet under Rule 16 of C.C.A. Rules, 1958. The Enquiry Officer submitted the enquiry report on 29.07.1993 holding the petitioner guilty for the charges.

The disciplinary Authority thus, dismissed the petitioner vide order dated 14.2.1994.

3. The respondents filed a reply and denied any document being sought during the enquiry. As per the respondents, the documents were sought only after the enquiry report was sent and thus, such averment by the petitioner was merely after thought. As per the respondents, the enquiry was conducted against the petitioner after giving him due opportunity but since he did not submit any reply, the enquiry proceeded accordingly against the petitioner. The respondents stated that 33 dates were given at the time of enquiry proceedings and thus, the petitioner had ample opportunities to defend himself. The counsel for the petitioner argued that the respondents had initiated another proceedings under Section 74(2) of the Cooperative Societies Act, 1965 and thereby imposed penalty to recover the amount lost and such penalty was already implemented vide judgment dated 12.09.1988, 10.10.1990 and 28.05.1987. It was also argued by the counsel for the petitioner that the same charges became the foundation of proceedings under Rule 16 of the C.C.A. Rules, 1958 and the same authority which had passed the order under the Section 74 was in fact appointed the Enquiry Officer. The counsel for the petitioner relied upon the judgment of Arujun Chaubey Vs. Union of India & Ors. [reported in AIR 1984 SC 1356].

4. The relevant portion is as follows:- "Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own case and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondent 3, was speaking the truth was decided by respondent 3 himself.

In State of Uttar Pradesh V. Mohammad Nooh, 1958 SCR 595 at p. 609: (AIR 1958 SC 86 at p. 94), S.R. Das, C.J., observed, while speaking for the majority, that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. We may borrow the language of Das, C.J., and record a finding on the facts of the case before us that the illegality touching the proceedings which ended in the dismissal of the appellant is "so patent and loudly obtrusive that it leaves an indelible stamp of infirmity" on the decision of respondent 3."

5. Learned counsel for the petitioner also relied upon the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha [reported in 2010(2) SCC 772]. The relevant portion which is as follows:- "30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly

seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In *Shaughnessy v. United States* 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said: (L Ed p.969)

"...procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

32. The affect of non disclosure of relevant documents has been stated in *Judicial Review of Administrative Action* by De Smith, Woolf and Jowell, Fifth Edition., Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the chargesheet.

6. The counsel for the petitioner relied upon the case of *Roop Singh Negi Vs. Punjab National Bank & Ors.* [reported in 2009 (2) SCC 570]. The relevant portion, which is as follows:- 14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary

proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

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7. Counsel for the petitioner relied upon the case of *Devi Singh Vs. State of Rajasthan & Ors.* [reported in 2008(3) WLC 157] The relevant portion, which is as follows:- "When in a disciplinary enquiry certain charges are levelled against the delinquent employee, it is for the department to prove those charges. The delinquent cannot be expected to disprove them."

8. The purport of the aforementioned case law is that the judicial proceedings of the departmental enquiry ought to be conducted in a cautious manner within the strict para-meters of law. The authority should not act as a complainant as well as a Judge and tendering of documents without proving it with the help of witnesses renders the enquiry to be illegal. Taking note of the aforesaid precedent law and examining the record of the case this court is of the opinion that the employee was already penalized by holding proceedings under Section 74(2) of Rajasthan Cooperative Society Act, 1965. I have carefully examined the charges and the charges are similar in the proceedings of Section 74 and in the proceedings under rule 16 of the Rajasthan Civil Service Rules (CCA), 1958. It is also a proven fact that the authority which held the proceedings against the petitioner under Section 74 were the same as the enquiry authority under Rule 16 of the C.C.A. Rules, 1958. Thus, the enquiry authority had already given its mind while passing orders under Section 74(2) of the Act of 1965 holding the petitioner guilty of the charges. It is also not disputed that none of the witnesses were examined to prove or support the documents produced by the department. It shall be against the parameter of Article 20 of the Constitution of India and the spirit of Section 26 of the general clauses act that two parallel proceeding are permitted on same chain of events.

9. In light of the aforementioned precedent law and the aforesaid discussion in this court, it is deemed appropriate to allow the writ petition while setting aside the impugned order dated 14.2.1994. Since the employee is no more there and has expired long ago, therefore, the consequential benefits may be given to the

legal heirs of the employee (original petitioner) within a period of 3 months from today.