

(2018) 01 RAJ CK 0006
In the Rajasthan High Court
Case No : 4911 of 1993

Hari Singh Karnawat

APPELLANT

Vs

Municipal Board, Jhunjhunu & Anr.

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Citation : (2018) 01 RAJ CK 0006

Hon'ble Judges : Ashok Kumar Gaur

Bench : Single Bench

Advocate : R.C.Joshi, B.K.Sharma

Judgement

1. The instant writ petition was filed by Hari Singh Karnawatpetitioner, who was working as Lower Divisional Clerk in Municipal Board, Jhunjhunu. The petitioner had challenged the order dated 21.07.1990/04.08.1990 passed by the Appellate Authority whereby the penalty of dismissal from service passed by Disciplinary Authority, was set aside and petitioner was visited with a penalty of "recorded warning" and further, the petitioner has been denied the benefit of salary and other benefits except subsistence allowance from the date of his suspension till the order of removal passed against him. The petitioner expired during the pendency of the writ petition on 27.02.1995 and the present writ petition is persued by his wife Smt.Udai Kanwar. The widow of original petitioner has been brought on record as legal representative by way of filing an application, which was allowed by this Court on 24.01.1996.

2. Brief facts of the case are that the petitioner while working as L.D.C., was placed under suspension by an order dated 27.02.1985 in contemplation of departmental enquiry. The petitioner was served with a memo

along with charge-sheet dated 22.08.1985. The Disciplinary

Authority imposed five charges against the petitioner. The substance of the charges are as under:-

1. The petitioner was absent from duty for the period from 16.01.1985 to 26.02.1985 and on 25.02.1985, he came to office and put his

signatures in the attendance register.

2. The petitioner did not handover the service record and also did not give charge to another employee.

3. The petitioner was suffering from mental ailment and he did not produce the requisite certificate from a competent doctor and instead produced certificate from a local doctor.

4. The petitioner collected money in the name of Prime Minister Relief fund and after collection of money, did not deposit the same.

5. The petitioner while discharging duties as L.D.C. was found to be involved in political activities and as such, he did not discharge his official duty properly.

3. The petitioner after receipt of charge-sheet, submitted an application for inspection of documents dated 23.10.1985. The petitioner has alleged

in his petition that application for inspection of record was not given any heed and no record was shown to him. The petitioner has further alleged

in his petition that he was not informed about the appointment of Enquiry Officer and only once one Assistant Accounts Officer called the petitioner

and recorded his statement. The petitioner alleges that he did not receive any letter from the Enquiry Officer, regarding any date of hearing. The

petitioner has further alleged that he was never informed about the dates on which witnesses on behalf of department were to be examined and

petitioner was also not given opportunity to file list of witnesses.

4. The petitioner has alleged in his petition that no enquiry worth name under Rule 16 of the Rajasthan Civil Services (Classification, Control and

Appeal) Rules, 1958 was conducted and even copy of enquiry report was not supplied to him. The petitioner has alleged that all of a sudden,

penalty order dated 04.01.1986 was received by him wherein the Disciplinary Authority imposed the penalty of dismissal from service. The

petitioner has alleged in his petition that Disciplinary Authority did not record its finding on any of the charges and in a cryptic manner, the petitioner

was dismissed from service by a nonspeaking order. The petitioner has alleged that the Disciplinary Authority in the impugned order has referred to

a criminal case, in which the petitioner was convicted in 1969 and petitioner was given appointment in the year 1973 and such criminal case had no

connection with the alleged misconduct levelled against the petitioner.

5. The petitioner feeling aggrieved from the order of dismissal from service, filed an appeal before the Appellate Authority. The petitioner

specifically took the following pleas in his appeal:-

(i) The petitioner had filed an application dated 23.10.1985 for obtaining necessary documents enabling him to file reply to the charge-sheet,

however, the documents were never supplied to him.

(ii) The petitioner was not informed about appointment of the Enquiry Officer and Enquiry Officer never gave any opportunity of producing

witnesses nor dates of examination of witnesses on behalf of the department, was intimated.

(iii) The enquiry report was not supplied to the petitioner.

(iv) The Disciplinary Authority did not issue any show-cause notice along with enquiry report and opportunity of making representation against

enquiry report was not afforded to him.

6. The petitioner submitted that he had not committed any misconduct and he submitted his detailed reply in response to all five specific charges,

which were levelled against him. The Appellate Authority vide order dated 21.07.1990/ 04.08.1990 found the charge no.1 of absence without

intimation, was proved against the petitioner. The charge no.2 was also found to be proved about not handing over of charge to the other

employee. The Appellate Authority did not find charge nos.3 & 5 to be proved. The Appellate Authority further said that in respect of charge

no.4, the separate enquiry is required to be conducted as per provisions of Cr.P.C. and the Administrator of Municipal board was free to hold

separate enquiry. The Appellate Authority while concluding, came to the conclusion that petitioner was guilty of indiscipline and was negligent in

discharging his duties.

7. The Appellate Authority set aside the penalty order dated 01.04.1986 and looking to the indiscipline and negligence in discharging duties,

penalty of "recorded warning" was imposed and the petitioner was to be reinstated back in service with immediate effect. The Appellate Authority

further held that by way of penalty, the salary and other allowances of the petitioner from date of suspension till his dismissal from service, was to

be forfeited and this period was to be treated as leave without pay. The operative portion of the order passed by the Appellate Authority is

reproduced hereunder:-

VERNACULAR MATTER OMITTED

8. The learned counsel for the petitioner, Mr.R.C. Joshi has assailed the penalty order dated 04.01.1986 (annex.3) and submitted that the

Disciplinary Authority has passed the order like an administrator order and no provisions of Rule 16 of the CCA Rules has been followed. Mr.

Joshi has submitted that once the charge-sheet under Rule 16 of CCA Rules was issued, the respondents were under obligation to afford proper

opportunity to the petitioner. The submission of the learned counsel for the petitioner is also supported from the pleadings to the extent that

intimation of appointment of Enquiry Officer was not sent to the petitioner. The Enquiry Officer never informed about the dates on which witnesses

were to be examined, no opportunity of cross-examination of witnesses was ever afforded.

9. Mr. Joshi submitted that whatever enquiry was conducted ex parte, the respondents were under obligation to supply copy of enquiry report to

the delinquent-petitioner, and without supply of copy of enquiry report, petitioner was prevented from making his objections/representation against

finding recorded by the Enquiry Officer. Mr. Joshi has submitted that perusal of impugned order of penalty passed by the Disciplinary Authority is

also not as per the requirement under CCA Rules. The Disciplinary Authority has summarized the charges in his own language and by drawing

general conclusion, the petitioner has been held guilty and no separate finding has been recorded on five charges, which were levelled against the

petitioner. Mr. Joshi has submitted that there is total non-application of mind on part of the Disciplinary Authority as he has referred to a criminal

case, which was registered against the petitioner, before he entered in the service.

10. Mr. Joshi has submitted that the Appellate Authority was apprised of all the

shortcomings in the departmental enquiry and further, the petitioner had made specific submission in his memo of appeal in the manner the enquiry was conducted and the penalty order was passed. Mr. Joshi submitted that Appellate Authority was apprised with the fact that penalty order was passed with the retrospective effect from the date of suspension and as such, it was not legally sustainable.

11. Mr. Joshi has submitted that Appellate Authority has also not decided the appeal filed by the petitioner as per requirement of Rule 30 of CCA Rules, 1958. The Appellate Authority was required to consider as to whether the proper procedure has been followed during the departmental enquiry or not. The Appellate Authority was required to consider as to whether the Disciplinary Authority has applied its mind and has considered the entire record of the enquiry and has further recorded his separate finding on each charge. Mr. Joshi has submitted that the Appellate Authority did not look into any aspect of the matter and only passed order by terming the act of the petitioner as of indiscipline and negligent in discharging the duties.

12. Mr. Joshi has submitted that the petitioner while was in service before his death, could not have been visited even with penalty of recorded warning as has been ordered by the Appellate Authority. Mr. Joshi has submitted that the denial of benefit of salary and other allowances, etc. during suspension period of petitioner from 27.02.1985 to 20.07.1990 is without any basis and the petitioner ought to have been given all the actual benefit as the petitioner had not committed any misconduct at all.

13. Mr.B.K.Sharma, learned Additional Govt. counsel appearing for the respondents, was directed by this Court on 02.01.2018 to bring the record of departmental enquiry for perusal of the Corut. This Court again on 11.01.2018 had asked the learned Government Counsel to make the record available and last opportunity was granted to procure the record of the departmental enquiry. The Court had ordered on 11.01.2018 that in case, record is not received till the next date of hearing, the case was to be decided on merit in absence of the record.

14. Mr. Sharma, submits that he had taken all necessary steps by informing the respondents by writing them letter, etc. but the Officer-in-Charge as well as other Officers of the department, have not supplied the record of the

enquiry of the petitioner, to him.

15. Mr. Sharma has made submissions on merits of the matter and he has pointed out that the alleged letter written by the petitioner for asking

documents to prepare reply to the chargesheet, was not received and this fact has specifically been mentioned in para 5 of the reply to the writ

petition and petitioner has not been able to controvert the same by filing rejoinder, etc.

16. Mr. Sharma has further submitted that the Appellate Authority has considered all the facts and the punishment of dismissal from service has

been converted into recorded warning and as such, petitioner cannot raise grievance before this Court about the penalty of recorded warning. Mr.

Sharma has submitted that petitioner has been granted all benefits except monetary benefits and since few charges were found to be proved even

by Appellate Authority, all the actual benefits cannot be conferred on such employee. Mr. Sharma has submitted that the petitioner was negligent in

discharging duty and he himself is to be blamed as he even did not bother to file reply to the charge-sheet. Mr. Sharma has submitted that Assistant

Account Officer must be presumed to be an Enquiry Officer and when the petitioner did not come forward, the report was prepared and the

Disciplinary Authority on the basis of report, had passed the order. I have considered submissions raised by learned counsel for the parties and

perused the material on record.

17. The Court finds that after issuance of charge-sheet under Rule 16 of the CCA Rules, no procedure worth the name, has been followed by the

respondents. Rule 16 of the CCA Rules provides procedure for imposing major penalties and Disciplinary Authority has to frame definite charges

on the basis of the allegations on which the inquiry is proposed to be held. Sub-rule (3) of Rule 16 provides that Government servant will be

provided permission for inspection of record and to take extracts from such official records for the purpose of preparing his defence. Sub-rule (4)

of Rule 16 provides for receipt of written statement of defence, if any, within specified time, filed by the delinquent, and the Disciplinary Authority,

if does not receive even the written statement of defence, may appoint a Board of Inquiry or an Inquiring Authority for this purpose and the

Enquiry Officer/Authority is required to proceed as per the procedure laid down in

Rule 16(5)(6) of the CCA Rules, and the Enquiry

Officer/Authority after recording evidence of both the parties, is required to submit his report at the conclusion of the enquiry under Rule 16(7) of

the CCA Rules, 1958. The Court finds that in the present case, it has not been disclosed either in the reply or during course of argument that any

procedure was followed by the Disciplinary Authority for appointing the Enquiry Officer and further, whether his report was prepared and same

was available with the Disciplinary Authority before he took the decision to impose the penalty.

18. The Court finds that the penalty order makes a reference that petitioner was issued a charge-sheet of which he did not file reply and enquiry is

said to be conducted and after perusal of the record, the petitioner was held guilty of all the charges by making a general statement in the impugned

order. As per requirement of Rule 16(9) of the CCA Rules, the Disciplinary Authority has to consider the record of the enquiry and record its

finding on each charge. The perusal of the impugned order shows that Disciplinary Authority failed to take action as per requirement of Rule 16(9)

of the CCA Rules and as such, the said order cannot be sustained in eye of law.

19. The Court further finds that the Appellate Authority also did not decide the appeal of the petitioner as per Rule 30 of the CCA Rules. The

Appellate Authority has to keep in mind the parameters, which have been enumerated in Rule 30(2) of the CCA Rules, 1958. Rule 30(2)(a)

specifically provides that Appellate Authority has to consider whether procedure prescribed in CCA Rules has been complied with or not or

whether such noncompliance has resulted in violation of any provisions of Constitution or in failure of Justice.

20. In the present case, the petitioner is all alone being requesting the Disciplinary Authority as well as Appellate Authority that there was gross

violation of principles of natural justice and petitioner was never associated with departmental enquiry and as such, it had resulted in failure of

justice. The Appellate Authority ought to have applied his mind and should have used its discretion as per requirement provided under Rule 30(2)

(a) of CCA Rules.

21. The Appellate Authority was further required to consider that the facts on which order was passed, were established or not. The Appellate

Authority instead of applying his independent power, only referred to the observations made by the Disciplinary Authority in the impugned order

and the Appellate Authority itself found that charges nos. 3k & 5 were not proved and further, charge no.4 was required to be enquired again by

following a de novo procedure, yet the Appellate Authority came to the conclusion that petitioner is guilty of indiscipline and negligent in

discharging the duties. In the opinion of the Court, the Appellate Authority has not considered the appeal as per the requirement of Rule 30 of

CCA Rules. The order passed by the Appellate Authority is also not sustainable in eye of law.

22. As far as submission of learned counsel for the respondents is concerned to the extent that respondents had never received the letter for asking

the documents to be supplied to the petitioner, the Court finds that not only the letter which asked for documents but at later stage also, the

petitioner has also not been associated with any kind of enquiry and as such, whatever has been done by the respondents that has been done

behind the back of the petitioner. The Court also does not find much substance in submission of learned counsel for the respondents that all facts

have been considered by the Appellate Authority while passing impugned order and only minor penalty like recorded warning has been imposed.

The submission of learned counsel for the respondents that petitioner has been given all benefits except monetary benefits, the Court finds that the

order passed by the Disciplinary Authority as well as by the Appellate Authority are not legally sustainable and as such, the consequences are

required to be followed by setting aside these orders.

23. Resultantly, the impugned penalty order dated 04.01.1986 and order of the Appellate Authority dated 21.07.1990/ 04.08.1990 to the extent

of imposing penalty of recorded warning and denial of salary and other allowance for the period from 27.02.1985 to 20.07.1990 are set aside.

The legal representative of the petitioner-widow is held entitled for payment of actual salary and other allowances of her late husband for the

period from 27.02.1985 to 20.07.1990 after deducting the subsistence allowance, which was already paid. The said exercise shall be carried out

within a period of two months from receipt of the certified copy of this order. The writ petition stands, accordingly, allowed. There shall be no

order as to cost.