

(1986) 03 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Writ Petition No. 872 of 1978

Hukam Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:

Citation : (1986) RLW 289 : (1986) 1 WLN 498

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Milap Chand Jain, J.—By this writ petition, the petitioner seeks to quash the order dated October 23, 1978 (Annex. 9/1) whereby, in the exercise of the powers under Rule 34 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short "the Rules"), the Governor enhanced the penalty from withholding the grant of two increments without cumulative effect to that of reduction of rank of the petitioner from the post of Sub-Inspector to Head-Constable for a period of two years. The petitioner was appointed as Sub-Inspector of Police directly by the Deputy Inspector General of Police, Bikaner by his order dated December 3, 1965. In the year 1966, an enquiry was held against the petitioner in respect of the three charges. It is alleged that the Enquiry Officer exonerated the petitioner of all the charges levelled against him, but the Deputy Inspector General of Police, Bikaner in his capacity as Disciplinary Authority, found the petitioner guilty of charge No. 3. He, however exonerated the petitioner of charges No. 1 and 2 and consequently, passed the order dated May 20, 1969 and imposed the punishment of stoppage of two grade increments without cumulative effect. It appears that in exercise of the powers under Rule 34, action was initiated against the petitioner for enhancement of the punishment. In May 1971, a notice was issued to the petitioner but the same was not served on him. The subsequent notice was again issued accompanied with the letter dated May 29, 1971 (Annex. R-3), but the same too was not

served. The petitioner was served with the notice dated September 1, 1976 (Ex.4). It was recorded in Ex. 4 that previously, notice dated 12-5-1971 was issued but was not served. After receipt of this notice, the petitioner could not make representation and he demanded inspection of some records and supply of the copy of the order of the Deputy Inspector General of Police, Bikaner dated May 20, 1969 and he also sought an opportunity of personal hearing. The petitioner was then directed by Ex. 6 to come for inspection of the records at the Secretariat within 15 days, else it will be presumed that he has nothing to say in the matter. In this connection, no travelling allowances will be paid, On a further re-presentation by the petitioner, the Deputy Secretary informed the petitioner by Ex. 7 dated 16-11-1977 that the actual travelling expenses would be paid in connection with the inspection of the record. In case, it is not done, the matter will be decided ex-parte. It appears that the petitioner further made a representation claiming advance travelling allowance and D.A. This representation was made on December 28, 1977 (Ex. 8). Thereafter, the matter was decided on October 23, 1978 (Ex. 9/i) and copy of the order passed by the Governor under Rule 34 was forwarded to the Deputy Inspector General of Police, Bikaner (Ex.9) dated November 16, 1978. The order dated October 23, 1978 (Ex. 9/1), inter alia, is sought to be challenged on the ground that the power under Rule 34 has not been exercised within a reasonable time. It came to be exercised after lapse of 9 years. Although, the action was initiated in May 1971.

2. The petition has been resisted on behalf of the respondent-State and it is averred that the power of review vests under Rule 34. The nature of the charge proved against the petitioner was taken into consideration and it was found that the petitioner has not been punished adequately, so, a show cause notice was issued to the petitioner on May 12, 1971, so, within the reasonable time, action was initiated against the petitioner under Rule 34. The petitioner was afforded an opportunity to represent against the show cause notice. The petitioner did not avail that, so, what was thought proper and just, punishment was imposed.

3. I have heard Mr. B.L. Maheshwari, learned counsel for the petitioner and Mr. B.R. Mehta, learned Deputy Government Advocate.

4. It has been urged on behalf of the petitioner that till September 1976, the petitioner was not informed that action has been initiated against the petitioner. The petitioner was not served with the earlier notice. The petitioner continued to serve in the capacity of Sub-Inspector of Police right upto October 1978. Although, there is no time limit in which the power under Rule 34 is to be exercised, still the power ought to have been exercised within the reasonable time and the power has not been exercised for 9 years, then it would be unreasonable and arbitrary to the exercise of the powers, if the same is exercised after a long lapse of time. In support of his submissions reliance has been placed on some case law.

5. Mr. B.R. Mehta, learned Deputy Government Advocate, on the other hand,

submitted that there is no time limit for the exercise of the power. The only time limit, which has been introduced in Rule 34 by notification dated 25-19-75 is that no action under Rule 34 shall be initiated more than 3 years after the date of orders to be reviewed Three years" time limit for reviewing the order is only for initiating the action and not for passing any final order of review. In the instant case, action was initiated in May 1971. Although, early to 27-19-75, there was no time limit for initiating the action, still the action was initiated in the present case within a reasonable time. He submitted that it is true that the final action in the matter, could not be taken and in between 1971-76, notices could not be served on the petitioner but for these reasons, it should not be taken that the power has been exercised arbitrarily in an unreasonsbie time.

6. I have considered the rival submissions advanced before me. In The State of Gujarat Vs. Patil Raghav Natha and Others, , it has been observed as under:

The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

That was a case with regard to exercise of power of revision u/s 65 of the Bombay Land Revenue Code (5 of 1879). There was no period of limitation prescribed u/s 211. In the connection, their Lordships observed as above.

7. Reliance has further been placed by Shri B.L. Maheshwari, learned counsel for the petitioner on a Bench decision of the Orissa High Court in Menasaranjan Das v. State of Orissa and Ors. 1973(2) SLR 553. In that case, the petitioner was employed as Accounts Clerk. He was placed under suspension w.e f. 1-12-1964 on charges of embezzlement. Charges were actually communicated on 7-6-1965 on 30-10-1968, he submitted his explanation. No action was taken in the disciplinary proceeding. Their Lordships observed that:

We see no justification in the order of suspension made in 1964 to have been kept alive until 1972. It was vexatious and inexpedient and had a demoralising effect on a public officer. The utter callousness shown by the Head of the Office in keeping a public officer suspended almost for eight years without any justification (we say so because the proceeding was kept alive for such a long period without any excuse) justifies the annulling of the order. Accordingly we quash the order of suspension as also the disciplinary proceeding.

It would appear not only the suspension order was quashed but the disciplinary proceedings were also quashed, simply on the ground that the official continued to be suspended for a period of 8 years without any justification for such a long period.

8. The other authorities, on which reliance is placed are A.P. Augustine v. Superintendent of Post Office Alwaye 1984 (2) SLR 153 and Mohanbhai

Dungarbhai Parmar v. Y.B. Zala and Anr. 1980 Lab. I.C. 89, These cases, lay down a rule regarding delay in initiation of disciplinary proceedings. It has been observed that no fair & effective enquiry can be conducted unless it commences within a reasonable time after the incident. It has been held that the delay in initiating the disciplinary proceedings must be held to constitute a denial of reasonable opportunity to defend himself as calling the employee, at distance of time is probably to put him at considerable disadvantage. These authorities have no application so far as the present matter is concerned.

9. In the present case, the final order imposing the punishment was passed on 20-5-1969 and the petitioner was not even served with any show cause notice upto September 1976, so, almost for a period of more than 9 years, the petitioner was not aware that any action has been initiated against him for enhancement of the punishment. It is true that the action was initiated within the reasonable time, but that alone is not sufficient. If after initiating the action, the power is not exercised within a reasonable time then that too would be taken as an arbitrary and unreasonable exercise of the power. It was most unreasonable to enhance the penalty after lapse of 9 years more particularly, when for a period of 7 years, no notice was served on the petitioner. During all these nine years, the petitioner continued to serve in the capacity of Sub Inspector of Police. All powers, which are vested in the authorities under the statute or the Rules should be exercised within a reasonable time also the exercise of the power can be found to be vitiated, on the ground that it has been exercised in an unreasonable manner after a long lapse of time. The petitioner took it that he has been punished and he accepted the punishment. It would be highly unjust after lapse of 9 years, his punishment may be enhanced. Thus, on this ground alone that the power has not been exercised within a reasonable time, in my opinion, the order dated October 23, 1976 enhancing the punishment deserves to be quashed.

10. On behalf of the petitioner, it is also urged that he was not given reasonable opportunity of hearing as he was not allowed to have inspection of the records. He could not inspect the record because of denial of the travelling and D. A. He could not visit Jaipur so he failed to inspect the record and without inspection, of the record, it was not possible for him to make any effective representation. This contention, in my opinion, has no merit. The petitioner was permitted to claim actual travelling expenses for inspection of the records. The petitioner could not be allowed the D. A. as it was his own matter and not an official duty. The petitioner was never denied to exercise his right of inspection of record. He had full opportunity of inspection of the record which he did not avail. Besides that, the petitioner cannot claim any opportunity of personal hearing. He could make representation against show cause notice but he had failed to make any representation. Thus, there is no denial of any reasonable opportunity of hearing to the petitioner, but in view of what I have discussed above, the order deserves to be quashed.

11. No other point survives for consideration.

12. In the result, the writ petition is allowed and the order dated October 23, 1978 (Ex. 9/i) is quashed. The parties are left to bear their own costs of this writ petition.