
(2001) 05 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1689 of 1991

Jagdish Chandra Chauhan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Rajasthan Police (Incitement of Disaffection) Ordinance, 1979 — Section 3, 4

Citation : (2002) 1 RLW 622 : (2002) 5 WLC 755

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : A.K. Sharma, for the Appellant; M.R. Naredi, for the Respondent

Judgement

Verma, J.—On the alleged allegation that the petitioner had taken part in the Police Agitation in the year 1979, his services had been dispensed with on 15.7.79. Even though the petitioner states that he had not participated in the agitation but was preparing for the examination of M.A. (Previous) (Economics), but the fact is that he was arrested on 17.7.79 u/s 3/4 of Rajasthan Police (Incitement of Disaffection) Ordinance, 1979. He was placed under suspension on 11.9.79. Along with the petitioner, 11 other police officials were also arrested and suspended. The case FIR No. 55/79 was registered u/s 3 of the Ordinance, 1979. The police filed Final Report before Chief Judicial Magistrate, Ajmer, meaning there by, the petitioner was not prosecuted. Ultimately the petitioner preferred the departmental appeal, which appeal was also dismissed in April, 1987 on the ground of limitation. Aggrieved against such order, the petitioner had moved writ petition No. 375/89, which was decided on 2.11.89 (ann, 1) whereby the order of dismissal and appellate order was set aside with the direction that the appeal of petitioner shall be decided by Dy. Inspector General of Police, Ajmer Range, Ajmer. Many other constables, who were similarly situated, they had also filed the appeal but given punishment of stoppage of 3 grade increments for a period of 3 years and were entitled to receive 3/4th of pay and allowance of the period they remained under suspension. Copy of such

order has been annexed as annexure-2. Similar order was passed in case of Mithalal on 4.10.89 (Ann. 4). The petitioner was punished vide order dt. 24.1.90 by the order of stoppage of 3 increment with cumulative effect but was denied pay and allowance for the period he remained out of job.

2. The petitioner had challenged the order of removal primarily on the ground that (1) he never participated in the agitation as he was preparing the examination of MA Previous (Economics) in July, 1979. Along with the rejoinder he has attached the copy of the admission card issued by University of Rajasthan bearing enrolment No. 73/23971 and Roll No. 8765; (2) No enquiry was held and if any enquiry was held the same was neither legal nor proper; (3) the police had submitted final report in the case, meaning thereby there was no basis or evidence to show that the petitioner had ever participated in the strike and in such circumstances the petitioner ought not to have been punished; (4) in similar circumstances the respondents had awarded the punishment of stoppage of 3 grade increments with cumulative effect with forfeiture of 25% salary to other police officers; even assuming the allegations are to be true, the petitioner could not have been given punishment which is discriminatory on the face of it; (5) other police personnel namely Radhey Shyam Sharma, ASI and Jalaluddin constable, who were arrested in FIR No. 55/97 were punished with stoppage of 3 increments and was paid 75% of salary.

3. In reply the facts, as stated above, are not denied. However, it is stated that so far awarding of punishment is concerned and if lesser punishment is given to employees by the appellate authority, it cannot be said that it is the case of discrimination. In regard to defence of petitioner that he was preparing for examination of MA Previous Economics and was not participating in Agitation, it is stated that the petitioner had not produced any such evidence.

4. In rejoinder filed by petitioner, further instances have been given to the effect that the respondent had given lesser punishment to many personnel, who had admitted the guilt but had tendered the apology.

5. Counsel for petitioner relies on the judgment in case of Shingara Singh v. State of Punjab (1).

6. After hearing counsel for parties and the circumstances mentioned above, I am of the opinion that it was a fit case where either the enquiry ought to have been held in view of the denial of petitioner that he had not participated in the agitation, but in any case, when other police officials, who were arrested along with petitioner in FIR No. 55/79 and Final Report was also submitted, had been awarded the punishment of stoppage of three increments with 75% wages of the period of dismissal, the similar punishment ought to have been awarded to petitioner. In appellate order annexure-4 it has been specifically mentioned that the earlier order of termination is recalled; there was nothing adverse against the petitioner; his past record was clean and in view of his long service and

young age, the earlier order or punishment was recalled.

7. It has been admitted in written statement that certain persons, who had tendered their apology i.e. they had admitted the guilt, but those persons were either reinstated or were given lesser punishment. Even though it is not domain of this Court to prescribe the punishment which may be imposed on the employee concerned, but in the circumstances of the present case, in my opinion, the other police personnel who were similarly situated to petitioner and were arrested on the same date; and in the same FIR Final Report was submitted, which was accepted, and were discharged and were given lesser punishment; there is no reason as to why the petitioner should be isolated for awarding higher punishment.

8. For the reasons and discussions mentioned above, it is directed that the petitioner should be considered for imposing the similar punishment as awarded to other similarly situated police personnel i.e. stoppage of three increments for three years, as mentioned in annexure-2. The petitioner shall be entitled for payment of 75% wages along with allowances and remaining salary shall be forfeited, that is, the punishment of the petitioner shall be equal as was awarded to other similarly situated employees vide Annexure-2.

9. With the above observations, the writ petition is disposed of. No order as to cost.