
(1987) 11 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 422 of 1987

Jagjiwan Chand Bhandari

APPELLANT

Vs

Rajasthan High Court and Others

RESPONDENT

Date of Decision : 27-11-1987

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 17
Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 — Rule 13

Citation : (1988) 2 RLW 547 : (1988) 1 WLN 440

Hon'ble Judges : Kanta Bhatnagar, J; A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has challenged the order of the Additional Registrar, Rajasthan High Court, Bench Jaipur dated 5-2-1985 (Annex. 1) where by he was given a "recorded warning" to be careful in future and he has also challenged the order of the Chief Justice where by his appeal was rejected.

2. The brief facts giving rise to this writ petition are that the petitioner was posted as Senior Bench Reader at Jaipur Bench. On 17-11-1984 at 3-30 p.m. when the Additional Registrar went for the round he found that the petitioner was not on his seat, therefore, on 19-11-1984 a memo was issued to the petitioner to explain within 3 days that why he was not available at that time on his seat. The petitioner received this memo on 30-11-1984 but he did not submit any reply. After that under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (here in after referred to as "the Rules of 1958") read with Rule 13 of the Rajasthan High Court (Conditions of Services of Staff) Rules, 1953 (here in after called "the Rules of 1953") was issued to the petitioner on 19-12-1984 with the direction to submit his explanation within 10 days from the date of receipt of the memo. The petitioner submitted his explanation on 2-1-1985. The Additional Registrar after going through the explanation submitted

by the petitioner did not find it satisfactory and it was observed that the petitioner has not been able to point out that in what matter he went to cause list Section for service work. So he gave a recorded warning to be careful in future. The petitioner appears to have filed an appeal which was rejected vide order dated 7-1-1987 (Annex. 3). Hence the present writ petition.

3. Mr. Bhandari appeared personally and argued his case. He also submitted written-arguments.

4. We have heard Mr. Bhandari in person and gone through the written arguments.

5. The respondents have also filed a reply justifying their action.

6. Mr. Bhandari submitted that the Additional Registrar, Rajasthan High Court, Bench Jaipur is not competent to impose the penalty. In order to appreciate his argument, it may be relevant to mention here that at the time of creation of a Bench at Jaipur the post of the Additional Registrar for Jaipur Bench was created. The service conditions of the High Court employees are governed by the Rajasthan High Court (Conditions of Services of Staff) Rules, 1953. Rule 12 lays down that what penalties would be imposed. Rule 12 of the Rules of 1953 reads as under:

12. Penalties: The following penalties may, for good and sufficient reasons, be imposed by the Chief Justice or, subject to any special order of the Chief Justice, by the Registrar upon the persons serving on the staff attached to the High Court, namely:

(i) Censure;

(ii) With-holding of increments or promotion;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order;

(iv) Reduction to a lower service, grade or post, or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules;

(v) Compulsory retirement on proportionate pension;

(vi) Removal from service which shall not be a disqualification for future employment;

(vii) Dismissal from service which shall ordinarily be disqualification for future employment.

Explanation: The following shall not amount to penalty within the meaning of this rule-

(i) Non-promotion whether in a substantive or officiating capacity, after

consideration of his case to a higher grade or post to which he is eligible;

(ii) Reversion to a lower grade or post of a person officiating in a higher grade or post on the ground that he is considered after trial, to be unsuitable for such higher grade or post on administrative grounds unconnected with his conduct;

(iii) Reversion to his permanent grade or post of a person appointed on probation during or at the end of the period of probation;

(iv) Compulsory retirement in accordance with the provisions relating to his superannuation or retirement;

(v) Termination of the service.

(a) of a person appointed on probation during or at the end of the period of probation;

(b) of a temporary person appointed otherwise than under contract on the expiration of the period of appointment;

(c) of a person employed under an agreement in accordance with the terms of such agreement.

7. The penalties have been enumerated and the procedure which is to be followed for imposing these penalties has been adopted as applicable to the Government servants of Rajasthan. Rule 13 clearly lays down that enquiry shall be conducted under the Rules framed by the State of Rajasthan. Rule 13 reads as under:

13. Inquiries into conduct of members of Staff: The rules or orders regulating inquiries into allegations against servants of the State Government shall apply with the necessary modifications and adaptations to inquiries into the conduct of members of the staff attached to the High Court.

8. By virtue of Rule 13, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 have been adopted mutatis mutandis. Rule 12 at the out-set lays down that the penalties shall be imposed by the Chief Justice for good and sufficient reasons. It further lays down that such penalties can be imposed by the Registrar also for good and sufficient reasons. It has also been laid down that the Chief Justice can issue a special order. The expression "subject to any special order of the Chief Justice" empowers the Chief Justice that apart from imposing the penalties by himself and by the Registrar he can by special order authorise any other officer also to impose the penalties. In this connection, learned counsel for the respondents has invited our attention to an order passed by the Chief Justice way back on 11-1-1982 whereby the Additional Registrar, Rajasthan High Court Bench, Jaipur has been authorised to exercise the powers under Rule 17 of the Rules 1958 in respect of the staff working at the High Court, Bench Jaipur. The order reads as under:

RAJASTHAN HIGH COURT, JODHPUR

ORDER

No. 1/S.O. Dated 11-1-1982

The Additional Registrar, Rajasthan High Court Bench Jaipur is also authorised to exercise the powers vested in the Registrar of this Court under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, in respect of Staff working at High Court, Bench Jaipur.

CHIEF JUSTICE"

9. Rule 17 of the Rules of 1958 reads as under:

17. Procedure for imposing minor penalties: (a) No order imposing any of the penalties specified in clauses (i) to (iii) of Rule 14 shall be passed except after-

(a) The Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make;

(b) Such representation, if any, is taken into consideration by the Disciplinary Authority;

(c) An opportunity of personal hearing is given by the Disciplinary Authority to the Government servant to explain his case, if so desired by him;

(d) The Commission is consulted in cases where such consultation is necessary.

(2) The Record of proceedings in such cases shall include:

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the advice of the Commission, if any; and

(v) the orders on the case together with the reasons therefor."

10. Rule 17 of the Rules of 1958 lays down that penalties mentioned in clauses (i) to (iii) of Rule 14 of the Rules of 1958 are minor penalties. Rule 14 of the Rules 1958 runs as under:

14. Nature of penalties: The following penalties may, for good and sufficient reasons, which shall be recorded, -and as here in after provided, be imposed on a Government Servant, namely:

(i) Censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the

Government by negligence or breach of any law, rule or order;

(iv) reduction to a lower service, grade or post, or to lower time scale to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules;

(v) compulsory retirement on proportionate pension;

(vi) removal from service which shall not be a disqualification for further employment;

(vii) dismissal from service which shall ordinarily be a disqualification for further employment.

Explanation (1)-The following shall not amount to penalty within the meaning of this rule.

(i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;

(ii) stoppage of a Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar;

(iii) non-promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered after trial to be unsuitable for such higher service grade or post or on administrative grounds unconnected with his conduct;

(v) reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms on his appointment or the rules and orders governing probation;

(vi) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(vii) termination of the services-

(a) of a Government servant appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing probation; or

(b) of a temporary Government servant appointed otherwise than under contract on the expiration of the period of appointment;

(c) of a Government servant employed under an agreement, in accordance with the terms of such agreement;

(d) of a Government servant in the services of any of the integrating units of Rajasthan, on non-selection or non absorption for appointment in any of the Services of the integrated State of Rajasthan in accordance with the integration rules.

Explanation (2)-The discharge of a person appointed on ad hoc or provisional basis to any of the posts in the integrated set up of the Rajasthan Services otherwise than for reasons of non-selection or non-absorption to any such services or post in accordance with the integrated rules, shall amount to removal or dismissal as the case may be.

Note : The disqualification for future employment on account of dismissal under Rule 14(vii) can only be waived by the Government if the merits of an individual case so justify

As such the clauses (i) to (iii) of Rule 14 of the Rules of 1958 are pari materia with clauses (i) to (iii) of Rule 12 of the Rules of 1953 as re-produced above. As such the order dated 11-1-1982 shall be deemed to be an order under Rule 12 authorising the Additional Registrar, Rajasthan High Court, Bench Jaipur to exercise the power of imposing the minor penalties. Since Rule 13 of the Rules of 1953 says that the provision of the Rules 1958 will be applicable mutatis mutandis to the Rules of 1953 and Rule 17 lays down the procedure for imposing minor penalties, thus, the Additional Registrar under the Rules of 1953 can pass any minor penalties by following the procedure given in Rule 17 of the Rules of 1958. Thus, the contention of Mr. Bhandari does not appear to be well founded and it is rejected.

11. Mr. Bhandari, has next contended that the "recording warning" is not a punishment as indicated in Rule 12 of the Rules of 1953 or Rule 14 of the Rules of 1958. It is true that the "recorded warning" is not a punishment as contemplated in either Rules of 1953 or the rules of 1958. The "recorded warning" though not a punishment under either of the two Rules, but it is an adverse entry against the incumbent. The expression "censure" has been defined in Webster's Third New International Dictionary as under:

Censure: a judgment involving condemnation; a : Spiritual chastisement by an ecclesiastical agency; b : sentence of punishment by civil or military authority : adverse judgment : the act of blaming, finding fault with or condemning sternly, critical recension, expression of official disapproval, a resolution of a legislative body expressing disapproval of a government official;

Censure : ESTIMATE, JUDGE: to form or pronounce an opinion on: to find fault with and criticize adversely as blame worthy, with stern judgment: disapprove of or dispraise: to condemn with judicial sentence."

12. The expression "censure" has been defined in the Concise Oxford Dictionary Hnd Edition, which reads as under:

Censure: 1. Adverse judgment, expression of disapproval, reprimand. 2. v.t.

Blame, criticize unfavourably, reprove; hence-

13. Likewise, the expression "warning" has been defined by the Webster's Third New International Dictionary as under:

Warning: the action of one that warns: the action or fact of putting one on his guard by intimating danger, evil consequences or penalties from an act or course of conduct; b : the fact or state of being warned, 2. Something that warns or serves to warn; as a : ADMONITION b : an example or case having a deterrent effect c : CALLING SUMMONS; also; a summoning bell or other signal; d : a notice from one or the other of two parties to a business relation that it will be terminated at a certain time e : a notice advising a student that his academic or social record is unsatisfactory : a notice, bulletin, or signal that serves to caution of the approach of danger;

warning : serving as an alarm, signal, summons or admonition: announcing something imminent or impending or the presence of danger.

14. Warning has also been defined as under in the concise Oxford Dictionary Hnd Edition:

Warning: have one's caution excited, mentally register danger etc., act on a; also or esp. : that serves to warn, announce that employment is to terminate in specified time.

Both the expression, i.e., "censure" and "warning" have different connotation But speaking in the service parlance the incident is same that the incumbent's action is found wanting. The proper expression for imposing the punishment was "censure". But none the less the incumbent was found wanting in his conduct. Therefore, this warning should be treated not as a punishment as contemplated in the Service Rules. But it is definitely an adverse entry showing the lack of efficiency on the part of the incumbent. Thus, the Additional Registrar has rightly communicated this adverse entry and the same has been made part of the record of the incumbent.

15. Lastly, Mr. Bhandari urged that the CCA Rules are not applicable This contention of Mr. Bhandari is not well founded as we have already answered this contention while answering the first question with reference to Rule 13 of the Rules of 1953 which has made the C.C.A. Rules applicable mutatis mutandis to the Rules of 1953.

16. Mr. Bhandari has also made a point in his written submissions that the order dated 11-1-1982 issued by the Chief Justice empowering the Additional Registrar of the Jaipur Bench cannot be treated as a rule, unless it is published in the Gazette. This is not a rule, but this is an order issued by the Chief Justice in exercise of the powers under Rule 12 of the Rules of 1953 authorising the Additional Registrar to act as a Disciplinary Authority for a limited purpose, i.e, to impose the minor penalties. Such an administrative order in exercise of the statutory powers of the Chief Justice is not required to be published in the

Gazette.

17. In the-result, we do not find any merit in this writ petition and the same is dismissed with the above modification.

18. The parties are left to bear their own costs.