
(2009) 02 RAJ CK 0010
In the Rajasthan High Court

Jai Narayan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2009) 02 RAJ CK 0010

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—The petitioner, a Patrolling Officer with the Department of Excise was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter to be referred to as the Rules of 1958) to explain his conduct relating to a charge for demanding and accepting a bribe of Rs. 2000/- from one Prem Kumar and also for having possession over 100 gms. of opium. For the same charges a criminal case was also lodged against the petitioner, however, in that a final report was given and was accepted by the competent Court.

2. The petitioner denied the charges alleged, therefore, the disciplinary authority decided to proceed with a regular inquiry against him as per the provisions of the Rules of 1958. During the course of inquiry statements of number of prosecution witnesses were recorded and the petitioner was permitted to cross-examine them. Certain documents were also placed on record by the prosecution. The complainant Prem Kumar, from whom the petitioner is said to have demanded bribe, was also examined by the inquiry officer. Two independent witnesses viz. Achal Singh and Vasudev were also examined by the inquiry officer.

3. The inquiry officer after considering whatever material available on record submitted a report of inquiry on 19.5.1989 to the disciplinary authority i.e. the Commissioner Excise, Udaipur. The inquiry officer exonerated the petitioner from

the allegation No. 2 that is regarding illegal possession of 100 gms. of opium, however, by relying upon the statements of Hamir Singh, Narpat Singh, Binj Raj, Sohan Singh, Amra Ram and Kishan Lal, held the petitioner guilty for demanding and accepting bribe of Rs. 2000/- from Sh. Prem Kumar. The disciplinary authority by its order dt. 26.8.1989 imposed a penalty of reversion to the post of Jamadar Gr.I from the post of Patrolling Officer Gr.II after holding the petitioner guilty for the misconduct alleged. Being aggrieved by the order aforesaid the petitioner preferred a petition for writ (S.B. Civil Writ Petition No. 3496/89) before this Court which came to be accepted on 06.12.1989, holding therein that the petitioner could have not been reverted to the post of Jamadar being never born in that Cadre. While doing so, this Court remanded the matter to disciplinary authority to reconsider record of the inquiry and to pass an order afresh.

4. Accordingly, the disciplinary authority passed an order dt. 30.10.1990 holding the petitioner guilty for the charge No. 1 and imposed a penalty of stoppage of all future annual grade increments. The order passed by the disciplinary authority dt. 30.10.1990 came to be modified by the appellate authority under the order dt. 1.9.1993 by confining penalty to the extent of stoppage of three annual grade increments with cumulative effect.

5. By this petition for writ the findings given by the inquiry officer, order passed by the disciplinary authority and also the order passed by the appellate authority are questioned. The contention of learned Counsel for the petitioner is that the instant one is a case of no evidence and the inquiry officer drew an inference regarding demand and acceptance of bribe by the petitioner from Sh. Prem Kumar though no conclusive evidence in this regard is available on record. Per contra, as per the respondents, the inquiry officer after considering the statements of Hamir Singh, Narpat Singh, Binj Raj, Sohan Singh, Amra Ram and Kishan Lal rightly drew inference regarding demand and acceptance of bribe by the petitioner. The disciplinary authority considered the entire record of the inquiry and after accepting the findings given by the inquiry officer imposed a penalty which was reduced by the appellate authority.

6. Heard counsel for the parties.

7. The case of the respondents against the petitioner was that he, while holding the post of Patrolling Officer, recovered 100 meters of foreign cloth from Sh. Prem Kumar and to release the same he demanded bribe.

8. I have thoroughly examined the record available. Sh. Hamir Singh, a Sepoy in the Department of Excise, has stated that the petitioner along with him and three other Sepoy made a raid and during that raid 100 meters of foreign cloth was found in illegal possession of Sh. Prem Kumar. Sh. Prem Kumar was not carrying any valid receipt from the Department of Customs to carry such foreign material. He has also stated that on basis of some complaint a team of police officials came to the Excise Office to make enquiry regarding the allegations of

demanding and accepting bribe during the raid aforesaid. During the course of inquiry the Superintendent of Police frisked the petitioner and also other members of the raid party but no money was found with them. The Patrolling Officer during the course of frisking instructed Sepoy Narpal Singh to bring the envelop which was said to be lying in his office. The envelop aforesaid was brought by Narpal Singh and the same was handed over to the Superintendent of Police. The statements of the same nature were given by Binj Raj and Sohan Singh also. The Sepoy Narpal Singh also stated that during the frisking nothing illegal was found from his possession or from possession of the petitioner. He has also stated that he handed over one envelop to Superintendent of Police as per the instructions given by Patrolling Officer i.e. the petitioner.

9. Shri Amra Ram and Sh. Kishan Lal are the police officials and they have stated in their statements that the petitioner Jai Narayan on asking denied the fact regarding demanding and accepting any bribe, however, after some persuasions he instructed Narpal Singh, a Sepoy of the Department of Excise to bring the money from the barrack, accordingly that was brought and handed over to the Superintendent of Police. The statements of same nature are also given by the Assistant Sub Inspector, Sh. Amra Ram. It is pertinent to note that Sh. Prem Kumar, from whom foreign cloth was recovered in his statements, denied the factum of demand and acceptance of bribe by the petitioner. The independent witnesses namely Achal Singh and Vasudev have also not supported the prosecution case. All the three persons named above were declared hostile.

10. Precisely the question requires examination is that whether the sufficient material was available on record to draw the inference regarding demand and acceptance of bribe by the petitioner? For the purpose, the evidence on basis of which the petitioner is found guilty is required to be pondered. Sh. Hamir Singh, who is a Sepoy in the Department of Excise, was a member of a party which made a raid under leadership of the petitioner states about recovery of foreign cloth from Prem Kumar and also that after recovery of the cloth the patrolling officer was in process of initiating proceedings to hand-over the cloth to the Department of Customs. He has not stated anything about the demand and acceptance of bribe by the petitioner. Binj Raj and Sohan Singh, who are also Sepoy in the Department of Excise and were members of the raid party, said that 100 meters of foreign cloth was recovered from Prem Kumar and the patrolling officer was under process for taking steps to hand over the recovered cloth to the Department of Customs. Sh. Narpal Singh, who is also a Sepoy in Department of Excise, has certainly stated that he was member of a raid party that recovered 100 meters of foreign cloth from Prem Kumar and under instructions of patrolling officer (petitioner) he handed over an envelop to the Superintendent of Police, who was making investigation relating to the allegation of demanding and accepting bribe from Prem Kumar. Sh. Narpal Singh has nowhere stated that he handed over money to the Superintendent of Police or the envelop which was handed over to a Superintendent of Police by him was containing money. So far as Amra Ram and Kishan Lal are concerned they are employees of the

Department of Police and they are members of the team investigating the case against the petitioner on basis of a complaint said to be made by Sh. Prem Kumar against the petitioner. Sh. Amra Ram in his statements stated that the petitioner on asking denied the factum of demand and acceptance of bribe, however, after some persuasions he instructed the Narpat Singh to bring the envelop from the barrack. Under the instructions of the petitioner Narpat Singh brought the envelop and handed over the same to Superintendent of Police. The envelop was containing two thousand rupees. The statements of same nature are also given by Sh. Kishan Lal. The inquiry officer formed opinion regarding demanding and accepting bribe on basis of the statements given by the police personnels. As a matter of fact they have stated about handing over of an envelop containing money but on that basis it can not be assumed that the petitioner demanded bribe from Prem Kumar and the envelop handed over by Narpat Singh was containing the money given in bribe by Prem Kumar.

11. True it is, that the degree of evidence to prove the charges in domestic inquiry against a civil servant is not required to be of the nature that is required in a criminal case, however, being the proceedings of quasi criminal nature the inquiry officer is always required to have adequate material to give definite finding relating to the misconduct proved. In departmental proceedings charges are not required to be proved like a criminal trial, however, the conclusion even in such inquiry must be arrived after cautious preponderance of probability to prove the charges on basis of material available. Not only the conclusion but even the idea or opinion must be formed only from positive and conclusive evidence. No guess work is permissible to draw an inference that results to guilty of a misconduct.

12. The circumstances of the case, as a matter of fact, are neither complete nor adequate to make a definite opinion regarding demand and acceptance of the bribe by the petitioner. At the most it can be said that Narpat Singh handed over an envelop to Superintendent of Police and that envelop was containing a sum of Rs. 2000/-. On basis of it, it can not be inferred that the petitioner demanded and accepted bribe. The finding given by the inquiry officer is not substantiated by adequate, conclusive and positive evidence.

13. The disciplinary authority did not choose even to consider and discuss the evidence on basis of which the inquiry officer gave a finding of guilt. He simply accepted the findings. The findings so given are not based on sufficient evidence, thus, are bad. The order given by the appellate authority too is bad for the same reasons.

14. In view of whatever stated above this petition for writ deserves acceptance, and therefore, the same is allowed. The order impugned dt. 30.10.1990 passed by the disciplinary authority that is the Commissioner, Department of Excise, Udaipur and the order dt. 01.09.1993 passed by the appellate authority are declared illegal, and therefore, the same are quashed. The petitioner is declared entitled for all consequential benefits thereto. No order as to costs.