
(2000) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal No. 285 of 1999

Jaswant Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2000) 4 RLW 301 : (2000) 2 WLC 324 : (2001) 1 WLN 623

Hon'ble Judges : S.K. Garg, J;B.J. Shethna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The appellant/original petitioner was removed from service by an order dated 27.2.1991 passed by the disciplinary authority on the charge that he unauthorisedly remained absent from duty for 332 days. His appeal before the appellate authority was also dismissed on 7.10.1991. Hence, he filed the writ petition No. 76/1992 before this Court which was dismissed by the learned Single Judge of this Court on 10.12.1998. Hence, this special appeal.

2. The appellant was serving as Constable in the Police Department and posted at Sri Ganganagar. He was served with a charge-sheet dated 23.11.1989 for as many as four charges-(1) remaining absent from duty after the expiry of 3 days leave, (2) not complying with the transfer order dated 22.5.1985 whereby he was transferred from District Churu to Jaipur and not resuming duty at the transferred place, (3) for remaining absent continuously for 332 days and (4) producing doubtful medical certificate.

3. Out of the aforesaid 4 charges, the enquiry officer found the appellant guilty for only one charge of remaining absent from duty for 332 days. On this ground, the disciplinary authority terminated his services by passing an order of removal. Against the said order of removal, he preferred a departmental appeal before the appellate authority without making any grievance about the non-supply of the enquiry report and said appeal was also dismissed on 7.10.1991.

4. Learned Counsel Mr. Shah for the appellant vehemently submitted that non-supply of the enquiry report was fatal in this case as the impugned order of removal was passed in breach of principles of natural justice because the appellant was not in a position to meet with enquiry report submitted against him by the enquiry officer holding one charge for remaining absent from duty of 332 days. In support of his submission, learned Counsel Mr. Shah has relied upon two Supreme Court judgments (1) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and (2) Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., He also submitted that it was not necessary for the appellant/ delinquent to ask for the enquiry report as it was the duty of the disciplinary authority to supply the necessary enquiry report along with notice before passing the order of removal.

5. We have carefully considered the judgment of the Hon''ble Supreme Court in P.N.B.'s case (supra), however, the same has no application to the facts of this case.

6. In P.N.B.'s case (supra), the disciplinary authority differed from the finding recorded by the enquiry officer. In that view of the matter, the Hon''ble Supreme Court held that the disciplinary'' authority must afford opportunity of hearing to the delinquent before passing the impugned order, at the cost of repetition, we may say that in the instant case, the enquiry officer clearly found against the delinquent that he unauthorisedly remained absent from duty for 332 days.

7. No doubt it is true that in Karunakar's case (supra), the Hon''ble Supreme Court held that whenever the service rules contemplate that before the penalty is awarded and when the enquiry officer is not a disciplinary authority, then delinquent employee will have a right to receive the enquiry officer's report irrespective of the fact whether he demanded the same or not.

8. We have specifically asked the question to Mr. Shah as to whether there is any Rule under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short ''the CCA Rules'') to which Mr. Shah stated that there is no such Rule under which the authority is under obligation to provide the report of the enquiry officer to the delinquent. In that view of the matter, in our considered opinion, the aforesaid judgment of the Hon''ble Supreme Court will have no application to the facts of the present case.

9. We may state that this very contention was also raised before the learned Single Judge in the writ petition but the same was not found favour with the learned Single Judge on the ground that though the petitioner filed regular appeal before the appellate authority, no such grievance was raised by him before the appellate authority, therefore, he cannot be allowed to raised this point for the first time in the writ petition. The learned Single Judge also observed that the petitioner failed to show that how any prejudice was caused to him by not supplying him the copy of the report of enquiry officer. For that the learned Single Judge has placed reliance upon the following judgments of the

Hon''ble Supreme Court:

- (1) Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,
- (2) State Bank of Patiala and others Vs. S.K. Sharma,
- (3) Major G.S. Sodhi Vs. Union of India (UOI),
- (4) S.K. Singh Vs. Central Bank of India and Others,
- (5) Monika Jain v. State of Rajasthan and Ors. RLW 1998 (1) RAJ 710.
- (6) Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others,
- (7) A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.,
- (8) A.M. Allison Vs. B.L. Sen,
- (9) The Cantonment Board, Ambala Vs. Pyarelal,
- (10) State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.,
- (11) Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa,
- (12) Rajeswari Amma and another Vs. Joseph and another,

10. The appellant came to be removed from service on the charge of remaining absent from duty for 332 days. The appellant has not disputed the fact that he remained absent from duty for as many as 332 days. This is a matter of record and when this allegation levelled against him in the enquiry is found to be proved by the enquiry officer, then supplying copy of such enquiry officer's report would be of no consequence because it will not carry the matter further and the same is not going to make any difference in the defence of the. appellant in appeal before the appellate authority or any other higher forum.

11. It is true that in the case of Union of India and others Vs. Mohd. Ramzan Khan, the Hon''ble Supreme Court has held that the cases in which the orders which were passed after 20.11.1990, the report of enquiry officer was required to be furnished to the delinquent for his proper defence. If there was any other case, then there would have been a different consideration but here is a case of police constable who was serving in a disciplined force like police department. If such a person remains absent from duty as many as 332 days because he was transferred from one place to another place, then in our considered opinion, such a person cannot be retained in service. The appellant was not in a position to dispute the fact that he has unauthorisedly remain absent from duty for 332 days, therefore, on the peculiar facts of this case, in our considered opinion, non-supply of the enquiry report would not help the petitioner when the charge is clearly found to be proved against him.

12. We may also make it clear that we are considering the judgment and order passed by the learned Single Judge in the Special appeal where the learned

Single Judge has refused to exercise his extraordinary jurisdiction in favour of the petitioner. The word "Special" has a special meaning and special connotation. If the view taken by the learned Single Judge is just and proper then merely because this Court can take different view of the matter would not be sufficient to interfere with the order passed by the learned Single Judge.

13. In view of the above discussion, we do not see any reason to entertain this special appeal and accordingly it fails and is hereby dismissed.