
(2010) 03 RAJ CK 0022
In the Rajasthan High Court

J.L. Mehsani

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Citation : (2010) 2 WLN 478

Hon'ble Judges : Dinesh Maheshwari, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—This intra-court appeal is directed against the order dated 22.08.1997 as passed by the learned Single Judge of this Court dismissing the writ petition (CWP No. 1659/1984) filed by the petitioner-appellant wherein he prayed for quashing of the orders dated 10.10.1977, 25.03.1980, and 24.03.1984.

2. By the order dated 10.10.1977, the Disciplinary Authority, after departmental inquiry, proceeded to impose upon the petitioner-appellant the penalty of compulsory retirement with proportionate pension per Clause (v) of Rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958"); and by the orders dated 25.03.1980 and 24.03.1984, respectively the Appellate and Reviewing Authorities proceeded to reject the appeal and the review petition filed by the petitioner-appellant.

3. Briefly put the relevant facts and background aspects of the matter are that the appellant J.L. Mehsani, then working as Patrolling Officer, Preventive Force, Excise Department, was served with a memorandum along with charge-sheet under Rule 16 of the Rules of 1958 on the allegations that while working as Excise Inspector, Circle Aligarh (Tonk) in the year 1972-73, he carried out raid at the house of one Ramkaran on 18.09.1972 and seized six bottles of liquor despite having been shown the permit; that he attempted to institute a false

case against the said Shri Ramkaran and demanded an amount of Rs. 500/- by way of illegal gratification; and that eventually, he let Ramkaran off, on being paid Rs. 150/-. It was, thus, the allegation in Charge Nos. 1 and 2 that the appellant misused his power and collected the amount of bribe. The appellant was further charged with the allegation that on 04.08.1972, he recovered an amount of Rs. 120/- from Shri Ramkaran towards compounding of Case No. 31/1 972 but did not deposit the said amount in the treasury and embezzled the same.

4. After the appellant submitted reply denying the charges, the Disciplinary Authority proceeded to appoint Deputy Commissioner, Preventive Force, Udaipur as the inquiry officer, who submitted the inquiry report dated 26.07.1976, essentially finding charges Nos. 1 and 2 relating to illegal raid proceedings and receiving of bribe proved but charge No. 3 regarding embezzlement not proved.

5. It appears that the Disciplinary Authority was not fully satisfied with the inquiry report and sought further clarification from the inquiry officer who, by the communication dated 18.11.1976, expressed doubts on the permit allegedly obtained by Ramkaran from one Assistant Excise Officer who was not enjoying good reputation and who had since retired. The inquiry officer observed that such a permit was not entered in the dispatch register and serious doubt was created in relation to the charges against the appellant. The Disciplinary Authority, however, did not agree with the observations made by the inquiry officer and recorded its reasons for disagreement while observing that it was not the case where the delinquent discarded the permit treating it to be an invalid one; and the intentions of the delinquent in raiding the place of Ramkaran were not above board. The Disciplinary Authority further observed that charge No. 2 regarding illegal gratification was a vital one and such a charge stood proved in evidence including the testimony of two independent witnesses. The Disciplinary Authority, therefore, formed the opinion that the appellant was required to be compulsorily retired from service with commuted pension.

6. The Disciplinary Authority, thus, proceeded to serve a notice dated 20.07.1977 on the appellant with a copy of the reasons of its disagreement with the inquiry officer's comments; and called upon the appellant to show cause against the proposed punishment. The appellant filed a reply to the notice so served but ultimately, the Disciplinary Authority, the Excise Commissioner, Rajasthan, by the impugned order dated 10.10.1977, held that the charges, of the appellant attempting to lodge a false case against Ramkaran and receiving Rs. 150/- in bribe were proved and hence, proceeded to impose the penalty as aforesaid.

7. The petitioner-appellant preferred an appeal under Rule 30 of the Rules of 1958 against the order dated 10.10.1977 that came to be rejected by the Appellate Authority on 25.03.1980. Aggrieved, the petitioner preferred a review petition under Rule 34 of the Rules of 1958 to his Excellency, the Governor of the State of Rajasthan. This review petition came to be rejected by the order dated 24.03.1984.

8. While questioning the orders so passed against him, the petitioner preferred the writ petition wherefrom this intra-court appeal has arisen. It was submitted before the learned Single Judge of this Court in the writ petition that the Appellate Authority had passed a non-speaking order, that the appeal had been rejected without application of mind, and that the order of the Appellate Authority had not been supplied to the petitioner- appellant. The learned Single Judge observed in this regard that the order of the Appellate Authority was not on record and it could not be examined whether it was a reasoned order or not. It was also noticed, and rather conceded on behalf of the petitioner- appellant, that the ground of non-serving of the appellate order was not taken in the review petition.

9. It was further argued on behalf of the petitioner-appellant that the order passed by the Disciplinary Authority was a nonspeaking one and the reasons had not been recorded. The learned Single Judge, while referring to several decisions on the aspect relating to recording of reasons, observed that the Disciplinary Authority had passed the order putting reliance on the inquiry report and after examining the entire record. The learned Single Judge also noticed the reasons as stated in detail in the show cause notice on the proposed punishment and further observed that had the Disciplinary Authority not applied its mind thoroughly, there would not have been an order for re-inquiry.

10. Even while rejecting the submissions regarding non- application of mind by the authorities concerned, the learned Single Judge, in order to give a fair treatment to the petitioner- appellant, summoned the original record; and even while observing that the writ court would not sit in appeal over the impugned order and would only examine the procedural correctness of the decision making process, felt it expedient to put a glance over the statements of the witnesses particularly the defence witnesses who had otherwise not been referred in the impugned orders.

11. After examining the record, the learned Single Judge observed that 6 witnesses had been examined and 2 of them had been totally independent witnesses whose statements had neither been diluted nor contradicted; and the appellant could not make out the reason for those 2 independent witnesses deposing against him. The learned Single Judge also noticed the fact that by the communication dated 05.07.1976, the petitioner- appellant specifically stated that the two employees of the department, Mohammed Umar and Muneer Ahmed had been examined and no other witness was to be examined by him. The learned Single Judge proceeded to examine the statements of these two witnesses and pointed out that the two statements were contradictory and, in any case, those witnesses were not in know of the complete facts. The learned Single Judge found Muneer Ahmed having deposed that no Excise Officer took money from Ramkaran nor there was any demand but then, found Umar Ahmed having stated thus:

I and Muneer Ahmed came out of the house after recovery of the bottles . Money

was not given in my presence. If given after we came out, we could not know it.

12. Thus, only after a comprehensive examination of the record, the learned Single Judge found that the Disciplinary Authority had given a fair treatment to the petitioner; and a fair inquiry had been held. The learned Single Judge observed that the petitioner was found guilty of taking bribe which amounted to moral turpitude and in such cases, the only punishment could have been of dismissal. The learned Single Judge, while finding that there was no illegality or infirmity in the impugned orders, further observed that the authorities had taken rather a lenient view in the case of acceptance of bribe.

13. The learned Counsel for the petitioner-appellant has strenuously argued in this appeal that the learned Single Judge has not considered the fundamental fact that the impugned orders as passed against the appellant are non-speaking orders; that the observations as made by the Disciplinary Authority in the note appended with the notice to show cause (page 35 of the paper book) records rather contradictory findings regarding existence or not of the permit with Ramkaran; and that the submissions as made by the appellant do not find consideration in the order passed by the Disciplinary Authority. The learned Counsel further submitted that the learned Single Judge was not right in proceeding on conjectures about existence of any separate appellate order than the one given to the petitioner-appellant and produced by him as Annexure-6. According to the learned Counsel, the said order Annexure-6 remains a totally non-speaking one and contrary to the requirements of the Rules of 1958. It is submitted that incumbent it was for the Appellate Authority to have passed a speaking order as per Rule 30 of the Rules of 1958 and as laid down by the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India (UOI) and Others, It is also submitted that the learned Single Judge has rather traveled beyond the scope of the writ petition and proceeded as if recording a finding on appreciation of evidence that ought to have been done by the departmental authorities and who failed to do

14. Per contra, the learned Counsel for the respondents has supported the orders impugned and submitted that the learned Single Judge has thoroughly considered all the relevant aspects of the matter and has dismissed the writ petition after being satisfied of the fact that the charges were duly substantiated. The learned Counsel submitted that the contentions urged on behalf of the appellant, of want of speaking order, remain hollow as well as baseless because the essential and relevant aspects have duly been dealt with by the authorities concerned and then, the petitioner-appellant has totally failed to show any prejudice having been caused to him. It is submitted on behalf of the respondents that the petitioner has not been able to assail the findings on charges Nos. 1 and 2 relating to the delinquency of moral turpitude and, in the given fact situation, the penalty of compulsory retirement calls for no interference. The learned Counsel has referred to and relied upon the decisions in the case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal

Grover, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Haryana Financial Corporation and Anr. v. Kailash Chandra Ahuja 2008 AIR SCW 6055 and Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others,

15. After having given an anxious consideration to the rival submissions with reference to the law applicable and after having examined the record, we are clearly of the opinion that this appeal remains bereft of substance and deserves to be dismissed.

16. The basic submissions on behalf of the petitioner-appellant have revolved around the contentions that the order as passed by the Appellate Authority had not been a speaking one; and that the learned Single Judge proceeded on conjectures if there was any other order made by the Appellate Authority.

17. True it is that no other order except the one dated 25.03.1980 (Annex. 6) appears to have been passed by the Appellate Authority; and the said order dated 25.03.1980 indeed appears to be laconic but then, these aspects alone cannot, in the given set of circumstances, be considered to be that of prejudice to the appellant so as to warrant interference in this appeal. The fundamental charges against the appellant were of his having proceeded with raid despite having been shown the permit; and his having taken bribe from Ramkaran before letting him off. The appellant suggested that the permit as held by Ramkaran was a forged or an invalid one. However, in this regard, it has rightly been noticed and observed by the Disciplinary Authority and the Reviewing Authority that once the permit was shown, the aspect of its validity could have been referred to the Excise Commissioner but the delinquent could not have been proceeded along with the raid proceedings. Moreover, the clinching aspect of the matter remains, as found by the Disciplinary Authority and again observed by the learned Single Judge, that apart from the complainant and his brother, there had been two independent witnesses who deposed on the fact of the petitioner-appellant taking bribe. The Disciplinary Authority has taken note of this position thus:

I think charge No. 2 is vital. It is of accepting Rs. 150/- from Shri Ram Karan. Again going back to the charge No. 1 if it is taken that permit of Shri Ram Karan was invalid - since it was issued by an authority not empowered to issue it - then possession of 6 bottles of liquor becoming illegal and a case is made out against him but pertinent question remains; does an invalid or illegal permit with the party empowers the Circle Inspector to accept Rs. 150/- from the accused to sort- out the case ? I think not ! Even in the reenquiry findings on charge two in the main inquiry, of accepting Rs. 150/- from Shri Ram Karan and its corroboration by two independent witnesses have not been diluted or contradicted. Thus this charge is proved beyond the shadow of doubt.

18. It is noticed the petitioner-appellant suggested before the Appellate Authority and the Reviewing Authority that the complainant had obtained a false permit;

and that two of the witnesses were Ramkaran and his brother Ram Swaroop whereas other two were their relations; and Ram Swaroop was Sarpanch of the village. It was also suggested that there was no reason to disbelieve the testimony of Mohammed Umar and Muneer Khan. Though it appears that the Appellate Authority chose to reject the appeal with rather cryptic an order but then, the Reviewing Authority examined the review petition with the record and found no substance in the submissions made by the appellant after dealing with all the submissions point wise. Moreover, in the interest of justice, the learned Single Judge considered it proper to summon the inquiry record and, after proper scrutiny, pointed out as to why the statements of defence witnesses were of no help to the appellant.

19. A comprehensive look at the record makes out that in the present case, the Disciplinary Authority got the matter examined and probed in sufficient detail and then, independently examined the entire matter and found the major penalty requisite looking to the nature of accusation particularly that in charge No. 2. In the matter of present nature involving moral turpitude and where the defence of the delinquent was of uncertain nature, only accusing the prosecution witnesses of being related with the complainant, the Appellate Authority appears to have concurred with the Disciplinary Authority after examining the record. In any case, the Reviewing Authority not only examined the record but stated its concurrence with the conclusions of the Disciplinary Authority with a speaking order; and above all, the learned Single Judge has taken pains to scrutinize the record himself before finding no case for interference in the writ jurisdiction.

20. We are of the considered opinion that in the matter of the present kind, the order of punishment as passed in the departmental proceedings would call for no interference with blanket and abstract reference to the requirements of passing of a speaking order by the Appellate Authority.

21. Any violation of principles of natural justice is, of course, visited with considerable disfavour by the Courts but and yet, in the present case, even when the order as passed by the Appellate Authority appears to be a non-speaking one, we are unable to find a specific case of prejudice having been made out; and the present one is not a case where violation of principles of natural justice be applied in abstract or vacuum.

22. In Ram Chander's case (supra), the challenge to the Appellate Authority's non-speaking order was rejected by the High Court finding no such requirements of the Rules. The Hon'ble Supreme Court held that under the relevant rule, the Appellate Authority was obliged to "consider" the matters indicated therein and in the context, the expression "consider" was held meaning an objective consideration by the Appellate Authority after due application of mind which implies giving reasons for the decision. This decision does not help the petitioner-appellant for, as noticed above, in the present case, the appellant did file a review petition after the decision of appeal; and the Reviewing Authority examined the entire matter with reference to record and rejected the Review

Petition with a specific reasoned order; and then, the learned Single Judge again examined the record before finding no case for interference in writ jurisdiction.

23. In the given fact situation, the learned Single Judge has rightly adopted the course of examining the inquiry proceedings himself and has rejected the writ petition only after finding that no case of prejudice was made out. As observed by the Hon''ble Supreme Court in the case of Munnu Barrick (*supra*), the principles of natural justice cannot be put a straitjacket formula; and they have to be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, it is not necessary to set aside the order impugned unless a clear case of prejudice is made out.

24. In the present case, we find that the conclusions as drawn by the Disciplinary Authority and as affirmed by the learned Single Judge after examining the record do not suffer from any infirmity and no case of prejudice is made out. The learned Single Judge has rather rightly observed that the department had shown leniency even in the case of acceptance of bribe by imposing punishment of compulsory retirement with proportionate pension. The impugned order calls for no interference at the instance of the appellant.

25. As a result of the aforesaid, the appeal fails and is, therefore, dismissed but in the circumstances, without any order as to costs.