
(2010) 03 RAJ CK 0126
In the Rajasthan High Court

Kanhaiya Lal Garg

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16, 16(10), 16(5), 16(6), 16(9)

Citation : (2010) 2 WLN 497

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Under the Constitution "We the people", have created a welfare State. A welfare State, always behaves as a model employer, protecting and promoting the interest of its employees. However, this utopian vision, at times, gets blurred, and, at time, is lost in the labyrinthine corridors of the bureaucracy. Smugged in the grandeur of bureaucratic power, the government officers show scant respect for the rule of law and for human dignity. Like dictators of Banana republic, like satrap of petty kingdoms, government officers trample upon the rights of the people. The employee, who is at the mercy of government officers, at times, is awed and dismayed by the brutal use of force by the State to the extent that he forgets to protect his own interests and rights. However, even the voiceless person can seek refuge in a Court of law and pray for justice to be done. This case is paradigm example of the tussle between the employer and the employees. Since the petitioner has been removed from service vide order dated November 4, 1996, he has approached the haven of this Court for justice.

2. Briefly the facts of the case are that on December 16, 1967, the petitioner was appointed on the post of Patwari and was posted at Tehsil Begun, District Chittorgarh. For twenty-seven years, the petitioner performed his services with

honesty and dedication. But, he hit a rough weather in the year 1994. On October 27, 1994, a charge sheet, under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short "CCA Rules"), was issued to the petitioner. In the charge sheet two allegations were levelled against him namely, that while the petitioner was serving in Patwar Mandal Mandawari, he permitted one Ram Chandra son of Balu Raigar to encroach upon government land in Khasra No. 431 and permitted him to carry out his farming. Secondly, that the petitioner took Rs. 3200/-, by way of illegal gratification, from Ram Chandra, but did not mutate the said land in his name. When Ram Chandra asked the petitioner to return the said amount, he allegedly refused to do so. The departmental enquiry continued from 1994 till 20-7-1996.

3. It is the case of the petitioner that during the departmental proceeding on February 27, 1996, in his absence and in the absence of his defence nominee, the department had examined a number of witnesses. On March 6, 1996, the petitioner submitted an application requesting that he should be permitted to cross-examine the witnesses examined on February 27, 1996. However, the department did not grant any opportunity to cross-examine the said witnesses. In fact, subsequently, vide order dated June 26, 1996 the departmental enquiry was carried out ex-parte against him. Moreover, during the pendency of departmental enquiry, the defence nominee of the petitioner was transferred. Therefore, the petitioner requested that a new defence nominee be appointed. However, even this plea fell on deaf ears. Furthermore, after the second show cause notice was issued to the petitioner, he requested that certain documents be given to him. But this plea went unresponded. Eventually, vide order dated November 4, 1996 the petitioner was removed from service. Hence, this petition before this Court.

4. Mr. D.L.R. Vyas, the learned Counsel for the petitioner, has contended that the respondents were trying to get rid of the petitioner by one way or the other. Even during continuation of the departmental enquiry, they transferred the petitioner from Patwar Mandal Govindpura, Tehsil Chittorgarh to Patwar Mandal Chiklad, Tehsil Partapgarh. However, as the said order was an illegal one, the petitioner had challenged the same before the Rajasthan Civil Services Appellate Tribunal (for short Tribunal"). The learned Tribunal stayed the said order. Unable to get rid of the petitioner by transferring him, the respondents issued an order dated June 18, 1996, whereby the petitioner was retired compulsorily. However, even in this endeavour, the respondents failed; the petitioner challenged the same before the learned Tribunal stayed the said order. Having failed in their endeavors, in order to victimise the petitioner, the departmental enquiry was changed into a Kangaroo enquiry. The fundamental requirements of principles of natural justice were ignored. Although the petitioner had a right to cross-examine the witnesses, but the said opportunity was denied to him. Although the petitioner had a right to be defended by a defence nominee, but after the transfer of petitioner defence nominee, no new defence nominee was ever appointed. Thus, the petitioner was denied the right to defend himself. Hence, the departmental

enquiry was a sham. To say the least, it was an illegal enquiry. Furthermore, after the issuance of the second show cause notice, thrice the petitioner sought copies of certain documents, but on all occasions his requests were ignored. Furthermore, despite the fact that the complainant, Ram Chandra had submitted a letter along with an affidavit, wherein he clearly stated that the allegation made by him against the petitioner were absolutely false, the Enquiry Officer did not discuss the same in the enquiry report. Thus, the Enquiry Officer has ignored a relevant piece of evidence, which is readily available on record. Furthermore, the Disciplinary Authority has not discussed the evidence point-wise as is required under Rule 16(9) of the CCA Rules. Lastly, even the Disciplinary Authority has not discussed the affidavit filed by the complainant clearly exonerating the petitioner of the allegation levelled against him.

5. On the other hand Mr. I.S. Pareek, the learned Counsel for respondents, has vehemently contended that the petitioner had never bothered to submit a reply to the charge sheet. He had intentionally tried to delay the departmental enquiry. The departmental enquiry was carried out strictly in accordance with the provisions of the CCA Rules. After going through the oral and documentary evidence, the Enquiry Officer was justified in finding the petitioner guilty of both the charges. Moreover, once the Enquiry Officer comes to a finding that both charges are proved, the Disciplinary Authority is not required to pass a detailed and reasoned order in case it agrees with the finding of the Enquiry Officer. Furthermore, the petitioner was given ample opportunity to inspect the documents, which he had sought. If the petitioner failed to do so, he cannot claim that the documents were not supplied to him. Hence, the learned Counsel has supported the impugned order.

6. In rejoinder, Mr. Vyas has contended that the petitioner was granted permission to inspect the documents vide letter dated October 3, 1996. According to the said letter the petitioner was required to inspect the documents on October 10, 1996. But, unfortunately, the said letter was received by the petitioner on October 11, 1996. Hence the petitioner could not possibly inspect the documents on October 10, 1996. The fact that the letter dated 3-10-96 was received by the petitioner after some delay was pointed out by the petitioner vide letter dated October 14, 1996 and October 29, 1996. In spite of knowing the fact that the petitioner could not inspect the documents on October 10, 1996, no further opportunity was ever given to the petitioner to inspect the documents. Therefore, he was not in a position to file a reply to the second show cause notice. In this view of the matter, the impugned order deserves to be quashed and set aside.

7. Heard learned Counsel for the parties, and examined the material available on record.

8. The primary duty of the State is to protect and promote social and economic interest of its people. Since economic justice is one of the dreams of the preamble of the Constitution of India, the State is constitutionally bound to act

as a model employer it is, indeed, trite to state that every action of the State has to be just, fair and reasonable. Therefore, while dealing with a departmental enquiry, the State is constitutionally bound to observe a just, fair and reasonable procedure. The state officers cannot violate the procedure established by law for holding a departmental enquiry in their hot-haste to get rid of an employee. Even if an employee is allegedly indisciplined and corrupt, even then he is entitled to a fair departmental enquiry in accordance with law. After all, the first principle of common law is that every person is presumed to be innocent, till proven guilty. Moreover, a person cannot be condemned unheard. Thus, while holding a departmental enquiry, the state officers are legally bound to follow the procedure established under the provisions of the CCA Rules.

9. Rule 16 of the CCA Rules prescribes an elaborate procedure in order to ensure a fair and just enquiry to the delinquent. Rule 16(5) of the CCA Rules prescribes that a delinquent would have a right to be represented by a defence nominee. Moreover, Rule 16(6b) of the CCA Rules prescribes that the delinquent shall have a right to cross-examine the departmental witnesses. It is indeed trite to state that veracity and credibility of a witness is tested on the touchstone of cross-examination. Moreover, the right of cross-examination is an integral part of defending one's reputation and right to defend one's conduct. In case the said right is denied to the delinquent, the entire departmental enquiry turns into a farce.

10. Moreover, according to Rule 16(10) of the CCA Rules, a delinquent has a right to be served with a second show cause notice along with the copy of enquiry report. He further has a right to defend himself against the proposed punishment. In order to submit his case, if the delinquent requires the production of certain documents, he is entitled to request for the same. Since the outcome of departmental enquiry may affect the prestige and life of a delinquent, the department is duty bound to furnish the documents so claimed for. It is indeed, a settled principle of law that every reasonable opportunity should be given to a delinquent to defend himself till the last moment. After all, an employee is fighting against the brutal leviathan power of the State. Pitched as he is against the power of the department, an employee has to be armed with every single weapon in the armory to defend his life. The right to a fair departmental enquiry is an essential ingredient to right to life under Article 21 of the Constitution of India. Therefore, the department is constitutionally required to ensure that Article 21 of the Constitution of India is not violated.

11. A bare perusal of the order-sheet of the departmental enquiry clearly reveals that in absence of the delinquent and his defence nominee, on February 27, 1996, testimonies of four witnesses namely, Ramchandra Raigar, Babu Lal Dhakar, Chunni Lal Raigar, Ram Niwas Patwari, were recorded. Thus, their testimony was recorded behind the petitioner and his defence nominee. On March 6, 1996, i.e. the next date of the departmental enquiry the petitioner submitted an application praying therein that he be given an opportunity to cross-

examining these witnesses. However, the prayer was never conceded to. Thus, clearly the petitioner's right to cross-examine the witnesses has been violated.

12. The record further reveals that the petitioner's defence nominee was transferred during the course of departmental enquiry. The petitioner requested that a new defence nominee be appointed in place of the previous one. However, even this plea fell on deaf ears. The department did not appoint a new defence nominee for the petitioner. Thus, the petitioner did not have ample opportunity to question the creditworthiness of the witnesses of the department, and did not have an opportunity to defend his interest and rights. Since two essential ingredients of a fair departmental enquiry have been violated, the enquiry report is absolutely illegal.

13. While preparing the enquiry report, the Enquiry Officer is required to discuss the evidence which is readily available on record. The task is more onerous once a piece of evidence comes in which is in favour of delinquent. In the present case, the complainant himself had submitted an application along with his affidavit, clearly stating that under the influence of some people, he had falsely lodged the complaint against the petitioner. He further stated that not only he himself, but even his brother had falsely deposed against the petitioner during the course of departmental enquiry. Despite the fact that the affidavit and the application were on record, the Enquiry Officer has kept a studied silence over this piece of evidence. In fact, the Enquiry Officer was duty bound to discuss the impact of this application and of the affidavit upon the enquiry. Thus, the enquiry report suffers from non-application of mind. It further suffers from virus of colorable exercise of power.

14. Interestingly, even the Disciplinary Authority did not discuss the evidence of affidavit of complainant, wherein the complainant had resiled from his deposition before the Enquiry Officer. The Disciplinary Authority, thus, ignored a vital piece of evidence, which is readily available on record. Therefore, the impugned order dated November 4, 1996 also suffers from non application of mind, and from colorable exercise of power. Hence, this Court quashes and set aside the impugned order dated November 4, 1996.

15. Moreover, according to the record, after the second show cause notice was issued to petitioner, the petitioner requested that some specific documents should be given to him for preparing his reply. Although, vide letter dated 3-10-96, the petitioner was granted permission to inspect the documents on 10-10-96, admittedly, the said letter was received by the petitioner on 11-10-96. Obviously, the petitioner could not have, therefore, inspected the documents on 10-10-96. Twice, the petitioner brought this fact to the notice of respondents and pleaded that time for submission of reply should be extended, but the said pleas were totally ignored. Therefore, even the Disciplinary Authority threw the fundamental principles of fair departmental proceedings out of the window.

16. As a last resort, Mr. Pareek, the learned Counsel for respondents, has

contended that liberty for holding de-novo departmental enquiry should be given to respondents. However, considering the fact that the complainant himself has resiled from his complaint and deposition, no fruitful purpose would be served by holding a de-novo departmental enquiry. Moreover, with the lapse of time over a period of sixteen years, the evidence is bound to get blurred and event lost for both the sides. Therefore, a de-novo enquiry would be an exercise in futile. Thus, there is no need to direct that a de-novo departmental enquiry be conducted.

17. For the reasons mentioned above, the writ petition is, hereby, allowed. The respondents are directed to reinstate the petitioner with all back consequential benefits. The consequential benefits shall be given to the petitioner within a period of two months from the date of this order. No order as to cost.