
(2014) 09 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2635 and 2602/2002

Karan Singh Tak

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2014) 09 RAJ CK 0057

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Hemut Dutt, Advocate for the Appellant; S.R. Paliwal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Vineet Kothari, J.—The petitioner, a Ranger in the Forest Department, has challenged the impugned order Annex. 37 dated 18/12/1997 by which the punishment of withholding of two grade increments without cumulative effect, a minor punishment, was imposed upon the petitioner by the disciplinary authority on the basis of the charge no. 2 found proved against the petitioner. The said order came to be upheld by the appellate authority vide Annex. 40 dated 19/4/2000 and by the reviewing authority also vide order Annex. 45 dated 25/1/2002.

2. In the earlier round of litigation, the punishment imposed upon the petitioner was set aside and quashed by this Court while allowing SBCWP No. 788/93-Shri Karan Singh Tak vs. State of Rajasthan & ors. on 4/3/1997 (Annex. 7) directing the respondents to proceed further with the de novo enquiry and also directed the petitioner to cooperate in the said enquiry. The said de novo enquiry was to be conducted either by the Principal Officer not below the rank of Chief Conservator of Forests or by an officer not below the rank of Conservator of Forests. In pursuance of these directions, the said fresh enquiry was held against the petitioner but in the meanwhile the petitioner also filed contempt petition before this Court, namely; SB Civil Contempt Petition No. 240/97 arising out of

the aforesaid writ petition No. 788/93 & the learned Single Judge of this Court directed personal presence of the respondent contemnors vide order dated 5/9/1997 in SB Civil Misc. Application No. 203/1997. The petitioner during this contempt proceedings also filed additional affidavit (page 142 of the paper book), a copy of which is placed at Annex. 12 dated 18/9/1997) in which he alleged that the respondent contemnor indirectly threatened him of dire consequences and pressurized him to withdraw the contempt petition. In this background, in pursuance of the directions of this Court the present proceedings were concluded against the petitioner and as against four charges, only one charge was found to be proved i.e. charge no. 2 vide page 279 internal page 8 of the paper book. The charge against the petitioner was that while working as Ranger in the Forest Department at Beawar under the D.P.A.P. Scheme in Bayakheda, Soniyana and Lotiyana in the area of about 100 Hectares, he had shown about 21,000 and 28,000 pit holes dug for the purpose of plantation for the said afforestation scheme between the period January, 1987 to March, 1987 but in the subsequent inspection carried out by the concerned authorities in the month of October-November, 1987, about 6-7 months thereafter, it was found that 17,966 pit holes were less in number and thus the petitioner caused financial loss of Rs. 20,122/- to the respondent State Government. The said inspection was carried out by two persons namely; Shri Virendra Singh, Assistant Conservator of Forest and Shri Jatan Singh Karnawat, Assistant Conservator of Forest and on the basis of various oral evidence, the said charge was found to be proved and consequently the disciplinary authority imposed the aforesaid punishment of withholding of two grade increments without cumulative effect, which is stated to have been upheld by the appellate authority and review authority and being aggrieved by the same the petitioner had preferred this writ petition before this Court. The connected writ petition No. 2602/2002-Karan Singh Tak vs. State of Rajasthan & Ors. was filed by the petitioner for non-consideration of his case for promotion to the next higher post in view of the punishment order, which is challenged in the present writ petition.

3. Learned counsel for the petitioner, Mr. Hemant Dutt submitted that the impugned order passed by the disciplinary authority, namely; Chief Conservator of Forest, Mr. S.P. Mathur, is malafide and unsustainable because the same was passed by the authority who was biased against the petitioner having been summoned by this Court in the aforesaid contempt petition. Learned counsel for the petitioner also submitted that the inspection was carried out by the two authorities after six months of the actual work undertaken under the supervision of the petitioner and the finding recorded by the enquiry officer that upon inspection lesser number of pit holes were found is unsustainable finding due to long lapse of time in between the date of the work and the date of inspection and also that no proper marking was made at the time of inspection and the inspection was done by marking the pit holes by foot, whereas, it should have been done by marking the pit holes by the line powder. He, therefore, submitted that the punishment order deserves to be quashed by this Court.

4. On the other hand, Mr. S.R. Paliwal appearing for the respondent Department supported the impugned order and urged that the enquiry has been concluded and impugned order has been passed by the Chief Conservator of Forest under the directions of this Court dated 4/3/1997 and there is no bias against the petitioner. He also submitted that the punishment is not disproportionate to the alleged misconduct and in view of the dereliction of duties established by the respondent Department, the impugned punishment order is justifiable and also upheld by the higher authorities.

5. Having heard the learned counsels, this Court is of the opinion that the impugned orders are liable to be quashed & set aside and the writ petition deserves to be allowed.

6. This Court does not find any good ground to sustain the finding recorded against the petitioner simply for the reason of long lapse of time between the actual work undertaken under the supervision of the petitioner and the inspection carried out for verifying the work done. The pit holes dug for the purpose of plantation were verified after six months and if it is verified in the manner stated to have been done, such finding ex-facie cannot be believed. The charge of financial loss to the State Government was also levelled against the petitioner as part of charge no. 2, amounting to Rs. 20,122/-, but the disciplinary authority has not passed any order seeking to recover the said amount from the petitioner, while on the earlier occasion in the similar enquiry initiated against the petitioner, vide punishment order Annex. 6 dated 26/12/1992, recovery of Rs. 10,000/- was directed against the petitioner. This prima facie shows that the disciplinary authority also could not connect the financial loss allegedly against the respondent State on account of misconduct on the part of the petitioner. The lapse of six months period between the actual work done and inspection carried out by the two authorities is sufficient to render such exercise a futility because the period in which such pit holes were dug cannot be ascertained upon inspection after 6-7 months. Nothing prevented the concerned inspection authorities to carry out the inspection immediately after the work done report was submitted by the petitioner in contemporary period in the month of January to March, 1987. The background of the case that the impugned order of punishment has been passed by the same authority, who was one of the contemnors in the contempt petition, namely; Mr. S.C. Mathur also does not rule out the chance of bias against the petitioner. It is well settled principle that the fairness and justice should not only be done but it should appear to have been done. If the said authority was arrayed as contemnor in the contempt petition and this Court considered it appropriate to summon the respondent contemnors coupled with the fact that petitioner filed additional affidavit (Annex. 12) that he was threatened of dire consequences and pressurized to withdraw the contempt petition, that affidavit having remained un rebutted on the side of respondents raises a fair amount of doubt in the mind of this Court as to whether the same authority ought to have passed the punishment order against the petitioner or not. When authorities of the same level, as permitted by this Court in the

previous order while directing the fresh enquiry, were available, it is desirable by the respondent Department to exclude the person, who was arrayed as contemnor in the contempt petition filed by the petitioner before this Court and allowed some other parallel authority to undertake the disciplinary proceedings and pass fresh order, if any.

7. The perusal of the orders passed by the higher authorities also in appellate jurisdiction as well as in review jurisdiction reveal that the same were passed in mechanical manner without any independent application of mind on the aforesaid aspects. Said orders are, therefore, unsustainable.

8. Accordingly, the writ petition no. 2635/2002 challenging the impugned order of punishment as well as appellate & review order is liable to be allowed and same is hereby allowed. The impugned order of punishment Annex. 37 dated 18/12/1997, the appellate order Annex. 40 dated 19/4/2000 and the review order Annex. 45 dated 25/1/2002 are hereby quashed and set aside.

9. The connected writ petition No. 2602/2002 is also disposed of and the respondents are directed to consider the case of the petitioner for promotion, which was withheld and rejected in view of the punishment order, in accordance with law. The petitioner is retiring in near future in December, 2015, therefore, the consideration of the case of the petitioner for promotion may be expeditiously done, preferably within a period of six months from today.

10. With these observations and directions, both the writ petitions are disposed of. Copy of the order be sent to the parties concerned forthwith. No costs.