
(2017) 04 RAJ CK 0170
In the Rajasthan High Court
Case No : 5911 of 1998

Kesar Lal Meena

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Citation : (2017) 04 RAJ CK 0170

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : S.N.Kumawat, Dharmendra Pareek

Judgement

1. The petitioner by way of this writ petition has prayed as under : - "(i) Declaring the orders dated 3.11.1997 (Annex.3) and order dated 25.7.1998 (Annex.6) passed by respondents Nos.2 and 3 respectively to be illegal and unconstitutional and the same may be quashed and set aside ;

(ii) Directing the respondents to allow the petitioner to continue to work on the post of Patwari, Patwal Mandal, Dhandholi with all consequential benefits;

(iii) Passing any other appropriate order or direction which may deem just and proper in the facts and circumstances of the present case in favour of humble petitioner including award of cost of this writ petition."

The order dated 3.11.1997 is an order by which the petitioner has been removed from service by way of penalty while the order dated 25.7.1998 is the order passed in appeal.

2. The short ground of the petitioner in challenging the orders is that while he was holding the post of Land Revenue Inspector on 26.05.1992 he was suspended alongwith five other employees. Charge-sheet was served on him on 23.1.1996 wherein it was alleged that in file No.691/83 dated 18.1.1983, mutation No.290 dated 30.4.1986 had already been sanctioned and executed but the petitioner got another mutation No.15 in regard to Khasra No.614/1180

measuring 2 hectares whereby a report was entered to the effect that mutation of this Khasra was not implemented/executed and this report was got approved from the higher authorities. Second charge was with regard to earlier period when he was working as Patwari in Village Dhandholi vide mutation No.49 of 26.5.1992, it was alleged that although allotment to a particular Khatedar had been made for only 2.00 hectares (10 bighas of land), the petitioner entered him as Khatedar of 5 hectares of land. The third charge was that while the petitioner posted as Patwari in Mundiya Khurd, the petitioner vide mutation No.56 made an entry in the revenue records that mutation No.290 had not been executed/implemented by Land Records Officers, but in fact while this mutation had been implemented in Account No.284 and in this manner erroneously 30 bighas of land was allotted in favour of the allottee in place of originally 10 bighas of land allotted.

3. It is a case of the petitioner that the records were scrutinized by the Land Record Officer and thereafter also by the Tehsildar. However, only the petitioner has been singled out for being discriminated against and no action has been taken against either the then Land Record Inspector Shri Jagannath Prasad or the Tehsildar who signed these documents. It is further a case of the petitioner that the situation had arisen on account of overload work but documents also reflected that there were signatures of Inspector, Land Record with remarks that the entries had already been checked to be correct and with regard to charge No.2, it was submitted that the entries in regard to mutation which form subject matter of this charge were checked and verified to be true by Land Record Inspector Shri Bajrang Lal Joshi, who had been examined as a witness by the prosecution in the enquiry conducted against the petitioner while Bajrang Lal Joshi was left scott free and was further promoted as Office Kanoongo. It is his submission that petitioner has been penalized on the statement of the said Bajrang Lal Joshi and petitioner in his reply has pointed out that the mistakes which had occurred were due to crowded and excessive work and even the other witnesses admitted that there was a rush of work at that time and the fact regarding earlier mutation could not be noticed. It is further case that there was no ill-motive on the part of the petitioner and it was an error occurred on account of mere negligence but was not deliberate.

4. The disciplinary proceedings had thus been challenged by the petitioner on the ground that co-accused had been made as a witness to hold the petitioner as guilty for which the said persons were also responsible and disciplinary proceedings were liable to be set aside. It is further submitted that the provisions for joint enquiry are required to be followed as per Rule 18 of the Rules of Rajasthan Civil Services (Classification, Control & Appeals) Rules, 1958 (hereinafter referred to as the "Rules of 1958") and the word "may" in Rule 18 be read as in mandatory form. It is further submitted that the disciplinary authority has proceeded to pass an order as it is a judicial order being pronounced. The petitioner submits that the punishment of removal was wholly excessive. It is further submitted that while the enquiry officer has observed that

the conduct of the petitioner which caused the wrongful entries was during revenue campaign and there were chances that it has occurred due to higher load of work. But so far as disciplinary authority is concerned, without recording its disagreement, has proceeded to hold the petitioner guilty of deliberately making wrongful entry and has also proceeded to hold that such action was taken with the purpose to benefit the allottee for extraneous considerations. In this manner, he has disagreed with the findings of the enquiry officer. Drawing such a conclusion that the action was for the purpose of ulterior motive and benefit, the petitioner has been punished with severe punishment of removal in this manner. Therefore, the prejudice has been caused to the petitioner as he was not served with any disagreement notice by the disciplinary authority. The petitioner further submits that under Rule 30 of Rules of 1958, the appellate authority is also required to see while examining the appeal that the order of punishment is excessive or not.

5. Per contra, the learned Counsel for the respondents submits that the action of the respondents in mentioning wrong measurements of the land from 10 bighas to 30 bighas cannot be ignored easily and inference can be drawn that the entry in the mutation was recorded with a malafide intention in order to give benefit to a land allottee for which he was not entitled to. Moreover, it is submitted that since the petitioner has himself admitted to have committed mistake, he cannot turn back now and has to face the punishment of severe penalty of removal. It is further submitted that the appellate authority has also examined this aspect and found that such error causes unnecessary litigation to occur. Moreover, it is submitted that incident had occurred in one allotment of increase from 10 bighas to 30 bighas which itself is sufficient for imposition of such penalty and therefore, such a penalty cannot be said to be disproportionate.

6. Having considered the submissions of both the Counsel and after looking into the facts of the case, this Court finds that the enquiry officer has recorded evidence of the Office Kanoongo and Tehsildar during the course of enquiry against the petitioner who was working then as a Patwari. During the course of enquiry, the petitioner has admitted that at the time of opening of mutation all earlier revenue records where entries had been made could not be examined. The entry from 10 bighas to 12 bighas then to 30 bighas was done in the name of the land owner. The question is whether such an entry would ipso facto make it as a misconduct and would show a reflection of ill-motive of the petitioner. From the statements which have come on record, the superior Officers also agreed that there was much overload of the work with the petitioner drawing revenue campaign. Allegation of ulterior motive was not substantiated. Moreover the witnesses namely Jagannath Prasad and the second witness namely Bajrang LaL Joshi, Office Kanoongo were also signatories of the said document and stated that mistake occurred due to overload and rush of work. No enquiry had been conducted with regard to any of them. This Court is of firm view that if there are more than one delinquent, who may be involved in the commission of delinquency, provisions of Rule 18 of the Rules of 1958 regarding joint enquiry

have to be followed mandatorily. It is not to be left at the discretion of the disciplinary authority to isolate one delinquent and conduct enquiry one after other and take evidence of other co-delinquents as witness in the case. Such action violates the principles of fair play as naturally the other coaccused would put the entire burden on the person against whom an enquiry has been conducted so as to save oneself. The statement of such a person cannot be taken as true. Thus, this Court finds that there is a violation of the provisions of the Rules of 1958 while conducting departmental enquiry.

7. Second argument taken by the Counsel for the petitioner is with regard to disagreement notice. This Court finds that while the enquiry officer has made observations about the action of the delinquent to have occurred on account of heavy rush of work during revenue campaign and has observed that even if there was heavy rush, a person should remain agile and must perform his work dutifully. The disciplinary authority has virtually reached to a different conclusion from the campaign report by holding that the petitioner has acted with the purpose of benefit of other person and was thus, accountable for the said action. Malafide intention has been presumed by the disciplinary authority of the petitioner but before reaching to such a conclusion a disagreement notice as required under Rule 16(10) of the Rules of 1958 has not been served upon the petitioner. It has been held in the case of Punjab National Bank Vs. Kunj Bihari Sharma 1998 (7) SCC 84 in para 18 and 19 as under :- "18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry

officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

8. In view of above findings the punishment order cannot be allowed to be sustained. The order passed by the appellate authority also therefore deserves to be set aside.

9. In the circumstances and the conclusions as above, the writ petition is allowed. The order dated 03.11.1997 and 25.7.1998 are set aside with all consequential benefits. However, it is made clear that the pay to be fixed during which the petitioner has served the respondents namely 3.11.1997 till his date of superannuation shall be treated as notional. The petitioner would be entitled to receive full pension and pensionary allowances while calculating his salary for the period 1997 till his attaining superannuation age as notional. No costs.