(2011) 04 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2494 of 2005

Khushal Singh Gehlot (Dr.) APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2011) 4 RLW 3328

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Vyas, J.—Heard learned counsel for the petitioner.

2. It is submitted by learned counsel for the petitioner that although the petitioner is superannuated from service, but in this writ petition, the petitioner is challenging the APAR for the year 2001-2002 communicated to him vide communication dated 19th August, 2003; in which, the following comments were made:-

He is very poor administrator. He hardly provided leadership in Hospital to staff or doctors. He tired to escape from responsibilities all the time. Often these were complaints from public representatives and other in unformal from in meetings about his inefficient way of hardly things. He is more suited to desk jobs.

3. The main contention of learned counsel for the petitioner is that any observation or assertion in the APAR can be made by the competent authority after due application of mind, but, here in this case, as per reply itself the adverse entries were the petitioner for the year 2001-2002 on the basis of the communication sent by the District Collector dated 22th January, 2004.

4. In reply to para 9 of the writ petition, it is admitted by the respondents that entries were made on the basis of communication received from the District Collector by the competent authority. Meaning thereby it is obvious that adverse

entries communicated to the petitioner were made without application of mind. Thus, the above entries for the year 2001-2002 may be quashed.

5. I have perused the adverse entries made against the petitioner, so also, para 9 of the reply filed to the writ petition.

6. The Para 9, of the reply to writ petition reads as under-

9. That the contents of para 9 of the writ petition are not admitted and hence denied. It is submitted that during the year 2001-2002, the petitioner has not performed his duties to the best of administrative capacity of the post held by him. The then Dist. Collector vide letter dated 22.1.2004 also wrote letter to the State Government about the administrative incapability of the petitioner. A copy of letter dtd. 22.1.2004 is annexed herewith and marked as Annex.R/1.

7. In my opinion, if any administrative performance is to be assessed then the competent authority is required to apply his mind towards working of the employee and thereafter adverse remarks can be made.

8. Here in this case, although a representation was filed by the petitioner in detail against communication of adverse remarks, but it has not been considered properly by the respondents and straightaway rejected the representation in cyclostyle manner, which is, evident from Annexure-16 filed alongwith the writ petition. Further, when respondents themselves admitted in reply that adverse entries for the year 2001-2002 were made on the basis of communication sent by the District Collector, in which, it was informed by him that petitioner is incapable to perform his duties as administrative then it cannot be said that adverse remarks were made after due application of mind by the competent authority.

9. In the above facts and circumstances of the case, I am of the view that it was the duty of the competent authority to apply its own mind for the purpose of assessing the performance of the petitioner. Admittedly, in this case, adverse entries were made on the basis of communication sent by the District Collector, then it cannot be said that adverse entries are based upon proper application of mind by the competent authority.

10. In view of the above, the adverse entries made against the petitioner vide Annexure-P/13 dated 19th August, 2003 is not sustainable in the eye of law. It is also worthwhile to mention here that the Division Bench of this Court in case of S.K. Bansal vs. The Rajasthan High Court reported in 2003(1) WLC (Raj.) 623 laid down certain parameters for recording adverse entries, which are as follows:-

18. It has to be agreed on all hands that annual confidential reports/annual performance appraisal reports form the sole basis and plank of the service career on an employee and the these reports, depends the future career of the concerned officer/employee and such remarks may marr or bless his service career. Such remarks may sometimes give boost in the service and at the same time, they can also be used to the serious prejudice of the employees for the

purpose of supersession, compulsory retirement etc. In nut shell, it goes without saying that the remarks recorded in the annual confidential reports of an officer leave an indelible impression on his service career and it is through the ACRs/ APARs that the over all performance, integrity and conduct of the first principles, the following requirements must be followed for the purpose of recording the communication of the adverse remarks, when no procedure or written guidelines are available:

(i) In case any defect is noted with regard to the work, conduct and performance of an officer/employee, the Reporting Officer may immediately bring it to the notice of the concerned officer/employee to take care of such defect and if the defect yet persists, then only, the Reporting Officer should proceed to record adverse remarks.

(ii) Satisfaction for the purpose of recording adverse remarks may be subjective satisfaction of the Reporting Officer but it must be based on objective facts which may also, in a given case, include the perception of the Reporting Officer with regard to the Reportee Officer with reference to his over all performance and conduct.

(iii) In case any adverse remark is to be recorded with regard to the integrity of an officer/official, it must precede a clear intimation in advance to the concerned officer that his integrity is reported to be doubtful and unless there is any cogent material on the basis of which his integrity could be found to be doubtful, the remarks may not be made against the integrity of the officer on the basis of remours.

(iv) The remarks have to be recorded at the end of the year and must be conveyed to the concerned officer/official within a reasonable time because conveying of the remarks after long lapse of time, defeats the very purpose of recording the remarks.

11. In this view of the matter, while following the above judgment, this writ petition is allowed. The order impugned dated 19th August, 2003 (Annexure-P13) as well as the order dated 06th July, 2004 (Annexure-P16) are hereby quashed and set aside.