
(2012) 12 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 987 of 2002

Kishan Sunder Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 CDR 971 : (2013) 137 FLR 124 : (2013) 3 RLW 2676

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : L.M. Lodha, for the Appellant; Mukul Singhvi, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing inquiry report dated 29.2.2000 which is communicated to the petitioner vide communication dated 28.3.2000 and impugned order of punishment dated 1.6.2001 (Annexure-10) passed by the State Government against the petitioner in the disciplinary inquiry conducted against him under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958. As per facts of the case, a joint inquiry was conducted against the petitioner three other officials of the respondent Public Works Department by the DOP (Department of Personnel) vide Annexure-2 dated 25.4.1998 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short, to be called hereinafter as "the CCA Rules"). The petitioner and other delinquents filed their reply and, thereafter, the inquiry officer-proceeded to conduct the joint inquiry against all of them, viz., petitioner Kishan Sunder Sharma, Store Keeper, R.L. Boliya, Superintending Engineer, Pramed Kumar Sharma, L.D.C. and Anil Kumar Shah, L.D.C. After conclusion of the inquiry, the inquiry officer submitted its report on 29.2.2000 while holding all the delinquents guilty.

2. The DOP sent a notice while annexing a copy of the inquiry report to inter alia

the petitioner on 28.3.2000, by which, the delinquents were directed to furnish their reply within 15 days against the inquiry report submitted by the inquiry officer. The petitioner however made a request to grant some more time to file reply to the inquiry report because the inquiry report is running in more than 100 pages. The petitioner has placed on record Annexure-7 to prove the fact that application was filed by him to grant sometime to file reply to the inquiry report submitted by the inquiry officer.

3. Contention of the petitioner in the writ petition is that the Disciplinary Authority did not respond to the request made by the petitioner for extension of time, therefore, the same amounts to refusal on the part of the respondents to extend the time. The respondent No. 2 along with other respondents sent inquiry report to the Rajasthan Public Service Commission for approval and the Commission approved the proposed punishment vide letter dated 24.3.2001; and, thereafter, vide order Annexure-10 severe penalty was imposed against the petitioner whereby the whole pension of the petitioner and his all pensionary benefits are forfeited for his life-time vide the impugned order.

4. In the writ petition, it is pleaded by the petitioner that inquiry conducted against him and other officials by the inquiry officer was totally against the principles of natural justice because inspite of making the prayer to supply documents during the inquiry the copies were not supplied, the petitioner raised the objection and wanted to cross-examine the prosecution witnesses who were produced in the inquiry to prove the charges but the said opportunity was not granted and, while relying upon the prosecution story, the inquiry officer held that charges are proved; but, in fact, the inquiry has been conducted in violation of the principles of natural justice and was merely an eye-wash in order to hold the petitioner guilty for the alleged baseless charges, The petitioner was never asked to produce any witnesses in defence, so also, opportunity to cross-examine was not provided to the petitioner. It is also submitted that the inquiry officer did not allow the petitioner to produce even any document in rebuttal, therefore, it can be said that the departmental inquiry was conducted in contravention of the mandatory provisions of Rule 18 of the CCA Rules and, upon that, inflicted severe punishment against the petitioner.

5. It is also pleaded by the petitioner that after receiving copy of the inquiry report and notice although the petitioner was directed to submit his reply within 15 days but an application was filed by the petitioner for extension of time but that opportunity was not given by the Disciplinary Authority, therefore, obviously without granting any opportunity of hearing or to submit his reply to the inquiry officer's report the Disciplinary Authority proceeded to impose penalty against the petitioner which is in violation of the principles of natural justice.

6. The State filed reply to the writ petition on 10.7.2002, thereafter, the matter was listed so many times in the Court and I finally on 8.9.2009 the coordinate Bench passed an order to make available entire record of the inquiry in question. On 6.10.2009, a specific direction was issued by the co-ordinate Bench that

respondents are supposed to produce entire original record of the inquiry conducted against the petitioner in pursuance of the memorandum of charge, the record shall be submitted before the Court on 8.10.2009 and, further, a direction was issued to make available the orders passed by the appellate authority in the cases of other co-delinquents namely, R.L. Boliya, Pramod Kumar Sharma and Anil Kumar Shah on 8.10.2009.

7. On 8.10.2009, the co-ordinate Bench after perusing the entire record of the case and order dated 18.8.2000 passed by the Governor on being satisfied that no allegation stands against R.L. Boliya, Pramod Kumar Sharma and Anil Kumar Shah cancelled the entire disciplinary action against them but no order in respect of the petitioner was passed as he did not submit any representation to the Governor. The co-ordinate Bench of this Court after examining the entire record minutely passed an order that case of the petitioner is not distinguishable from the case of co-delinquents viz., R.L. Boliya, Superintending Engineer, Pramod Kumar Sharma, L.D.C., and Anil Kumar Shah, L.D.C. because charges No. 2, 3, 4 and 6 were held to be established against the petitioner whereas against co-delinquent R.L. Boliya all the eight allegations were held proved but the Governor while considering the representation of delinquent R.L. Boliya in most unambiguous terms reached the conclusion that no charge is established against him. The Co-ordinate Bench passed an order on 8.10.2009 and quashed the order imposing punishment against the petitioner vide order dated 1.6.2001 passed by the Government of Rajasthan, Department of Personnel (Group-III) while holding that similarly situated persons have been exonerated from the charges levelled against them which were similar to the charges levelled against the petitioner.

8. Against said judgment dated 8.10.2009 passed by the Co-ordinate Bench, an appeal was preferred before the Division Bench by the State and vide judgment dated 19.9.2011 the Division Bench of this Court set aside the judgment of the Co-ordinate Bench and remanded the writ petition for deciding the same afresh on merit and parties were granted liberty to amend the pleadings and raise all additional grounds in support of their respective case.

9. After remand, an application was filed by the petitioner for amendment in the writ petition and along with the application the petitioner filed order dated 18.8.2000 (Annexure-P/11) and submitted that the same may be taken on record for adjudication of the case. During course of arguments, however, it is submitted by the petitioner's Counsel that said amendment application may be treated as rejoinder to the reply. Upon prayer made by the petitioner's Counsel, the application filed for amendment in the writ petition will be read as rejoinder to the reply filed by the respondents.

10. In this writ petition, the main challenge is to the order of penalty inflicted against the petitioner vide order dated 1.6.2001 passed by the respondents whereby entire service benefits including pensionary benefits have been forfeited by the respondents. Learned Counsel for the petitioner vehemently submits that

the punishment order suffers from patent illegality because after completion of the joint inquiry the inquiry report was submitted before the Disciplinary Authority for taking action against all the delinquents and in pursuance of that Disciplinary Authority sent a notice along with copy of inquiry report on 28.3.2000 to all the delinquents and granted only 15 days" time to file reply to the inquiry report; but it was not possible for the petitioner to submit reply within the time granted, therefore, prayer was made to extend time but the prayer of the petitioner was not responded and after 15 months the Disciplinary Authority passed an order to punish the petitioner vide order dated 1.6.2001 which is impugned in this writ petition.

11. Learned Counsel for the petitioner submits that joint inquiry was conducted against 4 delinquents namely, petitioner Kishan Sunder Sharma, R.L. Boliya, Pramed Kumar Sharma and Anil Kumar Shah but, it is very strange that order Annexure-10 was passed in the case of the petitioner only while observing in the order that separate orders have already been issued in respect of R.L. Boliya, Pramod Kumar Sharma and Anil Kumar Shah although it is nowhere stated as to what are the reasons for passing separate orders whereas the inquiry was jointly conducted under Rule 16 of the CCA Rules, therefore, it is apparent that two orders have been passed in the said joint inquiry, one order was passed for three delinquents and another order has been passed against the petitioner. In the order passed against the petitioner which is impugned in this writ petition, the only assertion is that separate order has been passed against R.L. Boliya, Superintending Engineer, Pramod Kumar Sharma, L.D.C. and Anil Kumar Shah, L.D.C., however, it is not disclosed whether they have been penalized or exonerated. The observation in the order is only that R.L. Boliya, Pramod Kumar Sharma and Anil Kumar Shah have filed their reply to the notice sent along with inquiry officer's report but the petitioner has not filed any reply, therefore, separate order has been passed for them and, due to the reason that the petitioner has not filed any reply to the notice, separate order is hereby passed against the petitioner.

12. Learned Counsel for the petitioner submits that although there is no disclosure of the outcome of the inquiry against the co-delinquents but it came to the knowledge of the petitioner when record was called in the Court: that although joint inquiry was conducted against the petitioner and three other officials but, on 18.8.2000, an order was passed by the Disciplinary Authority whereby after considering the reply filed by co-delinquents R.L. Boliya, Pramod Kumar Sharma and Anil Kumar Shah against the inquiry report, they were exonerated and it is observed in the order that separate order will be passed for the petitioner because he has not filed any reply to the inquiry report.

13. Learned Counsel for the petitioner submits that how the Disciplinary Authority can discriminate the case of the petitioner while deciding the fate of the inquiry. It is vehemently contended that when the inquiry was ordered to be conducted jointly and inquiry officer was appointed for holding joint inquiry, then,

obviously the Disciplinary Authority was under obligation to pass one consolidated order for all the delinquents but the Disciplinary Authority first passed an order for three co-delinquents vide order dated 18.8.2000 and exonerated them only for the reason that they filed reply to the notice and inquiry report and separate order has been passed against the petitioner on 1.6.2001 while saying that no reply has been filed by the petitioner against the notice and inquiry report submitted by the inquiry officer. The aforesaid facts clearly reveal that there is complete discrimination made by the Disciplinary Authority because for one inquiry two separate orders have been passed on different dates on altogether different considerations without assigning any reason and discussing the finding of the inquiry report. The Disciplinary Authority exonerated three delinquents and in the case of the petitioner while reproducing the inquiry officer's report passed an order for withholding all retiral benefits vide impugned order dated 1.6.2001.

14. Learned Counsel for the petitioner vehemently argued that in the order dated 18.8.2000 passed by the Disciplinary Authority for three other delinquents in the same inquiry there is no discussion as to what type of reply is filed by the co-delinquents and how the Disciplinary Authority disagrees with the finding of the inquiry officer whereas a separate order was passed in the case of the petitioner on 1.6.2001 inspite of the fact that a prayer was made for granting extension of time for filing reply to the report of the inquiry officer; meaning thereby, the only distinguishing feature is that other three co-delinquents have been exonerated by the Disciplinary Authority as they filed reply and petitioner did not file reply and prayed for extension of time for filing reply, therefore, he has been penalized.

15. As per the petitioner, the order impugned is totally against the basic principles of procedure of the inquiry. When a joint inquiry was conducted and after completion of the inquiry notices were sent to all the delinquents, then, obviously joint order was to be passed in respect of the delinquents but, here, in this case, on 18.8.2000 three co-delinquents were exonerated against the finding of the inquiry officer solely on the ground that they filed their reply and petitioner has been inflicted penalty vide impugned order dated 1.6.2001 solely on the ground that no reply has been filed by him to the notice sent along with inquiry report. The contention of the petitioner is that no such discrimination can be made by the Disciplinary Authority when he inquiry officer held all the delinquents guilty for the charges levelled against them, therefore, the order impugned may be quashed.

16. Per contra, learned Counsel for the respondents submits that joint inquiry was conducted against four persons viz., R.L. Boliya, Superintending Engineer, petitioner Kishan Sunder Sharma Store Keeper, Pramod Kumar Sharma, L.D.C. and Anil Kumar Shah, L.D.C. and inquiry was also conducted jointly by the inquiry officer and the inquiry officer in its report dated 29.2.2000 held all the delinquent officials guilty and, thereafter, a joint notice was given to all the delinquents to file their reply to the inquiry report within 15 days; but, the

petitioner did not submit his reply within 15 days and the other three delinquents filed their reply to the inquiry report, therefore, their case was examined by the Disciplinary Authority and, while considering their reply, they were exonerated vide order dated 18.8.2000; but, in the case of the petitioner, the matter was examined by the Disciplinary Authority in the absence of any reply filed by him and, after thorough consideration, the impugned order was passed separately in which there is no illegality.

17. It is also submitted by learned Counsel for the respondents that there is no substance in the argument of the petitioner that there is violation of procedure in the inquiry or any contravention is committed by the inquiry officer while conducting the inquiry, therefore, there is no force in this writ petition and the same deserves to be dismissed.

18. Learned Counsel for the respondents vehemently argued that the petitioner prayed for time only to delay the conclusion of the inquiry and did not submit representation against the inquiry report and other co-delinquents submitted their respective reply to the inquiry officer's report, therefore, in absence of his reply, the matter was considered by the Disciplinary Authority and penalty was imposed against the petitioner. Therefore, the petitioner is not entitled to get any relief in this writ petition because the Disciplinary Authority has exercised its power in absence of any reply filed by the petitioner to the inquiry officer's report. It is submitted that after proper inquiry conducted by the inquiry officer, in which, the petitioner was found guilty for the charges levelled against the Disciplinary Authority inflicted the penalty in accordance with law, therefore, this writ petition may be dismissed.

19. After hearing learned Counsel for the parties, I have scanned the entire record of the case.

20. It emerges from the facts that charge-sheet was issued to the petitioner and other co-delinquents for the charge of loss of two tankers of bitumen which were said to be dispatched from Baroda to be received at Banswara P.W.D. Store in the years 1992 and 1993; meaning thereby, for alleged misconduct of loss of two tankers of bitumen charge-sheet was issued to the petitioner as well as other officials on 25.4.1998 jointly in which an inquiry was conducted and all the officials were held guilty by the inquiry officer for the alleged misconduct. The inquiry officer submitted its report on 29.2.2000 and, after receiving the said joint inquiry report all the four delinquents were given notice along with copy of the inquiry report and they were directed to submit their reply.

21. The petitioner made a request to extend the time for filing reply to the inquiry report because the inquiry report was running in 100 pages and it was not possible for him to give reply within 15 days; but, the said prayer was not accepted by the Disciplinary Authority and upon perusal of the order impugned passed against the petitioner, it is revealed that there is observation with regard to passing separate order for other three co-delinquents namely, R.L. Boliya,

Superintending Engineer, Pramod Kumar Sharma, L.D.C. and Anil Kumar Shah, L.D.C. but whether they are exonerated or they have been held guilty is not disclosed. It is also not disclosed on what date the separate order was passed against the co-delinquents.

22. When this Court summoned the entire record of the joint inquiry, then, it has come to the knowledge of the petitioner and this Court that separate order was passed on 18.8.2000 by which the above three co-delinquent officials who were found guilty along with the petitioner by the inquiry officer were exonerated. The petitioner after obtaining copy of exoneration order under the RTI Act has placed on record the above order as Annexure-P/11 dated 18.8.2000 whereby co-delinquents were exonerated which reads as under:

23. Upon perusal of the above order, it is revealed that there is no reason for disagreement with the inquiry report in case of the other three co-delinquents but only on the ground that they filed their reply to the inquiry report and after examination of their reply, it is found that charges cannot be treated as proved. In the case of the petitioner, however, separate order was passed after 10 months on 1.6.2001 whereby a major penalty is inflicted against the petitioner for the alleged misconduct only on the ground that in spite of granting time to the petitioner no reply has been filed by him to the inquiry report, therefore, he is guilty of the charges levelled against him and while giving the said finding the Disciplinary Authority inflicted major penalty against the petitioner; meaning thereby, on the one hand, the prayer of the petitioner for extension of time was not responded and, on the other hand, while observing that in spite of granting sufficient time no reply has been filed, therefore, he is guilty of the charges levelled against him and in case of the co-delinquents they have been exonerated solely on the ground that they filed their reply to the inquiry report.

24. In the opinion of this Court, the procedure adopted by the Disciplinary Authority is patently illegal. On the one hand, the Disciplinary Authority exonerated the other three co-delinquents only on the ground that they filed reply to the inquiry officer's report and after examining their reply without giving any finding or disagreement with the inquiry officer's report exonerated them vide order dated 18.8.2000. In the case of the petitioner, however, following order has been passed:

25. Upon perusal of the above order, it is revealed that the reason for punishing the petitioner that he has not filed any reply to the notice sent along with the inquiry report is not justified. In the opinion of this Court no separate orders can be passed in a joint inquiry on the ground that some of co-delinquents have filed reply and one delinquent has not filed any reply, Once the inquiry was conducted jointly, then, obviously a joint final order was to be passed by the Disciplinary Authority for all the delinquents to hold them guilty or to exonerate them but, here, in this case, there is no discussion made in the order of exoneration dated 18.8.2000 for three co-delinquents and in the order passed for the petitioner, after 10 months of passing the earlier order, the Disciplinary Authority re-

produced the charges and inquiry officer's report; meaning thereby, two opinions have been expressed, in one no reason has been assigned to exonerate and, in the second, in respect of the petitioner punishment order has been passed only for the reason that the petitioner did not file reply to the report of the inquiry officer.

26. In the opinion of this Court, when co-delinquent R.L. Boliya who was found guilty for all the eight charges levelled and the petitioner was held guilty for charges No. 2, 3, 4 and 6, then, how the penalty of forfeiting all the benefits including pension for life-time can be passed. Upon screening the record of this case, it emerges that the petitioner's case cannot be distinguished from the case of co-delinquents viz., R.L. Boliya, Superintending Engineer, Pramod Kumar Sharma, L.D.C. and Anil Kumar Shah, L.D.C. who were exonerated without any discussion or reasons by the Disciplinary Authority vide order Annexure-11 dated 18.8.2000.

27. In the order Annexure-11 dated 18.8.2000, it is clear that the Disciplinary Authority only on the ground that co-delinquents filed the representation reached to the conclusion that no charge is established against them and punished the petitioner solely on the ground that no reply to the inquiry report has been filed; meaning thereby, once the co-delinquents have been exonerated on merit for the same charges, then, the petitioner cannot be held guilty for the charges levelled against him in the joint inquiry conducted by the inquiry officer by way of passing separate order simply for the reason that he has not filed reply to the notice. In view of above, this Court fails to understand how separate order can be passed in the joint inquiry and how penalty could be imposed against the petitioner after exonerating the co-delinquents on 18.8.2000 for which Disciplinary Authority found them guilty. It is relevant to mention here that in the order dated 18.8.2000 passed in respect of the co-delinquents there is no finding arrived at by the Disciplinary Authority that no charges are treated to be proved and how the charges are found to be proved in the case of the petitioner in absence of the reply to the notice. Therefore, in absence of any finding against the petitioner in the earlier order dated 18.08.2000 it cannot be said that order impugned dated 1.6.2001 is sustainable in law.

28. It is also required to be mentioned that in the judgment of Hanuman Prasad Nandwana v. State of Rajasthan, 1996 (2) WLC (Raj.) 425 it has been held by this Court that the whole or any part of the pension can be forfeited only if it is found that pecuniary loss has been caused to the Government. In the judgment reported in 1991 (2) RLR 700, it has been held by this Court that object of Rule 170 of the RSR and Rule 7 of the new Pension Rules of 1996 in making provision for forfeiture of pension is to recover pecuniary loss suffered by the Government. Here, in this case, without any finding of pecuniary loss to the State the petitioner has been held guilty in joint enquiry by separate order and other three co-delinquents against whom the inquiry officer gave finding that charges are proved were exonerated before passing order against the petitioner on

18.8.2000, Therefore, the order impugned dated 1.6.2001 is not sustainable in law because there is no finding in the order of punishment that petitioner is responsible for any pecuniary loss to the State. As a result of the foregoing discussion, this writ petition is allowed. Order impugned dated 1.6.2001 is hereby quashed and set aside and the respondents are directed to grant all consequential benefits to the petitioner including pension.