

(1976) 04 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 399 of 1972

Kundan Singh Jhala

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 15-04-1976

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1976) WLN 175

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The petitioner was employed as an Assistant Regional Transport Officer in the Transport Department of the Government of Rajasthan at Kota from July 21, 1960 to July, 1963. While the petitioner was working in that capacity, it appears that a Departmental Audit Party inspected his office and found certain financial irregularities in his office. On the basis of the report submitted by the Departmental Audit Party, the petitioner was suspended from service on February 5, 1963. However, he was reinstated on March 30, 1963 subject to the result of the disciplinary enquiry which was to be initiated against him. A disciplinary enquiry under Rule 16 of the Rajasthan Civil Services Classification, Control and Appeal Rules, 1953 hereinafter referred to as the Rules was initiated against the petitioner by the State Government and a memorandum dated April 25, 1963 along with a statement of charge and a statement of allegations, on the basis of which these charges were framed, was served upon the petitioner. Five charges were framed against him and the State Government entrusted the enquiry proceedings to the Commissioner for Departmental Enquiries, Rajasthan, Jaipur. After conducting the aforesaid enquiry, the Commissioner for Departmental Enquiries, Rajasthan by his report dated November 29, 1965 found the petitioner guilty in respect of all the five charges levelled against him. On the basis of the report of the Enquiry Officer, a show cause notice dated April 13, 1966 was

served upon the petitioner. In respect of the punishment of demotion to the post of Transport Inspector, which was proposed to be inflicted upon him. The petitioner gave his reply to the show cause notice which was referred by the State Government to the Rajasthan Public Service Commission for its advice and the Commission was of the opinion that all the charges except charge No. 3 were established against the petitioner and it tendered its advice in this connection to the State Government on June 25, 1971. The State Government, thereafter considered the matter and held that the petitioner was guilty of incorrect appreciation and non compliance of law and Rules and of acting in transgression of departmental instructions and showing carelessness and negligence about the maintenance of the official records and in the matter of their proper custody; It was, however, held by the State Government that there was no material evidence on record to show that the petitioner acted dishonestly and malafide. It was, therefore, thought fit by the State Government that a penalty of seepage of three annual grade increments with cumulative effect be inflicted upon the petitioner, in accordance with the advice tendered by the Rajasthan Public Service Commission

2. The petitioner has submitted the present writ petition against the aforesaid imposition of penalty of withholding three annual grade increments with cumulative effect upon him. The first submission made by the learned Counsel for the petitioner was that a disciplinary enquiry was held earlier against the petitioner in respect of the allegations contained in charge No. 2 and the petitioner was exonerated in respect of that very charge as a result of the earlier enquiry and, therefore, the State Government was not justified in framing the said charge again and holding it as proved and imposing punishment upon the petitioner in respect thereof Charge No. 2 related to the grant of irregular exemptions from payment of Motor Vehicles Tax under the Rajasthan Motor Vehicles Taxation Act by the petitioner in respect of two vehicle bearing registration Nos. R.J.R. 816 and R.J.R. 300. The petitioner has produced Ex. 17, which is the charge sheet issued to him by the State Government on May 17, 1967 alleging that the petitioner granted irregular and illegal exemptions or waived payment of tax of motor vehicles and disciplinary action was contemplated against him under Rule 17 of the Rules. Ex. 18 is the statement of allegations on the basis on which the aforesaid charge sheet was issued to the petitioner and attached thereto is a list of cases in which exemptions were alleged to have been granted by the petitioner in respect of payment of tax under the Rajasthan Motor Vehicles Taxation Act The aforesaid list included the two vehicles bearing registration Nos. R.J.R. 816 and R.J.R. 300 and 22 other vehicles. The petitioner submitted an explanation in respect of the aforesaid charge sheet to the State Government and by the order of the State Government dated July 24, 1970 (Ex 19) the explanation submitted by the petitioner in respect of the aforesaid allegations was found to be satisfactory by the State Government and consequently the departmental proceedings were dropped. The respondents in their reply to the present writ petition have taken the stand in this respect that

merely because the enquiry with regard to the earlier charge the case was dropped against the petitioner it could not be said that the imposition of punishment upon him in respect of charge No. 2 was unwarranted. As the earlier disciplinary enquiry initiated against the petitioner in respect of that very charge of granting illegal or irregular exemptions from payment of tax under the Rajasthan Motor Vehicles Taxation Act related to the same Vehicles Nos. R.J.R. 816 and R.J.R. 300 along with some other vehicles and as the State Government was then satisfied with the explanation furnished by the petitioner in that respect so it dropped the enquiry for that reason, it clearly amounted to the exoneration of the petitioner of the charge which was the subject matter of the earlier departmental enquiry. The State Government was, therefore, not justified in including the very same charge in the charge sheet dated April 25, 1963. The contention of the learned Counsel for the petitioner on this score appears to be well founded. The law is well settled on this point that in case an employee is exonerated of a charge in earlier departmental proceedings, then he cannot be penalised in respect of that very charge at any subsequent state. For the aforesaid reasons, the State Government was, therefore, not justified in finding the petitioner guilty in respect of charge No. 2.

3. Learned Counsel for the petitioner next argued that charges Nos. 1 and 4 were extremely vague and referred to certain instructions, the particulars of which were not supplied to the petitioner either with the charge sheet or the statement of allegations, on the basis of which the charges were framed, I have looked into the charge sheet which is Ex. 3 on record and have also considered the statement of allegations which is Ex. 4. In my opinion sufficient particulars had been furnished to the petitioner in respect of charges Nos. 1 and 4 framed against him. The petitioner could have asked the State Government to furnish further particulars, if he required any such particulars for submitting his reply to the charge sheet issued to him. From the record of the case, it does not appear that the petitioner made any grievance before the Enquiry Officer in respect of the allegations or details. I do not find any force in this submission of the learned counsel. Charge No. 1 related to the charging of lesser penalty by the petitioner from the owners of four vehicles from that which was prescribed u/s 5 of the Rajasthan Motor Vehicles Taxation Act. The explanation furnished by the petitioner in this respect was that he exercised his judicial discretion in the matter and did not charge any penalty but merely collected composition fee u/s 12 of the Rajasthan Motor Vehicles Taxation Act. According to the petitioners, he took the view that it was not necessary that any prosecution should have been lodged before making the provisions of Section 12 of the Rajasthan Motor Vehicles Taxation Act applicable to the case of non-payment of tax under that Act and that he was empowered under the provisions of Section 12 to compound such an offence on payment of composition fee which might be even lesser than the amount of tax the person concerned was liable to pay and on payment of the composition fee, such person could be discharged from all liabilities in respect of that offence. The Enquiry Officer took note of the fact that what was

really collected by the petitioner was "penalty" and not composition fee and that the stand taken by the petitioner at the time of departmental enquiry, namely that he acted u/s 12 of the aforesaid Act and collected merely composition fee was apparently erroneous on that score. On the factual aspect the view taken by the Enquiry Officer does not appear to be correct, as from his report it is clear that on the files in respect of the four vehicles (marked Ex. P/10, P/11, P/12 and P/13 in the course of the enquiry) the petitioner had ordered for the recovery of "composition fee" from the delinquent persons. It may be another thing that the view taken by the petitioner regarding the interpretation of Sections 5 and 12 of the Rajasthan Motor Vehicles Taxation Act might be erroneous but it would be difficult to hold that merely taking an erroneous view of law in the absence of malafides would amount to misconduct. The enquiry Officer has in this respect also relied upon certain circulars alleged to have been issued by the Director of Transport for the guidance of the officers of the Transport Department, particularly the minutes of the meeting (Ex. P/4) held in the office of the Director of Transport. However, the petitioner's case is that he attended the alleged meeting only on the first day and thereafter he had to go to Delhi in connection with some case pending before the Hon'ble Supreme Court and that he did not attend the said meeting on all the four days. This contention of the petitioner has not been refuted by the respondents in their reply. The petitioner, therefore, appears to be right in contending that the Enquiry Officer as well as the State Government were not justified in holding charge No. 1 proved against petitioner.

4. As regards charge No. 4, the allegation is that surrendered documents should have been kept by the petitioner in his own custody and he should not have allowed such documents to be kept in the custody of the clerks of his office and that he should have made a report in respect thereof after physical verification. Particulars of the five vehicles have been supplied in the statement of allegations annexed to the charge-sheet, in whose cases the surrendered documents are alleged to have traveled back to the owners of the respective vehicles. The petitioner's case in respect of this charge was that the documents of three of the five vehicles were not rendered during the period the petitioner worked as Assistant Regional Transport Officer at Kota and that during his time vehicles Nos. R.J.G. 59, R.J.G. 19 and R.J.R. 1543 were regularly plying and paying tax, which implied that the documents in respect of such vehicle must have been returned to their owners earlier to the period the petitioner took charge of his office at Kota of course in respect of vehicles Nos. R.J.G. 134, R.J.R. 2098 the documents ought to have been in possession of the petitioner while he worked as Assistant Regional Transport Officer at Kota. From the evidence referred to by the Enquiry Officer in his report it appears that the surrendered documents were found in possession of the clerks by the checking party. Learned Counsel for the petitioner, therefore, has not been able to show that the finding recorded by the Enquiry Officer in respect of charge No. 4 was substantially incorrect.

5. Charge No. 5 related to the allegation that no register of temporary permits issued by the office of the petitioner was regularly kept and no record was

maintained to show as to how much money was collected on account of temporary permits issued by the office of the petitioner. It was also alleged that temporary permits were issued on loose forms and their office copies might have been misplaced or destroyed with the result that the fees and taxed payable on account of the issuance such temporary permits could not be duly accounted for. I have gone through the finding recorded by the Enquiry Officer in respect of this charge and was unable to find any error therein. Learned Counsel for the petitioner was also not able to satisfy this Court as to how the finding in respect of charge No. 5 was improper or illegal.

6. Then the learned Counsel for the petitioner urged that the petitioner was not allowed inspection of the record which he demanded. The respondents in reply, relied upon the letter Ex. 6 dated October 20, 1963 sent by the Director of Transport to the petitioner, in which a detailed explanation was given pertaining to the inspection of the documents demanded by the petitioner. The petitioner has not challenged the contents of the letter Ex. 6 in the writ petition and learned Counsel for the petitioner candidly gave up the sub-mission when he was faced with the aforesaid letter Ex. 6.

7. Learned Counsel for the petitioner next argued that the petitioner desired to examine Shri G.L. Sharma, who was in charge of the Departmental Audi Party, as a defence witness on his behalf. The respondents' contention was that Shri G.L. Sharma was appointed as the representing officer to conduct the case on behalf of the State Government before the Enquiry Officer and as he was in charge of the prosecution case against the petitioner in the very same enquiry, the Enquiry Officer did not think it proper to allow Shri G.L. Sharma to be examined as a defence witness. It appears that this position was duly explained by the Enquiry Officer to the petitioner, as is clear from the petitioner's own application dated November 2, 1965 and he thereafter requested the Enquiry Officer that since Shri G.L. Sharma was not allowed to be examined as defence witness, Shri M. Mukerji, Accounts Officer, Directorate of Transport, might be allowed to be examined as a defence witness in place of Shri G.L.; Sharma. Thus it appears that the petitioner was satisfied with the reasons furnished by the Enquiry Officer for his refusal to examine Shri G.L. Sharma as a defence witness and having reconciled with that situation he himself requested the Enquiry Officer to examine Shri N Mukerji as a defence witness in place of Shri G.L. Sharma, which was allowed to be done. The petitioner, in these circumstances, cannot now be heard to complain that Shri G.L. Sharma was not allowed to be examined by the Enquiry Officer as a defence witness.

8. It was lastly argued by the learned counsel for the petitioner that as charge No. 2 had failed, in respect of which the petitioner's explanation had earlier been found to be satisfactory by the State Government and the previous departmental proceedings in respect of the same charge having been dropped and as Charge No 1 was based only upon an honest mistaken interpretation of the provisions of law, then it could not be said as to whether the State Government would have

still inflicted the same punishment upon the petitioner in respect of the remaining charges Nos. 4 and 5, because the petitioner had already been exonerated in respect of charge No. 3 by the State Government accepting the advice of the Rajasthan Public Service Commission and it was urged by him that in these circumstances, this Court should remand the case to the State Government to reconsider and redial the question of penalty to be imposed upon the petitioner in respect of the remaining charges Nos. 4 and 5.

9. In *State of Orissa Vs. Bidyabhushan Mohapatra*, their Lordships of the Supreme Court were pleased to observe:

But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justifiable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were unassailable, the order of the Governor, on whose powers by the rules no restrictions in determining the appropriate punishment are placed was final, and the High Court had no jurisdiction to direct the Governor to review the penalty, for as we have already observed, the order of dismissal passed by a competent authority on a public servant if the conditions of the constitutional protection have been complied with is not justifiable. Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment in error in directing the Governor of Orissa to reconsider the question.

It may be observed here that a similar situation arose in *State of Orissa Vs. Bidyabhushan Mohapatra*, as has arisen in the present case. In that case, out of the charges levelled against the concerned Government servant charges 1(a), 1(c), 1(d), 1(e) and 2 were found proved and the Governor of Orissa passed an order of his dismissal. On a writ petition filed by the dismissed Government employee, the High Court was of the view that charges under the two heads, 1(a) and 1(e) could not be sustained and it directed the State Government to decide whether on the basis of the remaining charges the punishment of dismissal should be maintained or whether lesser punishment would suffice. Their Lordships of the Supreme Court, in these circumstances held that even if the finding relating to two out of five heads of the first charge and charge 2 was not found liable to be interfered with by the High Court and the employee was *prima facie* found to be delinquent, the High Court had no power to direct the

Governor to reconsider the order of dismissal, with regard to the question of penalty.

10. In *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, a Railway employee was found guilty of two charges at a departmental enquiry and an order of his removal was passed. In a writ petition filed by the said employee it was held that one of the two charges was unsustainable. The principle enunciated in *State of Orissa Vs. Bidyabhushan Mohapatra*, was, however, applied by their Lordships of the Supreme Court in the aforesaid case as well, and it was observed :

It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that charge, But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we held that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which tie punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

In the present case, the State Government by its order dated 22.7.1971. Imposed a penalty of stoppage of three annual grade increments with cumulative effect upon the petitioner although the aforesaid penalty was imposed on the basis that charges Nos. 1, 2, 4 and 5 were proved against the petitioner, but if charges Nos. 1 and 2 are held to be unsustainable against the petitioner even then it count be said hat the punishment imposed upon the petitioner by the State Government could not lawfully have been imposed upon him on the basis of the remaining charges Nos. 4 and 5, which are found to be sustainable. In view of the aforesaid decisions of their Lordships of the Supreme Court. I do not think it would be proper for this Court to direct the State Government to reconsider the order regarding the quantum of punishment awarded to the petitioner. It is, therefore, not possible to accept the contention of the learned Counsel for the petitioner that the matter should be remanded back to the State Government to consider as to whether lesser punishment would suffice in the present case.

11. No other point was argued before me.

12. As a result of the aforesaid discussion, the writ petition is dismissed. However, the parties are left to bear their own costs.