
(2010) 02 RAJ CK 0124
In the Rajasthan High Court

Mahavir Prasad Jain

APPELLANT

Vs

The Divisional Commissioner and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 2 WLN 227

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for parties.

2. This writ petition has been filed by petitioner against order of penalty dated 15.09.1992, by which he was awarded penalty of stoppage of three grade increments with cumulative effect by the disciplinary authority, and order dated 02.09.1994 by which his appeal filed against that order was rejected.

3. Shri C.K. Jain, learned Counsel for petitioner, has argued that departmental enquiry in present case was initiated 13 years after the date of incident and that the enquiry officer so appointed found only charge No. 3 proved against him and that too holding that action of petitioner was of mere negligence. Remaining charges, namely, charge Nos. 1, 2 and 4 were not found proved. The District Collector, however, by impugned order dated 15.09.1992, without any notice to petitioner and without serving upon him any note of disagreement, held all the four charges proved and accordingly awarded penalty of stoppage of three grade increments with cumulative effect. Learned Counsel submitted that even in charge No. 3 there was no ill-will or oblique motive attributed to petitioner and it was a case of bona-fide error, which occurred on account of fact that the mutation was attested in a special derive held by the administration and he opened mutation of a land stating it to be a Government land (siwai chuck) in favour of Nanda Son of Madho Gurjar, wherein land bearing Khasra No. 710 measuring 17 biswa was stated to have been regularized, whereas the aforesaid land was already entered in revenue record in his name. The enquiry officer found that it was already mutated in his name and therefore he did not find any

ill-will or mala-fide on his part to have been proved. However, for remaining three charges, the enquiry officer held them not proved but disciplinary authority i.e. the District Collector in his finding held all the four charges proved against petitioner. It is therefore prayed that writ petition be allowed.

4. Shri Sayed Zakawat Ali, learned Deputy Government Counsel, appearing on behalf of respondents, has opposed writ petition and submitted that disciplinary authority has duly recorded reasons to disagree with findings recorded by enquiry officer i.e. Sub Divisional Officer. No separate notice was required to be given to petitioner, moreover the petitioner did not object to such recourse to be adopted by respondent even when he filed appeal. The appellate authority has also considered all his arguments in detail and has upheld the order passed by disciplinary authority. There is no infirmity in impugned order. It is therefore prayed that writ petition be dismissed.

5. Upon having learned Counsel for parties and perusing material on record, I find that mere delay in service of charge-sheet cannot be taken as a reason to annul the order of penalty in the present case particularly when no prejudice has been shown to have caused to petitioner. Petitioner has participated in departmental enquiry and was fully able to defend himself. This fact is evident from report of enquiry officer, even all three charges were found to be not proved against him and charge No. 3 was found partly proved which was only in regard to his negligence. The District Collector however was not in agreement with finding recorded by Sub Divisional Officer and held that all charges are fully proved against petitioner. If he wanted to do so, he should have given specific note of disagreement to petitioner. No such notice was given to petitioner. Although the learned Additional Government Counsel sought to justify order of disciplinary authority by submitting that District Collector has provided personal hearing to petitioner, but that cannot be taken as a note of disagreement. In so far as charge No. 3 is concerned, the fact that the land which was already mutated in favour of Nanda was again mutated in his name due to non availability of record because as per the petitioner this mutation was carried out in special derive of revenue department where complete record was not available and subsequently this mistake was rectified, it cannot be said to be either mala-fide or any deliberate act with oblique motive on the part of petitioner. This certainly can not be said to confer undue benefit on any third party because incidentally it was again sought to be mutated in name of Nanda. It was therefore that enquiry officer found charge No. 3 only partly proved against petitioner and that too holding that the act of petitioner was of mere negligence.

6. Having regard to circumstances of the case however when only charge No. 3 has been found proved partly, award of penalty of stoppage of three grade increments with cumulative effect cannot be justified. This penalty is therefore reduced commensurate with gravity of charge proved that too of negligence, as per the report of enquiry officer and the same is substituted with penalty or stoppage of two grade increments without cumulative effect.

7. Accordingly impugned orders of disciplinary authority and that of appellate authority are modified. Petitioner shall be entitled to consequential benefits with interest at the rate of 6% per annum. Compliance of this order be made within a period of three months from the date its copy is produced before the respondents.

8. The writ petition is accordingly partly allowed.