
(2019) 12 RAJ CK 0117
In the Rajasthan High Court
Case No : Civil Writ Petition No. 330 Of 1999

Mohammed Alim	Vs	APPELLANT
State Of Rajasthan And Ors		RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Rajasthan Civil Services (Classification, Control And Appeal) Rules, 1958 — Rule 16
Constitution of India, 1950 — Article 32, 226, 227

Citation : (2019) 12 RAJ CK 0117

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Reasham Bhargava, KC Chandel, S. Zakawat Ali

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

The petitioner by way of this petition has assailed the order dated 29.08.1997, whereby, he has been punished with stoppage of one grade increment with cumulative effect and forfeiture of suspension period and the order dated 14.07.1998, whereby, the appeal was rejected.

Learned counsel for the petitioner submits that the petitioner was holding the post of District Education Officer and was served with charge-sheet and was suspended on 22.3.1994 in continuation of departmental enquiry initiated against him.

Learned counsel submits that memo under Rule 16 CCA was issued to the petitioner vide memorandum dated 29.12.1994 levelling two charges against the petitioner. First charge therefore, against the petitioner was that while he was working as District Education Officer, Elementary Education, Ajmer in the Education Session 1993-94, he has issued transfer orders of Teachers irregularly while there was a ban on transfers by the State Government which was alleged during the ban period. He has transferred five Senior Teachers Grade-II and 17

Teachers Grade III irregularly during the ban period and in this manner he was guilty of issuing irregular transfers as detailed by statement of allegation. The second charge levelled against the petitioner was that while he was working as District Education Officer, Elementary Education, Ajmer, he has been found guilty of not following orders passed by his Senior Officers and showing carelessness towards Government duties. In the statement of allegation levelled, the charge No.1 was detailed out as to how transfers were made of five senior Teachers and 17 Teachers irregularly and during the ban period when there was a ban on transfers.

The petitioner has denied the charges and had demanded documents by his application dated 31.01.1995 including copy of the preliminary enquiry report and complaints made against him as well as orders by which there was a ban by the State Government. Certain other documents in relation to application were also demanded, however, the same were not made available to him apprehending that proceedings may be taken for documents were made available to him. The petitioner has submitted the preliminary reply to the charge sheet and denied all the charges. Learned counsel for the petitioner submits that it was specifically pointed out in the reply that there was no ban by the State Government for issuing transfer orders after 2.12.1993 upto 23.12.1993 and therefore charges were required to be dropped.

Learned counsel submits that without alluding to the contents of the reply to the charge sheet, the respondents appointed enquiry officer vide order dated 31.10.1995. It is submitted that appointment of enquiry officer was without application of mind as there was no discussion relating to the submissions made by the petitioner with respect to charge sheet, though reasons have been required for necessitating conducting of enquiry.

Learned counsel further submits that the petitioner has moved an application requesting supply copy of the documents and material which were also not exhibited to enquiry but they also did not make available to the petitioner. It is submitted that while documents relied upon by the prosecution were allowed to be perused and inspected, the copies of the same were not available which resulted in preventing petitioner from putting up his defence properly. Learned counsel has specifically pointed out two aspects regarding non supply of copy of preliminary enquiry report which was also marked as Exhibit P-29 in the enquiry proceedings and was relied upon heavily by the prosecution during the course of enquiry. Learned counsel submits that as the copy of the preliminary enquiry report was not made available so he could not submit his reply to the various conclusion drawn in the preliminary enquiry. Learned counsel has further assailed that the enquiry report submitted by the enquiry officer were conveyed to the petitioner vide order dated 26.6.1996. Learned counsel submits that enquiry officer has solely relied upon preliminary enquiry to reach to the conclusions while the enquiry officer has given finding that the transfer orders were not passed during ban period and there was no ban to transfer during period of

3.12.1993 to 24.12.1993 all the transfers were made during the said period where there was no ban, he still proceed to hold petitioner guilty of charge No.1. Learned counsel further submits that preliminary enquiry report which was prepared by one Deputy Director, Education was presented himself before the enquiry officer as PW-2 and has relied on the preliminary enquiry report to submit that the petitioner has issued transfer orders without following procedure as laid down for transfer is concerned, PW-2 has stated that preliminary enquiry was conducted on account of some complaints but none of the complaints were exhibited before the enquiry officer. Learned counsel submits that in absence of making available copy of the preliminary enquiry report, the enquiry officer could not have relied on the said document to hold petitioner guilty of charge of irregularity committed in issuing transfer orders. Learned counsel also further submits that the enquiry officer after reaching to the conclusion that the transfer orders had been issued during the period when there was a ban by the State Government, and not proceeded to hold the petitioner guilty on the basis of that the transfer cannot said to be in administrative exigency and transfer orders have been made which was in fact absorption and adjustments of certain persons within the same district, will have to be treated as part of providing personal accommodation to some persons and such was not nature of the charges levelled against the petitioner. The enquiry officer has gone beyond the charge to hold guilty of both the charges. Learned counsel further submits that so far as charge No.2 is concerned, both the prosecution witnesses could not prove that any document was ever supplied to the petitioner and received by any personal/staff of the petitioner's office. In the statement of allegation with regard to charge No.2, it was mentioned that certain letters sent by Deputy Director which was not adhered however, the receipt of such letters could not be proved during the course of enquiry. However, without further discussion in the same, enquiry officer has held guilty of the said charge No.2 on the basis that same were prepared and levelled by Deputy Director office. Learned counsel submits that the Disciplinary Authority has also not applied his mind independently to the submissions made by the petitioner and the punishment order was passed without application of mind. It was obligatory upon him to record the findings which has not been prescribed.

Learned counsel submits that an independent discussion and analysis ought to have been made by the Disciplinary Authority. Learned counsel submits that similarly Appellate Authority as well as Revisional Authority have also failed to perform their duty as assigned under the Rules of 1958 and the reply of the petitioner and contents of the appeal were not considered.

Learned counsel has placed reliance on the decision of Supreme Court in the case of A. Savariar vs. The Secretary, Tamil Nadu Public Service Commission and ors, reported in 2013(2)SLJ 323 (SC).

Per contra, learned counsel appearing for the State has submitted that the documents were made available for perusal and the petitioner has submitted a

detailed reply to the charge sheet and therefore no prejudice can be said to have been caused to the petitioner. Learned counsel submits that the petitioner was made available opportunity to inspect record and he has also demanded of two copies out of which one was exhibited. Learned counsel further submits that reply of the petitioner with the charge sheet was examined alongwith relevant record and on being prima facie satisfied, regular departmental enquiry was warranted, enquiry officer was appointed vide order dated 31.10.1995.

Learned counsel submits that no reasons are required to be mentioned while appointing enquiry officer, the petitioner was given full time to defend himself and also cross examine the witnesses. It is submitted that Disciplinary Authority applied his mind and after objective consideration of whole material found, the petitioner to be partially guilty of both the charges and penalty for stoppage of one grade increment with cumulative effect was imposed and the punishment does not warrant interference.

Learned counsel for the respondents submitted that this Court would not act as Appellate Body and would not substitute its own finding to that finding of the enquiry officer.

I have considered the submissions. First charge levelled against the petitioner is that he had issued transfer orders while there was a ban. From the charge No.1, it is apparent that alleged transfers were said to be irregular as the same were issued during the period when there was a ban and five senior teachers and 17 teachers of Grade-II and Grade-III respectively, had been transferred during the ban period. Enquiry Officer in his enquiry report has found that the transfers were not made during the ban period inspite of the same, the petitioner has been held guilty of charge No.1. From the perusal of the enquiry report and submissions made by the learned counsel for the petitioner, it is apparent that the enquiry officer has examined apart from the bald allegation of transfers during ban period, also the fact whether the transfer orders were passed after following procedure laid down therein. This aspect has been dealt with by the enquiry officer based on the preliminary enquiry report and the enquiry officer has relied on the preliminary enquiry which has been marked as Exhibit P-29. However, the documents which have come on record as well as from record as pointed out by the learned counsel for the respondent-DOP, this Court is satisfied that copy of preliminary enquiry report was never made available to the petitioner. Relying upon a document, which has not been made available to delinquent, would result in miscarriage of justice and denial to proper defence and on that count, the enquiry proceedings stands vitiated. The conclusion on the said basis of preliminary enquiry report which was prepared by PW-2, who has also made his statement only on the basis of preliminary enquiry report would therefore have to be ignored. With regard to charge No.2, no document has been produced to show that the orders passed by the Superior Authority was made available to the petitioner to prove that documents having been served on the petitioner is found to be totally absent. Thus, so far as charge No.2 is

concerned, it is a case of no evidence whereas the enquiry Officer has held the petitioner guilty of the same.

On perusal of the order passed by Disciplinary Authority, it is noticed that the Disciplinary Authority also finds that the petitioner has not passed orders of transfer during ban period but it has chosen to accept the enquiry report to the extent of irregularity committed by the petitioner in making transfers which was solely based on the preliminary enquiry report. As this court has held that the enquiry officer has relied upon a document which was not available to the delinquent, findings of the Disciplinary Authority on the said basis, would also stand vitiated. As regards the charge No.2, Disciplinary Authority has held that the charge No.2 is partially proved, he has not given any finding in this regard, perversity in the order therefore is apparent.

In view thereof, the order passed by the Disciplinary Authority of holding petitioner guilty of the charges is based on no evidence. Order goes contrary to the principles laid down in the CCA Rules 1958. In *Kuldeep Singh vs. Union of India* reported in 1999 (2) SCC 10, the Enquiry Officer has held as under:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority."

By not providing document to the petitioner while not given fair and proper opportunity to the delinquent to defend himself of the charges, it is based solely on the preliminary enquiry report.

In the case of *Sawai Singh vs. State of Rajasthan* reported in AIR 1986 SC 795, the enquiry was held to be vitiated where it was found to be in violation of principles of natural justice and fair play. One of the principles of natural justice is also with regard to making available copy of the document which is relied upon for holding him guilty. If such document upon being demanded is not made available proceedings would stand vitiated.

In *Central Industrial Security Force vs. Abrar Ali* reported in AIR 2017 SC 200, Larger Bench of Supreme Court has examined law with regard to departmental enquiry and after considering the law as has been held from time to time by the Apex Court found that the judgment passed in *Union of India & ors. vs. P. Gunasekaran* reported in (2015) 2 SCC 610 laid down specifically what is the scope of the High Court in exercise of power under Article 226 and 227 of

Constitution of India, which held as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

While this court is conscious that there has to be no re appreciation of evidence, what the High Court can see is whether the enquiry held is according to the

procedure prescribed in this behalf and whether there is violation of principles of natural justice in conducting the proceedings and whether the preliminary enquiry is based on no evidence. It would also see whether the authority has deviated from reaching fair conclusion by same consideration to the evidence and merits of the case or whether the authorities have allowed themselves to be influenced by irregular or extraneous consideration.

Keeping in view the aforesaid principles, this Court is satisfied that the conclusion drawn by the Disciplinary Authority and that of the Appellate Authority and Revisional Authority, are based on aspects which were part of the preliminary enquiry report and preliminary enquiry report was not made available to the petitioner. He has been deprived to put his defence with relation to the enquiry and conclusion therein. As far as charge No.2, no evidence was adduced. Thus, there has been violation of the principles of natural justice in conducting the proceedings. It is also noticed that the enquiry Officer has proceeded to hold the petitioner guilty of charges having reached to the conclusion that the gravamen of the charge was that there was a ban on transfer by the State Government which was flouted by the petitioner and such charge was not found to be proved as there was no ban during the period when the transfer orders were issued by the petitioner.

In conclusion, therefore this writ petition deserves to be allowed.

The impugned orders dated 29.8.1997 & appellate order dated 14.7.1998 are set aside with all consequential benefits. The petitioner shall be entitled to get his pay fixation revised accordingly and consequential benefits thereto. The exercise shall be conducted within a period of three months from today. No costs.

All pending applications also stand disposed of.