
(1975) 01 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1532 of 1970

Mohan Lal Tiwari

APPELLANT

Vs

Panchayat Samiti Bhadra and Others

RESPONDENT

Date of Decision : 03-01-1975

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1975) WLN 33

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The petitioner was employed as a Gram Sevak in a substantive capacity in the Panchayat Samiti, Bhadra While working on the aforesaid post, he was placed under suspension by the order of the Vikas Adhikari of the Panchayat Samiti, Bhadra, dated March 7, 1969. It appears that by a subsequent order dated October 27, 1969, the Finance, Taxation and Administration Standing Committee of the Panchayat Samiti, Bhadra (hereinafter referred to as "the Committee") confirmed the action of the Vikas Adhikari in placing the petitioner under suspension. On July 3, 1969, the Vikas Adhikari served a charge sheet upon the petitioner wherein after enumerating the charges, he stated that the said charges were found proved against the petitioner and as such, the petitioner was not a fit person to be retained in the service of the State Government the petitioner was, therefore, called upon to show cause why proceedings for his removal from service be not taken the petitioner case in that the Vikas Adhikari was prejudiced, against him at the petitioner in his reply filed on July 31, 1969 submitted that on account of the fact that the Vikas Adhikari was biased against him and has already come to the conclusion that the charges levelled against him stood substantiated he did not expect that justice would be done to him by the Vikas Adhikari. It appears that the Vikas Adhikari made an ex parte enquiry against the petitioner and found the charges proved against him in his enquiry

report dated January 2, 1970. A show-cause notice was sent by the Vikas Adhikari to the petitioner on January 2, 1970 along with a copy of the enquiry report and he was directed to submit a reply within 15 days as to why he should not be removed from service. On February 6, 1970, the report of the enquiry conducted by the Vikis Adhikari was placed before a meeting of he Committee of the Panchayat Samiti and the finding arrived at by the Enquiry Officer was approved, subject to confirmation by the District Establishment Committee (hereinafter called the "District Committee").

2. The petitioner raised several grounds in the present writ petition, inter alia, that no final order was passed in respect of the services of the petitioner by the Panchayat Samiti and that the petitioner was not paid any subsistence allowance since the time he was placed under suspension from March 7, 1969. However, with the reply filed by the respondents, a copy of the order of the Vikas Adhikari, Panchayat Samiti Bhadra dated November 3, 1970 (Ex. P-1) has been produced by which, the petitioner was removed from the post of Gram Sevak with effect from March 7, 1969 and it has been stated therein that the District Committee Sriganganagar, in its meeting held on September 19, 1970, had confirmed the order of the Committee imposing the punishment of removal from service upon the petitioner.

3. The first contention by the learned Counsel for the petitioner is that no subsistence allowance was paid to the petitioner since March 7, 1969, the date he was placed under suspension by the order of the Vikas Adhikari (Ex. 1). This fact is not denied by the respondents in their reply but it has been averred by them that the subsistence allowance could not be paid to the petitioner due to his own delaying tactics. It has not been brought on record by the respondents that at any time an offer was made on their behalf in respect of the payment of subsistence allowance to the petitioner and the petitioner refused to accept or delayed the payment thereof. Thus, there is no doubt that the grievance of the petitioner on this score is well founded and no subsistence allowance was paid to him ever since he was placed under suspension with effect from March 7, 1969, nor any offer regarding the payment of the subsistence allowance appears to have been made to the petitioner at any time during this period by or on behalf of the respondents.

4. The next ground urged by the learned Counsel for the petitioner is that the disciplinary proceedings conducted against him were vitiated for three reasons, namely that in the first instance, the Vikas Adhikari having already mentioned in the charge sheet Ex. 3 itself that the alleged charges were proved against the petitioner and that it was clear that the petitioner was not fit for being retained in service, the petitioner did not expect a fair and impartial enquiry at the hands of the Vikas Adhikari who had apparently already made up his mind against the petitioner and was biased against him the second ground is that the Vtkas Adhikari was never appointed as an enquiry officer by the Panchayat Samiti at any time and as such, the framing of the charge sheet by the Vikas Adhikari and

the starting of an enquiry by him against the petitioner were wholly invalid and without lawful authority because the disciplinary authority in the case of the petitioner was the Panchayat Samiti and the Vikas Adhikari, of his own, was not empowered either to frame and serve the charge sheet upon the petitioner or to make an enquiry into any charges against him the third ground urged by the learned Counsel is that the petitioner could not take part in the enquiry because no subsistence allowance was paid to him ever since the petitioner was placed under suspension.

5. Taking the last ground first, it is not contested by the respondents that the petitioner was entitled to the payment of subsistence allowance during the period he remained under suspension from March 7, 1989 until the order of his removal from service was parsed on November 3, 1970 In *Ghanshymdas v. State of M.P.* 1973 SLR (1) 636, their Lordships of the Supreme Court took the view that if no subsistence allowance was paid to the delinquent employee and in case he is unable to face the enquiry on account of the non-payment of the subsistence allowance, the enquiry would be vitiated and the order of punishment would also be bad on the ground that it was passed in violation of the provisions of Article 311(2) of the Constitution as the delinquent employee did not receive a reasonable opportunity of defending himself in the enquiry proceedings. In the present case, in the absence of payment of subsistence allowance to the petitioner during the entire period he remained in suspension, it cannot be said that the petitioner was given a fair and reasonably opportunity of defending himself and the inability of the petitioner to take part in the enquiry proceedings on account of non-payment of subsistence allowance would itself be sufficient to vitiate the entire enquiry proceeding and the report of the inquiry officer based on evidence recorded behind the back of the petitioner at such an enquiry would also be vitiated for the same defect. I am, therefore, clearly of the view that the petitioner was entitled to the payment of subsistence allowance since March 7, 1969, and that the non payment of any subsistence allowance to the petitioner during the entire period of his suspension vitiated the enquiry.

6. The Rajasthan Panchayat Samitis and Zila Parishads Service (Punishment and Appeal) Rules, 1961 (hereinafter called "the Service Rules") provide that the Appointing Authority for the purposes of taking disciplinary proceedings against the employee of the Panchayat Samitis and Zila Parishads is the authority specified in Section 31 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (hereinafter called "the Act") Section 31 of the Act provides that appointments to other posts in class IV service shall be made by the Vikas Adhikari while the appointments to other posts shall be made by the Panchayat Samitis In the prescribed manner Thus so far as the petitioner is concerned, the Panchayat Samiti as the Appointing Authority in accordance with the provisions of Section 31 Rule 7 of the Service Rules provides the procedure for imposition of major penalties on the employees of the Panchayat Samitis and it provides that the Disciplinary Authority, which in the case of the petitioner was the Committee

of the Panchayat Samiti, as mentioned in Section 89 of the Act read with Rule 2(f) of the Service Rules shall frame definite charges. It is for the Disciplinary Authority to nominate any person as the Enquiring Authority and further after the Enquiry Authority limits its report, it is for the Disciplinary Authority to consider the report of the enquiry and give its finding on each charge and if the Disciplinary Authority is of the opinion that any of the major penalties should be imposed on the delinquent employee, then it is for that Authority to serve notice upon the delinquent employee to show cause why the proposed punishment should not be exposed upon him. In the present case not only the charge sheet appears to have been framed by the Vikas Adhikari of his own accord, but the Vikas Adhikari also conducted the enquiry himself without being appointed as the Enquiring Authority by the Panchayat Samiti or the Committee, which was the Disciplinary Authority in the case of the petitioner. Further the show cause notice dated January 2, 1970 was also issued by the Vikas Adhikari on the basis of his own report even without placing the report of the enquiry before the Panchayat Samiti or the Standing Committee thereof & without the prior approval of such Standing Committee. Thus, the entire proceedings relating to the disciplinary enquiry against the petitioner were void as the Disciplinary Authority did not apply its mind at any stage learned Counsel for the respondents however, contends that the matter was finally placed before the Committee on February 6, 1970 and the Committee approved of the proceedings taken by the Vikas Adhikari and also agreed with the punishment proposed by him. Learned Counsel for the petitioner on the other hand contends that the meeting of the Committee held on February 6, 1970 was attended only by two members thereof, namely Shri Harisingh and the Chairman as appears from the certified copy of the resolution of the Committee dated February 6, 1970 and as the minimum quorum for a meeting of the Standing Committee was three, as such, the decision taken at the said meeting of the Committee held on February 6, 1970, was of no avail and could not be said to be a valid decision by the Standing Committee of the Panchayat Samiti. Although it has not been denied in the reply filed on behalf of the respondents that the meeting of the Committee dated February 6, 1970, was attended by only two members thereof yet it has been stated that the resolution of the Committee was valid because the said meeting was an adjourned meeting and as such, no quorum was necessary the respondents have failed to place on record the proceedings of the earlier meeting at which the matter in question was fixed for consideration nor does the certified copy of the resolution dated February 6, 1970 placed before me show that the same was passed at an adjourned meeting of the Committee. As the fact that only two members of the Committee were present in its meeting held on February 6, 1970, is not denied by the respondents, I am unable to hold that the action taken by the Vikas Adhikari in initiating disciplinary proceedings against the petitioner and in making an enquiry against him, and in proposing the punishment of removal against the petitioner and giving him a show cause notice was ever approved by the Panchayat Samiti or a Standing Committee thereof, inasmuch as the minimum quorum for meeting of a Standing Committee of the Panchayat Samiti is there

as provided in Rule 5 of the Rajasthan Panchayat Samiti (Conduct of Business of Standing Committee) Rules 1959. It is not disputed that the Panchayat Samiti was the Disciplinary Authority so far as the petitioner was concerned and it was only the Panchayat Samiti or the Standing Committee thereof which could have initiated the disciplinary proceedings against the petitioner by framing a charge sheet and appointing an Enquiring Officer in accordance with the procedure prescribed by Rule 7 of the Service Rules. However, even if it be taken that Vikas Adhikari could conduct the enquiry against the petitioner as a delegate on behalf of the Panchayat Samiti or its Standing Committee, yet it was for the Disciplinary Authority itself to consider the report of the Enquiring Officer and to see that the Disciplinary Authority came to the (sic) a that the charges leveled against the petitioner were found proved, then it was for that authority alone to use a show cause notice to the petitioner as to why the proposed punishment could not be imposed upon. As in the present case the entire disciplinary proceedings were conducted by the Vikas Adhikari, apparently without any authority from the Panchayat Samiti thereof, such proceedings cannot be held to be valid. At least in any view of the matter, the issue of the show cause notice by the Vikas Adhikari of his own was wholly unauthorised. Moreover, as a matter of fact the action taken by the Vikas Adhikari in framing the charge sheet and conducting an enquiry himself against the petitioner, does not even appear to have been approved or ratified by the Panchayat Samiti or a Standing Committee thereof at any subsequent stage in as much as the meeting of the Committee held on February 6, 1970, could not be considered to be valid in view of the fact that quorum was not complete and only two members of the Committee were present at the said meeting. In this view of the matter, I hold that the disciplinary proceedings against the petitioner were vitiated not only because no subsistence allowance was paid to the petitioner during the entire period of his suspension, but also because the Vikas Adhikari conducted such proceedings without any authority from the Panchayat Samiti or a Standing Committee thereof.

7. Sub-section (4) of Section 89 of the Act provides that the prescribed punishment may be inflicted by a Standing Committee of a Panchayat Samiti, subject to the approval of the District Committee. As I have already held above that the meeting of the Standing Committee of the Panchayat Samiti Bhadra held on February 6, 1970, was invalid because of lack of quorum. It cannot be held that any punishment was inflicted upon the petitioner by a Standing Committee of the Panchayat Samiti. Moreover, such punishment could be awarded only with the prior approval of the District Committee. The stand of the respondents is that the District Committee approved of the proposed punishment against the petitioner in its meeting held on September 19, 1970 (Ex. D. 2). However, there is nothing on record to show that after the aforesaid approval by the District Committee, the Panchayat Samiti or its Standing Committee passed any resolution inflicting the punishment of removal from service upon the petitioner. Even after the approval of the District Committee, the final order was passed by the Vikas Adhikari vide Ex. D1 dated November 3, 1970; which is contrary to the

provisions of Sub-section (4) of Section 89 of the Act, as it was only the Standing Committee of the Panchayat Samiti which could have imposed the punishment upon the petitioner.

8. In view of the aforesaid discussion, I allow the writ petition and quash the entire disciplinary proceedings taken against the petitioner by the Vikas Adhikari beginning from the framing & service of the charge sheet dated July 3, 1969, However the Panchayat Samiti shall be free to take fresh disciplinary proceedings against the petitioner if it considers it proper to do so the Panchayat Samiti. Bhadra, is also directed to make payment of subsistence allowance to the petitioner from the date he was placed under suspension namely from March 7, 1969. In view of the quashing of the disciplinary proceedings the resolution of the Finance, Taxation and Administration Standing Committee of the Panchayat Samiti, Bhadra, dated February 6, 1970, imposing the punishment of removal from service upon the petitioner is also set aside and all proceedings in that respect subsequent there to the petitioner will get his costs from the respondents.