
(2008) 04 RAJ CK 0052
In the Rajasthan High Court

Nand Lal Saini

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2008) 3 RLW 2490 : (2009) 3 SLJ 173

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—By way of filing the present writ petition, the petitioner has challenged the validity of order dated 26.7.2003 (Annexure-6) passed by Inspector General of Police whereby the order dated 4.12.2002 (Annexure-5) passed by the same authority in appeal filed by the petitioner was set aside.

2. According to the facts of the case, the petitioner who was working as ASI under the control of respondent No. 3, was served with charge-sheet dated 19.9.2001 under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 (for short, "the Act of 1958" only). After receiving the said charge-sheet, a detailed reply was filed by the petitioner within the stipulated time and without considering the reply filed by the petitioner, it is alleged that in a slip-shot manner, a mechanical order was passed without application of mind whereby a penalty of withholding of one grade increment with cumulative effect coupled with the forfeiture of the salary of one hundred four days on the principle of "no work no pay" was passed while sanctioning the leave without payment. The said penalty order was passed against the petitioner by the respondent No. 3 on 6.7.2002.

3. Against the said cryptic order, the petitioner preferred an appeal as provided under Rule 23 of the Rules of 1958.

4. The appellate authority respondent No. 2 after taking into consideration the

facts and circumstances and the grounds taken by the petitioner allowed the appeal filed by the petitioner vide order dated 4.12.2002 and set aside the order of penalty passed by disciplinary authority dated 6.7.2002.

5. In the instant writ petition, It is stated that after passing the order by the appellate authority on 4.12.2002, there was no occasion for the said authority to review that order but surprisingly the said order passed in appeal was set aside by the respondent No. 2 suo motu vide impugned order dated 26.7.2003 without assigning any reasons.

6. According to the petitioner, the impugned order has been passed in total negation of the petitioners fundamental rights under Article 14, 16 and 311(2) of the Constitution of India, therefore, the order impugned dated 26.7.2003 deserves to be set aside. Further it is stated that after passing order of exonerating the petitioner by the appellate authority vide order dated 4.12.2002, the said authority become functus officio and it was not open for the said authority to review its own order and to pass afresh order in the same matter as has been done in this case. It is further submitted that there is no power left on the author of the order impugned under the Statutes or the Rules of 1958 to review the order, therefore, the reviewing of the order is totally without any rhyme and reasons, therefore, the action of reviewing the order is nothing but a colourable exercise of power and wholly without jurisdiction.

7. Learned Counsel for the petitioner vehemently argued that once in appeal filed by the petitioner, the respondent No. 2 after considering the submissions as well as the grounds set aside the order of penalty then the respondent No. 2 has committed an error while quashing the said order passed in appeal by itself vide impugned order dated 26.7.2003 because there was no jurisdiction left with the same authority to set aside the order.

8. Per contra, learned Counsel for the respondents has argued that there is no illegality or infirmity in the impugned order passed by the competent authority because the appellate authority felt it necessary to set aside the order passed by him, if it is found that the same is not in consonance with the provisions of law. Further it is submitted that the petitioner preferred this writ petition after two years from the date of passing of order impugned order dated 26.7.2003, therefore, no interference under Article 226 of the Constitution of India is required. So far as judicial review and scope of interference of this Court under Article 226 of the Constitution of India is concerned, it is submitted that in the judgment rendered by Hon''ble Apex Court in case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , it has been held that in a petition under Article 226 of the Constitution of India, the High Court does not function as Court of appeal over the findings of disciplinary authority; and in case of Transport Commissioner, Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, it has been held by Hon''ble Apex Court that under Article 226 of the Constitution of India, the High Court has no jurisdiction to go into truth of the allegations/ charges unless they are perverse. In yet another judgment as per the

respondents in case of Union of India (UOI) and Others Vs. Narain Singh, it has been held by Hon"ble Apex Court that it is not the function of the High Court to arrive at an independent finding, if an enquiry has been properly held that question of adequacy or reliability of evidence cannot be canvassed before the High Court. Therefore, concurrent finding of facts recorded by disciplinary authority as well as appellate authority does not required any interference by this Court under Article 226 of the Constitution of India.

9. After hearing both the parties and considering the material on record, it emerges that initially the petitioner was charge- sheeted under Rule 16 of the Rules of 1958 for the alleged misconduct and after conclusion of enquiry, a penalty of withholding of one grade increment with cumulative effect was imposed by the respondent No. 3 vide order dated 6.7.2002, so also the disciplinary authority passed an order for forfeiture of salary of 104 days on the principle of no work no pay" but sanctioned the leave without payment for 104 days. The order dated 6.7.2002"passed by disciplinary authority inflicting the penalty against the petitioner, was challenged by way of filing appeal before the respondent No. 2 and in appeal filed by the petitioner, while considering legal grounds taken by the petitioner, the respondent No. 2 allowed the appeal filed by the petitioner vide order dated 4.12.2002 by which the order passed by respondent No. 3 dated 6.7.2002 was set aside and the petitioner was exonerated from the charged levelled against him. Obviously after passing the said order, there was no occasion for the respondent No. 2 to pass fresh order dated 26.7.2003 and to cancel the order dated 4.12.2002 and that too without any notice to the petitioner. Obviously, after passing the order dated 4.12.2002, the said authority became functus officio and there was no power left with the respondent No. 2 to review the said order but it has been done illegally, therefore, all the judgments cited b/learned Counsel for the respondents have no application in this case because facts of the those cases are altogether different. In this case firstly a penalty was inflicted against the petitioner, against which an appeal was filed and the appellate authority set aside the order of penalty and the said order of setting aside the penalty against the petitioner was further set aside without any notice and without any jurisdiction by the same authority which is not permissible under the law. Therefore, It is not a case of concurrent finding where interference by this Court under Article 226 of the Constitution of India is limited but it case a case in which the appellate authority initially exonerated the petitioner from the charges levelled against him and later on after lapse of seven months, the said appellate authority quashed his own order and maintained the order passed by disciplinary authority, which is not permissible under the law because, It is against the principles of natural justice. The sword of penalty which was hanging upon the head of the petitioner was removed by the appellate authority but again It is imposed by the same authority without any rhyme and reasons by non-speaking order.

10. Therefore, in the facts and circumstances of the case, I am of the opinion that the order impugned dated 26.7.2003 passed by the appellate authority

setting aside its own order deserves to be set aside.

11. Accordingly, the writ petition is allowed. The order impugned dated 26.7.2003 passed by appellate authority which is totally without any authority of law is set aside with all consequential benefits. No order as to cost.