

(1992) 04 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 610 of 1984

Narain Singh Ranawat

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-04-1992

Acts Referred:

Constitution of India, 1950 — Article 137, 226

Citation : (1992) 3 WLC 465 : (1992) WLN 507

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner was working as Assistant Commercial Taxes Officer in the Commercial Taxes Department In Govt. of Rajasthan in the year 1983. A memo dated 7.12.83 was issued by the Commissioner Commercial Taxes, Rajasthan, Jaipur and an enquiry under Rule 17 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short Rules of 1958) was initiated against the petitioner. In all three charges were leveled against him. Two of these charges were in relation to the alleged absence from the Check Post Shahpura and the last one was in relation to the alleged reduction in the quantum of tax collection at the said check post during the tenure of the petitioner. The petitioner submitted a detailed reply to the memo on 21.12.83 and pointed out that he had sincerely discharged his duties after his appointment in service. He had to rush to Jaipur on account of accident, of his daughter regarding which information had been received by him at Shahpura. On account of the fact that 4.12.83 was a Sunday, he could not contact his senior officer and could not inform them. However he made a note about the same in the attendance register. He stated that on 5.12.83 he appeared before the Commercial Taxes Officer, Ward Jaipur and appraised him of all the facts. He submitted an application for grant of casual leave and for grant of headquarter permission. The Commercial Taxes Officer sanctioned him leave for 4.12.83 and

granted permission of leaving the headquarter upto 1 PM of 5.12.83. The petitioner, therefore, contended that no misconduct had been committed by him. He stated in the circumstances in which he had to come to Jaipur, it cannot be said that he had deliberately violated orders of the higher authorities. He gave out the figures of tax collection during his tenure and corresponding term of the previous year and submitted that the tax collection has in fact been on the higher said and that he was in no way responsible for the alleged reduction in the amount of tax collected and that the allegation in respect of charge No. 3 was absolutely unfounded.

2. Thereafter the Deputy Commissioner (Admn.) Headquarters wrote a D.O. letter dated 11.1.84 to the petitioner and called upon him to submit medical prescription, bill of medicine and certificate of admission of the child in the hospital. In response to the above letter the petitioner submitted certificate of Dr. R.R. Gupta along with his letter dated 16.1.84.

3. The Commissioner, Commercial Taxes issued an order dated 28.1.84 and imposed a penalty withholding one grade increment without cumulative effect on the petitioner. It is this order of the Commissioner, Commercial Taxes, which has been challenged by the petitioner in his writ petition filed under Article 226 of the Constitution.

4. The main ground of challenge is that the Commissioner, Commercial Taxes was not competent to impose any punishment on an officer of the State service and the petitioner, who was holding the post of Assistant Commercial Taxes Officer, belonged to the State Service in Commercial Taxes Department. It has also been stated that the order of punishment is not speaking and that the facts given in the reply of the petitioner were not at all taken into consideration by the Commissioner, Commercial Taxes Department while passing the impugned order.

5. In their counter the Respondents have asserted that the petitioner was posted at Shahpura Check Post on 4.12.83 and 5.12.83. The Commissioner, Commercial Taxes had issued instructions on 2.12.83 during his visit at the Check Post to the petitioner that at least one responsible officer should remain at the Check Post. The petitioner did not abide by this instruction and had gone to Jaipur on 4.12.83 without any specific reason and without obtaining permission of the Commercial Taxes Officer. The Commercial Taxes Inspector was on leave since 30.11.83. The petitioner subsequently applied for leave on 5.12.83 and got the leave sanctioned from Commercial Taxes Officer. However, mere sanction of the leave does not exonerate the petitioner from his responsibility. The factum of the memo having been issued to the petitioner, the reply having been submitted by him and order dated 28.1.84 having been passed by the Commissioner, Commercial Taxes have been admitted. Regarding the competence of the Commissioner, Commercial Taxes, the Respondents have placed on record an order dated 10.10.84 issued by the Govt. empowering the Commissioner, Commercial Taxes w.e.f. 6.10.79 to impose penalties under rule 14 of the 1958 Rules.

6. The first question which requires determination is as to whether the Commissioner, Commercial Taxes was competent to pass an order of punishment against an officer of the State Service. Admittedly the petitioner was holding the post of Assistant Commercial Taxes Officer and was a member of the State Service of Commercial Taxes Department at the relevant time. His appointing authority and disciplinary authority was the State Govt. Therefore, punishment could be imposed on the petitioner only by the State Govt.

7. Rule 7 of 1958 Rules provides that State Services shall consist of:

(a) Members of the services included in Schedule I.

(b) Persons who hold in a substantive capacity, posts included in Schedule I and not borne on the cadre of any other Service.

(c) Persons appointed on an ad-hoc basis pending final selection according to the rules of the Integration Department, on posts borne on the cadres of the Services referred to in Clause (a) or on posts referred to in Clause (b).

Rajasthan Commercial Taxes Service is among the services included in Schedule I to the Rules of 1958. As the said Schedule stood upto 5.7.79, there was a note appended in the following terms:

Note - The powers regarding imposition of the penalties of "censure" and "with-holding of increments" in regard to holders of posts at Sl. No. 6 & 7 viz. Assistant Commercial Taxes Officers and Assistant Commercial Taxes Officer (P.P.) and non-R.A.S. Commercial Taxes Officers (S. No. 4) shall vest with Commissioner Taxes, Rajasthan.

This Schedule I was substituted vide notification dated 6.12.79 and the substituted Schedule does not contain the aforesaid note.

8. Rule 2(c) defines the term "Disciplinary Authority" competent under these rules to impose a penalty on the Govt. servant. Rule 15 of the Rules specifies the Disciplinary Authorities for different cadres in the Service of the Govt. of Rajasthan and it reads as under:

Rule 15. Disciplinary Authorities - (1) In respect of the State Services the Government or the authority specifically empowered by the Government in that behalf, in respect of the Subordinate and Ministerial Services, the Head of Department or the authority specifically empowered by the Head of the Department with the approval of the Government and in respect of Class IV services the Head of office shall be the disciplinary authority.

Note : (i) The authority specifically empowered to make appointment to a Service under rule 12 of these rules shall have power to inflict any of the penalties specified in rule 14.

(ii) The State Government or the Head of the Department as the case may be, shall not empower under this rule any other authority to impose penalties

specified in Clause (vi) and (vii) of Rule 14.

(2) In respect of the State Services the powers of appointment to which is not delegated to subordinate authority, before imposing the penalties other than censure, and withholding of increments the Public Service Commission shall be consulted.

Perusal of Rule 15 together with Rule 7 and Schedule I clearly provides that in so far as the holder of the post of Assistant Commercial Taxes Officer is concerned, the State Govt. or the authority specifically empowered by the State Govt., in that behalf is the competent disciplinary authority. Prior to the constitution of Schedule I vide notification dated 6.12.79, Commissioner, Commercial Taxes was empowered to impose penalty of censure and withholding of increments. However, with the issue of notification dated 6.12.79 by which Schedule I was substituted, no provision empowering, the Commissioner, Commercial Taxes to impose penalty on the Assistant Commercial Taxes Officer was available and the Commissioner, Commercial Taxes ceased to be having power to impose these punishments on the holders of the posts of Assistant Commercial Taxes Officer and the State Govt. alone was the competent authority to act as disciplinary authority. The Govt. of Rajasthan was very much conscious of the absence of delegation of power in favour of the Commissioner, Commercial Taxes to impose minor penalties on the holders of the State Service posts and precisely with the object of overcoming this lacuna the Govt. issued order dated 10.10.84 in the purporting exercise of its power under Rule 15(1) of 1958 Rules. By this order, the Commissioner has been empowered to impose minor punishments on the holders of the posts of Commercial Taxes Officers and Assistant Commercial Taxes Officers. This power has been conferred with retrospective effect from 6.12.79. The very fact that the power has been sought to be given retrospective effect forfeits the conclusion that between 6.12.79 and 9.10.84 the Commissioner, Commercial Taxes was not empowered to impose any penalty on a person holding the post of Assistant Commercial Taxes Officer. Therefore, it has to be held that on 28.1.84, when the Commissioner, Commercial Taxes issued the order imposing punishment of withholding of one grade increment of the petitioner, he did not have the power to issue such order under Rule 16 of 1958 Rules. Logically this order has to be held to be without jurisdiction.

9. An incidental question, however, remains to be examined. By order dated 10.10.84 the Govt. has delegated the power of imposition of minor punishments on the holders of the posts of Commercial Taxes Officers and Assistant Commercial Taxes Officers on the Commissioner with retrospective effect from 6.12.79. Can it be said that this retrospective delegation is valid thereof in respect of the exercise of legislative power conferred on the Legislature. The law is well settled that the legislature can legislate prospectively as well as retrospectively. Retrospective legislation is one which is made operative from a date anterior to the date of enactment of the legislation. In respect of delegated legislation and exercise of powers conferred by the law to frame rules, bye-laws

or to issue notifications, the position is, however different and unless the legislature confers such a power in the statute to make rules, bye-laws or issue notifications with retrospective effect expressly or by necessary implication, a rule, bye-law or notification cannot be issued so as to operate retrospectively with effect from a date earlier than the date of issuance of the said rule, bye law or notification. Rule 15 of 1958 Rules does not contain any express provision which authorises the State Govt. to pass an order of delegation of powers of disciplinary authority with retrospective effect. There is nothing in Rule 15 on the basis of which such power can be read as implicit in the State Govt. The power to act as disciplinary authority can be exercised only prospectively and, therefore, delegation of such power can also be only prospectively. Exercise of a power of disciplinary authority with retrospective effect would amount to validation of illegal acts of the authority who has acted as disciplinary authority in exercise of the power conferred on it. The order dated 10.10.84 whereby the State Govt. has empowered the Commissioner, Commercial Taxes to impose minor penalties on Commercial Taxes Officers or Assistant Commercial Taxes Officers cannot, therefore, be held to have been validly made so far as retrospectivity is concerned. Such an order can validly be passed only from the date 10.10.84. This very question has been examined in S.B. Civil Writ Petition No. 335/86 Gyan Chand Gupta v. The State of Rajasthan and Ors. decided on 1.9.86 and also in Chandanmal Nawal v. State of Rajasthan and Ors. 1987 (1) RLR 47. In both these cases delegation of power of disciplinary authority on Director General of Police with retrospective effect in respect of the officers of the Rajasthan Administrative Service came up for examination. Two learned Judges of this Court in their separate judgments took the view that the State Govt. was not entitled to make retrospective delegation of power in favour of the Director General of Police but can act as a disciplinary authority in respect of the officers of the State Services of the Police-Department.

10. In view of the above discussion it has to be held that the order dated 23.1.84 passed by the Commissioner, Commercial Taxes, suffers from lack of jurisdiction and is liable to be quashed. Even otherwise the impugned order dated 23.1.84 is not sustainable from any point of view. The proceedings were initiated against the petitioner under Rule 17 of 1958 Rules. In response to the notice issued by the Commissioner, Commercial Taxes the petitioner submitted a detailed reply on 21.12.83. He was then called upon to submit medical certificate, prescription and bills of medicines. The petitioner submitted the certificate of Doctor on 16.1.84. However, without giving any reason the disciplinary authority has held that the explanation submitted by the petitioner was not satisfactory. None of the facts which have been mentioned in the reply has even been adverted by the Commissioner before passing the order of punishment.

Rule 17 of 1958 Rules reads as under:

17. Procedure for imposing minor penalties-No order imposing any of the penalties specified in Clause (i) and (iii) of Rule 14 shall be passed except after-

(a) The Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make;

(aa) holding an enquiry, in the manner laid down in Rule 16, in every case, in which it is proposed to withhold increments of pay for a period exceeding three years, or with cumulative effect for any period or so as to adversely affect the amount of pension payable to him or in which the disciplinary authority is of the opinion that such inquiry is necessary;

(b) such representation, if any submitted by the Government servant under Clause (a), and the record of enquiry, if any, held under Clause (aa), is taken into consideration by the Disciplinary Authority;

(c) an opportunity of personal hearing is given by the Disciplinary Authority to the Government servant to explain his case, if so desired by him;

(d) the Commission is consulted in cases where such consultation is necessary.

(2) The record of proceedings in such cases shall include:

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the evidence produced during the enquiry;

(v) the findings on each allegation;

(vi) the advice of the Commission, if any; and

(vii) the orders on the cases together with the reasons therefor.

A bare look at Rule 17(1)(b) shows that the competent authority is required to take into consideration representations, if any, made by the Govt. Servant. The word "consideration" implies of objective application of mind by the competent authority. This objective application of mind must be manifested in the order of punishment itself. In other words, the order of punishment passed on the basis of a notice issued under Rule 17 must be speaking order i.e., it must contain reasons on the basis of which the disciplinary authority or any other competent authority holds that the allegation/s leveled against the Govt. servant have been proved and for good reasons a particular punishment has been imposed. Rule 14 of 1958 Rules begins with the words "the following penalties may for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government Servant...". Therefore, before any penalty can be imposed, it is a statutory obligation of the disciplinary authority to record reasons and such reasons must be good and sufficient. This requirement is applicable in all cases where any of the punishments specified in Rule 14 is imposed on the

government servant. Recording of good and sufficient reasons constitute a condition precedent for imposition of a punishment. If the word "consideration" as used in Rule 17(1)(b) is read with the opening words of Rule 14 it becomes clear that the competent authority must take a decision for imposition of any of the penalties specified in Rule 14 only after it feels convinced with the explanation submitted by a government servant is not satisfactory and that there are good and sufficient reasons for imposing a penalty. While recording of reasons is provided by the Rule itself, principles of natural justice warrant that such reasons must be communicated to the delinquent. It is significant to note that the government servant has a statutory right of appeal against the order of punishment under Rule 23 of the 1958 Rules. If the order of punishment does not contain reasons, much less good and sufficient reasons, the government servant is seriously handicapped in submitting his appeal. At the same time, the appellate authority is deprived of an opportunity to examine the appeal with reference to the requirements of Rule 30(2) of the 1958 Rules. Unless reasons are communicated to the delinquent employee so that he can effectively assail that order in appeal the right of appeal conferred upon the Govt. servant will be reduced to farce. In *Testeels Ltd. Vs. N.M. Desai and Another*, , a Full Bench of Gujarat High Court had an occasion to examine the requirements of American and English law on the subject, Bhagwati, J. (as he then was) observed that recording of reasons and communication thereof constitute an integral part of the principles of natural justice. Their Lordships observed that merely by giving reasons or by keeping silence the quasi judicial authority cannot frustrate or stultify the power of judicial review vested on the High Courts under Article...of the Constitution and on the Supreme Court under Article 137 of the Constitution. There have been several decisions of the Supreme Court on the subject of speaking orders but it would be sufficient to refer to the recent decision of the Supreme Court in *S.N. Mukherjee Vs. Union of India*, , wherein a Constitution Bench of the Supreme Court has after examination of almost all earlier decisions of the Supreme Court stated thus:

39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decisions.

40. We may now come to the second part of the question, namely, whether the confirming authority is required to record its reasons for confirming the finding and sentence of the court-material and the Central Government or the competent authority entitled to deal with the post-confirmation petition is required to record its reasons for the order passed by it on such petition. For that purpose it will be necessary to determine whether the Act or the Army Rules, 1954, (hereinafter referred to as "the Rules") expressly or by necessary implication dispense with the requirement of recording reasons. We propose to consider this aspect in a broader perspective to include the findings and sentence of the court-material and examine whether reasons are required to be recorded at the stage of (i)

recording of findings and sentence by the court-material; (ii) confirmation of the findings and sentence of the court-material; and (iii) consideration of post-confirmation petition.

11. In the case of minor penalty this Court has in *Vedpal Krishna Dheer v. The State of Rajasthan* and Anr. 1977 WLN 397, held that the disciplinary authority is required to record and communicate the reasons to the delinquent even in the case where punishment specified in Rule 14(i) and (ii) is imposed. In addition to what has been held in *Vedpal Krishna Dheer*'s case. I would observed that even the Court is entitled to examine on merits whether the reasons given by the disciplinary authority for imposing a particular punishment are legally sustainable or not and as to whether there is sufficient justification for imposition of a particular penalty. By failing to record reasons or by failing to communicate the same to the delinquent, the disciplinary authority cannot take away the right of employees to seek effective judicial review of the order of penalty.

12. In the present case the Commissioner, Commercial Taxes has simply written one line regarding the representation of the petitioner. He has observed:

Li"Vhdj.k dk voyksdu dj ml ij fopkj fd;k x;k tks fopkj ds i"pkr larks"kizn ugha ik;k x;kA

13. No reason, whatsoever, has been assigned by the Commissioner from which it can be inferred why the reply filed by the petitioner was not found satisfactory. The Commissioner completely overlooked the fact that the petitioner had to proceed from the check post on 4.12.83 on receipt of an information regarding accident of his daughter at Jaipur. He has also completely overlooked the fact that the petitioner had in fact contacted the Commercial Taxes Officer "C" Ward, Jaipur and applied for leave for 4.12.83 and sought permission to stay away from headquarter till the afternoon of 5.12.83. The Commercial Taxes Officer had sanctioned the leave and granted the permission to the petitioner. The petitioner produced the medical certificate also when called upon to do so. The impugned order is totally oblivious of these factors. The impugned order is not only a non speaking order but is an order which is cryptic to the core. The Commissioner has completely failed to discharge his statutory obligation of consideration of representation submitted by the petitioner and of recording good and sufficient reasons in support of the order of punishment. From the facts of this case, it is possible to infer that the Commissioner felt aggrieved with the petitioner because he could not find him at the check post when the former had visited the check post at Shahpura. Apparently, the Commissioner's ego felt hurt and, therefore, ignoring all the pleas raised by the petitioner and showing a total lack of humanistic approach, the Commissioner passed the impugned order of punishment. It is not possible even to comprehend as to how after the Commercial Taxes Officer "C Ward had accepted the version of the petitioner about accident of his daughter and had sanctioned him leave, the Commissioner still penalised the petitioner for his alleged absence from the check post. Regarding the allegation of reduction in the quantum of tax collection, not a word

has been said in the impugned order as to why the explanation of the petitioner has not been considered to be satisfactory. The details of the documents given by the petitioner have totally been ignored by the Commissioner.

14. Shri K.S. Gupta, who appeared on behalf of Shri G.S. Bafna, learned Counsel for the respondents, submitted that the Court should not give relief to the petitioner because the petitioner has failed to avail the alternative remedy of appeal before the government. I have mentioned this argument only for its summary rejection. It is to be noted that a show cause notice of the writ petition was issued to the respondents on 20.7.84. Reply to the show cause notice was filed on 19.11.84. On 25.2.85 when the case was taken up for admission, none had appeared on behalf of the respondents. After hearing the learned Counsel for the petitioner, the Court admitted the petition. While admitting the petition, the court had obviously not considered the plea of alternative remedy raised in the written reply of the respondents to be of any significance. The Court felt, that the questions raised in the writ petition were of importance and such questions need a decision by the High Court. The rule of alternative remedy is a rule evolved by the Courts and it is invoked as and when the Court feels that an effective and efficacious remedy is available to the person to seek relief from, some other forum. In such circumstances the Court declines to give relief under Article 226. However, this rule is not a rule of thumb. The plea of availability of equally efficacious alternative remedy has to be examined in the facts and circumstances of each case. This Court would fail to discharge its constitutional obligation if in a case like the present one it declines to give relief to the petitioner on the specious plea of availability of alternative remedy. The reasons for this view are (i) the writ petition is being heard by the Court in the year 1992 i.e., after period of 7 years of its admission, (ii) the plea of alternative remedy had been raised by the respondents in their written reply and it did not find favour with the Court at the time of admission of the petition, (iii) once the Court had admitted the writ petition, except in exceptional circumstances, hearing on merits cannot be denied to the petitioner refer to *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, , (iv) the Court has found that the order dated 10.10.84 is unlawful to the extent of retrospective delegation of power, (v) there has been a clear violation of the principles of natural justice in the passing of the impugned order dated 23.1.84 and it is one of the settled principles of law that plea of alternative remedy cannot be a ground for denial of relief where principles of natural justice have been violated. This has been held by the Apex Court in *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*,

15. This Writ Petition is, therefore, allowed. The order dated 23.1.84 is quashed. The petitioner shall get consequential benefits. The petitioner shall get cost of Rs. 1,000/- from the Respondents.