

(1997) 08 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2394 of 1989

N.L. Jogi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Citation : (1997) 3 RLW 1494 : (1998) 1 WLC 476 : (1997) 2 WLN 269

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner was initially appointed as a village Level Worker in the year 1963 in the Development Department and was later on sent to Agriculture Department as Agriculture Supervisor where he worked upto 1978. In response to certain vacancies advertised in Jaipur Nagaur Aanchalik Gramin Bank, Jaipur (hereinafter referred to as "the Gramin Bank") for the post of Manager, and on his application being made, the petitioner was selected as a Manager where he joined after resigning from his earlier post in the Agriculture Department. His appointment in the Gramin Bank was on probation for a period of two years. It is stated by the petitioner that his main work was to supervise his branch and to recover the loans which were advanced to the villagers and as a part of his duties he had used to go for inspection in the villages also. He had visited certain villages on various dates in May and June, 1979 and had submitted his T.A. Bills alongwith receipts. As desired he is said to have also sent his diary to the Head Office. Some of his T.A. Bills were doubted because of the mode of conveyance adopted by him. The petitioner was informed on 18.8.1979 by the Manager Personnel Department to the fact that the petitioner had not performed the journeys on the mode of conveyance mentioned by him in the T.A. Bills and, therefore, some allegations of misappropriation of the amount of the bank were levelled against the petitioner. It was stated by the petitioner that he had made the journey on camel cart and some time on foot and also through the

bus. It was stated that when he visited the interior parts of the villages he had been changing from one cart to another cart and it was also stated by the petitioner that in case the journey on camel cart is not accepted or if the journey camel cart is not permissible then in that case it should be treated as "on foot." The petitioner replied to the communication on 27.8.1979. But his services have been terminated vide order dated 15.9.1979 received by him on 18.9.1979 stating therein that he had tried to reimburse all the T.A. Bills on the strength of false money receipts and mentioning wrong mode of conveyance and looking to this misconduct the services of the petitioner were terminated from 18.9.1979. It is stated by the petitioner that no enquiry as required under Clause IX of the Service Regulations of the Gramin Bank was held. He filed an appeal against the order dated 15.9.1979.

2. The appeal filed by the petitioner was decided against the petitioner ultimately with the result that the petitioner had to file D.B. Civil Writ Petition No. 1233 of 1979 which was decided on 31.10.1988 by a Division Bench of this Court. The petitioner had taken the plea before the Division Bench that his representation did not amount to any admission. He had also stated that the order of termination casts a stigma on the petitioner and further he had stated that no enquiry whatsoever had been held against the petitioner. The writ petition was accepted and the appellate order dated 24.11.1979 was quashed with the direction that the same be decided afresh by the appellate authority in accordance with the observations made by the Division Bench in the above said writ petition. It was further observed by the Division Bench that the appellate order was not a speaking order and there was no application of the mind while deciding the appeal. A direction was given that the appeal of the petitioner should be decided afresh. The writ petition having been allowed, the appellate authority again decided the appeal on 27.5.1989 vide Annex. 2 and hence the present writ petition.

3. The appellate Board had held that because of the reason that the amount of the T.A. claimed is Rs. 199.40 only for which some irregularities have been committed and a taking a lenient view the petitioner was offered a fresh appointment as an Officer at the bottom of the Officer's scale from the date he joins the duty. All other benefits in regard to previous salary, allowances and other benefits including seniority and consequential benefits were denied. However, it was further decided that from the date of dismissal till the date he rejoins the duty, the petitioner was to be treated on duty on loss of pay and no salary and allowances and consequential benefits including the seniority was made to the petitioner. As a matter of fact, he was to be reappointed.

4. The petitioner has levelled certain allegations against some of the members of the Board of Directors and had also submitted that as a matter of fact, the Board of Directors was already biased. He has also challenged the proceedings of the meeting of the Board of Directors when his appeal was decided. It is stated that the services of the petitioner have been terminated because of some preliminary

enquiry held by the respondent Gramin Bank and the order of termination of services casts stigma. It is further submitted that he was given a hearing and the petitioner had informed the authorities of his defence. But no speaking order had been passed by any of the authorities.

5. A reply has been filed by the respondents No. 2 and 3. It is stated that the petitioner was a probationer in the respondent Gramin Bank when his services were terminated on 15.9.1979. It is stated that the petitioner was informed on 18.8.1979 to the fact that on examination it has been found that claiming of T.A. Bill in regard to the journey undertaken by the mode mentioned in the T.A. Bill is not genuine. It is also stated that the letter was written to the petitioner to the fact that he is claiming the false T.A.

6. The averments made by the respondents have been denied in the rejoinder.

7. The petitioner has challenged the order of termination Annex. 3 and the appellate order dated 27.5.1979 (Annex.A.2). Initially no prayer was made for setting aside the order of termination Annex.3 but vide a separate application made by the petitioner, the prayer to set aside the order of termination has been now included.

8. Even though from the reading of the relevant documents produced on the record, there seems some truth in the submission of the petitioner to the fact that the impugned orders are perverse and are not based on any evidence. But it is not necessary at this stage to go into any evidence or documents produced by the parties in regard to T.A. Bills as the truthfulness or falsity of the T.A. Bills could only be established by holding a regular enquiry and by issuing a proper charge-sheet under the rules which admittedly had not been done in the present case.

9. The impugned order of termination attached as Annex.3 to the writ petition reads as under:

Mr. N.L. Jogi, Manager, C/o J.N.A. Gramin Bank, MED Branch Dear Sir,

It has been observed that soon after your posting as Manager of our Med Branch, you have submitted T.A. Bills and claimed reimbursement of expenses stating to have been incurred by you on the strength of false money receipts and mentioning wrong mode of conveyance and facts have also been admitted by you.

Your above action has been seriously viewed by the bank. This is a gross misconduct and prejudicial to the interest of the Bank as you have shown yourself unreliable and not trustworthy. This is more seriously while you are still on probation.

In view of your above act of gross misconduct, it has been decided to terminate your services and, therefore, you stand relieved from the bank's service as at the close of business on 18th September, 1979.

Yours faithfully, Chairman.

10. Reading the order of termination Annex.3, leave no doubt that the petitioner had been removed from service on the ground of misconduct and the order Annex.3 itself casts a stigma. It is settled law that the services of the probationer can be terminated if his performance during the probation period is not satisfactory but if a probationer is to be removed from service on the ground of any misconduct, in that situation, he shall be entitled to the same opportunity to defend himself as is normally provided to any other employee.

11. The Supreme Court in *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, had categorically held that if a probationer is to be removed on the ground of misconduct, in that situation, it is necessary to hold an enquiry and to give an opportunity to the probationer. In the present case, admittedly the petitioner had been removed vide Annex. 3 on the ground of misconduct which finds mention in the impugned order itself. The impugned order also contains a stigma. It is also settled law that if the order of removal is stigmatic, that cannot be sustained in the eyes of law as it involves civil, consequences. There is no doubt left after going through the order Annex.3 that the order is not only stigmatic but also has been passed because of misconduct as mentioned in the order itself. It is also admitted that no regular enquiry was held against the petitioner on the ground that he was a probationer. As has been held in *Anoop Jaiswal Vs. Government of India and Another*, any order passed because of misconduct cannot be sustained in the eyes of law even in the case of probationer.

12. For the reasons given above, the writ petition is allowed, the impugned order Annex.3 is to be set aside and quashed and the consequential appellate order Annex. A.2 passed on 27.5.1989 is also quashed. The petitioner shall be entitled to all consequential benefits. No Costs.