

(2017) 04 RAJ CK 0136
In the Rajasthan High Court
Case No : 1124 of 2017

Parbat Singh S/o Shri Narayan Singh

APPELLANT

Vs

The Rajasthan State Road Transport Corporation

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

[Constitution of India](#), [Article 311](#) -
Dismissal, removal or reduction in rank of persons employed in civil capacities under
the Union or a State

Citation : (2017) 04 RAJ CK 0136

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Rajesh Punia, ?Harish Purohit

Final Decision : Allowed

Judgement

1. The petitioner, a conductor in the Respondent Corporation appointed vide order dated 04.08.1986, has impugned the order dated 13.01.2017, whereby he has been placed under suspension, under contemplation of a disciplinary enquiry.
2. Though there are various grounds for which, the order impugned has been assailed, but during the course of arguments, Mr. Rajesh Punia confined the challenge to the order impugned within the confines of observance and requirement of order No.35 of the Rajasthan State Road Transport Workshop Employees Standing Orders, 1965 (hereinafter referred as "the Standing Order").

3. Mr. Punia inviting attention of this Court towards Clause (vi) (a) of the Standing Order No.35 contended that if the Rajasthan State Road Transport Corporation (hereinafter referred as "Corporation") thinks it necessary to place a Workman under suspension, it may do so by an order in writing to such effect, however, such order of suspension should be accompanied with a charge sheet, explaining the reasons for such suspension.

4. Adverting to the facts of the present case he contended that the petitioner has been suspended by way of the order under consideration, issued on 13.01.2017, however, neither any charge sheet was enclosed, nor any reasons necessitating such suspension were contained therein. Developing his argument further, he submitted that not only till the date of filing of the present writ petition, even till today (the date of hearing), the respondents have not served any charge sheet upon the petitioner. In light of these facts he contended that the order placing the petitioner under suspension is per se illegal, contrary to Clause (vi) (a) of the Standing Order No.35 of the Standing Order of 1965.

5. Whereas Mr. Harish Purohit, learned counsel for the Corporation urged that Clause (vi) (a) of the Standing Order No.35 cannot be read in isolation and it has to be read and interpreted in the background of the entire scheme dealing with suspension duly catalogued in Clause (i) to (vi) of the Standing Order No.35. He extensively navigated the Court through the entire Clause 35 which is reproduced hereinfra:-

35. (i) Competent authority may suspend a worker for any act or omission of misconduct as described in standing order No. 35 by an order in writing and serve the worker with a charge sheet containing specific charges on which each charge is based and asking him to state whether he desires to be heard in person.

(ii) A worker shall be required to submit his explanation in writing within a week from the date of service of charge sheet and if he desires to be heard in person his summary inquiry shall be held.

(iii) During summary inquiry the suspended worker shall be given an opportunity to cross examine witnesses or to have such witnesses called as he may wish or to explain circumstances alleged against him.

(iv) An order in writing referred to in Clause (i) above shall take effect immediately on delivery to worker, and in the event of refusal by the worker to accept delivery of the said ; order served on him, the affixing of the same on a notice board at the place of his posting will be deemed to be a sufficient service on him.

(v) Deleted.

(vi) (a) Where on a complaint of misconduct against a workman, disciplinary proceedings against him are contemplated or are pending or where a case against him in respect of any criminal offence is under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may do so by serving on the workman an order in writing to that effect. Such an order shall take effect immediately on delivery to the workman. It shall be accompanied by a charge sheet explaining in detail the reasons for such suspension and the workman shall be given an opportunity for defending himself.

(b) The workman, who is placed under suspension, shall, during the period of such suspension, be paid subsistence allowance at the following rates:

(i) Where the enquiry is departmental, the subsistence allowance shall be equal to $\frac{1}{2}$ of his wages as defined in the Payment of Wages Act, 1936 (Central Act 4 of 1936), for the first 90 days. If the departmental enquiry gets prolonged and the workman continues to be under suspension for a period exceeding 90 days, the subsistence allowance shall be paid at the rate of $\frac{3}{4}$ of the wages but if the enquiry is delayed beyond 90 days due to reasons directly attributable to the workman, the subsistence allowance shall be reduced to $\frac{1}{4}$ of the wages.

(ii) Where the enquiry is by an outside agency or as the case may be, where any criminal charge against the workman is under investigation or trial, the subsistence allowance shall be equal to $\frac{1}{2}$ of his wages as defined in the Payment of Wages Act, 1936 (Central Act 4 of 1936) for the first 180 days. If such an enquiry gets prolonged and the workman continues to be under suspension for a period exceeding 180 days, the subsistence allowance shall be paid at the rate of $\frac{3}{4}$ of the wages. But if the reasons for the delay are directly attributable to the workman the subsistence allowance be reduced to $\frac{1}{4}$ of the wages.

(c) If on conclusion of the enquiry, or as the case may be, of the criminal proceedings, the workman has been found guilty of the charge and it is

considered that an order of dismissal may meet the ends of justice, the employer shall pass orders accordingly. When such orders are passed the workman shall be deemed to have been absent from duty during the period of such suspension and shall not be entitled to any remuneration for such period but the subsistence allowance already paid to him shall not be recovered. Provided that in case of a workman to whom the provisions of Clause (2) of Article 311 of the Constitution of India apply the provisions of the Article shall be complied with.

(d) If, on conclusion of the enquiry or as the case may be, of the criminal proceedings, the workman has been found

not guilty of the charge, he shall be deemed to have been on duty during the period of such suspension and shall be entitled to the same wages as he would have received as if he had not been suspended, after deducting subsistence allowance paid to him for such period.

(e) The payment of subsistence allowance shall, however, be subject to the workman concerned not taking any employment during the period of his suspension.

(vii) An appeal against an appealable punishment imposed shall lie to the next higher authority and shall be preferred within 15 days of the passing of the order. Decision of the next higher authority shall be final.

6. Mr.Purohit learned counsel for the respondent paraphrasing the above clause contended that the Competent Authority may suspend a Worker by an order in writing "and" serve the Worker with a charge sheet containing specific charges; he submitted that Clause (vi) (a) of the Standing Order No.35 is only a machinery provision, while Clause (i) thereof, is an enabling provision; as long as the enabling provision does not require a charge sheet to be served along with the order of suspension; as per him, the same can be served at a later point of time. He vehemently submitted that the requirement of giving charge sheet in Clause (vi) (a) cannot be read to conclude that, if the charge sheet is not served along with the order of suspension, the suspension itself would be illegal and void.

7. He contended that the stipulation regarding serving a charge sheet and the reasons for the suspension, are not mandatory and

fatal to the order of suspension per se; the suspension does not vitiate, if it is not accompanied with a charge sheet. He submitted that use of word "and" in Clause (i) of Order 35 is very important and a bare reading of Clause (i) suggests that the charge sheet can be issued and served subsequently.

8. Learned counsel for Respondents submitted that the suspension can be made in three contingencies, (i) on a complaint of misconduct against a Workman, (ii) disciplinary enquiry against him are contemplated or are pending or (iii) where a criminal case is under investigation or trial. He contended that if the argument of the petitioner is accepted, then in cases of contemplated enquiry, no person can ever be suspended. While focusing on the expression "contemplated" ,he submitted that even in case of contemplated enquiry, the framers of the policy have provided for suspension. He submitted that preparation or issuance of a charge sheet cannot be envisaged at the initial stage of contemplating an enquiry. Mr. Purohit submitted that "contemplated" enquiry means "intended" and when the competent authority, prima facie feels that looking to the complaint or misconduct, an enquiry may be required to be held/conducted against a delinquent. At the time of forming such prima facie opinion, based on the skeleton facts, the Competent Authority may consider it expedient to place the delinquent under suspension. In such event, neither the issuance of charge sheet nor detailed reasons for suspension are expected to be drawn, as such there arises no question of communicating the same, in case of contemplated enquiry.

9. Mr. Purohit, contended that such interpretation or reading of the provision would be against the service jurisprudence and would impede the administration of the Corporation. He

painstakingly submitted that in many cases, immediate suspension is not only imperative but inevitable lest the delinquent should not tinker with the evidence or misuse his position or authority, as the preparation of charge sheet and memorandum of charges is a time consuming process.

10. I have heard the learned counsel for the parties and given my thoughtful consideration over the matter. A close and conjoint reading of the Chapter, dealing with the suspension being Order No.35 shows that Clause (i) thereof is the repository of the power of suspension, while the succeeding clauses namely Clause (ii) to (vi) contain the machinery provision, encapsulating the manner and procedure to be followed in cases of suspension.

11. It is true that Clause (i) does not mandate that a charge sheet should be co-existent with the order of suspension, however, the procedural paragraph of the Standing Order does require this. In teeth of the categorical assertion contained in Clause (vi) (a) of the Standing Order No.35, with the use of term "shall"; the language of Clause (vi) (a) of the Standing Order No.35 neither leaves any room for ambiguity, nor does it provide any leeway to the competent authority to issue order of suspension, without serving or enclosing a charge sheet and reasons for the suspension.

12. Though, argument of Mr. Purohit appears to be attractive and fall in tandem with the service jurisprudence but cannot be accepted inasmuch as the Courts are required to read and interpret the law, as has been framed by the framers of the law. Clause (vi) (a) of the Standing Order No.35 is unambiguous and unequivocal, leaving hardly any room for the respondent-Corporation to argue. It is true that Clause (i) of the Standing Order is a substantive provision but the same is stringed with

machinery provisions contained in Clause (ii) to Clause (vi) of the Standing Order No.35. Clause (vi) (a) in express terms require that such order of suspension shall be accompanied by a charge sheet explaining in detail, the reasons for such suspension. This Court cannot take a detour from the express provision contained in the Standing Orders, which have been formulated or framed by none else, than the Corporation itself. The Standing Orders are mandatory and at least the Corporation is bound by it.

13. On exploring the law on the subject, this Court finds that in identical facts and circumstances, Jaipur Bench of this Court has allowed a writ petition being S.B. Civil Writ Petition No.7599/2015, Yogendra Kumar Meena Vs. RSRTC, vide its order dated 11.01.2016 and quashed the suspension order with following observations:-

A perusal of para 35 reveals that an employee can be suspended against whom disciplinary proceedings are contemplated or pending or if a criminal case is under investigation or trial. It is however, necessary to serve a copy of the order on the workman in writing and such an order would take effect immediately on its delivery. The order of suspension need to be accompanied by a charge-sheet explaining the reasons of suspension. In view of the provisions aforesaid, the non-petitioner was under an obligation to accompany the copy of charge-sheet along with copy of order of suspension but it is missing in this case. The service of the charge-sheet is subsequent to the order of suspension thus, the impugned order has not been passed as per para 35 of the standing orders of 1965. Hence, it is quashed. It is moreso when order does not supply reasons required as per the provisions referred above. The writ petition is allowed with the aforesaid. The non- petitioner would, however, be at liberty to pass fresh order, if so wishes."

14. This Court has no hesitation in holding that the provision contained in Clause 35 (vi) (a) are mandatory and the same shall prevail over the provision contained in Clause (i) of the Order No.35, as it is a settled principle of interpretation that in the event of conflict between the two provisions of a statute, the one later in order shall prevail.

15. In view of the above discussion, I am of the considered opinion that in wake of the express provisions contained in Clause (vi) (a) of the Standing Order No.35, the respondent-Corporation is required to serve a charge sheet and reasons for suspension along with order of suspension. Order of suspension dated 13.01.2017 challenged by the petitioner sans, the reasons of suspension and charge sheet is per se illegal, and violative of Clause (vi) (a) of the Standing Order.

16. As a fall out of the above enunciation, the order dated 13.01.2017 suspending the petitioner is quashed and set aside.

17. Needless it is, to observe that the Respondent-Corporation shall be free to suspend the petitioner, if at the time of serving the charge sheet, they deem it expedient to do so.

18. The writ petition is allowed, in terms aforesaid. Petitioner shall be entitled for full pay for the suspension period as a consequence of the annulment of the order dated 13.01.2017.