

(2005) 09 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2241 of 2002

Prithvi Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 309, 32
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16
Rajasthan Land Revenue (Land Records) Rules, 1957 — Rule 14, 15
Rajasthan Land Revenue Act, 1956 — Section 2(2)

Citation : (2006) 4 RLW 2865 : (2004) 2 WLC 436

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : S.D. Rajpurohit, for the Appellant; Vishnu Kachchawaha, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This writ petition has been presented in the Registry of this Court on 22.12.2000. The petitioner has primarily challenged impugned orders An-nex.62 dated 4.5.1991 whereby pursuant to a departmental enquiry the Appointing Authority has imposed upon him the penalty of dismissal from service and Annex.64 dated 21.7.1992 whereby the appellate authority maintained the penalty order. On its face, the writ petition suffers from gross delay and, therefore, at the outset this Court called upon the counsel for the petitioner to show sufficient cause why this petition may not be dismissed only on the ground of laches.

2. The gruelling narration of the facts leadings to delay in filing the writ petition is that on accrual of the cause of action, after dismissal of his appeal by the appellate authority, the petitioner engaged Shri Vinayak M. Joshi, Advocate and handed over him the file alongwith all relevant material. He also made payment of the full fees and expenses. It is deposed of affidavit on affidavit by the petitioner that Shri Vinayak M. Joshi told him that he will require 2-3 months for

setting the copies typed and preparing the writ petition and the petitioner was directed to come again for signing the papers in the last week of October or in November 1992. When in the month of November 1992 the petitioner came to Jodhpur, his Advocate Shri Vinayak M. Joshi was not available at Jodhpur. Therefore, he again came to Jodhpur in December 1992. However, when he met Shri Joshi he was informed by Shri Joshi that his appears are still not ready and so he should come in the month of January 1993; and, in the month of January 1993, he was again asked to come in the month of February 1993. In these circumstances, he enquired of his Advocate Mr. Joshi about limitation in the matter but Shri Joshi told him that in writ petition no limitation is prescribed.

3. The petitioner narrates that in the month of June 1993 Advocate Shri Joshi cut a sorry figure and told him that unfortunately his file is either got lost or it has been misplaced with some other files of the office, therefore, fresh copies of the memorandum of charges and allegations will have to be obtained. The petitioner states on oath in the affidavit that his Advocate Shri Vinayak M. Joshi took from him more vakalatnama in his favour and since Shri Vinayak M. Joshi informed him that his file was not traceable, in the situation, the petitioner moved an application for obtaining certified copies of the relevant documents. Copies were made available to the petitioner on 11.4.1994 and, after obtaining the certified copies of the relevant documents, the petitioner handed over the bunch of copies and papers to Shri Vinayak M. Joshi. Then, again the petitioner signed all the blank papers for preparation of the writ petition. The petitioner states that besides himself, his first cousin Mohan Singh Rajpurohit and his own son Dilip Singh made regular enquiry from Shri Vinayak M. Joshi about the writ petition whereupon they were always told that the writ petition has already been filed and has been admitted and will come up for hearing in due course. Thereafter, when the petitioner himself again met Shri Joshi he was told that as and when his personal presence will be required in the matter he would be called. The petitioner further stated that he had also asked Shri Joshi as to how much time the litigation would take in final decision then Shri Joshi told him that looking to the large number of vacancies of Judges, listing of old cases and speed of disposal, the matter may at least take 4-5 years more. In this melee of circumstances, Shri Vinayak M. Joshi died in an accident on 31.5.2000.

4. Faced with the situation, the petitioner contacted and requested Advocate Shri Patanjali M. Joshi, brother of late Shri Vinayak M. Joshi to handle his case pending in the High Court for which the petitioner offered him to pay additional fee; but, Shri Patanjali M. Joshi, Advocate told him he would first look into the papers and if he could justify himself for handling the case he would take vakalatnama without charging any additional fee.

5. It is at this juncture the petitioner was informed by Advocate Shri Patanjali M. Joshi that no writ petition was filed in the High Court and petitioner's file containing bunch of documents and blank stout papers duly signed was lying in the office of late Shri Vinayak M. Joshi. This original bunch of documents and

papers was shown at the time of arguments and an affidavit was filed along with photostat copies of vakalat-nama which were executed by the petitioner in favour of Advocate late Shri Vinayak M. Joshi for filing the writ petition. The bunch of stout papers was also shown and notes prepared by Shri Joshi were also placed before the Court.

6. In the aforesaid circumstances, it is submitted that though the delay in approaching this Hon''ble Court has been occasioned but, in the meantime, nothing has occurred which may put any sort of hindrance in the way of consideration of the writ petition on merit as no right worth the name has arisen in favour of any third person and that being so despite the delay, the grievance of the petitioner may be examined.

7. It is contended by learned Counsel for the petitioner that first of all, the delay in filing the writ petition is required to be condoned because as narrated by the petitioner he handed over the papers to the Advocate and paid the fee for filing the writ petition before the Court but it was not filed and assurance was given to him that petition will be filed and as and when his presence will be required in the proceedings he will be called. It is contended by learned Counsel for the petitioner that as per the judgment of the Supreme Court in Rafiq and Another Vs. Munshilal and Another, , while granting the special leave petition, it was observed as under:

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court''s procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire , as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

8. Therefore, when the petitioner handedover the documents and brief to the Advocate and paid the amount of his fees and drew up vakalatnama in his favour, after assurance that the petition will be filed and contested on his behalf, nothing was there to be done by the petitioner himself. But, after the death of Shri Vinayak M. Joshi, Advocate Shri Patanjali Joshi, Advocate, brother of late Shri Vinayak M. Joshi, informed him that the documents along with bunch of papers and notes in the hand of late Shri Vinayak M. Joshi are lying in the office of late Shri Vinayak M. Joshi, for the first time he came to know that petition has not been presented in the Court. It is thereafter, that the present writ petition

has been filed in the year 2000. Learned Counsel for the petitioner, therefore, urged that in view of the aforesaid the delay in filing the writ petition is required to be condoned.

9. Another judgment cited by the learned Counsel for the petitioner is reported in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , delivered by the Constitution Bench of the Supreme Court in the case of Tilokchand Motichand and Ors. v. H.B. Munshi and Anr. He has quoted from the judgment the following excerpt:

If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed, are and how the delay arose.

10. Drawing the Court's attention to Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , the counsel for the petitioner cited excerpt from the judgment of the Supreme Court delivered in the case of Ramchandra Shankar Deodhar and Ors. v. State of Maharashtra and Ors. which runs as under:

There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaints, and this delay, contended that respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into related and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.T., in Tilokchand Motichand v. H.B. Munshi is one of discretion or this Court to follow from, case to case. There is no lower limit

and there is no upper limit. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.

11. Counsel for the petitioner has vehemently urged that in view of the judgments of the Supreme Court it is manifestly clear that where the case is of a bona fide delay, such delay cannot by itself be a ground for the rejection of the petitioner's claim for relief.

12. Mr. Vishnu Kachchawaha, the learned Addl. Government Advocate appearing on behalf of the respondents urged that, of course, the petitioner has his explanation for the delay but the delay is not just that as could be lightly condoned. He contended that the delay in the instant writ petition is mammoth and fatal and the petitioner is not entitled to any relief on account of delay and laches. In the context of the explanation submitted by the petitioner for the delay, learned Counsel for the State urged that on the saying of the petitioner himself he has been fully careless and negligent in watching the progress and enquiring about the litigation launched by him.

13. On the question of laches there is legitimate explanation from the petitioner which sufficiently elicits Court's sympathy for consideration of the petitioner's case on merits. For the same, I draw force from the Supreme Court verdicts in the cases of Rafiq and Anr. v. Munshi Lal and Anr. (supra), Tilokchand Motichand and Ors. v. H.B. Munshi and Anr. (supra) and Ramchandra Shankar Deodhar and Ors. v. State of Maharashtra and Ors. (supra).

14. In the case of Ramchandra Shankar Deodhar and Ors. (supra), there was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, the Supreme Court emphatically observed that there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. There is no lower limit and there is no upper limit. It will all depend on what the breach of the Fundamental Right and the remedy claimed are. In Tilokchand Motichand and Ors. (supra), speaking for the constitutional Bench, (Hon'ble) Hidayatul-lah, C.J., as His Lordship then was, observed that where there is appearance of avoidable delay and this delay affects the merits of the claim, the Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction, therefore, the question is one of discretion for this Court to follow from case to case and in a suitable case the Court may entertain such a petition even after a lapse of time.

15. The vice of delay vitiates a cause and, therefore, Court must consider whether delay occurring in the case is aimed at culling out an advantage or is only detrimental to the cause of the petitioner. Where limitation is not statutorily provided it does not indicate that there is no limitation. Acquiescence would be the inference and it has a juridical aspect to take into account. Judicious discretion has to be applied to ignore or not to ignore that delay inasmuch as the Court's hands may not be bound by any law of limitation. Yet Court cannot shut its eyes to negligence or acquiescence or, beyond it, say a procrastination

stratagem. We cannot imagine of a system of justice delivery which is not environed by pervasive discipline. Inaction or indolence must be left to its own fate; but, at the same time, it must not be forgotten that lawyers are the essential component of the present day justice delivery system and they are believed both by their clients and by the Judges on the Bench. Duties are not severable in an institution, they are collective as well as individual. When a litigant states that he has engaged an Advocate and handed over him his case and he states that with sufficient material evidence to corroborates his assertion, the Court must believe him. It would be sheer technical appreciation if a cause is brushed aside on the ground of delay without reference to its merit. When the Court is called upon to condone delay in its judicious exercise of discretion, the sufficiency of the cause must be construed as may not occasion failure of justice and may enable the Courts to advance substantial justice in meaningful manner. A negative discretion would be justified when negligence, inaction or want of bona fide is glaringly conspicuous in the behaviour of the party litigating; but, when the delay is just sufficiently explained away without there being any cogent ground to disbelieve the party praying for condonation, it would be harsh to refuse the prayer. Courts cannot be harsher than the legal necessity and, here, I recall the apt observation of their Lordships of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, that the highest that can happen when delay is condoned is that a cause would be decided on merits after hearing the parties; and, that is the meaningful purpose of the Courts of law.

16. In the instant case, sufficient material has been brought to the notice of the Court which only reflects the traumatic experience of the petitioner. It would be a tragedy for the petitioner if this Court takes a harsher view and ousts him from the arena of justice on the ground of laches whereas the explanation for the delay given by the petitioner will only make every man of reasonable prudence to believe him and, in the facts and circumstances of the case, this Court would exercise discretion in his favour. Therefore, in my considered opinion, the laches on the part of the petitioner for the delay occurred in filing the writ petition deserve to be condoned and therefore the writ petition is considered on merits.

17. It is submitted by the petitioner that under Article 309 of the Constitution of India appropriate Legislature is the basic authority to regulate the recruitment and conditions of service of the persons appointed to public services and posts in connection with the affairs of the Union or of any State, and by proviso thereof the power has been given to the President or Governor of the State, as the case may be, to make rules on the said subject until provision in that behalf is made by or under an Act of appropriate legislature. That being so, rules pertaining to the service conditions of Patwaris, if any, made by the Governor under proviso to Article 309 ceased to operate from the date of commencement of the Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956" hereinafter) and Rajasthan Land Revenue (Land Records) Rules, 1957 (in short, "the Rules of 1957" hereinafter) because under the Rules of 1957 a separate procedure for taking

disciplinary action was provided for the post of Patwari. Hence after promulgation of the Rules of 1957 the matter with regard to imposing punishment upon a Patwari exclusively remained under the Rules of 1957.

18. It is submitted that when the charge-sheet was served upon the petitioner he immediately filed his preliminary objection and raised this issue by way of filing the preliminary objections Annex. 23. The grievance of the petitioner is that he has brought to the notice of the Disciplinary Authority- Collector, Land Revenue, Pali that charge-sheet issued to him under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (in short, "CCA Rules" hereinafter) is not maintainable and this preliminary objection was to be decided by the respondents. Thereafter, another application was filed by the petitioner raising the same issue but it was not decided in accordance with law by the respondents.

19. Learned Counsel for the petitioner has invited the Court's attention to Article 309 which is reproduced hereunder:

309. Recruitment and conditions of service of persons serving the Union or a State-Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

20. Thereafter, the CCA Rules were framed in exercise of power conferred under proviso to Article 309 of the Constitution of India governing the classification, control and appeal in respect of the Rajasthan Civil Services. These rules were published on 7.5.1959 with the following title and preamble:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan makes the following rules governing the classification and control of and the Appeal preferable by the members of the Rajasthan Civil Services.

1. Short title and Commencement. - (a) These rules may be called the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

21. A charge-sheet was issued to the petitioner under Rule 16 of the CCA Rules. Rule 16 of the CCA Rules, to the extent it is relevant, reads as under:

16. Procedure for imposing major penalties.- (1) Without prejudice to the

provisions of the Public Servants (Inquiries) Act, 1850 no order imposing on a Government Servant any of the penalties specified in Clauses (iv) to (vii) of Rule 14 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.

22. For the purpose of adjudicating the present controversy Rule 14 which was in existence upto 13th of September, 1985 of the Rules of 1957 is also reproduced hereunder:

14. Punishment - (i) An order of dismissal or removal of Patwari can be passed by the Collector, who is the appointing authority.

(ii) A Patwari may be removed or dismissed-

(a) for contravention of the provisions of paragraphs 12 and 13;

(b) for incompetence, misconduct or neglect of duty;

(c) if having been required to pass the patwar Examination, he fails to pass it completely within two years of his provisional appointment unless his case is governed by Clause (i) or Clause (ii) of the proviso to sub-para (c) of para 4.

(iii) When a Patwari is once dismissed, he shall not be eligible for re-employment.

(iv) Before passing an order for removal or dismissal, the Collector shall in all cases, give the Patwari an opportunity of explaining the charges which have been brought against him and showing cause against the imposition of the penalty, considered prima facie to be appropriate, should the charges against him be held to be proved. If the facts are denied by the Patwari, the Collector may call for such evidence as he may deem necessary.

23. The amendment made in the Rules of 1957 on 14th September, 1985 resulted in amendment of Rule 14 of the Rules of 1957 which, as amended, reads as under:

14. Application of C.C.A. Rules. - The Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 shall apply in the matter of disciplinary action against the Patwaris.

24. From the aforequoted provisions it is clear that on the date of charge-sheet issue to the petitioner the power to take disciplinary action was to be exercised by the Collector only and there was no provision for appointment of the inquiring officer. Further, there was no applicability of the CCA Rules as well. The said objection was raised by the petitioner by way of preliminary objection in his application but the application was not decided in proper manner and order was made by the Collector on 16.3.1985 which is reproduced hereunder:

Finally, the process of enquiry either under the Land Record Rules or under the C.C.A. Rules is exactly the same. Therefore, none of the rights of the patwari has been violated under the Land Record Rules. Mere statement that the enquiry under the C.C.A. Rules does not vitiate the enquiry so long as the provisions of

Land Record Rules have also been followed in full. He may be advised that the enquiry will proceed as per the Land Record Rules and that since no rights of the patwari have so far been violated, he has no cause for complaint.

25. It is also contended by the petitioner that in this order though the preliminary objections were not decided but only it is observed that, "he may be advised that enquiry will be proceeded as per the Land Record Rules and that since no rights of patwari have so far been violated he has no cause of complaint", meaning thereby, though the objections were not decided but it was well within the knowledge of the District Collector that under the Rules of 1957 wherein specific procedure is laid down for taking action against the patwari and CCA Rules are not applicable. Therefore, he has observed certain things in the order itself without deciding the preliminary objection raised by the petitioner. It is contended by learned Counsel for the petitioner that the whole enquiry conducted against the petitioner which culminated into his dismissal from service and non-payment of the salary during the period of suspension is non est. Likewise, the appellate authority's order is also required to be quashed on the above grounds because the charge-sheet itself was issued illegally under the CCA Rules and the enquiry was conducted by the inquiring officer which was totally without jurisdiction. Under the Rules of 1957, there is no such provision for appointment of the inquiry officer and the Collector has been given the authorisation to hold the inquiry himself and the inquiry was required to be conducted under Rules 14 and 15 of the Rules of 1957 because the CCA Rules were made applicable by amendment dated 13.9.1985.

26. In the alternative, it is also submitted that though inquiry was conducted under wrong provisions of law having no jurisdiction but, not only that, the same was conducted in violation of the principles of natural justice. It is stated that the petitioner was working on the post of patwari and he made a prayer for allowing legal practitioner to defend as a matter of right under the provisions of the Act of 1956. But, it was not provided to him because the assistance of legal practitioner is not available without the permission of the Disciplinary Authority in the CCA Rules. Likewise, under the Rules of 1957, the enquiry is required to be conducted by the Collector himself and under Rule 16 the enquiry is permissible to be made by any subordinate to the Collector by appointing him as enquiry officer.

27. It is contended that Sub-Divisional Officer-I was appointed as enquiry officer and legal assistant of the Collector's office was appointed as representative of the Government in the enquiry vide order dated 23.4.1985; and, thereafter, on 14.8.1985 one Shri Ghisu Singh, Sub-Divisional Officer was appointed as enquiry officer in the enquiry against the petitioner. Thereafter, on 20.3.1986 Shri Ghisu Singh informed the District Collector that post of S.D.O., Land Revenue has been abolished. Therefore, other person may be appointed as enquiry officer. This fact is evidence from the Annex. 28 to the writ petition. Thereafter, another order-sheet was written on 23.6.1986 whereby it is stated that no post of Sub-Divisional Officer, Land Revenue has been created, therefore, now again notices

may be issued to the delinquent and representative of the government. Thus the post on which Ghisu Singh was appointed was abolished and new post was created and another person initiated the enquiry. It is further submitted that some times dates were given at Pali and sometimes at Jaitaran. On 12.12.1986, in the absence of the delinquent and government representative, notices were issued to the witnesses and they were directed to remain present at Jaitaran, which is evident from the order-sheet dated 12.12.1986 and the next date was given 24.12.1986. On 24.12.1986, the government representative was not present nor the petitioner was present: and, in absence of both the parties and without ascertaining whether information is received by the petitioner to remain present at Jaitaran, statement of witnesses were recorded by the so called enquiry officer in the absence of the government representative and petitioner. Again, in that order-sheet on 24.12.1986 it is stated that the incumbent may be informed that statements of witnesses have already been recorded from the side of the government and if the delinquent wanted to produce any witness or evidence he may produce the same on 3.1.1987 at Pali. On that day the petitioner filed application that statement of the prosecution witnesses were recorded in his absence and, therefore, they may be recalled and opportunity of cross-examination may be given to him. But, the opportunity was refused and petitioner was directed to produce his evidence, if any, on the next date of hearing.

28. It is evident from the order-sheet dated 23.1.1987, in the absence of the petitioner while stating that as per the petitioner's request the prosecution witnesses may be summoned and incumbent may also be sent summons for the cross-examination. Meaning thereby, on the one hand the petitioner's application for recalling the witnesses was rejected and; on the other hand, in the absence of the parties, prosecution witnesses were called and examined. It is also very strange that on 4.3.1987, it is observed in the order-sheet that the petitioner is deliberately delaying the enquiry, therefore, the government witnesses may not be called. From the perusal of the order-sheets of the enquiry proceedings Annex. 28, it is clearly revealed that the proceedings was totally carried on without adhering to the principles of natural justice and so also without any appointed by the Collector as enquiry officer. After creation of the post the enquiry was commenced. Therefore, the whole proceedings was per se illegal and more so without proceedings was per se illegal and more so without jurisdiction because as per Rules of 1957 the Collector himself was to conduct the enquiry and enquiry officer could not be appointed by the Collector. Only the Collector could hold the enquiry under the Rules of 1957. As against it, under the CCA Rules there is such provision under Rule 16 for appointment of the enquiry officer by the Collector who is appointing authority of a Patwari.

29. It may be observed that when separate procedure is prescribed under the Rules of 1957 for taking disciplinary action against Patwari in which the petitioner was to be given opportunity to defend himself by way of allowing legally trained person; but, this opportunity was not provided and from the prosecution side the

Naib-Tehsildar was appointed to represent the prosecution whereas such opportunity was not provided to the petitioner though the rules had a provision therefor. In this context, learned Counsel for the petitioner invited the attention of this Court towards the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , wherein the Court observed that on the question whether, where in a domestic enquiry the employer appoints a legally trained person as presenting cum prosecuting officer the enquiry would be vitiated for violation of principles of natural justice if the employer rejected the delinquent's request for permission to defend him by a legal practitioner. In the case in hand, the entire enquiry proceedings appear to have been carried through in a haphazard manner in violation of the principles of natural justice. The prosecution witnesses were examined in the absence of both the parties. A request was made by the petitioner to recall the witnesses as narrated above. The same was refused and on the next date of hearing in the absence of the petitioner they were again called and it was not informed to the petitioner in proper manner. The whole proceedings was conducted in casual manner and with the intention to penalise the petitioner. For the same the enquiry officer was appointed and enquiry was initiated against the petitioner under the CCA Rules whereas at the time of the issuance of the charge-sheet the Rules of 1957 were applicable for taking disciplinary action and only Collector was competent to conduct the enquiry, and there was no provision for appointment of the enquiry officer, in the Rules of 1957. Initially the enquiry officer was appointed but, later on, the post was abolished and it was informed by the said enquiry officer; but, again when the post was created the proceedings of the enquiry was commenced without any order of appointment of the enquiry officer. All these facts clearly reveal that the enquiry was conducted under the Rules which were not applicable in the petitioner's case who was working on the post of Patwari.

30. It is true that later on after issuance of the charge-sheet to the petitioner the Rules of 1957 were amended and CCA Rules were made applicable. It is also obvious from the facts that the objection taken by the petitioner to the procedure was not considered in accordance with law and he was only informed that the enquiry will proceed as per the Land Records Rules but just after the information the enquiry officer was appointed, meaning thereby that the whole enquiry was conducted against the petitioner without jurisdiction, therefore, the punishment awarded to the petitioner vide order dated 4.5.1991 is required to be quashed.

31. Counsel for the petitioner also contended that the so called enquiry was concluded and thereafter the Disciplinary Authority Collector passed order for dismissal of the petitioner from service vide order date 12.5.1990. The petitioner preferred appeal to the Commissioner, Jodhpur and the Divisional Commissioner-appellate authority passed order dated 26.3.1991 whereby the order of the Disciplinary authority was set aside on the ground that copy of the enquiry report was not made available to the petitioner and the case was remanded to the District Collector vide its order dated 26.3.1991. Only thereafter the enquiry report was made available to the petitioner and vide Annex. 61 the petitioner

filed his representation against the enquiry in which all these facts were narrated and the judgments of the Supreme Court were cited. The final order dated 4.5.1991 was passed.

32. It is contended by learned Counsel for the petitioner that bare perusal of order dated 4.5.1991 will reveal that none of the contentions raised by the petitioner was considered, therefore, the said order cannot be termed as speaking and reasoned order. In *S.N. Mukherjee Vs. Union of India*, , while examining the proposition of law with regard to necessity of communicating reasons, the Supreme Court observed that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administration authority exercising judicial or quasi-judicial functions must record the reasons for its decision. For an order to be a speaking order there should be resolution of the controversy and, therefore, it is necessary that reasons are clearly and explicitly recorded to indicate that the authority has given due consideration to the points in controversy. The reasons are still more important if the order is appealable because they enable the appellate authority to effectively exercise the appellate power. The object underlying the said proposition is to ensure fairness in the process of decision making and obviate chances of arbitrariness. Therefore, the requirement to record reasons can be regarded as, one of the principles of natural justice so as to prevent miscarriage of justice and secure fair play in action. In the case in hand, not only that the enquiry was conducted in a highly haphazard manner without bidding by the rules in application but the Disciplinary Authority has biased the order by not deciding the objections raised by the petitioner. Even the appellate authority did not take into account the points raised by the petitioner in his objections.

33. On the other hand, learned Counsel for the non-petitioner contended that the objections raised by the petitioner were considered and decided in accordance with law. He submitted that all the point raised by the petitioner were dealt with by the Disciplinary Authority and taken into consideration by the appellate authority. The enquiry proceedings, according to him, was carried through in accordance with the procedure laid down under the rules. He contended that when the appellate authority remanded the matter to the Disciplinary Authority because enquiry report was not given to the petitioner the opportunity was given to the petitioner and, therefore, the petitioner cannot now contend that the enquiry was vitiated for violation of the principles of natural justice. He also invited attention of the Court towards delay in filing the writ petition which is fatal in the case and the petitioner is not entitled to any relief in the present writ petition on account of laches. In the context of explanation submitted by the petitioner for the delay, counsel for the State urged that on the saying of the petitioner himself he has been fully careless and negligent in watching the progress and enquiring about the litigation launched by him.

34. So far as the question with regard to the competence and jurisdiction is concerned in this case for holding the enquiry, it is admitted position that at the

time of commencement of the proceedings in the enquiry the CCA Rules were not applicable for taking disciplinary action against Patwari. The Rules of 1957 were to be taken into account and Rule 14 and Rule 15 thereof were applicable in the case of disciplinary action being taken against the petitioner at the time when charge-sheet was given to him. Rules of 1957 did not envisage appointment of enquiry officer by virtue of any provision contained therein and it was only the Collector himself who could have initiated and conducted the enquiry. The charge-sheet against the petitioner was proposed on 04.05.1983. At that time, the relevant Rule was Rule 14 of the Rules of 1957 which was applicable in the case of the petitioner inasmuch as u/s 2(2)(v) of the Act of 1956, exercising the power conferred thereby, the State Government promulgated the Rajasthan Land Revenue (Land Records) Rules, 1957 which came into force with effect from 23.01.1958. However, the charge-sheet was Issued to the petitioner under Rule 16 of the CCA Rules by the Disciplinary Authority. Thus even if during the course of enquiry objections raised by the petitioner had not been so raised, nullity of the proceedings as having not been conducted in the procedure laid down by law could not have been obviated. Besides, even after the objections raised by the petitioner the disciplinary Authority only made casual reference to analogy of the rules and neither passed any rectification order nor cared to decide the objections in lawful manner. It is true that later on after issuance of the charge-sheet the Rules of 1957 were amended and CCA Rules were made applicable. But, the fact remains that the enquiry proceedings are Initiated under Rule 16 of the CCA Rules which was not applicable at the time of initiation of the proceedings. The enquiry further suffered vitiation by appointment of the enquiry officer by the Collector to hold the enquiry against the petitioner whereas the relevant rules empowered the Collector himself to conduct the enquiry against a Patwart.

35. It may be noted that on the preliminary objections raised by the petitioner in the enquiry, the Disciplinary Authority passed vexatious order saying the process of enquiry either under the Land Record Rules or under the C.C.A. Rules is exactly the same, therefore, none of the rights of the patwari has been violated under the Land Record Rules. His remark that so long as Land Record Rules have also been followed in full would not enable him to employ the CCA Rules also because the CCA Rules could not at all be employed in the procedure followed being barred of application. Thus it is obvious that not only the enquiry was initiated under inapplicable provisions but the proceedings in the course of enquiry was vitiated by non- application of mind by the authority exercising competence.

36. With regard to appointment of the enquiry officer something need be said. Admittedly, for the first time, vide Annex.25 dated 23.04.1985 Shri Jugal Kishore Sharma, S.D.O.-I was appointed Enquiry Officer by the Collector (Land Revenue), Pali. On the same day, another order was issued whereby Legal Assistant of the office of the District Collector, Pali was appointed as Government nominee to represent the case of the department before the enquiry officer. But, after about

four months. on 14.08.1985, another officer Shri Ghisoo Singh, S.D.O. was appointed enquiry officer to conduct the enquiry. On 29.03.1986, due to abolition of the post, he wrote a letter to he District Collector apprising him that the post on which he was working has already been abolished and, therefore, another officer may be appointed as enquiry officer. After three months, on 23.06.1986, another order-sheet was drawn whereby it was observed that now the new post of S.D.O., Land Conversion, Pali has been created, therefore, the proceedings are hereby initiated again and notices were issued and the person who was appointed on the newly created post commenced the enquiry.

37. It may be noticed that obviously this was against fair play and reasonableness so as to vitiate the proceedings. Primarily, only the Collector could have enquired into the charges against the petitioner under the provisions of the Rules of 1957; and, even otherwise, after abolition of the post the enquiry officer held, there had to be a fresh order for appointment of the enquiry officer if, at all, the enquiry officer was appointed under the CCA Rules. Thus, the entire proceedings stood vitiated due to non-application of applicable rules and further, apart from this aspect of the matter, once an action is impeachable on the ground of fair play and reasonableness it necessarily results in arbitrariness and, therefore, such action is violative of Article 14 of the Constitution of India.

38. It is evident from the record that in the entire proceedings the principles of natural justice were not followed and even at the conclusion of the proceedings, on appeal by the petitioner, the case was remanded to the Disciplinary Authority for giving copy of enquiry report to the petitioner. At one stage of the enquiry, the petitioner agitated for defence counsel inasmuch as the Department had pitted Naib Tehsildar on behalf of the department against the defence and, under the rules, the petitioner was entitled for legally trained defence nominee; but, the required permission was not granted. These and other facts on record show the scan manner in which the proceedings was conducted without ensuring adequate compliance of the principles of natural justice.

39. It may be noted in the instant case that sufficient reasons have not been recorded for the Finding arrived at by the Disciplinary Authority as to the conclusions drawn by it on the basis of the enquiry report. Failure to record sufficient reasons for the conclusions drawn in a judicial or quasi judicial proceedings is always fatal and leaves the entire proceedings vulnerable to challenge on different grounds because then there is sufficient scope for interpretation and misinterpretation. In this context, reference may be made to the decision of the Apex Court in the case of *S.N. Mukherjee v. Union of India* (supra) wherein, while examining the proposition of law with regard to necessity of communicating reasons, the Supreme Court observed 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 must record the reasons for its decision. For an order to be a speaking order there should be resolution of the controversy and, therefore, it is necessary

that reasons are clearly and explicitly recorded to indicate that the authority has given due consideration to the points in controversy. The reasons are still more important if the order is appealable because they enable the appellate authority to effectively exercise the appellate power. The object underlying the said proposition is to ensure fairness in the process of decision making and obviate chances of arbitrariness. Therefore, the requirement to record reasons can be regarded as one of the principles of natural justice so as to prevent miscarriage of justice and secure fair play in action. In the case in hand, not only that the enquiry was conducted in a highly haphazard manner without abiding by the rules in application but the Disciplinary Authority has biased the order by not deciding the objections raised by the petitioner. Even the appellate authority did not take into account the points raised by the petitioner in his objections.

40. In view of the foregoing discussion, the writ petition deserves to be allowed and is hereby allowed. The impugned orders Annex.62 dated 04.05.1991 and Annex.64 dated 21.07.1992 are quashed and set aside. The enquiry initiated in pursuance of the charge-sheet Annex.21A issued under Rule 16 of the Rules of 1958 is held non-est and quashed. As a result, the petitioner is held entitled to all consequential benefits.