
(1996) 03 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Special Appeal No. 311, 316, 317 and 318 of 1995

Rajasthan State Electricity Board

APPELLANT

Vs

Iqbal Singh and Others

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Citation : (1996) 2 RLW 8 : (1996) 2 WLC 255 : (1996) 1 WLN 189

Hon'ble Judges : P.C. Jain, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—These four appeals are directed against the judgment dated 31-1-95 passed by the learned Single Judge, by which the learned Single Judge allowed the four writ petitions filed by the respondent petitioners -and quashed and set-aside the orders of punishment passed by the appellant Rajasthan State Electricity Board (for short, "the Board") against the respondent-petitioners. The learned Single Judge further directed the appellant R.S.E.B. to reinstate the respondent-petitioner Iqbal Singh with all consequential benefits. The learned Single Judge, while setting-aside the orders of punishment imposed upon the three. Assistant Engineers (respondent-petitioners) regarding disentitlement of promotion for three years, also, directed the Board to provide them all consequential benefits such as proper fitment in the pay scale of the post on which they were working.

2. Respondent Iqbal Singh was working as the Executive Engineer (O&M), R.S.E.B., Hanumangarh, at the relevant time while respondents P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla were working as the Assistant Engineers under him. The Enquiry under Regulation-7 of the Rajasthan State Electricity Board Employees (Classification, Control and Appeal) Regulations, 1962 (for short, "the Regulation, 1962") was proposed to be held against Iqbal Singh, P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla. The Statement of Allegations were served upon them. They denied the charges and thereafter Shri P.K.B.K.

Kurup, I.A.S. (Retd.) was appointed as the Enquiry Officer to hold a regular enquiry against Iqbal Singh, the Executive Engineer, and Sarvashri P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla.

3. The Enquiry Officer, after enquiry, partly found all these delinquent officers guilty for the misconduct and submitted the report to the Board. The report of the Enquiry Officer was considered by the Board in its 402nd Meeting held on 1-2-91 and the Board took the decision to impose punishment of removal from service against Iqbal Singh (the delinquent Executive Engineer) and the penalty of reduction in rank for three years upon Sarvashri P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla the Assistant Engineers. The decision of the Board was communicated to the delinquent officers vide letter/order dated 23-2-90.

4. All the petitioner-respondents, aggrieved with the orders imposing penalty upon them passed by the Disciplinary Authority, challenged these orders in these writ petitions before the High Court. The writ petitions, filed by the petitioner-respondents were allowed by the learned Single Judge by his judgment dated 31-1-95. It is against this judgment that the appellant R.S.E.B. has preferred these four appeals.

5. It is contended by the learned counsel for the R.S.E.B. that the *mense rea* is not the necessary ingredient to prove the misconduct and even if the *mense rea* is not necessary then it can be proved by circumstantial evidence because direct evidence to prove the *mense rea* is not possible. In the present case, without fixing the target, respondent Iqbal Singh released 231 electric connections in contravention of the directions issued by the Superintending Engineer. At the relevant time there was a ban on releasing the connections but still he released 231 connections. The learned Single Judge didn't consider this aspect of the case. Even the report of the Enquiry Officer was not properly considered by the learned Single Judge. His further submission is that the misconduct of the respondents stands established beyond reasonable manner of doubt. The learned Single Judge was, therefore, not justified in quashing and setting-aside the orders of punishment imposed upon the respondents. It has, also, been contended by the learned counsel for the appellant against Iqbal Singh and, therefore, the order of his reinstatement and that one more disciplinary enquiry is pending award of back wages to him is not justified. Learned counsel for the respondents, on the other hand, has submitted that each and every error or mistake, without any malafide or corrupt motive, does not constitute a misconduct and a good and sufficient reason for the purpose of imposing the punishment. It is, also, contended by Shri Mridul that the expression "good and sufficient reasons" used in regulation 5 clearly shows that the bonafide error unless coupled with corrupt motive, is not a "misconduct" which may give rise to imposition of penalty. It has, also, been contended by Shri Mridul that the findings, which have been recorded by the Enquiry Officer as well as by the Disciplinary Authority are not the part of the charges. Mr. Sidhu has, also, supported the judgment passed by the learned Single Judge and submitted that

the charges, for which the enquiries were held against the petitioner-respondents are not specific but are vague in nature. A bonafide error of fact cannot give rise to the holding of the enquiry and passing of the orders of punishment. It has, also, been contended by Shri Siddhu that the respondent-petitioners Sarvashri Gupta, Sara, Karwasra and Chawla were working as the Assistant Engineers and were subordinate to petitioner-respondent Iqbal Singh and they had to obey the orders passed by the Executive Engineer Iqbal Singh. Even otherwise, no communication was received from the Office of the Superintending Engineer by the respondent-petitioners which are said to have been flouted by them and as such the punishment were wrongly imposed upon them which have rightly been set-aside by the learned Single Judge.

6. We have considered the submissions made by the learned counsel for the parties.

7. The charges, for which the Disciplinary Enquiries were conducted against the petitioner-respondents read as under:

Charge Against Mr. Iqbal Singh:

Shri Iqbal Singh, while working as the Executive Engineer (O&M), R.S.EB., Hanumangarh, during 1984-85 was found responsible for issuing orders forgiving 231 agricultural connections without the orders of the Board and without fixing the target. Chief Engineer or Superintending Engineer had already instructed him not to issue the sanction for the release of connections. Besides this he overloaded the transformers in his Division and sanctioned connections in his Division without having regard to the other Divisions. Thus, he has abused his official position.

8. The Charges, for which the enquiry against Sarvashri R.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla were conducted, were identical except the number of connections released by them. The charges against these four Assistant Engineers read asunder:

While working as the Assistant Engineer (O&M), R.S.EB., during 1994-95, you were found responsible for:

(1) releasing xxx connections when the Sanction of the Executive Engineer (CO 1) was against the orders of the Board and beyond the tangent so it was his moral responsibility to request the Executive Engineer for review of the sanction;

(2) released connections without levying service connection charges whereas the advise of the Director (Commercial) was to realise such charges from the consumers;

(3) released connections beyond the distance of one pole violating the Board's over No. 4255 dated 26-11-83.

9. The Enquiry Officer, in para No. 17 of its report, held that "it is established that the charge-Sheeted Officer Iqbal Singh (CO 1) embarked on a release spree.

Even Ex. P. 14 could not deter him from his adventure but there is not evidence that the transformer (s) became over-loaded. Neither the technical difficulty was assessed prior to the sanction nor the evidence has been adduced by the prosecution to support over-loading of the transformers. How far the position in regard to other circles has been up-set, has, also, not been brought out by the prosecution. Although there is no direct evidence to conclude that the C.O.-I Iqbal Singh was actuated by any ulterior motive or indulgence in corrupt practice but his defiant action smacks of a bad odour bordering on the accrual of improper benefit to oneself. It is also evident that he was not vigilant in the discharge of his duties. Thus, the allegations are partly established."

10. Regarding charges against Sarvashri P.K. Gupta, R.S. Sara and D.L. Chawla, the findings of the Enquiry Officer are that Sub-allegation (1) is partly established while Sub- allegations No. 2 and 3 are not substantiated. Against P.R. Karwsra the charge established against him is that he issued connections after 21-6-84 and further did not issue instructions to the Junior Engineers to keep the actual release in abeyance.

11. The facts which are, now, not in dispute and stand established are that Iqbal Singh issued the orders for release of 231 electric connections and the Assistant Engineers, viz., Sarvashri P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla released connections although the sanction of the Executive Engineer was against the orders of the Superintending Engineer and were beyond the target. Whether these issuance of the orders for connections by the Executive Engineer and the compliance of the orders by the Assistant Engineers amount to "misconduct" ? The learned Single Judge in his judgment held that the misconduct for which Disciplinary action can be taken against an employee, must postulate a deliberate conduct of breach of discipline or violation of the instructions. The breach of discipline or violation of the instruction must be with some mense rea. The learned Single Judge was, also, of the view that "a close scrutiny of the documents attached by the Board in this connection lead me to a conclusion that the Executive Engineer did not commit any deliberate misconduct or act of breach of discipline or breach of instructions so as to deserve a departmental enquiry and dismissal from service."

12. Regarding the misconduct of the Assistant Engineers, the learned Single Judge observed that "the other petitioners in other writ petitions, were subordinate to the Executive Engineers. They carried out the orders of their superior and there is absolutely no material on record to warrant their conviction."

13. Regulation 28 of the Rajasthan State Electricity Board Employees (Conduct) Regulations, 1976 defines the word "misconduct". It is an inclusive definition given in regulation 28. The Regulation provides that certain act and omission mentioned in the Regulations, 1976 shall be treated as "miscondnu", for which the penalties mentioned in regulation 5 of the Regulations, 1962 may be imposed by the competent authority in accordance with the procedure prescribed therein.

Sub-rule (c) states non-performance of the duty, slackness, dereliction of duty and negligence of work, shall be construed as "misconduct". Sub-rule (f) of Regulation 28 states that indiscipline or breach of any rule or instruction will be treated as "misconduct". So far as the non-performance of the duty, slackness, dereliction of duty or negligence of work on the part of the respondent-petitioners are concerned, they have been exonerated from these charges. The only ground, on which the penalties were imposed upon them, is the indiscipline and the breach of the instructions issued by the Superintending Engineer on 23-5-84, by which a direction was given by the Superintending Engineer to release the agricultural connections only after fixing the target by the Chief Engineer (RB), R.S.E.B., Jaipur for the years 1984-85. Earlier to this, there was a Board's Circular dated 26-11-83 relating to release of the connections as well as the Circular dated 2-12-83 issued by the Chief Engineer (O&M) regarding the target.

14. The Circular/orders are issued with certain object to be accomplished and the execution of the order will accomplish this object. An honest and reasonable mistaken belief that the order has been passed by the higher authority, is a justification for following it. There is a difference between a "mistake of law" and the "mistake of fact". The mistaken belief of fact does not amount to misconduct while a mistaken belief of law provides no defence to the disobedience of the order of the higher authority. The Chief Engineer and the Superintending Engineer are entitled to give reasonable and legal directions regarding the manner in which the work of the Establishment should be conducted and if their directions are flouted and the subordinate behaves in an insubordinate manner then the proper functioning will become high impossible and such insubordinate behaviour or disobedience is a serious misconduct. But an error of judgment or an innocent mistake or act of negligence do not constitute "misconduct" unless it arises from ill-motive or a willful act.

15. Where an employee, who receives two or more contradictory or different Circular/Instructions from the superior authorities, he is not required to decide which order he shall obey to his peril. In such a case the path of the duty becomes confused and obscure. Placed in such a situation if the officer obeys the order of the higher authority then the compliance of the order of the higher authority will not amount to "misconduct" though the immediate higher authority to him has issued the contradictory order. Obedience of the order of the higher authority is a valid excuse for not obeying a contradictory order of the lower authority though senior to him.

16. "Misconduct" and negligence" are two different notions. According to Aiyer's Law of Lexicon, "misconduct" implies a wrongful intention and not a mere error of justice. According to Stroud's Judicial Dictionary, "misconduct" means misconduct arising from ill motive; Act of negligence, error of judgment or innocent mistake, does not constitute such "misconduct". The Supreme Court in: Union of India (UOI) and Others Vs. J. Ahmed, held that:

Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

The Apex Court further held that:

Gross or habitual negligence in performance of duty may not involve *mense rea* but may still constitute misconduct for disciplinary proceedings.

17. In *Krishna Swami Vs. Union of India and another*, the Supreme Court held that:

Misconduct is said to be a vague and relative term. Literally it means a wrong conduct or improper conduct. It has to be construed with reference to the subject matter and the context wherein the term used having regard to the scope of the Act and the statute.

The Apex Court further held that:

Every act or conduct or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mense rea* by the doer. Even administrative action or omissions too need accompaniment of *mense rea*.

18. "Misconduct" is a violation of definite law, a forbidden act and it differs from carelessness or negligence. The expression misconduct covers a large area of human conduct and the term has to be construed with reference to the subject and context in which it is used. Regulation 5 of the Regulations, 1962 provides that the punishment enumerated in the Regulations can be imposed for good and sufficient reasons to be recorded. The expression "good and sufficient reasons" used in this regulation clearly shows that each and every error does not constitute the ground for imposition of the punishment. The expression "good and sufficient reason" has to be read in a reasonable manner, for otherwise the words will become too vague and bereft of the guidelines. To fall within the scope of Regulation 5 the mere error of judgment or a bonafide mistake does not furnish a ground for punishment to be imposed. Error of judgment cannot be eliminated in all human affairs. Negligence in the performance of duty, error of judgment and an innocent mistake will not constitute misconduct unless it is actuated by ill-motive and a willful act. A willful and intentional disobedience of the instruction of the superior authority will amount to misconduct. If the decision taken by the officer reflects that it has been taken with ulterior corrupt

motive then it will, also, constitute "misconduct* To fall within the definition of the misconduct while doing something the doer must know that he is wrong. An inadvertent violation of certain instructions of the superiors without any ulterior motive, would not amount to "misconduct" for which the penalty can be Imposed unless the conduct is a calculated attempt to defy the order passed by the superiors or to violate the Instructions.

19. A look of the charges framed against the respondent- petitioners only shows that respondent-petitioner Iqbal Singh ordered for the issuance of 231 connections and the Assistant Engineers, viz., Sarvashri P.K. Gupta, R.S. Sara, P.R. Karwasra and D.L. Chawla, complied with those orders. There is a specific finding by the Enquiry Officer that neither the transformers became over-loaded nor the other Circle have been affected. There is, also, a finding that the Respondents were not actuated with any ulterior motive or indulged in corrupt practice. It has, also, been held that no loss has been caused to the R.S.E.B. and no ulterior motive has been established against the petitioner-respondents. The action of the petitioner-respondents neither caused any loss to the R.S. E. B. nor the transforms were over- loaded. Releasing of the connection was, also, not actuatated with any ulterior or corrupt motive.

20. In view of the conflicting Circulars : one issued by the Board and the Chief Engineer and the other issued by the Superintending Engineer, Iqbal Singh followed the Circulars issued by the Board and the Chief Engineer. Compliance of the order of the Board or the Chief Engineer in preference to the order of the Superintending Engineer will not constitute misconduct. A reasonable and honest belief that there are only the orders of the Board and of Chief Engineer, is a good justification to follow these orders. The learned Single Judge was, therefore, justified in allowing the writ petitions filed by the petitioner-respondents and quashing and setting-aside the orders of penalty passed by the Board. We see no infirmity in the judgment passed by the learned Single Judge. The learned Single Judge, however, dismissed the writ petition filed by Shri D.L. Chawla as having abated on account of his death during the pendency of the writ petition. The same order was passed in the case of late Shri D.L. Chawla as were passed in the cases of the present petitioner-respondents who were the Assistant Engineers. He was also, entitled to the same relief but since the writ petition filed by Shri D.L. Chawla was dismissed as abated, it is expected that the appellant will give the same relief/benefits In the case of late Shri U.L. Chawla, also.

21. In the result, we do not find any merit in these appeals and the same are hereby dismissed.