

(1998) 03 RAJ CK 0069

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5143 of 1994

Rajasthan State Road Transport Corporation and Another

APPELLANT

Vs

Sugna Ram and Another

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Citation : (1998) 2 RLW 707 : (1998) 3 WLC 207 : (1998) 1 WLN 192

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr. B.S. Chauhan, J.—The instant writ petition has been filed by the petitioner Corporation challenging the Award of the Industrial Tribunal Bikaner contained in Annexure, 3 to the writ petition.

2. Respondent No. 1, who was employed as a Conductor with the appellant Corporation was given a memo of charge on 6.6.1983, contained in Annexure. 1 to the petition, with the allegation that he was found carrying ten passengers without ticket and he had the intention to recover the charges of tickets from those passengers and misappropriate the said amount. The petitioner Corporation was not satisfied with the reply submitted by the respondent No. 1 and subsequently a full-fledged enquiry was held against him. The Enquiry Officer submitted its report holding that the charges were proved against the contesting respondent and on the basis of the same, the competent Authority passed the order imposing the punishment of stoppage of two annual grade increments with cumulative effect. Being aggrieved and dissatisfied, the respondent No. 1 challenged the same in the Labour Court and the Labour Court, vide impugned Award dated 4.3.1994, contained in Annexure, 3, allowed the case of the delinquent employee and the punishment order was modified to the extent that stoppage of two annual grade increments with cumulative effect was substituted by the punishment of stoppage of three annual grade increments without cumulative effect and he was also allowed all consequential benefits.

Being aggrieved and dissatisfied with the impugned Award, the petitioner Corporation has Corporation preferred the instant writ petition.

3. Heard Sri Sangeet Lodha, learned Counsel for the petitioners and Sri. R.K. Singhal, learned Counsel for the respondent No. 1.

4. The case of the petitioner Corporation is that the Labour Court has categorically held that for the offence committed by the respondent No. 1, even a major penalty could have been imposed on him under Rule 36 of the Rajasthan State Road Transport Workers and Workshop Employees Standing Orders, 1965 (for Short, "the Standing Orders"). However, placing the reliance on the Hon"ble Supreme Court in Kulwant Singh Gill v. State of Punjab 1990 (9) JT 70, the Labour Court has held that the punishment awarded by the Corporation was a major penalty and it could not have been imposed without supplying the copy of the enquiry report to the delinquent employee and, thus, the punishment imposing the major penalty was bad.

5. In fact in Kulwant Singh Gill (supra), the Hon"ble Apex Court has held that for imposing the major punishment, a full-fledged enquiry should be held. Merely issuing a show cause notice to the delinquent and passing the order of punishment after considering his reply, is not sufficient. Holding the enquiry dehors the rules is not permissible and, thus, the order of imposing the major penalty was found to be bad.

6. Mr. Lodha has placed reliance on a Division Bench Judgment of this Court in Krishna Dutt sharma v. State of Rajasthan and Ors. 1987 (1) RLR 346, wherein the case under the provisions of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 was considered, and the Court observed as under:

A persual of the seven kinds of penalties specified under Rule 14 shows that under Clause (ii) only withholding of increment has been mentioned but it nowhere specified that withholding of increments could also be given with cumulative effect. In case a penalty of withholding of grade increment is imposed for one year or two years then such Government servant is put to a financial loss for a limited period and he becomes entitled to his usual grade increment after such a period of one year or two years. While in case of with holding of grade increment with cumulative effect the Government servant is put to a financial loss for the entire period of his future service and the result is that he is put to one grade increment less for the entire period of his remaining service. In our view such penalty of withholding of grade increment with cumulative effect and reduction to a lower stage in the time scale as provided as one of the penalties under Clause (iv) of Rule 14 are equivalent and have the same effect. Learned Additional Government Advocate was unable to explain any difference in the aforesaid two kinds of penalties. If a Government servant is given a penalty of reduction to a lower stage in the same time scale, then also such Government servant is put to a loss of one grade increment for the entire period of his service after such punishment. It remains undisputed that the penalty of reduction to a

lower stage in the time scale as specified in Clause (iv) or Rule 14 is a major penalty and procedure for enquiry has to be followed as provided under Rule 16 of the Rules.

(Emphasis added)

Thus, it was categorically held that imposition of major penalty of stoppage annual grade increments with cumulative effect tantamounts to imposing a punishment of reduction to a lower post or grade. If the same analogy is applied in the instant case, at the most it can be said that the punishment imposed by the competent Authority was under Rule 36 Clause (vi) and not under Clause (ii), and imposing such a penalty was permissible under the law.

7. In the instant case it is an admitted position that the full-fledged enquiry had been held against the delinquent employee. The Standing Orders ap provide that in every case of delinquency, a full-fledged enquiry shall be held, whether it may ultimately end in imposing a major penalty or a minor penalty. If a memo of charge is served upon a delinquent employee, a full-fledged enquiry is envisaged and, thus, there is no scope for holding that the enquiry was dehors the Rules. The Labour Court proceeded with the assumption that it was mandatory under the said Standing Orders that before imposing the punishment, a copy of the enquiry report ought to have been supplied to the delinquent employee, which was perhaps not done and, thus, the order of imposing the major penalty was bad.

8. Mr. Singhal could not point out any rule in the Standing Orders which may provided for such a requirement. Even otherwise it is settled proposition of law that unless a delinquent employee satisfies the Court as under what circumstances his case has been prejudiced by the non-supply of the copy of the enquiry report, such an averment is not tenable as the law laid down by the Constitution Bench of the Hon"ble Apex Court in *Union of India and others Vs. Mohd. Ramzan Khan*, was subsequently re-considered and modified to the said extent and reliance can safely be placed for this proposition on the law laid down in *S.P. Vishvanathan v. Union of India and Ors.* 1991 Suppl. (2) SCC 269 ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., : Managing Director, ECIL, Hyderabad v. B. Karunakaran* 1994 Suppl. (2) SCC 391; *State of Uttar Pradesh and Anr. v. Abhai Kumar Masta* 1995 (1) SCC 366 ; *B.C. Chaturvedi Vs. Union of India and others, ; S.K. Singh Vs. Central Bank of India and Others, ; AIR 1997 9 (SC); State of Rajasthan Vs. B.K. Meena and others, ; and Director General of Police and Ors. v. G. Dasayan* 1998 (1) JT 259.

9. The aspect of prejudice was considered by this Court in *Monika Jain v. State of Rajasthan and Ors.* RLW 1998 (1) 71 . wherein, after placing reliance on the judgment of the Hon"ble Apex Court in *Major G.S. Sodhi Vs. Union of India (UOI), , and State Bank of Patiala and others Vs. S.K. Sharma, ,* it was held that such a case should not succeed merely on technical grounds. The delinquent must plead and prove that by non-compliance of such a technical requirement,

his cause has been prejudiced. In the instant case, there had been no such pleadings before the Tribunal.

10. Thus, there was no justification for the Labour Court to interfere in the order passed by the Disciplinary Authority, particularly in view of the specific observations made by the Labour Court that even major penalty could have been imposed against the delinquent.

11. Thus, in view of the above, the Award dated 4.3.1994 passed by the Labour Court cannot be approved. The writ petition succeeds and is allowed. The Labour Court's Award dated 4.3.1994, contained in Annexure. 3, is hereby quashed and the order of punishment imposing major penalty of withholding the two annual grade increments with cumulative effect passed by the competent Authority of the petitioner Corporation is restored. In the facts and circumstances of the case the parties shall bear their own costs.