
(2003) 05 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3324 of 1999

Ram Pratap Choudhary

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Employees (Classification, Control and Appeal) Regulations, 1962 — Regulation 6, 7(1)

Citation : (2004) 2 RLW 914 : (2003) 3 WLC 730

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Rajendra Kothari, for S.G. Ojha, for the Appellant; Manoj Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner on 4.9.1999 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 22.5.1998 (Annex. 3) passed by the respondents by which in an enquiry under Regulation 6 of the Employees (Classification, Control & Appeal) Regulations, 1962 (hereinafter referred to as "the Regulations of 1962") after holding the petitioner guilty of supervisory negligence, punishment of withholding of two annual grade increments without cumulative effect was imposed against the petitioner and the appellate order dated 6.8.1999 (Annex. 5) passed by the Appellate Authority respondent No. 1 Secretary by which the appeal of the petitioner against the order Annex. 3 dated 22.5.1998 was dismissed, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

Initially, an enquiry under Regulation 7(1) of the Regulations of 1962 was initiated against the petitioner and he was served with the statement of

allegations alongwith the memorandum dated 12.8.1996 (Annex. 1) and the main allegation against the petitioner was that while he was working as Assistant Engineer, Sadulgarh Rajpur during the period from 9.9.1991 to 14.5.1993, he had committed grave irregularities in issuing electric connections and by the act of the petitioner, a financial loss was caused to the Rajasthan State Electricity Board (for short "the Board").

The details of the allegations levelled against the petitioner through memorandum Annex. 1 are that under the Group Scheme of granting 30 domestic connections, the estimates were prepared of domestic lines and the work order was also issued. But out of 30 connections, only 5 connections were released at site by the petitioner and connections for 25 persons were not released and the impression was given that these consumers had refused to take the connection, but later on, under a very well planned scheme, the electricity line of 10 poles was installed from the well bearing two phase line instead of single phase and in such a manner that in connivance of the petitioner, the facility for running the well was made available by theft of electricity and thereby causing huge financial loss to the Board and therefore, irregularities were committed by the petitioner and thus, he has committed supervisory negligence.

A reply to the allegations levelled against the petitioner through Annex. 1 was filed by the petitioner on 13.12.1996 and a copy of which is marked as Annex. 2. In the said reply Annex. 2, it was submitted by the petitioner that though 30 applications for domestic connections were received, but estimates were prepared by one Bhagwan Singh, Junior Engineer and after fulfilling all formalities, 5 consumers obtained connections and for rest, Junior Engineer Bhagwan Singh did not report to the petitioner, which was his duty and therefore, it was wrong to say that the petitioner had committed irregularities. It has been further contended by the petitioner in the reply that since the Junior Engineer did not produce the compliance report, therefore, the petitioner was not in a position to know the actual facts etc. etc.

The further case of the petitioner is that after the reply Annex. 2 was filed by him on 13.12.1996, the disciplinary proceedings were converted into Regulations 6 of the Regulations of 1962 from Regulation 7 of Regulations 1962 and in this respect, a letter dated 31.12.1997 was issued and the petitioner submitted additional reply on 27.1.1998.

It may be stated here that Regulation 6 of the Regulations of 1962 is equivalent to Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

The Disciplinary Authority, after considering the reply of the petitioner and other material available on record, held the petitioner guilty of supervisory negligence and thus, imposed the penalty of withholding of two annual grade increments without cumulative effect against the petitioner through impugned order Annex. 3 dated 22.5.1998.

Aggrieved by the said order Annex. 3 dated 22.5.1998, the petitioner preferred an appeal before the Chairman of the Board under Regulation 10 of the Regulations of 1962 and a copy of the said appeal is marked as Annex. 4.

After hearing the petitioner, the Appellate Authority (respondent No. 1-Secretary) through impugned appellate order dated 6.8.1999 (Annex. 5) dismissed the appeal of the petitioner holding inter- alia that as per the Rules, all the 30 connections ought to have been released after estimates were prepared under a group scheme, but only five connections were released and thus, financial loss was caused to the Board. Had the work would have been supervised in a proper manner by the petitioner, this would not have happened.

In this petition, both the impugned order Annex. 3 dated 22.5.1998 and appellate order Annex. 5 dated 6.8.1999 have been challenged by the petitioner on various grounds and the main grounds are as follows:-

(i) That out of 30 persons, 25 persons did not take the connection and for that, the petitioner cannot be penalised and thus, the findings of the Disciplinary Authority as well as the Appellate Authority in this respect are erroneous one and should be set aside.

(ii) That apart from this, the petitioner was found guilty of supervisory negligence and therefore, it does not amount to any punishment and thus, withholding of two annual grade increments without cumulative effect was wrong.

(iii) That appellate order Annex. 5 dated 6.8.1999 is also liable to be quashed and set aside on the ground that it is not a speaking order.

(iv) That looking to the nature of allegations found proved against the petitioner, the punishment awarded to the petitioner is excessive, unreasonable and disproportionate to the allegations found proved against him.

(v) That apart from this, since Junior Engineer Benney Singh has been exonerated of all the allegations levelled against him through appellate order Annex. 7 dated 6.8.1999, therefore, the petitioner should also have been exonerated and from this point of view also, the impugned orders Annex. 3 and 5 cannot be sustained.

A reply to the writ petition was filed by the respondents and it has been submitted by the respondents that the writ petition deserves to be dismissed on the ground that the petitioner has failed to show any illegality in the impugned orders Annex. 3 and Annex. 5 and furthermore, the scope of judicial review under Articles 226 and 227 of the Constitution of India is very limited one and since the petitioner has committed the irregularities and allowed the consumers to use the facility of running the well by mis-using the electricity, which amounted to theft, therefore, the allegations were rightly found proved against him and his appeal was also rightly dismissed by the appellate authority.

It has been further submitted by the respondents that exoneration of Benny

Singh of the allegations levelled against him would not affect the penalty imposed upon the petitioner and there is no question of discrimination as allegations levelled against the petitioner were found proved. Hence, the writ petition filed by the petitioner be dismissed.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

6. There is no dispute on the point that initially the enquiry under Regulation 7 (1) (imposition of major penalties) of the Regulations of 1962 was initiated against the petitioner, but later on it was converted from Regulations 7(1) to Regulation 6 (Imposition of minor penalties) of Regulations of 1962.

7. The statement of allegations was served upon the petitioner through Memorandum Annex. 1 and the details of allegations levelled against the petitioner have been mentioned above.

8. Through impugned order Annex. 3 dated 22.5.1998, the Disciplinary Authority found the petitioner guilty of supervisory negligence and thus, a penalty of withholding of two annual grade increments without cumulative effect was imposed against the petitioner.

9. A perusal of impugned order Annex. 3 dated 22.5.1998 reveals that the Disciplinary Authority has clearly observed that out of 30 connections, only five connections were released by the petitioner and rest were not released and thus, he caused financial loss to the Board and in the statement of allegations (Annex. 1), this position was very much clarified on the point that a case of electric theft was also found proved for which the petitioner was held guilty of supervisory negligence.

10. Similarly, the impugned appellate order Annex. 5 dated 6.8.1999 also reveals the same thing.

11. Thus, it is clear that the main allegations, which were levelled against the petitioner through Annex. 1 have been found proved against the petitioner by the Disciplinary Authority as well as Appellate Authority and the findings of the Disciplinary Authority as well as the Appellate Authority are based on correct appreciation of material available on record.

12. Since personal hearing was given to the petitioner, therefore, it is wrong to say that personal hearing was not given to the petitioner and it is also wrong to say that Appellate Authority had not assigned any reason while dismissing the appeal of the petitioner as reasons are contained in the impugned appellate order Annex. 5 dated 6.8.1999.

13. Before proceeding further, legal aspect with respect to scope of judicial review and scope of interference by the High Court under Articles 226 and 227 of the Constitution of India with the findings of the Disciplinary Authority as well as

Appellate Authority may be seen.

14. In *Bhagat Ram v. State of Himachal Pradesh and Ors.* (1), the Hon''ble Supreme Court held that in a petition under Article 226 of the Constitution of India, the High Court does not function as a Court of appeal over the findings of disciplinary authority. But, where the finding is utterly perverse the High Court can interfere with the same.

15. In *Transport Commissioner, Madras-5 v. Thiru. A. Radha Krishan Moorthy* (2), the Hon''ble Supreme Court held that under Article 226 of the Constitution of India, the High Court has no jurisdiction to go into truth of the allegations/charges unless they are perverse.

16. In *Union of India and Ors. v. Narain Singh* (3), the Hon''ble Supreme Court has held that it is not the function of the High Court to arrive at an independent finding. It was further held that if an enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the High Court.

17. Thus, the High Court under Article 226 of the Constitution of India can interfere with the findings of the Disciplinary Authority and Appellate Authority only when they are perverse and irrational and furthermore, when there is error of law or procedure leading to manifest injustice or violation of principles of natural justice.

18. In the present case, the findings recorded by the Disciplinary Authority as well as the Appellate Authority that the petitioner was guilty of supervisory negligence are based on correct appreciation of material available on record. It cannot be said that the findings of the Appellate Authority as well as the Disciplinary Authority are perverse or unreasonable or irrational or based on no material and on the contrary, they are recorded after careful consideration of entire material available on record. There is also no error of law or procedural error leading to manifest injustice.

19. Apart from this, it appears that the impugned orders Annex. 3 and Annex. 5 were passed after giving full opportunity of hearing to the petitioner to defend his case and after hearing the petitioner and considering the entire material available on record, the impugned orders Annex. 3 and Annex. 5 were passed holding the petitioner guilty of supervisory negligence and therefore, in these circumstances, it is not a case of breach of principles of natural justice.

20. Thus, no interference is called for with the findings of the Appellate Authority and Disciplinary Authority holding the petitioner guilty of supervisory negligence, in exercise of power under Articles 226 and 227 of the Constitution of India, as they are based on correct appreciation of material available on record and there is no error of law or procedural error leading to manifest injustice or violation of principles of natural justice.

On point of quantum of punishment

21. The Hon"ble Supreme Court in *Indian Oil Corporation Ltd. v. Ashok Kumar Arora* (4), while considering the question as to whether the High Courts could in exercise of their powers of judicial review interfere with the punishment imposed by a disciplinary authority pointed out:-

"At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and or the punishment is totally disproportionate to the proved misconduct of an employee."

22. In *State of Punjab v. Surjit Singh Conductor* (5), the Hon"ble Supreme Court held that imposition of punishment is within the power and discretion of the authority and Civil Courts have no jurisdiction to substantive the punishment imposed by such authority.

23. In *Union of India and Ors. v. Narain Singh* (supra), the Hon"ble Supreme Court observed that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of the High Court's interference unless it is disproportionate to the proved misconduct as to shock the conscience of the Court.

24. Thus, it can be concluded that the jurisdiction of the High Court under Article 226 of the Constitution of India for interference with the quantum of punishment awarded to employees in the departmental enquiry is very limited and interference can be made with the punishment if it is disproportionate to the proved misconduct as to shock the conscience of the Court or where the enquiry is vitiated because of non-observance of principles of natural justice or if [he findings are based on no evidence.

25. In the present case, the punishment of withholding of two annual grade increments without cumulative effect was imposed against the petitioner and looking to the nature of allegations found proved against the petitioner and looking to the entire facts and circumstances of the case and the facts that full opportunity to defend his case was given to the petitioner and the principles of natural justice were observed while conducting departmental enquiry, therefore, in these circumstances, the punishment of withholding of two annual grade increments without cumulative effect awarded to the petitioner cannot be said to be excessive, unreasonable and disproportionate to the proved allegations. Hence, no interference is called for with the punishment awarded to the petitioner by the Disciplinary Authority and Appellate Authority.

26. So far as the argument that since Junior Engineer Benney Singh was exonerated by the Appellate Authority, therefore, the petitioner should also have been exonerated is concerned, it is all together different as each person has to face enquiry for the charges levelled against him and if one is exonerated, it does

not mean that another should also be exonerated and thus, this argument stands rejected.

27. For the reasons stated above, there is no merit in this writ petition and the same deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.