(1992) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 179 of 1990

Randhirmal Lodha APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Citation : (1992) 1 WLN 190

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The petitioner-Randhirmal, died during the pendency of the writ petition on 24-3-1991 and an application has been moved on behalf of his heirs and legal representatives whose names have been mentioned in the application dated 9-5-1991, that the effect that name of the petitioner Shri Randhirmal may be deleted and names of all the 6 applicants-Legal Representatives may be substituted as petitioner. Learned Counsel for the respondents has no objection to the application being allowed. The application is allowed. Smt. Sushila widow of late Randhirmal, Sarvashri Praveen, Pradeep, Pramod and Prakash Lodha, sons of late Randhirmal and Smt. Madhu daughter of late Randhimal are impleaded in place of petitioner late Shri Randhirmal.

2. Learned Counsel for the petitioners states that he has already filed the amended cause-title.

3. That the request of both the learned Counsel for the parties, the petition is heard on merits also.

4. While the petitioner was serving as Depot Manager, Jodhpur between February, 1982 to October, 1982, vide a charge- sheet served in June, 1983, the following three charges were levelled against him:

(i) That Shri Narpat Singh-II, was allowed to continue on the same Ticket window in the same shift.

(ii) He has not complied with the departmental orders.

(iii) He has been negligent in discharge of his duties.

5. An inquiry was conducted not by the Disciplinary Authority but by the Inquiry Officer appointed by the Disciplinary Authority. He has in his report exonerated said Randhirmal of the charges No. 1 and 3 stated above and found him partially guilty in respect of charge No. 2. On the basis of report of the Inquiry Officer, the Disciplinary Authority passed the impugned order Annx. 9 dated 16-9-1989 that he does not agree'' with the findings of the Inquiry Officer and on the basis of record it is true that the petitioner is guilty of negligence in discharge of his duties. On this finding, he imposed a penalty of stoppage of two grade increments with no future effect. The petitioner Randhirmal preferred an appeal against the order Annx. 9 on which the petitioner was served with a communication dated 5-12-1989 stating that his appeal is rejected. No separate order showing how the appeal has been considered has been produced either by the petitioner or the respondents. Annx. 11 dated 5-12-1989 has also been produced with the aforesaid writ petition.

6. It is contended by the learned Counsel for the petitioner that order Annx. 9 by which the penalty has been imposed on the petitioner is an order passed in gross violation of the principles of natural justice. Inasmuch as the Inquiry Report was, not supplied to the petitioner before passing the order Annx. 9 which was passed by the disciplinary Authority who has not himself the Inquiry Officer, it has also been contended that the order Annx. 9 itself shows that it was an order in which findings of the Inquiry Officer have not been accepted nor the findings of the Inquiry Officer have been reversed, by a non-speaking order. No reason whatsoever has been assigned for coming to a different conclusion in respect of the Corporation, the Depot Manager is responsible for discipline, management, revenue collection and maintenance of the record. Neither the charge specifies any instance of dis-obedience of the directives of the Corporation nor incidents where the petitioner has been found negligent in discharge of the duties. The charges levelled against the petitioner are vague ad infinitum and the findings too are as vague as the charges. It has also been contended that it was obligatory for the Disciplinary Authority to have furnished the Inquiry Report before arriving at any conclusion on the findings of guilt against the employes. He was under an obligation to give reasons for his conclusion. Learned Counsel for the petitioner placed reliance for his contention on a decision of Hon''ble Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, and two decisions of this Court reported in Umaid Charitable Trust Vs. Commissioner of Income Tax, and 546 (Phoolchand v. State of Rajasthan and Harinarain v. Union of India and Ors.). On the other hand, it. has been contended by the learned Counsel for the Corporation that it was bounden duty on the petitioner to get the booking'' checked regularly by special or surprise checking. To sit quietly in the office and to order on the papers or verbally to his sub-ordinates to go and check

the booking windows without getting report from them, is a clear negligence on the part of the petitioner. He cannot escape the liability of performance of duties by saying that he had already asked his sub-ordinates to make such checkings. He did not pursue the matter after issuing instructions to see whether his instructions have properly been complied with or not ? He was, therefore, guilty of conscious negligence and punishment imposed is within the perimeters of settled norms.

7. I have considered the rival contentions raised before me and perused the various orders under challenge. The question is no more res integra that a Disciplinary Authority in passing an order of punishment acts as a quasi-judicial authority and the order passed by him must conform to the norms of a speaking order. If the order passed by the Disciplinary Authority falls short of the perameter of speaking order, the order fails being in violation of the principles of natural justice, being in the category of conclusions not informed with the reasons. A bare perusal of Annx. 9 makes it abundantly clear that no reason whatsoever has been record in support of his conclusion about the guilt of the petitioner in respect of charge No. 3. The order even does not inform what was the finding about partial proof of guilt in respect of charge No. 2 that was recorded by the Inquiry Officer. Not only the order is a non-speaking order, even the charges itself disclose that charges No. 2 and 3 which are alleged to have been proved against the petitioner, refers to ''some lapses'' on the part of the petitioner in failure to obey the decision/instructions of the department and showing negligence in discharge of his duties. Suffice it to say, reasons cannot be supplied through return to the writ petition. Even the charges does not show that on account of negligence any does not loss was caused to the Corporation for which the petitioner was responsible. When there was no charge that he was responsible for causing financial loss to the Corporation yet a passing observation has been made in the impugned order that had the petitioner been caused to the Corporation. Obviously, there is a great deal of variance between the charges'' levelled against the petitioner and the findings recorded by the Disciplinary Authority.

8. Apart from the aforesaid infirmities, the fact that the petitioner was not supplied with the Inquiry Report before passing the impugned order, remains un-rebutted. The law in this point is well setteled vide Mohammed Ramzan''s case (supra) that if the Inquiry Report of the inquiry held by an officer who is the Disciplinary Authority, is not supplied to the incumbent and the Disciplinary Authority passes an order of punishment, the order has to be treated as void having been passed in violation of the principles of natural justice.

9. I am, therefore, of the formal opinion that the impugned order of punishment Annx. 9 is not sustainable and the same is hereby quashed. It may be stated that the appellate order suffers from the vice of a non-speaking order and is un-sustainable for the same reasons as stated herein above.

10. In the result, the writ petition is allowed. The impugned order Annx. 9 dated

16-9-1989 and the Annx. 11 dated 8-1 -12-1989 are quashed.

There will be no order as to costs.

