
(2005) 07 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2058 of 1997

R.C. Lal Agrawal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 21, 226
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16, 16(9), 18, 34
Rajasthan Service Rules, 1951 — Rule 169, 169(1), 169(2), 169(3), 170

Citation : (2005) 3 RLW 2189

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : J.K. Singhi, for the Appellant; B.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—By this writ petition petitioner has assailed order dt. 12.12.96 (Ann.23) whereby he has been inflicted with penalty of withholding of full pension for life in exercise of power under Rule 170 of Rajasthan Service Rules, 1951 ("R.S.R."), after holding an inquiry under Rule 16 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 ("CCA Rules").

2. This writ petition was earlier decided by this Court vide judgment dt. 04.05.2000 on the premises that petitioner has an alternative remedy of review available under Rule 34 of CCA Rules. However, review petition preferred by him was rejected vide order dt. 16.08.99 holding that there is no power conferred upon the Governor to review the order dt. 12.12.96. Therefore, petitioner again approached this Court by filing review petition No. 34/2000; and this Court recalled its judgment dt. 04.05.2000 vide order dt. 16.04.2001. Accordingly the matter has come up for hearing.

3. Facts in brief, are that petitioner entered into service in July, 1960, thereafter appointed as Assistant Engineer in August, 1961 and was regularly selected by

Rajasthan Public Service Commission in September, 1961. He was further promoted as Executive Engineer on 25.05.73, so also as Superintending Engineer in November, 1990.

4. Petitioner applied for seeking voluntary retirement under Rule 244(1) of RSR for contesting election of Rajasthan Legislative Assembly held in the year 1993, through telegram dt. 12.10.93 (Ann.1) and looking to short time, pursuant to application for voluntary retirement (Ann.1), he relinquished the charge of his post on 13.10.93 in the afternoon as per provisions of RSR and communicated it vide letter dt. 13.10.93 (Ann.2).

5. Petitioner submitted his nomination paper to contest election for Ramgarh (Alwar) assembly seat. Screening of nomination paper was held on 20.10.93, whereupon he was issued notice dt. 20.10.93 about his status as to whether he was Government servant or retired from service; and in response to which, he informed that he has already sought for his voluntary retirement under Rule 244(1) through telegram and relinquished his charge on 13.10.93 but consent from State Government has been awaited. However, Returning Officer rejected his nomination paper vide letter (Ann.9).

6. The State Government vide its letter dt. 05.11.93 (Ann. 10) rejected his application seeking voluntary retirement u/s 244 (1) of RSR on the premises that he was facing departmental inquiry under Rule 16/18 of CCA Rules and pending inquiry, the application could not be accepted and consequently, he was called upon to join his duties. Refusal to grant permission for voluntary retirement (Ann. 10) was challenged by filing writ petition, which was dismissed vide order dt. 27.01.97 - as a consequence whereof, refusal to grant voluntary retirement vide order (Ann. 10) attained finality and is not open for adjudication in present petition.

7. Petitioner was to retire on attaining superannuation age on 31.03.1994 but a day before it, he was served with a charge sheet under Rule 16 of CCA Rules (Ann.13) on 30.03.94 with the allegation of wilful absence from duty from 14.10.93 till attained age of superannuation on 31.03.94. However, provisional pension was sanctioned to petitioner vide order dt. 10.02.95 (Ann.19) w.e.f. 01.04.94 and accordingly pension payment order (Ann.20) was issued and thus he was getting provisional pension till conclusion of departmental inquiry.

8. Pursuant to charge sheet dt. 30.03.94 (Ann. 13), a regular inquiry was held against him. Petitioner submitted his interim reply dt. 23.07.94 (Ann.14) & final reply dt. 23.07.94 (Ann.15) to the charge sheet inter-alia averring that the reason which was taken to be basis for rejecting application seeking voluntary retirement was not justified and the inquiry which is said to have been pending was of remote past period and mere pendency of inquiry cannot be taken as basis for denial to permit voluntary retirement to the petitioner and once he has submitted his application for voluntary retirement and got his charge relinquished on 13.10.93, as provided under the Rules, he could not be forced to

work thereafter. The inquiry officer after conducting inquiry held the petitioner guilty and recorded a finding that once petitioner was informed about refusal to his voluntary retirement, he never applied for leave and there was no sanction of leave by competent authority, so his act of relinquishing the charge suo moto was not justified and the charge imputed against him of wilful absence from 14.10.93 to 31.03.94 stood proved. After the inquiry officer submitted his report dt. 24.08.95 (Ann. 17), disciplinary authority sent a copy of inquiry report to petitioner, to which he submitted detailed reply by reiterating his defence that the reason for which he did not report for duty was bonafide and after he relinquished his charge on 13.10.93, premise on which voluntary retirement declined was of pendency of inquiry against him, which could not be considered to be a valid basis for rejection of his voluntary retirement because pending inquiry related back to remote past period; and that apart, once he stood voluntarily retired from service, disciplinary inquiry could not further be continued against him for absence from duty since Rule 170 of RSR empowers the competent authority to inflict penalty only when the act of delinquent government servant caused any pecuniary loss to the public exchequer or has committed a grave misconduct or negligence in discharge of his duty while in service.

9. After submission of the reply, petitioner was served with a notice dt. 13.11.95 (Ann.21) to show cause against tentative decision to withhold full pension for whole life under Rule 169(3) of RSR, to which also, petitioner made his representation (Ann.22) on 06.12.95 but that did not prevail upon and respondents vide order dt. 12.12.96 after holding the petitioner guilty of wilful absence from duty, punished him with penalty of withholding full pension for whole life. Hence, this writ petition.

10. The petitioner has filed two additional affidavits. Alongwith affidavit dt. 07.01.2000 petitioner has filed an order dt. 16.07.99 (Ann.26) whereby petitioner has been exonerated of the charge imputed vide memo of charge dt. 27.08.93 in an inquiry under Rule 16 of CCA Rules, which was considered to be basis for rejection of application for voluntary retirement under Rule 244 (1) of RSR. Alongwith another affidavit dt. 12.09.2001 petitioner has filed xerox copy of charge sheet (Ann.27) with statement of allegation imputed against one Shri Raghunath Singh Chauhan Superintending Engineer (Retired), wherein similar charge as impugned against petitioner was made against Sri Raghunath Singh who despite held guilty for absence from duty was not punished of the self same charge vide order dt. 24.02.2000 (Ann.28) on the pretext that the charge proved is not a grave misconduct committed, which may warrant infliction of penalty upon him.

11. During pendency of writ petition, vide interim order dt. 18.12.2001 this Court directed the respondent State to compute pension of petitioner on the basis of qualifying service which he has rendered and he should be paid atleast 50% of computed pension. It has been informed to this Court that in terms of interim

order dt. 18.12.2001, he is getting 50% pension determined on the basis of his actual qualifying service rendered.

12. Shri J.K. Singhi, Counsel for petitioner urged that in view of Rule 170, RSR, punishment could have been inflicted against retired government servant only if there is a pecuniary loss caused to the Government or he has committed grave misconduct or negligence in discharge of his duties during period of service; and short period of absence for which he was charged under Rule 16 of CCA Rules, in no manner was an act of grave misconduct or negligence so as to warrant impugned penalty under Rule 170 of RSR and in such circumstances, infliction of penalty vide order dt. 12.12.96 (Ann.23) was beyond the scope of Rs. 170, RSR, and thus was violative of Article 14 & 21 of Constitution of India.

13. Shri Singhi further urged that charge of wilful absence has been found proved but no finding has been recorded by disciplinary authority of charge found proved being of grave misconduct or negligence in discharge of duty - in the absence of which Rs. 170 could not be invoked and further the respondents have failed to consider explanation furnished by petitioner pointing out his bonafide reason particularly when he had relinquished charge of his post on 13.10.93, though in telegram it was stated that he was to contest election and after being relieved, he was not supposed to join and at relevant point of time, this Court had expressed its view that retired employee could be punished under Rule 170, RSR, only in the circumstance when pecuniary loss has been caused to the State Government, but the competent authority failed to consider his explanation and without taking note of his reasonable & bonafide justification besides the fact of his satisfactory service of 33 years which he rendered in the State Government having unblemished record inflicted penalty of withholding of full pension for whole life which is a harsh penalty and that apart, while inflicting penalty impugned, competent authority has failed to record good & sufficient reasons as required and which is pre-requisite condition before inflicting penalty under Rule 170, RSR and according to Shri Singhi, the impugned penalty in aforesaid circumstances is violative of principles of natural justice, so also of Article 14 & 21 of Constitution of India.

14. Shri Singhi further urged that Shri Raghunath Singh Chauhan has also applied for voluntary retirement under Rule 244 (1) of RSR alongwith petitioner on 07.10.93 for contesting election of legislative assembly and voluntarily relinquished his charge through letter dt. 08.10.93 and his application like petitioner for voluntary retirement was rejected by the State Government on 19.11.93 on the same premises that he was facing inquiry under Rule 16 of CCA Rules; and after rejection, he failed to report back on duty despite reminders and for which he was served with similar charge sheet on 27.08.94 and notice under Rule 170 of RSR, as issued in case of present petitioner; and he was also held guilty by inquiry officer which was also finally accepted by competent authority but still no punishment, was inflicted despite his guilt found proved by competent authority, vide order dt. 24.02.2000 (Ann.28) on the premises that period of his

absence is short one and he sought retirement to contest election, and according to Shri Singhi, the only distinguishing feature among petitioner & Shri Chauhan is that Shri Chauhan was to retire on 31.12.93 so his period of absence was from 08.10.93 to 31.12.93 and since petitioner was going to retire on 31.03.94, his absence continued accordingly upto March, 1994 but despite the authority found the charges proved against both the delinquents, viz., petitioner & Shri Chauhan, inflicted penalty of stoppage of full pension for whole life on the petitioner but not considered same nature of misconduct to be so grave in case of Shri Chauhan, who is similarly placed to inflict any penalty upon him, and action has resulted in arbitrary exercise of discretion by competent authority.

15. Respondents have filed reply to writ petition. Shri B.K. Sharma, Deputy Govt. Advocate submitted that after sending telegram on 12.10.93 seeking voluntary retirement from 13.10.93, petitioner voluntarily relinquished his charge from 13.10.93 without prior permission of competent authority and vide order dt. 05.11.93 his application seeking voluntary retirement was rejected on the premises that he was facing inquiry under Rule 16/18 of CCA rules. It has further been submitted that after rejection of his application vide order dt. 05.11.93, letters were sent to petitioner on 25.01.94 and 07.02.94 to report for duty but despite the same, he failed to join and being such senior responsible officer, it was expected of him to abide by orders of superior authority and in these circumstances, his absence from duty was an act of grave misconduct and for which, he was served with charge sheet dt. 30.03.94 under Rule 16 of CCA Rules and in a regular inquiry after affording fair opportunity of hearing, petitioner was held guilty by inquiry officer whose finding was accepted by disciplinary authority. It has also been submitted that since petitioner stood retired from service on 31.03.94, inquiry was initiated further for inflicting punishment upon him in terms of Rule 170 of RSR and accordingly a notice under Rule 169(3) was served upon him intending to inflict penalty of stoppage of full pension for whole life and after receipt of his explanation, competent authority examined it and after due consultation with RPSC, inflicted impugned penalty upon him vide order dt. 12.12.96 (Ann.23) by a speaking order in consonance with Rule 170 of RSR.

16. Shri B.K. Sharma also urged that in case of petitioner, who was holding responsible post was supposed to report for duty after rejection of his application seeking voluntary retirement and it was a clear case of disobedience, as he failed to report back for duty despite reminders and his act was of grave misconduct and therefore, was rightly saddled with infliction of penalty of stoppage of full pension for life.

17. Shri B.K. Sharma further urged that so far as case of Shri Raghu-nath Singh Chauhan is concerned, it was decided on 24.02.2000 whereas in case of petitioner, penalty was inflicted in December, 1996 and as regard infliction of penalty in question, no comparison in any manner could have been made. However, in the case of Shri Chauhan, absence was of short span of time whereas in case of petitioner, he continued to remain wilfully absent for

comparatively long period and despite reminders issued, he intentionally disobeyed the orders by not reporting back for duty, inasmuch as a valid justification has been extended before competent authority for not inflicting penalty upon Shri Chauhan while passing order dt. 24.02.2000 (Ann. 26).

18. I have considered rival contentions of learned counsel for both the parties and perused material on record.

Relevant Rule 170, RSR, provides as under :-

"170. Recoveries of losses from the pension.--The Governor further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement."

19. Thus from a careful perusal of scheme of Rule 170, RSR, it is clear that the Governor has reserved the right to (1) withhold or withdraw a pension wholly or any part of it, either permanently or for a specified period and (2) recover from a pension of the whole or part of any pecuniary loss caused to Government, subject to the minimum. The condition precedent is that in departmental inquiry or judicial proceedings, pensioner is found guilty of grave misconduct or negligence during period of his service of the original or on re-employment. However, condition precedent is that there should be finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in RSR. The scope is wide of mark dependent on the facts & circumstances of each case.

20. Employee's right to pension is a statutory right. Measure of deprivation, therefore, must be correlative to or commensurate with gravity of grave misconduct or negligence as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution of India.

21. It is not necessary for me to further probe into scope and meaning of grave misconduct or negligence and under what circumstances, the findings of guilt are held proved. Suffice is to say that charge in present case against petitioner was that he was wilfully absent for not reporting on duty despite his application seeking voluntary retirement was declined by competent authority.

22. Rule 169 of RSR prescribes "Good Conduct" as a pre-condition for grant of pension. Under Rule 169(1), future good conduct is an implied condition of every grant of pension and the pension sanctioning authority is empowered to withhold or withdraw pension or part thereof whether permanently or for a specified period, if pensioner is convicted of a serious crime or is found guilty of grave misconduct. Rule 169(2) deals with cases of pensioner who is convicted of a serious crime by a court of law, and 169(3) deals with the matter pertaining to

grave misconduct or of negligence.

Relevant Rule 169(3) of RSR reads thus:-

(3) In a case not falling under Clause (2) if the competent authority under Clause (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under Clause (1).

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal, and

(b) take the representation, -if any, submitted by the pensioner under Clause (a) into consideration."

23. It is seen from scheme of Rule 169 read with Rule 170, RSR that exercise of power by the Governor is hedged with a condition precedent that a finding should be recorded either in departmental inquiry or judicial proceedings that the pensioner has committed grave misconduct or negligence in discharge of his duty while in office. In the absence of such a finding, the authority is not competent to impose penalty of withholding of pension as measure of punishment either in whole or in part, permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to the minimum.

24. In the present case, from a bare perusal of impugned order dt. 12.12.96, it reveals that the authority has only held the petitioner guilty of wilful absence for the period in question, but has failed to record a finding as to whether the charge stood proved against him, was at all an act of grave misconduct or of negligence if, any committed by him while holding public office. In my opinion, in the absence of which, very action of inflicting penalty upon petitioner vide order dt. 12.12.96 (Ann.23) for withholding whole pension permanently, is in violation of Rule 170, RSR so also of Article 14 & 21 of the Constitution of India.

25. Apart from above, in case of Shri Raghunath Singh Chauhan, who too was similarly placed and charge against him was self same except the facts that Shri Chauhan was going to retire on attaining superannuation act on 31.12.93 and period of his absence came to end on that day but in case of present petitioner, as he was going to retire later than him, period of his absence was extended till he attained age of superannuation on 31.03.94. Rest of circumstances in case of Shri Chauhan and present petitioner are the same. While holding Shri Chauhan guilty for misconduct on account of his wilful absence from duty, in similar circumstances like of petitioner, yet the competent authority has not considered it to be a case of grave misconduct for inflicting penalty upon Shri Chauhan under Rule 170, RSR, in such circumstances, in my opinion, taking note of Shri Chauhan, as referred to supra, impugned order dt. 12.12.96 (Ann.23), is

otherwise not legally sustainable and is violative of Article 14 of the Constitution of India.

26. Further other reason too, interference in the order impugned dt. 12.12.96 (Ann.23) is called for, because the order impugned is completely laconic and non-speaking order, which does not disclose due application of mind of the authority after the petitioner was called upon to give explanation as required under Rule 169(3), RSR.

27. Rule 169(3) of RSR makes it obligatory upon competent authority who arrives at conclusion proposing action under Rule 170 of RSR, to afford an opportunity to delinquent pensioner by issuing notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken, and after explanation is furnished by delinquent pensioner, it has to be taken into consideration.

28. "Consideration" as referred to in Rule 169(3) of RSR is having a very wide import. In present case, from a bare perusal of impugned order (Ann.23) makes it precise that the authority has merely recorded stock phrases viz., reply/explanation has been considered and is not found to be satisfactory. In my opinion, it cannot be said to be fair & objective consideration as independent mind has not been applied by competent authority while imposing penalty under Rule 170 of RSR and in the absence of which, Rule 169(3) of RSR cannot be said to be complied with in letter & spirit. Further, it shows that albeit the authority has made an attempt to show of passing a speaking order, but in fact it is not an order which can be termed as speaking one, and rather such an order can safely be described as non-speaking. In opening part of the order (Ann.23), narration of facts & events of inquiry proceedings have been mentioned. After recording merely bald expressions that inquiry was held in accordance with rules, & opportunity of defence was given etc., in the end the authority has recorded, "it has considered representation but has not found it to be satisfactory", and it concluded to inflict penalty of withholding of full pension permanently. Curiously enough, the authority has nowhere recorded even a conclusion and what to talk of reasons as to why & how reply or explanation of petitioner was not satisfactory or how the contentions raised by petitioner in his explanation are not having any merit. Recording of reason after consideration so as to arrive at the conclusion to pass the impugned order (Ann.23), as has been done in present case, in my opinion, is not a sufficient compliance with requirement of speaking order.

29. Recording of reasons and communication thereof has been stressed time and again in a catena of decisions by the Apex Court and this Court. A constitution Bench of the Apex Court in S.N. Mukherjee Vs. Union of India, Shri S.C. Agrawal J., as he then was, observed as under:-

"The object underlying the rules of natural justice is to prevent miscarriage of justice and secure "fair play in action". As pointed out earlier the requirement

about recording of reasons for its decision by an administrative authority exercising quasi judicial functions achieves this object by excluding chances of arbitrariness and ensuring a decree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of a judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. And the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

For the reasons aforesaid, it must be concluded 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 is required to record the reasons for its decisions."

30. In *The Union of India (UOI) Vs. Ramgopal Tanwar*, C.B. Bhargava, J., had observed, "There can also be no doubt that the punishing authority in exercise of its quasi-judicial powers was bound to make a judicial approach to the question and should have been given reasons for its decision particularly when its order was subject to appeal to a higher authority.

31. In *Ram Khilari v. Union of India* 1976 RLW 320 a Division Bench made a detailed examination of the question relating to the requirement of recording of reasons and communication thereof by quasi-judicial authorities after detailed survey of the case. The Division Bench observed as under:

"Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order..it is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127(1). We are unable to accept this submission.. The reasons for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to approach the High Court under its writ jurisdiction under Article

226 of the Constitution and even to this (sic-the Supreme Court) under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is malafide or arbitrary or that it is based on irrelevant and extraneous considerations.....When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

32. In *State of Rajasthan vs. Amolakchand* 1983 RLR 246 a Division Bench of this Court again reiterated the requirement of reasons by a quasi-judicial authority. The Division Bench took notice of the provisions of rule 16 in particular of Rule 16(9) of the 1958 Rules in holding that a disciplinary authority must pass a speaking order and communicate the same to the delinquent employee.

33. Before parting with this order, I must hasten to add that the reasons and basis taken by State Government to refuse permission on application of petitioner seeking voluntary retirement under Rule 244 (1) of RSR that there was pending inquiry against him, once stood defeated because in that inquiry, the petitioner has been totally exonerated by the State Government as is evident from order dt. 16.07.99 (Ann.26), which has not been controverted by the respondents, in my opinion, very purpose of remaining absent on the part of petitioner after tendering voluntary retirement stands justified and further it frustrated purpose of initiation of inquiry in question. Had the pending inquiry against petitioner which was made basis to decline voluntary retirement to the petitioner, been concluded early, petitioner could have been permitted to the voluntary retirement, as sought by him under Rule 244(1) of RSR.

34. As a result of the above discussion, this writ petition is allowed. Order dt. 12.12.96 (Ann.23) is hereby quashed & set aside and the petitioner is entitled to all consequential benefits including retiral & pensionary benefits in full. The respondents are directed to compute a release retiral & pensionary benefits of the petitioner for services rendered by him upto 13.10.93 in accordance with the Rules after due adjustment of pension already paid during pendency of inquiry & writ petition. Arrears of pensionary benefits be paid alongwith interest thereon @ 9% p.a., within a period of three months. No order as to costs.