
(2013) 07 RAJ CK 0158

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No"s. 772 and 773 of 2005

Shrikrishna Meena

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 227, 32

Citation : (2014) 1 WLN 8

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Sanjeev Prakash Sharma, with Mr. Gaurav Sharma, for the Appellant; Kanishk Gupta on behalf of Mr. Sushil Sharma, AAG for State, for the Respondent

Final Decision : Dismissed

Judgement

Veerendr Singh Siradhana, J.—The above noted two intra-court appeals are directed against the judgment and order dated 25th May, 2005 passed by the learned Single Judge. The original appellant-petitioner-Shrikrishna Meena (deceased) preferred two writ applications raising common question of law and fact and at the joint request of the parties, same were decided by the common judgment and order impugned hereinabove in these appeals. Accordingly, we propose to adjudicate upon the above noted intra-court appeals by this common judgment. Necessary facts for adjudication of the controversy are that the appellant-petitioner, a member of Scheduled Tribe, was appointed as Lower Division Clerk (for short "the L.D.C.") on 20th January, 1970 in the office of the Collector, Barmer, and having been declared surplus on 25th August, 1970, was absorbed in the Department of Border Home Guards on 26th August, 1970 and thereafter was transferred to Collectorate, Alwar in 1973. Further, on his request, he was transferred to Jaipur in 1974 and was confirmed as L.D.C. vide order dated 30th August, 1983.

2. The appellant-petitioner preferred Writ Application No. 2683 of 1993

challenging a charge-sheet dated 15th November, 1988 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "CCA Rules", for short) for his delinquency during the period w.e.f. 1st March, 1982 to 10th July, 1984 imputing three charges against him. The first charge was levelled for availing encashment by surrender of 30 days Privilege Leave (for short "the P.L.") instead of one time available in one block year i.e. 1982-84. Second charge was for interpolation in the block year from "1982-84" to "1978-80". Third charge was for the interpolation in the punishment order dated 6th July, 1979 wherein the penalty from "with cumulative effect" to "without cumulative effect" by prefix of Hindi letter "A" to "Sanchai" (with cumulative) making it to read "Asanchai" (without cumulative).

3. The disciplinary authority dissatisfied with the response to the charge-sheet ordered a regular inquiry wherein the appellant-petitioner admitted the charges but made a request to be pardoned since he was unaware and would not repeat the mistake in future. The Inquiry Officer returned a finding of guilt against the appellant-petitioner. The disciplinary authority having considered the reply in response to the inquiry report furnished to the appellant-petitioner as well as keeping in view the gravity of the proved charges; inflicted penalty of dismissal from service vide order dated 3rd September, 1991. On an appeal, the appellate authority upheld the finding of guilt, however, converted the penalty of dismissal to removal from service so as to avoid disqualification for future employment elsewhere.

4. Civil Writ Application No. 3669 of 1999 was directed against another charge-sheet dated 13th June, 1989 under Rule 16 of the CCA Rules for the delinquency for the period from 15 July, 1985 to 15 May, 1986 wherein two charges were imputed against the appellant-petitioner. First charge was for twice availing of encashment by surrender of 30 days P.L. instead of one time encashment of 30 days P.L. in one block year of 1984-86. Second charge contained the allegation of collusion with one Rohitash Nazir while making interpolation in an entry at page 14 of service book No. 2 for changing the block year 1984-86 to "1982-84"; thereby committing misconduct causing loss to public exchequer for personal gain by availing encashment of leave twice in one block year by tampering with the public record.

5. The disciplinary authority dissatisfied with the response to the charge-sheet ordered for a regular inquiry wherein the appellant-petitioner admitted to have accepted encashment of 30 days P.L. twice over and in his explanation stating to be unaware of such a provision, and deposited the excess amount of encashment leave of 30 days P.L. in the Treasury. However, the allegations of interpolation in the service record were denied as contained in second charge. The Inquiry Officer returned finding of guilt on the charges, a copy of which was sent to the appellant-petitioner for his response. The Disciplinary Authority agreeing with the finding of guilt and having regard to the gravity of the proved charges, inflicted penalty of dismissal from service vide order dated 3rd September, 1991, which

was altered to "removal", by the Appellate Authority so as to avoid disqualification for future employment elsewhere. The appellant-petitioner preferred Civil Writ Application No. 2684 of 1993 before this Court, which was disposed off with liberty reserved to the appellant-petitioner to avail the remedy of review petition, which the appellant-petitioner unsuccessfully availed of.

6. According to the learned counsel, the appellant-petitioner was ignorant of the relevant provisions under the Rajasthan Service Rules, which restricted the claim of encashment in lieu of surrender of 30 days P.L. once in a block year 1982-84 and 1984-86 and therefore, under a bona-fide belief he moved applications for the claim which were sanctioned by the competent authority and the encashment was duly acknowledged. However, upon objection by the Audit, the excess amount drawn in lieu of surrender of P.L. in dispute was deposited in the Treasury and hence, it could not be construed to be a misconduct.

7. Pleadings with reference of second charge have been to the effect that tampering with the entries in the service record for change in block year was of no benefit to the appellant-petitioner and the charges were imputed on account of malice on the part of the respondent No. 4 (Shri Kan Singh Rathore, Inquiry Officer). The defence with reference to charge No. 3 is that the alleged interpolation in converting penalty "with" to "without" cumulative effect, did not result into any benefit to the appellant-petitioner rather he has been victimized being a member of Scheduled Tribe to get rid of him.

8. Further, similarly situated delinquent has been treated unequally adopting two standards for inflicting penalty since one Sultan Singh, U.D.C, who too availed of benefit of encashment of surrender of 30 days P.L. more than once in one block year, who was initially dismissed from service, but the Appellate Authority reduced the penalty of dismissal to stoppage of one annual increment with cumulative effect while in case of the appellant-petitioner, the penalty from "dismissal" has been converted to "removal" but ultimately he remained unemployed and therefore, the action has been assailed to be violative of Article 14 and 21 of the Constitution of India. To buttress the submissions, judgments of the Hon'ble Apex Court of the land were also referred to and relied upon. The penalty imposed was also assailed for being shockingly disproportionate to the alleged misconduct.

9. The respondent - State responding to the notice of the writ applications submitted the counter-affidavit, supporting the action in terminating the service of the appellant-petitioner for gross misconduct committed by availing of encashment of surrender of 30 days P.L. thrice in block year 1982-84 and twice in block year 1984-86. The amount was deposited only when the matter surfaced and to cover up the serious misconduct and the consequences to follow. Further, interpolation in the service book to change the block years was with the intention to avail of the financial benefit. However, subsequent deposit did not absolve the appellant-petitioner of the gross misconduct committed by him. The act of delinquency was intentional and deliberate in interpolating the entries in the

service book for obvious reason i.e., to gain financial benefit. Moreover, during the course of inquiry, the charges were proved and the appellant-petitioner admitted his guilt with regard to the overwriting in the service book as well as to avail the encashment in lieu of surrender of 30 P.L. The delinquent was accorded ample opportunities at all stages in the course of inquiry and there was no error in the decision making process. Lenient view adopted in favour of Sultan Singh while inflicting a penalty, has been explained stating it to be a solitary charge in one block year whereas against the appellant-petitioner, there were/are serious charges of interpolation in the service record, which were found proved and his case could not be equated with that of Sultan Singh.

10. The learned Single Judge having considered the facts, circumstances, material available on record and the rival submissions of the parties, concluded that there was no illegality in the procedure adopted in holding inquiry rather it is the case of the appellant-petitioner that procedure as provided under the CCA Rules has been followed and in the course of inquiry, ample opportunity was accorded to him inasmuch as compliance of principle of natural justice was also ensured before the punishment was inflicted. The thrust of challenge has been on the premises that the act of the appellant-petitioner was not intentional but on account of ignorance and inadvertence about the procedure for encashment of surrender leave. Be that as it may, the learned Single Judge in the result dismissed the writ applications vide judgment and order dated 25th May, 2005.

11. We have heard the learned counsel for the appellant-petitioner and the respondents as well as perused the material available on record.

12. The learned counsel for the appellant-petitioner reiterating the pleadings of the writ application(s) argued that since the appellant-petitioner was ignorant of the relevant provisions of the Service Rules and further, his claim was sanctioned by the competent authority on the applications moved by him under the bonafide belief of admissibility; however, in view of the objection raised by the Audit, he deposited the excess amount drawn and therefore, the act could not have been construed to be misconduct. According to the learned counsel, tampering with the entries in service record in changing the block year resulted into no benefit to the appellant-petitioner as well as the alleged interpolation in converting the penalty "with" to "without" cumulative effect also did not benefit the appellant-petitioner rather he was victimized by respondent No. 4 being a member of the Schedule Tribe.

13. The learned counsel, inviting the attention of this Court to the reply in response to the charge-sheet, argued that the appellant-petitioner did not admit the charge of interpolation in the service record as well as converting the penalty from "with cumulative effect" to "without cumulative effect". The attention was also invited to the relevant documents and material available on record with reference to the interpolation in the service record relating to "with cumulative effect" to "without cumulative effect". Referring to the memo of appeal under Rule 23 of the Rules of 1958, learned counsel submitted that the appellant-

petitioner specifically explained the circumstances, he availed of the encashment in lieu of surrender of 30 days P.L. and reiterated the admission of his mistake. Further, no loss was caused to the public exchequer since the appellant-petitioner deposited the excess amount so soon he learnt about his mistake.

14. Since, there was no difference in the ink with reference to the alleged interpolation made while converting the penalty from "with cumulative effect" to "without cumulative effect", therefore, the finding arrived at is bad in the eye of law. According to the learned counsel, the relevant documents relating to service book with regard to interpolation, were not furnished to him and no opportunity of cross-examination was accorded. Moreover, Rohitash Kumar has not been produced with whom collusion was alleged. Lastly, the learned counsel pressed the issue of penalty imposed being shockingly disproportionate to the nature of misconduct alleged.

15. The learned counsel for the respondent-State reiterating the pleadings of the counter-affidavit to the writ applications supported the action of the respondents in imposing the penalty of removal on the appellant-petitioner. The learned counsel further submitted that there was no error in the decision making process and the learned Single Judge has passed a well reasoned judgment and order dated 25th of May, 2005, recording findings on the basis of material available on record and therefore, the same calls for no interference in these intra-court appeals.

16. A bare perusal of the impugned judgment and order dated 25th of May, 2005 reveals that the learned Single Judge analyzed the material available on record and arrived at the specific finding that the case of the appellant-petitioner is that the procedure as provided under the CCA Rules has been followed and during the course of inquiry, the appellant-petitioner was accorded ample opportunity as per rules. Admittedly, the defence of the appellant-petitioner has been that the act was not intentional and was on account of ignorance of the procedure. The appellant-petitioner being an employee of the department for a considerable period, cannot be so ignorant about the leave rules and procedure and, therefore, the finding arrived at by the learned Single Judge after a careful consideration of the material available on record in view of the admission of the appellant-petitioner, cannot be faulted by any stretch of imagination.

17. Moreover, interpolation in the service record in changing the block year obviously could have benefited none but the appellant-petitioner. Be that as it may, the appellant-petitioner having admitted the charge and with a further undertaking not to repeat the error in future, as is apparent on the face of the record; the Disciplinary Authority committed no error in upholding the finding of guilt recorded by the Inquiry Officer and inflicting penalty, hence, the view taken by the learned Single Judge in upholding the decision of the Disciplinary Authority as well as the Appellate Authority cannot be faulted on any of the grounds pleaded by the learned counsel for the appellant-petitioner. Further, merely because the excess amount drawn by the appellant-petitioner was

subsequently deposited, did not absolve him of the gross misconduct committed by him, which involved an element of moral turpitude.

18. From the material available on record, we find no error committed by the learned Single Judge in arriving at the finding that the appellant-petitioner could not be ignorant about the rules and procedure while claiming encashment of surrender leave and further that the misconduct committed by the appellant-petitioner was certainly for his benefit and once, the finding of guilt was supported with legal evidence available on record, the learned Single Judge rightly did not interfere with the action taken by the employer.

19. The judgments referred to and relied upon have been duly considered and there is no error warranting interference on that count as well. The conduct of the appellant-petitioner in changing the entries in service record for his benefit and availing of encashment of surrender of 30 days P.L. thrice in one block year and twice in another block year by submitting applications, was obviously a loss to the public exchequer. The appellant-petitioner suffered penalty of stoppage of two grade annual increments "with cumulative effect" and he interpolated the same from "with cumulative effect" to "without cumulative effect".

20. Learned senior counsel in order to fortify his submissions on the issue of quantum of punishment placed reliance on the verdict delivered by the Hon''ble Supreme Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, which was a case wherein the Hon''ble Supreme Court dealt with the punishment of dismissal from service by way of summary court-martial proceedings wherein Ranjit Thakur (appellant) while serving sentence committed another offence for which a summary court-martial assembled on the very next day of the incident and the appellant was dismissed from service. The facts and circumstances of the case referred to and relied upon are entirely different from the one at hand. In case of Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, the Hon''ble Supreme Court dealt with the situation wherein the services of the respondent (R.K. Mittal) were terminated, for he got notice to be served threatening to file the suit claiming payment for overtime for about 40 days out of which he was paid only for seven days. Thus, it is apparent that the matter was decided in that backdrop of factual matrix.

21. In Vijay Singh Vs. State of U.P. and Others, the Hon''ble Supreme Court dealt with the issue of order passed by the Disciplinary Authority withholding Integrity Certificate, which was held to be without jurisdiction since the same could not be termed as punishment under the rules and hence, a nullity. The Hon''ble Supreme Court specifically held that the punishment for a proved delinquency is regulated and controlled by the statutory rules. Thus, the Hon''ble Supreme Court interfered with the punishment that was not prescribed under the statutory rules, which is not a position in the fact situation of the present case at hand.

22. In case of Commandant, 22nd Battalion, Central Reserve Police Force,

Srinagar, C/o 56/APO and others The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar, the Hon"ble Supreme Court allowing the appeal against the order passed by the Jammu and Kashmir High Court, wherein the High Court interfered with the order of dismissal, held thus:-

15. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In Union of India and Others Vs. R.K. Sharma, this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service.

23. In the facts, circumstances and material available on record in the present case at hand, view taken by the learned Single Judge after having arrived at the findings, in the light of the material available on record as well as having regard to the nature of misconduct, the impugned order dated 25th May, 2005 cannot be faulted. Be that as it may, judicial review generally speaking, is not directed against a decision but it is directed against "decision making process". The question, therefore, of choice and quantum of punishment is within the jurisdiction and discretion of the employer. In the face of the fact that the appellant-petitioner availed of encashment of surrender leave more than once in one block year and was also found guilty of interpolation in the service record; has been inflicted with appropriate penalty of removal, which cannot be construed to be "shockingly disproportionate" to the nature of misconduct committed.

24. Taking an overall view of the matter and having regard to the gravity as well as nature of the proved charges, we have no hesitation in holding that the penalty of removal imposed; and upheld by the learned Single Judge calls for no interference in the instant intra-court appeals. In the result, the intra court appeals are hereby dismissed. However, in the facts and circumstances, there shall be no order as to costs.