
(2004) 02 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4895 of 1996

Shriram Verma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2004) 3 RLW 1640 : (2004) 2 WLC 422

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : S.P. Sharma, for the Appellant; N.K. Maloo, for the Respondent

Final Decision : Allowed

Judgement

K.S. Rathore, J.

(1). At the relevant point of time the petitioner was posted as Regional Deputy Director (Child Development), Churu.

(2). Vide memorandum dated 19.2.92 a charge sheet under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958 was served upon the petitioner wherein three charges were levelled against him. Alongwith the charge sheet statement of allegations were also served.

(3). The charge sheet was with relation to the appointment on the post of Lower Division Clerks on daily wages basis. The post of Lower Division Clerk was sanctioned vide order dated 22.4.88. 6 posts were to be filled on daily wages basis in the Churu district.

(4). Vide circular dated 25.10.87 the Women, Child and Nutrition Department laid down the procedure for filling of the aforesaid posts and it was stipulated in the circular that the LDCs shall be appointed on daily wages basis at the rates laid down by the Labour Department, by the Regional Deputy Director and Child Development Project officer of the concerned region after obtaining a list, from

the District Employment Exchange office and after holding the interviews.

(5). There were vacancies of Class IVth employees also. So far as the IVth class employees are concerned, the same were to be appointed after obtaining list from the District Employment Exchange and after obtaining Non-Availability Certificate from the concerned Collector by the Child Development Project Officer after interview.

(6). Pursuant to the circular the Class IV employees were appointed in all the other districts in the State of Rajasthan by the Child Development Project Officers alone. As per the circular the petitioner constituted a committee for selection of the LDCs, Drivers and Class IV employees vide order dated 20.2.88. The committee consisted of SDM, Ratangarh as the Chairman and CDPO, Sujangarh as the Member. The names of the suitable candidates were sponsored by the District Employment Exchange Churu. The committee after holding the interview appointed 4th class employees.

(7). It is contended on behalf of the petitioner that so far as the appointment on the posts of LDCs are concerned, only 6 persons appeared and there was requirement of 6 persons. All of them were given appointment on daily wages basis. Similarly on 6 posts of Drivers the Committee selected first 6 persons on the basis of interview and gave appointment to them out of the list as per the roster sent by the District Employment Exchange, Churu.

(8). No person against ex-serviceman was given appointment because the employment exchange has not sent any name of such ex-serviceman to the interviewing committee.

(9). Regarding appointment made by the interview three charges are levelled against the petitioner. First regarding appointment of 6 persons as LDC, second is with regard to the appointment of 6 persons as drivers and third is that 8 persons were given appointment on the post of Class IV employee. For appointment on the aforesaid posts it was alleged that the petitioner has not followed 100 point roster system and specifically he has not given any appointment against the category of ex-servicemen.

(10). The petitioner in its reply to the chargesheet submitted that he has not committed any irregularity while making aforesaid appointment and followed the instructions issued by the State Government and also not disobeyed the circulars issued by the State Government. The procedure adopted by him for appointment was absolutely fair, just, proper and in accordance with the rules and directions issued by the department.

(11). It was also contended that the petitioner was not only member of the selection committee and the selection committee consisted of 3 persons as per the directions issued by the Government order dated 20.2.88. The selection committee interviewed the candidates and prepared the selection list. On the basis of marks obtained by the candidates the appointment orders were issued.

(12). So far as not giving the appointment to ex-servicemen is concerned, the petitioner submits that District Employment Officer Churu did not send the list containing the names of ex-servicemen and so far as sending of call letters are concerned, the same was conducted by the District Employment Officer, Churu. Even otherwise as per the roster system two posts had been filled in various projects at different townships and only two posts are available in various projects and third posts can only be filled from ex-servicemen. It was not the case of the respondents that there was any ex-serviceman available at that time who had been denied consideration/appointment.

(13). The enquiry officer was appointed by the respondent vide order dated 20.12.92 and the enquiry was conducted. The petitioner again submitted the detailed reply before the enquiry officer denying the charges levelled against him.

(14). After conducting the enquiry the enquiry officer has held the petitioner guilty of all the charges levelled against him and send a copy of the enquiry report to the petitioner along with the letter dated 30.10.95. The petitioner again submitted a reply against the enquiry report reiterating his submissions, which he earlier made vide letter dated 4.12.95.

(15). The disciplinary authority after considering the enquiry report and the reply submitted by the petitioner passed the punishment order dated 12.8.96 stopping three grade increment with cumulative effect.

(16). Aggrieved and dissatisfied with the punishment order dated 12.8.96 the petitioner preferred this writ petition on the ground that the finding of the enquiry officer was given without considering the reply submitted by the petitioner and the disciplinary authority has wrongly relied upon the enquiry report. It was specifically contended that the petitioner was one of the member of the selection committee and all the allegations alleged against the petitioner alone. This fact was also not considered by the enquiry officer as well as disciplinary authority that since the employment exchange Churu has not send any name in the category of ex-serviceman thus the appointment could not be made out of the category of ex-servicemen and the roster system was followed. The appointments were made on the respective posts.

(17). It was also contended that the order of punishment was passed by the disciplinary authority without application of mind and without appreciating the documents and evidence led before.

(18). Learned counsel for the petitioner gave much emphasis on the point that the enquiry procedure has not been followed. In support of his contention he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Sher Bahadur v. Union of India and Ors. (1), wherein the Hon'ble Supreme Court has held:

"The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence

which is neither relevant in abroad sense nor established any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter was proved, is erroneous. It is clearly a case of finding the appellant guilty of the charge without having any evidence to link the appellant with the alleged misconduct. Therefore, the order of the disciplinary authority, under challenge, cannot be sustained."

(19). In support of the submissions that the selection procedure adopted by the Board for Churu was identical to the selection procedure adopted in various districts, but nowhere else the charge was levelled against the concerned Deputy Director and the petitioner alone was singled out, in this regard learned counsel placed reliance on the judgment *Himmat Singh Bhati Vs. State of Rajasthan and Others*, wherein this Court has held that discrimination with regard to punishment cannot be followed. In the present case even the charge sheet was not issued to the other members of the Board and since the selection cannot be said to have been conducted singly by the petitioner the charge sheet and the enquiry has to be quashed.

(20). Learned counsel for the respondent has vehemently opposed the submissions made on behalf of the petitioner and also raised the objections regarding the maintainability of the present writ petition. The petitioner has filed the review petition before His Excellency the Governor of Rajasthan under Rule 34 of the CCA Rules 1958 and the review petition has been rejected on 23.9.2003 and that review petition was also submitted after lapse of 6 years. This present petition also filed against the order dated 12.8.96 after expiry of the limitation period of 3 years. Thus in these circumstances the present petition is not maintainable.

(21). Learned counsel for the respondent further emphatically denied that it was not necessary to follow roster points on daily wages basis. It was submitted that the State Government issued a notification dated 15.10.71 whereby it was directed that if any temporary appointment is made for more than 45 days, it is necessary/mandatory to follow roster system. On the basis of material and evidence available on records it was found proved by the enquiry officer that delinquent officer/petitioner made certain irregularities in appointments and rightly passed the punishment order awarding stoppage of three grade increments with cumulative effect.

(22). Mr. Maloo further submits that scope of the writ petition is very limited. This Court cannot re-appreciate the evidence under Article 226 of the Constitution of India.

(23). In support of his contention *Collector of Customs, Calcutta Vs. East India*

Commercial Co. Ltd., (3), Sheodan Singh Vs. Smt. Daryao Kunwar,

(24). On the point of judicial review he referred the judgments Union of India and Others Vs. M/s. Shatabadi Trading and Investment Pvt. Ltd. and Others, and 2002 WLC 53 (8).

(25). The petitioner replied regarding maintainability of the writ petition as the petitioner already availed the alternative efficacious remedy by way of submitting the review application before His Excellency the Hon"ble Governor under Rule 34 of the CCA Rules 1958 and the review petition has been rejected on 23.9.2003. It was submitted that no speaking order has been passed by His Excellency. Simply the review petition was returned by the Department of Personnel to the petitioner pointing out that it is time barred and to say that it has been returned or dismissed on merits, is wholly contrary to the facts.

(26). In support of his submissions he placed reliance on the judgment Collector of Customs v. A.S. Bava (9), Dr. R.K. Sharma v. State of Rajasthan (10). After referring the aforesaid judgments the petitioner submits that merely because he availed the opportunity to file a review and the review petition is dismissed only on the ground of delay, does not debar the petitioner to file the present petition in view of the aforesaid judgments.

(27). On the point of vague charge sheet learned counsel Mr. Sharma referred the case Transport Commissioner, Madras v. A. Radhakrishna Moorthi (11), wherein the Hon"ble Supreme Court has held that charge of indulging along with other officials in misappropriation by falsification of accounts-In absence of specification of the part the delinquent played, charges held to be vague and charge memo quashed. He also placed reliance on the judgments Sawai Singh v. State of Rajasthan (12), Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others,

(28). On the point that the petitioner held guilty without sufficient evidence he placed reliance on the judgment of Sher Singh v. Union of India (14), and Anil Kumar v. Presiding Officer (15).

(29). Heard rival submissions of the respective parties and perused the material available on the record as well as the judgments referred by the respective parties and the relevant rules. 1 also carefully perused the memorandum of chargesheet and the reply submitted by the petitioner.

(30). As discussed hereinabove the petitioner is no doubt has constituted a committee for selection on the post of LDC, 4th Class and Drivers. The selection committee consisted of SDM, Ratangarh as the Chairman and CDPO, Sujangarh as the Member. It is also not disputed that the candidates were given appointment on daily wages basis on the posts of LDCs, Drivers and 4th Class out of the list furnished by the Employment Exchange Churu. It is not the case of the respondent that he has not followed the circular while making such appointment. The only allegation against the petitioner was that he has not given appointment in the category of ex-servicemen. It is also not disputed that the

name of the ex-servicemen has not been sponsored by the employment exchange.

(31). Be that as it may. Considering the allegations levelled against the petitioner if at all the petitioner failed to ask for the names in the category of ex-servicemen from the employment exchange even though the petitioner alone cannot be held responsible as the selection was conducted by three members and at the time of selection no such grievance has been raised before the selection committee. I also found that the reply submitted by the petitioner before the enquiry officer and before the disciplinary authority has not been properly considered. The petitioner has categorically stated that the roster system has been fully complied with and even if in the category of ex-servicemen the appointment was not made following the roster system in the respective places. The third vacancy can only be filled by the ex-servicemen category whereas vacancies in the respective places not more than two vacancies,

(32). It is also not given in the enquiry report and in the order of the disciplinary authority as to how the petitioner alone was singled out and why the other members of the selection committee were not served with the chargesheet under Rule 16 of the CCA Rules. After going through the record it reveals that the respondent also not properly followed the procedure of the Rule 16 while initiating the enquiry against the petitioner and the conclusion has been drawn against the petitioner without sufficient evidence on the record.

(33). In view of the judgment of the Hon''ble Supreme Court in the case of Transport Commissioner, Madras v. A. Radhakrishna Moorthi (supra), the charge sheet itself is vague since sufficient evidence is not available against the petitioner. The expression "sufficiency of evidence" has been held by the Hon''ble Supreme Court in the case of Sher Bahadur v. Union of India and Ors. (supra).

(34). Thus in view of the aforesaid observations the order dated 12.8.96 by which the petitioner was punished for stoppage of three grade increments with cumulative effect is herewith quashed and set aside.

(35). Consequently, the writ petition stands allowed with no order as to costs.