
(2001) 09 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 520 of 1977

Sohan Lal Kansal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16, 18

Citation : (2002) 3 RLW 1723

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; Satish Bijarnia, on behalf of N.K. Maloo, for the Respondent

Judgement

Calla, J.—This Letters Patent Appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment and order dated 3.2.1997 passed by the learned Single Judge, whereby the petition was dismissed on the ground that the petitioner had filed the petition without exhausting the alternative remedy of preferring an appeal.

2. The contention which was raised before the learned Single Judge on behalf of the petitioner was that the order of the punishment had been passed by the Secretary, Department of Personnel, who was the Appellate Authority. The learned Single Judge took the view that it was, therefore, admitted case that the alternative remedy of appeal was available and yet the same was not exhausted. Therefore, it was mentioned in the impugned order that the petitioner was at liberty to file an appeal before the competent authority before whom this point could also be urged. We find that whereas the contention was that the punishment order had itself been passed by the Appellate Authority, there is no question of filing appeal before the same authority and therefore, the rejection of the petition on the ground that the alternative remedy was not availed of cannot be sustained. We are, therefore, required to consider the case of the appellant on merits.

3. It is the common case of the parties that the appellant petitioner was initially appointed as a Sub Engineer in the Irrigation Department of the Government of Rajasthan. On 15.3.1986, the petitioner appellant was subjected to the chargesheet for holding an enquiry under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as the Rules of 1958). The charges relate to the petitioner's working during the period 1970-71. At the time when the chargesheet was served i.e. on 28.5.1986, the petitioner was working as Junior Engineer. It also appears from this memorandum under which the chargesheet was served that an enquiry was proposed to held under Rule 16 of the Rules of 1958 against one Shri D.C. Chaturvedi (Superintending Engineer), R.L. Mathur (Executive Engineer), Jagjit Singh (Superintending Engineer), S.C. Singhal (Junior Engineer) and the present appellant who was also the Junior Engineer. Later on i.e. on 21.4.1990, an order was passed under Rule 18 of the Rules of 1958 to hold a joint enquiry against all these employees and the enquiry officer was appointed. The enquiry proceedings were started on 17.5.1990 and continued till 30.8.1994. When the enquiry report was made by the enquiry officer, the petitioner appellant had contested the findings, had filed the reply and had also submitted that the relevant record was not made available to him during the course of enquiry. The enquiry report was sent to the petitioner appellant on 15.9.1994 and thereupon the petitioner made a detailed representation against the enquiry report on 20.2.1995. It was on 28.6.1996, that the punishment order was passed and the present appellant was awarded punishment of stoppage of three grade increments with cumulative effect which is a major penalty under the CCA Rules, 1958. It has been submitted before us that Mr. D.C. Chaturvedi had already expired and therefore, the enquiry proceeded against R.L. Mathur, Jagjit Singh, S.C. Singhal and the present appellant petitioner. It is given out that the enquiry had been dropped against Jagjit Singh on the basis of the reply filed by him but R.L. Mathur was punished with the deduction of the 10% of the pension for five years and S.C. Singhal and the present appellant were punished with the stoppage of three grade increments with cumulative effect.

4. So far as the first argument of the learned counsel for the appellant that the order itself had been passed by the Appellate Authority in as much as it had been passed by the Secretary, Department of Personnel, it may be straight away observed that it was a case of the joint enquiry under Rule 18 of the Rules of 1958 and therefore, the disciplinary authority of the delinquent officer of the highest rank facing the enquiry had to pass the order and in this view of the matter, no exception can be taken if the order has been passed by the Secretary, Department of Personnel, who is otherwise the Appellate Authority so far as the present appellant is concerned. The delinquent officers in this joint enquiry included the officers of the rank of Superintending Engineer and Executive Engineer and further the Secretary, Department of Personnel could have passed the order. In the facts of the case, wherein the joint enquiry was there under Rule 18 of the Rules of 1958, this argument of the learned counsel for the

present appellant petitioner, fails. His further argument in this regard is that after holding the enquiry under Rule 18 of Rules of 1958, the enquiry report could be sent to the disciplinary authority of the present appellant petitioner for the purpose of passing the final orders. It does not make any difference at all, for the sample reason that the enquiry in this case also been held by the Addl. Commissioner for Departmental Enquiries who is higher in rank than the disciplinary authority of the petitioner and therefore, no useful purpose could be served by sending the enquiry report to the disciplinary authority of the present appellant i.e, the Chief Engineer of the Department. Even if the order of punishment would have been passed by the Chief Engineer as the appellant-petitioner's disciplinary authority, the matter could again come up in appeal before the Secretary Department of Personnel, who was to consider the matter against condelinquent Superintending Engineer and Executive Engineer as their disciplinary authority and it would have been a case of duplication of the process, giving rise to further controversy. Hence this contention is of no avail.

5. The learned counsel for the appellant has laid much stress and has argued emphatically that in the facts of the present case, the charges relate to the period 1970-71 for which the chargesheet was issued in the year 1986 i.e. after the period of 15 years and therefore, the enquiry started after such a long period of 15 years, was itself bad from its inception. He has further submitted that it was not a case in which the allegations relating to the misconduct were not known to the Department earlier or that the Department came to know about the misconduct in the year 1986 only. He has submitted that three senior officers of the Department had made a preliminary enquiry in this case in the year 1973 and thereafter, a preliminary enquiry was also held in the year 1975 wherein nothing was found against the petitioner appellant. Mr. S.P. Sharma, learned counsel has submitted that in the Irrigation Department, there are two wings; one is the technical wing and other is the working wing and there was a difference of opinion about the allegations of the misconduct between the two wings. The working wing to which the appellant petitioner belongs opined in his favour but the technical wing opined against him. In any case, the delay for a period of 15 years is not explained in any manner whatsoever according to the appellant-petitioner and in this regard, learned counsel for the appellant has also submitted before us that earlier the petitioner had filed a writ petition No. 996/1996 before this court, challenging the holding of the enquiry itself and during the pendency of that writ petition, the punishment order had been passed and therefore, that writ petition became infructuous and the same was dismissed as not pressed on 19.12.1996 and thereafter, the present writ petition was filed challenging the punishment order. His submission is that the petitioner had even challenged the holding of the enquiry itself and in fact, challenged the enquiry proceedings before the punishment order was passed.

6. The learned counsel for the appellant in support of his arguments has relied upon the case of State of Punjab and Ors. v. Chaman Lal Goyal, (1). In this case the Supreme Court was concerned with a case wherein the Superintendent of Jail

had been charged after a period of 5-1/2 years for being responsible for escape of prisoners involving death of a number of persons. The Supreme Court held that in such cases whether the enquiry stands vitiated on account of delay, should be decided by balancing process i.e. weighing the factors appearing for and against and taking decision on the totality of the circumstances. In the facts of that case, it was also observed by the Supreme Court that there were factors for as well against the officer, in the departmental enquiry, prosecution evidence had been completed and therefore, the charges and the appointment of the enquiry officer should not have been quashed but the delinquent officer, in his turn should have been considered for promotion and, if found fit, granted promotion subject to the result of the departmental enquiry and the departmental enquiry was directed to be concluded within eight months, failing which the same would be deemed to be dropped.

7. In the case of *State of Andhra Pradesh v. N. Radhakishan* (2), also the Supreme Court considered as to when the delay vitiates the enquiry proceedings and held that there are no predetermined principles applicable to all cases and in all situations, each case has to be considered taking into account all relevant facts-and circumstances and balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings may have on an employee. Unexplained delay in conclusion of the proceedings is in itself an indication of prejudice caused to the employee and in the facts of that case, the enquiry proceedings were quashed and the employee was directed to be promoted in accordance with the recommendations of the DPC. The Supreme Court had also noticed that it was a case of generalisation of the charges and the role of each employee had not been particularised in the charges.

8. In the case of *State of Madhya Pradesh v. Bani Singh* (3), the Supreme Court had found that the Department was aware of the involvement of the officer in alleged irregularities and there were no satisfactory explanation of inordinate delay in issuing the charge sheet and the disciplinary proceedings were initiated after a period of more than 12 years and the same was liable to be quashed and the order which had been passed by the Administrative Tribunal, quashing the enquiry proceedings on the ground of delay was upheld in the appeal and the same was also dismissed. The Supreme Court observed that it is unreasonable to think that the department is taking more than 12 years to initiate the disciplinary proceedings and there was no satisfactory explanation for inordinate delay in issuing the charge memo and the Supreme Court was also of the view that the delay was unfair to permit the departmental enquiry to be proceeded with at this stage. We may also notice that this case of *Bani Singh* (Supra) has been considered by the Supreme Court in the case of *State of Punjab & Ors. Chamanlal Goyal* (Supra) and in para 13 thereof it has been recorded that in the case of *Bani Singh* (Supra) there was a delay of 12 years whereas in the case of *Chamanlal Goyal* (Supra) there was a delay of 5-1/2 years. The Supreme Court has also considered the nature of the charges and observed that we did not know whether the charges in the case of *Bani Singh* (supra) were as grave as they

were in the case of Chamanlal Goyal (Supra) and observed that probably, they were not. The Supreme Court noticed yet another distinguishing feature in the case of Chamanlal Goyal (Supra) that by the date of the judgment of the High Court, the major part of the enquiry was over and that this is also a circumstance obtaining in the case for weighing the factors for and against.

9. Mr. S.P. Sharma, learned counsel for the appellant has also cited a decision rendered by one of us (Hon'ble Mr. Justice M.R. Calla) in Single Bench of this Court in case of Gopal Singh v. State of Rajasthan & Ors. (4), It was a case in which a driver had been placed under suspension in the year 1974 in contemplation of the disciplinary proceedings and in the year 1988, an enquiry under Rule 16 of the Rules of 1958 was proposed in relation to the charges of the year 1974 with regard to the wrong physical verification of parts of a vehicle. The suspension was continued for a period of 16 years and the Department was held guilty of laches and chargesheet and enquiry proceedings in that case were quashed and the suspension order was declared to be illegal and the delayed action against the delinquent employee was held to be unlawful.

10. As against this, learned counsel for the respondents has submitted that the petitioner had filed a reply to the chargesheet, had also filed written statement in the enquiry proceedings and the representation was also made but not even once he raised any plea of any prejudice or delay before the disciplinary authority and therefore, he cannot be allowed to raise this plea for the first time before this Court and this plea of delay so as to vitiate the enquiry should not be entertained. He has submitted that the Rules of 1958 do not prescribed the time limit for initiating the enquiry, therefore, it is open for the Department to initiate the proceedings at any time. In support of his submissions, he has placed reliance on case of Deputy Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey and Ors. (5). In this matter, the Supreme Court considered the question of speedy trial with reference to Articles 21 and 311 of the Constitution of India. In this case, there were serious charges of misappropriation and absconding with the official records. The disciplinary proceedings were commenced after about 16 years from the date of the incident. The Supreme Court found that the Department alone cannot be held to be responsible for the delay, the officer could not be served in enquiry proceedings as he had been avoiding service and did not co-operate in the enquiry and therefore, the proceedings could not be quashed and accordingly the matter was remanded back to the High Court. This case is of no help to the respondents as the facts are distinctly different.

11. The learned counsel for the respondents has relied upon the case of O.P. Sachdeva and Ors. v. The Food Corporation of India and Ors. (6), the Punjab & Haryana High Court in this case has distinguished the Bani Singh's case (supra) and relied upon the case of Chamanlal Goyal (Supra). In the case of O.P. Sachdeva (Supra), the enquiry proceedings were sought to be quashed on the ground that there was a delay of 7 years in the initiation of the enquiry. The

Supreme Court found that memo was served upon the petitioner for holding enquiry, shown that the petitioner was called upon to submit statement of defence within ten days but the petitioner instead of replying, filed the writ petition and in this context, the question arises whether the proceedings can be nullified for quashing the chargesheet on the ground that there was a delay of 7 years. The Supreme Court held that delay simplicitor cannot be a ground for quashing of the enquiry proceedings or order passed by the employer on the basis of such enquiry. In the case of Takhat Singh v. State of Rajasthan and Ors., (7), a Single Bench of this Court considered that there were allegations of irregularities in purchasing 109 sewing machines and thereby causing loss of Rs. 10,000/-. The initiation of the disciplinary proceedings was after about 11 years. There was a delay of 11 years in initiation of the disciplinary enquiry and thereafter, on account of interim orders, obtained by the petitioner, the enquiry could not be concluded, the charge were found to be of serious nature and in this context, the Court held that no interference was warranted in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. While arguing on this point, Mr. S.P. Sharma, learned counsel for the appellant submitted that the petitioner had taken point of delay in enquiry in his representation dated 20.2.1995, Annexure- 6 to the writ petition.

12. We have considered this objection raised by the appellant on the basis of principles which have been laid down in the cases referred to and relied upon by the learned counsel for the parties and cited before us as above. The correct principles for applying in such cases in our opinion would be therefore as under:-

1. Balance has to be struck between the purity of the administration and fairness to the delinquent employee.
2. The gravity of the charges has to be kept in view.
3. It is also to be considered as to what stage the objection of delay has been taken and what is the stage of the enquiry proceedings.
4. Whether the delay in initiation of the enquiry has been explained by any factors.

13. Applying these principles, we find that in the facts of this case the investigation had been made by three senior officers of the Department way back in the year 1973 with regard to the allegation of misconduct of the period 1970-71 and in the preliminary enquiry, which was made in the year 1975, it was reported that nothing has been found against the present appellant petitioner. In fact, there was a difference of opinion in the two wings of the Department. It was a case of joint enquiry and as such five officers were involved in the case and therefore, it took sometime. Besides this, we find that the appellant herein did not raise even a little finger on the question of delay in the initiation of the enquiry in 1986 at the very threshold and even the earlier writ was filed in the year 1996 and by that time, the enquiry report had already been submitted and the appellant had already filed his representation against the enquiry report and

even if it is accepted that the appellant had raised the objection with regard to the prejudice caused on that account, it was so raised for the first time in the detailed representation dated 20.2.1995 made against the enquiry report. So far as the gravity of the charges are concerned, we find that some charges are not of that serious nature but the charges also included the allegations of manipulation in the government record, acting fraudulently in discharging duties, destroying of the original government record and replacing it by fabrication as well as the allegation of causing heavy loss to the Government. The question is not as to whether any charge or charges in such cases are proved or not, the question is as to whether an enquiry into such charges should be allowed to be held or not after certain amount of delay.

14. Applying the principles as have been laid down which we have also summarized hereinabove, this court finds that it is not a case in which disciplinary proceedings deserve to be quashed on the ground of delay. Number of years in such cases is not important, what is important is as to whether the delay stands explained by explanation or not. This court finds that there is ample material to explain the delay in holding the enquiry in 1986 for the allegations of the period 1970-71, charges also cannot be said to be minor or non-serious, the appellant himself did not raise such an objection of delay at any point of time prior to the year 1995 when the representation was filed by the appellant petitioner against the enquiry report wherein this point was raised for the first time and by the time the objection was taken by the appellant it was too late and the enquiry proceedings were already over. Earlier writ petition was also filed in the year 1986. The cumulative effect of all these factors is that the enquiry proceedings cannot be quashed on the ground of delay. This point raised by the learned counsel for the appellant, therefore, fails, of course, we do not find any substance in the argument raised on behalf of the respondents that because on time limit is fixed under CCA Rules for initiating enquiry, it can be initiated at any time. We may observe that a hand book of instructions has been issued in this regard by the Government in which time schedule for each stage of enquiry has been fixed and the maximum time in which an enquiry should be completed is nine months whereas in this case it has taken nine years. Even if no time limit is fixed for initiating enquiry, it has to be started within a reasonable time and delay, if any, has to be explained. There may be cases in which the evidence to be tendered in defence, may wither away with long lapse of time, important witnesses may die or may not be available and therefore, the enquiry has to be initiated without any loss of time. In certain cases even evidence in support of charges may vanish and complete records may not remain available at belated stage and therefore, it is in the interest of purity of administration and fairness that enquiry proceedings are not only initiated within reasonable time but should also be completed with utmost promptitude.

15. The learned counsel for the appellant then argued before us that undisclosed material has been considered and the relevant record had not been made available to him despite his request. That in the order passed by the disciplinary

authority the material which had not been even referred to by the enquiry officer has been relied upon. It was pointed out that in the order of punishment, reliance has been placed on the technical wing's report dated 9.5.1988 which was not tendered in evidence and yet the same has been used against the appellant petitioner by the disciplinary authority while passing the order of the punishment. He has submitted that only two witnesses were examined in this case in support of the charges and even the relevant record was not made available to the enquiry officer himself. Notwithstanding the fact that the record was not made available to the enquiry officer himself the enquiry was concluded. He has referred to the ordersheet dated 22.8.1990 and 31.3.1992, recorded by the enquiry officer. The ordersheet dated 20.8.1990 shows that the relevant record was not made available by the Personnel Department and that in absence of the record, the further proceedings could not be held and the matter be sent to the Personnel Department. The next ordersheet is of 31.3.1992, according to which neither the file was returned nor any steps were taken for about 1 and 1/2 year and in the meantime, the Personnel Department vide its letter dated 22.1.1992 had conveyed that the enquiry be proceeded on the basis of whatever record was available and after 31.3.1992, enquiry proceeded, although, the complete record as ordered by the enquiry officer was not available. It is therefore, clear that the enquiry was proceeded after 31.3.1992 in absence of the complete record which was considered to be necessary by enquiry officer himself and after 31.3.1992, the enquiry was held without such record being available because the Department of Personnel conveyed that the enquiry be held on the basis of whatever record was available. It is on the basis of the such incomplete record that the charges No. 2 to 5 were found to be partly proved and charges No. 1 and 6 were not found to be proved. It is also clear by the order passed that the charges No.2 to 5 were found to be partly proved and charges No. 1 and 6 were not found to be proved against the present appellant petitioner. The reliance was placed on the letter dated 9.5.1988 which was never tendered in the evidence in the enquiry. Thus, it is clear that the enquiry had been held on the basis of the incomplete record and undisclosed material has been used against the present appellant petitioner and the charges No.2 to 5 had been found to be partly proved and the charges No. 1 and 6 had not been found to be proved. For this reason alone, the enquiry is required to be held to be unlawful. In the facts of this case, it appears to be a case of the denial of the natural justice because the enquiry was proceeded on the basis of the incomplete record. The record which was considered to be necessary by the enquiry officer himself, was not made available and the appellant was not supplied the records asked for by him. The respondents have not been able to give any answer to this factual position which by itself is sufficient to vitiate the enquiry so as to render the punishment order to be invalid.

16. The upshot of the aforesaid adjudication is that this appeal succeeds and the same is allowed. The impugned order of punishment passed by the disciplinary authority dated 28.6.1996 is hereby quashed and set aside and impugned

judgment and order dated 3.2.1977, passed by the learned Single Judge is also set aside. In the facts of this case, we do not find any point now in keeping it open to the respondents to hold the enquiry again and fresh at this stage after a long period of 30 years from 1970-71 and therefore, we order that the appellant shall also be entitled to all consequential benefits as if the punishment order had never been passed against him.