
(1986) 01 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1583 of 1979 and 1895 and 2986 of 1984

State of Rajasthan and Another

APPELLANT

Vs

Narendra Singh Verma and Others

RESPONDENT

Date of Decision : 09-01-1986

Acts Referred:

Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 — Section 2(f)

Citation : (1986) RLW 66 : (1986) 1 WLN 1

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—In all the three writ petitions similar question of law is involved, therefore, they are disposed of by this common judgment.

2. For the appreciation of controversy, facts of S.B. Civil Writ Petition No. 1583 of 1979 State of Rajasthan and Anr. v. Narendra Singh Verma and Ors. are taken into consideration. The petitioner by this writ petition has challenged the orders of the Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur, dated 15th January, 1979 (Annexure 4), 2nd April, 1979 (Annexure 6). The appellant non-petitioner No. 1 was holding the post of Second-in-Command in Border Home Guards at Bikaner with effect from 8th October, 1977 under the control of the Battalion Commandant Shri D. Ramdesani. While working under D. Ramdesani an adverse report was given to the appellant non-petitioner No. 1 and the same were communicated to him by the Reviewing Officer, the Deputy Director Home Guards, Rajasthan, Jaipur vide its letter dated 30th May, 1978. The appellant non-petitioner No. 1 submitted his representation against this adverse report, but the same was rejected and the decision was communicated to the appellant non-petitioner No. 1 on 1st August, 1978. Aggrieved against this the appellant non-petitioner No. 1 preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur.

3. A preliminary objection was raised before the Tribunal that the Tribunal has no jurisdiction to entertain such matters. The Tribunal considered this objection at

great length and ultimately came to the conclusion by its order dated 15th January, 1979 that it has jurisdiction to entertain appeal against the rejection of the representation against the adverse entries in the Annual Performance Appraisal. Thereafter on merits also the Tribunal found that the adverse remarks against the appellant non-petitioner No. 1 has not been correctly recorded and thereby it accepted the appeal and expunged the adverse remarks against the appellant non-petitioner No. 1 in the Annual Performance Appraisal for the year 1977-78. The State of Rajasthan, petitioner No. 1 here in, has preferred this writ petition and specifically raised the question that the Tribunal has no jurisdiction to entertain such appeals.

4. My answer to this question is in affirmative. The Tribunal has jurisdiction to entertain appeals against the rejection of representation against the adverse entries recorded in the Annual Performance Appraisal. In this connection, it would be proper to reproduce Section 2(f) of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976 (hereinafter referred to as the Act) as under:

Section 2(f) "Service matter" means any one or more than one of the following matters relating to a Government servant:

- (i) Seniority;
- (ii) Promotion;
- (iii) Confirmation;
- (iv) Fixation of pay;
- (v) An order denying or varying pay, allowances, pension and other service conditions to the disadvantage of a Government servant, otherwise than as a penalty;
- (vi) Cases of revision while officiating in a higher service, grade or post otherwise than as a penalty;
- (vii) Withholding the pension or denying the maximum pension otherwise than as a penalty;
- (viii) Any other matter notified by the Government.

Before I deal with this, it may also be useful to refer to the Statement of Objects and Reasons, the same are reproduced as under:

The proposal to constitute Administrative Tribunals to decide service matters was under consideration of the State Government for a long time. Service matters are broadly of two types : One type relating to disciplinary proceedings and the other relating to the rules of recruitment and other conditions of service. So far as the disciplinary matters are concerned, the Classification, Control and Appeal Rules make provisions for Departmental appeal or review. As regards the other service matters, the present practice is only of making a representation to the

Government. In both the cases an aggrieved Government servant can approach the Civil Courts, by way of suits and the High Court or Supreme Court by means of writ petitions. The ordinary civil Courts take a considerable time in deciding the service matters which is expensive and burdensome to both the Government servant and the Government. The suggestion of establishing Administrative Tribunals has been from time to time considered by the Law Commission as well as by other eminent authorities.

In view of the need for satisfactory and early final decision and to stop a flood of litigation in the Civil Courts, the State Government has decided to constitute Administrative Tribunals to decide appeals from the order of the Competent Authority and to bar the jurisdiction of the Civil Courts in service matters. These Tribunals would provide an independent forum for decision in service matters and would be more economical both to the Government Servant and the Government. It will also lessen the burden of judicial courts and enable them to concentrate on other judicial matters.

5. Thus, a survey of the Objects and Reasons will show that these Tribunals were constituted in order to mitigate hardships caused to Government servants in regard to their grievances expeditiously so as to avoid them from going to Civil Courts for their grievances. Thus, the present forum was created and all the matters pertaining to the Government servant were entrusted to the Tribunal for speedy disposal of the grievances. In this light we have to examine the whole matter.

6. The definition of "service matters" is very exhaustive one and large the important events in the service career like, seniority, promotion, fixation of pay confirmation have been specifically enumerated in Clause (i) to (iv). But Clause (v) is some what residuary clause which has widened the scope that any order denying or varying pay, allowances, pension and other service conditions to the disadvantage of a Government servant, otherwise than as a penalty. "Thus meaning thereby all matters pertaining to the service career of the candidate shall come in the scope except the penalty. The resultant position is that all incidences of service as enumerated in Clause (i) to (iv) shall be subject matter of Tribunal and any other order which varying or denying pay, allowances, pension and other service matters to the disadvantage of a Government servant pertaining to promotion, pay and allowances benefits and other service conditions which are not being enumerated shall be subject matter of the jurisdiction of the Tribunal except the penalty part. It may also be emphasised that the adverse entries in the Annual Performance Appraisal is a very important question of career of the incumbent. If the incumbent has poor report then his service career for further promotion and confirmation is going to be seriously prejudiced. Thus, to exclude the scrutiny of this matter from Tribunal will not be in consonance with the Objects and Reasons as well as the definition of Service matters defined under the Act. Since the whole career of the incumbent depends on these reports and to exclude to them as not being part of the service matters

so as to deny the jurisdiction of the Tribunal will be against the spirit of the Act itself. It is needless to emphasise that further promotion, confirmation and the pecuniary benefits which flow from such promotion depend on these reports. An adverse entry in the Annual Performance Appraisal is to fall in the definition of the "service matters". The expression "other service conditions to the disadvantage of the Government servant is a very comprehensive expression and this is wide enough to include the adverse entry in the Annual Performance Appraisal. Therefore, in my view the Tribunal has jurisdiction to decide matters pertaining to adverse entries in the Annual Performance Appraisal.

7. So far as the second question is concerned that whether the Tribunal has rightly expunged the adverse remarks remains against the appellant non-petitioner No. 1 or not. I think the Tribunal has rightly approached the matter. The Tribunal after reviewing the whole matter and directions and the guide lines given by the State Government in its Circulars from time to time has rightly held that the adverse entries made in the Annual Performance Appraisal for the years 1977-78 has not been recorded in accordance with the Circulars issued from time to time. Thus, in the result I do not find any merit in this writ petition and the same is dismissed.

8. Similarly in S.B. Civil Writ Petition No. 1895 of 1984 State of Rajasthan and Anr. v. Gulab Chand Sindal and Ors. so far as the first question is concerned I have answered in affirmative. So far as the second question regarding the adverse entries recorded in the Annual Performance Appraisal for the years 1975-76 against the appellant-non-petitioner No. 1 is concerned, the Tribunal has rightly approached the matter and after considering the circulars on the subject has held that the remarks may be treated as advisory in character because the incumbent was new entrant in the service and thereby allowed the appeal with the above observations. Thus, I do not find any merit for interference by this court in the order of the Tribunal.

9. Likewise in the case of S.B. Civil Writ Petition No. 2986 of 1984 State of Rajasthan and Anr. v. Ami Lal and Ors. so far as first question is concerned I have already answered in affirmative that the Tribunal has jurisdiction. So far as second question regarding adverse entries in the Annual Performance Appraisal for the years 1980-81 the Tribunal after going through the adverse remarks has found that the remark "integrity doubtful" is not warranted. In this case the view of the Tribunal is not correct. The following remarks were given in the Annual Performance Appraisal for the year 1980-81, which reads as under:

(1) An average officer with Average Administrative abilities but high political abilities;

(2) Integrity Doubtful.

The State Government vide order dated 8th April, 1983 partly allowed the representation of the appellant-non-petitioner No. 1 so far as remarks regarding "but high political abilities" but the other adverse remarks were upheld.

Aggrieved against this the appellant-non-petitioner No. 1 preferred an appeal and the Tribunal after considering over the matter has held that the remarks "integrity doubtful" is not rightly given by the Collector. I am afraid the view of the Tribunal is not correct. It is very difficult to pinpoint regarding the integrity of the incumbent. It can only be gathered from day to day working. It is not possible in the matter of integrity to pinpoint that in one particular case the incumbent has taken any bribe or he was influenced by extraneous considerations. If that were so it will be easier to charge sheet that incumbent. It is only the next Senior Officer under whom the incumbent is working can gather his impression by observing the action of his subordinate. In the present case the Collector has himself explained in reply to the letter of the Special Secretary, Department of Personnel that how he has formulated his opinion regarding integrity of present officer. The Collector has mentioned that he has gathered this impression on account of the reputation enjoyed by the officer and general impression created by his activities. He has been very frank enough to convey that he has not been able to catch the officer in any specific case showing lack of his integrity. But the impression he has gathered from his activities and the general working of the officer. In addition he has also mentioned one fact that the officer has managed to stay in Sriganganagar District. He has further said that he was also punished in one departmental proceeding. The Tribunal has proceeded on one aspect only namely, that simply because the officer has not been posted out from Sriganga Nagar, it cannot be inferred that his integrity is doubtful. But I am afraid the Tribunal has not taken into consideration the letter dated 14th March, 1983 (Annexure-4) of the Collector in the correct spirit. One of the reason given by the Collector for his impression was that he has managed to stay in Ganganagar for long time. But he has also said that he has gathered this impression after watching the working of incumbent and the general reputation enjoyed by officer. Thus for these three reasons the Collector has found the integrity of the appellant-non-petitioner No. 1 doubtful. Since a senior officer like Collector who had an occasion to closely watch the activities of the sub-ordinate, the impression of the Collector and the reasons given by the Collector for forming such impression cannot be lightly brushed aside. I have given my thoughtful consideration and I am of the opinion that the reasons given by the Collector do not appear to be so perverse so as to be brushed aside. The reasons given by the Collector appear to be rational and based on sound common sense. After going through these three reasons I think the Tribunal has not rightly approached the matter, therefore, the order of the Tribunal to this extent is set aside.

10. In the result I allow this writ petition in part and set aside the order of the Tribunal dated 23rd January, 1984 for setting aside the adverse entry in the Annual Performance Appraisal of the appellant-non-petitioner No. 1 for the year 1980-81.

11. In the result S.B. Civil Writ Petition No. 1583 of 1979, State of Rajasthan and Anr. v. Narendra Singh Verma and Ors. and S.B. Civil Writ Petition No. 1895 of

1984, State of Rajasthan and Anr. v. Gulab Chand Sindal are dismissed and SB Civil Writ Petition No. 2986 of 1984 is partly allowed for the reasons mentioned above. No order as to costs.