

(2001) 02 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Special Appeal No. 730 of 1997

State of Rajasthan

APPELLANT

Vs

P.D. Paliwal and Another

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 3, 3(2), 6
All India Services (Discipline and Appeal) Rules, 1969 — Rule 2, 6, 7
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16
Rajasthan Lokayukta and Up-Lokayukta Act, 1973 — Section 10
Urban Land (Ceiling and Regulation) Act, 1976 — Section 21, 34

Citation : (2001) 2 WLC 121 : (2001) 4 WLN 551

Hon'ble Judges : V.S. Kokje, J;Arun Madan, J

Bench : Division Bench

Advocate : N.K. Maloo, for the Appellant; Mahendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kokje, J.—This is an appeal from an order passed by the learned Single Judge in S.B. Civil Writ Petition No. 2335/92 decided on 17.1.97. The writ petitioner before the Single Bench was initially a member of the Rajasthan Administrative Service. In the year 1984, he was appointed by the State of Rajasthan as Competent Authority at Jaipur under the Urban Land (Ceiling and Regulation) Act, 1976 (in short "the Act"). While functioning as the Competent Authority, he passed an order on 18.8.87 exempting some land transferred by its owners to Jagjivan Gran Nirman Sahkari Samiti Ltd. a registered Cooperative Housing Society, on the basis of certain government notifications. In some other cases, the writ petitioner had rejected the application for exemption of other land owners distinguishing their cases from the cases of those who were granted exemption u/s 21 of the Act. Appeals were taken from those decisions and the Government supported the view taken by the writ petitioner in his order. However, one Prithvi Singh, a stranger to the proceedings, filed a complaint before the Lokayukta and sent a copy of the complaint to the State of Rajasthan

through the Special Secretary to the Government, Department of Personnel, urging upon the Government to exercise its revisional jurisdiction u/s 34 of the Act. The Lokayukta took cognizance of the case and ordered an enquiry and investigation into it. One Vijay Pal Choudhary intervened in the matter and made a statement. The writ petitioner was called upon to give his comments which he submitted in details before the Lokayukta. On 23.10.89, the Lokayukta found it to be a fit case for investigation u/s 10 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973. Ultimately, the State Government issued a charge sheet against the writ petitioner and a memorandum in this regard was served on the writ petitioner on 6.3.92. The writ petitioner challenged this action of the Government in a writ petition and obtained an interim stay. In the meantime, the writ petitioner was promoted to the Indian Administrative Service in the year 1993 and retired on superannuation on 31.7.96.

2. The writ petitioner challenged the action initiated against him, mainly on three grounds (i) that after his retirement, the proceedings could not continue, (ii) that on his promotion to Indian Administrative Service, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short "the Rules of 1958") under which action was initiated against him, did not apply to him and (iii) that an adjudicatory order, which was subject to appeal and revision, could not form the basis of any disciplinary proceeding against him.

3. The learned Single Judge upheld these contentions and held that the disciplinary proceedings were carried on maliciously against the writ petitioner for colat-efal purposes.

4. The State of Rajasthan has filed this special appeal against the order passed by the learned Single Judge contending that the order passed by the learned Single Judge was erroneous, it was contended that the view taken by the learned Single Judge that the disciplinary proceedings could not continue, after the retirement, was erroneous and that contradictory views have been taken by the learned Single Judge on the point as to whether the departmental proceedings initiated under the Rules of 1958 could continue after the promotion of the writ petitioner to the Indian Administrative Service, it was further contended that the decision on the point as to whether the disciplinary proceedings could be initiated on the basis of a quasi judicial order or not, is contrary to the law laid down by the Supreme Court, it was further contended that the view taken by the learned Single Judge that the charge sheet was washed away because of the writ petitioner's promotion to the Indian Administrative Service was also erroneous as the promotion was granted under an interim order of the Court passed in the writ petition which had stayed the operation of the charge sheet itself. It was further contended that the learned Single Judge erred in interfering at the interim stage with the departmental proceedings.

5. The first point to be discussed is as to whether on promotion to the Indian Administrative Service, the disciplinary proceedings pending under the Rules of 1958 against the writ petitioner could be continued. It is submitted that the writ

petitioner ceased to be governed by the Rules of 1958 on his promotion to the Indian Administrative Service and therefore, could not have been proceeded against under the Rules of 1958. A reference was made to the All India Services (Discipline and Appeal) Rules, 1969 (in short "the Rules of 1969") in this behalf and it was contended that under Rule 7 of the Rules of 1969, the proceedings could be continued by the State Government. It was pointed out that Rule 2(b) of the Rules of 1969 defines the "disciplinary authority" to mean the authority competent under the rules, to impose on a member of the service, any of the penalties specified in Rule 6. It was also pointed out that Rule 2(c) defines the "Government" to mean in the case of a member of the service serving in connection with the affairs of the State, the Government of that State. Rule 7 of the Rules deals with the authorities to institute proceedings and impose penalties. It provides that where a member of the service has committed any act or omission which renders him liable to any penalty specified in Rule 6, then, if such an act or omission was committed before his appointment to the service, the State Government if he is serving in connection with the affairs of that State, shall be competent to institute proceedings and to impose penalty.

6. On the basis of aforesaid Rule 7, it was contended that it was permissible for the State Government to institute disciplinary proceedings in respect of acts or omissions committed before the appointment to the Indian Administrative Service. The aforesaid argument does not advance the appellant's case in this appeal. What the State Government is claiming to do is to continue the departmental proceedings initiated under the Rules of 1958 against the writ petitioner even after his having become a member of the Indian Administrative Service. That is not permissible under the Rules of 1969. Rule 7 empowers the competent authority to initiate disciplinary proceedings against a member of the service, for an act or omission which was committed by him before his appointment to the service also but such proceedings have to be under the Rules of 1969 and the act or omission must be such as would render such an officer liable to penalties specified under rule 6 of the Rules of 1969. Rule 7 confers no authority to continue disciplinary proceedings on the basis of the charge sheet issued under any other Rules even after the entry of the government servant into the Indian Administrative Service. The logical conclusion of all this is that as soon as a member of the State Service is promoted to the Indian Administrative Service, he ceases to be governed by the State Service Rules and all proceedings under the State Rules against him should be deemed to have been dropped on his promotion. It is a different matter that under the All India Service Rules, such a person could be proceeded against for something done before his entry into the All India Service.

7. Normally, a person against whom disciplinary proceeding is pending would not be promoted to the Indian Administrative Service. If such a person is promoted, despite the disciplinary proceedings being pending against him, the only inference could be that the charges against him are either found to be groundless or the misconduct has been condoned by the State Government. In

the present case, the explanation of the State Government for promotion of the writ petitioner despite pending enquiry is that the charge sheet had been stayed by this Court by passing an interim order. It was also contended that as the promotion was given under an interim order, it was subject to the final decision of the writ petition. On 17.3.92, the following order was passed by the Court staying operation of the charge sheet:

" 17.3.92 Hon"ble M.R. Calla J.

Mr. Paras Kuhad, for the petitioner

Issue notice of the stay application. The rule is made returnable by 10.4.92. Notices be given "dasti" to the counsel for the petitioner. In the meanwhile, the operation of the memorandum dated 6.3.92 issued by the Department of Personnel (K- III) is hereby stayed."

Thereafter, on 13.4.92, the order was confirmed as under:

"13.4.92 Hon"ble M.R. Calla J.

Shri Paras Kuhad, for the petitioner

Shri Pekar Farooq, Dy. GA for respondents.

It has been submitted that the respondents have been served as back as on 21.3.1992. Shri Pekar Farooq wants time to file reply. The interim order dt. 17.3.92 is confirmed to last till the disposal of the writ petition. The respondents will be at liberty to file an application for vacation/modification of the stay order after filing of the reply to the writ petition. The case be listed as and when any application for vacation/ modification of the interim order is filed after filing of the reply to the writ petition."

8. It would be clear from the above that it was open to the State Government to have applied for vacation/modification of the stay order after filing its reply. No such application has been filed after the State Government filed its reply, with the result that the stay order continued. In such a situation, it cannot be said that because of the said order, the charge sheet could not have been taken into consideration while considering promotion of the writ petitioner to the Indian Administrative Service. The State Government was not only free but was duly bound to bring it to the notice of the Court that the writ petitioner was due for promotion and slaying of the operation of the charge sheet will result in his promotion to the Indian Administrative Service despite a charge sheet being pending against him. As this was not done, the State Government cannot blame this Court for having stayed operation of the charge sheet and for the resultant promotion of the writ petitioner to the Indian Administrative Service. It was because of the inaction on the part of the officers of the State Government that the writ petitioner could be promoted to the Indian Administrative Service. The State Government, therefore, shall be deemed to have condoned the misconduct or dropped the charge sheet against the writ petitioner by not moving this Court

for vacation/modification of the stay order. Actually, the respondent P.D. Paliwal has brought on record by additional affidavit the fact that he had filed O.A. No. 60/92 before the Central Administrative Tribunal when he was not being considered for promotion despite the charge sheet being stayed by this Court. The Original Application was allowed by the Tribunal on 25.11.92 and the respondent P.D. Paliwal was directed to be promoted. This order was challenged in the Supreme Court and the Supreme Court set it aside with a direction that the Government may consider the question independently and take a decision in the matter of promotion to Indian Administrative Service. Thereafter, the Government considered the question of promotion of respondent P.D. Paliwal and promoted him to Indian Administrative Service without any condition that the promotion would be subject to decision of the writ petition against the charge sheet. There is, therefore, no force in the contention that the promotion was subject to final result of the petition. The rulings cited on the point are, therefore, irrelevant to the issue involved in the case. In such circumstances, the charge sheet issued under the Rules of 1958 and the enquiry instituted thereon cannot continue on promotion of the writ petitioner to the Indian Administrative Service.

9. The next question is as to whether the charge sheet and the proceedings instituted thereon could continue after retirement on superannuation of the writ petitioner. It is true that in certain circumstances, departmental proceedings instituted while in service could continue beyond the superannuation but such proceedings could continue only for the purpose of depriving pension to the delinquent officer and only when the conditions mentioned in the Pension Rules are fulfilled. Rules 3 and 6 of the All India Service (Death cum Retirement Benefit) Rules, 1958 were referred to in this regard. Rule 3(2) provides that the Central Government may withhold or withdraw any pension or any part of it, for a specified period or indefinitely, on a reference from the State Government concerned, if after retirement, a pensioner is convicted of a serious crime or be guilty of grave misconduct. This rule obviously does not apply to the situation before us. It relates to conviction or being held guilty of misconduct after retirement. Rule 6(i) provides that right of withholding or withdrawing pension or any part of it, whether permanently or for specified period and the right of ordering the recovery from pension, of the whole or part of any pecuniary loss caused to the Central or a State Government, is reserved to the Central Government if the pensioner is found, in a departmental or judicial proceeding, to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or the State Government, by misconduct or negligence, during his service, including services rendered on re-employment after retirement. However, this right given to the Central Government is not unqualified. The first proviso to Rule 6(i) requires consultation with the U.P.S.C. before such an order is passed. The proviso contained in Rule 6(i)(a) further provides that such departmental proceedings, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final

retirement of the pensioner, be deemed to be a proceeding under this sub rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

10. The sum-total of these Rules is that if a departmental action against a member of the All India Service has commenced before his retirement, it can continue for the purpose of withholding or withdrawing the pension or recovering pecuniary loss from him even after his retirement. In the present case, as already seen, no disciplinary action under the All India Service Rules was initiated against the writ petitioner and therefore, there is no question of continuing such an action even after his retirement. An action initiated under the Rules of 1958 applicable to the State Services cannot be continued after promotion of a government servant to the All India Services and his retirement therefrom.

11. The last point is as to whether the charge sheet could be based on a quasi judicial order passed by a government servant discharging duties conferred on him by a statute. It is no doubt true that in the discharge of his duties, if a government servant commits a misconduct, only because such misconduct is committed while passing a quasi judicial order would not grant him immunity from action. It is only in case of error of judgment that the government servant is immune from departmental action but if the powers conferred by a statute are mala fide used with ulterior motives, there is no immunity from disciplinary action. The question has been considered in the recent decision of the Supreme Court in *Government of Tamil Nadu v. K.N. Ramamurthy* (1). An excerpt from an earlier decision in *Union of India v. K.K. Dhawan* (2) was quoted. It would be appropriate to reproduce the same, which is as under:

""28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

12. In *Zunjarrao Bhikaji Nagarkar v. Union of India and others* (3), it was held that a wrong interpretation of law cannot be a ground for misconduct. But of course, it is a different matter altogether if it is deliberate and actuated by malafides. In paras 41 and 43 of the decision, it was observed as follows:

"41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal."

"43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g. in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

13. In the present case, the charge-sheet points out that the writ petitioner had passed the order of exemption clearly ignoring the fact that the Cooperative Society mainly consisted of members of one family, who were the owners of the land under ceiling and out of the eight office bearers of the Society, four were the members of the family of the owners of the land. It was also alleged that the writ petitioner accepted an agreement to sell as a valid sale and it could not be believed that a senior officer like him did not know the difference between the registered sale deed and an agreement. It was further alleged in the charge sheet that one of the sellers was minor and without permission from the District Court, no sale could be effected on his behalf. It was further alleged in the charge sheet that the compromise deed attested before the Additional Distt. Judge clearly showed that the vendors had no right to transfer the land and actually, the Court had granted an injunction against transfer of land, it was therefore, alleged that the writ petitioner deliberately ignored all the aforesaid facts in holding that there was a valid sale of the land. All the aforesaid allegations were such as to show that there was a prima facie mala fide intention in passing the order. It cannot be said that charges amounted only to error of judgment in deciding a case on quasi judicial side. In such circumstances, it cannot be said that the charge sheet related to something which was done on the quasi judicial side in a normal way and therefore, could not have been given. The decision of the learned Single Judge on this count therefore, is erroneous and cannot be sustained.

14. However, since we have upheld the decision of the learned Single Judge on the ground of continuance of the proceedings under the Rules of 1958 after promotion of the writ petitioner to the Indian Administrative Service and continuance of the proceedings after his retirement, this appeal must fail and is hereby dismissed. There shall be no order as to costs.