
(2015) 03 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4432/2011

Subhash Chandra Godara

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0080

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : D.S. Rajvi, for the Appellant; Pratistha Dave, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court assailing the legality, validity and propriety of the order Annexure-5 dated 20.4.2009 whereby the petitioner was handed down a penalty of stoppage of two grade increments with cumulative effect in a departmental enquiry and the order Annexure-6 dated 14.9.2010 whereby appeal against the said order was dismissed on the ground of non maintainability.

2. I have heard arguments advanced by the counsel for the parties and have gone through the impugned orders.

3. It is not in dispute that as per Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, the petitioner being an officer in the rank of Executive Officer, Municipal Board, Nohar could not have challenged the impugned order by way of appeal but was rather required to submit a review petition. The petitioner either ignorantly/inadvertently titled his petition against the order imposing penalty to be an appeal. The concerned officer of the State Government dismissed the said petition submitted by the petitioner on an absolutely technical ground that the petitioner could have challenged the order imposing penalty only by filing a review under Rule 34 of the C.C.A. Rules and an

appeal was not maintainable. As a matter of fact, on going through the impugned order Annexure-6 passed on the memorandum submitted by the petitioner against the order dated 20.4.2009, it is evident that the same was addressed to the concerned Minister. Therefore, the Dy. Secretary who rejected the challenge made by the petitioner to the order imposing penalty was not even authorized to pass any order thereupon. The concerned officer rather than acting in a hyper technical manner should have directed that the appeal be treated as a review under Rule 34 of the C.C.A. Rules, and the same should have been placed before the appropriate authority i.e. Hon''ble The Governor for disposal. This Court fails to comprehend as to how the Dy. Secretary (Administration) took it upon himself to pass the order Annexure-6 when the memo was not even addressed to him. A bare perusal of the order Annex. 6 further reflects the total ignorance of the concerned officer regarding position of law. The Dy. Secretary (Admn.) observed that no appeal was maintainable under Rule 23 of the C.C.A. Rules against the order imposing penalty upon the petitioner. It was further expressed in the order that the petitioner was at liberty to submit a review to the concerned Minister under Rule 34 of the C.C.A. Rules within a period of 90 days from the date of order imposing penalty. Firstly, the memorandum submitted by the petitioner though purportedly titled as an appeal under Rule 23 of the Rules but nonetheless, the same was addressed to Minister. An appeal was not maintainable looking to the fact that the order imposing penalty was passed by the State Government. Thus, the petitioner was required to submit a review petition under Rule 34 of the C.C.A. Rules for consideration by Hon''ble the Governor. Therefore, evidently, the order Annexure-6 suffers from total non application of mind as well.

4. Accordingly, the writ petition is allowed. The impugned order Annexure-6 dated 14.9.2010 is declared illegal and is hereby quashed and set aside. The memo of petition submitted by the petitioner against the order Annexure-5 dated 20.4.2009 shall be now treated as a review application and shall be placed before Hon''ble The Governor for decision as per law. The bar of limitation shall not be treated as a hurdle against the petitioner's right to pursue the remedy available to him under Rule 34 of the C.C.A. Rules. The petitioner is given liberty to supplement the memo of review petition by way of a fresh memorandum as well if he so desires. No order as to costs.