
(2002) 04 RAJ CK 0073
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6044 of 1992

Tikma Ram	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

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

Citation : (2003) 1 RLW 197 : (2002) 3 WLN 612

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : S.N. Trivedi, for the Appellant; Dinesh Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This writ petition Under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 11.11.92 Annex.6 by which the petitioner was reverted from the post of LDC to the post of Class IV employee in Department enquiry held Under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as the Rules of 1958) be quashed.

2. It arises in the following circumstances :

(i) The petitioner was initially appointed as Lower Division Clerk on temporary basis in the pay scale of Rs. 490-840 for a period of 3 months till selected candidates are available through Rajasthan Public Service Commission from Scheduled Caste quota and he was given appointment vide order dated 19.3.1983 (Annex. 1) passed by the District Collector, Barmer-respondent No. 3 and in compliance of that order, the petitioner joined his duties on 21.3.83 in the office of Tehsildar, Shiwani, Dist. Barmer as LDC.

(ii) The petitioner was served with a memorandum No. 4392 dated 24.8.91 along with charge-sheet under Rule 16 of the Rules of 1958 and the same is Annex. 3.

Thereafter Shri B.L. Sharma, Sub Divisional Officer, Balotra was appointed as Enquiry Officer vide order dated 13.11.91.

(iii) The charge was levelled against the petitioner regarding carelessness in his work and by doing so he did loss in the Government revenue by making the registration at lower rates than the prescribed rates by the Government while he was working as registration Clerk in Tehsildar's Office, Pachpadra.

(iv) The petitioner submitted his reply to the charge-sheet dated 24.8.91 on 26.8.91 and the same is Annex. 4.

(v) After conclusion of the enquiry, the enquiry report was submitted by the Enquiry Officer on 14.2.92 and same is Annex. 5 in which it was stated that the charges levelled against the petitioner were found proved. Thereafter the disciplinary authority i.e. respondent No.3. The Dist. collector, Barmer vide his impugned order No. 506 dated 12.10.92 (Annex. 6) punished the petitioner and reverted him from the post of Lower Division Clerk to the post of Class IV and posted him in the office of Tehsildar, Chohtan.

3. The simple case of the petitioner is that imposition of penalty of reversion from the post of LDC to the post of Class IV employee is illegal and without jurisdiction and unconstitutional as reduction in rank of the Government servant initially recruited to a higher time scale grade service or post to a lower time scale grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to such lower post affecting the policy of recruitment itself. Hence, punishment imposed vide order dated 12.10.92 (Annex. 6) is ab initio void and should be quashed. Hence this writ petition.

4. The learned counsel for the petitioner has placed reliance on Nyadar Singh Vs. Union of India (UOI) and Others,

5. To this writ petition, the respondents filed a reply on 26.12.94 in which it was averred by them that under Rule 16 of the Rules of 1958, the Disciplinary authority is authorised to pass demotion order as has been issued in the present case and therefore, the impugned order Annex. 6 dated 12.10.92 is sustainable in the eye of law and should not be quashed and hence this writ petition filed by the petitioner should be dismissed. It has been further averred by the respondents that the case of Nyadar Singh (Supra) has no relevancy in the facts of the present case. The learned counsel for the respondent has placed reliance on Clause IV of Rule 14 of the Rules of 1958, which reads as under :

"14. Nature of Penalties : The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided be imposed on a Government Servant, namely :-

(i).....

(ii).....

(iii).....

(iv) reduction to a lower service, grade or post, or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules :"

6. I have Heard both the parties and perused the record.

7. There is no dispute in this case that the petitioner was initially appointed as LDC and there is also no dispute on the point that after completion of the Department Enquiry under Rule 16 of the CCA Rules, the petitioner was punished and his punishment was that he was made Class IV employee from the post of LDC.

8. The question for determination is whether a person initially recruited to higher time scale, grade or service or post can be reduced by way of punishment to a post which he never held.

9. I have considered the rival contentions raised at the Bar and in my considered opinion, the argument raised by the learned counsel for the petitioner should prevail and the argument raised by the learned counsel for the respondents should be straightway rejected as above question has been answered by the Hon"ble Supreme Court in the case of Nyadar Singh (supra). In that judgment, the Hon"ble Supreme Court considered the rival decisions of the different High Courts and found that there is a divergence of judicial opinion amongst the High Courts on the point. The Division Benches of the Orissa and Karnataka High Courts have held that such a reduction in rank is not possible at all. For that reliance can be placed on following two decisions:

(i) Babaji Charan Rout v. State of Orissa (1982) 1 SLJ 496 1982 Lab IC 603.

(ii) Shivalingaswamy Vs. State of Karnataka,

10. However, Madras, Andhra Pradesh and Allahabad High Courts have held that there is no limitation on the power to impose such a penalty. For that following decisions may be referred to :

(i) R. Gopal Rao Vs. The Commissioner of Income Tax,

(ii) Mahendra Kumar v. Union of India (1984) 1 SLJ 34 Kar 1984 Lab IC 1478.

(iii) S.N. Dey v. Union of India (1993 2 SLJ 114 (All)

11. The Hon"ble Supreme Court after analysing the law came to the conclusion that the view taken by Madras, Andhra Pradesh and Allahabad and Allahabad High Court Courts cannot be taken to have been laid down the principle correctly and the decision given by the Division Benches of Orissa and Karnataka High Courts were approved.

12. Thus it can be concluded that reduction cannot be made to lower rank than the one initially recruited. This was the law laid down by the Hon"ble Supreme Court in the above case.

13. When this being the position, the impugned order dated 12.10.92 (Annex. 6) cannot be sustained. By that order, the petitioner who was initially recruited as LDC was punished in a departmental enquiry initiated against him under Rule 16 of the CCA Rules, 1958 and by way of punishment, he was reverted to the post of Class IV employee from the post of LDC.

14. If the argument of the learned counsel for the respondents is to be accepted, then a person directly recruited to the post of Rajasthan Higher Judicial Service (from Advocates quota) can be reverted from that post to the post falling under Rajasthan Judicial Service on punishment in an enquiry held under Rule 16 of the Rules of 1958. Can it be possible? The answer is "No". On the same analogy and reasoning, thus a person who is directly recruited to the post of LDC cannot be reverted to the post of Class IV employee which he never held.

15. For the reasons mentioned above, the punishment imposed on the petitioner cannot be sustained.

16. The next question that arises for consideration is what orders are to be made now in this writ petition.

17. In normal Course, the penalty imposed against the petitioner through impugned order dated 12.10.92 (Annex. 6) is required to be set aside and the Disciplinary Authority is to be directed to reconsider the other penalty which it would now choose to impose. But I am of the opinion that it would be somewhat unfair that at this distance of time, the matters are reopened especially when the incident took place between 21.1.91 to 22.8.92 and looking to the fact that the petitioner was simply appointed as LDC from Schedule Caste Quota and not on a post of higher cadre and looking to the fact that the incident relates to the year 1991-92 and petitioner has suffered mental agony for long period and not only this, the petitioner is still holding the post of LDC and not the post of Class IV employee as this Court while admitting the writ petition stayed the operation of the impugned order dt. 12.10.92 (Annex. 6).

For the reasons mentioned above, the writ petition is allowed. The impugned order dated 12.10.92 (Annex. 6) is set aside and I further 12.10-92 (Annex. 6) is set aside and I further order that the proceedings taken against the petitioner would come to an end and there is no need to remit the matter to the disciplinary authority for selection and imposition of fresh penalty.

Cost made easy.