
(1981) 07 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 932 of 1974

Ved Prakash

APPELLANT

Vs

Rajasthan State Ware-housing Corporation and Others

RESPONDENT

Date of Decision : 27-07-1981

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 25

Citation : (1981) WLN 227

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The petitioner was appointed as a Technical Assistant Grade II in the Rajasthan State Warehousing Corporation (hereinafter referred to as "the Corporation") by the order of the Managing Director of the Corporation dated January 27, 1967 and was posted at Pilibanga, Distiict Sri Ganganagar. He was confirmed on the aforesaid post by the order dated July 25, 1968 with effect from June 18, 1968.

2. The petitioner was transferred to Sojat Road Office of the Corporation and while he was working there, he was placed under suspension by an order of the Managing Director of the Corporation dated February, 21, 1970. A charge sheet along with a memorandum of allegations dated April 16, 1970 was served upon the petitioner and as a result of the disciplinary inquiry a penalty of stoppage of two grade increments with cumulative effect was imposed upon the petitioner by the order of the Managing Director of the Corporation dated July 6, 1970. An adverse entry in the confidential record of the petitioner was made in which it was inter alia stated that there were some complaints against the petitioner at Sojat for which the petitioner was penalised. The Managing Director, by his letter dated February 22, 1971 informed the petitioner about the adverse entry made in his confidential record. The petitioner filed an appeal/review petition to the Chairman of the Corporation regarding imposition of penalty on October 9, 1972.

Meanwhile the respondents Nos. 4 to 24, who are alleged to be junior to the petitioner in the category of Technical Assistant Grade II, were promoted as Warehousing Managers Grade II.

3. The petitioner's grievance in this writ petition is that persons junior to him should not have been promoted on the roosts of Warehousing Managers without considering the case of the petitioner. His grievance also is that the appeal filed by him against the order of the Managing Director of the Corporation, imposing a penalty of with-holding two grade increments with cumulative-effect, has not been decided and a direction is sought for the early decision of the appeal. The petitioner has also prayed for quashing the adverse entry communicated to him by the letter of the Managing Director dated February 22, 1971,

4. The reply of the respondent Corporation is that the petitioner was informed by the letter of the Managing Director dated July 17, 1970 that he would be governed by the Rajasthan Civil Services (Classification Control & Appeal) Rules, 1958 (hereinafter called the "CCA Rules") until the Corporation frames separate rules of its own, in respect of the conduct and discipline of its employees, but the petitioner preferred an appeal/review on October 9, 1972 against the order of the Managing Director of the Corporation dated July 6, 1970 and the same was rejected by the Executive Committee of the Corporation in its meeting held on September 24, 1973. The petitioner was informed about the rejection of his review petition by the letter of the Managing Director dated March 14, 1974. It was also stated by the respondent that the petitioner's case for promotion was considered by the Departmental Promotion Committee constituted by the Executive Committee of the Corporation and which consisted of the Chairman, Managing Director and the Finance Director of the Corporation. The Departmental Promotion Committee scrutinized the record of all eligible candidates including the petitioner, but found the respondents more suitable than the petitioner. The respondents were promoted on the posts of Warehousing Managers Grade II, on the basis of the recommendation of the Departmental Promotion Committee, which was accepted by the Executive Committee of the Corporation in its meeting held on December 28, 1973. According to the respondent corporation, the petitioner had wrongly stated in the writ petition that his case for promotion was not considered, while the Departmental Promotion Committee had considered the petitioner's case for promotion but did not find him suitable. The respondents also stated that the adverse entry was justified as the penalty imposed upon the petitioner by the Managing Director was maintained by the Executive Committee, as the appeal of the petitioner was rejected.

5. It is not in dispute that the penalty of with-holding two grade increments with cumulative effect was imposed upon the petitioner by the order of the Managing Director dated July 6, 1970 (Exhibit 2). At that time the Corporation had no separate rules for the conduct and discipline of its staff and the CCA Rules were applicable to the employees of the Corporation. The Corporation later framed the

Rajasthan State Warehousing Corporation (Staff) Regulation, 1974 which were published for the first time in the Rajasthan Rajpatra dated January 20, 1975. But earlier thereto the employees of the Corporation were governed by the Rajasthan Government rules on the subject. Rule 25 of the CCA Rules provides that an appeal could be preferred against the penalty imposed upon a Government servant within a period of three months, before the authority to which the authority imposing penalty was subordinate. The petitioner, who was also then governed by the CCA Rules, like Government servants, ought to have preferred an appeal to review petition within the period statutorily allowed under those Rules. The petitioner has averred in the writ petition that he did not know whether he was governed by the CCA Rules or by the Corporation Rules and that he repeatedly requested the Managing Director of the Corporation to intimate to the petitioner as to by which rules he was governed," so that he could file appeal but the Managing Director did not inform the petitioner about the appellate authority until 20.9.1972 But the respondent has stated in its reply that the Managing Director by his letter dated July 17, 1970 informed the petitioner that he was governed by the CCA Rules until separate rules were framed by the Corporation. The petitioner had no reason to wait for more than two years before proceeding to file his appeal or review petition before the Chairman of the Corporation or the Executive Committee of the Corporation. The Chairman or the Executive Committee was the next higher authority to the Managing Director of the Corporation and an appeal should have been preferred by the petitioner to that authority, within the specified period. The Executive Committee of the Corporation rejected the review petition filed by the petitioner, by its resolution dated September 24, 1973 on the ground that the same was barred by time and an intimation was sent to the petitioner of such rejection by the letter of the Managing Director dated March 14, 1974. In view of the fact that the so called appeal of the petitioner has already been disposed of, no direction is necessary from this court now in this respect.

6. The adverse entry, which contains a statement to the effect that the petitioner was penalized in respect of his conduct at Sojat cannot be held to be unjustified as the Managing Director had imposed a penalty of stopping two grade increments with cumulative effect upon the petitioner by his order date July 6, 1970 and the said order remains unaffected and has become final and conclusive, because the appeal/review petition filed against that order was rejected by the Executive Committee of the Corporation as time-barred. In the face of the adverse entry, the Departmental Promotion Committee cannot be said to have acted unjustly in holding that the petitioner was not suitable for promotion to the posts of Warehousing Managers Grade II and in proceeding to promote persons junior to the petitioner on the said posts.

7. Learned Counsel for the petitioner argued that the order of the Managing Director dated July 6, 1970 imposing the penalty of with-holding two grade increments with cumulative effect was also bad in law as no reasons were assigned for imposition of penalty upon the petitioner. The order should have

been challenged by the petitioner in an appeal or a revision petition filed within time in accordance with the provisions of the CCA Rules, which were then applicable to the petitioner. Moreover, in the present writ petition filed on March 20, 1970 a challenge in respect of the order passed by the Managing Director as early as on July 6, 1970 could not be entertained. The petitioner has not sought any relief in this writ petition for quashing the order of the Managing Director dated July 6, 1970 imposing penalty upon him, apparently because the order of imposition of penalty was passed almost four years before the filing of the writ petition.

8. The main grievance of the petitioner in the present writ petition is about the promotion of persons junior to him to the posts of Warehousing Managers Grade II, without promoting the petitioner. The petitioner has erroneously stated in the writ petition that his case for promotion was not considered whereas the respondent Corporation has stated in its reply that the petitioner's case was considered but he was not found suitable for promotion by the Departmental Promotion Committee constituted for the purpose. As a penalty was imposed upon the petitioner by the order of the Managing Director dated July 6, 1970 and two grade increments were withheld with cumulative effect there appears to be good ground for not promoting the petitioner and the Departmental Promotion Committee was justified in considering other persons junior to the petitioner more suitable for promotion as compared to the petitioner.

9. Considering all the facts and circumstances of the case, I find no merit in this writ petition and the same is dismissed. The parties are left to bear their own costs.