
(1973) 03 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 257 of 1968

Vijay Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) RLW 431 : (1973) 6 WLN 385

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—The petitioner was serving as Head Constable in Police Lines, Sirohi, when he was placed under suspension on February 22, 1964. The Superintendent of Police ultimately passed an order (Ex. 1) on June 10, 1965 reverting him to the post of Constable for a period of six months and forfeiting half his salary for the suspension period. The Deputy Inspector General of Police thereupon issued a notice (Ex-2) to the petitioner on April 12, 1966 to show cause why the penalty should not be enhanced in view of the gravity of the charges against him. The petitioner contested that notice on the ground, inter alia, that an action for the enhancement of the penalty had not been initiated within six months, it was not permissible to enhance the penalty. The Deputy Inspector General, however, enhanced the penalty by order Ex.3 dated July 26, 1966 by reducing the petitioner to the rank of Constable for a period of two-and-a-half years. He however allowed him the maximum pay of the Constable's grade & further directed that, after the completion of the period of his reversion, he would get the same pay which he was getting on the date of the order. The petitioner preferred an appeal to the State Government, which was referred to the Rajasthan Public Service Commission. The Commission expressed the view that there was no force in the appeal, and it was dismissed by the Government by order Ex 4 dated January 29, 1968. He has now approached this Court by

means of the present petition Under Article 226 of the Constitution for a redress of his grievance.

2. The State of Rajasthan has filed a reply controverting the petitioner's claim in the writ petition and I shall have occasion to refer to the admitted facts in a while.

3. The only point which has been argued is that the impugned order (Ex 3) of enhancement of the penalty is invalid because the action to enhance the penalty was initiated by the Deputy Inspector General of Police more than six months after the date of the order of the Superintendent of Police, Sirohi. The other grounds mentioned in the writ petition have not been urged for the Court's consideration.

4. That Rule 32 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, hereinafter referred to as "the Rules", which bears on the argument of the learned Counsel, reads as follows:

32. The authority to which an appeal against an order imposing any of the penalties specified in Rule 14 lies may, if no appeal has been preferred therefrom of its own motion or otherwise, call for and examine the records of the case in a disciplinary proceeding held by an authority subordinate to it and after making further investigations if necessary, revise any order passed in such a case and after consultation with the Commission where such consultation is necessary:

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order to any other authority directing such further action or inquiry as it considers proper in the circumstances of the case; or

(d) pass such order as it deems fit: Provided that:

(1) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;

(2) if the appellate authority proposes to impose any of the penalties specified in Clauses (iv) to (vii) of Rule 14 in a case where an inquiry under Rule 16 has not been held, it shall, subject to the provisions of Rule 19, direct such an inquiry to be held & thereafter on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it deems fit;

(3) no action under said rule shall be initiated more than 6 months after the date of order to be revised.

Proviso (3) of the rule thus provides that no action by way of review against an

order imposing any of the penalties specified in Rule 14 "shall be initiated more than 6 months after the date of order to be revised," and the question is whether such an action was initiated within that period of time? The question cannot, however, be answered in the abstract, for its answer really depends on the facts and circumstances of the case, with due regard to the requirement of the rule.

5. The meaning of the expression "initiate" does not appear to present any difficulty, for Webster has defined it to mean "make a beginning of", "perform or facilitate the first action, steps, or stages of", or "mark the beginning of". The facts of the present case have therefore to be examined with reference to this definition.

6. Now the undisputed facts, on which the learned Counsel for the parties are in agreement before me, are these: The order (Ex. 1) of the Superintendent of Police, imposing the aforesaid penalty on the petitioner, was passed on June 10, 1965. It has been stated by the respondent State that the Deputy Inspector General of Police sent memorandum Ex 6-1, dated August 30, 1965, to Superintendent of Police, Sirohi, asking him to send the file of the departmental inquiry which had been conducted against the petitioner. He received that file, examined it and sent memorandum Ex.5, 3 dated October 11, 1965 to the office of the Inspector General of Police under registered acknowledgement due post. He stated in that memorandum that during his inspection he checked one bag full of articles in the store, but the person who incharge of it could not explain it, and that the Superintendent of Police, in that connection, awarded the punishment of reduction in rank for six months to the petitioner. He further stated, in clear terms, that the punishment awarded by the Superintendent of Police was "considered" by him to be "lenient" and that it was a fit case for "enhancement of penalty". He however expressed the view that as he had "detected the whole affair", he did not consider it advisable to enhance the penalty himself and that he was therefore sending the record for the orders of the Inspector General. These facts clearly show that the Deputy Inspector General had not only called for and examined the record of the case relating to the disciplinary proceeding which had been held by the Superintendent of Police, but had taken the decision that it was, prima facie, a fit case for taking further action for the enhancement of the penalty. If the Deputy Inspector General had not taken the view that because the shortage had been detected by him at the time of his inspection, action by way of an enhancement of the penalty should be taken by the Inspector General, he would no doubt have himself given an opportunity to petitioner of making any representation which he might have wished to make against the proposed enhancement. The period of six months had not expired when memorandum Ex-5-2 dated October 11, 1965 was despatched to the Inspector General of Police, and I have therefore no doubt that the Deputy Inspector General had "initiated" the action for enhancing the penalty within the period of six months prescribed by the rule. It appears that some time was lost because of the correspondence with the Inspector General of Police, and that was why the issue of the show cause notice (Ex-2) was delayed until April

12, 1966, for the Inspector General took the view that the Deputy Inspector General could himself take the necessary action. But that would not seem to matter for, as has been stated, the action to enhance the penalty had been initiated by the Deputy Inspector General, who was the competent authority, well in time, in the manner already stated I may refer to *Mohanlal v. State of Rajasthan* 1963 RLW 209 where a Division Bench of this Court has expressed the view that proceedings should be taken to commence "when process is ordered to issue against such person, or when the authority makes up its mind to take action." So when the Deputy Inspector General of Police had taken a decision, in the present case, after calling for and examining the record, that the punishment which had been awarded by the Superintendent of Police appeared to be lenient, and that the case was fit for further action for the enhancement of that penalty, he had thereby initiated the action to enhance the penalty well within the period of six months prescribed for it by Sub-rule (3) of Rule 32 of the Rules. I am fortified in this view by certain observations in *Ramankutty v. State of Kerala and Anr.* 1973 (1) SLR 408 to which reference has been made by Mr. Mathur. It has been held in that case the real question in such cases is whether a decision has been taken to take the proceeding in question against the delinquent.

7. Mr Singhvi has placed considerable reliance on the decision in *Shankatu Khan v. Director of Postal Services, Andhra Circle, Hyderabad* 1972 SLR 875 for the argument that a mere decision of the competent authority is not sufficient in such cases and that it is also necessary that that authority should issue a notice to the delinquent officer calling upon him to show cause why the punishment noted out to him should not be enhanced. I have gone through that decision, but it was taken on the basis of a provision of the law which was quite different, and on different facts. There, the penalty of reduction in the salary was imposed on December 31, 1968, and the reviewing authority merely called for the record within six months and did nothing more. The notice calling upon the delinquent officer to show cause why the penalty should not be enhanced, was issued after the expiry of the period of six months which had been prescribed for it. In that case, therefore, the reviewing authority had not examined the record of the case and had not taken the decision to initiate the proceedings for the enhancement of the penalty within the prescribed time limit. If I may say so with respect, that decision cannot therefore avail the petitioner.

8. It has to be appreciated that the issue of the show cause notice cannot really be the criterion for deciding whether action has been initiated under Sub-rule (3) of Rule 32 of the Rules to enhance the penalty within the prescribed period of six months, because that notice is required to be given only if the reviewing authority wants to make an order "imposing" or "enhancing" the penalty, and not if it proposes to make any of the other orders mentioned in Rule 32. Thus a notice or opportunity for making a representation is not required to be given if the reviewing authority wants to modify or set aside the order to the petitioner's advantage, and there is no reason why that authority should not be deemed to have initiated the action in such a case if it calls for the record, examines it and

takes a decision that it shall process the case further, by way of consultation with the Commission or otherwise, for modifying or setting aside the earlier order. The issue of the notices (or the giving of the opportunity for making the representation) is not therefore the only test for deciding whether action has been initiated in a given case under Sub-rule (3) of Rule 32.

9. As I have reached the conclusion that the Deputy Inspector General had initiated the action to enhance the penalty within the time limit prescribed by law, I do not find any merit in this writ petition and it is dismissed. In the circumstances of the case there will, however, be no order as to the costs.