

State and anr Vs. Lakhpat Raj

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Court : Rajasthan Jodhpur

Decided On : Mar-31-2014

Appellant : State and anr

Respondent : Lakhpat Raj

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

D.B.Civil Special Appeal (Writ) No.494/2005 The State of Rajasthan and anr.

V/s Shri Lakhpat Raj Date of Judgment::- 31.3.2014.

PRESENT Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice Vijay Bishnoi Mr.K.L.Thakur, Additional Advocate General for the appellants.

Mr.M.S.Singhvi, Senior Advocate with Mr.Amit Tatia for the respondent.

JUDGMENT

BY THE COURT (Per Hon'ble Amitava Roy,CJ.The subject matter of challenge in the instant appeal is the judgment and order dated 10.8.2005 whereby the penalty of compulsory retirement with proportionate pension imposed on the respondent-writ-petitioner by way of disciplinary measure has been annulled.

We have heard Mr.K.L.Thakur, learned Additional Advocate General for the appellants-State and Mr.M.S.Singhvi, learned Senior Counsel for the respondent-

writ-petitioner.

The prefatory facts preceding the initiation of disciplinary proceeding against the respondent-writ-petitioner are that at the 2 relevant time i.e.in 1983, he was Executive Engineer, Public Health & Engineering Department (PHED) and posted as Technical Assistant to the Additional Chief Engineer at Ajmer.

Civil suits had been instituted by four firms with regard to the disputes arising out of the contracts awarded to them for drilling hand pumps at various places by the department.

Vis-a-vis the said civil proceedings, the respondent-writ-petitioner was appointed as officer-incharge on behalf of the State of Rajasthan.

According to him, on 3.2.1983, he received a letter dated 1/2.2.1983 signed by the Deputy Secretary to the Government of Rajasthan, Medical & Health (Group-4) Department, Jaipur addressed to the Chief Engineer, PHED, Jaipur with a copy endorsed to him.

A proforma of proposed compromise containing the terms and conditions thereof also did accompany the letter.

The letter mentioned that in conformity with the opinion expressed by the Law Department of the State, if the agencies involved were prepared to compromise the suits, then the same may be entered into in terms of the accompanying format and accordingly, the same be filed in Court.

The letter also mentioned the particulars of communication of the Law Department approving this couRs.of action.

By the endorsement at the foot of the letter vis-a-vis the respondent-writ- petitioner at serial no.2 to whom a copy thereof was forwarded, he was asked to get the compromise prepared and filed in Court immediately and inform the department accordingly.

The 3 respondent-writ-petitioner on receipt of this letter contacted the concerned learned Government Advocate at Ajmer, who by his letter dated 3.2.1983 required

him to verify the details of the compromise from the Chief Engineer, Jaipur.

To this, the respondent-writ-petitioner replied by his letter dated 4.2.1983 that the compromise proforma was correct and that the process needs to be completed early.

The learned Government Advocate, however, addressed a letter dated 4.2.1983 to the Collector, Ajmer, Chief Secretary, Government of Rajasthan, Law Minister, Government of Rajasthan and the officer-in-charge i.e. respondent-writ-petitioner opining that the State Government ought to reconsider the terms of the compromise.

As the respondent-writ-petitioner perceived that in view of the instructions contained in the letter dated 1/2.2.1983, in the capacity of the officer-in-charge on behalf of the State-respondents early action ought to be ensured, he by his letter dated 4.2.1983 insisted that the compromise be effected as instructed by the higher authorities.

It, however, transpired that there was thereafter some rethinking at the higher level and the respondent-writ-petitioner was subsequently informed telephonically by the Chief Engineer on 7.2.1983 not to take further steps in the matter of compromise.

The respondent-writ-petitioner has averred that on receiving such instruction, he did not further verify the compromise which however was filed in Court on or before 7.2.1983, but eventually, in absence of verification, was withdrawn and no order was passed thereon.

A memorandum of charges dated 21.11.1985 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, hereinafter referred to as the Rules.) was however served on the respondent-writ-petitioner with the following charge:- That the said Shri L.R.Pithi, while working as XEN, PHED and officer-in-charge in the litigation case between the State Govt.

and the four firms of Bhilwara (earlier engaged in drilling of Hand Pumps) displayed undue haste in advising the Govt. Advocate, Ajmer to file an agreement

(which letter proved spurious) in the court of Munsif, Ajmer.

Shri Pithi ignored the advice of the Govt.

Advocate for review of the decision and instead of seeking advice from the higher authorities became instrumental in getting a spurious agreement filed in the court.

The conduct of Shri Pithi in the affair was thus not only unbecoming of a responsible officer but also sizeable loss to the Govt.

but for the timely detection of the fraud and the remedial measure taken.

The details of the charge is available in enclosed Statement of Allegations.

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The essence of the charge is that he while working as Executive Engineer and officer-in-charge on behalf of the State in the suits had- (i) displayed undue haste in advising the learned Government Advocate to file the agreement (which letter proved 5 spurious).(ii) ignored the advice of the learned Government Advocate for review of the decision and instead of seeking advice from the higher authorities became instrumental in getting a spurious agreement filed in Court.

The respondent-writ-petitioner was thus charged of a conduct unbecoming of a responsible officer which could have resulted in sizeable loss to the Government but for the timely detection of the fraud and the remedial measures taken.

Finally, a joint enquiry against the respondent-writ-petitioner alongwith Shri G.P.Nagar, Deputy Secretary to the Government of Rajasthan (author of the letter dated 1/2-2.1983).Shri Prakash Sharma, Legal Assistant, Shri Gulshan Kapur, Legal Assistant and Shri Manoharlal Sharma, Upper Division Clerk was held and on the completion thereof, the enquiry officer submitted his report holding inter-alia that the charge levelled against the respondent-writ-petitioner was proved.

As the said report would reveal, the enquiry officer, to start with, had accepted that the letter dated 1/2.2.1983 had been written to the Chief Engineer, PHED and copy thereof had been forwarded amongst others to the respondent-writ-petitioner

and that thereby, it was instructed that if the contractors were willing to compromise the suits, in terms of the stipulations contained in the format therefor accompanying the same, it be 6 filed in Court.

The enquiry officer noticed as well that thereby the respondent-writ-petitioner was advised to file the compromise in Court immediately and inform the department accordingly.

The enquiry officer thus expressed his reservation as to how this letter dated 1/2.2.1983 could reach the respondent-writ-petitioner on 3.2.1983 and commented that it was possible that it had been carried by some one.

The enquiry officer also noted that the copy of the letter forwarded to the respondent-writ-petitioner did not contain the signature of the author thereof and as the learned Government Advocate having found the proposed terms of the compromise to be not in order, he requested the respondent-writ- petitioner to get it verified from the Chief Engineer, PHED, Jaipur.

The enquiry officer observed that inspite of this, it did not occur to the respondent-writ-petitioner that there was a possibility of the format being forged or erroneous.

The enquiry officer thus inferred the probability of dishonest involvement of the respondent-writ- petitioner in the process.

He noticed as well that the respondent- writ-petitioner without getting the compromise format verified, by his letter had insisted upon the learned Government Advocate to get it filed in Court without however indicating that it had been found to be in order.

That though the learned Government Advocate, by his letter addressed amongst others to the Collector, Ajmer, Chief Secretary, Law Minister and the respondent-writ- petitioner did forward certain suggestions with the 7 recommendation that the State Government ought to re-examine the matter, the respondent-writ-petitioner insisted that the compromise, as the terms and conditions thereof had been approved by the Law Department, ought to be filed, was noted.

From all these, the enquiry officer concluded that the charge levelled against the respondent-writ-petitioner stood proved.

The disciplinary authority thereafter concurring with the findings of the enquiry officer held the respondent-writ-petitioner guilty of misconduct as charged and imposed on him the penalty of compulsory retirement with proportionate pension.

The respondent-writ-petitioner being aggrieved by this decision, approached this Court with S.B.Civil Writ Petition No.296/1991 which was disposed of on 23.10.1991 interfering with the order of penalty chiefly on the ground that the copy of the enquiry report had not been furnished to him before imposing the same.

Thereafter, on remand, the respondent-writ-petitioner having been supplied with the copy of the enquiry report, submitted a detailed representation, whereafter by order dated 15.6.1993, the disciplinary authority again returned the finding that the charge of misconduct levelled against him had been proved and imposed the penalty of compulsory retirement with proportionate pension.

It would be appropriate to extract the relevant excerpt from this order:- ..

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- - . 0 1 . Y - " As would be apparent from the above text, the disciplinary authority though did deal with the different contentions raised by the respondent-writ-petitioner, those were negated, however, without reference to the evidence on record.

As would be evident, except generally concurring with the ultimate conclusion recorded by the enquiry officer, no analysis of the materials was independently made and no finding with regard to the charge in categorical terms on the basis thereof was recorded.

Vis-a-vis the plea of the respondent-writ-petitioner that no loss had resulted and that in the fiRs.information report that was filed with regard to the episode the police on completion of the investigation had submitted final report, the disciplinary authority observed that no imputation of loss had been made as a segment of the

charge and 10 that the drills of police investigation and disciplinary proceeding are not inter-dependent so much so that even on submission of final report, on the proof of charge in the disciplinary proceeding, the delinquent can be penalised.

Aggrieved by the said decision, the respondent-writ-petitioner again turned to this Court.

The learned Single Judge, on an elaborate consideration of the materials on record and the rival submissions made, dealt with the circumstances acted upon by the enquiry officer independently and concluded that the impugned decision was not sustainable and consequently, interfered with the order of compulsory retirement and held that the respondent-writ-petitioner was entitled to all consequential benefits.

The learned Single Judge, as the impugned judgment and order would reveal, was of the view that the approach of the disciplinary authority qua the explanations offered by the respondent-writ-petitioner in his representation was cursory and superficial and that those were not considered in true sense of the term.

It was observed that the disciplinary authority did act in contravention of Rule 16(9) of the Rules, inasmuch as, it failed to consider the record of the enquiry and register its independent finding on the charge as required thereby.

Vis-a-vis the circumstances acted upon by the enquiry officer, the learned Single Judge was of the view that even he (enquiry officer) had himself accepted that it was not impossible for the letter to reach Ajmer from Jaipur in a day and held that the receipt thereof on 11 3.2.1983 was not a circumstance to conclusively create any doubt with regard to the involvement of the respondent-writ-petitioner in the alleged process of creation of spurious document.

The learned Single Judge also recorded that as the copy of the letter dated 1/2.2.1983 had been forwarded to the respondent-writ-petitioner, absence of signature of the author thereon also could not be taken to be a circumstance against him as normally the original of a document bears such signature.

The learned Single Judge was also of the view that in the face of the instructions to him to act without any delay it was quite possible that the respondent-writ-petitioner had acted bonafide in insisting on the filing of the compromise deed at the earliest.

The learned Single Judge also held that the action taken in haste per se is no misconduct.

That the finding of the enquiry officer was also not in categorical terms vis-a-vis-the charge was recorded as well.

Mr.Thakur has emphatically argued that the charge having been proved against the respondent-writ-petitioner, considering the gravity of the misconduct, the penalty of compulsory retirement ought not to have been interfered with.

As the evidence on record did amply establish that the respondent-writ- petitioner had acted in undue haste being motivated by extraneous considerations rendering his conduct to be wholly unbecoming of a public officer, the penalty as imposed by way of disciplinary measure was called for and commensurate in the facts and 12 circumstances of the case.

The learned Additional Advocate General urged that the learned Single Judge did leave out of consideration vital pieces of evidence on record rendering his ultimate conclusion unsustainable.

Mr.Singhvi in reply has argued that as admittedly, the letter dated 1/2.2.1983 had been issued by the Deputy Secretary to the Government of Rajasthan, Medical & Health Department, it can by no means be termed as spurious as alleged and thus, the very basis of the charge levelled against the respondent-writ-petitioner being non-existent, no interference with the impugned judgment and order in any view of the matter is warranted.

This is more so as Mr.G.P.Nagar, Deputy Secretary to the Government of Rajasthan, Medical and Health Department was also proceeded against for disciplinary action and meted out the same penalty.

The learned Senior Counsel argued that not only the respondent-writ-petitioner was duty bound to act in terms of the advice contained in the letter dated 1/2.2.1983 to avoid disciplinary action which clearly explains his insistence for the filing of the compromise format/deed as ratified by the Law Department at an early date, no loss having been caused to the Government, there existed no foundation for taking disciplinary action against him.

Referring to the statements amongst others of the Additional Chief Engineer and the Chief Engineer of the department holding office at the relevant time that even if the compromise deed in the form as 13 initially forwarded would have been filed, no loss would have occurred to the State-respondents, Mr.Singhvi has argued that the charge levelled against the respondent-writ-petitioner is frivolous on the face of the record.

The learned Senior Counsel reiterated that not only the treatment of the evidence on record by the enquiry officer had been faulty, the disciplinary authority having failed to independently examine the materials on record and arrive at its own finding on the charge, there has been a violation of the mandate of Rule 16(9) of the Rules thus vitiating the penalty.

According to Mr.Singhvi, as the learned Single Judge had exhaustively dealt with the materials on record and had recorded his findings on the basis thereof, there is no patent illegality afflicting the impugned judgment and order and thus, no interference therewith is called for in the interest of justice.

Mr.Singhvi to buttress his arguments placed reliance on the decision of the Hon'ble Apex Court in Roop Singh Negi V/s Punjab National Bank and ORS.((2009) 2 SCC570.

We have extended our anxious consideration to the pleadings, the documents on record and the arguments advanced.

A bare perusal of the charge extracted hereinabove would demonstrate in clear terms that the essence thereof is the perceived haste with which the respondent-writ-petitioner was found inclined to have the compromise deed filed in Court.

There is no allegation of being an interested party in getting the 14 compromise format designed in the form as accompanying the letter dated 1/2.2.1983 with the ultimate motive of causing loss to the Government.

There is no dispute that the contents of the letter dated 1/2.2.1983 did disclose that the compromise format had been duly approved by the Law Department and that the respondent-writ-petitioner had been advised to file it immediately in Court, if acceptable to the plaintiffs and intimate the department accordingly.

In this factual setting, though the learned Government Advocate might have rightly expressed his reservations with regard to the terms and conditions embodied in the compromise format, the insistence on the part of the respondent-writ-petitioner to have it filed in Court per se did not prove his culpability on any count to constitute a misconduct warranting disciplinary action.

The circumstances noticed by the enquiry officer have been dealt with in sufficient details hereinabove.

It is noticeable that the enquiry officer inferred dishonest involvement of the respondent-writ-petitioner in the matter merely from his insistence to file the compromise deed in Court by disregarding the fact that he had been doing so under the instructions of his superior officers. His persistent requests to the learned Government Advocate therefore in absence of any incriminating evidence in support of such deduction, in our considered opinion, did not establish any delinquent complicity of his.

Admittedly, neither the Government had suffered any loss nor 15 the evidence of the Additional Chief Engineer and the Chief Engineer as witnesses in the disciplinary proceeding that even if the compromise format forwarded with the letter dated 1/2.2.1983 would have been filed, no loss would have occurred to the Government, can be lightly ignored.

Rule 16(9) of the Rules requires the disciplinary authority to independently analyze the record of the enquiry and record its independent findings on each charge.

A bare perusal of the order dated 15.6.1993 demonstrates that the disciplinary authority has not adhered to this statutory mandate.

Its findings vis-a-vis the points taken by the respondent-writ-petitioner in his representations are by way of expression of general concurrence with the enquiry officer and by no means amount to compliance of the imperatives of Rule 16(9) of the Rules.

The Hon'ble Apex Court in Roop Singh Negi (supra) has held that a departmental enquiry is a quasi judicial proceeding and that the disciplinary authority and the appellate authority are duty bound to record reasons as the orders of penalty entail civil consequences.

Their Lordships held as well that an enquiry report, if based on surmises and conjectures, cannot be sustained.

That in a departmental enquiry suspicion howsoever high cannot be a substitute for legal proof, was also recorded.

On a perusal of the impugned judgment and order as a whole, we find ourselves in total agreement with the findings 16 recorded therein.

The learned Single Judge has on the basis of the indepth analysis of all essential aspects adjudged the disciplinary proceeding to be invalid and interfered with the penalty imposed.

Having regard to the scope of scrutiny in the present appeal in the exercise of the power of judicial review, we find no persuasive or weighty reason to take a different view.

The appeal thus fails and is dismissed.

(Vijay Bishnoi)J.

(Amitava Roy)CJ Parmar