

Sawai Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-16-1982

Reported in : 1982WLN280

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 1666 of 1975

Appellant : Sawai Singh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. M.R. Singhvi

Disposition : Petition allowed

Judgement :

S.K. Mal Lodha, J.

1. The only point involved in this writ petition under Article 226 of the Constitution of India is whether the disciplinary authority concerned who tentatively decided to impose the punishment of removal from service under Rule 14 (vi) of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules') could impose the graver punishment of dismissal from service under Rule 14 (vii) of the Rules at the time of the passing of the final orders. '

2. The facts necessary for determining the aforesaid question may succinctly be stated: while the petitioner was working as Patwari, Mokhampura, Tehsil Bali, District Pali, he was served with a memorandum dated July 28, 1967 issued by the Collector (L.R.) Pali along with charge sheet and statement of allegations. The petitioner filed reply to the charge sheet. The Collector appointed Shri P. K. Garg, S.D.O., Pali as Enquiry Officer. The Enquiry Officer conducted the enquiry and submitted his report. On the basis of the report, the petitioner was exonerated in respect of four charges but one charge was found to be established against him. The Collector agreed with the finding of the Enquiry Officer. He issued a show cause notice (Ex. 6) as required by Article 311(2) of the Constitution as it existed then. In this notice the penalty of termination from service proposed to be imposed was stated by the Collector. The petitioner submitted his reply to the show cause notice on June 22, 1970. The Collector passed the order (Ex. 9) dated July 13, 1970 imposing penalty of dismissal from services. Aggrieved by the order of dismissal from service, the petitioner lodged the appeal. The Board of Revenue for Rajasthan, Ajmer by its order (Ex. 12) dated March 29, 1971 while upholding the order of dismissal from service rejected the appeal. The petitioner lodged further appeal but he was unsuccessful vide order (Ex. 14) dated June 13, 1975. Thereafter, the petitioner has filed this writ petition under Article 226 of the Constitution of India for quashing the orders Ex. 9 dated July 13, 1970, Ex 12 March 29, 1971 and Ex. 14 dated June 13, 1975. In the writ petition, the petitioner also prayed for certain ancillary reliefs. No reply was filed on behalf of the non-petitioners.

3. I have heard Mr. M.R. Singhvi, learned Counsel for the petitioner and Mr. D.S. Shishodia, learned Government Advocate for the non-petitioners.

4. It was contended by Mr M.R. Singhvi, learned Counsel for the petitioner that it was not open to the Collector to impose the graver punishment of dismissal from service when in the show cause notice (Ex. 6) under Article 311(2) of the Constitution as it existed then, he tentatively decided to impose the punishment of termination from service and as such, the order of dismissal from service so passed was void and without jurisdiction and hence, it must be set aside.

5. Article 311(2) of the Constitution as it existed then reads as under:

311(2). No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of asking representation and the penalty proposed but only on the basis of the evidence adduced during such inquiry

Provided that this clause shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

After considering the reply to the show cause notice, the Collector passed the order (Ex. 6) imposing penalty of dismissal from service.

6. A similar question arose before a Division Bench of the Orissa High Court in *Dayanidhi Nath v. B.S. Mohanty* : AIR1955 Ori33 . The Division Bench observed as under:

There can be no strict compliance with Clause (2) of Article 311 unless the penalty that is eventually passed is either the same, or lesser in degree than that which was proposed to be passed against a civil servant.

As there was contravention of mandatory provisions of Article 311(2) of the Constitution in consequence of which the order of dismissal was held void and inoperative.

7. Dayanidhi Nath's case : AIR1955 Ori33 was noticed by a Division Bench of the Bombay High Court in B.K. Pandey v. State 1967 (15) SLR 95. In that case, the point canvassed was that when the authority concerned tentatively decided to impose the lesser punishment of discharge from service, it was not open to that authority in passing the final order to impose a graver punishment of dismissal from service. Dayanidhi's case was noticed by their Lordships of the Supreme Court in Hukam Chand v. Union of India : [1959]1SCR892 and it was not dissented as far as this aspect is concerned. In S.K. Pandey's case 1967 (15) SLR 95, the principles laid down in Dayanidhi's case : AIR1955 Ori33 were followed and it was held that the order of dismissal from service is invalid having been passed in contravention of Article 311(2) of the Constitution. Dayanidhi's case : AIR1955 Ori33 and B.K. Pandey's case 1967 (15) SLR 95 were again followed in Brandaban v. State : AIR1970 Ori81 . It was observed as under:

Law is well settled that if the punishment tentatively proposed against a civil servant is of a lesser kind, but after hearing his representation he is awarded a graver form of punishment there is non-compliance with the provisions of Article 311(2) of the Constitution.

A somewhat similar question arose in Govind Ram v. State of Himachal Pradesh 1974 (1) SLR 474. In that case, R.S. Pathak, C.J. (as he then was) has himself in the following words:

The importance of the requirement that the penalty proposed should be clearly and specifically mentioned in the notice is apparent. If the notice indicates that it is proposed to remove the Government servant the subsequent imposition of the penalty of dismissal will render the order of dismissal void. It is open to the punishing authority to impose a lesser penalty than the one proposed but there can be no dispute that it is not competent for that authority to impose a heavier penalty than the one indicated in the notice. The position becomes just as difficult where there is no indication at all whether the lesser heavier penalty is proposed. It is, therefore, necessary that a show cause notice should clearly and specifically indicate the penalty which is proposed by the punishing authority. It is only then that a Government servant is able to assess the kind of case which he must set up

in reply to the show cause notice. Vague expression in such a notice can afford no indication of the severity of the penalty proposed to be visited on him.

In that case, show cause notice, the order of dismissal from service and the appellate order were quashed. It was left open to the authority concerned to issue fresh notice to the petitioner to show cause against the punishment proposed against him and to carry on the proceedings from that point. No decision taking a different view has been brought to my notice.

8. Upon the aforesaid consideration and respectfully following the aforesaid decisions of the Orissa, Bombay and Himachal Pradesh High Courts. I am of opinion that graver punishment could not have been imposed on the petitioner from one which was mentioned in the show cause notice (Ex. 6) under Article 311(2) of the Constitution as it existed then and as such, it was not open to the Collector at the time of passing the final order to impose a graver punishment of dismissal from service under Rule 14 (vii) of the Rules, when at the time of issuing show cause notice (Ex. 6) he tentatively decided to impose a lesser punishment of termination from service under Rule 14 (vi) of the Rules. I, therefore, hold that the order (Ex. 6) dated July 13, 1970 of dismissal from service is invalid as it was passed in contravention of Article 311(2) of the Constitution as it existed then. Consequently, the orders Ex. 12 dated March 23, 1971 of the Board of Revenue and Ex. 14 dated June 30, 1975 of the State of Rajasthan are also illegal and they have to be set aside.

9. The result is that the writ petition is allowed and the orders Ex. 9 dated July 13, 1970 of dismissal from service, Ex. 12 dated March 20, 1971 of the Board of Revenue and Ex. 14 dated June 20, 1975 of the State of Rajasthan are quashed. There will be no order as to costs of this petition.

10 This order will not how ever preclude the Disciplinary Authority concerned to pass any fresh orders in accordance with law.