

Phool Chand Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-18-1980

Reported in : 1980WLN(UC)311

Judge : S.C. Agarwal, J.

Appeal No. : S.B. Civil Writ Petition No. 364 of 1979

Appellant : Phool Chand

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.C. Agarwal, J.

1. The petitioner in this writ petition filed under Article 226 of the Constitution, was employed as a Patwari. While he was posted at Village Goda Hema, Tehsil-Sanchore, he was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules 1958 (hereinafter to be referred as 'the Rules') whereby, the petitioner was informed that it was proposed to hold an enquiry against him under the Rules on seven charges set out in the statement of charges and explained in the statement of allegations appended to the said memorandum. The petitioner submitted his reply on July 30, 1976,

wherein, he refuted the said charges, and submitted that the charges have been falsely levelled against him at the instance of certain person) who were inimical toward the petitioner. By his order dated 16th April/August, 1976 the Collector, Jalore, appointed the Sub Divisional Officer, Bhinmal, as the Enquiry Officer, to conduct an enquiry into the aforesaid charges. The Enquiry Officer submitted his report on June 25, 1977, wherein, he found the petitioner guilty of all the charges except charge No 3 On July 20, 1977, the Collector sent a notice to the petitioner, whereby he informed the petitioner that considering the report of the Enquiry Officer, he had arrived at the conclusion that the petitioner should be dismissed from the service, and the petitioner was required to show cause against the proposed punishment. In response to the aforesaid show cause notice the petitioner submitted a representation on August 8, 1977, wherein, he submitted that the charges levelled against him had not been proved In his reply aforesaid, the petitioner also submitted that the Enquiry Officer had wrongly closed the evidence of the petitioner on April 30, 1977, even though, the petitioner had sent a telegram informing the Enquiry Officer about his illness and his inability, to appear before the Enquiry Officer on April 30, 1977. The Collector, Jalore, by his order dated September 23, 1977 imposed the punishment of removal from service on the petitioner. The petitioner filed an appeal before the Board of Revenue, against the aforesaid order passed by the Collector, Jalore dated September 23, 1977. The said appeal was dismissed by the Board of Revenue by its order dated October 4, 1978. Being aggrieved by the order dated September 23, 1977, passed by the Collector, Jalore, removing the petitioner from service, and the order dated October 4, 1978, passed by the Board of Revenue, the petitioner has filed this writ petition wherein, he has prayed that a writ of certiorari or any other writ, order or direction, be issued to quash the aforesaid orders.

2. In the writ petition, aforesaid, the petitioner has challenged the validity of the order dated September 23, 1977 passed by the Collector, Jalore, removing the petitioner from his service on the ground that the Collector did not consider the submissions made by the petitioner, in his reply to the show cause notice and that the order which was passed by the Collector, was in contravention of the provisions of Rule 16 of the Rules. In the writ petition), the petitioner has also challenged the validity of the order passed by the Collector, Jalore on the ground

that the Collector while imposing the punishment of removal from service on the petitioner, had taken into consideration the fact that the petitioner had been punished once in the year 1976 and twice in the year 1977, and that the petitioner was not afforded any opportunity to submit his explanation with regard to his past conduct on which reliance had been placed by the Collector for imposing the punishment of removal from service on the petitioner. As regards the order dated October 4 1978, passed by the Board of Revenue the case of the petitioner is that the said order cannot be held to be a speaking order in as much as the Board of Revenue has failed to take into consideration the various points raised by the petitioner in his appeal, even though they were urged by the learned Counsel for the petitioner during the course of his arguments before the Board of Revenue.

3. By its order dated January 9, 1980, this court had directed that the writ petition be listed for hearing on March 28 1980, after a part-heard case, if any, and the respondents were given six week's time to file their reply to the writ petition. No reply has, however, been filed on behalf of me respondents, and the averments in the writ petition have remained uncontroverted.

4. As regards the order dated September 23,1977, passed by the Collector, Jalore. imposing the punishment of removal from service on the petitioner, Shri Mridul, the learned Counsel for the petitioner, has urged the following contentions:

(i) Rule 16(10)(ii)(b) of the Rules imposes a mandatory duty on the Disciplinary Authority to consider the representation if any made by the Government Servant, in reply to the show cause notice, and the Disciplinary Authority in the discharge of the said duty is required to examine objectively the submissions contained in the said representation and that in the present case, the Disciplinary Authority, i.e the Collector Jalore, in his order dated September 23,1973, has not even referred to the various submissions contained in the reply submitted by the petitioner to the show cause notice, which shows that the Collector has not considered the said reply of petitioner.

(ii) In his order dated September 23, 1977. The Collector, Jalore, while imposing the punishment of removal from service on the petitioner, has taken into consideration the fact that the petitioner had been punished once in the year 1976

and twice in the year 1977 without affording to the petitioner any opportunity to make his submissions with regard to the past conduct on which reliance has been placed and the order of punishment passed by the Collector, Jalore, after taking into consideration the past conduct of the petitioner has thus been passed in disregard of the principles of natural justice.

5. Clause (i) of sub rule (10) of Rule 16 of the Rules lays down that if the Disciplinary Authority, having regard to its findings of the charges, is of the opinion that any of the penalties specified in clause (iv) to (vii) of Rule 14 should be imposed, it shall furnish to the Government servant a copy of the report of the Inquiring Authority and where the Disciplinary Authority is not the Inquiring Authority a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority, and give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry. Clause (ii) of Sub-rule (10) of Rule 16 of the Rules consists of two sub-clauses. Sub-clause (a) provides that in cases in which it is necessary to consult the Commission the record of the inquiry together with a copy of the notice given under clause (i) and the representation made in response to such notice if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice. Sub-clause (b) of Clause (ii) of Sub-rule (10) of Rule 16 reads as under:

(b) On receipt of the advice of the Commission, the Disciplinary Authority shall consider the representation, if any, made by Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant, and pass appropriate orders in the case.

6. From a perusal of the provisions of Sub-clause (b) of clause (ii) of sub Rule (10) of the Rule 16, it is apparent that it imposes an obligation on the Disciplinary Authority to consider the representation submitted by the Government servant in reply to the show cause notice. A Division Bench of this court in *Kuldeep Singh v.*

Union of India 1974 RLW 171, has laid down that the word 'consider' or the process of consideration has within its ambit an examination of the circumstances with objectivity rather than a mere subjective conclusion, and that any objective consideration necessarily implies the examination of two sides. The aforesaid observations with reference to the provisions of Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. In my opinion the interpretation placed by this Court on the word 'consider' in Kuldeep Singh's case (supra) can equally be applied to the said word contained in Rule 16 (10) (ii) (b) of the Rules. This would mean that the aforesaid provisions impose on the Disciplinary Authority a duty to make an objective examination of the submissions contained in the representation submitted by the Government servant in reply to the show cause notice. An objective examination of the submissions would imply that the Disciplinary Authority must record its reasons for rejecting the said submissions. In other words Rule 16(10)(ii)(b) of the Rules postulates that the Disciplinary Authority must record its reasons for rejecting the submissions made by a Government servant in his representation. In the present case, the reply submitted by the petitioner to the show cause notice served on him, shows that the petitioner had raised various objections with regard to the conduct of the Enquiry Officer. One of the aforesaid objections was with regard to the Enquiry Officer having closed the defence evidence on 30th April, 1977 and having proceeded to hold the Enquiry ex-parte, even though the petitioner had sent a telegram on April 30, 1977, with regard to his illness and consequent inability to appear before the Enquiry Officer on 30th April, 1977. The order dated September 23, 1977, passed by the Disciplinary Authority does not show that the various submissions contained in the representation have been given due consideration by the Disciplinary Authority. In the circumstances, it must be held that the Disciplinary Authority has failed to consider the representation submitted by the petitioner in reply to the show cause notice, and the order dated September 23, 1977 was passed by the Collector, Jalore, in contravention of the provisions of Rule 16(10)(ii)(b) of the Rules.

7. In my opinion the second contention urged by Shri Mridul with regard to the validity of the order dated September 23, 1977, passed by the Collector, Jalore, also merits acceptance. The relevant portion of the said order, may be reproduced as under:

^fuEu gLrk{kjdrkZ }kjk foHkkxh; tkap i=koyh] tkap fjiks ZV rFkk iVokjh }kjk izR;qRrj dk iw.kZ :i ls voyksdu fd;k x;k Jh 'kekZ ds fo:) vkjksi ua0 3 dsk NksM+dj IHkh vkjski izekf.kr gksrs gs SA buds vykok Hkh Jh 'kekZ dks 1976 es ,d ckj o 1977 es nks ckj n.M+ fn;k tk pqdk gS A ftlls ;g Li'V gksrk gS fd ;g iVokjh ykijokg ,oa Hkz'V gS A

vr% ;g vko';d le>k tkrk gS fd Jh QqypUn 'kekZ dsk ukSdjh es j[kuk Bhd ugh gS A

vr% Jh QwypUn 'kekZ dsk iVokjh dsk jkT; Isok (Remove) Is gVk;k tkrk gS A

8. This shows that in imposing the punishment of removal from service on the petitioner, the Disciplinary Authority has taken into consideration the past conduct of the petitioner viz. the fact that the petitioner has been punished once in the year 1976 and twice the year 1977, and from the said past conduct the Disciplinary Authority has inferred that the petitioner is negligent and corrupt.

9. In the State of Mysore, appellant v. Mancha Gowda, respondent : [1964]4SCR540 the Supreme Court has laid down as under:

If the proposed punishment is mainly based upon the previous record of the Government servant and that is not Disclosed in the notice, it would mean that the main reason for the proposed punishment is withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. What the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a master of fact that; the earlier punishments were imposed on him or that he knew of his past record. What the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his

notice, he might explain that he had no knowledge of the remarks of his superior officers that he had adequate explanation to offer for the alleged remarks of that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers.

We therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishment or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

10. In the present case, neither in the original charge-sheet, nor in the show cause notice, that was served after the submission of the report of the Enquiry Officer, is there any reference to the past record of the petitioner. Shri Mridul has submitted that if the petitioner had been afforded an opportunity to submit his explanation with regard to his past conduct and the punishments imposed on him in the years 1976 and 1977 respectively, he would have been able to point out that two of the punishments imposed on the petitioner had been set aside in appeal and that the only punishment which remained was one which was imposed upon the petitioner for delaying the preparation of the record and was only a minor punishment. The petitioner has thus suffered serious prejudice as a result of the Disciplinary Authority, having passed the order for removal of the petitioner from service, after taking into consideration the past record of the petitioner, without affording to the petitioner any opportunity of making his submissions with regard to the same. The order dated September 23, 1977 has thus been passed in violation of the principles of natural justice and is liable to be quashed.

11. As regards the order passed by the Appellate Authority, viz. the Board of Revenue, the submission of Shri Mridul, the learned Counsel for the petitioner is that the Appellate Authority was required to pass a speaking order giving reasons indicating that it has taken into consideration the various submissions made by the appellant before it. Shri Mridul has submitted that in present case the Board of Revenue has passed the order dated October 4, 1978 dismissing the appeal of the petitioner without taking into consideration the various submissions made by the

petitioner in the memo of appeal aid that in so far as the submissions are concerned, the order passed by the Board of Revenue, cannot be held to be a speaking order. Shri Mridul has further pointed out that the Board of Revenue, while dealing with the appeal of the petitioner, has not even cared to examine the record carefully, and the Board has upheld the order passed by the Disciplinary Authority, on the basis that the petitioner had taken bribe from Asq(sic), s n of(sic) Jama, even though the said charge (charge No. 3) has been held to be not proved by the Enquiry Officer, as well as the Disciplinary Authority. In my view, the aforesaid contention of Shri Mridul mint be accepted. In the Si-mens Engineering and . v. The Union of India and Anr. : AIR 1976 SC1785 the Supreme Court has emphasised that where an authority makes an order in exercise of quasi-judicial functions, it must record its reasons in support of the order it makes. In that context learned Judge of the Supreme Court have observed as under :

The Collector in revision did give some port of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1665. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend a surance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Jaw, they may have to be so replaced it is essential that administrative authorities and tribunals should a card fair and proper bearing to the persons sought so be effected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the ad judicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audialteram partam, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

12. In the present case, the petitioner in his memo of appeal had urged a number of grounds, wherein, the petitioner had challenged the findings recorded against him by the Enquiry Officer in respect of the charges which have been found proved. The petitioner had also challenged the order of the Disciplinary Authority on the ground that it had failed to take into consideration, the submissions contained in the reply to the show cause notice. The petitioner, in his memo of appeal had also raised the ground that his defence evidence had been wrongly closed by the Enquiry Officers April, 30, 1977. In addition, while dealing with the previous penalties, the petitioner, in his memo of appeal, had pointed out that in respect of two of the punishments the petitioner had been exonerated by the Board of Revenue, and the third punishment was not worth cognizance because it was a minor punishment for the default of not preparing records in time. The order passed on October 4, 1978 by the Board of Revenue, shows that the Board of Revenue has merely summarized the charges levelled against the petitioner, and the findings recorded in respect of the charges. In the aforesaid order, the Board of Revenue has made no reference to the various submissions contained in the memo of appeal filed by the petitioner. In the writ petition, the petitioner has made a categorical statement to the effect that during the course of arguments before the Board of Revenue, the counsel for the petitioner had assailed the order of punishment on the grounds set out in the memo of appeal and had urged that said grounds during the course of his submissions. There is no reason to disbelieve the aforesaid averment in the petition. It is reasonable to assume that the petitioner, who had agitated before the Disciplinary Authority the question with regard to the denial of the opportunity to him by the Enquiry Officer to adduce defence, and had raised the same in his memo of appeal, would have urged the same during the course of his submission before the Board of Revenue. Thus, it appears that the Board of Revenue has dismissed the appeal of the petitioner without taking into consideration, the various submissions made by the petitioner in support of the said appeal, and the order passed by the Board of Revenue, dismissing the appeal of the petitioner, cannot be regarded as a reasoned order in accordance with the decision of the Supreme Court in *Siemens Engineering and Co. v. The Union of India* (Supra).

13. Shri Mridul lastly urged that the Enquiry Officer has erred in not affording an opportunity to adduce defence evidence and in proceeding against the petitioner in the said enquiry. As I am of the view that the orders passed by the Disciplinary Authority and the Appellate Authority, are liable to be quashed, and the matter should go back to the Disciplinary Authority for consideration on the question as to whether the petitioner should be afforded an opportunity to adduce defence evidence, can be considered by the Disciplinary Authority.

14. In the result, the writ petition is allowed. The order dated September 23, 1977; passed by the Collector, Jalore and the order dated April 10, 1978 passed by the Board of Revenue, Rajasthan, Ajmer are quashed. The matter shall go back to the Collector, Jalore, who shall deal with the case of the petitioner from the stage of the consideration of the reply submitted by the petitioner in reply to the show cause notice served upon him. In the circumstances, there will be no order as to costs.