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Court : Rajasthan

Decided On : Dec-09-1980

Reported in : 1980WLN(UC)575

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 992/1974

Appellant : Sare Mal

Respondent : The State and ors.

Advocate for Pet/Ap. : Shri. M. Mridul

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. The petitioner has challenged the order of reversion (Exhibit 8) dated December 23, 1978 passed by the Collector (Land Records) Sirohi, the order dated June 4, 1974 (Exhibit 9) passed by the Board of Revenue in appeal against the order of the Disciplinary Authority and the order of the State Government (Exhibit 10), dated October 19, 1973 passed on review application of the petitioner.

2. The petitioner was appointed as Inspector (Land records) by the order of the Commissioner, Jodhpur No. 8712 dated April 5, 1961, after selection by the Rajasthan Public Service Commission and after unnergoing Kanugo Training. The petitioner was thereafter confirmed on the post of Land Records Inspector by the order of the Collector, Jalore, No. L.R. 1718 dated April 28, 1964. The petitioner was then transferred to the office of Assistant Registrar Cooperative Societies, Sirohi, by the order of the Collector, Sirohi, dated April 22, 1965. When the petitioner was working as a Sales Officer in the Cooperative Societies, Sirohi, he was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, (hereinafter, referred to as the Rules wherein it was proposed to hold an inquiry against the petitioner. The petitioner was served with a charge-sheet and statement of allegations by the Collector, Sirohi. He submitted his written statement of the defence to the charge-sheet, wherein he denied the charges. The Collector, Sirohi, first appointed the Treasury Officer as an Inquiry Officer, thereafter, the Tehsildar, Sirohi was appointed as an Inquiry Officer.

3. The petitioner averred that he cited 9 defence witnesses in his written statement of defence and had also prayed that seven documents mentioned in Para No. 4 (A to N) of his written statement may be called and kept on the record of the departmental inquiry, but neither the record was called nor the petitioner was examined along-with defence witnesses Pyare Lal, Virendra Kumar, Chella, Natha, Kana, Gajaram nor was heard in person. The Inquiry Officer after holding the inquiry came to the conclusion that charge No. 1 read with charge No. 4 and charge No. 2 read with charge No. 5 are partly proved and charges Nos. 3,6 and 7 are not proved. After the findings of the Inquiry Officer dated February 29,1970, the Collector Sirohi, issued a show cause notice as to why the petitioner be not dismissed from service. The petitioner submitted his reply to the show cause notice. The Collector, Sirohi, by his order dated December 23,1970, reverted the petitioner from the post of Girdwar Kanugo to the post of Patwari. The petitioner preferred an appeal against the order of the Disciplinary Authority, but the same was rejected by the Board of Revenue vide Exhibit 9 dated June 4, 1971. Thereupon, the petitioner preferred an appeal/review application before the Government but the Government dismissed the same. Thereafter, the Collector

(Land Records) Sirohi, issued the order of reversion Exhibit 11. The petitioner has challenged the orders passed by the authorities, in the disciplinary proceedings against the petitioner on several grounds.

4. On behalf of the State of Rajasthan no counter to the writ petition has been filed.

5. I have heard Shri M. Mridul learned Counsel for the petitioner and Shri H.N. Calla learned Additional Government Advocate for the non-petitioner.

The State of Rajasthan (1)

7. The learned Additional Government Advocate Shri Calla could not dispute this position that the statements of most of the witnesses were not recorded as a whole but in their statements their affidavits were made the part of their statements. He could not justify this manner of recording of the evidence of witnesses. Under Sub-rule 6(A) of Rule 16, it was provided that the Inquiring Authority shall in the course of inquiry consider such documentary evidence and take oral evidence as may be relevant or material in regard to the charges and a right was conferred on the government servant to cross-examine the witnesses in support of the charges and to give evidence in defence. It would appear from this provision that the Inquiring Authority is required to record the oral statements of the witnesses in support of the charges. This would mean that the method of recording evidence by introducing affidavit in the statement is not warranted by this provision. Besides that the Inquiring Authority itself made some obstructions in its report as to how the affidavits were got sworn. That makes the affidavit evidence suspicious. Only the statements of some of the witnesses have been recorded in full orally, else the statements of most of the witnesses have not been recorded in full but their affidavits have been made part of their statements. Firstly this procedure is not warranted by sub Rule 6(a). Further it is also contrary to principles of natural justice. In *Kanhaiyalal v. State of Rajasthan* (supra) it was observed that:

In view of these circumstances, it was very necessary for the officer conducting the inquiry that he should have recorded the entire oral evidence in the presence

of the petitioner. Even apart from any particular rule or procedure, natural justice required that the entire evidence ought to have been recorded in his presence. In failing to do so, the officer conducting the enquiry not only violated the procedure laid down by Rule 16 but acted even against the principles of natural justice.

8. It is true that in Kanhaiyalal's case emphasis was placed on recording of the evidence in the presence of delinquent Government servant but it has also been observed that the entire oral evidence should be recorded by the officer conducting the enquiry. It may be stated that the affidavits were prepared or sworn not in the presence of delinquent Government servant but they were prepared and sworn in his absence. It may be that the deponent may not testify on oath the contents of his earlier affidavit if his statement is recorded on oath orally in the presence of the delinquent Government servant.

9. The Inquiring Authority has made use of affidavit evidence as put into statements extensively on all the charges. Of course the statements of some of the witnesses have been recorded by the Inquiring Authority as deposed orally before him without reference to any affidavit, but it would not be proper to consider the conduct of inquiry partly as valid and partly as invalid. As large number of witnesses have made their statements with reference to their affidavits so it would be proper that the whole of the inquiry may be held to be improper and illegal and the proceedings of inquiry shall stand vitiated on that account and the inquiry proceedings deserve to be quashed. If the inquiry proceedings are quashed, automatically the orders based on the inquiry will fall and it is not necessary to consider the contention of Shri Mridul that the impugned orders are not speaking orders, so deserves to be quashed on that ground.

10. Shri Mridul next contended that in the circumstances of this particular case, it could not be proper to order re-inquiry into the matter. He carried me through the findings of the various charges recorded by the inquiring authority. The statements of most of the witnesses have not been believed by the inquiring officer and doubts have been expressed on their versions. The learned inquiring authority of course believed the statement of Chela supported by the statements of PW 13 Suremal Khandelwal and PW 14 Shri Kasuwa Mali and has found that the

petitioner had recovered Rs. 20-56 paisa in excess. The learned authority also believed the version of PW 9 Natha, PW 8 Kana and PW 7 Deepa and has found that a sum of Rs. 300/- was paid to and petitioner by Deepa the brother of Natha against his loan account and similarly a sum of Rs.1980 was realised from Deepa and Rs. 13.13 Kana PW 8 in excess, which were not deposited in the treasury. Thus it was found that a sum of Rs. 353-49 was not deposited by the the petitioner and was realised in excess. Mr. Mridul emphasised that no complaint was lodged by the witnesses for a very long period. The affidavits were not prepared within 8 to 10 days and the divergent versions appearing in the affidavits and statements of the witnesses were observed by the inquiring authority, so it would not be proper in the interest of justice to allow re-inquiry in the matter after a lapse of 14 years when the amounts were said to have been recovered by the petitioner. Mr. Mridul supported this contention by referring to some cases.

11. Shri Kalla on the other hand vehemently refuted the submission of Mr. Mridul and urged that in financial matters where charges are for defalcation and misappropriation, the matter may not be viewed lightly. If the petitioner would have been prosecuted and defence would have been proved against him, he would have been convicted and dismissed from service in departmental proceedings. Shri Calla urged that there has been breach of trust of office by the petitioner. If any illegality has been committed in the conduct of inquiry then the proper thing would be that charges may be again enquired into in the presence of the petitioner.

12. Having considered the rival submission in the facts and circumstances of the case, I am not inclined to accept the contention of Mr. Mridul In charges involving financial matters, the matter has to be viewed seriously and it is always better for the petitioner to get himself exonerated of the charges after inquiry. It is true that the petitioner has already faced an inquiry once and has suffered mentally and otherwise for a very long period but on that basis it would not be justified that the direction may be given for not conducting inquiry second time.

13. In the right of the above discussion the writ petition deserves to be allowed.

14. Accordingly the writ petition is allowed and the proceedings , relating to recording of evidence in the inquiry are quashed and consequently the impugned orders dated 23-12-1970 of the Collector, Sirohi, 4th June, 1971 of the Board of Revenue and 19th October, 1973 of the State Government are quashed and setaside. However, it would be open to the disciplinary authority to conduct the inquiry afresh.

15. In the circumstances of the case the parties shall bear their own costs of the writ petition.

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