

Amba Lal Vs. State of Rajasthan and Others

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Court : Rajasthan

Decided On : Dec-21-2000

Reported in : 2001(2)WLC545; 2001(2)WLN178

Judge : B.S. Chauhan, J.

Acts : Rajasthan Panchayat Samities and Zila Parishads Act, 1959 - Sections 31 and 89; Rajasthan Panchayat Samities and Zila Parishads Service (Punishment and Appeal) Rules, 1961 - Rules 2 and 7; [Constitution of India](#) - Articles 309 and 311(1)

Appeal No. : S.B. Civil Writ Petition No. 717 of 1999

Appellant : Amba Lal

Respondent : State of Rajasthan and Others

Advocate for Def. : A.L. Dave, Adv.

Advocate for Pet/Ap. : M.S. Singhvi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Chauhan, J.

(1). The instant writ petition has been filed for quashing the charge sheet dated 30.4.96 (Annex.2) and seeking a direction for release of retirement dues alongwith interest.

(2). The facts and circumstances giving rise to this case are that on the date of retirement, i.e. 30.4.96, petitioner was served a charge sheet for the alleged misconduct committed by him during the years 1987-88 and 1988-89 alongwith statement of allegations under rule 7 of the Rajasthan Panchayat Samitis and Zila Parishads Service (Punishment & Appeal) Rules, 1961 (for short, 'the Rules, 1961) and his post retiral benefits had been withheld. He moved the authorities and the Additional Divisional Commissioner, vide order dated 19.12.96 (Annex. 12) directed the Vikas Adhikari to prepare the pension case of the petitioner, but the same have also not been paid.

(3). The charge sheet has been challenged on the ground that the same has been issued by the Vikas Adhikari, respondent No. 5, who had no competence to initiate the disciplinary proceedings and, therefore, it remained inconsequential. On the other hand, it has been contended by the respondents that the Controlling Authority can always initiate the disciplinary proceedings and, therefore, petitioner is not entitled for any relief whatsoever.

(4). The issue involved herein is no more res integra as the same has been considered by the Hon'ble Supreme Court in a catena of decisions.

(5). In State of M.P. vs. Sardul Singh (1), the Supreme Court held that Article 311 (1) of the Constitution provides for guarantee to a civil servant that he would not be dismissed or removed by any authority subordinate to his appointing authority but it does not provide for further guarantee that disciplinary proceedings in case of dismissal or removal of a civil servant should also be Initiated and conducted by the authority mentioned therein. The Court observed as under:-

'But for the incorporation of Article 311 of the Constitution even in respect of matters provided therein, Rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servant. Hence, we are unable to agree with the High Court that the guarantee given under Article 311 (1)

Includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also, be initiated or conducted by the authorities mentioned In the Article.'

(6). In State of U.P. vs. Ram Naresh Lal (2), the Hon'ble Apex Court held that there was nothing in the Constitution debarring the Government from conferring powers on an officer other than the Appointing Authority to dismiss a Government servant, provided he was not subordinate in rank to the Appointing Authority.

(7). In Sampuran Singh vs. State of Punjab (3), the Apex Court held that Disciplinary Authority may be different from the Appointing Authority and, thus, it is not necessary that an employee can be removed only by the Appointing Authority. Article 311 of the Constitution requires that the Government servant should not be dismissed/removed from service by an Authority below his Appointing Authority. Thus, he can be removed by the Authority higher than his appointing Authority.

(8). In Scientific Advisor to the Ministry of Defence vs. S. Denial, (4), the Supreme Court held that even if the appointing Authority delegates the power of appointment to a subordinate authority, it can still initiate the disciplinary proceedings against the person so appointed by his delegatee.

(9). In P.V. Srinivasa Sastry & Ors. vs. Comptroller and Auditor General & Ors. (5), the Hon'ble Supreme Court observed as under:-

'It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences and the framers of the Constitution do not consider it necessary to guarantee even that too holder of civil post..... at the same time, this will not give right to authorities having the same rank as that of the officer against whom the proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any supervisory authority who can be held to be a controlling authority, can initiate such proceeding.'

(10). Thus In absence of the Statutory Rules, providing that only Appointing Authority or Disciplinary Authority can initiate the disciplinary proceedings, the

Controlling Authority can initiate the disciplinary proceedings. However, if the rules provide that a particular authority alone shall be the competent to initiate the same, the controlling authority would not be competent to do so.

(11). In *Transport Commissioner, Madras vs. A. Radha Krishna Moorthy* (6), the Supreme Court held that such proceedings can be initiated by an officer subordinate to the appointing authority and only the dismissal/removal shall not be by an authority subordinate to the appointing authority.

(12). Similar view has been reiterated by the Hon'ble Supreme Court in *Inspector General of Police & Anr. vs. Thavasiappan* (7), wherein it was held that there was nothing in the statutory rules requiring only the disciplinary authority to initiate the proceedings.

(13). In *Jai Jai Ram & Ors. vs. U.P. State Road Transport Corporation & Ors.* (8), the Hon'ble Supreme Court considered the statutory provisions involved therein and observed that there was no requirement that the authority to initiate the disciplinary authority must also continue to have the power of making appointment as it can be any other authority so long as it is not subordinate in rank to the authority by which the delinquent was appointed.

(14). In *Director General, ESI & Anr. vs. T. Abdul Razak* (9), the Hon'ble Supreme Court dealt with the case in which as per the Statutory Rules the Director General had been the Disciplinary Authority and proceedings were initiated by the Regional Director. The Apex Court held that a statutory power must be exercised only by the authority or officer, in whom it has been confided unless sub-delegation of the power is authorised by express words or necessary implication. However, it further observed that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any authority who can be held to be the controlling authority who may be an officer subordinate to the Appointing Authority. The Court observed that the Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of delinquent T. Abdul Razak and, thus, was competent to initiate the disciplinary proceedings against him even in the absence of specific conferment of a power in that regard.

(15). In *Steel Authority of India & Anr. vs. Dr. R.K. Diwakar & Ors.* (10), the Hon'ble Supreme Court approved and followed the law laid down in *T. Abdul Razak* (supra) and held that the disciplinary proceedings can be initiated by the controlling authority unless the Rules provide that disciplinary/appellate authority alone can initiate the same.

(16). In *Deputy Commissioner of Police vs. B. Jayachandran* (11), the Apex Court rejected the plea that departmental enquiry stood vitiated because charge memo was not issued by the Competent Authority.

(17). Thus, the legal position emerges is that generally disciplinary proceedings should be initiated by the appointing authority. It can also be initiated by the authority higher than the appointing authority and even in absence of specific delegation of power, the same can also be initiated by the controlling authority, which even otherwise may be an authority subordinate to the disciplinary authority. But in the latter case, the order of the dismissal or removal cannot be passed by such authority.

(18). The instant case requires to be examined in view of the aforesaid settled legal proposition. Petitioner, at the time of retirement, was working as a Upper Division Clerk and he was served with the charge-sheet on the date of retirement, i.e. 30.4.96 (Annex.2) by the respondent No. 5- the Vikas Adhikari - containing various charges and the statement of allegations. The same had been challenged before this Court on the ground that the charge-sheet had been issued under rule 7 of the Rules, 1961. Rule 2 (c) defines the 'appointing authority' which means the authority empowered to make appointment to any officer or servant of a Panchayat Samiti or Zila Parishad u/S. 31 of the Rajasthan Panchayat Samitis & Zila Parishads Act, 1959 (for short, 'the Act, 1959'). 'Disciplinary authority' has been defined in rule 2(f) of the Rules, 1961 as the authority competent to impose any punishment u/S. 89 of the Act, 1959. Sec. 89 of the Act, 1959 reads as under:-

'(1) The conduct of disciplinary proceedings that may be started against and the punishment that may be inflicted in such proceedings, on all officers and servants of the Panchayat Samitis and Zila Parishads, other than the officers referred to in Sec. 26 and 55, shall be governed and regulated by the rules made by the

Government in this behalf.

(2).....

(3) All other prescribed punishments may be inflicted on the persons holding appointment on the post encadred in the services of the Panchayat Samiti or a Zila Parishad by the District Establishment Committee.'

(19). Therefore, it has been submitted by Mr. Singhvi that no authority other than the District Establishment Committee can initiate the disciplinary proceedings. He tried to explain that as the statutory rules specifically provide that the District Establishment Committee shall be the Disciplinary Authority, no authority other than it, can initiate the same.

(20). Rule 7 of the Rules, 1961 reads as under-'Procedure for imposing major penalties:-

(1) No order imposing on any officer or servant of a Panchayat Samiti of Zila Parishad any of the punishments specified in Clause (iv) to (vii) of rule 6 shall be passed except after an inquiry held as far as may be, in the manner hereinafter provided.

(2) The disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based shall be communicated in writing to such officer or servant and he shall be required to submit, within such time as may be specified by the disciplinary authority a written statement indicating whether he admits the truth of all or any of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person:

Provided that it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statements of allegation made by the person charged in the course of his defence. (3).....

(4) On receipt of written statement of defence or If no such statement is received within the time specified, the disciplinary authority may itself inquiry into such of the charges as are not admitted or, if it considers it necessary to do so, appoint a Board of Inquiry or an Inquiry Officer for the purpose.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the inquiring authority): The officer or servant may present his case with the assistance of any other officer or servant approved by the disciplinary authority, but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority is a legal practitioner or unless the disciplinary authority, regard to the circumstances of the case, so permits.

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(10) If the disciplinary authority, having regard to its findings on the charge is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 6 should be imposed, it

(a) furnish to the member of the service 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 inquiry authority;

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action;

(c) consider the representation, if any, made by the officer or servant as aforesaid and determine what punishment, if any, should be imposed on the member of the service and pass appropriate orders in the case; and

(d) If the disciplinary authority, having regard to its findings, is of the opinion that any of the penalties specified in clauses (i) to (iii) of rule 6 should be imposed, it shall pass appropriate orders in the case.

(11) Orders passed by the disciplinary authority shall be communicated to the officer or the servant who shall also be supplied with 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 reason for disagreement, if any, with the findings of the inquiry authority, unless they have already been supplied to him.'

(21). The aforesaid scheme of the Rules 1961 and the provisions of the Act 1959 make it abundantly clear that for holding the inquiry or imposing major punishment, it is the disciplinary authority alone who can initiate the disciplinary proceedings. The Legislature, in its wisdom, has empowered the disciplinary authority alone in this behalf and it is not possible to interpret the rules that by implication or otherwise the disciplinary authority has been empowered to delegate its power to initiate disciplinary proceeding or the controlling authority may initiate the same in absence of any specific authorisation in general or particular.

(22). In the instant case, the charge sheet has been framed and served upon the petitioner by the Vikas Adhikari-respondent No. 5, who is admittedly not the disciplinary authority and the authority concerned cannot be permitted to proceed in pursuance thereof as the orders suffer for want of jurisdiction.

(23). The petition succeeds and it allowed. The charge-sheet dated 30.4.96 (Annex. 2) is hereby quashed. The respondents are at liberty to proceed against the petitioner strictly in accordance with law if they still want him to face the proceedings. In the facts and circumstances of the case, there shall be no order as to costs. Petitioner shall be prepared for all consequential benefits, including the provisional pension etc.