

Kalulal Vs. State and ors.

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Court : Rajasthan

Decided On : Sep-23-1997

Reported in : 1998(1)WLC566; 1997(2)WLN501

Judge : J.C. Verma, J.

Appeal No. : S.B.C.W. Pet. No. 797 of 1993

Appellant : Kalulal

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

J.C. Verma, J.

1. At the consent of learned Counsel for the parties, the writ petition is being finally disposed of at the admission stage.

2. The petitioner Kalulal, working as District Probation & Social Welfare Officer, was charge-sheeted on certain allegations on 18.2.85 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter called as 'the Rules of 1958'). Copy of charge-sheet is attached as Annex. 5 to the writ petition. After completing certain formalities, an enquiry officer was appointed as required under the rules. A report was submitted by the enquiry

officer which was communicated to the petitioner on 4.9.85. In the report, submitted by the enquiry officer, the petitioner was found guilty and, therefore, a show cause notice was issued to the petitioner and against which show cause notice, the petitioner had made a representation. The objection of the petitioner made in the representation was accepted. It was the case of the petitioner in the representation that as a matter of fact, one Chetram, an other officer, was responsible, for the irregularities, if at all if there was any lapse but not the petitioner. On the representation having been accepted, fresh order for holding the enquiry was passed for initiating a joint enquiry against the petitioner and the said Shri Chetram Kundala as is clear from the contents of Annex. 7. It is alleged and is also not denied that in the fresh joint enquiry ordered by the competent authority, the petitioner was exonerated by the enquiry officer but the other delinquent Shri Chetram was found guilty to some extent. Even though, the enquiry report was submitted in the year, 1988, the petitioner was not communicated result of the enquiry. With the result, the petitioner had to make a representation for deciding his fate in regard to the enquiry which had since been finalised. After more than four years of the submission of the enquiry report, the petitioner received a letter Annex.9 dt. 22nd September, 1992 issued by the competent authority ordering a denovo enquiry.

3. It is stated by the petitioner that even though he was suspended in the year, 1985 and reinstated in the year, 1990 but he was not even allowed the benefit of revised pay scale Rules of 1987 w.e.f. 1.9.86 on the ground that petitioner's case was under investigation. With the result, the petitioner is still getting pay scale of the period prior to the period when these revised pay rules came into being. It is also alleged by the petitioner that he has even been denied promotion because of the pendency of the enquiry. Being aggrieved, the petitioner filed the present writ petition. This Court had stayed final action which was to be taken in furtherance of Annex.9 but do novo enquiry was allowed to continue.

4. In the written statement, filed by the respondents, the facts are not disputed. Para 9 of the writ petition where the petitioner had averred that he was exonerated by the enquiry officer also stands admitted. It is stated in para 13, of the reply that payment of increments, relating to the period of suspension and during pendency

of the enquiry, shall be decided only on completion of the enquiry. However, in regard to withholding of the promotion, it has been stated in the written statement that DPC did not find the petitioner suitable for promotion in the year 1986-87 and 1987-88, but for the next ensuing years, his name had been considered and recommendations have been kept in sealed cover.

5. This Court vide order dt.7th May, 1997 had directed the counsel for the respondents to produce enquiry report which had been referred in para 9 of writ petition and wherein it is stated that the petitioner had been exonerated. Today, Mr. Bhansali, Advocate appearing for the respondents had produced file containing enquiry report dt.22nd August, 1988. I have found that enquiry officer had exonerated the petitioner in the last concluding para of the enquiry report. Mr. Bhansali had been requested to place a photo copy of enquiry report dt. 22nd August, 1988 on the file.

6. Counsel for the petitioner contends that order Annex.9 does not comply with the mandatory provisions of Sub-rule 9 of Rule 16 of the Rules of 1958. Sub-Rule 9 of Rule 16 reads as under:

16. Procedure for imposing major penalties--(1) Without prejudice to the provisions of the public servants (Inquiries) Act, 1850 no order imposing on a Government Servant any of the penalties specified in Clauses (iv) to (vii) of Rule 14 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.'

(9) The Disciplinary Authority, shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.

The Disciplinary Authority may while considering the report of the Enquiring Authority for just and sufficient reasons to be recorded in writing remand the case for further/de-novo enquiry, in case it has reason to believe that the enquiry already conducted has been laconic In some respect or the other.

Sub-rule 9 enables the disciplinary authority while considering the report of the enquiry officer for just and sufficient reasons to be recorded in writing to remand

the case for further/de-novo enquiry, in case, disciplinary authority makes up his mind and has reason to believe that enquiry already conducted has been laconic in some respect or other. English Translation of impugned Annex. 9 reads as under:

A de novo enquiry is to be conducted under 16 of the CCA Rules against Shri Kalulal Chhajjed, former District Probationary and Social Welfare Officer and Shri Chet Ram Kundara. Former Assistant Hostel Superintendent, Sirohi as the enquiry report of the earlier enquiry officer was not factual.

Therefore, the undersigned appoints Dy. Director (First) Social Welfare Officer, Social Welfare Department, Udaipur as presenting Officer for holding enquiry against Shri Kalulal Chhajjed in respect of allegations contained in memo dated 18.2.85 and Shri Chet Ram Kundara, Assistant Hostel Superintendent in respect of memorandum dt. 27.10.87.

The Enquiry Officer is directed to complete the joint enquiry and submit the enquiry report positively within three months. SD/-Director Social Welfare Department

7. From reading of Annex. 9 it is not clear as to how and under what circumstances and on what facts and on what reasons, the disciplinary authority had ordered de-novo enquiry to be held by a different person. No reason whatsoever has been mentioned in Annex. 9. Even, the disciplinary authority has not noticed or mentioned, the date of the enquiry report which enquiry report according to the disciplinary authority was not factual. Though it is true that disciplinary authority may not give a very detailed order for de-novo enquiry but rule does prescribe that he is bound to give certain just and sufficient reasons which are to be recorded in writing for remanding the case for de-novo enquiry or in any case the disciplinary authority is bound to give certain findings after going through the record that enquiry had been held in some laconic manner. No such thing has been mentioned by the disciplinary authority in the order passed on 22nd September, 1992 vide Annex.9 Admittedly, the enquiry report dt. 22nd August, 1988 was submitted to the disciplinary authority but still order Annex.9 has been passed after more than four years. There is no reason of such a delay caused by

the disciplinary authority. Counsel for the petitioner relies on WLN (UC) 1980 311 (Phool Chond v. State of Rajasthan) for the proposition that as to how the disciplinary authority is to conduct himself in giving the reasons. It was held in Phool Chand's case (supra) as under:

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 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(1)(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.

8. Even though, Phoolchand's case (supra) related to the deciding the representation of the delinquent official but so far as the reasons to be recorded appear in sub-clauses 9 and 10 of Rule 16 carry same meaning.

9. In State of Rajasthan v. Amolak Chand Snaghi RLR 1983 246 while interpreting Rule 16(9) a Division Bench of this Court had held that disciplinary authority should apply mind and record specific findings and reasons while acting under Rule 14 of the 1958 Rules. It was held that disciplinary authority was bound to apply mind before passing the order of punishment for good and sufficient reasons. It was held that necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or at any rate, minimises arbitrariness in the decision making process.

10. After going through the facts of the case, I do find that order Annex.9 has not been passed as was required under the law. No reasons whatsoever, good or sufficient, have been mentioned in the order, and, therefore, it cannot stand test of judicial scrutiny and is likely to be quashed. With the result, the petition is allowed. The order Annex.9 is quashed and set aside being illegal.

11. Because of pendency of the disciplinary proceedings, if the pay of petitioner has not been fixed in the revised pay scale as per Rajasthan Civil Services (Revised Pay Scale) Rules, 1989 came into force w.e.f. 1.9.88 and also the previous revision of pay allowed to the employees of the Rajasthan Government, it is held that pendency of the enquiry does not entitle or authorise the respondents to debar the petitioner of the benefit of revised pay rules. No rule or instructions have been quoted before me for debarring any of the official under the disciplinary enquiry for depriving him the benefit of statutory revision of pay rules. Because of the quashing of order Annex.9, and also because of the reason that the petitioner already stands exonerated by the inquiry officer, in the charge-sheet issued in the

year, 1985 the petitioner shall be entitled for all the consequential benefits which might have accrued to him but not given because of the disciplinary proceedings. No order as to costs.

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