

Anil Kumar Vs. Rajasthan State Electricity Board and ors.

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Court : Rajasthan

Decided On : Sep-15-1977

Reported in : 1977WLN(UC)380

Judge : M.L. Jain, J.

Appeal No. : S.B. Civil Writ No. 1148/1971

Appellant : Anil Kumar

Respondent : Rajasthan State Electricity Board and ors.

Disposition : Petition allowed

Judgement :

M.L. Jain, J.

1. The petitioner Gautam is a U.D.C. in the employment of the respondents Rajasthan State Electricity Board Upon a complaint of misbehaviour with his Assistant Engineer, he was suspended on 20-5-1968 There after by an order dated February 11, 1970, of the Additional Chief Engineer, he was visited with the penalty of stoppage of one grade increment with cumulative effect. He was reinstated and it was also directed that he shall be paid full pay and allowances as he was drawing prior to his suspension for the period he remained under suspension and this period will be considered as on' duty. The Superintending

Engineer, however, referred the matter back as he thought that the order regarding payment of full wages was in violation, of Regulation 41 of the Rajasthan State Electricity Board Employees Regulations, 1964. However, on 16.11.70 the Superintending Engineer intimated the petitioner that he was not entitled to more than what has been paid during his suspension period as he has not been fully exonerated. On 26-3-71, the Super-intending Engineer conveyed that the petitioner was entitled subsistence allowance only during his suspension period. It appears that the Chief Engineer too, by his order dated 9th August, 1971, agreed that since Shri Gautam has been punished, the claim for full wages cannot be entertained.

2. The petitioner challenges the subsequent revision of the orders regarding payment of pay and allowances 'during suspension. Firstly, on the ground that the order of the Addl. Chief Engineer, was not in violation of the said Regulation 41 as it shall be deemed that he as the competent authority considered the suspension wholly unjustified or at best passed the order under Clause (5) of the said Regulation. Secondly, on the ground that the subsequent order was passed behind his back without affording him an opportunity of being heard. Learned Counsel relies upon *M. Gopdl Krishna Naidu v. State of MP : (1968) 11 LLJ 125 SC*, in which, with reference to Fundamental Rule 54, which is pari material with the said Regulation 41. the Supreme Court observed that an order under Fundamental Rule 54 is an objective order rather than a subjective one. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, the order is liable to be struck down as invalid on the ground that it is 'one in breach of the principle of natural justice. The rule, contemplates a duty to act in accordance with the basic concept of just and fair play.

3. I have considered. I need not examine the first contention as the petitioner succeeds on the second. In view of the Supreme Court decision, the order disallowing him full wages for the period of suspension is invalid as the petitioner was not held before the earlier order was revised affecting him adversely. There is no effective answer to this challenge.

4. Consequently, this petition is accepted and it is hereby directed 'that the impugned orders of 16-11-70, 26-3-71, & 9-8-71 shall be quashed and the order of the Addl. Chief Engineer dated' February 11, 1970, which regard to payment of full pay and allowance to the, petitioner during the period of suspension shall stand restored There shall be no order as to, costs. The respondent shall however, be at liberty, if they so deem fit to consider the question de novo after giving the petitioner & reasonable opportunity to' show cause against any proposed revision of the order dated' 11.2.70 only with regard to payment of salary and allowances for the period of suspension.

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