

S.C. Sharma Vs. State and anr.

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Court : Rajasthan

Decided On : Apr-25-1995

Reported in : 1995(3)WLC498; 1995(2)WLN532

Judge : N.C. Kochhar, J.

Appeal No. : S.B. Civil Writ Petition No, 436 of 1995

Appellant : S.C. Sharma

Respondent : State and anr.

Disposition : Petition allowed

Judgement :

N.C. Kochhar, J.

1. The facts giving rise to this writ petition are as under: The petitioner was transferred to Baran as Executive Engineer in the Irrigation Department and he took charge of his post 6-1-1981. Prior to his posting in Baran, his predecessor had invited tenders for certain digging work. The orders in response to those tenders could be placed upto 14-3-1981. On 17-7-1981, a note was prepared by Shir AK Kulshreshtha, Upper Division Clerk (UDC) in the office of the petitioner, for inviting tenders for the work in question and that note was forward by the Divisional Accountant to the petitioner, who issued orders for inviting the tenders for the said

work. The rates in the subsequent tenders so received were higher than the rates which were quoted in the tenders invited by the predecessor of the petitioner with the result that the Government suffered a loss of Rs. 86,058.85 p. In the said note no mention was made about the fact that the tenders had already been invited for the same work and were to be accepted by 14-3-1981 and thereupon the orders for issuing the tenders were issued by the petitioner. Since the rates in the latter tenders were higher and the Government suffered a loss of Rs. 86,058.85 p., the matter having brought to the notice of the authorities, the Superintending Engineer (SE) called for the explanation of the petitioner and thereafter held a preliminary enquiry and submitted his report on 4.6.1985 (Annex. 5) holding that the fact of earlier tenders having been invited was not brought to the notice of the petitioner by the UDC and the Divisional Accountant concerned but the the petitioner was guilty of supervisory negligence. No action was taken by the Government against the petitioner after receipt of the abovesaid report of the preliminary enquiry conducted by the SE and, on the contrary, his case for promotion to the post of SE was placed before the Departmental Promotion Committee (DPC) and the petitioner was promoted as SE in the year 1993, The charge sheet dated 6.12.1994 (Annx. 8) was served on the petitioner on 5.1.1994 alleging that he had been guilty of supervisory negligence and that if after taking charge of the post of Executive Engineer, Baran he had been vigilant enough to make enquiries he would have come to know that earlier tenders for the same work had been invited and that because of the abovesaid negligence on his part the Government has suffered loss and that enquiry was to be held against him Under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (the Rules). Even after this charge sheet dated 6.12.1994, the petitioner was given promotion as Superintending Engineer in the vacancy of the year 1990-91 on the basis of the review DPC. The petitioner having become eligible for promotion to the post of the Additional Chief Engineer, the DPC was convened but it was directed that the DPC may consider his case for promotion to the post of Addl. C.E. but the result of the petitioner should be kept in sealed cover. The petitioner, having felt aggrieved, has filed this writ petition under Article 226 of the Constitution of India.

2. In the writ petition, it has been alleged that the petitioner is being victimised for no fault of his and further that the preliminary enquiry was held against the UDC, who was found guilty of suppressing this fact and punishment of stoppage of one grade increment without commulative effect has been imposed on him vide order dated 14.3.1991 (Annx. 9). The petitioner has also challenged the charge sheet on the ground that the same had been issued with inordinate delay. He has prayed that the charge sheet be quashed and the consequential benefits be given to him.

3. On receipt of notice, the writ petition has been contested by the respondents. In the reply, it is not disputed that the report of the preliminary enquiry had been received in the year 1985 but it has been stated that thereafter certain clarifications were sought and draft charge sheet was prepared in the year 1987 but due to certain clarifications amended charge sheet was prepared and it was sent to the administrative department in the year 1990 who issued certain queries and the charge sheet was finalised in the year 1992 and has been served on the petitioner on 5.1.1995.

4. No particulars have been given in the reply regarding the delay which occurred at all levels between the dates of receipt of the report of the preliminary enquiry in the year 1985 and the service of charge sheet dated 6.12.1994 which was served on the petitioner on 5.1.1995. In the reply it has not been disputed that the UDC concerned was found guilty of having suppressed the facts and has been punished for the same. It is also not understandable when the proceedings were contemplated against the petitioner for imposition of major penalty under Rule 16 of the CCA Rules how he was promoted to the post of SE and in the revised DPC he was given the year 1990-91. It appears that the Government did not think it proper to take any action against the petitioner for all this time but when he became due for promotion to the post of Additional Chief Engineer some one thought it necessary to get the enquiry conducted against the petitioner so that his case for promotion could be delayed and then the Government came in action and served the charge sheet which had been prepared before the promotion of the petitioner was made by the revised DPC. Not only this is a case of inordinate and unexplained delay but the action of the Government in taking up this matter at this stage also shows that the action is not bonafide.

5. In my view, the petitioner's case is squarely covered by the decision of the Apex Court in case 'State of MP v. Bani Singh and Anr.' (1990) (2) SLR 798.

6. Consequently, the writ petition is allowed, the charge sheet dated 6.12.1994 (Annx. 8) is quashed and the respondents are directed to promote the petitioner to the post of Additional Chief Engineer if he is found fit by the DPC and on the vacancy being available according to the recommendation of the DPC. The petitioner, in the circumstances of the case, is also held entitled to receive the cost of this writ petition, which is assessed at Rs. 2,000/-. The writ petition stands disposed of accordingly.

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