

Rameshwar Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-27-1987

Reported in : 1987WLN(UC)345

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Civil Writ Petition No. 2244 of 1983

Appellant : Rameshwar Lal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M. Mridul, Mr. Mridul

Judgement :

Kanta Bhatnagar, J.

14. In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the legality of the order dated March 30, 1982 (Annexure-2) by which his services as Upper Division Clerk with non-petitioner No. 2 the Rajasthan State Road Transport Corporation (for short 'the Corporation' here in after) were terminated and Annexure 1 dated April 11, 1983 informing the petitioner that his appeal had been dismissed by the General Manager of the Corporation.

2. The case of the petitioner is that he was Upper Division Clerk with the non-petitioner Corporation and was posted at Jodhpur. That, vide order dated

September 16, 1976, he was transferred to Banswara and joined duty there on September 25, 1976. That, as the petitioner was not being paid his salary, he left for Jodhpur leaving an application for leave in the Office at Banswara because no other Officer was available there. That, after coming to Jodhpur he made an application for extension of leave but did not receive any intimation. That, the silence of the Authorities sanctioning the leave led him to think that the leave was sanctioned. That, vide Order dated November 5, 1977 he was put under suspension pending inquiry and a charge sheet dated November 5, 1977 was served upon him. The allegations levelled were that he had left the Office at Banswara soon after joining there without permission and getting the leave sanctioned and as such his misconduct fell within the ambit of Rule 34 of the Rajasthan State Road Transport Workers & Workshop Employees Standing Orders, 1965 (for short 'the Standing Orders'). The petitioner has stated in detail the various dates fixed for the inquiry and the reasons for the delay in inquiry, sometimes because of his illness and sometimes because of the Inquiry Officer not being present. That, the petitioner was not paid subsistence allowance for the period of his suspension despite his making prayer for it and the Divisional Manager, Udaipur, sending letter to the Depot Manager Banswara and the letter in his turn asking the Depot Manager, Jodhpur to send the Last Pay Certificate of the petitioner so that the payment of the subsistence allowance may be made. That, after the inquiry vide order dated March 30, 1982 (Annexure-2) the Additional General Manager (Personnel), the Inquiry Officer in the matter passed the said order imposing upon the petitioner punishment of removal from service of the Corporation. Feeling aggrieved by that order, the petitioner preferred an appeal which was dismissed vide order dated April 11, 1983 (Annexure-1).

3. Feeling dissatisfied by the aforesaid orders of his removal and the decision in the appeal, the petitioner has invoked the writ jurisdiction of this Court.

4. Notices were issued to the non-petitioners and Mr. L.S. Udawat, Additional Government Advocate appeared on behalf of non-petitioner No. 1 and Mr. S.N. Sharma for the remaining non-petitioners.

5. Mr. M. Mridul, learned Counsel for the petitioner has assailed the impugned orders on three grounds. Firstly, that the removal of the petitioner from service was illegal because he was not paid subsistence allowance; secondly, that the copy of the inquiry report was not supplied to the petitioner and as such he could not put up his case properly before the Appellate Authority and thirdly, that the order dated April 11, 1983, (Annexure-1) the appellate order is not speaking order and deserves to be set aside on this ground.

6. Advancing arguments on the first ground, Mr. Mridul strenuously contended that an employee is entitled to subsistence allowance after his suspension during the pendency of the inquiry to enable him to maintain himself and his family and to defray the expenses for participating in the inquiry. It has been stressed that despite the prayer made by the petitioner and letters dated October 5, 1978 (Annexure-9) and October 6, 1978 (Annexure-10), the petitioner was not given subsistence allowance and the inquiry stands vitiated for that reason.

7. Mr. S.N. Sharma, learned Counsel for non-petitioner Nos. 2 to 4 did not dispute the position that an employee after suspension is entitled to subsistence allowance but his contention is that in the present case as the petitioner had not remained at the Head Quarter as required by the Standing Orders he has no right to make such a claim.

8. In order to appreciate the respective arguments of the learned Counsel for the parties, it would be profitable to seek help from the decisions in various cases referred to by the learned Counsel for the parties.

9. In the case of Ghanshyam Das Shrivastava v. State of Madhya Pradesh (1), the delinquent officer, a Forest Ranger, was put under suspension pending departmental inquiry against him. Suspension allowance was not paid to him. The officer did not attend the inquiry for non-payment of suspension allowance. The order of dismissal in the circumstance was held to be hit by Article 311 of the Constitution.

10. Dealing with the point of non-payment of suspension allowance in the case of Jethmal v. The State of Rajasthan and Ors. (2) the principle enunciated in the

above referred Supreme Court decision was followed and it was held that the non-payment of subsistence allowance to the petitioner from the date of this suspension to the date of his compulsory retirement was sufficient to vitiate the inquiry and the proceedings deserved to be quashed.

11. The principles enunciated in these cases show that the Courts have taken very serious view of non-payment of subsistence allowance to an employee and in appropriate cases have set aside the inquiry on that count.

12. In the Rajasthan State Road Transport Corporation Employees Service Regulations, Regulation No. 53(2)(b) makes provision for payment of subsistence allowance to an employee during the period of suspension. Clause (1) 1973(1) SLR 636 and (2) 1984 WLN 520 of the Regulation No. 53 provide the rate at which such an allowance is to be paid. Order No. 35(b) of the Standing Orders, provides that the workman who is placed under suspension shall, during the period of such suspension, be paid subsistence allowance at the rate mentioned in Sub-clause (i) and (ii) of that clause.

13. Thus, from these provisions it is evident that the right of an employee with the Corporation to get subsistence allowance during the period of suspension is by virtue of Regulations and Orders which govern such employees.

14. In the case of *Fakirbhai Fulabhai Solanki v. Presiding Officer and another* (3) : (1986) ILLJ124SC , during the pendency of the proceedings under Section 33(3) of the Industrial Disputes Act (14 of 1947) the workman placed under suspension was not paid any allowance. The permission was granted after about six years of the application by the management. In the Standing Orders governing the workers there was no provision for the payment of subsistence allowance during the pendency of an application made by the management Under Section 33(3) of the Act for permission to dismiss a protected workman. Despite that position the denial of payment of subsistence allowance to a workman placed under suspension during the pendency of the proceedings Under Section 33(3) of the Act was taken to amount to violation of principle of natural justice because it was difficult to anticipate the result of the application made before the Tribunal and it was held to be reasonable that the workman against whom the application made should be

paid amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. Such a denial according to their Lordships lead to the violation of principle of natural justice and consequently vitiates the proceedings before the Tribunal under Sub-section (2) of section 33 of the Industrial Disputes Act.

15. Mr. S N. Sharma, learned Counsel for the Corporation submitted that the failure of the petitioner to remain at the Head Quarter during the period of suspension has disentitled him to the subsistence allowance. Mr. Sharma, referred to the Circular dated August 25, 1975 relating to the administrative instructions in modified Standing Order No. 35 of the Orders. Clause 6 of the modified Order. No. 35 provides that while issuing suspension order it should also be simultaneously ordered thereto that the employee will not leave the Head Quarter during the period of suspension, that, he should be required to present himself in the office of the Controlling Officer and that an attendance register for subsistence allowance will now be necessary. According to Mr. Sharma this amended provision came into force prior to the petitioner being placed under suspension and therefore, he was required to remain at the Head Quarter i.e. at Banswara, which he had not done and therefore, subsistence allowance is not allowable.

16. It is important to note that there is nothing to show that the petitioner was directed to remain at the Head Quarter during the period of suspension. The petitioner's case is that no such condition was imposed and Mr. S.N. Sharma, learned Counsel for the Corporation has not placed on record the suspension order to show that the requirement of Clause (6) of Order No. 35 was complied with the order of the suspension simultaneously and the petitioner was directed that he will not leave the Head Quarter during the period of suspension and will remain present in the office of the Controller.

17. Mr. Mridul, learned Counsel for the petitioner submitted that even if such condition would have been imposed that would not have debarred the petitioner for his claim of the subsistence allowance. Mr. Mridul submitted that imposing a condition on the suspended employee to remain present at the Head Quarter amounts to denial of work to him at other places and a person directed to remain

present would be entitled to full wages.

18. Mr. Mridul referred to the case of B.B. & C.I. Railway v. B.C. Patil and another (4) 1951 LLJ 584. In that case the employee was placed under suspension and was directed to remain at hand for inquiry by an officer of the railway. The contention was that during the period of suspension the contract of employment was also suspended and that no wages were due. The Court held that the right of the master was exercised by calling on the employee to remain at hand for enquiry and that it was open to the employer to take the services of the employee, but in any event wages were due to the employee.

19. In the case of Chittranjan Ghose v. I.G. Police. W.B. & Ors (5) 1979(2) SLR 194 the order directing Police Officer, while under suspension, to attend roll call was held to be illegal because attending roll call by a Police Officer is a part of his duty whereas during the period of suspension pending inquiry, the employee is not liable to render any service or perform any duty.

20. In the case of Zonal Manager, Food Corporation of India and Ors. v. Khaleel Ahmed Siddiqui (6) 1982(2) SLR 779, it was held that the expression 'suspension' means debarring an employee from service temporarily, The observations made were that an employee under suspension during the pendency of the proceedings cannot be compelled to attend office and to mark attendance at the office daily during the working hours, such a direction was held to be illegal.

21. The principles enunciated in the above referred decisions, lead to the conclusion that suspension of an employee amounts to suspension of contract of service temporarily i.e. for the period the employee remains under suspension. When the contract of service is under suspension, neither the employer is under an obligation of payment of wages during that period nor is an employee under an obligation to work or attend his duty.

22. Thus the suspended employee cannot claim the wages of that period but he can claim his subsistence allowance for the said period. Leaving apart the principle so enunciated regarding the imposition of condition for suspended employee, as observed above, there is no material to suggest that the directions

were issued to the petitioner in accordance with the Order 35(6) of the Orders. Conduct of the authority concerned also shows that no condition for remaining at Head Quarter was imposed on the petitioner and despite his remaining away from Banswara during the period of suspension, he was held entitled to subsistence allowance. Annexure-6 is the application by the petitioner to the Depot Manager, Banswara for arranging payment for subsistence allowance to him. The Divisional Manager, Udaipur vide Annexure-9 informed the Depot Manager, Banswara that the petitioner had not received the subsistence allowance since December 1977. The Depot Manager had also been asked to make the payment of subsistence allowance to the petitioner immediately and send intimation to the Office of the Divisional Manager, Udaipur In compliance to that the Depot Manager, Banswara on October 6, 1978 (Annexure 10) asked the Depot Manager, Jodhpur to send immediately the Last Pay Certificate of the petitioner so that subsistence allowance may be paid to him. These letters are sufficient to show that the petitioner was held entitled to subsistence allowance. As such the contention of Mr. S.N. Sharma that the subsistence allowance need not be paid because the petitioner had not remained at Banswara during the pendency of the inquiry does not hold good, Neither any return has been filed nor any material placed on record to show that the subsistence allowance was not paid for this reason.

23. The dismissal of the petitioner would not come in the way of his claim for the subsistence allowance. In the order itself he has been held entitled to the subsistence allowance. The authorities concerned has held him entitled for subsistence allowance as is evident from the proceedings taken in response to his application, for example letters Annexures 9 and 10. Order 35(c) provides that when on the conclusion of enquiry an order of dismissal is passed, the workman shall be deemed to have been absent from duty during the period of such suspension and shall not be allowed any remuneration for such period but the subsistence allowance already paid to him shall not be recovered. Simply because on account of the mistake on the part of the concerned authorities subsistence allowance could not be paid to the petitioner in time, he would not be disentitled to get the amount which had become due to him when the order of dismissal was passed.

24. The petitioner is therefore, entitled to claim subsistence allowance for the period he remained under suspension.

25. Having held the petitioner entitled to subsistence allowance, the next question emerging for determination would be whether because of the non-payment of subsistence allowance, the inquiry is vitiated and the proceedings are liable to be quashed.

28. Mr. Mridul, learned Counsel for the petitioner submitted that in the cases of Ghanshyam Das Shrivastava v. State of Madhya Pradesh (1), Jethmal v. The State of Rajasthan & Ors (2) and Fakirbhai Fulabhai Solanki v. Presiding Officer and Anr. (3) the proceedings were quashed for the non payment of subsistence allowance to the employee.

27. Mr. S.N. Sharma, learned Counsel for the Corporation submitted that those cases are distinguishable because in the present case the petitioner had participated in the inquiry. That, despite his letter Annexure 13, requesting for payment of subsistence allowance and in case of failure to do so by the management to remain absent from the inquiry, the petitioner continued to participate in the inquiry.

28. It is for the employer to arrange for the subsistence allowance so that the suspended employee may maintain himself and his family and defray the expenses of facing inquiry. It is not for the petitioner to make the demand. However, it is not in all cases that non payment of subsistence allowance would be a sufficient reason for quashing the proceedings of inquiry. The petitioner despite Annexure-13 participated in the inquiry. It is no where his case that on account of non-payment of subsistence allowance, he could not defend himself properly. The details given in the writ petition themselves show that the delay in inquiry was not merely on account of the fault of the Inquiry Officer rather, the petitioner himself was to some extent responsible for it because he had time and again sought adjournments.

29. Looking to the facts and circumstances of the case, I do not consider it to be a fit case in which non-payment of subsistence allowance may be considered

sufficient to quash the proceedings against the petitioner.

30. The second ground of attack on the validity of the impugned orders is that the report of the inquiry was not given to the petitioner and therefore he was not in a position to know what material had been collected against him.

31. Mr. Mridul learned Counsel for the petitioner referred to the case of Ram Singh Rathore v. Rajasthan State Road Transport Corpn. & Ors (7) (1986) RJS 129. The services of the petitioner, an employee with the Corporation, were terminated by passing a stereo type termination order and that was held to be a serious lapse. The point raised in the case was that the copy of the inquiry report was not supplied. In those circumstances, taking into consideration the principle of natural justice it was held that when statute gives a right of appeal against an order of punishment merely because there is no provision in Standing Orders for supplying enquiry report, it is no valid defence to commit breach of principles of natural justice.

32. Another case relied on by Mr. Mridul is Nawaratan Mal Khamera v. Punjab Motional Bank and Ors. (8) 1986 WLN (UC) 126. One of the points raised by the petitioner in the case was that he was given a show cause notice but the report of the Inquiry Officer was not made available to him inspite of the fact that he had made specific demand by his communication. The argument found favour with the Court and it was held that it was expected of the Management that they should have supplied the copy of the finding recorded against the petitioner so as to enable him to make his representation effectively. In the absence of the same, it was held that the petitioner had not been afforded reasonable opportunity to meet the case of the management and he was seriously prejudiced.

33. In order to enable the delinquent officer to make proper representation of leading adequate defence for the allegations levelled against him, he should be made aware as to what was the material against him. This purpose can be served by supplying the copy of the inquiry report to the concerned employee. However, that in itself will not in all cases be sufficient to set aside the inquiry. It would only in cases where the case of the delinquent officer is prejudiced for non supply of the copy or where in the absence of the inquiry report he is unable to make out

what the case against him was and on which material, the Inquiry Officer has proceeded, that non-supply of the inquiry report would be taken to prejudice the case of the employee and he may make a legitimate claim for getting the inquiry set aside on that count.

34. Mr. S.N. Sharma, learned Counsel for the Corporation submitted that in the present case the facts were very simple. The allegations were that the petitioner without permission and sanction of level left Banswara and thereafter remained absent for more than a year and it was at that stage that the management had taken step to proceed against the petitioner. According to Mr. Sharma, these are not the disputed facts and therefore the non supply of the inquiry report to the petitioner cannot be said to have prejudiced his case so as to disable him to make proper representations to the higher authority. To substantiate his contention, Mr. Sharma placed reliance on the principle enunciated in the case of D M. Madashetty v. State of Karnataka (9) 1985 Lab. IC 1742. In that case the enquiry report was not given to the officer concerned before the order of punishment was passed. The official however urged all grounds against the report before the Reviewing Authority. The Reviewing Authority passed She order after considering the report. In those circumstances it was held that the order of the Reviewing Authority could not be set aside on the ground that the enquiry report was not given.

35. The allegations against the petitioner were based on the facts which have been staled by the petitioner himself in the writ petition. The petitioner has urged all the grounds in the memo of appeal. In such circumstances, non supply of the inquiry report cannot be said to have prejudiced the case of the petitioner. It is also to be noted that it is for the first time in this Court that the petitioner has raised this point. He has not expressed his grievance before the appellate authority that he was unable to represent his case properly because of the non supply of the inquiry report to him.

36. I, therefore, do no consider it proper to set aside the inquiry on this ground.

37. The third and the last point agitated by Mr. Mridul, learned Counsel for the petitioner is that the order Annexure-1 is not a speaking order. Mr. S.N. Sharma

learned Counsel for the Corporation, raised an objection that what the petitioner has assailed is not the order of the appellate authority but the intimation of the decision in the appeal.

38. There is force in the submission. Annexure-1, dated April 11, 1983 is the information sent by the General Manager (Personnel) to the petitioner, informing him that in connection with his appeal, the General Manager had perused the concerned record and the petitioner was heard on April 4, 1983 but as he has not produced any material which may lead to any interference in the Order No. 296 dated March 30, 1982 passed by the Additional General Manager (Personnel) Jaipur, his appeal had been rejected by the General Manager.

39. Mr. Mridul emphasized that what has been supplied to the petitioner is Annexure-1 dated April 11, 1983 and the copy of the appellate order, even if any passed, was not supplied to him. According to Mr. Mridul, it is the duty of the concerned authority to send the copy of the appellate order to the employee which has not been done in this case. That, it is only on receiving the order that the employee can know whether the appellate authority has applied its mind to the matter or not and whether the reasons given in the order are adequate or not. Mr. Mridul referred to the case of *State of Punjab v. Amar Singh* (10) : (1966) IILLJ188SC where in it was held that the mere passing of order of dismissal is not effective unless it is published and communicated to the officer concerned.

40. So far as the order of dismissal is concerned, there, was communication. The appeal was filed. As observed earlier, Mr. S.N. Sharma is correct when he says that Annexure-1 dated April 11, 1983 is only an intimation about the appeal being rejected for the reasons mentioned therein. But Mr. Mridul's contention that it was only Annexure-1 which was sent to the petitioner and as such he was not in a position to place on record the order passed in appeal and that if the learned Counsel for the Corporation thinks that there was some other order, he should have produced the same which he had not done and as such the petitioner is left with no alternative but to take the reasons mentioned in Annexure-1 as the only ground for rejection of his appeal.

41. Mr. Mridul submitted that merely mentioning in Annexure-1 that the General Manager has perused the concerned file will not mean that he had applied his mind to the matter. According to Mr. Mridul, the appellate order should be a speaking order. To substantiate his contention Mr. Mridul referred to a number of authorities on the point.

42. In the case of Kripal Singh v. State of Rajasthan (11) 1980(2) SLR 717 it was held that the order passed in appeal as well as in review against the removal from service should be speaking order. In the absence of reasons in support of the conclusion given, the order was held to be illegal.

43. In the case of Anil Kumar v. Presiding Officer and Ors. (12) : (1986)ILLJ101SC importance of reasoned report of the inquiry was considered to be essential on the ground that the absence of reasons shows non-application of mind. According to Mr. Mridul, the same principle applies to the appellate order in the present case.

44. In the case of Ram Chander v. Union of India (13) : (1986)ILLJ334SC where in the mechanical reproduction of phraseology of R 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 was considered to be non-compliance of that Rule and it was observed that the appellate authority must pass reasoned order.

45. There is no dispute on the point that the appellate authority should apply its mind. However, there may be cases where the appellate authority, while agreeing with the reasonings given by the disciplinary authority may not pass a detailed order, but even in those cases, the order should speak that the material was considered.

46. Though the appellate order is not before the Court, Annexure-1, itself shows that the General Manager had perused the concerned file and the petitioner was heard. It has also been mentioned therein that the petitioner had not produced any material which might impress upon the General Manager to take a view different from the one taken by the disciplinary authority.

47. There cannot be any hard and fast rule that all orders, which do not mention the facts and circumstances of the case or the detailed reasons for the conclusion

arrived at, would be invalid and should be quashed. The facts and circumstances of the case cannot be overlooked in doing so.

48. The allegations levelled against the petitioner were quite simple. The admitted position is that on joining duty at Banswara on September 25, 1976 the petitioner left that place and remained absent up to November 5, 1977 when the order of suspension pending inquiry was passed. The petitioner had admitted, as is evident from Para-6 of the appeal that he could not join duty for that period having fallen ill or for some other reasons. In the petition also this fact has been stated with further contention that having not received any intimation about his leave being refused, he presumed that the leave was sanctioned. Thus, the facts of the case are not in dispute. In such circumstances, no detailed reasons were required from the appellate authority and the decision of the appellate authority cannot be said to suffer from any infirmity. There may be cases where the appellate order not being a speaking order, Courts do interfere and quash such order, retaining the inquiry and issue directions to the appellate authority to pass a reasoned order.

49. For the reasons mentioned above, I do not take this case to fall in that category. I am therefore, not inclined to quash the decision of the Appellate Authority.

50. From the above discussion, I arrive at a conclusion that the only relief which the petitioner can be given in this writ petition is allowing of subsistence allowance to him for the period of suspension.

51. Consequently, the writ petition is partly allowed. The relief for quashing the orders Annexure-1 and 2 dated April 11, 1983 and March 30, 1982 respectively is denied. The petitioner is however held entitled to the subsistence allowance for the period he remained suspended i.e. from November 5, 1977 to March 30, 1982, the date of his termination from service vide Annexure-2. The non-petitioner No. 3, General Manager of the Corporation is directed to make payment of the subsistence allowance to the petitioner to the tune of the amount which he according to the Regulations and the standing Orders of the Corporation is entitled to receive, within a period of three months from this order. Costs are made easy.

