



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 3830/2000

Shiv Kumar Khandelwal



----Petitioner

Versus

1. The State of Rajasthan through the Secretary to the Government, Department of Agriculture, Govt. of Rajasthan, Jaipur.
2. Shri Bharat Meena, Area Development Commissioner, Command Area Development, Chambal, Kota.
3. Shri N. C. Chhatar, Executive Engineer and T. A. to Supdt. Engineer, L.D.P. Circle, Command Area Development, Kota.

----Respondents

For Petitioner(s) : Mr. H. V. Nandwana
For Respondent(s) : Mr. K. S. Chandel, AGC
Mr. Abhishek Bhandari

HON'BLE MR. JUSTICE SAMEER JAIN

Order

Reserved on 07/02/2024

Pronounced on 28/02/2024

1. By way of present petition, the petitioner has challenged the impugned charge-sheet dated 24.05.2009 (Annexure-3) issued to the petitioner as also the penalty order dated 07.07.2020 (Annexure-15), whereby, in departmental enquiry conducted under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "CCA Rules"), the Command Area Development Commissioner,



Chambal, Kota (for short "CAD Commissioner") has imposed a penalty of forfeiture of services prior to 18.07.1999.

2. The facts of the case, as per learned counsel for the petitioner, are as follows. The petitioner was initially appointed as Junior Engineer (Degree Holder) by the Director, Agriculture Department of the State of Rajasthan. In August of 1989, the petitioner was sent on deputation by the Director, Agriculture Department, State of Rajasthan (i.e. parent department) to Command Area Development, Kota (for short "CAD"). In 1998, the petitioner applied for Post Graduate Course, i.e. Masters of Engineering (Agriculture) as a sponsored candidate of Government of Rajasthan in Irrigation Water Management (for short "IWM") at College of Technology and Agricultural Engineering, Udaipur (for short "CTAE"). The application of the petitioner, along with two other people, was also forwarded by the Agricultural Department of the State of Rajasthan vide letter dated 18.07.1998 to Dean, CTAE, Udaipur. The said application was also accepted by the Rajasthan Agricultural University vide letter dated 01.09.1998. However, the CAD Commissioner cancelled the nomination of the petitioner to pursue the degree by a vague and non-speaking order dated 02.09.1998 and subsequently vide order dated 04.09.1998, the petitioner was repatriated to his parent department. Thereafter, the State Government issued order dated 11.09.1998 according permission to the petitioner for admission in PG course at CTAE, Udaipur and accordingly a letter was issued on 18/19.09.1998 by CTAE, Udaipur admitting the petitioner as a special case as sponsored candidate of the Government. Vide





order dated 07.10.1998, the petitioner was again sent on deputation by the Agriculture Department to CAD, Kota and in compliance thereof, the petitioner gave his joining at CAD, Kota on 13.10.1998 and requested for relieving him on account of his academic requirement. When no action was taken, the petitioner filed another representation on 20.10.1998 and thereafter vide order dated 02.11.1998, the petitioner was allowed to join. However, to the utter shock of the petitioner, the petitioner was served with a charge-sheet under Rule 16 of the CCS Rules on 24.05.1999, which resulted in passing of the impugned order of punishment dated 07.07.2000.

3. Assailing the impugned orders, learned counsel for the petitioner made the following submissions.

3.1. The first contention of learned counsel for the petitioner is that the CAD Commissioner is neither the disciplinary authority nor appointing authority of the petitioner to initiate proceedings under the CCA Rules and therefore the entire proceedings, i.e., issuance of charge-sheet, conduct of enquiry and penalty order dated 07.07.2000 are without jurisdiction and nullity in the eye of the law. It is contended that departmental enquiry against the petitioner could only have been initiated by the Head of Department of the parent department of the petitioner or any authority specifically empowered by the Head of Department with the approval of the State Government as per Rule 15 of CCA Rules. It is contended that the State Government Order dated 25.07.1974 on which reliance is placed by the respondent is a general order only for operational convenience, but the same



nowhere states that the power under Rule 15 of CCA Rules have been conferred to CAD Commissioner and no specific order has been passed in this regard. Learned counsel for the petitioner has also highlighted that in other instances, the State Government has passed specific order dated 29.11.1990, whereby the power of Head of Department has been conferred to CAD Indira Gandhi Canal Project, Bikaner. However, since no such order was passed in this case conferring specific authority upon CAD Commissioner, the entire proceedings, being without jurisdiction, are required to be set aside.

3.2. The second submission of learned counsel for the petitioner is that there was non-compliance of mandatory provision of Rule 16(6) of the CCA Rules as the petitioner did not have the opportunity to cross-examine the witnesses. Reliance is placed on Hon'ble Supreme Court judgment of **Sur Enamel and Stamping Works (P) Ltd. vs. Their Workmen: AIR 1963 SC 1914.**

3.3. The third submission of learned counsel for the petitioner is that the penalty imposed upon the petitioner of forfeiture of service has not been prescribed in Rule 14 of the CCA Rules and therefore the same could not have been imposed. Reliance is placed on **Vijay Singh vs. State of U.P. and Ors.: (2012) 5 SCC 242**, and **State Bank of India and Ors. vs. T.J. Paul: (1999) 4 SCC 759.**

3.4. The fourth submission of learned counsel for the petitioner is that the petitioner attended PG course as a sponsored candidate of Government of Rajasthan after getting due permission and



therefore the petitioner has not committed any kind of misconduct warranting penalty.

3.5. The fifth submission of learned counsel for the petitioner, without prejudice to his other arguments, is that the penalty imposed is too harsh and is grossly disproportionate to the offence alleged.



4. *Per contra*, learned counsel for the respondent submits that the charge of willful absence is conclusively established against the petitioner. It is submitted that application form of the petitioner along with two other people was simply forwarded, but never sanctioned. The proposal was also cancelled vide order dated 02.09.1998 on account of administrative exigencies as the petitioner was working on a technical post in a public sector utility department. Learned counsel for the respondents contends that the petitioner is estopped from raising the plea of lack of jurisdiction at this belated stage, after having participated in the entire disciplinary proceedings, especially when the said objection was never raised in the departmental proceedings. Even otherwise, the State Government order dated 25.07.1974 clearly delegated all powers to the CAD Commissioner and the reliance placed on the Circular dated 29.11.1990 is also misplaced as the same pertained to the Indira Gandhi Canal *Project* and the power of Additional Regional Development Commissioner therein under Rule 17 of CCA Rules and the present case pertains to Rule 16 of CCA Rules. On the quantum and nature of punishment also, learned counsel for the respondent submits that since the petitioner was found guilty of the charges as levelled, the



proposed punishment of removal from service was downgraded to forfeiture of previous service after taking a sympathetic approach. Since the punishment imposed was less severe than the proposed punishment, it cannot be said that the same was arbitrary or dehors the rules. Learned counsel for the respondent has also highlighted Rule 86 of the Rajasthan Service Rules, 1951 which prescribes the punishment of removal from service for prolonged period of unauthorized absence. It is further submitted that the petitioner was never given the authorization to absent himself to pursue PG course. The petitioner has also failed to produce a valid relieving order issued by the competent authority. Even the order dated 11.09.1998 relied upon by the petitioner, which supposedly superseded the order dated 02.09.1998 whereby the nomination of the petitioner was cancelled, was obtained fraudulently by the Deputy Secretary, Agriculture, who had nothing to do with the affairs of CAD or the petitioner's parent department. Learned counsel for the respondent further contends that the entire departmental proceedings were conducted strictly in accordance with law and the petitioner was given all opportunity to present his defence and to cross examine the witnesses.

5. Heard the arguments advanced by both the sides, scanned the record of the petition and considered the judgments cited at Bar.

6. The petitioner was punished with forfeiture of service, primarily, for the offence of willful absence. Though the petitioner does not dispute that the petitioner was absent from duty, but contends that the same was because the petitioner was enrolled in



the PG course as a government sponsored candidate after obtaining due permission from the competent authorities. The departmental enquiry concluded that the petitioner voluntarily abandoned services as the petitioner was not granted authorization by the competent authority to relieve himself of his official post and therefore, without handing over the charge, the petitioner attended PG course.



7. The primary contention of the petitioner is that the entire disciplinary proceedings were without jurisdiction. This contention, in the considered opinion of this Court, is entirely untenable. The petitioner was deputed to CAD in the year 1989. As per State Government order dated 25.07.1974, CAD Commissioner was competent to control the staff and procurement in all manners. Power equivalent to the parent department were assigned to CAD Commissioner and therefore, the respondents were well within their authority to not only issue the charge-sheet, but also conduct the departmental enquiry and pass appropriate punishment orders. The respondents are also quite correct in contending that the petitioner is estopped from raising the plea of lack of jurisdiction at this belated stage when the same was never raised while participating in the departmental proceedings.

8. Having established the competence of the respondents to pass the impugned orders, this Court will now examine the correctness of the impugned orders.

9. The record reflects that the charge-sheet was issued under Rule 16 of the CCA Rules. It is noted that subsequent to issuance of charge-sheet, the petitioner was granted opportunity



of hearing, enquiry officer was appointed, departmental representative was appointed, reply was filed on behalf of the petitioner, and witnesses were examined, which is reflected from the record. In these circumstances, it is difficult to hold that there were procedural infractions leading to manifest injustice or leading to some perverse outcome.



10. It is trite that the power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities, discharged by constitutional courts Under Article 226 of the Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority. The power of judicial review is an evaluation of the decision-making process and not of the merits of the decision itself. In disciplinary proceedings, High Court is not and cannot act as second court of first appeal. No inquiry in facts is to be done in exercise of powers under Section 226 of the Constitution of India. Reliance in this regard can be placed on plethora of Apex Court judgments, including **Union of India vs. P. Gunasekaran: (2015) 2 SCC 610, Regional Manager, UCO Bank & Ors. vs. Krishna Kumar Bhardwaj: (2022) 5 SCC 695, Anil Kumar Gupta vs. Union of India & Ors.: AIR 2022 SC 5626, V Ramana vs. APSRTC & Ors.: (2005) 7 SCC 327,** and **CISF vs. Santosh Kumar Pandey: 2023 (2) SLR 835 (SC)**. The relevant portion of **P. Gunasekaran (supra)**, is reproduced as under:



"12. *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re appreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in*



case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

12. Conclusion of fact, which are based upon evaluation and appreciation of evidence, when meticulously reached by authorities, should not be ordinarily interfered with.

13. In view of the above, this Court is not inclined to interfere with the finding of the disciplinary proceedings.

14. So far as the question of penalty imposed being outside the scope of the CCA Rules is concerned, this Court notes that the charge-sheet was issued to the petitioner for the offence of wilful absence, which can attract punishment of removal from service. Since the punishment imposed was less severe than the proposed punishment of removal of service, it cannot be set aside merely because it is not explicitly spelt out in the rules, especially considering that the charge of wilful absence stands established against the present petitioner. The quantum of punishment is also within the discretionary domain of the respondents and such discretionary power is open to judicial scrutiny only if the punishment imposed is strikingly disproportionate to the misconduct committed. As already noted, the petitioner was employed in a department providing public utility services,



wherein sincerity is of utmost importance as the public at large is likely to get affected. Therefore, in these circumstances, this Court is of the view that the punishment imposed was not grossly disproportionate to the misconduct committed and no interference is called for in the impugned punishment order dated 07.07.2000.



15. Resultantly, the writ petition stands dismissed. Pending application(s), if any, shall stand disposed of.

(SAMEER JAIN),J

Pooja/8