HIGH COURT OF MADHYA PRADESH : JABALPUR.

Writ Petition (s) 760/2004

Rajkumar Rachandani
Vs.
The State of M.P and others

PRESENT :

Hon'ble Shri Justice K.K. Trivedi. J.

Shri R.C.Tiwari, learned counsel for the petitioner.

Shri Rahul Jain, learned Government Advocate, for the respondents.

(O R D E R)
/01/2015

The petitioner, who was working as Forest Range Assistant at the relevant time, has approached this Court by way of filing this writ petition under Article 226 of the Constitution of India, ventilating his grievance against the order dated 6.7.2002 (Annexure P/6) by which the Divisional Forest Officer, respondent No.4, has imposed a penalty of withholding of increment of pay with cumulative effect and directed recovery of Rs.1,02,349/- from the monthly salary bills of the petitioner. An appeal was preferred by the petitioner against the said order, which has been dismissed on 16.12.2013 by the Conservator of Forest, respondent No.3. Hence, this writ petition was filed.

2. It is the case of the petitioner that when he was working as Forest Range Assistant a show cause notice was issued to him by the respondent No.4 on 14.9.2000 asking him to show cause as to why the physical verification report of the Dy. Divisional Forest Officer, Lanjhi be not accepted and since the shortage in the wood stock was found, why not to recover 75% loss caused to the State, from the petitioner and the two increments of pay of the petitioner should not be withheld with cumulative effect. The petitioner on receipt of the said show cause notice filed his reply stating that such physical verification of the stock was not properly done and the report was not drawn in accordance to the instructions issued by the State Government. It was pointed out by the petitioner that no weigh bridge was available and a presumptory weight of every log was assessed and thereby a loss of wood was found. It was pointed out that if proper assessment is done in terms of the instructions issued by the Chief Conservator of Forest of Government of M.P. on 22.8.1996, it would be clear that no loss was caused by the petitioner to the State Government and neither any recovery was to be made from the petitioner nor penalty of withholding of increments of pay was required to be imposed.

3. It is the case of the petitioner that after receipt of the reply to the said show cause notice, no enquiry whatsoever was conducted by the respondent No.4 and by the impugned order dated 6.7.2002 the penalty of

recovery as also withholding of two increments of pay with cumulative effect was imposed on the petitioner. Since the petitioner was not satisfied with the said order of penalty, he preferred an appeal before the competent appellate authority detailing the reasons as to how and why the order of penalty was unjustified. The appeal preferred by the petitioner was not considered in terms of the provisions of rules, more particularly Rule 27 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'the Rules') and was dismissed by the order impugned. Hence, this writ petition was required to be filed.

4. It is contended by the petitioner that in fact withholding of increments of pay with cumulative effect is a major penalty as has been held by the Apex Court in the case of ***Kulwant Singh Gill vs. State of Punjab, 1991 Supp (1) SCC 504***. If a major penalty is required to be imposed, the detailed enquiry as required under Rule 14 of the Rules aforesaid should have been conducted and then only any order could have been issued against the petitioner. The authorities have not looked into these requirements of law and have passed the order in such derogatory manner. As such the orders are bad in law and liable to be quashed.

5. Upon service of notice of the writ petition, the respondents have filed their return. It is contended by the respondents that in fact a report was submitted by the competent authority after physical verification of the stock of the depot where the petitioner was posted and

it was found that the said stock was not retain in appropriate manner and, there was shortage of the fuel wood as also the other woods. The complete assessment was done in presence of various persons, *panchnamas* were prepared and a report was submitted. After giving a show cause notice, the reply submitted by the petitioner was examined and the same was not found satisfactory. Though initially while directing the recovery of loss caused to the State Government a penalty of withholding of two increments of pay with cumulative effect was imposed on the petitioner, but in appeal, though initially the appeal was dismissed, but exercising power of review the appellate authority changed the order of withholding of two increments of pay with cumulative effect to one withholding of increments of pay without cumulative effect. It is thus contended that action was rightly taken and the order was rightly passed. No infirmity was committed by the respondents in conducting the enquiry against the petitioner and as such the order passed by the respondents need not be interfered with. Though a rejoinder was filed by the petitioner to the return, but nothing much has been said.

6. Learned counsel for the petitioner contended that looking to the fact that there was a dispute with respect to the conducting of the physical verification of the wood stock, it was necessary on the part of the respondents to adhere to the instructions issued by the superior authority. Pointing out that the circular was

issued by the Forest Department, it was contended that assessment of loss was required to be done in the manner indicated in the said circular. Respondents have not conducted the physical verification of the wood stock in terms of the said circular. Further it is pointed out that the State Government has issued a circular on 25th March, 2003 prescribing percentage of natural decay of the wood stock and if that particular aspect is taken into account, there was be no loss caused to the State Government. As such the recovery of any alleged loss was not to be made from the petitioner. Apart from this, it is contended by the learned counsel for the petitioner that the disputed facts could be proved only by recording evidence in a departmental enquiry and a summary procedure for imposition of minor penalty was not required tobe resorted to. Even otherwise, if the penalty was to be treated as minor, while examining the reply to the show cause notice issued under Rule 16 of the Rules, the disciplinary authority was required to adjudge whether a detailed enquiry was required to be conducted or not. This too was not done and as such the petitioner was not afforded a fair opportunity of hearing in the enquiry.

7. The other submission made by the learned counsel for the petitioner is that since the proposed penalty itself was major penalty, in fact, instead of a show cause notice, a charge sheet should have been issued to the petitioner and merely because the penalty is subsequently converted into a minor penalty, the

procedural defect in the departmental enquiry would not be cured. Still the order of penalty is liable to be quashed.

8. Per contra, it is contended by the learned Government Advocate appearing for the respondents that no prejudice is caused to the petitioner inasmuch as withholding of increment without cumulative effect is a minor penalty which is ultimately imposed on the petitioner. Admittedly, the penalty of recovery of loss is a minor penalty and for that, a charge sheet was not required to be issued to the petitioner. Reading as a whole, the order passed by disciplinary authority, learned Government Advocate has contended that each and every fact was taken into consideration by the disciplinary authority while holding the petitioner guilty of causing loss to the State Government and, therefore, rightly the penalty was imposed on him, which orders are not required to be interfered with by this Court in exercise of powers under Article 226 of the Constitution of India as this Court cannot sit as a Court of Appeal in such departmental enquiry.

9. Heard learned counsel for the parties at length and perused the record.

10. Undisputedly the show cause notice indicates that a major penalty was to be imposed on the petitioner as the porposed penalty was withholding of two increments of pay with two cumulative effect. Even when the appeal was preferred by the petitioner, the appellate authority had not considered this aspect that a major

penalty was imposed on the petitioner in the garb of conducting a summary departmental enquiry in terms of the rule 16 of the Rules as while passing the order in the appeal of the petitioner, the Conservator of Forest has not converted that penalty into a minor penalty as is clear from the order dated 16.12.2003 passed in appeal of the petitioner. The modification in this order is done by the respondent Conservator of Forest only when the writ petition was filed by the petitioner and notice was issued to the respondents. This fact is apparent from the order dated 18.4.2004 placed on record as Annexure R/2. Even if this power was to be exercised to review the order passed by the appellate authority in terms of the provisions of Rule 29 of the Rules, such a power was exercised after a period of six months from the date of order passed in appeal and, therefore, such power was not available to the respondent No.3. Therefore, merely on this count it cannot be said that since a minor penalty was ultimately imposed on the petitioner no fault is to be found in the procedure adopted by the respondents in conducting the enquiry against the petitioner.

11. In fact, the initiation of the proceedings itself against the petitioner was not in accordance to the provisions of the Rules as if the intention was of imposing a major penalty, a charge sheet should have been issue to the petitioner and not mere a show cause notice as provided under Rule 16 of the Rules. Distinction in the charge sheet under Order 14 of the

Rules and a show cause notice issued under Rule 16 of the Rules is writ large. The charge sheet should contain the imputation of charges and definite allegations forming the charges against delinquent employee. There must be a list of witnesses and list of documents appended to the charge sheet to propose evidence to prove the charges against the delinquent employee. The show cause notice does not contain all these documents and in absence of such document, it is not possible for a delinquent employee to participate in such enquiry in detail in appropriate manner. Therefore, initiation of the departmental enquiry against the petitioner by resorting to the procedure not applicable to the major penalty cannot be sustained.

12. Yet another aspect is that the petitioner disputed the fact relating to assessment of shortage in the wood stock. In reply to the show cause notice, he gave in detail the reasons why he was not accepting the report of physical verification of the stock. He further pointed out the fact that loss of wood because of the decoy was not taken not of. All these aspects could not be dealt with without recording the evidence of the witnesses who were present on the spot when the physical verification of the wood stock was done. More particularly the stock was old one, the physical verification was done at a later point of time and at that time the presence of the petitioner was not solicited. Had he been asked to remain present at the time of physical verification, he would have pointed out

various factors, which the physical verification authority could have taken note of.

13. That being so merely because a physical verification report was given which was not put for cross-examination by the petitioner, the same was not to be made foundation of imposition of penalty on the petitioner. The order passed by the disciplinary authority indicates that only physical verification report, sent on 16.5.2000, relating to the physical verification conducted on 30th June, 1999 was made the basis for imposition of penalty on the petitioner. Without putting such physical verification report for examination of the petitioner and without granting him an opportunity to cross-examine the authority, who has conducted the physical verification of the wood stock, such a report alone was not enough for holding the petitioner guilty of any loss caused to the State Government on account of shortage of wood stock. All these aspects though the petitioner has raised in his appeal were not taken note of by the appellate authority and, therefore, the order passed by the appellate Authority converting the penalty imposed on the petitioner to a minor penalty will not water down the entire claim made by the petitioner in the writ petition.

14. Lastly, it is to be seen that Rule 16 of the Rules itself prescribes that where the disciplinary authority is of the opinion that looking to the defence raised by any delinquent employee, who has been given a show cause notice, a detailed enquiry is required to be conducted to

strictly prove the allegations of loss against the delinquent employee, the said authority is required to initiate a regular departmental enquiry in terms of Rule 14 of the Rules. Not a single word is said about the said fact as to how the disciplinary authority was satisfied with the charges made against the petitioner and the proof thereof and why the defence taken by the petitioner was assessed and was not found sufficient to warrant any regular departmental enquiry against the petitioner. These aspects were neither considered by the disciplinary authority nor tested by the appellate authority and, therefore, conducting of a summary enquiry in these given circumstances against the petitioner was not justified. True it is that the Courts are not required to function as appellate authority, but if the procedural defects are found patent illegalities are shown in conducting the disciplinary enquiry, the courts are competent enough to exercise their power of judicial review and pass appropriate orders in respect of the departmental enquiry.

15. Notably, in the present case no interim relief was granted to the petitioner. The order of penalty itself prescribes that loss caused to the State Government was to be recovered from the petitioner in installments i.e. first installment of Rs.1308/- and 79 installments of Rs.1279/-. It further appears that this amount has been recovered from the salary of the petitioner while he was in the service. However, as has been pointed out hereinabove, looking to the facts as stated by the

petitioner since there was no proper assessment of loss caused to the State, the said amount was not to be recovered from the salary of the petitioner. It is also not clear whether the petitioner is still in service or not as he was 49 years of age in the year 2004 and would have attained the age of superannuation by now. If that is so, there would be a hurdle in the way of the respondents in conducting a *de novo* enquiry against the petitioner if the orders of penalty are quashed. Since the order of penalty of withholding of increments of pay was made with non-cumulative effect, at least that much loss the petitioner may continue to suffer, but since there is no definite finding that actually the shortage in the wood stock was found on account of alleged misconduct of the petitioner as there is no report to that effect, the recovery of the amount of loss from the petitioner cannot be sustained. IF the petitioner is now retired from service, it would not be open for the respondents to initiate a *de novo* departmental enquiry against him in the appropriate manner as the alleged misconduct of the petitioner is beyond the limitation prescribed under Rule 9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976. In any case, the petitioner has suffered much as the amount was already recovered from his salary, which he could not utilized in his service career. His increments of pay were withheld for a period of two years and thereby financial loss was caused to the petitioner. Therefore, it would not be appropriate to leave it open to the respondents-State to initiate a *de*

novo enquiry against the petitioner. In any case, the orders impugned cannot be sustained in view of the fact that the same are found to be grossly violative of Rules aforesaid as also the rules of natural justice.

16. Consequently, the writ petition is allowed. The order dated 6.7.2002 (Annexure P/6) and the order dated 16.12.2003, as modified vide order dated 16.9.2004, stand quashed. The petitioner would be entitled to the consequential benefits of refund of amount recovered from him and restoration of his increments of pay.

17. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.

(K.K. Trivedi)
Judge

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