

Civil Writ Petition No.122/94  
Ramdeen Morya Vs.State & Ors.

**Date of Order ::: 27/04/2005**

**Hon'ble Mr. Justice Ajay Rastogi**

Mr.Sunil Samdaria for petitioner  
Mr.B.K.Sharma Dy.Govt.Adv. for respondents

By this writ petition, petitioner has assailed orders (1) dt.13/11/87 (Ex.11) whereby he has been inflicted with penalty of removal from service; and (2) dt.22/02/90 (Ex.28) whereby appellate authority upheld decision of disciplinary authority.

Facts, in brief, are that petitioner joined service as LDC on 17/11/90. For the delinquency committed by him he was placed under suspension U/r 13 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 ("CCA Rules") vide order dt.21/06/86 (Ex.4). He was served with memo of charge sheet dt.02/06/86 (Ex.5) along with statement of allegations (Ex.6, 7 & 8) U/r 16 of CCA Rules. In all five charges were imputed against him. After holding regular inquiry under CCA Rules, inquiry officer held the petitioner guilty for 1<sup>st</sup>, 2<sup>nd</sup> 4<sup>th</sup>, & 5<sup>th</sup> charges while 3<sup>rd</sup> charge was not found proved against him. After record of inquiry was placed before disciplinary authority, it agreed with findings recorded by inquiry officer and finally, inflicted penalty of removal from service vide order dt.13/11/87 (Ex.11), against which petitioner preferred appeal U/r 23 of CCA Rules, which was

rejected by appellate authority vide order dt.22/02/90 (Ex.28). Hence, this petition.

Shri Sunil Samdaria, Counsel for petitioner urged that charge sheet was issued by an authority subordinate to the disciplinary authority, as such the very disciplinary action initiated against petitioner pursuant to charge sheet along with articles of charges (Ex.5 to 7) stands vitiated in view of R.16(2) of CCA Rules. Shri Samdaria further urged that disciplinary authority has not examined record of inquiry independently but has proceeded on inquiry report and the recommendations of Executive Engineer - copy of which was not supplied to him, which is in violation of R.16(10) & (12) of CCA Rules and according to him, it is for disciplinary authority to record its finding independently on the charges and has to take its own decision with regard to nature of penalty to be inflicted upon delinquent petitioner and in support of his submissions, Shri Samdaria placed reliance on the decision of Apex Court in (1) **Bahadur Singh Lakhubhai Gohil Vs. Jagdish M.Kamalia** (AIR 2004 SCW 37) & (2) **Anirudhsingh K.Jadeja Vs State of Gujarat** (1995 (5) SCC 302), and (3) **MD ECIL Vs. B.Karunakar** (AIR 1994 SC 1074).

Shri Samdaria also urged that even if charges are found proved against petitioner, disciplinary authority is yet under obligation while taking its decision to independently record good & sufficient reasons for inflicting penalty upon delinquent as

stipulated in R.14 of CCA Rules, which alone can justify reasonableness of the authority and his due application of mind while inflicting penalty upon delinquent. So far as order of appellate authority is concerned, Shri Samdaria has contended that appellate authority has not applied its mind and no reasons have been assigned while considering appeal preferred by the petitioner, which is in violation of R.30(2) of CCA Rules.

Respondents have filed reply to writ petition, wherein it has been inter-alia submitted that petitioner was entrusted with work of compilation of monthly, quarterly & yearly revenue statement of Urban water supply scheme; he was warned several times for non-compilation of revenue statement vide letter dt.28/09/84 (Ann.R.1) and for the delay in the work of compilation vide letters (Ann.R.2 to R.8); that apart, he was always misbehaving with his colleagues & officers, and despite warned several time, he was habitual to remain absent from duty without prior permission from competent authority; and pursuant to his delinquency, memo of charge sheet along with articles of charges were served upon him and even in course of inquiry despite prior intimation made to him by inquiry officer, he failed to attend inquiry and has never come forward with his explanation or defence thereto before inquiry officer, and for which no reason whatsoever has been assigned by him. Inquiry officer after affording him opportunity has rightly held him guilty for charges

No.1,2,4 & 5 except charge No.3, to which disciplinary authority rightly agreed with findings recorded by inquiry officer, and looking to the gravity of charges which stood proved against him, petitioner has rightly been punished with penalty of removal from service vide order dt.13/11/87 (Ex.11). So far as order of appellate authority is concerned, respondents in their reply averred that petitioner has failed to make out a case of any error having been committed by disciplinary authority, therefore, appeal preferred by him was also rightly rejected vide order dt.22/02/90 (Ex.28).

Shri B.K.Sharma, Dy.Govt.Adv. for respondents urged that even if charge sheet has been issued by authority subordinate to disciplinary authority, it will not vitiate disciplinary action for simple reason that petitioner never raised any objection at any point of time in course of inquiry, and that apart, so far as the final decision is concerned, it was arrived at by competent authority and in such circumstances, no prejudice can be said to have been caused to petitioner. Shri Sharma further contended that the Executive Engineer has only suggested as subordinate officer which cannot be said to be recommendations which were binding upon disciplinary authority, who has independently examined & considered record of inquiry forwarded by inquiry officer and has recorded its own finding without being influenced by note of Executive Engineer, and contrarily, as is evident from order

of punishment (Ex.11), it shows due application of mind of disciplinary authority in recording its own independent findings also on each of charges and rather he has examined nature of punishment to be inflicted upon delinquent petitioner keeping in view gravity of proved charges and the decision is, therefore, in consonance with scheme of CCA Rules.

Shri Sharma further contended that petitioner never demanded either suggestions made by Executive Engineer, or copy of inquiry report while submitting appeal against punishment order, inasmuch as he failed to show & establish any prejudice having caused to him, particularly in facts and circumstances of the case when he had not been able to show his defence in the course of inquiry despite full opportunity of hearing afforded to him.

Lastly Shri Sharma urged that before appellate authority petitioner failed to show any error committed by disciplinary authority and that apart, so far as charges No.1,2,4 & 5 are concerned, they are found proved on the material on record, to which contrarily even no justification prima facie has been furnished by him in writ petition, and further the appellate order being one of affirmation in such circumstances except for repetition of findings recorded by disciplinary authority, nothing more was required for appellate authority, and appellate decision is in full consonance of R.30(2) of CCA Rules.

Having considered rival contentions of

both the parties and perused material on record, this fact remains undisputed that inquiry officer has afforded full opportunity of hearing and informed the petitioner of all dates fixed in course of inquiry, yet he failed to participate in inquiry itself, nor submitted his defence & justification in regard to the charges imputed against him. R.16(2) of CCA Rules provides that delinquent be furnished with definite charges on the basis of which inquiry is proposed to be held against him. In present case, charges which were communicated to petitioner were specific and duly communicated under signature of Executive Engineer as disciplinary authority in exercise of powers U/r 15 of CCA Rules, that apart, merely issuance of charge sheet to the petitioner under the signature of Executive Engineer, no prejudice can be said to be caused to him and it was in due compliance of R.16(2) of CCA Rules.

So far as recommendation of Executive Engineer after taking note of findings recorded by inquiry officer - of which competent authority has taken into account while taking impugned decision (Ex.11) is concerned, in my opinion these were mere suggestions made by subordinate officer, with whom disciplinary authority was not bound or influenced and even from a perusal of impugned decision (Ex.11), I find that disciplinary authority has applied its own mind independently and examined the findings recorded by inquiry officer so also analyzed the record of inquiry independently in regard to each of charges and thereafter held the

petitioner guilty and took decision for inflicting impugned penalty against him. In present facts situation, in my opinion, there is no violation of R.16(10) of CCA Rules and the findings recorded holding petitioner guilty are of competent authority who at no stage influenced by purported suggestion made by Executive Engineer and, therefore, I find no illegality or perversity in the impugned findings recorded in the order (Ex.11).

As regards apex decisions cited by Shri Samdaria, in **Anirudh K.Jadeja Vs. State of Gujarat** (supra), U/s 20-A of TADA Act, 1987, prior approval was to be obtained from district Superintendent of Police but he contrarily made a report to the additional Chief Secretary and asked his permission to proceed under TADA Act as such, mandate of legislation was not followed by him despite statute casts specification obligation upon competent authority. In my opinion, this case has no relevance to the present controversy involved herein. Next decision cited by Shri Samdaria in **Bahadur Singh Gohil's case** (supra) has no application in the facts and circumstances of the case. The Executive Engineer was subordinate to the disciplinary authority who had given only suggestions but the disciplinary authority has independently applied its mind while taking impugned decision (Ex.11) based on record of inquiry and merely reference of some suggestions, no prejudice can be said to be caused to the petitioner in view of independent application

of mind applied by disciplinary authority in taking impugned decision (Ex.11).

So far as non-supply of copy of inquiry report and purported suggestions of Executive Engineer is concerned, undisputed fact established on record is that petitioner never demanded those documents after the impugned decision (Ex.11) before preferring appeal against the order of penalty. In present facts situation, when the petitioner has not come out with any defence in the course of inquiry and failed to participate or show prima facie material with statement/submissions made in his appeal which the authority has failed to consider, and once the appellate authority was satisfied with findings recorded by disciplinary authority and was of the view to affirm the findings of guilt, in my opinion, independent reasons, in such circumstances, were not required to be recorded by appellate authority and no prejudice in the facts and circumstances, has at all been caused to him.

That apart, looking to the nature of imputed charges proved against petitioner, I am of the opinion, no error has been committed by disciplinary or appellate authority and the impugned penalty is in consonance with R.14 of CCA Rule, which have been recorded after good and sufficient reasons. In this view of the matter, apex decision in **MD ECIL Vs B.Karunakar** (supra) does not render any help to petitioner, since impugned decision (Ex.11) taken by respondents was of prior to



20/11/90.

Consequently, I find no merit in this writ petition, which is hereby dismissed with no order as to costs.

**(Ajay Rastogi) , J.**

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