

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR**

— 3 —

## :: ORDER ::

Madan Singh Vs. State of Rajasthan & Ors.

**D.B.CIVIL SPECIAL APPEAL (WRIT) NO.158/2005.**

Date of order :: 31<sup>st</sup> May 2006

## PRESENT

## **HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA**

## **HON'BLE SHRI JUSTICE DINESH MAHESHWARI**

Shri P.S. Bhati, for the appellant.  
Shri S.K. Vyas, Government Advocate.

**BY THE COURT : (Per Hon'ble Maheshwari,J.)**

This intra-court appeal is directed against the order dated 16.03.2005 passed by the learned Single Judge dismissing the writ petition filed by the petitioner challenging the orders passed respectively by the Disciplinary Authority, the Appellate Authority and the Reviewing Authority against him in disciplinary proceedings under Rule 17 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 ('the Rules').

The petitioner while working as Lower Division Clerk with the Commandant, 9<sup>th</sup> Battalion, RAC Tonk was served with charge-sheet dated 06.10.1995 on the allegations that while posted at Force Branch he failed to place the application made by one constable Magna Ram for appearing in competitive examination for recruitment to the post of Assistant Sub-Inspector Police (Intelligence) to the concerned authority despite the office having received the application on 26.07.1995 causing serious loss to the said applicant. The petitioner in his reply did not deny receipt of such application on 26.07.1995 but took the stand that at the relevant time, he was looking after dispatch and maintenance of other registers and of emergent nature work; but the clerk concerned Shri Laxman Singh was continuously absent and the petitioner had not received any order in relation to his work that continued to remain pending. It was also submitted that the application did not indicate the date of examination nor any circular was received in that relation and the application was received in routine manner and was kept pending in the work of the said clerk. The petitioner also submitted that the applicant ought to have taken care of his application and obtained necessary orders from the Commandant; and that there was no ill will

against Magna Ram nor the petitioner was to derive any benefit by retaining such application.

The Disciplinary Authority after considering the record of the case found the petitioner to be guilty of gross negligence and of dereliction in duty that resulted in depriving a constable from his chances of appearing in examination for higher post causing serious prejudice in his future prospects. The petitioner was, therefore, found guilty and punished with stoppage of one grade increment without cumulative effect by the order dated 30.11.1995 (Annex.3). The Appellate Authority examined the contentions of the petitioner and so also of the Department and agreeing with the findings of the Disciplinary Authority, dismissed the appeal by the order dated 03.05.1996 (Annex.4). The Reviewing Authority further considered the entire matter with reference to the contentions of the petitioner and found that from the date of receipt of the application i.e. 26.07.1995 till serving of the notice under Rule 17 on 06.10.1995 the petitioner failed to place the application before the Commandant causing serious loss to the applicant for which the petitioner was directly responsible. The review petition was rejected by the order dated 23.10.1997 (Annex.5).

In the writ petition preferred by the petitioner, the learned Single Judge after examining the impugned orders

found that the application in question was kept pending and was not submitted to the higher authorities within time, as a result of which the applicant could not appear in examination. The learned Single Judge was of opinion that negligence of the petitioner was proved beyond doubt and orders against him were passed after proper application of mind and the findings called for no interference nor there was any illegality or irregularity in the disciplinary proceedings. The writ petition submitted by the petitioner was accordingly dismissed.

Learned counsel for the appellant-petitioner has strenuously contended that the petitioner was not in charge of the desk concerned and, therefore, the charge against the petitioner of dereliction in duty in not forwarding the application was fundamentally baseless. Learned counsel further submitted that the application in question did not indicate that it required immediate attention and the petitioner cannot be held guilty of any negligence. Learned counsel also contended that the impugned orders passed by the authorities concerned are absolutely non-speaking orders and the submissions of the petitioner have not been dealt with nor reasons have been assigned for holding the petitioner guilty and awarding the punishment.

Having given our thoughtful consideration to the submissions and having examined record of the case, we are clearly of opinion that this appeal remains totally bereft of substance and no case for interference is made out.

We have examined the reply submissions of the petitioner in relation to the charge against him and find that the petitioner having failed in his duty to forward the application of Magna Ram within time to the higher authority has only attempted to shift the burden either on the cause of absence of the other clerk; or on want of due diligence on the part of applicant; or in the alleged procedural flaws in the system of his having not been served with an order for looking after the work of the absent clerk. The petitioner also suggested his having no mala fide intention. The learned Disciplinary Authority found the petitioner to be negligent and because of his inaction and dereliction in duty, the applicant was deprived of his chances to appear in examination causing him serious prejudice. The Appellate Authority has taken note of all the contentions of the petitioner and the comments of the Department and after examining the record endorsed the findings of the Disciplinary Authority. The learned Reviewing Authority has dealt with all the submissions of the petitioner and found that the application moved by the applicant on 26.07.1995 was not forwarded till the date of serving of notice

under Rule 17 of the Rules resulting in serious loss to the applicant.

Having examined the orders passed by the learned departmental authorities, we are satisfied that the learned authorities have dealt with the matter in accordance with law and have not committed any illegality so as to warrant interference in the writ jurisdiction of this Court and the learned Single Judge was justified in dismissing the baseless writ petition. The contention of the petitioner that he was not in charge of the desk concerned and, therefore, liability could not have been fastened on him, is not well founded inasmuch as it remains an admitted case of the petitioner that he was looking after other urgent work and he was aware of the fact that the other clerk was absent ever since 16.05.1995; yet the application was kept in pending work treating it to have been received in 'routine'. The approach of the petitioner has clearly been perfunctory and unconcerned. It has resulted in causing direct loss to the said applicant for none of his fault. The attempt to take shelter behind the fact that there was no written order received by him for looking after the work of absent clerk, makes it clear that the petitioner prefer to rely on hyper-technicalities to justify his dereliction of duty. When the clerk concerned was absent right from 16.05.1995 and the petitioner was looking after the urgent work, he was not

justified in ignoring the application only because it was allegedly received in routine.

The contention that the impugned orders suffer from want of reasons or being non-speaking orders is equally meritless. The authorities concerned have examined the matter while dealing with proceedings under Rule 17 of the Rules for imposing minor punishment in accordance with law and have passed the orders, which do show their application of mind to the relevant contentions. The order passed by the Disciplinary Authority is of course not descriptive in nature but the substance of the matter has been put succinctly and it cannot be said that the order is unreasoned or non-speaking. The Appellate Authority has also taken note of all the contentions before recording its conclusion. Moreover, the Reviewing Authority has dealt with the matter in sufficient detail and has arrived at unexceptionable finding that the petitioner is guilty of dereliction of duty causing loss to the applicant in his future prospects. We are clearly of opinion that stoppage of one grade increment without cumulative effect is the least minimum punishment the petitioner was deserving and such order has rightly not been interfered with.

Learned counsel has proceeded to rely upon the decision of the Hon'ble Supreme Court in S.N.Mukherjee Vs. Union of India : AIR 1990 SC 1984 to submit that the reasons

ought to be recorded and the administrative actions are also required to be supported by reasons. Apart from the fact that the ratio in S.N.Mukherjee's case has no bearing on the present case inasmuch as the authorities concerned have definitely recorded reasons and the orders cannot be said to be non-speaking one, it may further be pointed out that the Hon'ble Supreme Court in the same decision in S.N.Mukherjee's case has pointed out that for administrative action, the reasons are not required to be as elaborate as the decision of a Court of law and the extent and nature of the reasons would depend upon particular facts and circumstances. The Hon'ble Supreme Court observed,-

"It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. "

We are clearly of opinion that for looking at the reasons also, the substance and not their form is to be looked at. Substantial reasons having been assigned, the challenge to the impugned order remains meritless.

We may point out that at one stage of proceedings in this appeal, we were *prima facie* of opinion that the

misconduct of the petitioner calls for rather higher punishment and mere stoppage of one grade increment without cumulative effect appeared to be a punishment inadequate. However, having regard to the overall facts and circumstances of the case and non-existence of any element of ill intention on the part of the petitioner, we consider it proper not to persist with the proposition to enhance the punishment. However, we are convinced that the punishment awarded to the petitioner remains the least minimum that he deserves.

In the aforesaid view of the matter, we are clearly of opinion that there is no force in this appeal and the same deserves to be dismissed.

Consequently, the appeal fails and is dismissed. No costs.

**(DINESH MAHESHWARI), J.**

**(S.N.JHA), C.J.**

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