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In The High Court of Judicature for Rajasthan
Jaipur Bench, Jaipur

ORDER

S.B. Civil Writ Petition No.6674/1999
Hari Lal Gupta Vs. State of Raj. & Ors.

Date Of Order :: 30.08.2011

Hon'ble Mr. Justice Ajay Rastogi

Mr. Nitin Jain, for petitioner.
Mr. Pradeep Kalwania, Addl. GC for respondent-1 & 2.
Mr. Indrajeet Singh, for respondent-3.

Instant petition has been filed by the petitioner assailing the order dt.17.07.1998 (Annex.3) inflicting penalty of stoppage of four annual grade increments with cumulative effect in a regular enquiry initiated against him and so also the order dt.04.08.1999 (Annex.10) rejecting his departmental appeal by non-speaking order without assigning reasons in a cryptic manner.

The petitioner initially joined service as LDC in November,1971 and was promoted as UDC in 1992 and while working as UDC, respondent-3 served upon him a charge-sheet dt.24.07.1997 u/R.53 of the Rajasthan Agricultural Produce Markets (Market Committee Employees) Service Rules,1975, pursuant to which reply was submitted by the petitioner on 29.09.1997 but prior thereto enquiry officer was appointed vide order dt.02.09.1997. However, enquiry officer must have proceeded in the matter and enquiry report was submitted on 26.02.1998 as alleged but without the copy

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of the enquiry report being served, the petitioner was punished by a cryptic order passed by the disciplinary authority inflicting penalty of stoppage of four annual grade increments with cumulative effect vide order dt. 17.07.1998 (Annx. 3) and immediately after the order of penalty being served upon the petitioner he demanded copy of the enquiry report and other relevant documents vide Annx. 4 dt. 21.07.1998 and reminder was also sent on 12.08.1998 (Annx. 5) but the respondent-3 did not supply copy of the enquiry report if at all there was any and other documents demanded by him and under the constraint the petitioner preferred the departmental appeal on the basis of the material available with him but that too was rejected by the respondent by passing cryptic and non-speaking order dt. 04.08.1999 (Annx. 10).

The main thrust of submission of counsel for petitioner is that penalty of stoppage of four grade increments with cumulative effect inflicted upon the petitioner is a major penalty and without copy of the enquiry report and other relevant documents relied upon during the course of enquiry being made available to the petitioner, the order inflicting penalty upon him vide dt. 17.07.1998 (Annx. 3) is in

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violation of principles of natural justice and also of R.53 of the Rules of 1975 and the departmental appeal preferred by him was also rejected by the appellate authority without due application of mind by passing cryptic and non-speaking order which also deserves to be quashed.

He further submits that after the appeal was preferred by the petitioner the disciplinary authority was called upon to send its comments and it opined that none of the charge out of four levelled against the petitioner are sustainable and he deserves exoneration but the appellate authority despite there being positive comments of the disciplinary authority supporting case of the petitioner still rejected the appeal preferred without assigning reasons which clearly discloses that the appeal was dismissed without due application of mind and such action of the respondent deserves to be quashed.

Reply to the writ petition has been filed which is wholly evasive. However in para-4 thereof it has been averred that enquiry officer submitted its report on 26.02.1998 and on the basis of the provisions of Rules the respondent-3 passed a resolution dt.08.05.1998 and after considering the charges levelled and the enquiry report

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inflicted penalty of stoppage of four annual grade increments with cumulative effect. No material has been placed on record along with the reply to show as to what was the finding recorded by the enquiry officer in its alleged report referred to in para-4 of the reply and resolution if any taken by the respondent no.3 based on the report of the enquiry officer and the basis on which the disciplinary authority took its final decision based on enquiry officer's report and of good and sufficient reasons while inflicting penalty (supra) upon the petitioner and apart from it the reply itself does not disclose regarding application of mind of the material which the appellate authority considered while rejecting the appeal vide dt.04.08.1999 (Annx.10) despite the fact that when the comments were called upon at the stage of appeal being preferred by the petitioner what was contended by the petitioner was accepted and the disciplinary authority opined in its comments that none of the charge is being established against him.

Counsel for the respondent submits that procedure provided under the scheme of Rules, 1975 has been followed and based on the report of enquiry the disciplinary authority while upholding the guilt inflicted penalty upon the petitioner vide Annx.3 and the order

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of the appellate authority being of affirmation, no reasons were required to be assigned.

I have heard counsel for the parties and also perused the material on record.

The procedure for discipline and appeal rules are provided in Appendix-B attached to R.53 of the Rules, 1975 and R.1 of Appendix-B provides the nature of penalty which could be inflicted upon the delinquent for good and sufficient reasons and the procedure for inflicting major penalty of dismissal/removal is provided u/R.4 of the scheme of Rules and regarding penalties specified in item no.(i) & (ii) of para 1 may be imposed in terms of the procedure provided under para 6 of Appendix-B to R.53 of the Rules, 1975.

In the instant case, after the charge-sheet being served reply was filed by the petitioner and prior thereto the enquiry officer was appointed but nothing has been placed on record about the procedure which the enquiry officer followed in the course of enquiry and the petitioner straightaway was served with the order inflicting penalty of stoppage of four annual grade increments with cumulative effect vide order dt.17.07.1998 and its perusal discloses that the order is cryptic and non-speaking and does not disclose

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application of mind of disciplinary authority and in the opinion of this Court the very procedure adopted by the respondent was not in conformity with the scheme of Rules, 1975 in particular para-6 of Appendix-B referred to supra and the order inflicting penalty upon the petitioner is without due application of mind and a non-speaking order is not legally sustainable.

As regards the order of appellate authority, it appears that the comments were called upon which is an intra correspondence within the department but it has come on record that the disciplinary authority in its comments has given a positive report holding that none of the charge could be established against the petitioner and that being so which remained un-controverted and from the reply filed by the respondent it can certainly be inferred that the appellate authority too has not applied its mind and by cryptic and non-speaking order rejected the appeal preferred vide order dt. 04.08.1999 (Annex. 10) which too in the opinion of this court is not legally sustainable and deserves to be quashed.

The matter in the ordinary course was required to be examined from the stage where the petitioner was denied the opportunity of hearing or the stage where the principles of natural justice was violated but in the facts

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of the instant case when comments of the disciplinary authority are already on record obtained at the appellate stage as is evident from report dt. 12.02.99 (Annex. 7) and further clarification made vide communication dt. 10.06.99 (Annex. 9) and no contrary material has come on record, this court would like to record that no purpose is going to be served in granting opportunity to the respondents to initiate any further action in reference to charge-sheet impugned.

Consequently, the petition succeeds and is hereby allowed. The order dt. 17.07.1998 (Annex. 3) inflicting penalty of stoppage of four grade increments with cumulative effect upon the petitioner and so also the order dt. 04.08.1999 (Annex. 10) rejecting his appeal are hereby quashed and set aside and the petitioner is entitled for consequential benefits flowing thereof. No costs.

(Ajay Rastogi), J.