State Of Rajasthan vs M.C. Saxena on 24 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1150, 1998 AIR SCW 965, 1998 LAB. I. C. 1038, (1998) 2 JT 103 (SC), 1998 (2) JT 103, (1998) 3 SERVLJ 10, (1998) 1 SCR 1090 (SC), 1998 (2) UPLBEC 987, 1998 (2) SCALE 26, 1998 (2) ADSC 309, 1998 (3) SCC 385, 1998 SCC (L&S) 875, (1998) 1 SERVLR 787, (1998) 1 ESC 719, (1998) 1 LABLJ 1244, (1998) 2 ALL WC 1168, (1998) 93 FJR 582, (1998) 79 FACLR 140, (2000) 1 LAB LN 35, (1998) 3 MAD LJ 6, (1998) 2 RAJ LW 274, (1998) 2 SCT 502, (1998) 4 SCJ 391, (1998) 2 UPLBEC 987, (1998) 2 SUPREME 174, (1998) 2 SCALE 26, (1998) 1 CURLR 879

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Bench: S. Saghir Ahmad

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
M.C. SAXENA

DATE OF JUDGMENT: 24/02/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T G. B. PATTANAIK These two appeals, one by the state of Rajasthan and the other by the concerned employee arise out of the same judgment and as such are being disposed of by this common judgment. The respondent Shri. M.C. Saxena in Civil Appeal No 2536 of 1993 is an engineer who joined the service of the Rajasthan Government in the year 1957 as Assistant Engineer. While he was continuing as Executive Engineer at Bharatpur certain complaints were

received by the Anti Corruption Department to the effect that the material used by the Engineer as Seola and Baretha Bandhs are sub-standard materials. On the basis of the said complaint certain preliminary enquiry was held and then the State Government issued a set of charges against the respondent and four other officials in June 1979. On receipt of the explanation from the respondent an enquiry officer was appointed to enquire into the charges against the respondent by order of the State government dated 21st January, 1980. The enquiry officer ultimately submitted a report on 24th July 1984 indicating therein that the samples which have been taken by the concerned officer and were sent to the FSL was not in accordance with the prescribed procedure and therefore the report of the FSL cannot be relied upon. Accordingly the Enquiry Officer exonerated the respondent. During the pendency of the aforesaid departmental proceedings the respondent was promoted to the post of Superintending Engineer on provisional basis by order dated 24th November, 1984. The State Government who is the disciplinary Authority of the respondent considered the report of the Enquiry Officer and disagreed with the finding of the said enquiry officer. The State Government came to the conclusion that the charges against the respondent have been duly established and accordingly awarded the punishment of withholding of two increments without cumulative effect by order dated 8th October, 1995. On a Review Petition being filed by the respondent under Rule 33 of the Rajasthan Civil Services (CCA) Rules, 1958, the Government allowed the same partly by order dated 17th December 1986 and reduced the punishment imposed to withhold one increment without cumulative effect. The respondent then filed a second Review Petition which however was dismissed by order dated 20th June 1988. In the year 1989 the Departmental Promotion committee considered the cases of promotion in respect of vacancies in the post of Superintending Engineer for 81-82 and 82-83 but did not find the respondent fit for promotion for the year 81-82. The said DPC however, found the respondent suitable for promotion in respect of the vacancies in the year 82-83. In accordance with the said decision the State Government finally passed the order on 27th December 1989 granting retrospective promotion to the respondent to the post of superintending Engineer. The respondent then filed a writ petition in the Rajasthan High Court challenging the validity of certain provisions of Classification, Control and Appeal Rules as well as the recommendations of the Departmental Promotion committee for selection on promotion against the vacancies of 81-82 and 82-83 for the post of Superintending Engineer and the consequential order of the State Government dated 27th December 1989. The said writ petition was registered as Civil Writ Petition No 3323 for 1993, which is being impugned by the State of Rajasthan in civil Appeal 2536 of 1993. the employee Shri M.C. Saxena also has come up in the other appeal challenging the order of punishment inflicted upon him by the State of Rajasthan, in withholding one increment without cumulative effect. It may be stated that during the pendency of the writ petition before the High Court the respondent was promoted to the post of Additional Chief Engineer against the vacancy of 1992-93. The High Court by the impugned order came to the conclusion that since the delinquency in respect of which respondent stood charged in the Departmental proceeding was of the year 1973, the punishment awarded would lapse after expire of seven years from the date on which the alleged delinquency was committed and therefore non consideration of the respondent for promotion in the year 1980 is vitiated. The High Court further directed to hold the Departmental Promotion Committee to consider the case of the respondent for promotion to the post of Superintending Engineer w.e.f 1980 and on such consideration if he is found suitable to grant him retrospective promotion and should be considered also for promotion to the higher level.

Mr. Gupta appearing for the State in Civil Appeal No. 2536 of 1993 contends that in view of the Departmental proceeding initiated against the respondent and ultimately order of punishment inflicted upon by the disciplinary authority withholding one increment without cumulative effect, the conclusion of the High Court that the respondent was entitled to be considered for promotion w.e.f 1980 is wholly unsustainable in law. He further contended that in view of the relevant circular of the Government, the period of seven years can only be counted from the date of the order of punishment and the date of delinquency is wholly immaterial, and the High Court committed error in holding that the period of seven years could be counted from the date of delinquency. Mr. Gupta further submitted that the respondent having been duly considered in the year 1989 but having been found unsuitable for promotion to the post of Superintending Engineer in respect of vacancy occurring in 81-82, there has been no infringement of Article 16 of the Constitution and consequently the impugned direction of the High Court cannot be sustained.

Mr. Surya Kant, the learned counsel appearing for the employee who is the Appellant in civil Appeal No 2564 of 1993 though fairly stated that the period of seven years has to be counted from the date of the award of punishment and not from the date of delinquency but contended that the enquiry officer having exonerated the delinquent of the charges levelled against him, the disciplinary authority could not have inflicted punishment without giving an opportunity of hearing to the delinquent and as such the impugned order of punishment is liable to be set aside, being in violation of principle of natural justice. the learned counsel accordingly urged that the High court committed gross error in not setting aside the order of punishment imposed upon the delinquent government servant.

Having heard the learned counsel for the parties and having given our anxious consideration to the submissions made and on going through the impugned judgment of the High Court, we are of the considered opinion that the High Court committed gross error in issuing the impugned directions. A departmental proceeding was admittedly initiated against the respondent by serving upon him a set of charges on 1st June, 1979. that departmental proceeding culminated in the order of punishment imposed by the State Government on 8th October, 1975. When a departmental proceeding is already pending but no punishment has been inflicted upon and the question of promotion of the delinquent government servant arises then the Departmental Promotion committee can adopt a sealed cover procedure which is well known in the service jurisprudence. But if the departmental proceeding culminates in imposition of a punishment on the delinquent, the question of reconsideration of the delinquent's case for promotion would not arise at that stage. In the case in hand since the disciplinary authority disagreeing with the report of the enquiring officer held the respondent guilty and imposed the punishment of stoppage of two increments without cumulative effect which was later on reviewed and punishment of stoppage of one increment without cumulative effect was finally imposed, the High Court could not have directed the State Government to reconsider the case of promotion of the respondent to the post of Superintending Engineer w.e.f 1980 onwards. The said direction is wholly unsustainable and is accordingly set aside. The High Court also committed serious error in holding that in terms of the relevant circular, the seven year period could count from the date of delinquency and would lapse in the year 1980, even though the departmental proceeding was continued and ultimately culminated by imposing an order of punishment in the year 1985. In fact Mr. Surya Kant appearing for the delinquent could not support the aforesaid reasoning of the

High Court. In this view of the matter, we have no hesitation to come to the conclusion that the High Court committed serious error by requiring that the case of the delinquent government servant should be considered for promotion to the post of Supdt. Engineer retrospectively w.e.f 1980 onwards. We accordingly quash the said direction of the High Court.

The grievance of the delinquent government servant is based upon a through misconception about the rights of the government servant concerned. It is undisputed that the enquiring officer did not rely upon the FSL report on the ground that the procedure prescribed for taking sample have not been followed and therefore exonerated the delinquent government servant. But the disciplinary authority recorded reasons for disagreeing with the findings of the enquiring officer and held that the charges against the respondent has been established. It is well settled that the disciplinary authority can disagree with the findings arrived at by the enquiring officer and act upon his own conclusion, but the only requirement is that the said disciplinary authority must record reasons for his disagreement with the findings of the enquiry officer. If the disciplinary authority gives reasons for disagreeing with the findings of enquiring officer then the Court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said finding. In this view of the matter, the disciplinary authority was well within his powers to award punishment on the findings arrived at by him. We do not find any force in the submission of the learned counsel appearing for the delinquent government servant that before the disciplinary authority proceeds to award punishment, the delinquent government servant should have been afforded a further opportunity of hearing. As it appears, the punishment of stopping two increments without cumulative effect is a minor punishment under CCA Rules. Then again the delinquent government servant filed review petition and State Government allowed the review petition and reduced the punishment to stoppage of one increment without cumulative effect. In such circumstances the argument that there has been a gross violation of principle of natural justice is devoid of force. A set of charges having been framed and the delinquent government servant having filed his show cause to the set of charges, the regular enquiry having been held and the enquiring officer having recorded his findings and thereafter the disciplinary authority having disagreed with the findings by recording the reasons therefor and ultimately awarding minor punishment of stoppage of one increment without cumulative effect, there is no procedural irregularity therein nor can it be said that there has been any violation of principle of natural justice. Thus the punishment imposed upon by the authority has rightly not been interfered with by the High Court.

In the aforesaid premises the impugned judgment of the High Court is set aside. Civil Appeal No 2536 of 1993 is allowed. Civil Appeal No 2564 of 1993 filed by shri M.C Saxena stands dismissed and Writ Petition filed by him is dismissed. No order as to costs.