

Rajasthan High Court

Amra Ram vs State Of Rajasthan And Ors. on 30 April, 2003

Equivalent citations: RLW 2003 (3) Raj 1822, 2003 (3) WLC 631

Author: Garg

Bench: S K Garg

JUDGMENT Garg, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 7.9.2001 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 1.10.1999 (Annex. 4) passed by the respondent No. 3 Dy. Inspector General of Police, Jodhpur Range, Jodhpur by which the charges levelled against the petitioner in an enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the CCA Rules") were found proved and the petitioner was reverted to the post of Assistant Sub Inspector from the post of Sub Inspector for a period of three years, the order dated 25.3.2000 (Annex. 6) passed by the respondent No. 2 the Director General of Police, Jaipur by which the appeal filed by the petitioner against the order Annex. 4 dated 1.10.1999 was dismissed and the order dated 3.4.2001 (Annex. 8) by which the review petition of the petitioner was dismissed by the Home Department, Government of Rajasthan, Jaipur, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows :-

The petitioner was initially appointed on the post of Constable on 18.3.1971 and thereafter, he was promoted to the post of Head Constable on 13.6.1975 and, thereafter, he was further promoted to the post of Assistant Sub Inspector on 24.2.1983 and, thereafter, he was selected to the post of Sub Inspector on 29.4.1993.

It may be stated here that the petitioner has been compulsorily retired vide order dated 28.11.2000 before filing of the present writ petition.

The further case of the petitioner is that he was served with a charge-sheet under Rule 16 of the CCA Rules on 22.12.1995, a copy of which is marked as Annex. 1 and the sum and substance of the charges levelled against the petitioner is as follows :-

(i) That on 20.8.1994 in connection with case No. 85/94 under Sections 457, 380 IPC, he took the accused Teja Ram for interrogation to the police station, but his presence was not recorded in the record.

(ii) That on 21.8.94, presence of accused Teja Ram was not recorded in Rojnamcha and wrongly recorded his presence at item No. 2.

(iii) That the fact of interrogation from accused Teja Ram was not recorded in Rojnamcha and he also did not record the fact of departure alongwith the accused Teja Ram for search and enquiry.

(iv) That on 21.8.1995 accused Teja Ram was handed over to Mahendra Singh, "Head Constable and having proved guilt of accused Teja Ram, he was not arrested and he was wrongly detained in custody, and

(v) That he did not maintain control over the staff and, therefore, during the course of enquiry, in the way, accused Teja Ram committed suicide, upon which a case No. 86/94 was registered against him and challan was filed under Sections 342, 330 IPC."

The further case of the petitioner is that the crux of the charge-sheet was that accused Teja Ram was interrogated and while he was being taken for recovery, he committed suicide.

A reply to the above charges was filed by the petitioner and in the reply, the petitioner made it clear that at the time of going for recovery, he was not with the police party and, therefore, he cannot be held liable for any type of misconduct because admittedly accused Teja Ram committed suicide and he was an accused for the offence under Section 380, 457 IPC and he admitted his guilt during the course of interrogation.

The further case of the petitioner is that for the same charges, an FIR was lodged against him and a challan for the offence under Sections 342 & 330 IPC was filed against him. However, after trial, the petitioner was acquitted of the said charges for the offence under Section 342 and 330 IPC vide judgment and order dated 2.6.1999 passed by the learned Judicial Magistrate, Balesar, a copy of which is marked as Annex. 3.

The further case of the petitioner is that though he was acquitted of all the criminal charges, yet the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police, Jodhpur Range, Jodhpur) imposed the penalty of reversion to the post of Assistant Sub Inspector from the post of Sub Inspector for three years against the petitioner through order dated 1.10.1999, a copy of which is marked as Annex. 4.

Aggrieved from the said order dated 1.10.1999 (Annex. 4) passed by the respondent No. 3 Dy. Inspector General of Police, the petitioner preferred an appeal before the respondent No. 2 Director General of Police and a copy of the memo of appeal is marked as Annex. 5.

The Appellate Authority (respondent No. 2 Director General of Police) through order dated 25.3.2000 (Annex. 6) dismissed the appeal of the petitioner and affirmed the order Annex. 4 dated 1.10.1999 passed by the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police).

Aggrieved from the said order of the Appellate Authority dt. 25.3.2000 (Annex.6) the petitioner preferred a review petition before his Excellency "the Governor of Rajasthan, but the same was also dismissed through order dated 3.4.2001. (Annex. 8).

In this writ petition, the order dated 1.10.1999 (Annex. 4) by which the petitioner was reverted from the post of Sub Inspector to the post of Asstt. Sub Inspector, order dated 25.3.2000 (Annex. 6) by which the appeal of the petitioner was dismissed and the order dated 3.4.2001 (Annex. 8) by which

the review petition of the petitioner was dismissed, have been challenged by the petitioner on various grounds and the main grounds are as follows :-

(i) That when the criminal charges levelled against the petitioner were not found proved and he was acquitted of the criminal charges vide judgment and order dated 2.6.1999 passed by the learned Judicial Magistrate, Balesar, the continuation of the disciplinary proceedings against him was without jurisdiction and illegal and therefore, whole disciplinary proceedings against the petitioner should have been dropped.

(ii) That since the criminal charges have not been found proved against the petitioner, therefore, on this ground alone, the impugned orders Annex. 4, Annex. 6 and Annex. 8 cannot be sustained and liable to be quashed and set aside. Apart from this, there was not an iota of evidence against the petitioner to prove the charges levelled against the petitioner and thus, the findings of guilt recorded against the petitioner by the Disciplinary Authority and affirmed by the Appellate Authority and Reviewing Authority are erroneous one and cannot be sustained.

(iii) That furthermore, the penalty imposed against the petitioner is disproportionate, irrational and excess, looking to the charges found proved against him.

A reply to the writ petition was filed by the respondents and it has been submitted by the respondents that the petitioner stood compulsorily retired from service vide order dated 28.11.2000 and that order was passed after taking into consideration his entire service record and in public interest and it has no relation with the order dated 1.10.1999 (Annex. 4) by which the penalty of reversion from the post of Sub Inspector to the post of Asstt. Sub Inspector was imposed by the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police) after finding the charges levelled against the petitioner proved. The charges were rightly found proved against the petitioner as the petitioner has committed misconduct, negligence and dereliction of duties in detaining the accused Teja Ram in illegal custody and not only this, he concealed material facts etc. and because of his negligence, the accused Teja Ram committed suicide and thus, disciplinary proceedings were rightly initiated against him and he was rightly punished by the Disciplinary Authority.

So far as the acquittal of the petitioner of criminal charges is concerned, it was submitted by the respondents that it is a separate and distinct matter and it is distinguishable from the domestic enquiry as the standard of proof and manner of leading evidence is entirely different and thus, the acquittal of the petitioner of criminal charges would not affect the disciplinary proceedings initiated against the petitioner.

Apart from this, it was further submitted by the respondents that the findings recorded by the Disciplinary Authority as well as Appellate Authority are based on correct appreciation of evidence available on record. Furthermore, the scope of judicial review by the High Court under Article 226 in respect of scrutinizing the findings of the Disciplinary Authority as well as Appellate Authority is very limited. Hence, the writ petition filed by the petitioner be dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. At the very outset, the argument that since the petitioner was acquitted by the learned Judicial Magistrate, Balesar on criminal charges, therefore, departmental proceedings against the petitioner could not be continued, is to be rejected outrightly as the Hon'ble Supreme Court from time to time and in Secretary, Ministry of Home Affairs and Anr. v. Tahir Ali Khan Tyagi (1), has taken the view that there is no prohibition for continuation of departmental proceedings alongwith the criminal proceedings and furthermore, even after acquittal in criminal proceedings, the departmental proceedings can continue since the degree of proof varies.

5. Thus, the argument that after acquittal of the petitioner on criminal charge by the learned Judicial Magistrate, Balesar through judgment and order dated 2.6.1999, the departmental proceedings could not continue against him, is outrightly rejected.

6. The second submission of the learned counsel for the petitioner is that since the criminal charges have not been found proved against the petitioner, therefore, on this ground alone, the impugned orders Annex. 4, Annex. 6 and Annex. 8 cannot be sustained and liable to be quashed and set aside and apart from this, there was not an iota of evidence against the petitioner to prove the charges levelled against the petitioner and thus, the findings of guilt recorded against the petitioner by the Disciplinary Authority and affirmed by the Appellate Authority and Reviewing Authority are erroneous one and cannot be sustained.

7. Before proceeding further, legal aspect with respect to scope of judicial review and scope of interference by the High Court under Article 226 of the Constitution of India with the findings of the Disciplinary Authority as well as Appellate Authority may be seen.

8. In Bhagat Ram v. State of Himachal Pradesh and Ors. (2), the Hon'ble Supreme Court held that in a petition under Article 226 of the Constitution of India, the High Court does not function as a Court of appeal over the findings of disciplinary authority. But, where the finding is utterly perverse the High Court can interfere with the same.

9. In Rai Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and Ors. (3), the Hon'ble Supreme Court has further held that the High Court, in the proceedings under Article 226 of the Constitution of India does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice.

10. In Transport Commissioner, Madras-5 v. Thivu. A. Radha Kirishna Moorthy (4), the Hon'ble Supreme Court held that under Article 226 of the Constitution of India, the High Court has no jurisdiction to go into truth of the allegations/charges unless they are perverse.

11. In Government of Tamil Nadu and Anr. v. A. Rajapandian (5), where the order of dismissal was set aside by the Administrative Tribunal on re-appreciation of the evidence recorded by inquiring

authority and it was held by the Hon'ble Supreme Court that the Tribunal fell into patent error in sitting as a Court of Appeal over a decision based on the findings of inquiry authority in disciplinary proceedings and it is not their function to review such findings and reach different finding than that of the disciplinary authority. The Hon'ble Supreme Court in that case further observed that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the disciplinary authority.

12. In Union of India and Ors. v. Narain Singh (6), the Hon'ble Supreme Court has held that it is not the function of the High Court to arrive at an independent finding. It was further held that if an enquiry has been properly held that question of adequacy or reliability of evidence cannot be canvassed before the High Court.

13. Thus, the High Court under Article 226 of the Constitution of India can interfere with the findings of the Disciplinary Authority and Appellate Authority only when they are perverse and irrational and furthermore, when there is error of law or procedure leading to manifest injustice or violation of principles of natural justice.

14. Keeping in mind the law laid down by the Hon'ble Supreme Court from time to time, the findings of the Disciplinary Authority and Appellate Authority in the present case are being critically examined.

15. In the present case, give charges, the sum and substance of which is quoted above at pages 2 and 3 of this order, were framed against the petitioner and the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police, Jodhpur Range, Jodhpur) in its order Annex. 4 dated 1.10.1999 has dealt with each and every charge in detail and after considering the entire evidence and material available on record, the Disciplinary Authority found each charge proved against the petitioner and after finding all the above charges proved against the petitioner, the Disciplinary Authority imposed the penalty of reversion against the petitioner from the post of Sub Inspector to the post of Assistant Sub Inspector for three years.

16. Aggrieved from the said order of the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police) dated 1.10.1999 (Annex. 4), the petitioner preferred an appeal before the Appellate Authority (respondent No. 2 Director General of Police) and the Appellate Authority through impugned order Annex. 6 dated 25.3.2000 dismissed the appeal of the petitioner. The review petition filed by the petitioner against the said order of the Appellate Authority dated 25.3.2000 was also dismissed through order Annex. 8 dated 3.4.2001.

17. From perusing the order of the Disciplinary Authority (respondent No. 3 Dy. Inspector General of Police) dated 1.10.1999 (Annex. 4), it appears that the Disciplinary Authority has elaborately discussed each and every charge and after considering the entire material and evidence on record in an analytical manner, the Disciplinary Authority found the petitioner guilty of the charges levelled against him and after recording findings of guilt, the Disciplinary Authority imposed the penalty of reversion from the post of Sub Inspector to the post of Assistant Sub Inspector against the petitioner. The findings of guilt recorded against the petitioner by the Disciplinary Authority are

based on correct appreciation of evidence on record.

18. The findings of guilt recorded by the Disciplinary Authority against the petitioner were further confirmed by the Appellate Authority (respondent No. 2 Director General of Police) through order Annex. 8 dated 25.3.2000. The Appellate Authority has also dealt with each and every charge and after considering the entire material and evidence on record in an analytical and critical manner, came to the conclusion that the findings of guilt were rightly recorded by the Disciplinary Authority against the petitioner.

19. Thus, there are concurrent findings of facts recorded by the Disciplinary Authority and the Appellate Authority and they are based on correct appreciation of evidence. It cannot be said that the findings of the Appellate Authority as well as the Disciplinary Authority are perverse or unreasonable or irrational or based on no material and on the contrary, they are recorded after careful consideration of the evidence and material produced by parties. There is also no error of law or procedural error leading to manifest injustice.

20. For the reasons stated above, no interference is called for with the findings of facts recorded by Appellate Authority and Disciplinary Authority in exercise of power under Article 226 of the Constitution of India, as they are based on correct appreciation of evidence both oral as well as documentary and there is no error of law or procedural error leading to manifest injustice or violation of principles of natural justice.

21. The third submission of the learned counsel for the petitioner is that the penalty imposed against the petitioner is disproportionate, irrational and excess, looking to the charge, found proved against him.

22. To appreciate the above contention, first the law laid down by the Hon'ble Supreme Court from time to time in this respect may be seen.

23. The Hon'ble Supreme Court in *Indian Oil Corporation Ltd. v. Ashok Kumar Arora* (7), while considering the question as to whether the High Courts could in exercise of their powers of judicial review interfere with the punishment imposed by a disciplinary authority pointed out :-

"At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and or the punishment is totally disproportionate to the proved misconduct of an employee."

24. In *State of Punjab v. Surjit Singh Conductor* (8), the Hon'ble Supreme Court held that imposition of punishment is within the power and discretion of the authority and Civil Courts have no jurisdiction to substitute the punishment imposed by such authority.

25 In the case of Narain Singh (supra), the Hon'ble Supreme Court observed that it is within the jurisdiction of the competent authority to decide what punishment is to be Imposed and the question of punishment is outside the purview of the High Court's interference unless it is disproportionate to the proved misconduct as to shock the conscience of the Court.

26. Thus, it can be concluded that the jurisdiction of the High Court under Article 226 of the Constitution of India for interference with the quantum of punishment awarded to employees in the departmental enquiry is very limited and interference can be made with the punishment if it is disproportionate to the proved misconduct as to shock the conscience of the Court or where the enquiry is vitiated because of non-observance of principles of natural justice or if the findings are based on no evidence.

27. In the present case, looking to the above legal principle in mind and looking to the entire facts and circumstances of the case and looking to the nature of charges found proved-against the petitioner and looking to the facts that full opportunity to defend his case was given to the petitioner and the principles of natural justice were observed while conducting departmental enquiry, therefore, in these circumstances, the punishment of reversion from the post of Sub Inspector to the post of Assistant Sub Inspector for three years awarded to the petitioner cannot be regarded as disproportionate to the proved charges as to shock the conscience of the Court. Hence, no interference is called for with the penalty of reversion from the post of Sub Inspector to the post of Assistant Sub Inspector for three years awarded to the petitioner by the Disciplinary Authority and affirmed by the Appellate Authority and the Reviewing Authority.

28. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

Accordingly, the writ petition filed by the petitioner is dismissed. No order as to costs.