



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5379/2002

Mahaveer Singh Rathore S/o Shri Gordhan Singh Rathore, aged about 48 years, resident of Gordhan Bari, Khatipura Road, Jhotwara, Jaipur.

-----Petitioner

Versus

1. State of Rajasthan through Chief Secretary to Government of Rajasthan, Government Secretariat, Rajpath, Jaipur.
2. Deputy Secretary, Department of Personnel, Government of Rajasthan, Government Secretariat, Rajpath, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Ankul Gupta for Mr. Babu Lal Gupta
For Respondent(s)	:	Mr. Archit Bohra, AGC with Mr. Rahul Verma

HON'BLE MR. JUSTICE ANAND SHARMA

Order

08/01/2026

1. By way of filing this writ petition the petitioner has challenged order dated 14.06.1996, whereby the application for resignation from service submitted by the petitioner has been dismissed. He has further assailed order dated 28.07.1998, whereby penalty of removal from service has been imposed upon the petitioner, and has also put to question order dated 02.11.1999, whereby the review petition filed by the petitioner against the penalty order has also been dismissed.
2. It is stated by learned counsel for the petitioner that the petitioner was initially appointed to the post of Officer in



Rajasthan Administrative Service (RAS) vide order dated 03.10.1979, where he joined on 15.10.1979. He submitted one application dated 18.11.1995 for resigning from service, while he was posted as Estate Officer in Rajasthan Housing Board, Jaipur.

3. It is submitted by learned counsel for the petitioner that for a considerably long time no order was passed on the resignation application submitted by the petitioner and quite abruptly vide letter dated 14.06.1996, the resignation was not accepted on the ground that the petitioner was willfully absent since 10.02.1995 and an inquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (CCA Rules) was under contemplation against the petitioner.

4. Learned counsel further submitted that at one hand the application for resignation submitted by the petitioner was dismissed for irrational and unfounded reasons, and on the other hand a charge-sheet under Rule 16 of CCA Rules, 1958 was issued revealing therein that the petitioner was willfully absent from service w.e.f. 10.02.1995 and despite giving instructions to immediately join vide letter dated 14.06.1996, he has not joined the service. It is submitted by learned counsel for the petitioner that the reason of non-acceptance of resignation and issuing charge-sheet to the petitioner was that the then Chief Minister was annoyed with him.

5. The petitioner filed reply to the charge-sheet justifying his absence that since he had tendered his resignation, therefore, he was under bona fide belief that his resignation would be accepted and there was no reason to deny resignation of the petitioner. It was submitted that at the instance of the then Chief



Minister, the petitioner was unnecessarily harassed. He also submitted that as regards Rule 86 of Rajasthan Service Rules, 1951 are concerned, under the facts and circumstances where the petitioner has already tendered his resignation, such rules would not be applicable upon the petitioner.

6. It is further submitted by learned counsel for the petitioner that as one more charge-sheet dated 23.12.1995 was issued to the petitioner, therefore, the petitioner filed S.B. Civil Writ Petition No.2045/1997 with a prayer to quash the charge-sheet dated 23.12.1995 as well as charge-sheet dated 18.11.1996 and to accept the resignation of the petitioner submitted on 18.11.1995. In the said writ petition, notices were issued by this Court and reply to the same was also filed by the petitioner.

7. However, during the pendency of the aforesaid writ petition, the respondents proceeded with the inquiry proceedings pursuant to charge-sheet dated 18.11.1996 by appointing Inquiry Officer. However, Inquiry Officer did not follow the principles of natural justice and without following the procedure contemplated, inquiry report was prepared in haste holding the petitioner to be guilty of the charges levelled against him. Copy of inquiry report was served upon the petitioner, but on account of his sickness he could not file any representation against the inquiry report and silence of the petitioner in this regard was treated to be his agreement with the report submitted by the Inquiry Officer. Thereafter, the respondents sought concurrence from Rajasthan Public Service Commission and on receiving concurrence vide order dated 28.07.1998 penalty of removal from service was imposed upon the petitioner.



8. Feeling aggrieved, the petitioner filed review application before the Governor of Rajasthan, however, the review petition has also been dismissed vide order dated 02.11.1999. At the relevant time, the petitioner was suffering from severe *sciatica pain*, therefore, he was advised by the doctor to take rest, hence he could not make contact with his advocate and on being recovered from illness, he filed the present writ petition challenging order of rejection of resignation, penalty order of removal from service as well as order of dismissing the writ petition.

9. Reply to the writ petition has been filed by the respondents mentioning therein that merely submitting a resignation letter does not confer any right upon the petitioner to unilaterally assume that his resignation would be accepted, and therefore, he was not supposed to remain absent from the duty. Moreso, when such resignation letter was not accepted by the respondents and intimation in this regard was given to the petitioner vide letter dated 14.11.1996, and directions were also given to him to immediately report on his duty. The reasons for rejecting the request of resignation has also been specified in letter dated 14.11.1996 that an inquiry under Rule 16 of CCA Rules, 1958 was under contemplation, where reply of the petitioner was being under examination, hence, competent authority has rightly dismissed the resignation of the petitioner. It is also submitted in the reply that charge-sheet served upon the petitioner contained specific charges with regard to willful absence of the petitioner. The petitioner although filed reply to the charge-sheet, yet failed to give any justified reasons except that he had



already tendered his resignation. As the reply was not satisfactory, Inquiry Officer was appointed to enquire into the charges, however, the petitioner did not participate in the inquiry proceedings, neither he cross-examined the witnesses produced by the respondents, nor did he produce any defence to justify his absence. Under these circumstances, after meticulously examining the charges, reply to the charge-sheet and the material/evidence on record, the Inquiry Officer held him guilty of willful and unauthorized absence. Copy of inquiry report was although served upon the petitioner, yet he chose not to file any representation against the findings of the inquiry report. Under such circumstances, the disciplinary authority after due application of mind and consideration of the record as well as inquiry report passed order of penalty of removal from service, in which there is no infirmity. Entire procedure as contemplated under the Rules of 1958 has been followed. The review petition has also been examined by the reviewing authority and as there was no justified ground, the same was also dismissed in accordance with law. Hence, there is no substance in the writ petition filed by the petitioner, and the same deserves to be dismissed.

10. Heard learned counsel for the parties and perused the record.

11. It is not a matter of dispute that the petitioner was absent from duty from 10.02.1995 as mentioned in letter dated 14.06.1996 (annexure-1). Inquiry in this regard was earlier initiated vide charge-sheet dated 23.12.1995. Reply to the aforesaid charge-sheet was also filed by the petitioner.



12. Sensing strict action against the petitioner, who was continuously absent since 10.02.1995, he submitted resignation letter dated 18.11.1995. However, learned counsel for the petitioner has utterly failed to point out any provision which confers absolute right upon the petitioner to claim acceptance of resignation tendered by him despite there being inquiry under contemplation against him. Although, there is provision of resignation under the Rule, yet its acceptance depends upon the circumstances as well as on discretion of the competent authority. In the facts and circumstances of the instant case, where the conduct of the petitioner was under scrutiny and inquiry under Rule 16 of the Rules of 1958 was under contemplation against him, the competent authority had committed no mistake whatsoever in rejecting the application for resignation tendered by the petitioner on 18.11.1995. While rejecting the request for resignation, vide letter dated 14.06.1996, the petitioner was also directed to immediately join his duties.

13. In the entire memo of writ petition, no justification whatsoever has been put forward by the petitioner to justify his absence from duties. It is orally argued that till his resignation was rejected, he was under the bona fide belief that it would be accepted by the respondents, therefore, he did not join his duties; however, learned counsel for the petitioner has utterly failed to give any iota of reason for justifying his absence subsequent to 14.11.1996, i.e. the date on which the petitioner was communicated that his resignation has not been accepted by the competent authority. Thus, it is clear that there was no



reasonable, sufficient or justified reason available to the petitioner for remaining absent from the duties.

14. It has also been admitted that the petitioner although filed reply to the charge-sheet dated 18.11.1996, yet the reply to charge-sheet did not contain any other reason except the fact of tendering resignation on 18.11.1995. After filing reply, it has been admitted that the petitioner did not bother to join the inquiry proceedings, which were initiated under the circumstances, where the reply of the petitioner was found to be unsatisfactory. It is not the case of the petitioner that he was not having information with regard to initiation and continuance of the inquiry. He has also not come out with any justification for not joining and participating in the inquiry proceedings. Thus, the petitioner has utterly failed to place any defence whatsoever before the Inquiry Officer. The Inquiry Officer proceeded with inquiry in accordance with the rules and submitted his inquiry report holding the petitioner guilty of the charges. It is also not disputed that copy of inquiry report was also served upon the petitioner, yet the petitioner did not submit any representation against the findings of Inquiry Officer. Under these circumstances, the disciplinary authority examined the record, findings of Inquiry Officer and concurred with the report given by the Inquiry Officer and after due application of mind over the conduct of the petitioner, justification given by him in reply to the charge-sheet, his non-cooperation during inquiry, his long willful and unauthorized absence from service as well as on quantum of punishment, penalty of removal from service was imposed by the disciplinary authority. This Court does not find any procedural error or violation of principles of natural justice in the





inquiry proceedings or in the passing of penalty order dated 28.07.1998. Thereafter, the review petition filed by the petitioner was also dismissed after due examination of the record as well as the points raised by the petitioner in his review petition.

15. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution of India has got extremely limited jurisdiction in the matter of disciplinary inquiry. The scope of judicial review is limited to manifest illegality, violation of statutory rule, non-compliance of principles of natural justice, or of the procedure contemplated under the disciplinary rules and only in the cases, where any such illegality is found or the punishment imposed is found to be shockingly disproportionate to the guilt, this Court can exercise its jurisdiction. Under Article 226 of the Constitution of India, the Writ Court does not act as an Appellate Authority to re-appreciate the evidence. It is settled proposition of law that in the matter of disciplinary inquiry, this Court can examine the decision making process and not the decision itself. Since, the petitioner has utterly failed to point out any of the aforesaid grounds, therefore, is not entitled for seeking an interference.

16. It is also well settled that resignation tendered by a public servant cannot be construed as an absolute right to exit service, particularly when departmental proceedings for serious misconduct are under contemplation or actively pending. The acceptance of resignation remains within the discretionary domain of the competent authority, who after weighing the larger public interest, the gravity of allegations and the necessity to uphold administrative discipline against the employee's convenience. In



the instant case, petitioner's resignation application, submitted amid ongoing contemplation of major penalty proceedings under Rule 16 of the Rules of 1958 cannot be deemed effective or binding without approval of the competent authority, as it would frustrate the inquiry proceedings and would also undermine accountability. Rejection of resignation in the present case is strictly in consonance with valid principles of law.

17. Petitioner's absence from duty, even after the categorical rejection of his application for resignation constitutes willful and deliberate misconduct of a grave nature, warranting the imposition of the penalty of removal from service. Moreso, when no justification whatsoever, much less than sufficient cause, has been given by the petitioner in the entire writ petition for rationalizing and explaining his absence. Despite being duly intimated to resume duties forthwith, the petitioner persisted in his absenteeism without justifiable cause, thereby flouting the principles of discipline and subordination which are inherent and indispensable part of public service. Such conduct not only undermines the efficiency and integrity of the service but also reflects a blatant disregard for command of higher authority. Hence, imposition of penalty cannot be faulted as arbitrary or erroneous, being fully proportionate to the misconduct established on record.

18. Although, petitioner has levelled certain allegations of mala fides against the then Chief Minister, however, as a matter of fact, he has not impleaded the then Chief Minister as party respondent in this writ petition. It is settled proposition of law that the allegations of mala fides and bias can be entertained by this



Court only under the circumstances, where the person against whom such allegations have been levelled, has been impleaded as a party respondent by him. Therefore, such allegations are not at all entertainable. Even otherwise, there are mere assertion of facts regarding bias without there being any supporting material to inspire confidence of this Court. Therefore, the allegations of mala fides levelled by the petitioner are not accepted.

19. In the light of foregoing discussion and analysis of facts in relevant law, this Court does not find any ground to interfere in the present writ petition and same is hereby dismissed.

(ANAND SHARMA),J

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