



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

S.B. Civil Writ Petition No. 14688/2024

Prakash Mali S/o Sh. Manak Ram Mali, Aged About 41 Years, R/o Malpani Pada, Jaisalmer. At Present AME (Assistant Mining Engineer) (Vigilance), Jaisalmer.

-----Petitioner

Versus

1. State Of Rajasthan, Through Joint Secretary, Mines And Petroleum Department, Secretariat, Jaipur.
2. Director, Mines And Geology Department, Udaipur.
3. Mining Engineer, Mines And Geology Department, Jaisalmer.

-----Respondents

For Petitioner(s) : Mr. C.S. Kotwani
For Respondent(s) : Mr. Mahaveer Bishnoi, AAG
Mr. Harshwardhan

HON'BLE MR. JUSTICE FARJAND ALI

Order

22/10/2024

1. The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the action of the respondent in suspending him without reasonable and probable cause and same not being in accordance with Rule 13 of The Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958¹. It has also been prayed that the Mines and Petroleum Department, Secretariat, Jaipur² has wrongly mentioned the post of the petitioner to be Mining Engineer (Vigilance) instead of his original post i.e., Assistant Mining Engineer³ and therefore the same may also be taken note of.

1 For brevity hereinafter to be referred as "CCA Rules, 1958".

2 For brevity hereinafter to be referred as "respondent department".

3 For brevity hereinafter to be referred as "AME".



2. Bereft of elaborated details, the brief facts of the instant writ petition are as under:-

2.1 The petitioner has been appointed on the post of AME on 30.12.2014 (Annexure 1) and while working on the post of AME in the office of Mining Engineer, Bundi II was transferred to AME (Vigilance), Jaisalmer on 22.02.2024 (Annexure 2).

2.2 During the petitioner's tenure at Bundi, an additional charge of Mining Engineer, Bijolia was assigned to him on 28.02.2024 (Annexure 3). He despite being transferred was not relieved by the Mining Engineer, Bundi. Eventually, he was relinquished from the charge on 04.03.2024 (Annexure 4).

2.3 After joining at Jaisalmer, the petitioner was served a show-cause notice by the Additional Director (Admn.) to which the petitioner responded within the stipulated time. Subsequently, the petitioner was served with a charge-sheet under Rule 17 of the CCA Rules, 1958 on 16.08.2024 (Annexure 5) and on the same day he was suspended vide order dated 16.08.2024 (Annexure 6).

2.4 The order incorrectly mentioned the petitioner as a Mining Engineer (Vigilance) while he was holding the post of AME. The suspension order did not specify any ongoing disciplinary or criminal proceedings. Further the petitioner's headquarters was changed from Jaisalmer to Udaipur and therefore, aggrieved by the above, he preferred a writ petition before this Court challenging the above action of the respondent.

2.5 On 23.08.2024, the Hon'ble Court allowed the writ petition filed by the petitioner and quashed the suspension order dated





16.08.2024 issued by the respondent department and this order has invalidated the suspension. Following the court's order, the suspension order dated 16.08.2024 was set aside and consequently the petitioner resumed his services and assumed the position of Assistant Mining Engineer (Vigilance) at Jaisalmer on 28.08.2024. The copy of the order dated 23.08.2024 and 28.08.2024 respectively are annexed with the writ petition (Annexure 7 and Annexure 8 respectively).

2.6 The department sought an advice from Additional Advocate General (AAG) on 28.08.2024 (Annexure 9) to which he advised that the suspension order is invalid as it is not in accordance with Rule 13 of the CCA Rules, 1958. On 29.08.2024, a new suspension order was issued by the respondent department where the post of the petitioner was wrongly mentioned by the respondent department and he was suspended according to the Rule 13 (1) (a) of the CCA Rules, 1958 (Annexure 10). On 30.08.2024, a clarification order was issued correcting the designation error in the previous suspension order (Annexure 11).

3. Learned counsel for the petitioner submits that the actions of respondents in suspending the petitioner from the post of AME without providing any reason is illegal and arbitrary. The order issued on 29.08.2024 stated that disciplinary proceedings under the CCA Rules, 1958 were being considered against him (कार्यवाही किया जाना विचाराधीन है।). As a result of which the petitioner was suspended with immediate effect under Rule 13 (1) (a) of the CCA Rules, 1958.



3.1 On the very next day i.e., 30.08.2024, a clarifying order was issued regarding the previous order dated 29.08.2024 where the post of the petitioner has been corrected from Mining engineer (Vigilance) to Assistant Mining Engineer (Vigilance). It is not in accordance to the Rule 13 of the CCA Rules, 1958 as the order dated 29.08.2024 (Annexure 10) does not reflect any reason to suspend the petitioner from the post and further it has been contended that the petitioner's headquarters has been changed from Jaisalmer to Udaipur.

3.2 It is further argued that respondent department has committed a grave error of law as well as fact while passing the impugned order. The counsel for the petitioner further contended that the incident of his misconduct occurred when he was posted at Bundi and currently he is posted in Jaisalmer which is a totally different geographical and administrative jurisdiction and his past conduct should not be considered to suspend him from his current posting. He cannot influence or obstruct any investigative process as he is transferred to a new place, so suspending without giving any valid reasons appears to be both unwarranted and punitive in nature rather than preventive or corrective.

3.3 The suspension order states that it is according to the Rule 13 (1) (a) of the CCA Rules, 1958 which provides for suspension only when a disciplinary proceeding is contemplated or pending but in this case, this order does not specify that any disciplinary proceedings were either initiated or currently pending against the petitioner at the time of issuing the suspension order.



3.4 It was further pointed out by the counsel that neither the charge-sheet was served nor any disciplinary proceeding is contemplated and no investigation or trial to any criminal offence is pending against the petitioner. The petitioners approached this Court with the prayer that the impugned order dated 29.08.2024 (Annexure 10) may be quashed and set aside.

4. Per contra, learned counsel for the respondent's department vehemently opposed the submissions made by the counsel for the petitioner.

4.1 He submits that the instant petition is not maintainable and sustainable as the petitioner has approached this Court directly while having alternative remedy so also it is urged that it is well settled principle of law that suspension is not a punishment and therefore, it cannot be challenged under extra ordinary jurisdiction of Hon'ble High Court through preferring a writ petition rather he should have attended the proceedings initiated and pending before the competent authority of the State in the present matter and submit his response there and get the matter concluded. If the conclusion is found against him then he has equally efficacious statutory remedy to challenge the same before the proper forum available under the relevant law.

4.2 It is further contended that enquiry has been contemplated against the petitioner and which is evident from the charge-sheet dated 05.09.2024 issued to the petitioner (Annexure R/1). The respondents are competent to issue an order of suspension under Rule 13 of the CCA Rules, 1958 owing to the fact that some complaints were there with the respondent department.



4.3 It is further submitted by the counsel that Rule 22 of the CCA Rules, 1958 states Appeal against the order of suspension, so the petitioner had an alternative remedy available with him and therefore this writ petition is not maintainable.

4.4 In support of the above submissions, learned counsel appearing for the petitioner has placed reliance on the judgments **Jagdish Prasad v. State of Rajasthan & Ors.** decided on 22.10.2007 in **(S.B. Civil Writ Petition No. 5901/2007)** and **Pramod Kumar Pathak v. State of Rajasthan & Ors.** decided on 07.11.2008 in **(S.B. Civil Writ Petition No. 8324/2008).**

5. Heard learned counsel for the petitioner as well as the learned counsel for the respondents and perused the material placed on record.

6. After perusing the record and pondering upon the submissions and materials made available to the Court, prima facie, it is revealed that the petitioner was initially appointed as a AME and frequently he was transferred at different places and also were given different charge at different places. Further, it has been noticed that the charge-sheet given to him was not relating to his present place of posting as the allegations levelled in the charge-sheet are of inquiry under Rule 17 of the CCA Rules, 1958. The allegations as mentioned in the charge-sheet are regarding the act which was done in the month of February 2024 at Bijolia which was his previous place of posting and that also relates to some variation in the weights of loaded mineral gravel which is trivial in nature. Nothing concrete has been found against the petitioner relatable to his present place of posting.



7. The order dated 29.08.2024 (Annexure 10) has also been questioned on the ground that the post of the petitioner was wrongly mentioned which reflects that due application of mind was not exercised. The claim of the petitioner is sustainable as the post of the petitioner working was the post of Assistant Mining Engineer and not Mining Engineer (Vigilance). It is pertinent to mention here that the order passed by the respondent department was passed in a casual manner or in an unscrupulous way that they did not even checked the post of the employee whom they are suspending. The way of approach adopted by the respondent department in committing a grave error needs due diligence and procedural propriety while issuing the suspension orders.

8. This Court has also examined Rule 13 (1) (a) of CCA Rules, 1958 which allows suspension in two situations where the **disciplinary proceeding is contemplated or pending** or where the case of **criminal offence is under investigation or trial**. For ready reference Rule 13 (1) of the CCA Rules, 1958 is reproduced as under: -

13. Suspension. –

(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government servant under suspension.

(a) Where a disciplinary proceedings against him is contemplated or is pending, or

(b) Where a case against him in respect of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.





In this case, no proceeding was under contemplation or pending against the petitioner when he was ordered to be suspended and so also no criminal offence was under investigation or trial and therefore the action of the respondent department is not fulfilling the requirements needed under Rule 13 (1) (a) of the CCA Rules, 1958. The petitioner was transferred to Jaisalmer which is far from his previous place of posting where the alleged misconduct was done and there is no reasonable possibility that the petitioner's presence in Jaisalmer can interfere with any potential inquiry or investigation related to his previous place of posting.

9. The provision of placing an employee under suspension is not punitive but preventive. As a precaution that the employee may not influence/hamper the course of inquiry or temper with the material related to it; an order under Rule 13 can be passed, however when the alleged misconduct is of a trivial nature and that is relatable to his previous place of posting which is around 700 kms away from his present place of posting still passing an order of suspension seems to be punitive instead of a preventive one. It cannot be ignored that the alleged inquiry is to be commenced under Rule 17 of the CCA Rules, 1958 which is commonly known as less grave than to a proceedings under Rule 16 of the CCA Rules, 1958.

10. I have perused the judgments provided by the counsel for the petitioner delivered by the co-ordinate bench and Division bench of this Court in the case of **Jodharam Bishnoi v. State of Rajasthan & Ors.** decided on 01.09.2022 in (**S.B. Civil Writ**



Petiiton No. 11696/2022) and in Division bench **State of Rajasthan & Ors. v. Jodharam Bishnoi** decided on 13.03.2023 in **(D.W. Civil Writ Petition No. 979/2022)**. It has been observed by the Court in above matters that the charge-sheet which was issued to the petitioner was in relation to another misconduct not relatable to the charge-sheet. For ready reference the relevant parts of the orders dated 01.09.2022 and 13.03.2023 are reproduced herein below:-

11. The relevant para of the order dated 01.09.2022 is reproduced herein below:-

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The order impugned dated 29.7.2022 (Annex.6) *inter alia* reads as under:-

“आदेश

चूंकि श्री जोधाराम विश्नोई, तत्कालीन आयुक्त, नगर परिषद, नागौर के हाल आयुक्त, नगर परिषद, किशनगढ़ के विरुद्ध एक विभागीय जांच विचाराधीन है।

अतः राजस्थान सिविल सेवा (वर्गीकरण, नियन्त्रण एवं अपील) नियम, 1958 के नियम 13(1) में प्रदत्त शक्तियों के तहत श्री जोधाराम विश्नोई, आयुक्त, नगर परिषद, किशनगढ़ को तुरन्त प्रभाव से निलम्बित किया जाता है।

निलम्बनकाल में इनका मुख्यालय नगर परिषद, जैसलमेर में रहेगा और इनको नियमानुसार जीवन निर्वाह भत्ते का भुगतान नगर परिषद, किशनगढ़ से देय होगा।”

(emphasis supplied)

A perusal of the order impugned indicates that on account of pending departmental inquiry, which pertained to the period while the petitioner was posted as Commissioner, Municipal Council, Nagaur, exercising powers under Rule 13(1) of the Rules of 1958, the petitioner has been placed under suspension



The charge-sheet, which has formed the basis and regarding which the departmental inquiry is pending against the petitioner, was issued under Rule 17 of the Rules of 1958 on 1.10.2021 (Annex.5), as to what prompted the respondents to place the petitioner under suspension after almost 10 months of issuing the charge-sheet to the petitioner and that also when he was working at Kishangarh i.e. not at Nagaur, cannot be deciphered from the response filed by the respondents. It is besides the fact that the petitioner had already responded to the charge-sheet.

The reliance on the purported inquiry report dated 11.3.2021 (Annex.R/2) is of no consequence, inasmuch as, the same has not formed the basis of passing of the order dated 29.7.2022, that also after over 15 months of submission of the report.

The submission made that the suspension of the petitioner was in contemplation of inquiry which culminated into issuing of charge-sheet under Rule 16 of Rules of 1958 on 10.8.2022 (Annex.R/4) is baseless, as noticed hereinbefore, the impugned order of suspension does not talk of 'inquiry in contemplation' and it only referred to 'the pending inquiry'.

In view of the above fact situation, the submission made by learned counsel for the petitioner that the order of suspension dated 29.7.2022 (Annex.6) has been passed only with a view to frustrate the order dated 15.7.2022 passed by this Court staying the petitioner's transfer from Kishangarh to Banswara, appears to be justified.

In view of the above, the action of the respondents in placing the petitioner under suspension by order dated 29.7.2022 (Annex.6) in relation to the pending inquiry pursuant to charge-sheet dated 1.10.2021 (Annex.5), cannot be sustained.

Consequently, the petition filed by the petitioner is allowed. The order dated 29.7.2022 (Annex.6) is quashed and set aside.

12. The relevant para of the order dated 13.03.2023 is reproduced herein below:-

We find that while the respondent was posted at Nagaur, a charge sheet was issued to him on 01.10.2021. However, at that time, the disciplinary authority did not consider it appropriate to place the respondent under



suspension. Thereafter, the respondent was transferred from Nagaur. However, while he was posted and working at Kishangarh, the impugned order came to be passed on 29.07.2022 placing the respondent under suspension. All that the order states is that there is one departmental inquiry pending against the respondent. The order obviously refers to the charge sheet dated 01.10.2021, which was issued against the respondent and the departmental inquiry was pending.

No doubt the State has the power to place an employee under suspension either in contemplation of departmental inquiry or even during the pendency of the departmental inquiry. However, it is settled law that power of suspension is required to be exercised in a reasonable manner and cannot be allowed to be exercised capriciously or arbitrarily.

The order impugned is a statutory order passed by the authority in exercise of the powers conferred under the applicable Service Rules. As is well settled in the decision of the Supreme Court in the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors. [AIR 1978 SC 851]**, the validity of statutory order has to be adjudged from the contents of the order. The impugned order of suspension nowhere speaks as to what impelled the authority to suddenly place the respondent under suspension after having initiated inquiry wayback on 01.10.2021.

We also notice that the respondent was also transferred from Nagaur i.e. the place where he was posted during the alleged delinquency. While he was posted at Kishangarh, the impugned order came to be passed.

Though learned counsel for the State seeks to justify the action by submitting that subsequently also a charge sheet has been issued to the respondent in relation to another alleged misconduct committed subsequently and a fresh order of suspension has been issued, we find that the reasons which have been assigned by the learned Single Judge to set aside the order of suspension are in accordance with law. In absence of any proper justification for placing the respondent under suspension after nine months of the initiation of the departmental inquiry, without any other reason assigned to take recourse to the power of suspension, the order of suspension appears to be arbitrary.

In view of the above, we are not inclined to interfere with the impugned order of the learned Single Judge.





Accordingly, the present special appeal (Writ) is dismissed. We may however hasten to add that this order shall not come in the way of the State in defending the suspension order which has been subsequently issued by it in the matter of alleged delinquency of the respondent during his posting at some other place.

13. In view of the above discussions and judgments passed by the coordinate bench and Division bench of this Court it is felt that the order passed by the respondent authority suspending the petitioner was passed in a casual manner as the suspension order which was initially issued to the petitioner was not in accordance with Rule 13 of the CCA Rules, 1958. When the order was not found sustainable in the eye of law then a fresh order was passed on 29.08.2024 in which the post of the petitioner was wrongly mentioned. Then, finally after all the corrections, on 30.08.2024 it was again issued. The manner of dates and events showing that the order of suspension was not in accordance with the spirit of law but passed in obstinacy. The inquiry for which the charge-sheet is issued in the matter is of Rule 17 of th CCA Rules, 1958 wherein the nature of allegations are not so grave and the charges are petty in nature. This Court feels that for the projected charges, inquiry may be initiated but during the course of inquiry his suspension is not required particularly when the charges are related to his previous place of posting in Bijolia. This court deems it fit to exceed to the prayer made by the petitioner and thus the writ petition succeeds.



14. Accordingly, the writ petition is allowed and the impugned order dated 29.08.2024 passed by the Mines and Petroleum Department, Secretariat, Jaipur is hereby quashed and set aside whereby the petitioner has been kept under suspension. It is made clear that the department is not precluded from initiating/ commencing/ concluding the inquiry as it is contemplated in accordance with law.

15. Stay petition also stands disposed of.

(FARJAND ALI),J

217-Mamta/-