

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPURD.

B. Civil Special Appeal (Writ) No. 19/2018InS. B. Civil Writ Petition No. 6315/2007Rajasthan State Road Corporation, through1. Chairman, Rajasthan State Road Transport Corporation, HQChomu House, Jaipur.2. Managing Director, Rajasthan State Road Transport Corporation,HQ Jaipur.3. Executive Director, Traffic, Rajasthan State Road TransportCorporation, HQ Jaipur.4. Chief Manager, Rajasthan State Road Transport Corporation,Hindaun Depot, District Karauli, Rajasthan. Appellants.VersusSuresh Agarwal S/o Shri Raghuvveer Sharan Agarwal, by casteMahajan, R/o Keshavpura Pada, Hindauncity, District Karauli(Rajasthan). RespondentFor Appellant(s) : Mr. Vinayak Joshi. For Respondent(s): Mr. H.V. Nandwana, Amicus CuriaeMr. Suresh Agarwal, respondent in person. HON'BLE MR. JUSTICE MOHAMMAD RAFIQ HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHAJudgmentREPORTABLE04/11/2019%&

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/0,12This appeal has been filed by Rajasthan State RoadTransport Corporation (for short 'the RSRTC') challenging judgmentdated 23.03.2017 passed by the learned Single Judge of this Courtwhereby writ petition filed by respondent Suresh Agarwal has been
(2 of 10) [SAW-19/2018]allowed by setting aside the order of his removal from service dated10.05.2006 and the order dated 20.06.2007, rejecting his appealagainst the aforesaid order of dismissal from service and directedthe appellant-RSRTC to substitute that penalty by compulsoryretirement of the respondent with continuity of service and all theconsequential benefits, with payment of only 50% actual wages andtreating remaining wages as notional. The respondent-writ petitioner was appointed in theservice of the appellants as Conductor on 09.03.1984. His serviceswere terminated vide order dated 11.06.1985 on the allegation thathe was found carrying 15 passengers without ticket in the bus on02.06.1985. The respondent preferred Writ Petition No. 1427/1993before Single Bench of this Court alleging mala fides on the part ofthe appellants. The appellant-RSRTC agreed before Single Bench ofthis Court to reinstate him in service provided he did not claimsalary for the period prior to 13.06.1985. That writ petition wasaccordingly disposed of vide order dated 25.11.1993. Therespondent was, however, reinstated belatedly by passing orderdated 29.04.1994, as a daily wage Conductor and was posted atJhalawar. The respondent represented thereagainst. Subsequently,vide another order dated 01.06.1994, he was treated to bereinstated in service w.e.f. 08.12.1993 and posted at Hindaun.Being not satisfied therewith, the respondent preferred another WritPetition No. 496/1995 before Single Bench of this Court, which wasdismissed vide order dated 08.03.1995. The aforesaid order waschallenged before Division Bench of this Court by the respondent byfiling D.B. Civil Special Appeal (Writ) No. 357/1995, which wasdisposed of vide judgment dated 04.09.1995 after recording
(3 of 10) [SAW-19/2018]statement made by the learned counsel for the RSRTC that therespondent shall be treated as regular employee w.e.f. 01.03.1986.Yet another Writ Petition No. 5985/1996 was filed by the respondentbefore Single Bench of this Court for the purpose of counting hisperiod of service continuously as the appellants had not countedintervening period wherein the respondent was required to join hisduties at Hindaun. Writ petition was dismissed by the Single Bench.Thereafter, the respondent preferred D.B. Civil Special Appeal No.809/1997 before Division Bench of this Court, which was disposed ofon 10.07.1997 directing

the RSRTC to take the respondent in service so that he may have the satisfaction of continuity in service and simultaneously requiring the respondent to immediately join the duties without any demur. It is after so much of litigation that the respondent finally joined his duties but thereafter he was served with a charge sheet dated 10.01.2000 alleging that he was absent from duty for the period from 30.09.1999 to 11.12.2001. Earlier also a charge sheet was issued to the respondent on 15.10.1997 on the allegation that he, during the off days, had cancelled the travel of the vehicle of several kilometers on the ground that there had been no passengers and on account of mechanical failure of the vehicle. He caused loss to the tune of Rs. 22,010/- to the RSRTC by cancelling 2193 kilometers. Yet another charge sheet dated 25.06.2003 was issued to the respondent alleging that when he was transferred vide order dated 13.08.2002 from Kota to Hanumangarh, he did not report for duty at Hanumangarh. Though a notice was served on him on 11.09.2002 for joining duty but he avoided doing so on the pretext of back and spinal pain for which he was undergoing treatment at

(4 of 10) [SAW-19/2018] S.M.S. Hospital, Jaipur. Thus, he remained absent from duty from 14.08.2002 to 08.03.2004. In his reply, stand of the respondent was that he was suffering from mental as well as physical illness and therefore could not report on duty. Enquiry was conducted against the respondent in all three cases. After completion of enquiry, Chief Manager of the RSRTC passed a common order of penalty of removal of the respondent from service on 10.05.2006. Appeal filed by the respondent thereagainst was dismissed vide order dated 20.06.2007. The respondent challenged both the aforesaid orders by filing writ petition which was disposed of vide order dated 11.01.2008 with direction to the respondent to avail alternative remedy before the Labour Court under the Industrial Disputes Act, 1947. The respondent then preferred D.B. Civil Special Appeal No.416/2015 before Division Bench of this Court, which vide judgment dated 03.08.2015 set aside the order dated 11.01.2008 and remanded the matter back to the Single Bench to decide the writ petition afresh in accordance with law. It is thereafter that the learned Single Judge of this Court vide impugned judgment dated 23.03.2017 has allowed the writ petition in the terms as indicated herein above. Mr. Vinayak Joshi, learned counsel appearing on behalf of the appellants submitted that the learned Single Judge erred in law in setting aside the order of removal of the respondent from service as also order dismissing the appeal filed by the respondent thereagainst. Learned Single Judge further erred in directing the appellants to compulsorily retire the respondent with continuity in service and all the consequential benefits. It is argued that career of the respondent has a chequered history. He had been indulging in

(5 of 10) [SAW-19/2018] various litigations against the appellants on one pretext or the other. Perusal of the impugned judgment would indicate that the learned Single Judge was persuaded by consideration of sympathy and mercy rather than deciding the matter on merits. Learned counsel further argued that the learned Single Judge has gone to the extent of observing that the respondent, who was present in the Court, did not appear to be in a fit state of mind. It has wrongly been observed by the learned Single Judge that the respondent has been compelled to remain in continuous litigation against the appellants since 1993 and owing to this fact, a human being would be mentally stressed beyond normal limits. These considerations/observations are irrelevant for deciding the quantum of punishment. Learned counsel argued that the learned Single Judge has committed illegality in observing that a common order of penalty could not be passed in three different charge sheets issued to the respondent. But the learned Single Judge failed to analytically examine order dated 10.05.2006, which clearly states that separate enquiries were conducted against the respondent and he was given opportunity of hearing in the enquiry proceedings. Even the appeal filed by the respondent against order of removal from service has been dismissed by the disciplinary authority after giving opportunity of hearing to the respondent. There is no impediment in law in passing common order of penalty in respect of three charge sheets. Once a decision was taken to impose a penalty of removal from service upon the respondent, there

was no justification for passing any second or third order of penalty available in the relevant rules, which could additionally be imposed upon the respondent.

(6 of 10) [SAW-19/2018] Mr. H. V. Nandwana, learned Amicus Curiae appearing on behalf of the respondent opposed the appeal and submitted that the appellant-RSRTC has adopted Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958') for the purpose of holding disciplinary proceedings against its employees. The disciplinary authority in the present case has combined all three charge sheets issued against the respondent for passing a common order of penalty of removal from service, which is wholly impermissible under the Rules of 1958. There is no provision in the Rules of 1958 to pass a common order of penalty relating to three different enquiries. The respondent was not supplied with copy of the enquiry reports in any of the three disciplinary proceedings. Moreover, the disciplinary authority has taken into consideration past misconduct of the respondent and was unduly influenced thereby. Since there was no reference to the past misconduct of the respondent or the penalties awarded to the respondent previously, in any of three charge sheets served in the present matter, order of penalty passed, which is based on past misconduct of the respondent, stood vitiated. In support of this argument, learned counsel has relied upon the judgment of the Supreme Court in Mohd. Yunus Khan Vs. State of Uttar Pradesh & Others (2010) 10 SCC 539. Learned Single Judge was therefore perfectly justified in holding that penalty order passed in the present case was actuated with bias on the part of the disciplinary authority on account of the respondent filing several litigations against the appellants in the past. It is argued that order of penalty passed by the disciplinary authority is wholly vague and non-speaking one. Considering the fact that the respondent had attained age of

(7 of 10) [SAW-19/2018] superannuation, learned Single Judge has rightly moulded the relief by substituting the penalty of removal from service by compulsory retirement with only 50% actual wages, which in the facts of the present case, is wholly justified. We have given our anxious consideration to rival submissions and perused the material on record. Perusal of the order of penalty dated 10.05.2006 indicates that the disciplinary authority has combined three charge sheets for passing a common order of penalty. Order of penalty indicates that first charge sheet dated 10.01.2000 contained allegation that the respondent remain willfully absent from 30.09.1999 to 11.12.2001. The appellants being called upon by this Court have produced the record of the proceedings conducted by the enquiry officer. Record reveals that statement of Babulal Chahar was recorded with regard to which it appears that no cross-examination was done by the respondent. Report of enquiry has been prepared by the enquiry officer on a printed proforma in which certain columns, which are already left blank, have been filled in. Another enquiry report as to the charge sheet No. 381 dated 25.06.2003 is also available on record, which also has been prepared on a proforma by filling in certain blank columns. In the third enquiry report as to the loss of Rs. 22,010/- caused to the RSRTC by cancelling travel of 2193 kilometers also appears to have been prepared on proforma in a very flimsy manner. In fact, in all the three reports neither any document nor statement of any witness has been discussed. The manner, in which the enquiry in these three disciplinary proceedings have been conducted leave

(8 of 10) [SAW-19/2018] much to be desired. Enquiry proceedings in all the three charge sheets have thus been conducted by a procedure unknown to law. Apart from the clumsy manner, in which the enquiries have been conducted, the disciplinary authority has combined all three charge sheets and passed a common order of penalty on the basis of aforesaid reports and in doing so, the disciplinary authority has taken into consideration 11 penalties earlier awarded to the respondent, mostly of which are of fine, three of which are stoppage of one annual grade increment without cumulative effect and one is of stoppage of two annual grade increments with cumulative effect. The Supreme Court in Mohd. Yunus Khan (supra) after referring to its

previous judgments in Union of India & Others Vs. Bishamber Das Dogra, (2009) 13 SCC 102; The State of Assam & Another Vs. Bimal Kumar Pandit, AIR 1963 SC 1612; India Marine Service Private Ltd. V. Their Workmen, AIR 1963 SC 528; The State of Mysore Vs. K. Manche Gowda, AIR 1964 SC 506; Colour-Chem Ltd. Vs. A.L. Alaspurkar & Others, (1998) 3 SCC 192; Director General, RPF & Others Vs. Ch. Sai Babu, (2003) 4 SCC 331; Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, (2005) 2 SCC 489; Govt. of A.P. & Others Vs. Mohd. Taher Ali, (2007) 8 SCC 656, held that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing punishment. In para 34 of the Report, it was held as under: "34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past

(9 of 10) [SAW-19/2018] misconduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment." The Supreme Court in the aforesaid case has carved out an exception that in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for adding the weight to the decision of imposing the punishment if the facts of the case so required. In the facts of the present case, we are not inclined to hold that charges in any of the three disciplinary proceedings, for which penalty of removal has been imposed upon the respondent are of grave nature. Moreover, there is no provision in the Rules of 1958, particularly in Rule 16 thereof, which empowers the disciplinary authority to impose a common penalty on the basis of findings recorded in three different charge sheets. Combining three charge sheets and clubbing of charges in them does not make them any more serious. The disciplinary authority could have imposed separate penalty for each of the charge sheets and if gravity of charges in any one of them alone justified penalty of removal, other two matters could be closed reserving the right to reopen the same if necessity arises in future. Since gravity of charges in any one of the three charge sheets could not independently justify award of serious penalty like removal; all three charge sheets could not have been combined to justify imposition of grave penalty of removal from service.

(10 of 10) [SAW-19/2018] We are cognizant of the fact that this Court in exercise of its power of judicial review under Article 226 of the Constitution of India can interfere with the quantum of penalty, only if the penalty is shockingly disproportionate to the gravity of the charges. Even though the learned Single Judge in the present case has not recorded any such finding, but in the facts of the case, we are inclined to hold that each of the charge sheets individually taken, none qualifies that test, yet the learned Single Judge instead of setting aside order of penalty and despite all the aforementioned lacuna in the disciplinary proceedings, considering the fact that the respondent has already attained age of superannuation, moulded the relief so as to give a quietus to the controversy by setting aside the order of removal from service and substituting the same by order of compulsory retirement with continuity of service and consequential benefits from the date of judgment. Moreover, the learned Single Judge further moulded the relief by directing that the respondent shall be entitled to only 50% actual wages and remaining wages shall be treated as notional. In view of above discussion, we are not inclined to interfere with the discretion so exercised by the learned Single Judge of this Court, which in the peculiar facts of the present case is just, reasonable and equitable order. There is no merit in this appeal, which is dismissed with no order as to costs. (NARENDRA SINGH DHADDHA), J (MOHAMMAD RAFIQ), J (MANOJ NARWANI) / _____