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Certified Copy of Order Dated...11/05/2021
IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

S.B. CIVIL WRIT PETITION NO. 6194 /2021

16484
24/5/21

Ramjilal Jangid S/o Shri Late Shri Soni Lal, aged about 80 years, R/o
S-2, Cinema Scheme, Janta Colony, Adarsh Nagar, Jaipur (Raj.).

.....Petitioner

V E R S U S

1. Rajasthan State Road Transport Corporation through its
Chairman cum Managing Director, Head Office, Parivahan
Marg, Jaipur
2. The Executive Director (Administration), RSRTC, Head Office,
Parivahan Marg, Jaipur.
3. The Chief Manager, RSRTC, CBS Depot Jaipur.

.....Respondents

WRIT PETITION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA

AND

IN THE MATTERS OF ARTICLE 14, 16 AND 21
OF THE CCNSTITUTION OF INDIA

AND

IN THE MATTER OF RAJASTHAN STATE
ROAD TRANSPORT CORPORATION
EMPLOYEES PENSION REGULATIONS 1989

AND

IN THE MATTERS OF RAJASTHAN STATE
ROADWAYS TRANSPORT CORPORATION
WORKERS AND WORKSHOP EMPLOYEES
STANDING ORDER, 1965

AND

IN THE MATTERS OF VIOLATION OF THE
PRINCIPLE OF NATURAL JUSTICE

AND

SAJJAN KUMAR MEHTA
OATH COMMISSIONER
RAJASTHAN HIGH COURT BEN



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मान उच्च न्यायालय पीठ
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Om

IN THE MATTER OF OFFICE ORDER DATED
28.04.2021 PASSED BY CHAIRMAN AND
MANAGING DIRECTOR WHEREBY
REMAINING PENSION OF THE PETITIONER
HAS BEEN FORFEITED

To,



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साक्षिक अधिकारी न्यायिक
जस्थान उच्च न्यायालय ईद,
जयपुर

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

S.B. Civil Writ Petition No. 6194/2021

Ramjilal Jangid S/o Shri Late Shri Soni Lal, Aged About 80 Years,
R/o S-2, Cinema Scheme, Janta Colony, Adarsh Nagar, Jaipur
(Raj.).

----Petitioner

Versus

1. Rajasthan State Road Transport Corporation through its
Chairman Cum Managing Director, Head Office, Parivahan
Marg, Jaipur
2. The Executive Director (Administration), RSRTC, Head
Office, Parivahan Marg, Jaipur.
3. The Chief Manager, RSRTC, CBS Depot Jaipur.

----Respondents

For Petitioner(s) : Mr. Anshuman Saxena
For Respondent(s) : Mr. R.K. Paliwal for
Mr. R.A. Katta

HON'BLE MR. JUSTICE ANAND SHARMA

Order

11/05/2026

1. By way of filing this writ petition, petitioner has challenged order dated 28.04.2021 passed by the Chairman and Managing Director, Rajasthan State Road Transport Corporation, Jaipur, whereby in exercise of powers under Regulation-4 of Rajasthan State Road Transport Corporation Employees' Pension Regulations, 1989 (hereinafter to be referred as 'Regulation 4 of the Regulations of 1989'), pension earlier sanctioned to the petitioner was withheld permanently.

2. It has been asserted by the petitioner that when the petitioner was working on the post of Office Assistant in respondent- Corporation, on account of involvement in Criminal Case No.126/90, the Special Judge, Sessions Court, Prevention of Corruption Act No.1 passed judgment dated 06.09.2018, whereby the petitioner was convicted under Section 5(1)(c) of the



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Prevention of Corruption Act, 1947 read with Section 120-B IPC and on account of such conviction, he was sentenced to rigorous imprisonment of three years as well as to pay fine.

3. It is stated that in the meanwhile, on attaining age of superannuation, the petitioner retired from service w.e.f. 30.06.2001 and even the pension was also sanctioned to the petitioner and he was receiving pensionary benefits admissible to him upon his retirement. Learned counsel for the petitioner submits that soon after judgment of conviction and sentence dated 06.09.2018, without providing any opportunity of hearing whatsoever or without even issuing any notice to the petitioner, in quite abrupt manner order dated 31.01.2019 was issued by the Chief Manager of Central Bus Stand RSRTC, Jaipur, who was not even competent to issue any penalty order, whereby the pension admissible to the petitioner was directed to be permanently withheld w.e.f. 01.12.2018.

4. The petitioner challenged order dated 31.01.2019 by way of filing S.B. Civil Writ Petition No.2709/2020, mainly on the ground of incompetence of the order issuing authority, however, in view of interim order dated 19.01.2021 passed by the Co-ordinate Bench of this Court, the respondents passed fresh order dated 28.04.2021, which was although issued by the competent authority i.e. the Chairman and Managing Director of respondent-Corporation, however, again the petitioner was deprived of any opportunity of hearing, nor did he receive any show cause notice before passing order dated 28.04.2021.

5. Learned counsel for the petitioner submits that the order impugned has been passed in purported exercise of powers



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under Regulation 4 of the Regulations of 1989, which although can be invoked under the circumstances, where the concerned retired employee does not continue good conduct, which is implied condition for grant of pension, yet further submits that withholding the pension permanently is not the only penalty prescribed and rather discretion has been conferred upon the pension sanctioning authority under Regulation-4 to withhold/withdraw pension either in complete or in part thereof, whether permanently or for a specified period, therefore, in view of multiple choice of penalty prescribed, the order passed by the authority under Regulation-4 must reflect proper application of mind, so as to demonstrate the justified reasons for choosing a particular penalty by the authority concerned.

6. In the instant case, order dated 28.04.2021, apart from suffering from violation of principles of natural justice, is totally vague and evasive; and fails to show any proper application of mind for inflicting harshest penalty of withholding complete pension permanently. Thus, even otherwise, order dated 28.04.2021 has been issued in erroneous exercise of provisions of Regulation-4 of the Regulations of 1989.

7. *Per contra*, learned counsel for the respondents submits that it is an undisputed fact that the petitioner was convicted vide judgment dated 06.09.2018 for committing an offence under the provisions of Prevention of Corruption Act, 1947, therefore, under the circumstances, no other option was there with the pension sanctioning authority except to pass an order to withhold the entire pension permanently. Learned counsel submits that the offences under the provisions of Prevention of Corruption Act are



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distinct offences, which relate to the conduct of government servants while discharging their official duties and a judgment of conviction passed under the provisions of Prevention of Corruption Act, cannot be taken lightly, as such judgment is, no doubt, a conclusive proof of commission of serious misconduct and crime by the concerned employee while discharging his government duties.

8. Learned counsel submits that under the circumstances, there is no scope of applying principles of natural justice, as the same would be nothing but an empty ritual in the facts and circumstances of the case. Learned counsel also submits that order dated 28.04.2021 has been issued by the competent authority strictly in accordance with law and there is no scope of interference in the instant writ petition.

9. In rejoinder, learned counsel for the petitioner submitted that earlier vide order dated 28.05.2021, the present writ petition filed by the petitioner was dismissed in limine by the Co-ordinate Bench of this Court, which was challenged by the petitioner by way of filing D.B. Special Appeal (Writ) No.641/2021.

10. The Division Bench of this Court vide order dated 06.04.2022 allowed the aforesaid D.B. Special Appeal (Writ) No.641/2021 mainly on the ground that principles of natural justice are very much applicable in the instant case, and order dated 28.05.2021 passed by the learned Single Judge was quashed and set aside. However, under the circumstances, where the writ petition was dismissed in limine and the issue with regard to violation of principles of natural justice is a mixed question of fact and law, therefore, the factual statement made by the



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to whether the impugned order reflects due application of mind or not?

15. To examine the aforesaid question, it would be relevant to reproduce Regulation 4 of the Regulations of 1989, as under:-

"4. Good conduct & condition for the grant of

Pension

(1) Future good conduct shall be an implied condition of every grant of Pension. The Pension sanctioning authority may, by an order in writing, withhold/withdraw a pension or part thereof whether permanently or for a specified period if the pensioner is convicted of a serious crime or is found guilty of grave mis-conduct. Provided that no order shall be passed under this clause by an authority subordinate to the authority competent to make an appointment to the post held by the Pensioner immediately before his retirement from his service.

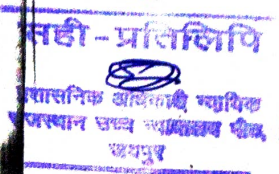
(2) Where a pensioner is convicted of a serious crime by a court of law, action under clause (1) shall be taken in the light of judgment of the court relating to such conviction.

(3) In a case not falling under clause (2) if the competent authority under clause (1) considers that the pensioner is prima facie guilty of grave mis-conduct, it shall before passing an order under clause (1):

(a) Serve upon the Pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the competent authority, such representation as he may wish to make against the proposal, and

(b) Take the representation, if any, submitted by the Pensioner under clause (a) into consideration.

(4) Where the authority competent to pass an order under clause (1) is the Chairman of the



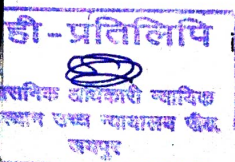
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Corporation, the Chairman may pass such orders on the appeal as he deems fit."

16. A bare perusal of the aforesaid Regulation makes it evident that discretion has consciously being conferred upon the competent authority to either withhold or withdraw pension in full or in part, either permanently or for a specified period. Thus, the Regulation itself contemplates varying degree of punishment depending upon the facts and circumstances of each case. Once such discretion has been vested in the authority, it necessarily follows that the authority is required to objectively consider all relevant aspects before choosing a particular course of action. The exercise of discretion cannot be mechanical or automatic merely because a conviction has been recorded. The order passed under Regulation 4 must disclose application of mind reflecting as to why the authority considered it appropriate to impose the harshest penalty of permanently withholding the entire pension instead of adopting any lesser measure permissible under the Regulation.

17. In the present case, the impugned order dated 28.04.2021 is apparently silent on all such relevant considerations. The order merely refers to conviction of the petitioner and thereafter abruptly directs permanent withholding of the entire pension. The order neither records any reasons nor reflects consideration of relevant factors such as the nature of misconduct, the length of service rendered by the petitioner, the period elapsed after retirement, the financial consequences of complete deprivation of pension, or even the possibility of imposing lesser penalty permissible under the Regulation. The impugned order, therefore, suffers from complete non-application



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of mind and fails to satisfy the requirement of a reasoned administrative order, more particularly when valuable retiral benefits of a retired employee are being permanently taken away.

18. While arriving at aforesaid conclusion this Court finds strength from the judgment delivered by Division Bench of this Court in the case of **Rajasthan State Road Transport Corporation & Others Vs. Shri Ram Yadav** reported in **1995(3) WLC (Raj.) 16** decided on 09.05.1995, in which the Division Bench has held as under:-

"12. It may be noted that the rule making authority has provided for imposition of one or more of the penalties enumerated in Rule 36. First four of the penalties i.e. (i) censure, (ii) withholding of increments or promotion, (iii) recovery from pay/wages of the whole or part of any pecuniary loss caused to the employer by negligence or breach of any law and (iv) fine upto 2% of worker's wages, are not appealable. The other four penalties, i.e. (i) forfeiture of wages during the period of suspension, (ii) reduction to a lower post or grade, (iii) termination of service which shall not be a disqualification for future employment and (iv) dismissal from service which shall be disqualification for future employment, are penalties against the imposition of which appeal could be filed to the appellate authority. Standing Orders itself confer wide discretion upon the competent authority to select the penalty and impose upon the workman. This has got to be done by exercising the discretion in accordance with law. It is incumbent upon the competent authority to indicate "good and sufficient reasons" for selecting the penalty. The reasons must make it intelligible to all concerned as to why the competent authority has selected a particular penalty. Otherwise question may be asked as to why the penalty may not be minimum? The other one may say as to why not the maximum? The rule making authority has cast obligation upon the competent authority to consider the question of penalty rationally and exercise his discretion in choosing the penalty in just, fair and reasonable manner. That is the reason why the rule making authority has made it



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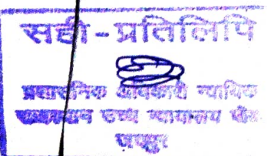
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obligatory upon the competent authority to indicate "good and sufficient reasons" while selecting and imposing particular penalty upon the delinquent employee.

13. In essence, Rule 36 of the Standing Orders enjoins duty upon the competent authority to determine which of the penalties enumerated in the Rule is to be imposed upon the delinquent employee. In other words, to decide means to give rational judgment after considering the pros and cons of the matter. As the rule in terms enjoins a duty upon the competent authority to make selection of the penalty "for good and sufficient reasons" the competent authority is bound to apply its mind to all the relevant aspects of the case. The order itself must show that all the relevant aspects have entered into consideration in rendering the decision by a process of ratiocination. It is only when the order itself gives a clue of the factors which have weighed with the competent authority in deciding upon the punishment of removal from service that one can say that there has been application of mind. Only then it can be realised that relevant and germane factors (and none others) have entered into the equation. There can be no determination or decision which does not disclose that the "plus" and "minus" factors and "for" and "against" considerations have been arraigned in the weighing scales. The order must, on the face of it, show as to why the most serious penalty of removal from service, from out of the list of alternatives is chosen and why a less serious penalty has been considered to be inadequate. Selection of maximum penalty and naming it from out of the list of alternative penalties which could have been imposed cannot be done arbitrarily. Similarly, it cannot be a matter of 'ipse dixit' of the disciplinary authority. He has to inform himself of the relevant considerations. He must re-assure himself that the particular penalty deserves to be imposed in order to meet the requirements of the situation. It will not be sufficient for the competent authority to say in a general, vague and ambiguous manner that having regard to the facts and circumstances of the case the employee concerned deserves to be removed or dismissed from service. The competent authority is bound to take into consideration the gravity of the charge, the nature of its consequences, the circumstances under which the misconduct was committed, the working condition of the workman, his past service record, the personal and family circumstances of the



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delinquent employee. The competent authority must also pose a question as to whether the charge warranted an inference as regards his dishonesty, lack of integrity or lack of uprightness, whether the fault was such which had resulted in serious detriment to the public interest, whether the prolonged proceedings and sufferings by the workman and his family members during the period of litigation would not be sufficient to teach him a lesson? These and many other vital considerations must be posed by the competent authority and answer the same to its own satisfaction.

23. In the instant case the disciplinary authority has made no attempt to ascertain as to what will be the just penalty in the facts and circumstances of the case. The disciplinary authority was under an obligation as per the provisions of the Standing orders to indicate "good and sufficient reasons" before passing appropriate order of punishment. In the instant case no attempt is made to ascertain as to what would be the just penalty. As indicated hereinabove, the learned counsel for the respondent Corporation has not been able to place any material before the Court to show that the competent authority had "good and sufficient reasons" to choose the penalty of removal from service and forfeiture of wages for the period of suspension. In this view of the matter, it cannot be said that the disciplinary authority has discharged the quasi judicial function in the manner required by law. It has got to be held that the disciplinary authority has not applied his mind to the most important function. Therefore, the order is nullity and the same is required to be quashed and set aside."

19. This Court also finds considerable force in the contention advanced by the learned counsel for the petitioner regarding violation of principles of natural justice. It is also settled proposition of law that pension is not a bounty but a valuable statutory right earned by an employee after rendering long years of service. Any order resulting in deprivation or permanent withholding of pension undoubtedly entails serious civil consequences. Therefore, unless specifically excluded by the



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statute, compliance of principles of natural justice is implicit before passing such an adverse order. In the present case after perusing entire reply to the writ petition filed by the respondents, it becomes absolutely clear that admittedly no show cause notice was issued to the petitioner and no opportunity of hearing whatsoever was afforded before passing the impugned order dated 28.04.2021. The contentions of the respondents that grant of opportunity of hearing would have been an empty formality cannot be accepted in the facts and circumstances of the present case. Even where conviction stands proved, the petitioner still had a valuable right to place mitigating circumstances before the authority for consideration regarding the nature and extent of penalty proposed under Regulation 4. The requirement of hearing was not an empty ritual but a substantive safeguard to ensure fair exercise of discretion by the authority.

20. It is also evident from the record that Division Bench of this Court while deciding D.B. Special Appeal (Writ) No.641/2021 vide judgment dated 06.04.2022 had already observed that the issue relating to applicability of principles of natural justice deserved consideration and consequently the earlier order dismissing the writ petition was set aside and the matter was remanded back. Though, the Division Bench left the issue to be adjudicated finally after exchange of pleadings, the observations made therein clearly indicate that compliance of principles of natural justice could not have been lightly dispensed with by the respondents.

21. In view of aforesaid discussion, this Court is of the considered opinion that the impugned order dated 28.04.2021



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cannot be sustained in the eye of law, firstly on account of gross violation of principles of natural justice, and secondly due to complete non-application of mind while exercising powers under Regulation 4 of the Regulations of 1989.

22. Accordingly, the writ petition is hereby allowed. The impugned order dated 28.04.2021 passed by the Chairman and Managing Director, RSRTC is hereby quashed and set aside. The matter is remanded back to the competent authority to reconsider the issue afresh in accordance with law. Before passing any fresh order, the respondents shall issue an appropriate show cause notice to the petitioner indicating the proposed action and shall afford reasonable opportunity of hearing to him. The petitioner shall be at liberty to place all relevant facts and mitigating circumstances before the authority. Thereafter, the competent authority shall pass a reasoned and speaking order strictly in accordance with Regulation 4 of the Regulations of 1989 after due application of mind with regard to the nature and extent of penalty, preferably within a period of three months from the date of receipt of certified copy of this order. Till passing of fresh order, the respondents shall restore and continue payment of pension admissible to the petitioner in accordance with law and arrears thereof, if any, shall also be paid to the petitioner.

23. Pending application(s), if any, shall also stand disposed of.


(ANAND SHARMA), J

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