

Rajasthan High Court
Rajasthan High Court
Jitendra Nath Tiwari vs State & Ors. on 27 January, 2010
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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

ORDER

IN

1. S.B. Civil Writ Petition No.4825/1993

{Jitendra Nath Tiwari Vs. The State of Rajasthan & Others}

AND

2. S.B. Civil Writ Petition No.3793/1997

{Jitendra Nath Tiwari Vs. The State of Rajasthan & Others}

Date of Order ::: 27.01.2010

Present

Hon'ble Mr. Justice Mohammad Rafiq

Shri Rajendra Prasad, Counsel for petitioners in both writ petitions

Shri Pradeep Kalwania, Additional Government Counsel for respondents in both writ petitions

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By the Court:-

These two writ petitions, filed by petitioner Jitendra Nath Tiwari, are directed against orders dated 15.06.1993 and 08.10.1996 passed by Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur, (for short, 'the Tribunal') in his Appeals No.255/1991 and 238/1992, respectively. The question to be decided in both these writ petitions, pertains to his service matter, therefore, both were directed to be clubbed and were heard together and are being decided by this common order. In Writ Petition No.4825/1993, the petitioner has challenged order dated 15.06.1993, by which his appeal was dismissed by the Tribunal; in that appeal the petitioner had challenged the order dated 12.01.1990, by which one Shri B.L. Paneri was promoted to the post of Joint Director and petitioner was superseded on account of adverse remark contained in his APARs for the year 1984-85 and 1988-89. The learned Tribunal dismissed the appeal on the ground that adverse entries and representations against them are not service matters as defined in Section 2(f)(v) of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976. Subsequent Writ Petition No.3793/1997 was filed by the petitioner against order dated 08.10.1996 of the Tribunal, by which the Tribunal dismissed his appeal; that appeal was filed by the petitioner against order dated 16.08.1991 of the Secretary, Agriculture Department, Government of Rajasthan, whereby he was compulsorily retired from service. In retiring him compulsorily from the service, the Government again considered adverse entries made in his APARS of the

years 1984-85 and 1988-89. The learned Tribunal, vide order dated 08.10.1996, dismissed this appeal also. Shri Rajendra Prasad, learned counsel for the petitioner, in support of his arguments, cited Full Bench decision of this Court in Tayyab Ali Vs. State of Rajasthan 1988 (2) R.L.R. 1, wherein it is held that while challenging any consequential order based on or influenced by adverse entry, relating to any of the matters specified in the several sub-clauses of clause (f) of Section 2, the affected Government servant can also challenge the correctness of the APARs, limitation prescribed for approaching the Tribunal given in the Act shall have to be reckoned from the date of passing of consequential order. The learned counsel submitted that the first Writ Petition No.4825/1993 is therefore required to be remanded back to the Tribunal, as the Tribunal has not correctly interpreted and followed up the law on the subject and, thereupon, the second matter, would also require reconsideration if eventually the adverse remarks are quashed, also needs to be remanded back. Learned counsel for the respondents opposed the writ petition but could not distinguish the Full Bench decision of this Court in Tayyab Ali's case (Supra). The ratio of that case, in my view, would apply to the present case with full force. In the result, both the writ petitions are allowed. The impugned orders dated 15.06.1993 and 08.10.1996 are set-aside. The matters, subjudice in both the writ petitions, are remanded back to the Tribunal. Since the appeal, filed in first case, belonged to the year 1991, the Tribunal is expected to give priority to these matters over any other matter which may have been filed subsequent thereto and dispose of the same as early as possible.

(Mohammad Rafiq) J.

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