
(1993) 11 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 4755 of 1992

Abani Kanta Sarmah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-11-1993

Acts Referred:

Assam Secretariat Subordinate Service Rules, 1963 — Rule 24, 29, 7(1)

Citation : (1994) 1 GLR 242

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : B.K. Das and D. Mazumder, for the Appellant; A. Hazarika, Government Advocate, for the Respondent

Judgement

D.N. Baruah, J.—In this writ petition the Petitioner has challenged the Annexure-XII show cause notice date 22.10.89 issued by the Joint Secretary to the Government of Assam, Department of Personnel S.A. (E), Annexure-XIV office order dated 26.6.90 passed by the Joint Secretary to the Government of Assam, S A, (E) Department, Annexure-XVI appellate order dated 16.7.91 of the Governor of Assam and Annexure-XVII order dated 25.11.91 passed by the Assam Administrative Tribunal, Guwahati.

2. The facts of the disc may, briefly, be stated as follows:

The Petitioner was temporarily appointed in the department of Weights and Measures in the year 1971. Thereafter he was appointed Lower Division Assistant in the Assam Secretariat in October, 1972. In the said month he was released from the former department and he joined as L.D. Assistant in the Assam Secretariat. By Annexure-IV order dated 5.3.76 of the State Government, the persons mentioned therein were exempted from the liability of passing the paper shown against their names. Petitioner's name appeared in the said order at Serial No. 1 and he was exempted from passing Paper I. By Annexure-IV A order dated 17.1.78 the Petitioner was shown as senior most L.D. Assistant of Construction Branch and he was allowed to officiate as U.D. Assistant in the

same Branch for a period of 32 days, Thereafter by another order dated 16.5.78 (Annexure-V) the Petitioner along with others was declared to have passed the departmental Examination in Group "A" (Junior Course) held on 20th and 21st April, 1978. By Annexure-VI office order dated 26.10.78 the Petitioner along with others were promoted to the post of U.D. Assistant and posted in legislative Department. By yet another office order dated 26.12.78 (Annexure-VII) the Petitioner was confirmed in the said post. His name appears at serial No. 10 of Annexure-VII, By Annexure-VIII office order dated 28.1.84 the appointment of the Petitioner as Upper Division Assistant was regularised along with others. By Annexure-IX gradation list of U.D. Assistants was forwarded to all departments and objections were invited. Thereafter, by Annexure-X order dated 8.10.87 the Petitioner's seniority was restored and his seniority was fixed in between Sarat Ch. Thakuria and Nirmalya Kr. Chakravarty in the gradation list in exercise of the power under Rule 29 of the Assam Secretariat Subordinate Service Rules, 1963. By yet another office order dated 9.12.87 (Annexure-XI) the Petitioner's position was refixed in between serial Nos. 249 and 250. After two years thereafter suddenly the Government by Annexure-XII show cause notice dated 22.11.89 asked the Petitioner to show cause why the relaxation granted to him earlier should not be withdrawn. The ground mentioned in the said show cause notice for withdrawal of the relaxation was that the Petitioner lost his seniority for his failure to pass departmental examination (Group-B training) as required under Rule 24 of the Assam Secretariat Subordinate Service Rules, 1963. It was further mentioned in the said show cause notice that passing of the said examination was a pre-requisite for consideration of promotion to the post of U.D. Assistant as provided under Rule 7(1) of the Rules. The Petitioner duly replied to the said show cause notice and thereafter by Annexure-XIV officer order dated 26.6.90 the Joint Secretary to the Government of Assam, Department of Personnel, S.A. (Estt.) had withdrawn the relaxation already granted. However, no reason was assigned for withdrawal though some indication was given in the show cause notice Annexure-XII.

In pursuance of the said Annexure-XIV order a gradation list was prepared and the Petitioner's seniority was fixed in between serial Nos. 385 and 386. Being aggrieved, the Petitioner preferred an appeal before the State Government and by Annexure-16 order dated 16.7.91 was passed rejecting the appeal of the Petitioner. While rejecting the appeal the Government observed as follows:

After careful consideration of the submissions of the Petitioners, the facts and circumstances of the case, and the relevant records, it is seen that one of the criteria for promotion to the post of U.D. Assistant is that an L.D. Asstt. has to successfully undergo the training, This is provided under Rule 7(1) and 24 of the Assam Secretariat Subordinate Service Rules, 1963. The Petitioner could not come out successful in the departmental training while his juniors in the cadre of L.D.A. could come out successful and got promotion earlier than the Petitioner. The Petitioner could come out successful at a later date and got promotion later than his juniors.

Against that order the Petitioner preferred an appeal before the Assam Administrative Tribunal. The Tribunal dismissed the appeal. While dismissing the appeal the Tribunal held thus:

It is seen that the Appellant did not appear in the examination held on 24.9.75 and 25.9.76, while he did appear in the examination held on 11.2.76 and 12.2.76 but failed in paper II. The Appellant has claimed that he could not do well in the departmental examination earlier as his right hand had developed "writers cramp". Even if the Appellant was really handicapped on the dates of this examination, he could have asked for the assistance of a writer. In any case, his handicap was a natural phenomenon beyond anybody's control and cannot be treated as "undue hardship" for the purpose of the relaxation rule. There is no justification to relax the seniority rule if the Appellant failed to pass the departmental examination in 1975 due to illness and to give him higher seniority to the detriment of those who did pass this examination earlier in 1976 and also were promoted as UDAs earlier than the Appellant. The Govt. therefore, were not wrong in withdrawing the relaxation earlier given in favour of the Appellant....

Hence, the present petition.

3. I have heard Mr. B.K. Das, learned Counsel for the Petitioner and Mr. B.L. Singh, learned Government Advocate.

4. Mr. Pas submits that the Government being satisfied in exercise of power under Rule 29 of the Assam Secretariat Subordinate Service Rules, 1963 relaxed the requirement of passing the Examination and put him in between Sl. Nos. 249 and 250. Therefore, there was no reason for withdrawal or cancellation of the said relaxation. Annexure-XII show cause notice, however, indicates that the relaxation was given improperly inasmuch as the Petitioner failed to pass the examination in time as required. Once a satisfaction is derived it cannot be substituted by the authority after a lapse of two years.

5. Mr. B.L. Singh, learned Government Advocate on the other hand, supports the action of the Government. Mr. Singh further submits that the Tribunal had gone in details regarding the relaxation and therefore, no interference is called for. The relaxation given by the Government was an administrative action and the Government can at any time review and withdraw such relaxation. In this connection Mr. Singh has placed before me a decision of the Supreme Court in R.R. Verma and Others Vs. Union of India (UOI) and Others, Relying on this decision Mr. Singh submits that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable only where the government exercises quasi-judicial powers vested in it by statute and not to purely administrative decisions. The Government must be free to alter its policy or its decision in administrative matters and cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties are affected. Moreover, if administrative

decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. In this connection Mr. Singh submits that before withdrawal of the relaxation the principles of natural justice have been complied with and, therefore, the action cannot be said to be unreasonable, arbitrary and contrary to the provisions of law.

6. On the rival contentions of the counsel for the parties it is to be seen whether the action of the Government in withdrawing the relaxation is justified or not, Rule 29 of the Assam Secretariat Subordinate Service Rules, 1963 empowers the Government to dispense with or relax any rule. I quote Rule 29.

29. Power of Government to dispense with or relax any rule. Where the Appointing Authority is satisfied that the operation of any of these rules would cause undue hardship in any particular case, he may dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in just and equitable manner:

Provided that the case of any person shall not be dealt with in any manner less favourable to him than that provided in any of these rules.

From the above rule it appears that in appropriate cases the Government on being satisfied may relax any rule in respect of promotion, etc. In this case the Government relaxed the rule regarding passing of examination and after relaxation of the Rule the Petitioner was put in seniority list in between serial Nos. 249 and 250. The Government has not produced any document to show under what circumstances relaxation was given to the Petitioner and others. The ground of withdrawal shown in show cause notice is that it was improper as the Petitioner failed to pass the examination in time. In my view when relaxation was granted in exercise of the power under Rule 29 of the rules and Petitioner's seniority was restored placing him in between serial Nos. 249 and 250, the ground shown in the show cause notice is not at all tenable. The appellate authority as well as the Tribunal did not go into that aspect of the matter. The Tribunal did not consider whether withdrawal of relaxation was proper or not. It only considered whether the Petitioner's failure to appear in the examination and pass can be a ground to grant relaxation. In my opinion, this is not a correct approach.

7. In view of the above I fully agree with the submission made by Mr. Das and hold that the withdrawal of relaxation was not reasonable and proper. The authority had no jurisdiction to withdraw the relaxation after a lapse of two years without considering the grounds on which the relaxation was granted. Accordingly, I allow the petition and set aside and quash Annexure-XII show cause notice dated 22.10.89, Annexure-XIV order dated 26.6.90, Annexure-XV dated 17.12.90, Annexure XVI order dated 16.7.91 and Annexure XVII dated 25.11.91. In consequence the Petitioner's position shall be restored accordingly and he shall be entitled to all the benefits.