
(1994) 03 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 1555 of 1992

Akai Thadou

APPELLANT

Vs

The North Cachar Hills

RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 7, 8, 8(1)
Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 427

Hon'ble Judges : S.N. Phukan, Acting C.J.

Bench : Single Bench

Advocate : A. Sarmah, B. Dutta and R.K. Jaitly, for the Appellant; B.D. Das, for the Respondent

Judgement

S.N. Phukan, Actg. C.J.

1. In this petition under Article 226 of the Constitution of India the writ Petitioner Shri Akai Thadou has assailed the suspension order as well as the disciplinary proceeding.

2. Initially in the year 1960 the writ Petitioner was appointed as Forester and thereafter in 1964 he was promoted to the rank of Forest Ranger. In the year 1974 the Petitioner was again promoted to the post of Assistant Conservator of Forests. It has been alleged that by letter dated 20.12.74 vide Annexure 2 to the writ petition he was entrusted to deal with matters relating to timber operation. By order dated 10.9.90 he was appointed in the post of Deputy Chief Forest Officer vide Annexure 11. The Petitioner has alleged that while he was posted as Assistant Conservator of Forests, he worked faithfully and diligently and thereby increased the royalty from timber for the District Council.

3. A show notice dated 3rd April, 1992 vide Annexure 13 was issued by the Principal Secretary of the N. C. Hills Autonomous District Council, Haflong asking the Petitioner to show cause, inter-alia, as to why he divulged official information

to public without going through the proper channel. He was also asked to show cause that though allegedly he detected short realization of royalty this information was not disclosed to the concerned authority. Cause was shown by the Petitioner on 13th April, 1992 but he was placed under suspension by the Principal Secretary of the District Council by order dated 3rd July, 1992. The order is available at Annexure 15 to the writ petition. From the said order it appears that the Petitioner was suspended on the allegation of misuse of official power and act of influencing outside agency for promotion. By notice dated 3.7.92, issued by the Principal Secretary charges were framed and communicated to the Petitioner. It appears that as many as 6 (six) charges were framed and the said charges are as follows:

1. That you have illegally entered the jurisdiction of Umrangso Range and threatened some of the Mill Owners and other persons and manufactured statements showing short realization of revenue for the purpose of your promotion to the post of Deputy Chief Forest Officer as can be seen from your Representation dated 13.9.91. You are, therefore charged with illegally trespassing the jurisdiction of different Range and intimidating Mill Owners and oilier persons to provide information for fabricating documents/statements to undermine the authority of District Council.
2. That you have illegally entered into the jurisdiction of Umrangso and made some statements showing short realization of revenue on the basis of some information extracted from Mill Owners under threat and thereafter circulating the same to Karbi Students Association and to the council and Sentinel Newspaper without bringing the same to your immediate superior authority for the purpose of putting undue pressure on the Council for your promotion. You are therefore, charged with mis-conducting yourself and leaking out official information to outside agencies in violation of Official norms.
3. You have compelled the proprietor of R.C. Timber to pay a sum of 50,000/- for the purpose of purchase of Truck No. ASN - 8014 in the name of your wife by misusing your official position. You have also look one Jeep and one VCR from R.C. Timber for your personal use by mis-using your authority. You are, therefore, charged with accepting illegal gratification by misusing your official position for your personal gain.
4. You have threatened many Mill Owners under Umrangso Range, namely: (I) Shri R.K. Sureka, (II) Shri Kamal Jain (III) Shri Ramesh Ninaodia and (IV) Shri Lalit Kishore Sarkar, and demanded money from them on many occasions during your service at Haflong/Maibang range, for the purpose of your personal use. You are, therefore, charged with misuse of official power and accepting money and other gratification for the purpose of your personal gain.
5. As per your Tour Diary you have shown that you have attended office from 8.1.91 to 12.1.91, but it has been found that during this period you have visited Umrangso without any permission from your superior Authority in violation of

official norms. You are, therefore charged with trespassing the jurisdiction of Umrangso range and submitting false Tour diary.

6. By an Order No. FRS/61/ST/87-88 dated 19.1.88 and No. FRS/61/SH/8742 dated 29.12.87 you have illegally extended the validity period of lease of Sri S. Terang and Sri Sanjib Hojai in respect of Forest Lease, a power vested with the Council. You are, therefore, charged with misuse of power of the higher authority and acting illegally without jurisdiction with own dishonest intention.

4. While issuing Rule on 30.7.92 the Division Bench of this Court directed that the competent authority may proceed with the Inquiry, but shall not pass any final order. Accordingly, the inquiry proceeded and completed and the inquiry report was submitted. The said report has been annexed as Annexure 44.

5. In the said Report I find that the Inquiry Officer found charge No. 1 proved. The said charge was acting beyond jurisdiction by the Petitioner. The Inquiry Officer also held that the Petitioner used to visit occasionally the Mills of the persons named in the report. Regarding Charge No. 2, the Inquiry Officer held that the charge regarding leaking of official information could not be proved but the charge of entering into the jurisdiction of other persons illegally was found to be proved. Regarding charge No. 3 no proper finding was given by the Inquiry Officer. Similar was the case in respect of Charge No. 4. Regarding Charge No. 6, the Inquiry Officer held that the Petitioner misused his power of higher authority inasmuch as he acted beyond his jurisdiction.

6. Counter-affidavit has been filed on behalf of the Respondents and the Petitioner has also filed affidavit-in-reply.

7. It may be stated that while forwarding the Inquiry report (Annexure 44) the letter dated 2nd March, 1993 was sent to the Petitioner by the Principal Secretary informing him that the District Council decided to inflict minor punishment, subject to approval of this Court. The said proposed punishment is "all your increments of pay henceforth will be stopped and you will not be considered for any promotional posts if any."

8. Heard Mr. A. Sarma, learned Counsel for the writ Petitioner as well as Mr. B.D. Das, learned Standing Counsel for the Respondents.

9. The first point urged by Mr. Sarma is that the proposed punishment is bad in law inasmuch as not only the increments of the Petitioner would be stopped for future but he would be debarred from getting any promotion to the, next higher post, According to Mr. Das "withholding" and "stoppage" are different and therefore such a punishment can be inflicted, Drawing attention to Rule 8 of the Assam Services (Discipline and Appeal) Rules, 1964, which has been adopted by the District Council, Mr. Das has urged that according to Sub-rule (1) of Rule 8 the authority can impose one or more penalties as specified in Rule 7. Therefore, there is no illegality according to Mr. Das in the proposed punishment.

10. Clause (ii) of Rule 7 of the said Rules runs as follows:

7. (ii) Withholding of increments or promotion:

Therefore the intention of the Rule Maker is very clear that the authority cannot impose the punishment of with holding of increments and promotion; only one punishment can be imposed, namely, either withholding of increments or promotion.

11. In view of the above legal position, I find considerable force in the submission of Mr. A. Sarma and hold that the proposed punishment is not in accordance with law.

12. According to Mr. Sarma the appointing authority of the Petitioner, namely, Executive Committee of the District Council has not passed any order and all actions are being taken at the official level, Therefore, the writ petition is allowed to the extent that Respondents shall place the entire matter before the Executive Committee of the District Council within 15 days from the receipt of this Judgment and order and the Executive Committee shall pass final orders in accordance with law. While passing such orders, the Committee shall apply its independent mind and shall also keep in view the above law, namely, that two punishments cannot be awarded.

13. The Petitioner shall also be re-instated after the final orders are passed by the Executive Committee within 15 days as stated above.

The petition is disposed of. No order as to costs.