

(1997) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 150 (SH) of 1996

Amberlight Lyngdoh

APPELLANT

Vs

Meghalaya State Electricity Board and Others

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Assam State Electricity Board Employees (General Services) Regulations, 1960 — Regulation 10
Constitution of India, 1950 — Article 226

Citation : (1998) 2 GLT 138

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : S.C. Shyam, for the Appellant; S.R. Sen, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—Upon hearing the learned Counsel Shri S.C. Shyam for the writ Petitioner and also Shri S.R. Sen, learned Counsel for the Respondents, it appears to me that the writ Petitioner made a prayer for setting aside the order of dismissal dated 29.7.1994 dismissing the writ Petitioner, Shri Amberlight Lyngdoh, Assistant Engineer (Civil) from service with immediate effect as in Annexure-XII to the writ petition.

The facts of the case in a very short compass are as follows:

2. The writ Petitioner is a graduate in Civil Engineering and was appointed as Asstt. Engineer by the MESEB, hereinafter referred to as the Board and, joined the Board as such in May, 1986 and he was posted as Asstt. Engineer, In-charge of Construction of Power House in stage IV project of the Board, with its Headquarter near Zero Point, Kyrdekulai, East Khasi Hills District and was attached with the Civil Division No. 4 of the Stage IV project.

3. The related work under Civil Division No. 4 of stage IV project was entrusted to one M/S. Amrapali Structurals Pvt. Ltd., of New Delhi by the competent

authority of the Board. Under the related contract agreement, the Board was required to supply requisite quantities of cement to the contracting firm free of cost as mentioned in the tender agreement by instalments, depending upon the progress of works and requirements of such materials for the work.

4. As per agreement, in the event of any wrong/mis-utilisation/mis-appropriation of any part of the materials so issued to and obtained by the contractor, recovery for its value shall be made from the contractor's bill at double the issue rate of the Division/Circle for the said material, and the responsibility for safe custody of the said cement including the proper carriage to the work site remains the responsibility of the contractor.

5. Accordingly, the writ Petitioner, in due discharge of his official duties, issued an order for supply of 1000 (one thousand) bags of cement on 6.7.89 from the store of stage IV Project and that the full quantity could not be lifted at a time by the contractor concerned; and that the part not lifted initially was issued by the store of the Board and the same was lifted by the authorised representatives of the contractor on 3.8.1989 - treating the order issued by the writ Petitioner on 6.7.1989 as valid.

6. The writ Petitioner issued a katcha slip on 3.8.1989 to the representatives of the contractor for allowing movement of the vehicle carrying the materials out of the security gate for plying along the only available second route namely via Guwahati - Shillong Road. According to the writ Petitioner, in the event of the mis-utilisation or mis-appropriation of the cement in question, the responsibility of it is to be fixed with the contractor concerned. In this regard, the firm of contractors had by their letter dated 5.8.1989 accepted the responsibility for the alleged misdeed by their representatives and, thereafter, the competent authority had decided for recovery from the contractor's bill for those materials at double the issue rate on 7.8.1989 in the light of the provisions of the contract agreement and, as such, there is no question of mis-utilisation or mis-appropriation of the said material, namely cement by the contractor or his representatives with the writ Petitioner.

7. According to the writ Petitioner, because of the alleged misdeed of the representatives of the concerned contractor, a departmental proceeding/inquiry had been initiated as against him and he was placed under suspension with immediate effect in connection with the alleged theft, mis-appropriation, conspiracy for transportation of cement of the Board on 3.8.1989, vide office order PER-1.272/88/3 dated 19.8.89 issued by the Chairman of the Board as in Annexure-I to the writ petition.

8. The Chairman of the Board also served a show cause notice upon the writ Petitioner under his office letter No. PER. I/272/88/12 dated 2.9.89 as in Annexure-II to the writ petition directing the writ Petitioner to show cause as to why disciplinary action should not be taken against him under Regulations 10(b) and 10(i) of the ASEB (General Service) Regulations, 1960, on account of the

following charges:

- (i) conspiracy with other employees of the Board and contractors with fraudulent intention leading to theft and loss of the Board's properties.
- (ii) Negligence of duty resulting in the loss of a large quantity of cement belonging to the Board.

9. The writ Petitioner submitted his show cause statement. An Inquiry Officer, Shri B. Nongkynrih, Special Officer, MESEB was appointed in the matter vide office order No. PER.I/272/88/44 dated 7.11.89 to inquire into the matter. After holding the inquiry, the said Inquiry Officer submitted his Inquiry Report. Thereafter the Chief Personnel Officer under his office letter bearing No. PER.I/272/88/72 dated 4.4.91 as in Annexure-V to the writ petition, informed the writ Petitioner that the Chairman of the Board, in exercise of the powers conferred by the Regulations of the Board, proposed to inflict the writ Petitioner with the penalty for dismissal from service of the Board and thus, he was called upon to show cause as to why the proposed penalty should not be inflicted on him and submit his say in the matter within not later than 15 days from the date of receipt of the aforesaid letter.

10. In compliance with the said order dated 4.4.91 as in Annexure-V, the writ Petitioner also submitted his show cause statement showing the factum of his innocence, of the charges levelled against him. According to the writ Petitioner, he was supplied a copy of the inquiry report only in the year 1992 by the Chief Personnel Officer of the Board and that the same is established and supported by the office letter bearing No. PER.I/272/88/83 dated 17.6.92 as in Annexure-VIII to the writ petition.

11. Thereafter, the impugned order of dismissal dated 29.7.94 as in Annexure-XII was passed by the Chairman of the Board by holding that, there is no ground and justification to review or alter the order of dismissal of 21.7.90.

12. Being dissatisfied with the impugned dismissal order of 29.7.94, the writ Petitioner preferred an appeal before the Meghalaya State Electricity Board, but, the appellate authority also dismissed the appeal of the writ Petitioner on 4.10.96. Having no alternative, the writ Petitioner filed this writ petition.

13. The case of the writ Petitioner was contested by, the Respondents, by contending inter-alia that, the indent issued on 6.7.89 expired on 30.7.89 and, as such, the lifting of cement thereafter or issuing any kacha slip for lifting or carrying after 31.7.89 is not as per Rule and as such, it is a misconduct on the part of the writ Petitioner. There is also no provision for issuing "kacha slip" and the issuance of such "kacha slip" is newly introduced by the writ Petitioner for his personal gain, the Respondents contended.

14. According to the Respondents, though the contractor was responsible for difference in quantity of cement, yet here in the instant case, a representative of the contractor lifted and carried the cement on the strength of the "kacha slip"

issued by the writ Petitioner against any norms of the Department, which tantamounted to misconduct on his part.

15. It is also the case of the Respondents that, as soon as an inquiry commenced it was duly communicated to the writ Petitioner and copies of the charge sheets and related statements had been supplied to him and the Inquiry Officer conducted the inquiry. The Respondents also denied the fact that the writ Petitioner did not receive any information of appointment of Inquiry Officer and also about the non-communication of the appointment of Inquiry Officer for holding the inquiry at the time, date and venue to the writ Petitioner.

Supporting the case of the Respondents, they referred to office letter bearing No. MSEB/80/ENO/237/89/43 dated 1.2.90 which shows about the place, date and time of holding the inquiry and it was despatched to the writ Petitioner.

16. The Respondents went on to contend, that before awarding punishment for the misconduct committed by the writ Petitioner, a copy of the inquiry report as claimed by him in his representation, was furnished to him and therefore, the principles of natural justice cannot be attracted in the instant case. The appellate authority also duly considered the case of the writ Petitioner and rightly passed the impugned order of 4.10.96.

17. At the very outset, Shri S.C. Shyam the learned Counsel for the writ Petitioner contended, that the Chairman of the Board/the Respondent No. 2 herein passed the impugned order of dismissal without considering the existing facts and circumstances of the case and that the same is violative of the principles of natural justice inasmuch as no reasonable opportunity of being heard was afforded to the writ Petitioner during the departmental proceeding.

18. Supporting the case of the writ Petitioner, Shri Shyam had drawn my attention of the office letter issued by the Special Officer of the Board on 1.2.90 as in Annexure-IV to the writ petition and submitted that the contention of the Respondents made in para, 17 of the affidavit-in-opposition with regard to the communication to the inquiry officer-for holding inquiry as against the writ Petitioner at the time, date and venue under an office letter dated 1.2.90, has no basis inasmuch as the said letter of 1.2.90 related to the suspension of Shri J.W. Shullai, Sub-Inspector (Security), Kyrdemkulai, Security Sector, MESEB, and for holding inquiry as against him and not against the writ Petitioner. The writ Petitioner was never informed about the date, time and venue for holding inquiry as against him in connection with the said departmental proceeding by the Inquiry Officer at any point of time, Shri Shyam contended.

19. The learned Counsel also further contended, that there is no material on record for showing the factum of communication of such information to the writ Petitioner by the Respondents and as such, the inquiry was done in Complete infraction of the principles of natural justice.

20. At the hearing, Shri S.R. Sen, learned Counsel for the Respondents,

contended that the principles of natural justice is not applicable in the instant case inasmuch as reasonable opportunity of being heard or say was afforded to the writ Petitioner during the inquiry, inasmuch as under the relate office letter-dated 1.2.90, the writ Petitioner was informed about the time, date and venue for die said inquiry and, moreover, the copy of the report was also supplied and furnished to him before passing the impugned dismissal order. There is no infirmity or illegality in the impugned dismissal order as in Annexure-XII to the writ petition as well as in the impugned order date 4.10.96 passed by the appellate authority as in Annexure-XVI to the writ petition. Hence, the writ Petitioner has no enforceable right, Shri Sen contended.

21. Now, this Court is to examine as to whether there is procedural error prescribed by law while passing the impugned orders as in Annexure-XII and XVI to the writ petition by the competent authority and whether, there is infirmity or irregularity in the impugned orders.

22. It is well known that departmental inquiries which were considered administrative at one time are now being considered as quasi judicial in character. It is also well settled that. even an administrative order involves civil consequences, it should be made consistently with the rule of natural justice. This established principles of law finds its place in number of cases and decisions rendered by the Apex Court, particularly in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, .

23. The violation of natural justice amounts to the decision void, and the violation of such principles if exists/existed in the order passed in quasi judicial proceeding by competent authority, the Courts shall always invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India for quashing the said decision.

24. In the book, "Administrative Law", Prof. H.W.R. Wade has said:

Where an administrative act or decision is vitiated by a breach of natural justice, the Court may award any appropriate remedies. The remedy will frequently be certiorari to quash, on the footing that the vitiated decision is void and a nullity.

Traditionally natural justice has been confined to the two rules now to be discussed; that a man may not be judge in his own cause; and that a man's defence must always be fairly heard. It has not, as yet, included the requirement that reasons should be given for decisions. On the other hand there is an isolated judicial statement that natural justice requires decisions to be based on some evidence of probative value. The Courts are now so conscious of natural justice that they may well extend its scope in both these directions....

25. Further in the same book. Prof. Wade has also stated:

How far can this obvious principles of justice be transplanted from its native judicial soil into the territory of administration? Can the Courts impose an

administrative technique of their own devising by laying down standards, and are there any standards of universal validity? The answer is that the courts have succeeded in enforcing the principle very widely, broadly speaking in all cases where legal rights or status are affected by the exercise of administrative power, saving only cases where the difficulty is insuperable; and that, accordingly, natural justice has become a doctrine with a high degree of universality. It does not follow that it need be modelled strictly on Court procedure; hearing need not always be oral hearings, nor need sources of evidence always be disclosed. But in general the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and right to argue.

26. On perusal of the office file bearing No. PER-I/272/88 on the subject, Departmental Proceedings against Sri Amberlight Lyngdoh, A.E.(C), the Chairman of the Board made an observation on 25.7.1994, which is reproduced as hereunder:

I have perused the documents connected with the departmental enquiry against Shri Amberlight Lyngdoh, Assistant Engineer, and heard him in person on 12 July, 1994. There has been an inordinate delay of four years in processing this case after the submission of the report of the Inquiry Officer, Shri B. Nongkynrih, on 21 July, 1990, and the order of punishment passed by Shri R.V. Lyngdoh, Chairman on the same date. It appears that not all the reasons for this delay can be ascribed to the apparent hesitation on the part of 4 Chairmen who succeeded Shri R.V. Lyngdoh. It would be in the fitness of things if other extraneous reasons for the delay can be identified.

27. Briefly, the Post-Enquiry processing of the case has been done in the following manner:

(1) Shri R.V. Lyngdoh, Chairman, passed an order of dismissal from service against Shri Amberlight Lyngdoh on 21 July, 1990 at Notesheet/1 in File No. MSEB/SO/ENQ/271/ 89.

(2) A Show Cause Notice was issued to Shri Amberlight Lyngdoh, vide Letter No. PER.I/ 272/88/72 dated 4 April, 1991, as to why the penalty of dismissal from service should not be inflicted upon him.

(3) Shri Amberlight Lyngdoh replied to this notice vide his letter dated 22 April, 1991.

(4) The above reply was put up to Shri Dalip Singh, Chairman on 2 May, 1991, but the Chairman did not pass any order.

(5) This reply was again put up to Shri Vinay Kohli, Chairman, on 24th April, 1992. It was decided to send a copy of Enquiry Report to the delinquent officer on the advice of the Board's advocate.

(6) A reminder was sent to Shri Amberlight Lyngdoh on 14 June, 1993 when he failed to respond. Shri Amberlight Lyngdoh sent his reply on 29 June, 1993.

(7) The file was put up to Shri J.P. Singh, Chairman on 07 August; 1993, and the Chairman decided to give Shri Amberlight Lyngdoh a personal hearing vide his order dated 10 August, 1993. There is nothing on record to indicate the Chairman's reaction to the personal hearing.

(8) The file was put up to me on 8 July, 1994, and I gave a fresh personal hearing to Shri Amberlight Lyngdoh on 12 July, 1994.

After hearing Shri Amberlight Lyngdoh, and after perusing the Enquiry Report and the replies to show cause Notices, I am of the opinion that there is no ground and justification for me to review the order dated 21 July, 1990 passed by my respected predecessor, Shri R. V. Lyngdoh. The order of dismissal passed by him may be given effect to immediately.

28. On bare perusal of this observation made by the Chairman of the Board, it is crystal clear that the Chairman was of the opinion that there was no ground and justification for him to review the order dated 21.7.90 passed by his predecessor, Shri R.V. Lyngdoh dismissing the Petitioner from his service. The related file bearing No. MSEB/SO/ENQ/271/89 is also placed before me wherein the Special Officer who was the Inquiry Officer, made office note on 21.7.90 stating that he had placed the report of the Inquiry before the Chairman on the suspension of the writ Petitioner; and while the departmental proceedings were being made, the writ Petitioner had submitted resignation letter from service and the resignation was however not accepted as the proceedings drawn against him were pending which was also duly communicated to the writ petitioner. Further, the said Special Officer/Inquiry Officer opined that two of the charges made against the writ petitioner have been established during inquiry, Chairman may like to pass necessary orders for imposing penalty on Shri A. Lyngdoh/the writ Petitioner. Thereafter, the Chairman of the Board agreed with the Inquiry Officer and he opined that the writ Petitioner to be unfit for service and the penalty should be dismissal and the writ Petitioner should be served second notice accordingly. This finding of the Chairman of the Board was made on the same day i.e. 21.7.90.

29. On perusal of the available materials on record, it has been revealed that, even though the writ Petitioner had been supplied the copy of the inquiry report in the year 1992 under the related office order dated 7.6.92 issued by the Chief Personnel Officer of the Board as in Annexure-VIII to the writ petition, no copy of the inquiry report was furnished or supplied to the writ Petitioner before the decision for imposing a penalty for dismissal was taken by the former Chairman of the Board on 21.7.90. The Respondents had failed to produce any related records or documents showing the factum of the supply of the copy of the inquiry report before the penalty for dismissal was taken by the former Chairman of the Board on 21.7.90 against the writ Petitioner. The office note dated 25.7.94 of the Chairman of the Board mentioned above, clearly shows the factum of an order of dismissal of the writ Petitioner from services by the former Chairman of the Board on 21.7.90.

30. Now, this Court is also further to examine as to whether the writ Petitioner was afforded reasonable opportunity of his say to the inquiry report or, whether he could make an effective reply or statement to the said inquiry report before the order of dismissal was passed by the former Chairman of the Board on 21.7.90. On perusal of the entire related records produced by the Respondents, there is no material for establishing the factum of communication of the time, date and venue for holding the said inquiry as against the writ Petitioner but the Respondents abruptly urged that the writ Petitioner had failed to appear before the Inquiry Officer, which, according to him is not reasonable statement in the eye of a reasonable man of prudence.

31. On further perusal of the office note dated 25.7.94, it is also crystal clear that the matter virtually amounts to a matter relating to review of the earlier order of dismissal dated 21.7.90 passed by the former Chairman of the Board and not the usual departmental proceeding. In my considered view, the writ Petitioner has been prevented from making effective reply or statement before the earlier order of dismissal of the writ Petitioner from his services was passed by the former Chairman of the Board on 21.7.90 as no report of the Inquiry Officer was furnished to the writ Petitioner at the relevant time. At this stage, I hereby recall a decision of the Apex Court rendered in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein, the Apex Court held, that the delinquent is entitled to the copy of the inquiry report before the disciplinary authority takes a decision regarding guilt or innocence on him and the refusal to furnish such a copy amounts to denial of reasonable opportunity. The same thing happened in the instant case also; that before the former Chairman took a decision regarding the guilt of the writ Petitioner, no copy of the inquiry report was furnished to the writ Petitioner.

32. As discussed above, the impugned order dated 29.7.94 as in Annexure-XII virtually amounts to a matter order relating to the review of the order of dismissal passed by the former Chairman on 21.7.90. Therefore, the plea of the Respondents that reasonable opportunity of being heard or say was afforded to the writ Petitioner before the impugned order of dismissal dated 29.7.94 as in Annexure-XII was passed is not tenable in the eye of law. On this ground alone, the impugned order of dismissal deserves to be quashed. In my considered view, the appellate authority also did not examine this legal aspect while passing the impugned order of 4.10.96 as in Annexure-XVI to the writ petition and, as such, the decision taken by the Respondents under the impugned orders as in Annexure-XII and XVI to the writ Petitioner are vitiated by a breach of natural justice and, accordingly, the impugned orders dated 29.7.94 as in Annexure-XVI and 4.10.96 as in Annexure-XVI are accordingly declared void and nullity and accordingly quashed.

33. Applying the above principles of law laid down by the Apex Court, liberty is given to the Respondents to hold fresh enquiry from the stage of furnishing of the report of the enquiry officer in accordance with the related Rules as on today,

if so advised, as it is the wisdom of the Respondents in the matter.

34. Considering the existing facts and circumstances of the case, I direct the Respondents to take back die writ Petitioner in service forthwith. It is made clear that, die Respondents shall decide the matter relating to the entitlement of the arrear, salary of die writ petitioner in accordance with die related Rules including Fundamental Rules, as it is die wisdom of the Respondents in the matter.

In the result, this writ petition is allowed but, no cost.