
(2007) 03 GAU CK 0036
In the Gauhati High Court

Amberlight Lyngdoh

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2007) 2 GLT 538

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Vaiphei, J.—In this writ petition, the petitioner is questioning the legality of the disciplinary proceeding initiated against him culminating in the order of punishment dated 4.4.2000 issued by the Chairman of the Meghalaya State Electricity Board and the appellate order dated 22.11.2002 and for payment of salary arrears and thereafter to consider his case for promotion to the post of Assistant Executive Engineer from the date on which the first of his juniors were promoted to the post of Assistant Engineer and to fix his seniority accordingly in the post of Executive Engineer.

2. This is the second round of litigation initiated by the petitioner. The facts and circumstances leading to the filing of this writ petition may be briefly noted at the very outset. The petitioner is a graduate in Civil Engineering and was appointed to the post of Assistant Engineer by the Meghalaya State Electricity Board (hereinafter referred to as "the Board") which he joined in May, 1986 whereupon he was posted as Assistant Engineer attached to Civil Division No. 4 of stage IV Project having its Headquarters near Zero Point, Kyrdemkulai, East Khasi Hills District. While working under Civil Division No. 4 of stage IV Project, a disciplinary proceeding was launched against the petitioner by the Board on the following charges:

(i) Negligence of duties and responsibilities by issuing of Gate Pass on 3.8.1989

by around 21:35 hours by Kutcha slip and not in the prescribed form for carriages of cement from store.

(ii) The Gate Pass in the Kutcha slip issued by him did not bear any official number and date or the registration number of the vehicles and the quantity of cement allowed to be carried.

(iii) 200 bags of cement were allowed to be lifted on 3.8.1989 from the Store against the indent which had already expired,

(iv) The Contractor actually lifted 350 bags of cement on 3.8.1989 against kutcha slip issued by him.

3. The Board ultimately issued the charge-sheet, which was received by the petitioner on 7.9.1989. The petitioner submitted his statement of defence on 22.9.1989 denying all the charges. The disciplinary authority after considering the written statement of defence of the petitioner did not find the explanation satisfactory and proceeded with the disciplinary proceeding against him by appointing Shri B. Nongkynrih, Special Officer of the Board as the Inquiry Officer to enquire into the charges. In the course of inquiry, as many as sixteen witnesses were examined on behalf of the Board. The Inquiry Officer thereafter submitted his inquiry report. The Inquiry Officer held that the charges No. 2 and 4 were conclusively proved against the petitioner. The chairman of the Board accepted the inquiry report and passed an order of dismissal of the petitioner from service on 21.7.1990, but no formal order of dismissal was issued to that effect. However, the newly appointed Chairman of the Board, after giving personal hearing to the petitioner and after considering the report of the Inquiry Officer and other record of the case, issued the order dated 29.7.1994 dismissing the petitioner from service with immediate effect. The appeal preferred by the petitioner against the order of dismissal was rejected whereupon the petitioner approached this Court in Civil Rule No. 86(SH) 1995.

4. This Court by the judgment and order dated 9.9.1997 allowed the writ petition, quashed the impugned order of dismissal and directed the respondents Board to re-instate the petitioner to his post. This Court also gave liberty to the respondents-Board to hold fresh inquiry from the stage of furnishing of the report of the Inquiry Officer in accordance with law, if so advised. This Court recorded the findings that the petitioner was supplied with a copy of the Inquiry Report in the year 1992 whereas the penalty of dismissal was already imposed by the former chairman of the Board on 21.7.1990 and that the petitioner was accordingly prevented from making effective reply against the Inquiry Report before issuing the order of dismissal, which was against the law laid down by the Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The respondents Board ultimately reinstated the petitioner to his former post but proceeded to hold a fresh inquiry from the stage of furnishing the Inquiry Report. A copy of the Inquiry Report was furnished to the petitioner. The petitioner made a representation against the Inquiry Report. The Board, after considering the

representation of the petitioner, once again accepted the Inquiry Report and awarded a major penalty by reducing to the minimum stage of time scale of the petitioner with consequent implications of his seniority and by placing his seniority at the lowest stage in the cadre as on the date of the order vide the order dated 4.4.2000. Aggrieved by this, the petitioner preferred an appeal before the appellate authority, by its proceeding and order dated 22.11.2002 proposed to inflict upon the petitioner only one penalty under Regulation 9(B)(a) (i) of the Meghalaya State Electricity Board Employees (Discipline and Appeal) Regulations, 1996 i.e., reduction to a lower rank in the seniority list. However, before the appellate authority actually decided the appeal, the petitioner apparently filed this writ petition.

5. The main submission of Mr. S.P. Mahanta, the learned Counsel for the petitioner is that the inquiry procedure adopted by the Inquiry Officer suffers from fundamental defect in that the petitioner was never informed of the date, time or venue for the Inquiry proceeding and all the statements of the witnesses examined on behalf of the Board were recorded behind the back of the petitioner and as such the constitutional right of the petitioner to have reasonable opportunity of hearing guaranteed by Article 311(2) of the Constitution of India has been violated. The learned Counsel for the petitioner, therefore, contends that this alone is sufficient to set aside the entire disciplinary proceeding and the impugned order of dismissal and the appellate order passed in connection therewith. On the other hand, Mr. K.S. Kynjing, the learned senior counsel for the Board submits that the petitioner was duly intimated on 1.2.1990 by the Inquiry Officer vide his letter dated 1.2.1990 of the date, time and venue for holding of the inquiry and that the petitioner purposely abstained himself from attending the inquiry and as such the inquiry had to be proceeded against the petitioner ex-parte and in that circumstances, the question of denying reasonable opportunity of hearing to the petitioner does not arise. The learned senior counsel further submits that the departmental inquiry against the petitioner was conducted in accordance with the procedure laid down by law and that the findings of the Inquiry Officer holding the charge against the petitioner conclusively proved, are based on sufficient evidence, which are not liable to be interfered with by this Court in exercise of its writ jurisdiction

6. I have duly noted the rival submission made by the counsel appearing for both the parties. I have also carefully gone through the file relating to the departmental inquiry, which is placed before me by the learned senior counsel for the Board. The inquiry officer in his report categorically asserted that the petitioner was asked to appear before him on 20.2.1990 and 20.3.1990 at Kyrdemkulai Dyke. At this stage, it may be noticed that all the witnesses of the Board were examined, doubtless, in the absence of the petitioner, which goes to show that the petitioner did not attend the inquiry. This fact is also admitted by the respondents in their counter affidavit. However, neither in the pleadings of the respondents Board nor in the file of the Inquiry Officer is there any document indicating the intimation of the Inquiry Officer to the petitioner on the date, time

and venue of the inquiry being held by him. The office letter dated 1.2.1990 upon which heavy reliance has been placed by the respondents Board would indicate that the letter pertains to the submission of Shri J.W. Shullai, Sub-Inspector (Security) Kyrdemkulai, Security Sector, Me SEB and for holding inquiry against him and not against the petitioner. No other evidence could be produced by the respondents Board or could be found in the file to show that the petitioner was ever intimated of the date, time and venue for holding the inquiry against him. On the facts so found, I find force in the contention of the learned Counsel for the petitioner that the inquiry was conducted by the Inquiry Officer without the knowledge of the petitioner and that all the statements of the witnesses examined on behalf of the Board were recorded behind the back of the petitioner. What then is the effect of such acts of commission or omission on the part of the Inquiry Officer is the moot point to be considered.

7. In every disciplinary proceeding, the delinquent is entitled to an opportunity to know the material against him, to have the evidence recorded in his presence, to have the right to cross-examine the witnesses examined and to have a chance to examine witnesses in support of his defence. It is a settled law that the witnesses who give evidence in support of the charges at the inquiry must be examined in the presence of the delinquent and he must be allowed to cross-examine them. Though the petitioner is not holding a civil post entitled to the protection of Article 311(2) of the Constitution, still he is entitled to reasonable opportunity of hearing if a major penalty is being imposed against him. The tests to be applied is to find out whether a departmental inquiry was conducted in accordance with the principles of natural justice and whether a delinquent official has reasonable opportunity of hearing or not are as follows:

- (i) Whether an opportunity to deny the guilt and establish his innocence had been given by framing definite charges and by disclosing the allegations on which the charges were based;
- (ii) Whether an opportunity to defend himself by cross-examining the witnesses produced against him and examined in his presence and to examine himself or any other witnesses in support of his defence was given and
- (iii) Whether any materials had been relied on against the delinquent in the inquiry without his being given an opportunity to explain the same.

8. Interestingly, such wholesome safeguards are also incorporated in Part-V of the Meghalaya State Electricity Board Employees (Discipline and Appeal) Regulations, 1996. In particular, in Clause 10(b) of the said Part-V, it is provided that the witnesses shall be examined by or on behalf of the disciplinary authority or may be cross-examined by the Board authority. This clearly shows that an employee of the Board such as the petitioner has the right to cross-examine the witnesses examined on behalf of the Board and such right cannot obviously be availed of if he is not allowed to attend the inquiry or if he is not present when the witnesses are examined on behalf of the Board. When, on the facts founds,

the petitioner was never informed of the date, time or venue of the inquiry conducted by the Inquiry Officer, it was not possible on the part of the petitioner to take part in the inquiry, much less, to cross-examine the witnesses examined on behalf of the Board. It is not the case of the respondents that the statements of the witnesses were recorded after ex-parte proceedings were duly held against him in terms of Clause (12) of Part-V of the said Regulations. Thus, the statements of the witnesses were obviously recorded by, the Inquiry Officer behind the back of the petitioner. Consequently, the conclusions of the Inquiry Officer, which are made on the basis of the statements recorded behind the back of the petitioner, obviously based on no legal evidence and without substantial prejudice has thus been caused to the petitioner by denying him reasonable opportunity of hearing. In view of this, the impugned order based on such fundamentally defective inquiry and without legal evidence, cannot be sustained in law and is liable to be quashed. Normally, the course of action open to the disciplinary authority in a case of this nature is to hold fresh inquiry from the stage of examination of witness, but considering the fact that about 18 years have lapsed and also of the nature of mis-conduct alleged against the petitioner and also of the value of the property involved, it will neither be fair nor desirable at this stage to continue the disciplinary proceeding against him, the property involved, it will neither be fair nor desirable at this stage to continue the disciplinary proceeding against him.

9. For what has been stated above, this writ petition is allowed. The entire disciplinary proceedings against the petitioner and the penalty imposed therein and as modified by the appellate authority in its order dated 22.11.2002 are quashed. The petitioner shall not be entitled to backwages on the principle of no work, no pay. The respondents Board shall consider the promotion of the petitioner to the posts of Assistant Executive Engineer and Executive Engineer as per rules from the date on which the first of his juniors was promoted to the post of Assistant Engineer and thereafter consider him for further promotion to the post of Executive Engineer in accordance with law. His seniority in the two higher posts shall also be fixed accordingly. The entire exercise shall be completed by the respondents Board within a period of three months from the date of receipt of this judgment. The parties are directed to bear their own costs.