
(1988) 06 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 1235 of 1986

Amulya Chandra Das

APPELLANT

Vs

Assam Administrative Tribunal

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Citation : (1988) 2 GLJ 386

Hon'ble Judges : B.L.Hansaria, J and S.P.Rajkhowa, J

Bench : Division Bench

Advocate : B.P.Kataki, D.N.Choudhary, C.Choudhary, Advocates appearing for Parties

Judgement

Hansaria, J.—The petitioner, while serving as a Lower Division Assistant, had to face a departmental proceeding on the serious charge of having realised a sum of Rs. 200/ on 29. 3. 84 from each of the 23 beneficiaries under the Minimum Need Programme. He had thus realised a sum of Rs. 4.600/. A report having been made in this regard to the Additional Deputy Commissioner, the person of the petitioner was searched and a sum of Rs. 4,600/was found with him. This was on 29. 3. 84 On being asked as to how this money could be found with him, the explanation of the petitioner was that as his sister's marriage was to take place after sometime he had carried the money to purchase some furniture. Not being satisfied with this explanation, a departmental proceeding was drawn against him on 8.6.84 vide AnnexureI. A perusal of this Annexure shows that by this communication the petitioner was asked to show cause as to why any of the penalties prescribed in clauses (i) to (iii) of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964, for short the Rules, should not be inflicted on him. On the charge being denied, an enquiry followed in which it is the case of the petitioner that he was examined first and thereafter the witnesses on behalf of the disciplinary authority were produced. After receipt of the enquiry report the disciplinary authority accepted the same and removed the petitioner from service. Feeling aggrieved, he preferred appeal and getting no relief he

approached the learned Assam Administrative Tribunal which also dismissed the appeal. The petitioner is now before this Court under Article 226 of the Constitution.

2. Shri D. N. Choudhury appearing for the petitioner has assailed the finding and the order of removal passed on 10.8.85 on three grounds. The first ground of attack is that the petitioner having been asked to show cause as to why the punishments provided under clauses i) to (iii) of the Rules should not be awarded, the penalty of removal could not have been inflicted, inasmuch as the three clauses mentioned in the notice visualise punishments of (i) censure, (ii) withholding of increment or promotion; and (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government. Shri C. Choudhury, learned Government Advocate, states that it was not necessary to mention in the show cause as to what penalty would be imposed. It may be that a show cause is not required to state as to what penalty would be imposed, but if penalty is mentioned we do not think if higher penalty can be imposed. On the facts of the case, however, it may be that a higher penalty was called for; but then, the delinquent having been asked to show cause as to why a minor penalty should not be imposed, a major penalty of removal could not have been awarded.

3. The next grievance of the learned counsel is that procedure which was adopted in the inquiry was one which vitiated the same inasmuch as the delinquent was first examined to be followed by the witnesses on behalf of the disciplinary authority. In this connection, our attention has been invited to *Meenglas T. E. vs. Workmen*, AIR 1963 SC 1719, in which it has been stated in para 4 that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. The further observation in this regard is that such a person must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. The delinquent then must be given a chance to rebut evidence led against him. This was not followed in the present case.

4. The third and final grievance is that the delinquent who was merely a Lower Division Assistant was not apprised of the fact that he was clothed with a right to take assistance of a defending officer. Shri D. N. Choudhury has, of course, gone a step further and has submitted that the present was a case where representation by a lawyer should have been allowed. In this connection, our attention has been invited to *Board of Trustees vs. Dilip Kumar*, 1983 (1) SCC 124, wherein some observations made by Lord Denning in *Pett. vs. Greyhound Racing Association Ltd* (1968) 2 All E.R. 545 were cited with approval. We are then referred to *Bhagat Ram vs. State of Himachal Pradesh*, AIR 1983 SC 454, wherein it has been observed in para 5 that where the department is represented "by a Presenting Officer, it would be the duty (sic) of the delinquent officer, more particularly where he is a Class IV Government servant whose educational qualification is such as would lead to an inference that he may not be aware of

technical rules prescribed for holding enquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declines to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer, the same would vitiate the enquiry unless it is shown that the Government servant had not suffered any prejudice. We are of the view that noninforming the petitioner about his right to be represented by defending officer did cause prejudice to him in the present case.

5. In view of all the above, we are not in a position to sustain the impugned order and the same is, therefore, set aside. But then keeping in view the serious nature of the charge against the petitioner, we would like to observe that it would be open to the disciplinary authority to initiate a fresh inquiry from the stage of issuing a show cause notice and thereafter to proceed in accordance with law.

6. In the result, the petition is allowed as aforesaid.