

(2005) 10 GAU CK 0013
In the Gauhati High Court
Case No : WP (C) No. 6170 of 2004

Anandilal

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Citation : (2006) 2 GLR 410

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : D.R. Gogoi, D. Buragohain, P.D. Nair and B. Das, for the Appellant;
A.M. Buzarbaruah, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Mr. D. R. Gogoi, learned Counsel appearing for the petitioner and Mr. A. M. Buzarbaruah, learned Govt. Advocate, Arunachal Pradesh.

2. The compulsory retirement of the petitioner imposed by way of punishment following a disciplinary proceeding, as made by order dated 30.7.2004, is the subject-matter of challenge in the present writ petition.

3. The facts are long and an attempt must be made to recite only what is essential.

The petitioner, who is a Junior Engineer in the Public Work Department of the State of Arunachal Pradesh, was charge-sheeted by a charge memo dated 16.12.1993 levelling certain acts of omission and commission on his part in the exercise of his official powers. Earlier to that the petitioner was put under suspension with effect from 6.9.1993. As the disciplinary proceeding against the petitioner was making tardy progress the petitioner had to approach this Court by filing a writ petition registered and numbered as Civil Rule No. 1709 of 1996. By order dated 3.4.1996 this Court had directed conclusion of the departmental proceeding against the petitioner within four month failing which he was directed to be reinstated in service. The proceeding against the petitioner not having been

concluded within the time stipulated by the Court, the petitioner was reinstated in service by revocation of his suspension by an order dated 13th September, 1996. Thereafter, it appears that the disciplinary proceeding against the petitioner continued and he participated in the said proceeding by appearing before the Enquiry Officer on 23.10.1998. According to the petitioner, what happened thereafter with regard to the progress of the disciplinary proceeding was not known to him. Evidently the proceeding continued as by a communication dated 3.3.2004 the petitioner was informed that the Enquiry Officer has submitted his report on the basis of which the Disciplinary Authority is considering the imposition of punishment of compulsory retirement and the petitioner was required to show case against the proposed punishment. Along with the communication dated 3.3.2004 a copy of the Enquiry Officer's report was stated to have been enclosed and made available to the petitioner. According to the petitioner, he was not aware of the conduct of the further proceedings in the disciplinary enquiry held against him and the report of the Enquiry Officer was also not made available to him in full. It is only a part of the aforesaid enquiry report that was furnished to the petitioner along with the communication dated 3.3.2004 whereafter the impugned punishment of compulsory retirement has been imposed by the order dated 30.7.2004.

4. The pleadings made in the writ petition and the arguments advanced highlight two significant aspects of the case, which in the considered view of the Court go to the root of the matter. According to the petitioner, after 23.10.1998 on which date he had appeared before the Enquiry Officer there was no further appearance made by him and there was no participation of the petitioner in the disciplinary proceeding. That was because the petitioner had no knowledge of any further conduct of the departmental proceedings and he had not received any intimation with regard to the same. The petitioner contends that in the incomplete report of enquiry which was furnished to him along with the communication dated 3.3.2004, it has been mentioned that summons dated 1.5.2002 and 24.7.2002 have been issued to the petitioner in spite of which the petitioner did not appear and, therefore, the departmental proceeding was held ex parte. According to the petitioner, neither of the aforesaid summons dated 1.5.2002 and 24.7.2002 or any other summons was received by him at any point of time. The second significant aspect of the case which had, been highlighted by the petitioner is that though in the memo dated 3.3.2004 it has been mentioned that the report of the Enquiry Officer is being furnished to the petitioner, the petitioner was actually furnished with a single page of the said report and the rest of the report was not made available to him. The single page of the report of the Enquiry Officer does not make any intelligent reading and, therefore, the petitioner was deprived of his right to file his representation against the actions proposed in the communication dated 3.3.2004.

5. The aforesaid two aspects of the case have been highlighted as necessary for consideration at the first instance inasmuch as if the answer to the aforesaid two issues are in the affirmative and in favour of the petitioner, the same would

virtually decide the fate of the present writ proceeding, at least, for the present.

6. The averments made in support of the facts as noticed above are contained in paragraphs 9 and 17 of the writ petition. A consideration of the affidavit-in-opposition filed on behalf of the official respondents do not indicate that summons with regard to the dates of the enquiry subsequent to 23.10.1998 were actually served on the petitioner. To enable the learned Government Advocate to satisfy the Court that summons were duly served on the petitioner, as claimed, full opportunity was given to produce before the Court the relevant records. The records produced and the communications addressed in this regard do not establish the fact that the summons dated 1.5.2002 and 24.7.2002 or any other summons regarding the holding of the departmental proceeding against the petitioner was served on him. In official respondents having failed to satisfy the Court on the basis of the relevant materials and records that the summons were actually served on the petitioner this Court cannot but come to the conclusion that the holding of the proceedings against the petitioner ex parte was not justified.

7. That apart, the petitioner was furnished with an incomplete enquiry report. The enquiry report in original placed before the Court by the learned Government Advocate has been compared with what the petitioner contends was furnished to him and such a comparison reveals that what was made available to the petitioner was indeed a part of the enquiry report. The same might have been on account of inadvertence on the part of the official respondents but the infringement of the right of the petitioner due to such an inadvertent omission is complete. The report of the enquiry has been perused and taking note of its contents the Court is satisfied that non-furnishing of the full report as noted above, has caused prejudice to the petitioner. It is, perhaps, on that account that the petitioner did not submit his representation against the proposed punishment.

8. For all the aforesaid reasons, I am of the view that the departmental proceedings against the petitioner leading to the imposition of the impugned punishment has not been conducted in a manner consistent with the requirement of law and the principles of natural justice. I, therefore, interfere with the punishment imposed on the writ petitioner by order dated 30.7.2004 and direct his reinstatement in service with all consequential benefits ; at the same time, leaving it open to the official respondents to proceed against the petitioner once again in accordance with law, if they so desire.

9. Writ petition is consequently allowed as indicated above.