
(2006) 09 GAU CK 0030
In the Gauhati High Court

Babban Singh

APPELLANT

Vs

Chairman and Managing Director, National Project
Construction Corporation and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Citation : (2007) 2 GLR 600

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—By Memorandum, dated 27.5.1996, a disciplinary proceeding was drawn against the petitioner, the article of charge framed against the petitioner being as under:

Shri Babban Singh while functioning as Jr. Storekeeper at Hathian PH Unit committed gross misconduct during 1991-92 inasmuch as that he tempered the store records. He changed the figures in the quantity supplied column of the indents placed by Shri A.K. Sharma, A.E. (C) and in some cases, added items which were not actually indented by the indenting officer.

Shri Babban Singh has, therefore, failed to maintain absolute integrity and absolute devotion to duty and thereby contravened Rule 3(1)(i)(ii) & (iii) and 4(1) and 4(5) of NPCC Employees Service (Conduct) Rules, 1979.

2. In course of time, and after the petitioner has submitted his written statement, disciplinary enquiry was fixed by the enquiry officer at a place in Delhi. As the petitioner's salary was withheld, the petitioner expressed his inability to move to Delhi and attend the enquiry. Realizing that the petitioner's presence was necessary, the presenting officer faxed a message, in this regard, addressed to the authorities concerned. Eventually, travelling allowance of a sum of Rs. 20,000 was sanctioned in favour of the petitioner. However, the petitioner could not avail the same as the information regarding giving of advance TA was conveyed to the petitioner, on 6.9.1997, i.e., the date on which the enquiry had

been fixed. Due to absence of the petitioner, the enquiry officer decided, on 6.9.1997, to proceed ex parte and accordingly concluded the enquiry and submitted his report holding the petitioner guilty of the charge. Pursuant to the enquiry report, which had been made available to the petitioner, the petitioner submitted his comments on 9.2.1998. By order, dated 13.8.1998, the disciplinary authority, having found the charge framed against the petitioner proved, imposed on him the penalty of removal from service. However, before removal of the petitioner from service, the petitioner was served with another order, dated 4.6.1998, withholding payment of his salary on the ground that the petitioner had not taken care of the materials, which had been lying loaded in a truck at Khowai, Berrage Unit, from 23.8.1998 onwards. The petitioner is, now, before this court, with the help of the present writ petition, seeking to get set aside and quashed the order, dated 4.6.1998, whereby the petitioner's pay and allowances has been withheld and the order, dated 13.8.1998, whereby the petitioner stands removed from service.

3.I have heard Mr. D.K. Biswas, learned Counsel, for the petitioner, and Mr. P.K. Biswas, learned Central Govt. Counsel, appearing on behalf of the respondents.

4. While considering the present writ petition, it is of immense importance to note that the basic principles of natural justice demand that a person be not condemned unheard. This principle necessarily involves giving of an opportunity to the person, who is sought to be punished. This requirement, in turn, prohibits holding of any disciplinary enquiry against a delinquent employee behind his back. However, the opportunity to participate in a departmental proceeding is not a mere formality. Such opportunity given to a delinquent employee must be fair, effective and meaningful. In the case at hand, the respondents have not been able to show any legal authority or reason for withholding the payment of salary of the petitioner. In such circumstances, fixing of the enquiry at Delhi and giving of advance TA was not sufficient, particularly, when the TA was made available to the petitioner on 6.9.1997, i.e., the very day on which the enquiry was to take place at Delhi. By their own conduct, the respondents have disabled the petitioner from attending the enquiry on 6.9.1997 and the enquiry officer illegally decided to proceed with the enquiry ex parte. If the result of such an enquiry is allowed to survive, it will cause serious miscarriage of justice. Similarly, withholding of pay and allowances of the petitioner by the impugned order, dated 4.6.1998, was also without serving the petitioner any notice to show cause in this regard.

5. In the result and for the reasons discussed above, this writ petition is partly allowed. The impugned order, dated 4.6.1998, aforementioned withholding the petitioner's pay and allowances as well as the order, dated 13.8.1998, whereby the petitioner was held guilty of the charge and punished shall stand set aside and quashed. The petitioner shall, therefore, be reinstated in service, but such reinstatement shall be for the purpose of completing the enquiry, which had been launched against the petitioner.

6. Considering the matter in its entirety and in the interest of justice, it is hereby directed that the petitioner shall be paid his salary up to 13.8.1998, i.e., until the date he was removed from service and payment of his further pay and allowances shall be subject to the out-come of the departmental enquiry. The departmental enquiry shall be commenced and completed by the respondents/ authorities concerned within a period of six months from today. The respondents/ authorities concerned are also left at liberty to take such action(s) as may be permissible in law with regard to the alleged negligence on the part of the petitioner and others to take due care of the materials lying in the truck aforementioned.

7. With the above observations and directions, this writ petition shall stand disposed of.

8. No order as to costs.