
(1996) 08 GAU CK 0070
In the Gauhati High Court
Case No : Civil Rule No. 2503 of 1994

Bipin Chandra Thakuria

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 12A, 7, 7(1), 7(2), 7(3)

Citation : (1998) 3 GLR 184

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S. Medhi, D. Barua and D. Mahanta, for the Appellant; A. Hazarika, G.A., for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—The writ application has been Hide praying the following reliefs:

- i) To quash the impugned order dated 19.12.90, Annexure-3 passed by the Respondent No. 6 suspending the Petitioner from 19.12.90.
- ii) To quash the statement of allegations of the charges against the Petitioner, Annexure-7 passed by the Respondent No. 5 and the office order dated 14.10.93 the award of punishment of the Petitioner vide Annexure-12
- iii) To declare that the Petitioner was on duty all along from 3.11.88.

2. To appreciate the facts of this, let us quote below Annexures-3, 7 and 12 to the writ application.

Annexure: 3

Sri Bipin Ch. Thakuria Forester - I is hereby placed under suspension with effect from the date of issue of this letter. During the suspension period he will draw subsistence allowance as admissible under the Rules provided if he joins his duties. His Head Quarter will be at North Lakhimpur Range during the period of

Suspension.

Annexure-7:

In exercise of the power conferred by the Govt. vide Notification No. ABP.58/62/228, dated 5.12.67, the undersigned hereby request you to show cause under Rules 9 of the Assam Services (Discipline and Appeal) Rules, 1964 why any of the penalties prescribed in Clauses (i) to (iii) of Rule 7 of the aforesaid rules should not be inflicted on you on the charges based on the statement of allegations enclosed herewith:

Charge No. 1 : Unauthorised willful absence from duty,

Charge No. 2 : Disobedience of order of superior officer and other official misdemeanour.

You should submit your written statement in defense within 15 (fifteen) days from the date of receipt of this communication provided you do not intend and intimate the I.O, in writing to inspect the documents which have relevance to the case under enquiry. In case you intend to inspect those documents, you should write to the Inquiry Officer for the same within 7 (seven) days from the date of receipt of this communication and submit your explanation thereafter within 10 (ten) days from the date of completion of inspection.

The Divisional Forest Officer, Lakhimpur Division has been appointed as Inquiry Officer to conduct enquiry into the charges levelled against you. For proper presentation of the proceeding case on behalf of prosecution, Shri K.N. Pegu, Asstt. Conservator of Forests, Lakhimpur Division has been appointed as presenting officer for this proceeding case.

Your written statement stating whether you desire to be heard in person should be submitted to the Inquiry Officer.

Annexure-12 :

Consequent upon suspension and departmental proceeding drawn against Sri B.C. Thakuria, Fr-I, the undersigned agree with the findings of the inquiry officer but the following minor punishment is awarded considering suffering of the Fr-I due to long pendency of the case. The case in brief reads as follows:

The delinquent was placed under suspension on 19.12.90 bringing charges of unauthorised and willful absence from his assigned duty and disobedience to the superiors with gross misconduct by the Divisional Forest Officer, Lakhimpur Divn. The D.F.O. could not proceed and find out a tangible solution in the ease as the delinquent could not be contacted in time as because of the delinquent's physical disappearance from the known sources and also his defiance to the authority's order and request. Meanwhile on 3.2.92 the delinquent has been ordered to be reinstated without prejudice to the proceeding against him by Chief Conservator of Forest (Admn), Assam.

Taking into account of all these events the suspension case is finally disposed imposing the following punitive actions.

1. Stoppage of 2 (two) annual increments with cumulative effect.
2. Period of unauthorised absence would be granted leave subject to availability of any kinds of leave in his leave account as per F.R.S.R and that would be mandatory.
3. The brief facts are as follows:
4. The Petitioner was appointed as Forester Grade-I on 9.11.70. As quoted above, the Petitioner was under suspension with effect from 19.12.90. Thereafter, the charge sheet was issued and the Respondent No. 6 was appointed as the enquiry officer to conduct the enquiry and to the charges levelled as against the Petitioner. The Petitioner was asked to collect and inspect the documents as prayed and he was given that opportunity but it appears that he did not go to the Head Quarter which was fixed by the authority at the time of suspension. The two charges levelled as against the Petitioner are as follows:

- i) Unauthorised wilful absence from duty.
- ii) Disobedience of order of superior officer and other official misdemeanour.

5. It appears from the record that the Petitioner was posted at Lakhimpur Range under Lakhimpur Sub-division and he left the range office leaving a leave application for three days C.L. from 1.3.88 to 3.3.88 but he did not turn up to resume his duty after availing casual leave and continued to remain absent from Head Quarter with effect from 1.3.88 to 31.3.88. The Petitioner thus remained absent for 6 (six) months without any leave. He was asked to join the duty by telegram but nothing was done. Records revealed that the Petitioner is in the habit of availing leave without authority. When the Petitioner was put under suspension, it was fixed that Head Quarter shall be at North Lakhimpur and this was fixed in terms of the departmental instruction which provides that the head quarter of Govt. servant should normally be his last place of duty, and accordingly the Head Quarter of the Petitioner was fixed at North Lakhimpur but he did not stay at North Lakhimpur and left the Head Quarter without informing the authority. From the appeal filed by the Petitioner which is Annexure-4, it appears as follows:

- i) That the Appellant admitted that he applied for leave due to serious adment of his wife and it was because of this he had to stay at Guwahati. He filed an application for his transfer from North Lakhimpur to Guwahati but as that was not considered and it appears that he was absent from duty for a long period of more than 3 (three) years without any leave being granted to him. Thereafter, it appears that the authority took a lenient view of the matter vide Annexure-12 to the writ application quoted above, order was passed.
- ii) The punishment of stoppage of two annual increment with cumulative effect is

a minor punishment. A bare reading of Rule 9(ii) will show that the punishment provided in Rule 7 from 1 to 3 are minor penalties.

6. No doubt, the procedure laid down in Rule 9 is mandatory and has to be followed even in the case of imposition of minor penalties specified in Rule 7(1) to (3) by virtue of Rule 9(ii) and 12(A) of the Discipline Rules, 1964. These Rules have been made in order to ensure security of service and should not be allowed to be utilised and observed in a casual and mechanical manner. In imposing minor punishment, the authority can take into consideration the materials available in the record even without conducting detailed enquiry.

7. A bare perusal of the record in the instant case will show that the Petitioner in this particular case was not fit to be retained in service. He was all along absent from duty on this or that plea. He wanted that he should be placed at Gauhati and he was not willing to serve anywhere else and he is placed at other places was found absent from duty and on record of this case shows that he was always finding out means and method to earn money and salary without doing any duty. From the record it is clear and it speaks in volume as against the person and when it is made known to a person and established from record, there is no need or necessity to hold detailed enquiry. After all, the purpose of enquiry is to collect the materials in accordance with prescribed procedure to enable the competent authority to come to a conclusion with regard to the charges, when the record itself establishes the charges, the question of holding detailed departmental enquiry does not arise, Petitioner did not participate in the enquiry and now he is making a (sic) face and trying to find fault with the authority. The conduct of the petitioner is not above board. He has not come to court with clean hands. He does not have just and right cause to be entitled to get relief in a writ proceeding. In a writ proceeding the court can always refuse the relief if the (sic)nt of a person is found to be soiled or tainted. A writ court cannot be utilised to perpetuate a wrong state of things or to obtain wrongful gain. So, the first part of the prayer of the Petitioner to quash the order of suspension as well as to quash the imposition of penalty shall stand rejected.

8. The next question is regarding adjusting the period of absence of the Petitioner, The authority in order to give the full pay and allowances to a person must come to a Finding that the suspension is wholly unjustified as required under FR 54(B)(3). That is not the case in hand. The suspension order was found to be justified by the authority and even on perusal of the materials on record as indicated above, I have found the order of suspension to be justified. So, the Petitioner shall not be entitled to the full pay and allowance during the period of suspension save and except the subsistence allowance which was paid to him.

9. Regarding regularisation of period of absence, the authority has taken the right decision to grant him leave available for the period and the other period for which the leave is not available or admissible shall be treated not to be on duty and this period of absence shall not be counted towards pension and other retinal benefits. The Petitioner in this particular case had taken hit service in a very light

and casual manner. He filed one after another case before this Court to obtain relief as will be evident from Civil Rule No. 307/85. After getting a favourable order in that particular case, the Petitioner again resorted to absence from duty for a long period of more than 3? years and that was the reason of the suspension in the present case. From the record it will be clear that the Petitioner was absent from duty is an admitted position but he has sought to justify the same either by adopting this or that plea.

10. Absence from duty for a long period cannot be justified on the pleas taken by him. Further, no leave was granted to this Petitioner and in spite of it he continued to remain absent from duty in a most cavalier manner. if the writ court ignores this sort of indiscipline on the part of a person and give him relief that will amount to encouragement of callous attitude and indiscipline in the service and that will damage the fabric of the service orders. Writ court cannot allow a person to ignore the laws and rules.

11. A certiorari may be issued against administrative authority if the decision does not conform to fair play. No certiorari may be issued even the decision violates some procedural safeguards, if on scrutiny of the record court arrives at the finding that the decision is fair, proper and reasonable. That is what the record reveals/reflects in this case, on this ground along I am not inclined to exercise my writ jurisdiction. The action of the Petitioner is not bonafide and just and he is not entitled to claim the equitable remember.

12. Accordingly, on perusal of the materials on record I find that there is no merit in this writ application and the same is dismissed. However, I leave the parties to bear their own costs.

13. The records produced by the Learned Govt. Advocate may be returned to the Learned Govt. Advocate.