
(2004) 12 GAU CK 0006
In the Gauhati High Court
Case No : WP (C) No. 2022 of 1999

Bipul Chandra Tamuly

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9

Citation : (2004) 12 GAU CK 0006

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A.K. Purakayastha, R.K. Agarwal and M. Talukdar, for the Appellant;
R.K. Bora, for the Respondent

Judgement

B.P. Katake, J.—The petitioner by this writ application has basically challenged the order dated 22.3.1999 issued by the Deputy Commissioner of Nagaon imposing punishment on the petitioner on the basis of the disciplinary enquiry initiated against him pursuant to the show cause notice dated 3.10.1997 (Annexure-5 to the writ petition).

2. I have heard Mr. A.K. Purkayastha, learned senior counsel for the petitioner and Mr. R.K. Bora, learned State counsel appearing for the respondents.

3. The writ petitioner has challenged the order passed by the Deputy Commissioner imposing punishment on the ground of violation of the mandatory provision of Rule 9 of the Assam Service (Discipline and Appeal) Rules, 1964 and also on the ground that the disciplinary authority before passing the impugned order of punishment has not supplied the enquiry report submitted by the Enquiry Officer so as to enable the writ petitioner to make a representation against the said report which caused prejudice to him. The further submission of Mr. Purkayastha is that he was not informed about the enquiry proceedings and the said enquiry was conducted behind his back.

4. Though no affidavit in opposition has been filed by the State respondents in

the present case, Mr. R.K. Bora, learned Govt. Advocate, has produced a part of the records containing photocopy of certain documents, which are not sufficient for the purpose of deciding the case on all points.

5. The writ petitioner has alleged that the enquiry report which was submitted by the Enquiry Officer has not been supplied to him for which he could not submit any representation against the enquiry report which violated his right to make a representation against the enquiry report since non-furnishing of the enquiry report has caused serious prejudice to him as it affect his service career. Mr. Purkayastha has also pointed out that had the enquiry report been given to him he would have got a chance to say whether the enquiry was not conducted in accordance with law and the enquiry which was conducted was in accordance with the Assam Services (Discipline and Appeal) Rules, 1964.

6. The writ petitioner in the writ petition has categorically stated that the said enquiry report was not furnished to him by the Disciplinary Authority before passing the impugned order of punishment. The said statement has not been denied by the State respondents either by filing affidavit-in-opposition or by producing the records. The part of the records which has been produced before this Court does not reflect anything to show that the enquiry report has ever been served on the writ petitioner so as to enable him to make a representation against the finding of the Enquiry Officer.

7. The Hon"ble Supreme Court in a catena of discussions has held that the Disciplinary Authority is duty bound to supply a copy of the enquiry report to the delinquent officer so as to enable him to make a representation against the report of the Enquiry Officer and failure to furnish such report of the Enquiry Officer will amount to denying reasonable opportunity to the delinquent officer. The delinquent officer who complains about non-supply of the report of the Enquiry Officer must show that the prejudice was caused to him for non-supplying of such report.

8. In the instant case, as stated above, a serious prejudice has been caused to the writ petitioner by the action of the Disciplinary Authority in not supplying the enquiry report as the writ petitioner could not submit any representation against the said enquiry report indicating to the Disciplinary Authority that the proceeding was held behind his back and also in violation of the mandatory provisions of Rule 9 of the Rules, 1964.

9. That being the position, I set aside the impugned order of punishment dated 22.3.1999 (Annexure-8 to the writ petition) passed by the Deputy Commissioner, Nagaon imposing punishment on the writ petitioner and remit back the matter to the Deputy Commissioner, who is the Disciplinary Authority, directing him to furnish a copy of the enquiry report submitted by the Enquiry Officer to the writ petitioner. The writ petitioner thereafter shall be at liberty to file a representation within the time that may be fixed by the Deputy Commissioner and in the said representation the writ petitioner may raise all the points which have been raised

in the present writ petition. The Deputy Commissioner thereafter upon consideration of evidence on record as well as the representation that may be filed by the writ petitioner will pass order afresh.

This exercise is to be completed within a period of four months.

The writ petition stands disposed of as indicated above.