
(2005) 11 GAU CK 0029
In the Gauhati High Court
Case No : WP (C) No. 1216 of 1999

Dipak Mohan Patra

APPELLANT

Vs

Assam State Transport Corporation and Others

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2006) 108 FLR 460 : (2006) 2 GLR 48

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A. Das, D.C. Mahanta, P. Bhattacharjee and P.J. Mahanta, for the Appellant; None Appeared, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Mr. D.C. Mahanta, learned senior counsel for the writ petitioner. None has appeared on behalf of the respondents.

2. The petitioner who was at the relevant point of time serving as the Divisional Accountant of the respondent Corporation and posted at Jorhat was served with a show cause notice dated 7.8.1995 levelling the following charges:

Along with the charge-memo as aforesaid the list of documents and the list of witnesses by which charges were proposed to be proved as well as the statements of allegations against the petitioner were furnished. The petitioner showed cause by submitting his defence statement on 19th of August 1995. The same having been found unsatisfactory the disciplinary authority decided to hold an enquiry. In the enquiry that was initiated against the petitioner the petitioner participated. Elaborate oral and documentary evidence was adduced in the course of the enquiry held, at the conclusion of which a report of enquiry was submitted holding all the three charges to be proved against the petitioner. Thereafter, the petitioner was furnished with a copy of the enquiry report along with a notice to show cause as to why the petitioner should not be removed from

service. The petitioner, once again, showed cause, whereafter, the impugned order dated 25.1.1999 was passed removing the petitioner from service with immediate effect and further directing one-third of the allegedly misappropriated amount totalling Rs. 1,41,149.60 to be recovered from the outstanding dues of the petitioner. Aggrieved, a departmental appeal was filed which having been dismissed the present recourse to the writ remedy has been made.

3. Though the arguments have been long and exhaustive it will not be necessary for the Court to traverse through the same in order to find out the validity of the impugned punishment imposed on the petitioner. A reading of the impugned order dated 25.1.1999 would go to show that the disciplinary authority before imposing the punishment in question came to the conclusion that the petitioner is responsible for misappropriation of the revenue of the Corporation alongwith the others named in the charge-memo. In fact, the disciplinary authority has held that the petitioner was a beneficiary of the aforesaid misappropriation and, therefore, he should not be allowed to continue in service and recovery as already noticed above ought to be ordered from the outstanding dues of the petitioner.

4. The report of enquiry submitted to the disciplinary authority by the enquiry officer has been enclosed by the writ petitioner alongwith the writ petition. A perusal of the said report of enquiry would go to show that although the petitioner has been found guilty of all the charges levelled against him the finding of the enquiry officer is not that the petitioner was guilty of misappropriation what has been found by the enquiry officer is that the petitioner was guilty of negligence in discharge of duties leading to misappropriation of the Corporation's revenue by the other persons as named in the charge-memo. The charge against the petitioner was one of negligence in duties facilitating misappropriation and not one of misappropriation. The two situations are entirely distinct and different. Needless to say the charge of misappropriation would be more grave than a charge of negligence in performance of duties facilitating misappropriation. The petitioner was furnished with a copy of the enquiry officer's report along with the second show cause notice and he was asked to show cause as to why the findings of enquiry should not be accepted and he should not be punished. The petitioners had showed cause by an exhaustive reply where several grounds have been taken to convince the disciplinary authority that the report of enquiry should not be accepted. The disciplinary authority cannot accept the report of the enquiry officer until the reply submitted by the delinquent is adequately considered. The reply submitted by the delinquent against the second show cause notice has all along been construed by the Court to be a part of the doctrine of reasonable opportunity enshrined by Article 311 of the Constitution and the principles of natural justice.

5. The punishment imposed by order dated 25.11.1999 has been based on findings which are contrary to the charges levelled and also not established by the report of enquiry. There is no material on record to show that the petitioner

is guilty of misappropriation or has been the beneficiary of any misappropriated money. The punishment imposed on that basis, therefore, would have no legs to stand. Accordingly, I set aside the impugned order dated 25.1.1999 and in view of the fact that the petitioner had already filed his reply against acceptance of the enquiry officer's report holding him to be guilty of negligence in performance of duties, the said reply will now be considered by the disciplinary authority of the petitioner who will, thereafter take an appropriate decision in the matter. As the petitioner is out of employment since the year 1999 on the basis of his removal order and even earlier on the basis of the suspension order passed against him the disciplinary authority will now decide the matter at the earliest.

6. At this stage, Sri Mahanta, learned Counsel for the petitioner, has pointed out that in a proceeding initiated against a beneficiary of the allegedly misappropriated amount, the punishment of stoppage of three increments has been imposed and the delinquent has been allowed to resume duties. The disciplinary authority will look into the aforesaid aspect of the matter while considering the quantum of punishment to be awarded against the petitioner keeping in mind that the punishment to be imposed must always be proportionate bearing a reasonable relationship with the punishment imposed on the other delinquents in the same or connected disciplinary proceedings.

7. The respondents are directed to take further action in the matter on the basis of the certified copy of the present order which would be furnished "by the petitioner. The writ petition is allowed to the extent indicated above.