
(2009) 08 GAU CK 0040
In the Gauhati High Court

Dr. Jatin Baruah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 7

Citation : (2010) 2 GLR 108

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner, who was serving as the Principal of a particular College, is aggrieved by the order removing him from service pursuant to a departmental proceeding initiated against him.

2. The petitioner was appointed as Principal of the College, called Biswahath College. Such appointment was by order dated 31.3.2005. The petitioner joined the College as the Principal on 1.4.2005. After such joining of the petitioner, the Director of Higher Education, accorded the formal approval to the appointment of the petitioner as Principal of the said College.

3. The particular selection was conducted pursuant to the advertisement dated 28.6.2004. It will be pertinent to mention here that for the same post, the Governing Body of the College had earlier conducted a selection, for which interview was held on 30.8.2004. In the said selection, three candidates were recommended, placing the petitioner at Sl. No. 2, while one Nityananda Gogoi, a Lecturer of the same College was placed at Sl. No. 1.

4. Making a grievance against the said selection in which the petitioner was placed at Sl. No. 2, the petitioner approached this Court by filing WP(C) No. 6848/2004. The grievance raised was that this petitioner was not given marks under the heads "Extra Curricular Activities" and "Administrative Experience".

5. The petition was allowed by judgment and order dated 8.2.2005, seating aside and quashing the selection and issuing direction to hold a fresh selection confining to the candidates who had participated in the earlier selection. It was pursuant to this selection the petitioner was selected as the first nominee and was appointed as the Principal of the College.

6. It is the case of the petitioner that after he had joined the College as the Principal, he tried to bring discipline in the matter of attendance of the College Teachers and students and holding examination in congenial atmosphere, which according to the petitioner was lacking at the time of Joining the College. Because of such strict administration, some teachers and students union of the College became annoyed with the petitioner and tried to make the petitioner compelled to leave the College under different issues. In this connection, the petitioner has attributed mala fide against said Shri Nityananda Gogoi, who was selected as the first nominee in the earlier selection.

7. It is the case of the petitioner that a particular group has set a conspiracy against him and they procured one photocopy of the M.A., final mark sheet, of the petitioner from the College record and tampered the marks so as to increase the percentage of marks obtained by the petitioner in the said examination as 55.3 as against the actual percentage of marks secured by the petitioner, which is 50.3. Be it stated here that the petitioner had actually secured 403 marks out of total 800 marks, which is 50.3%, but the photocopy of the mark sheet about which the petitioner has mentioned in the writ petition shows that he had secured 543 marks out of 800 marks which comes to 55.3%.

8. It was alleged that the petitioner had submitted false and tampered duplicate mark sheet of the M.A., final examination at the time of interview and the said allegation had spread in the College. The Governing Body of the College in its meeting held on 22.6.2006, adopted a resolution directing the petitioner to go on compulsory leave from 22.6.2006 to 22.7.2006, making it convenient to hold an enquiry relating to the incident. It is the case of the petitioner that such a resolution adopted by the Governing Body was arbitrary and mala fide. It is his further case that before sitting in the selection for the post of Principal, he had never submitted any tampered and/or forged mark sheet, and in fact, had submitted the original mark sheet showing his percentage of marks as 50.3.

9. On receipt of the aforesaid resolution of the Governing Body, the Director of Higher Education approved the same. However, with the modification of the words "compulsory leave" with that of "special leave without pay".

10. After the aforesaid developments, the petitioner was placed under suspension as per the resolution adopted by the Governing Body of the College in its meeting held on 17.7.2006, to which effect the in-charge Principal of the College made a communication to the petitioner on 22.7.2006. Being aggrieved by the order of suspension, the petitioner had approached this Court by filling the writ petition being WP(C) No. 4111/2006. The writ petition was disposed of

by order dated 21.2.2007 with the direction to the Disciplinary Authority to conclude the departmental enquiry against the petitioner by passing such final order as may be justified on the basis of the materials and evidence posed and established in the enquiry, as expeditiously as possible and in any case within a period of two months.

11. After placing the petitioner under suspension, the disciplinary authority had issued the Annexure-15 charge sheet dated 30.8.2006 to the petitioner, containing as many as 7(seven) charges. For a ready reference, the charge sheet is reproduced below:

1. That you have been appointed Principal in this college with effect from 1.1.2005 through interview which was held on 28.3.2005. This interview as held for the second time as a result of Gauhati High Court verdict on your writ petition filed by you alleging that no marks were given to you for extracurricular and administrative experiences in the interview held on 30.8.2004. The H.C. in its verdict dated 7.2.2005 cancelled the selection of Dr. N. Gogoi as the Principal and ordered for a second Interview with the same candidates. The college authority decided to hold the second interview on 28.3.2005 in which you stood first and were selected as the permanent Principal of the college, and the college G.B., meeting held on the same date forwarded all the documents to the D.H.E for approval which were duly signed by the President of the Governing Body. The newspapers published and some local organisation complained before the President, Governing Body, Biswanath College that the mark sheet of your M.A., Final examination submitted and produced before the Interview Board by you for the interview was forged.

That after the news published, the President, Governing Body, Biswanath College took the file of the first interview which was with the Dealing Assistant, and the Principal's approval file from you, which was in your custody after your appointment as the permanent Principal.

The mark sheets from HSLC examination onwards including that of M.A., Final examination submitted by you in support of your application were attested by K.C. Nath, the then Principal of Bongaigaon College and seen and signed by Mrs. R.B. Das the then Principal-in-charge of Biswanath College during the first interview held on 30.8.2004. But you have replaced all the mark sheets by enclosing a new set of mark sheets which are attested by Vice-Principal of Bongaigaon College. All these amount to misconduct under the Rules.

2. That the Pro forma of Biodata which was duly signed by the President of G.B., Biswanath College, submitted to the D.H.E., Assam, for approval just after the second interview held on 28.3.2005, carries 55.3% as your M.A., Final mark. The mark sheet of your M.A., Final examination with 55.3% marks, which is duly signed by the President, G.B. was submitted to the D.H.E along with other documents. But, in the Pro forma of Bio data in the college file and the document "detailed particulars for prior approval of Principal, Biswanath College, Chairali"

you has changed your M.A., Final examination mark to 50.3%. Moreover in the college file you have replaced your M.A., Final mark sheet with 55.3% by another mark sheet with 50.3%. This is a gross manipulation of documents on your part.

3. That the respective certified copies of your M.A., Final mark sheet along with Bio-data submitted by you for the post of Principal in Rangapara College and T.H.B. College which were collected by the President, G.B., Biswanath College from the Principals of Rangapara College and T.H.B. College, Jamugurihat respectively, showing 55.3% marks. In fact, your actual percentage of marks in the M.A., Final examination was 50.3%. This manipulation on your part is gross misconduct.

4. That in the first interview for the post of Principal, Biswanath College held on 30.8.2004, the Interview Board awarded you 7 marks for your M.A., Final mark sheet which can be awarded if a candidate secures 55% to 60% marks in M.A., Final examination. You were awarded 7 marks because you submitted and produced your M.A., Final mark sheet before the Interview Board with 55.3% marks. The photocopy of the said mark sheet attested by K.C. Nath, the then Principal of Bongaigaon College and seen and signed by Mr. Rajabala Das, the then Principal-in-Charge and Secretary of Biswanath College on the date of interview, i.e., 30.8.2004 is kept in the first interview file along with marks statement your action for taking undue advantage is a gross misconduct.

5. That in the second interview held on 28.3.2005 in which you were placed in the first position. The Interview Board awarded you 7 marks for your M.A., Final examination for securing 55.3% marks and the total marks was 70.77 for your academic, extracurricular and teaching experience.

Both in the College file for the second interview where you secured first position, it is seen that the marking statement of the Interview Board has been tampered. The marking statement of the Interview Board submitted to the Director of Higher Education by the President of the Governing Body of Biswanath College for approval of appointment of Principal does not tally with that in the College file. It has been clearly seen that 7 marks awarded for M.A., Final examination in the interview has been tampered and made 5 and the total marks 70.77 was also tampered and made 68.77. This tampering works were done by you as you were the custodian of all files and documents pertaining to the appointment of Principal, Biswanath College. All the actions amount to gross misconduct on your part.

6. That in file No. Estt/9 (Approval of Principal) the first document is "Detailed particulars for prior approval of Principal, Biswanath College, Chariali". This document, containing your M.A., Final marks as 55.3% was sent to the D.H.E., Assam just after the second interview. But during verification it is noticed that in the College file, this document carries your M.A., Final mark as 50.3% and the document is without the signature of the President, G.B., Biswanath College. Thus it is clear that you have replaced the original document with 55.3% and

signed by the President, G.B., Biswanath College by another document with 50.3% as your M.A. Final mark and without the signature of the President of the G.B. This is a gross misconduct on your part.

7. That Page No. 34 of Principal's approval file is an "experience certificate for conducting examinations" submitted by you, which was issued on 23.1.2004 by the Principal of Bongaigaon College. But, interestingly, this document was attested on 20.10.2003 by the Vice-Principal of Bongaigaon College. This is a clear case of manipulation of documents under the Rule.

That from the above facts it is seen that you have committed serious misconduct punishable under Rule 7 of the Assam Service (Discipline & Appeal) Rules, 1964.

12. While issuing the aforesaid charge sheet, the petitioner was asked to submit his written statement in defence. It was also indicated in the charge sheet that the petitioner would be entitled to inspect the relevant documents which the petitioner accordingly did. Thereafter, the petitioner submitted his written statement in defence on 5.10.2006 denying the charges. The disciplinary authority being not satisfied with the written statement, decided to hold an enquiry against the petitioner and appointed the respondent No. 5 as the Inquiry Officer to conduct the departmental enquiry.

13. The Inquiry Officer by his letter dated 8.2.2007 directed the petitioner to appear before him on 16.2.2007. In the letter, it was also indicated that the petitioner would be entitled to have the assistance of a Defence Assistant, subject to the approval of the disciplinary authority. In response to the said letter, the petitioner by his letter dated 10.2.2007 conveyed his intention to take the assistance of one Shri Tara Nath Mahanta, another Lecturer of that College, who also at that point of time was under suspension. On 16.2.2007 i.e., the date of the enquiry, the petitioner appeared before the Inquiry Officer along with said Shri Mahanta. However, the assistance of said Shri Mahanta was not allowed to the petitioner purportedly on objection of the Governing Body of the College i.e., the disciplinary authority. Thereafter, the enquiry proceeded and on conclusion of the same, the Inquiry Officer submitted his report holding the petitioner guilty of all the charges. The conclusion arrived at by the Inquiry Officer is reproduced below:

(A) The Disciplinary Authority (Governing Body) has been successful to establish all the charges levelled against the delinquent and mentioned in the show cause notice dated 30.8.2006 with clear, consistent, cogent and inspiring evidence and hence all the 5 (five) points for determination are answered in positive.

(B) The delinquent is found guilty for furnishing forged mark sheet before the Interview Board and for manipulating and tampering documents with the misuse of his official capacity as Principal.

(C) With this opinion I conclude my enquiry report and forward it to the GB. The GB may impose penalty/penalties upon the delinquent under any of the clauses

of Rule No. 7 of Assam service (Disciplinary and Appeal) Rules, 1964.

14. The Governing Body of the College by its resolution No. 1 adopted in the meeting held on 20.4.2007 accepted the enquiry report and resolved to remove the petitioner from service under Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964 and forwarded the same to the Director of Higher Education, Assam for his necessary approval. On the same day, a copy of the report was also forwarded to the petitioner along with the statement of witnesses and the resolution of the Governing Body. The petitioner was asked to submit his representation within 23.4.2007 on the proposed penalty.

15. On receipt of the enquiry report, the petitioner submitted his representation on 23.4.2007, followed by another representation dated 26.4.2007 to the Director of Higher Education, Assam requesting not to accord his approval to the Governing Body's resolution towards removal of the petitioner from service.

16. The Director of Higher Education, Assam, vide his letter dated 11.5.2007 accorded his approval to the resolution of the Governing Body towards removal of the petitioner, from service (Annexure-24). Being aggrieved, the petitioner has filed the instant writ petition.

17. The petitioner apart from challenging the order of removal from service on merit has also raised technical pleas of procedural irregularities in conducting the enquiry. Various grounds have been urged in this regard. They are, non-furnishing the sets of documents and witnesses along with charge sheet; the charges not being definite and distinct; denial of a defence Counsel in the enquiry; the enquiry being conducted with a pre-determined mind and with active association of the members of the Governing Body etc. The petitioner has also urged that the evidence on record does not justify imposition of penalty of removal on the petitioner.

18. The Governing Body of the College has filed its affidavit-in-opposition to which the petitioner has also filed his reply affidavit. While in the counter affidavit filed by the Governing Body of the College, the order of removal of the petitioner from service and for that matter the departmental proceeding initiated against the petitioner has been justified, the petitioner in his reply affidavit has reiterated and reaffirm the grounds urged in the writ petition. In the counter affidavit, it has been stated that the petitioner along with his application for the post of Principal had attached his mark sheet of M.A., final examination in Assamese (old course) of 1997 showing to have secured 443 marks in total, whereas, he had actually secured 403 marks. In paragraph 6 of the counter affidavit, the marks shown in the original mark sheet and in the mark sheet submitted by the petitioner have been indicated as follows:

ORIGINAL		MARKSHEET		SUBMITTED		MARKSHEET	
						Paper I -	
53	Paper-I	-	53	(History & Literature)	(History & Literature)		

----- Paper-II -	
44 Paper-II-	64 (Early and Modern Prose) (Early and Modern Prose)
----- Paper-III-	
47 Paper-III-	67 (Modern Western Literature) (Modern Western Literature)
----- Paper-IV-	
52 Paper-IV	- 52 (Bhakti Poetry and Essay) (Bhakti Poetry and Essay)

19. It is also the stand of the respondents that in both the interviews i.e., the earlier interview which was interfered with by this Court and the subsequent interview in which the petitioner was selected as the first nominee, the petitioner was awarded "7" marks by the selection Committee, which is the admissible marks as per the rules framed by the authority for the candidates securing 55% to 59% marks in the M.A., final examination. As the petitioner had submitted the mark sheet showing 443 (55.3%) marks instead of 403 (50.3%) marks, the selection committee as per the rule had awarded the petitioner "7" marks. Thus, it is the case of the respondents that had the petitioner submitted the original mark sheet or copy thereof, he would not have been awarded "7" marks by the members of the selection committee, which in fact, was awarded to him as he had submitted the forged mark sheet showing to have secured 443 marks in the M.A., final examination. Thus, according to the respondents, the petitioner had submitted forged mark sheet with inflated marks. At this stage, it will be appropriate to indicate the marks shown in the original mark sheet and the forged mark sheet, by virtue of which there was increase of 20 marks each in paper-II and paper-III.

ORIGINAL	MARKSHEET

----- Paper-II	
- 44 Paper-II	- 64 (Early and Modern Prose) (Early and Modern Prose)
----- Paper-	
III- 47 Paper-III-	67 (Modern Western Literature) (Modern Western Literature)

20. When the matter came to the notice of the Governing Body of the College, same was enquired into and on enquiry, the aforesaid facts came to light.

21. The college authority in its affidavit has also contended that the petitioner did the mischief to project himself as a candidate with UGC norms, one of which is 55% marks in M.A., final examination. In the affidavit, it has been stated that the petitioner did the same mischief in two other colleges in which also he had applied for the post of Principal and as to how the same had been verified by the Director of Higher Education himself.

22. I have heard Mr. S.N. Sarma, learned senior Counsel assisted by Mr. A.J. Das, learned Counsel for the petitioner as well as Dr. B. Ahmed, learned Counsel representing the Governing Body of the College. Mr. S.K. Dewri, learned Counsel

appeared for the respondents No. 7, 8, 9, 10 & 11. Mr. S.K. Das, learned Standing Counsel, Education Department argued on behalf of official respondents. He has also produced the records sent to him by the Director of Higher Education. Dr. B. Ahmed, learned Counsel representing the Governing Body has also produced the records pertaining to the departmental enquiry.

23. While Mr. Sarma, learned Counsel for the petitioner argued that the petitioner occupying such high position in the academic field cannot resort to falsehood in the matter of appointment as Principal. According to him, the entire episode is the creation of the group with vested interest. In this connection, he has also referred to the earlier round of litigation in which the petitioner was successful in getting the earlier selection quashed. According to Mr. Sarma, such approach on the part of the petitioner had annoyed the authorities and accordingly a conspiracy was hatched to malign the petitioner with the evil design of removal of the petitioner from service. As regards procedure adopted in conducting the enquiry, Mr. Sarma emphasised on two points. He submitted that denial of defence assistant to the petitioner had resulted in serious miscarriage of justice in the defence of the petitioner. The other point he urged is that the Governing Body of the College could not have accepted the enquiry report without first affording the petitioner an opportunity to make a representation against the same.

24. Dr. B. Ahmed, learned Counsel representing the Governing Body of the College on the other hand submitted that the forgery committed by the petitioner is writ large on the face of the record. He submitted that since the petitioner does not have the UGC norms of 55% marks in M.A., final examination, he had manipulated the mark sheet and while submitting the photocopy of the same, projected his marks as 443 instead of 403. As regards the allegation of mala fide etc. because of the earlier round of litigations, he submitted that had it been the intention of the authority not to select the petitioner as the Principal of the College, things could have been manipulated in the selection itself. He also submitted that even if some irregularities are found in conducting the departmental enquiry, unless the said irregularities are proved to have led to prejudice to the defence of the petitioner, the court will ignore the same.

25. Mr. S.K. Das, learned Standing Counsel, Education Department, by producing the documents forwarded to him by the director of Higher Education, submitted that the manipulation in the M.A., final examination mark sheet by the petitioner having been established, the writ court will not sit over the findings arrived at by the Inquiry Officer and the Disciplinary Authority, which has finally been approved by the Director of Higher Education. He submitted that the writ court would not sit on appeal to scrutinise the evidence on record. According to him, it is not a case of any perverse finding or lack of any evidence.

26. I have considered the submissions made by the learned Counsel for the parties. I have also gone through the records pertaining to the departmental proceeding. In consideration of the same, my findings are recorded below.

27. There is no dispute that there are two mark sheets in the name of the petitioner under same number and date pertaining to his M.A., final examination in Assamese held in 1977. In the first mark sheet, the petitioner has been shown to have secured total 403 marks, securing 207 in M.A., Previous and 196 in M.A., final. In the mark sheet, the marks obtained by him in Paper I, II, III & IV are 53, 44, 47 and 52. On the other hand, in the forged mark sheet, under the same number and year, the petitioner has been shown to have obtained total 443 marks securing 207 in M.A., Previous and 236 in M.A., final examination. He has been shown to have secured 53, 64, 67 & 52 in Paper I, II, III and IV respectively. The tampering and manipulation is in respect of Paper II and III, in which as-per the own admission of the petitioner, he has secured 44 and 47. By the manipulation, the said 44 and 47 have been altered to 64 and 67.

28. With 403 total marks in the M.A., final examination, the petitioner has secured 50.5% marks but if the manipulated mark sheet is taken into account, the percentage of marks secured by him comes to 55.3%. While 50.3% did not conform to the requirement of UGC norms, 55.3% marks conformed to the same. It is in this context, the stand of the respondents is that the petitioner with a view to show that he had fulfilled the UGC norms, submitted the manipulated mark sheet along with his application. While it is the case of the petitioner that such manipulation has been made by the vested interest group, it is the stand of the respondents that it is the petitioner who has done the manipulation, as it, is none else, who would be benefited by such manipulation.

29. The above aspect of the matter will have to be considered, taking into account the fact that the same manipulated mark sheet was submitted by the petitioner in two other colleges for his selection as Principal in the said colleges. The said two colleges are Darrang College and Tyagbir H.B. College. In the said two colleges also, he had submitted mark sheet of M.A., final examination showing 443 marks instead of 403 marks, which is actual marks obtained by him. Further, in the office records of the Director of Higher Education, in the file relating to approval of appointment of the petitioner as the Principal, the mark sheet in existence, is the one showing 443 marks along with the bio-data submitted by the petitioner, in which he had clearly indicated the percentage of marks obtained by him in M.A., final examination as 55.3%. The said bio-data was submitted by the petitioner duly signed by him.

30. The charges against the petitioner has been quoted above. The basic charge is that the petitioner, although, has secured 403 marks in his M.A., final examination (50.3%). but in the mark sheet submitted by him he had inflated the same to 443 (55.3%). After the selection was over and the petitioner was appointed as the Principal, he replaced all the mark sheets by a new set of mark sheets showing the actual marks obtained by him. In the minutes of the selection committee governing body, the particular column shows 55.3% marks against the name of the petitioner in the M.A., final examination. The supporting documents i.e., the mark sheet indicate the same. Thereafter the replacement

was made in the relevant file and in place of the earlier mark sheet, the actual mark sheet was placed. In the bio-data submitted by the petitioner in two other colleges, namely, Darrang College and Tyagbir H.B. College, for the post of Principal, he had indicated the percentage of marks in M.A., final examination as 55.3%.

31. The aforesaid position relating to inflated marks is corroborated by the fact that the interview board awarded him "7" marks, which is the admissible marks for the category of candidates securing 55% to 59% marks in the M.A., final examination. It is only "5" marks for the candidates securing below 55%. The mark i.e., "7" was awarded to the petitioner in both the selections, i.e., the first selection, set aside by this Court and the second selection, in which the petitioner had been selected. Even the marking statement of the interview board has been tampered. As per the charge sheet, although in some records, subsequent manipulation and correction was made depicting the correct marks obtained by the petitioner but in some other relevant records, such manipulation could not be made. At that relevant point of time, the petitioner being the Principal was the custodian of the documents.

32. I have verified the enquiry proceeding file in minute details, what I find is that apart from the manipulation in the mark sheet there was also manipulation in both the interview sheets pertaining to the first and the second selection. In Column "Post Graduate" there is apparent alteration of the original mark to "5". Likewise, in the total marks also, there is apparent alteration. Whosoever might have done the alteration, such alteration was done with meticulous precision so as to show that such alterations are also there in respect of some other candidates. However, the change in the total marks obtained by the petitioner is distinct and specific. In the first interview conducted, which was subsequently set aside by this Court, the petitioner was awarded "7" marks for his M.A., final examination, which is admissible for a candidate securing 55% to 59% of marks. In the category of candidate securing 50 to 54% marks, the prescribed mark is "5".

33. The interview sheet, mark sheet is available in the disciplinary proceeding file, which the Inquiry Officer duly took into account. The said document was also exhibited in the enquiry. The proceeding file has further revealed that the Principal and Secretary of the Tyagbir H.B. College by his letter dated 19.6.2006 (Ext. 3) intimated the Governing Body of the Biswanath College that the petitioner was a candidate for the post of Principal in the said College. Along with the said letter, the mark sheet submitted by the petitioner (Ext. 3C) was also enclosed. The mark sheet was the manipulated one showing the total marks as 443. Likewise Ext. 4 letter dated 20.6.2006 is a letter addressed to the Governing Body of the College by the Principal of Tyagbir H.B. College, confirming the same position. Along with the letter, the application submitted by the petitioner for the post of Principal along with Bio-data (Ext. 4c) was also forwarded. In the bio-data, the petitioner indicated the percentage of marks in

M.A., final examination as 55.3%. Further, in the mark sheet enclosed along with the application (Ext. 4(i)), the total marks shown to have been secured by the petitioner is 443.

34. Ext. 13 is the pro forma submitted by the petitioner offering his candidature for the post of Principal, Biswanath College. In this pro forma also, the petitioner has indicated his M.A., final examination mark as 55.3%. Along with the pro forma, he also submitted the forged mark sheet showing 443 marks (Ext 14). In the particulars submitted by the Governing Body to the Director of High. Education, Assam, for according prior approval towards appointment of the petitioner as the Principal, the total marks secured by him in the M.A., final examination was shown as 443 (55.3%), as was projected by the petitioner. However, later on, the petitioner tried to set the things right by replacing the manipulated mark sheets with that of the correct mark sheets. Likewise in the interview sheets also, correction regarding allotment of marks commensurating to the percentage of marks was made. However, in the process, the petitioner was caught as he could not manipulate all the records. As the saying goes one cannot suppress the truth for all the times to come.

35. I now deal with the technicalities or the purported procedural irregularities in conducting the enquiry as was raised by the learned Counsel for the petitioner. It was argued that since the petitioner was not given the opportunity to engage his defence Counsel, the enquiry is vitiated. It is true that the petitioner was denied the assistance of Shri Tara Nath Mahanta, a lecturer of the same College who at that relevant point of time was under suspension. The petitioner had sought for the assistance of said Shri Mahanta as his defence Assistant. However, it is to be seen as to whether such refusal was justified and even if was unjustified, whether that by itself, would vitiate the entire disciplinary proceeding.

36. Annexure-19 is the order sheet dated 16.2.2007 pertaining to the departmental enquiry. The prayer of the petitioner for engagement of said Shri Mahanta was disallowed as he himself was under suspension and the departmental proceeding was contemplated against him. The order sheet further reveals that after such rejection of the prayer of the petitioner for engagement of Shri Mahanta as defence assistant, he agreed to present his case himself. Not only that, he duly participated in the enquiry without any objection and even cross-examined the witnesses produced on behalf of the Disciplinary Authority. At no point of time, the petitioner made any grievance against the denial of the services of said Shri Mahanta as his defence assistant, rather he agreed to defend all by himself and even cross-examined the witnesses. In that view of the matter, the subsequent plea raised by the petitioner of denial of opportunity to engage defence counsel is not acceptable.

37. The Disciplinary Authority was not unjustified in refusing to allow Shri Mahanta as the defence assistant of the petitioner inasmuch as he was also under suspension and a departmental proceeding was in contemplation against him. With the denial of the assistance of Shri Mahanta, the petitioner could have

prayed for adjournment of the proceeding with further prayer for engagement of another defence assistant. However, he did nothing of the sort and rather agreed to participate in the proceeding. Now, at a later stage and only for the purpose of making out a case, he cannot be allowed to resale back from the said position so as to contend that there was violation of the principles of natural justice. It is in this context, Dr. Ahmed, the learned Counsel representing the Governing Body placed reliance on the decision of the Apex Court in *D.G. Railway Protection Force and Others Vs. K. Raghuram Babu*, , in which dealing with the right to claim assistance of a counsel or any other person, the Apex Court observed as follows:

Following the above decision it has to be held that there is no vested or absolute right in any charge sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through someone, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

38. As regards the plea of the petitioner that enquiry report could not have been accepted by the Governing Body without first considering the representation of the petitioner against the said reports, suffice is to say that the petitioner was given due opportunity to make representation which, in fact, he did. It is in consideration of the enquiry report and the representation submitted by the petitioner, the resolution of the Governing Body of the College towards removal of the petitioner from service was approved by the Director of Higher Education.

39. Another plea raised by the petitioner is that along with the charge sheet he was not furnished with the list of documents and witnesses. On perusal of the departmental proceeding file, what I find is that the petitioner was allowed inspection of all the documents on the basis of his written request and he had prior intimation regarding the witnesses to be examined by the Disciplinary Authority. Nothing has been pleaded in the writ petition to show any prejudice caused to the petitioner in conducting the departmental proceeding. Law is well settled that mere bringing out certain irregularities in conducting the departmental enquiry is not sufficient unless it is the pleaded and established case of the delinquent concerned that such irregularity has caused prejudice to his defence.

40. In *State Bank of Patiala and others Vs. S.K. Sharma*, the Apex Court dealing with the violation of rules, regulations, statutory provisions incorporating rules of natural justice in a departmental proceeding held that in case of procedural provisions which is not of substantial or mandatory character and if no prejudice is caused to the person proceeded against, no interference of the court is called for. It was held that substantial compliance of such provision is enough. It was further held that even in case of mandatory procedural violation, if it is in the interest of the person proceeded against and not in public interest and if such person waived the requirement thereof, then also non-compliance with such

requirement would not vitiate the action.

41. Dealing with the requirement of furnishing the copies of documents etc., the Apex Court in the aforesaid decision observed, thus:

31. Sub-clause (iii) is, without a doubt, conceived in the interest of the delinquent officer and hence, he could waive it from his conduct, the respondent must be deemed to have waived it this is an aspect which must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. It is trite to remember that, as a rule, all such procedural rules are designed to afford a full and proper opportunity to the delinquent officer employee to defend himself and are, therefore, conceived in his interest Hence, whether mandatory or directory, they would normally be conceived in his interest only.

32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of Sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter, Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

42. Dealing with the various facets of the principles of natural justice in the matter of departmental enquiry, the Apex Court further observed that in case of violation of procedural provision, violation of any and every procedural provision cannot be said to automatically vitiated the enquiry held or order passed except cases falling under "no notice", "no opportunity" and "no hearing" categories. The complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer, employee, in defending himself properly and effectively. In the instant case, the petitioner duly inspected the documents, cross-examined the witnesses and fully participated in the enquiry proceeding, even when he was made known that the nominated defence assistant would not be available to him. He duly and fully participated throughout the enquiry proceeding without raising any objection. Thus, it cannot be said to be a case of violation of principles of natural justice causing any prejudice to the defence of the petitioner.

43. Apart from the above when the materials on record point out only one thing that there was manipulation in the M.A., final examination mark sheet by the petitioner, there cannot be any escape, for the petitioner from the said liability. While conducting the enquiry, there was substantial compliance of the procedure to be followed and the petitioner was afforded all the opportunities of being heard. The evidence on record have been discussed above.

44. Much was argued by the learned Counsel for the petitioner that because of the earlier round of litigation initiated by the petitioner in which the selection of Shri Nityananda Gogoi i.e., the respondent No. 6 was set aside, the group of persons with vested interest acted against the interest of the petitioner and it is the said group who had manipulated the records, so as to show that the petitioner had resorted to forgery/manipulation in offering his candidature for the post of Principal. Although, such an argument was advanced but nothing could be shown either from the pleadings or from the records to substantiate that a particular group of persons or any individual had manipulated the records. It will be too much to say that the said group or an individual would go to the extent of manipulating all the records not only pertaining to the Biswanath College but also the other two colleges, so as to made the petitioner a scape goat.

It was rightly submitted by Dr. Ahmed learned Counsel for the respondents that had it been the intention of the authority to see the ouster of the petitioner, it would not have selected him in the interview, more so, when the vague and indefinite allegation brought by the petitioner are against the persons associated with the College.

45. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed. There shall be no order as to cost.