
(2008) 02 GAU CK 0075
In the Gauhati High Court

Jawaharlal Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2008) 117 FLR 249 : (2008) 1 GLT 961

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

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The petitioner, working as Junior Engineer In the Public Works Department (PWD) is aggrieved by the order of penalty imposed on him pursuant to a departmental proceeding. The penalty imposed is recovery of the amount, which the department allegedly sustained because of misconduct on the part of the petitioner.

2. The petitioner who entered into the services of the PWD way back in 1985 was placed under suspension by order dated 25.6.1999 pending drawl of departmental proceeding. Thereafter Annexure-1 charge sheet dated 21.12.1999 was issued bringing altogether 4 charges against the petitioner, which are quoted below:

Charge No. 1 : That while you were Sectional Officer of R. K. Nagar Sub-division under Karimganj PWD Road Division, on scrutiny and enquiry of the Bills at site, it is found that you have submitted 62 Nos. of bills without receiving any materials. The quantity of the materials stated in the bills were not found at site nor found to be utilized in any work. The total amount of such bills to the tune of Rs. 23.87,655.00 (Rupees twenty three lakhs eighty seven thousand six hundred fifty five) only. You are, therefore, charged with misconduct and cheating the Govt. for your own personal gain.

Charge No. 2 : That while you were Sectional Officer of R. K. Nagar Sub-division you have submitted 3 (three) Nos. of bills amounting to Rs. 1,30,540.00 (Rupees

one lakh thirty thousand five hundred forty) only without executing any work. You are, therefore, charged with misconduct and cheating the Govt. for your own personal gain.

Charge No. 3 : When you were directed to handover the charges of the Dullavcherra Section vide Executive Engineer, PWD, Karimganj Road Divisions Office Order No. G-2/E-9-15/Pt-vi/255, dated 29.6.99, you failed to handover the charges. You are charged with insubordination and gross negligence of work.

Charge No. 4: You have failed to submit the Accounts & M.B. "s maintained in Dullavcherra Section as directed vide Executive Engineer, PWD, Karimganj Road Divisions Office No. A-II/Bill/188, dtd. 23.6.99 and DEE (RKNL)"s No. ACC-2/359, dtd. 9.6.99 within the time mentioned. You are, therefore, charged with insubordination and acting with III motives for your personal gain.

3. After issuance of the charge sheet, the petitioner was reinstated in service upon revocation of the order of suspension. The order of reinstatement stated about reinstatement of the Assistant Executive Engineer involved in the same irregularity for which the petitioner was charged.

4. The petitioner, in his written statement of defence furnished on 31.1.2000 denied all the charges in categorical terms. According to the petitioner, the materials in question were duly received and utilized and that the bills were passed by the higher authorities. As regards the charge No. 2, it was the stand of the petitioner that he never committed anything wrong. In addition, he also stated that the charge was vague and indefinite. It was also pointed out that the bills were paid by the Executive Engineer and not by him.

5. The Inquiry Officer conducted the enquiry and on conclusion of the same, furnished his report (undated). In the report, the advice was for dropping the charge No. 3 and 4. As regards the Charge No. 1 and 2, it was held that while charge No. 1 was not possible to establish, the charge No. 2 requires confirmation through subsequent enquiry in respect of higher officials.

6. In view of the above finding recorded by the Inquiry Officer, it is the stand of the petitioner that none of the charges having been established in the enquiry, he could not have been imposed with the penalty of recovery from the salary-a huge amount of Rs. 8,39,395/-.

7. After the enquiry report so furnished by the Inquiry Officer, the Chief Engineer, PWD (R) i.e. the respondent No. 2 passed the impugned order dated 18.8.2001 (Annexure-5) holding the petitioner guilty of charge No. 1 and 2 and awarded the aforesaid penalty of recovery of the amount of Rs. 8,39,395/-from his monthly salary. The order also specified that the period of suspension should be treated as non-duty for all purposes. The petitioner was also imposed with the penalty of stoppage of two increments with cumulative effect.

8. The petitioner being aggrieved by the aforesaid order or penalty, preferred Annex- ure-6 appeal to the Government of Assam in the PWD. However, the

appeal has not been disposed of till date. However, during pendency of the appeal, the order of penalty so far as recovery of the amount is concerned was modified to the extent that recovery would be made from the salary of the petitioner amounting to Rs. 6,20,833 stated to be one third of the total amount of Rs. 18, 62,500/-.

9. The respondents have not filed any counter affidavit. However, Mr. P. N. Goswami, learned Standing Counsel, PWD has produced the records pertaining to the departmental proceeding.

10. I have heard Ms. P. Bhattacharyya, learned Counsel for the petitioner as well as Mr. P. N. Goswami, learned Standing Counsel, PWD. Ms. Bhattacharyya in her forceful argument submits that the Inquiry Officer having not held the petitioner guilty of any of the charges, more particularly the charge No. 1 and 2, the disciplinary authority could not have imposed the aforesaid penalty.

11. She submits that the petitioner has been made scapegoat for the irregularities committed by the higher authorities. Referring to charge No. 2, she also submits that the same being vague and indefinite in absence of any material particular disclosed in any case, the petitioner could not have held guilty of the charge. In support of her submission, she has referred to the decisions of this Court as reported in 2006 (1) GLT703 (Mahendra Kumar Singh v. Union of India) and Mahendra Kr. Singh Vs. Union of India (UOI) and Others,

12. Mr. Goswami, learned Standing Counsel, PWD, upon a reference to the records produced by him submits that on a total reading of the enquiry report, it is crystal clear that the petitioner is guilty of charge No. 1 and 2. According to him, the disciplinary authority passed the impugned order considering the enquiry report and the materials on record. He submits that the Writ Court will not sit on appeal over the findings recorded by the disciplinary authority.

13. I have considered the submissions made by the learned Counsel for the parties and the materials on record. The charge No. 3 and 4 having been dropped by the Inquiry officer as not established and the disciplinary authority also not having dealt with the same, the matter is confined to charge No., 1 and 2, which have been quoted above.

14. While the charge No. 1 is that the petitioned submitted bills without receiving any materials, it is the defence of the petitioner that in fact the materials was received and utilized. It is also his specific plea that the bills were cleared by the higher officials and not by him

15. As regards the charge No. 2, It has been -rightly argued by the learned Counsel for the petitioner that the same is vague and indefinite. The charge No. 2 speaks of submission of three bills amounting to Rs. 1,30,540/-, which according to the charge were submitted without executing any work. However, the charge does not refer to any materials. In the written statement of defence, the petitioner took the plea of the charge being not definite.

16. The Inquiry officer has not held charge No. 1 and 2 to have been established, in respect of charge No. 1, the finding of the inquiry officer is that the same was not possible to establish. Relevant observation and the findings of the inquiry officer are quoted below:

During the inspection of work of 1.5.2000 alongwith the S.E., E.E., A.E.E., S.O. & S.A., the traces of materials found at site, but, it was not possible to verify the actual quantity available at site after a lapse of more than one (1) year as the area is flood affected and such materials used in the road are likely to give way with the passage of time during the movement of vehicular traffic. As such, the charge brought against Sri J. Das at Charge No. 1 is not possible to establish.

17. The findings in respect of charge No. 2 was that after enquiry in respect of Sr. Officers would be required to establish the share of responsibility on the part of the petitioner. Relevant observation in this regard is quoted below:

The reply to the charge No. 2 furnished by Sri J. Das was not found satisfactory. 3 (three) Nos. of bills in question were furnished by the presenting officer from the statement prepared by the Executive Engineer, PWD, Karimganj Road Division and the Presenting Officer indicated that the bills in question were as shown in SI. 21 (Rs. 51,385.00), SI. 59 (Rs. 37,279.00) and SI. 65 (Rs. 41,876.00). Though the bills were duly countersigned by the A.E.E. and passed by the Executive Engineer, yet the orders placed in June/92 and works done and measurements taken in Nove/98, after long expiry of validity of the order leaves room for doubt. However, further enquiry as ordered separately in respect of other senior officials at the time may reveal further details about this matter, which needs to be confirmed alongwith the subsequent enquiry to establish the share of responsibility on the part of Sri J. Das, J.E.

18. In conclusion of the enquiry, the Inquiry Officer recorded that the statements furnished by the petitioner in respect of all the charges were corroborative. Further statement recorded was that from the record of measurement, bills, M. R. and accounts, the replies furnished by the petitioner were corroborative. However certain observations were made regarding execution of the work with the opinion that there was some amount of doubt. It was also observed that the enquiry against the higher officials would reveal the actual truth.

19. From the above, it will be seen that me charge No. 1 and 2 were not established against the petitioner. This is precisely the reason as to why the disciplinary authority while passing the impugned order dated 18.8.2001 virtually disagreed with the findings recorded by the Inquiry Officer. The disciplinary authority held that the charge No. 1 and 2 were established/proved as against the findings recorded by the Inquiry Officer that the same could, not be established in the enquiry.

20. While disagreeing with the findings of the inquiry Officer, the disciplinary authority did not afford any opportunity of being heard to the petitioner as is required under the law. In this connection, I may gainfully refer to the decisions

of the Apex Court as reported in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and (1999) 9 SCC 739 (Yoginath D. Bagde v. State of Maharashtra). I may also refer to another decision of the Apex Court as reported in AIR 2001 SC 2398 (S.B.I. and Ors. v. Arvind K. Shukla).

21. In all the aforesaid decisions, it has been held by the Apex Court that if a delinquent is absolved of the charges as per the findings of the Inquiry Officer, in case of any disagreement by the disciplinary authority, the delinquent will have to be provided with the opportunity of being heard in respect of such disagreement. In the instant case, no such opportunity was provided to the petitioner and the disciplinary authority on the basis of the report of the Inquiry Officer passed the impugned order.

22. Apart from the above, on perusal of the impugned order dated 18.8.2001, it appears that the disciplinary authority has gone beyond the charges and also considered the materials not forming part of the enquiry proceeding. It is also not understood as to how the share of responsibility of the petitioner has been fixed, which initially amounted to Rs. 8,39,395/- later on reduced to Rs. 6,20,833/- without first ascertaining the share and responsibility of the higher authorities.

23. On the other hand, if the petitioner was involved in any misconduct alongwith superior officers, it was incumbent on the part of the authority to hold enquiry jointly. However, not to speak holding of joint enquiry, the records produced by the learned Standing Counsel, PWD also do not indicate holding of any enquiry against the higher officials about whom the Inquiry Officer made a mention in the enquiry report.

24. The defence plea of the petitioner throughout the enquiry was that he was not held guilty of the misconduct and that there no pecuniary loss was caused to the respondents on account of his any action. It was the categorical stand of the petitioner that the materials were duly received and utilized. The Inquiry Officer categorically held that the petitioner made corroborative statement and that the charge could not be established. However, the disciplinary authority not only disagreed with the said finding but also went beyond the materials so as to hold the petitioner guilty of the charge No. 1 and 2. In the process, the said authority did not deal with findings of the Inquiry Officer and also as to whether it was the higher officials were guilty or the petitioner as Jr. Engineer was merely made a scapegoat.

25. In view of the above, writ petition is allowed. The impugned orders dated 18.8.2001 (Annexure-5) and 4.12.2001 (Annexure-7) are set aside and quashed. The petition having been absolved of the charges upon setting aside and quashing the impugned orders, he will be entitled to all consequential benefits.