

(2000) 07 GAU CK 0020
In the Gauhati High Court

Case No : Writ Appeal No. 133 of 1996 in Civil Rule No. 1001 of 1990

Kable Singh Sanghere

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Citation : (2000) 2 GLT 661

Hon'ble Judges : Brijesh Kumar, C.J;D.N. Chowdhury, J

Bench : Division Bench

Advocate : Mr. B.C. Das, Mr. P.C. Dey and Mr. S. Deka, for the Appellant; Mr. N.N. Sakia, General, A.P. and Ms. G. Deka, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—The judgment and order dated 4.1.1996 passed by the learned Single Judge in Civil Rule No. 1001/90 gave rise to this appeal. The Civil Rule preferred by the petitioner-appellant in the matter of his service regarding disciplinary proceeding was dismissed.

2. We have heard Shri B.C. Das, learned counsel for the appellant and Shri N.N. Saikia, learned Advocate General for the State of Arunachal Pradesh.

3. The brief facts necessary to appreciate the points involved in the present appeal are that the appellant was appointed as Assistant Sub-Inspector of Police on 16-2-1986 in the Arunachal Pradesh Police. He was posted at police station Pashighat. A departmental proceeding was initiated jointly against the petitioner and another police officer namely Officer-in-charge of the Police Station. Altogether two charges were levelled against them. One of them was that they unloaded 24 Nos. C.G.I, sheet from a bus which was brought to the Police Station and the next charge was that on the same day they took Rs. 5000 as illegal gratification from one Bindheswar Singh. A joint enquiry was held and witnesses were examined by the Enquiry Officer. However, on consideration of the materials available before him exonerated both from the charges and

submitted his report on December 13, 1988. The Disciplinary authority, however, disagreed with the findings of the Enquiry Officer and held that the charges were proved. By order dated 26.5.1989 the Deputy Inspector General of Police (W) imposed the punishment of reduction of rank to the lowest stage in the time scale of pay for a period of 5 years. On appeal preferred against the order dated 26.5.1989 passed by the D.I.G.(W) the Inspector General of Police by order dated 4.12.1989 reduced the pay by four stage in the time scale for a period of four years. The petitioner challenged the order of punishment and one of the main contention raised before the learned Single Judge has been that no opportunity of showing cause was at all afforded to the appellant by the Disciplinary authority before reversing the finding of the Enquiry Officer recorded in favour of the appellant exonerating him of the charges. It is also the case of the appellant that a copy of the enquiry report was also not furnished. On facts there seems to be no dispute that the Disciplinary authority did not give any opportunity of hearing to the appellant before recording the finding of guilt against the appellant reversing the findings of exoneration recorded by the Enquiry Officer. Learned Single Judge, however, dismissed the petition with observation that the question of giving an opportunity to the petitioner at the second stage of enquiry does not arise. We feel that the question involved was not regarding providing opportunity of hearing at the second stage of enquiry. As a matter of fact, it was still at the first stage of enquiry in the sense that the Enquiry Officer enquired into the matter recorded the findings exonerating the delinquent which was forwarded onwards to the Disciplinary authority for his consideration. Undisputedly, it is the sole domain of the Disciplinary authority either accord acceptance to the findings recorded by the Enquiry Officer or to take a different view. But the only question which was canvassed before the learned Single Judge was that before taking any different view for upsetting the findings in favour of the delinquent it was necessary for the Disciplinary authority to afford opportunity of hearing and show cause as to why a different view be not taken for the reasons indicated in the notice.

4. In support of his contention, learned counsel for the appellant has placed reliance on a decision of the Apex Court reported in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, Since different views were taken in earlier decisions of the Apex Court, the question as indicated above was pointedly referred for consideration and it has been held that in case the Disciplinary authority takes a different view setting aside the findings of the Enquiry Officer exonerating the delinquent, it is necessary to afford an opportunity of hearing failing which it will result in violation of principles of natural justice. Earlier decisions in which different view was taken have also been referred to while taking the view as indicated above. It has further been observed that this procedure will have to be adopted even though there may not be any specific provision in that regard in the rules and it is to be read inherent in the rules under which the Disciplinary authority is empowered to take a different view from one taken by the Enquiry Officer. This decision was also followed on the

same proposition in another case reported in (1998) 7 SCC 739 Yoginath D. Bagde v. State of Maharashtra.

5. Shri N.N. Saikia, learned counsel appearing for the respondents has placed reliance upon a case reported in The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, This case, however, we find is on a different proposition. It is rather about the scope and ambit of the exercise of powers by the Disciplinary authority setting aside the findings of the Enquiry Officer exonerating a delinquent and the powers of the High Court to interfere in such a conclusion drawn by the Disciplinary authority. So far the question as to whether any notice was necessary before upsetting such a finding recorded by the Enquiry Officer, we find that such notice was given by the Disciplinary authority to the delinquent before proceeding to consider to upset the finding of the Enquiry Officer as would be evident from the facts stated in paragraph 3 of the decision. We, therefore, find this decision is of no help to the case of the respondents.

6. In view of the discussion held above, the appeal is allowed and the order of the learned Single Judge and the order of punishment awarded by the Disciplinary authority, both are set aside. There will, however, be no order as to cost.