
(2014) 12 GAU CK 0012
In the Gauhati High Court
Case No : W.P.(C) No. 176/2009

Kollolmoy Dey

APPELLANT

Vs

The Assam Electricity Board

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Citation : (2014) 12 GAU CK 0012

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R. Mazumdar and J. Chettry, Advocates for the Appellant; H.K. Sharma, SC, APDCL, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—The challenge in this writ petition is the Annexure-8 order dated 09.09.2008, by which pursuant to a departmental proceeding, the petitioner has been imposed with the penalty of stoppage of four annual increments with cumulative effect. At the relevant point of time, the petitioner was the Central Secretary of the Assam State Power Workers Union. While he was serving as Lower Division Assistant, the Annexure-3 Charge-sheet dated 28.08.2006 was issued to him leveling the following charges:--

"Charge (1)- Riotous of disorderly conduct in connection with employment or act subversive of discipline;

Charge (2)- Causing loss of the Board's goods and property;

Charge (3)- Insubordination or disobedience to any lawful order of a superior."

2. Along with the charge sheet, the statement of allegation in respect of the charges was also enclosed, which is also quoted below:--

"Charge No. 1 : Riotous or disorderly conduct in connection with employment or act subversive of discipline.

In the interest of the Company's wok, Sri Kollolmoy Dey, LDA was transferred

from Silchar Electrical Division, CAEDCL to Udharbond Electrical Subdivision, CAEDCL vide his order No. 132 dated 02.08.2006. Being aggrieved of the transfer, Sri Dey along with certain employees gheraoed the Silchar Electrical Division, CAEDCL on 04.08.2006 at about 11 am and remained so continuously till 6. P.M. During the gherao, Sri Dey along with the said employees shouted slogans in very indecent manner and driven out all the staff of the office under threat and using slang languages. At that time the Senior Manager of the Division was preoccupied with some site works. But after receiving the information about the incident, he rushed to the Division Office to take stock of the situation. The General Manager and the Deputy General Manager (C) of Barak Valley Zone, CAEDCL also accompanied him. On reaching the office, they found that all the staffs were standing outside office premises and the entrance gate was closed. Sri Dey along with other agitated employees started raising slogans against the Senior Manager in very indecent and undemocratic manner. Thereafter the authorities present there discussed the situation with the said employees in the office chamber of the Senior Manager. During the discussion, Sri Dey demanded to withdraw the transfer order dated 02.08.2006 on the spot. Sri Dey more particularly insisted to withdraw his transfer on the spot. The authorities assured Sri Dey to take up the issue with the higher authority and requested him to withdraw the gherao programme. But Sri Dey was very adamant and arrogant on his demand, and again started slogans using most abusive languages against the Senior Manager and threatened him. At one point of time, Sri Dey raised slogans against the Managing Director, CAEDCL using unparliamentary languages. In this way, Sri Dey along with the said employees had blocked the office chamber of the Senior Manager confining there the said officers till 6 p.m. Due to the gherao programme led by Sri Dey, the office could not be functioned for the whole day.

On 07.08.2006, the local authorities of the Company again resumed discussion on the issue with Sri Dey along with others in the office of the Deputy General Manager, Cachar Electrical Circle. In the discussion besides the Deputy General Manager of Cachar Electrical Circle, the General Manager, Barak Valley Zone and the Deputy Personnel Manager of Cachar Electrical Circle were also present from the management side. During the discussion, the authorities said to Sri Dey and others to join in their new place of posting and represent individually to the Managing Director for consideration of their appeal. But Sri Dey did not pay any heed on the directive of the authorities, instead announced gherao programme on the officers present there instantly. The programme was continued for about 3(three) hours till 8 P.m. Therefore finding no other alternative, the authorities had to take up the matter with the local administration as the gherao programme had created a law and order situation on the office premises. Thus, the officers were rescued by the local administration dispersing Sri Dey along with other agitators.

From above, it appears that the gherao programme resorted to by Sri Dey in league with some other employees, vitiated the atmosphere of the office. The

filthy/abusive language used by Sri Dey against his superior officers is uncalled for and cannot be tolerated by any civilized society. Such acts of Sri Dey amount to misconduct of "Riotous or disorderly conduct in connection with employment or act subversive of discipline" under Regulation 10(h) of the ASEB (General Service) Regulations, 1960.

Therefore, Sri Dey is charged under the said Regulation.

Charge No. 2 : Causing loss of the Board's goods and property.

Sri Dey led a group of employees to create obstruction to revenue collection on 08.08.2006 at UdhARBond Electrical Subdivision, Sonai Electrical Subdivision and Lakhipur Electrical Subdivision (all are under Silchar Electrical Division, CAEDCL). Due to the obstruction, the consumers could not deposit their bills on the said day, as a result of which the Company had to incur huge loss of revenue.

From above, it appears that by obstructing the revenue collection, Sri Dey had attacked at the main business of the Company/Board causing loss. The employment is not given to Sri Dey to cause loss of revenue, which is vital earning source of the Board/Company. Such act of Sri Dey amounts to misconduct of "Causing loss of the Board's goods and property" under Regulation 10(c) of the ASEB (General Service) Regulations, 1960.

Therefore, Sri Dey is charged under the said Regulation.

Charge No. 3 : Insubordination or disobedience to any lawful order of a superior.

In pursuance of the transfer order dated 02.08.2006 as stated in the Charge No. 1 above, the Senior Manager, Silchar Electrical Division, released Sri Dey, vide his order No. 133 dated 8th August, 2006 to enable him to join in new place of posting. Accordingly, Sri Dey should have joined in UdhARBond Electrical Subdivision immediately after his release. But Sri Dey has not yet joined in compliance with the said order. Regulation 6 of the ASEB (General Service) Regulations, 1960 provides that employees of the Board should be liable to transfer from one place of work to another and to be assigned such duties as a competent authority may decide. Further, Regulation 10 provides inter-alia that every employee of the Board carry out all lawful orders of his superiors. In contravention to this, Sri Dey refused to receive either of the Transfer Order and Release Order issued and served upon him by the Senior Manager, Silchar Electrical Division, leave aside joining in his new place of posting as yet. Rather, he submitted one application for medical leave without affixing any certificate of competent authority in support of his medical case. Sri Dey, when communicated about his such irregular practices in connection with the order of transfer by the Senior manager by registered post, even refused to receive the registered letter and so far remains on such self- style so called medical leave. Furthermore, Sri Dey, while declaring himself sick (having applied for Medical leave), regularly engages himself in either agitational programme or meetings and acts that are hardly common for an ailing person an aimed only at disobeying/averting the

transfer order. Such act on the part of Sri Dey amounts to misconduct of "Insubordination or disobedience to any lawful order of a superior" under Regulation 10(a) of the ASEB (General Service) Regulations, 1960.

Therefore, Sri Dey is charged under the said Regulation."

3. The petitioner was also provided with the lists of documents and witnesses along with the charge sheet. In response to the charge sheet, the petitioner filed his written statement of defence dated 29.11.2006. While denying the charges, however, admitted that he in his capacity as the Secretary of the Union used to take up various problems relating to the welfare of the employees with the authorities and on occasions also resorted to Dharna and Protest in a very democratic manner. Referring to the particular incident occurred on 04.08.2006, he in his written statement stated thus:--

"On 04.08.2006, about 50 Union workers and office bearers including myself agitated against the transfer order 132 dated 02.08.2006 in a most democratic decent and peaceful manner. I categorically denies myself or any of the Union workers using any abusive, indecent or slang languages against any of the departmental authorities. On request of the General Manager, CAEDCL we stopped our agitation as he assured us to do the needful and requested us to have a discussion with us. On 07.08.2006, as directed we went for discussion and as nothing fruitful come out, there was a gherao of the officials in a democratic and peaceful manner by the Union workers at the call of the Central Secretary, Sri A.H. Laskar, ASPW Union. As such I have not committed any offence under Regulation 10(h) of the ASEB (General Service) Regulations, 1960 as alleged.

That with regard to the charge No. 2, Causing loss of the Board's goods and property the same is absolutely false and strongly denied by me. Any loss of Board's property is not only loss of Board's but the same is also a loss of our property. I have never indulged in any such activities in my entire service career under the Board. Though there was an agitation programme of the Union workers, there was no obstruction in revenue collection on 08.08.2006 and the consumers deposited their bills amount. As such the a legation of causing any loss of revenue to the Board/Company is strongly denied and I have not committed any offence under Regulation 10(c) of the ASEB (General Service) Regulations, 1960.

That with regard to the Charge No. 3, insubordination or disobedience to any lawful order of a superior the same is not correct and I strongly denies the same. I have never in sub-ordinated or disobeyed any lawful order of my superior in my entire service career of 19 years under the Board. I have performed duties till 08.08.2006 and thereafter was on medical leave by submitting I have complied with all lawful order of my superior authorities. As I have agitated the grievances of the employees which I have been doing in a lawful and democratic manner in my capacity as a Secretary, Labour Welfare and Education of the ASPC Union. I

have been victimized by transferring me 15 times in my service career of 19 years which I have complied. But since my present transfer is a punishment transfer which is illegal and not in any interest of the Board, I have the right to challenge it in a Court of law. As such I have not committed any offence under Regulation 10(a) of the ASEB (General Service) Regulations, 1960."

4. In due course, an enquiry was conducted against the petitioner relating to the charges and the Enquiry Officer vide his report dated 05.03.2008 held that while the Charge No. 2 could not be proved, but Charge Nos. 1 and 3 stood established in the enquiry. After the aforesaid findings recorded by the Enquiry Officer, Annexure-6, 2nd show cause notice dated 07.05.2008 was issued to the petitioner enclosing therewith the copy of the enquiry report asking him to show cause as to why the penalty of termination of service should not be imposed on him. Responding to the said show cause notice, the petitioner submitted his Annexure-7 representation stating the following:--

"That Sir, Senior Manager Silchar Electrical Division vide order No. 132, dated 02.08.2006 transferred me from Silchar Division Office to Udharbond Electrical S/ Divn and I honoured the transfer order under above, but the ASPW Union was not agreed with transfer. The union as a whole attend office of the Sr. Manager on 04.08.2006 at 11 a.m. to meet with Sr. Manager SED to draw his kind attention regarding cancellation of the said transfer order in democratic manner as per guideline of trade union law. This was a fundamental right as guaranteed by Indian Constitution. Slogans are the main theme of a trade union & its practice is shouting in nature. Nothing slang languages used nor drove away all the staff of the office under threat or not closed the entrance gate. The staff of the office took the opportunity to leave the office on that day.

Higher officers attended the office of Sr. Manager SED and called the union office bearers in a meeting for bi-lateral discussion on the issue of transfer & other problems. No solution came out from the said meeting and accordingly the General Manager agreed 2nd round of talk with the union on 07.08.2006 in the office of DGM/CEC and the discussion took place up to 8 p.m. in a democratic manner by obeying trade union rules. The management took the help of the police in a planned manner to blame myself and the union.

Charge No. 1 was framed against me with a motive to harass me and to harass the union as well in partisan manner.

The so called 17 Nos. of "Group Witnesses" are belonged to local officers and their yes man and thus their witness automatically goes in favour of the management and against myself and therefore the witnesses cannot be agreed with. Thus the Charge No. 1 is liable to be cancelled and dropped.

Charge No. 3:--Insubordination or disobedience to any lawful order of a superior.

In reply to the above charge, I have the honour to state that the a legation is vague, fake and motivated. I have been transferred vide Sr. Manager, Silchar

Electrical Division o/e/No. 132 dt. 02.08.2006 and subsequently released by the Sr. Manager, Silchar Elect Division vide his o/o No. 133 dt. 08.08.2006. Myself and the union prayed for cancellation of the transfer order through different programmes.

I could never refuse to receive the transfer order and release order as stated above, but the fact was that in due time the above orders were not sent to me or reached to me.

I have suddenly become ill and went on medical leave with effect from 09.08.2006 to 03.12.2006 duly supported by a medical certificate and thereafter I have joined the Udharbond Elect S/Divn. on January, 2007 as soon as the doctor declared me fit to resume duties.

Therefore, I strongly deny the charge No. 3 hence the charge is liable to be cancelled/dropped."

5. On receipt of the response from the petitioner against the 2nd show cause notice, the Disciplinary Authority having passed the Annexure-8 order dated 09.09.2008 imposing the penalty of stoppage of four annual increments with cumulative effect, the petitioner preferred the departmental appeal dated 24.10.2008 (Annexure-9), but before the same could be disposed of, he filed the instant writ petition. During the pendency of the writ petition, he retired from service on attaining the age of superannuation on 30.09.2013.

6. I have heard Mr. R. Mazumdar, learned counsel for the petitioner. I have also heard Mr. H.K. Sarma, learned Standing Counsel, APDCL. I have also perused the entire materials on record. My conclusion and findings are as follows.

7. Throughout the writ petition, there is no allegation of any procedural irregularity in conducting the departmental enquiry against the petitioner. Without pinpointing anything about any illegality committed in conducting the enquiry, the petitioner has made some swiping remarks in the writ petition with the statements like enquiry being conducted in a most illegal and arbitrary manner; suffered from procedural lapses; all the eye witnesses numbering 17 were yes men of the management; right of cross examination was not afforded; failure to appreciate the evidence on record etc. However, such statements are vague and indefinite without disclosure of any material particulars. Such pleas have also been denied by the respondents in their counter affidavit, in which it has been categorically stated that the petitioner was given sufficient opportunity of hearing to defend his case and there was no procedural lapse in conducting the enquiry.

8. In the affidavit, the respondents have denied that all the 17 witnesses were yes man of the management and that the petitioner was denied the right of cross examination. The affidavit further states that had there been any lapses in conducting the enquiry, the petitioner would not have put his signatures on the day to day proceedings without raising any objection. According to the

respondents, the pleas raised by the petitioner are all afterthought. The affidavit has disclosed that the departmental appeal that was preferred by the petitioner was disposed of on 01.09.2009. The appellate authority in due consideration of the materials on record, opined that the stoppage of increments was by way of taking a lenient view of the matter and accordingly dismissed the appeal.

9. Needless to say that this Court exercising writ jurisdiction cannot sit on appeal over the findings recorded by the Enquiry Officer, Disciplinary Authority and the Appellate Authority, unless it is shown to be perverse and/or based on no evidence. Insufficiency of evidence cannot be a ground to interfere with the findings of the said authorities. As to what were the charges against the petitioner has been noted above. In the enquiry proceeding, as many as 17 witnesses were examined in presence of the petitioner with full opportunity to cross examine them. This finds specific mention in the enquiry report under the head "The Evidence".

10. The whole matter emanated with the issuance of the transfer order No. 132 dated 02.08.2006 of the Senior Manager, Silchar Electrical Division, by which 7 LDA's including the petitioner were transferred. As recorded in the Enquiry Report, on the basis of the evidence on record, being aggrieved by the said transfer order, the petitioner in his capacity as Secretary of the Union led the agitators comprising around 50 numbers of employees, who were activists of the Union. They went to the office of the Senior Manager, Silchar Electrical Division on 04.08.2006 at about 10.00 A.M. and forced the officials of the division to leave the office, who had come to attend the office. They also blocked the office and obstructed the functioning of the office and closed the entrance gate. Thereafter they started shouting slogans very loudly against the Senior Manager and demanded cancellation of the transfer order.

11. As recorded in the Enquiry Report, the Senior Manager was not present in the office at that point of time. He having come to know about the incident over telephone, immediately informed his higher authorities. Thereafter, at around 11.30 A.M., they came to the office and found the entrance gate closed by the agitators led by the petitioner. They were also shouting slogans and obstructed the three officers from entering the office. However, on the request of the General Manager, Barak Valley Zone, they opened the gate and the officers entered into the office and started a discussion with the agitators. When the agitators were requested to comply with the transfer order, they declined to do so and insisted for cancellation of the transfer order.

12. There was another round of discussion held between the agitators led by the petitioner and the Management. On being apprised of the fact that the transfer order was issued in the interest of the Company and considering the tenure of the employee in a particular place of posting, the petitioner did not accept the suggestions to carry out the transfer order and announced that the officers present would be gheraoed and would not be allowed to leave. Thereafter, the officers were gheraoed for about 3(three) hours up to 7.30 P.M. Then the General

Manager managed to inform the District Civil Administration about the sudden gherao programme and the District Administration rescued the officers with the help of police at about 8.00 P.M. There was no formal notice from the side of the Union led by the petitioner that there would be agitation/gherao programme on 04.08.2006, 07.08.2006 and 08.08.2006. It is on record that out of the seven employees transferred, five had carried out the transfer order. It is also on record that the petitioner was serving in the Silchar Electrical Division for the last six years w.e.f. April, 2000 till 02.08.2006, when he was transferred.

13. As discussed in the enquiry report, the defence did not controvert the statement made by the 17 witnesses. Thus, the charge relating to the unruly incident on 04.08.2006 by blocking the office gheraoing the office etc went undisputed in the enquiry. As noted above, the petitioner tried to justify the blockade and gheraoing in the capacity of Secretary of the Union on demand of cancellation of the transfer order dated 02.08.2006. He did not deny that agitational programmes launched on 04.08.2006, 07.08.2006 and 08.08.2006 were without any formal notice to the competent authorities.

14. It was in the aforesaid circumstances and to maintain office discipline, the Disciplinary Authority on proving of the Charge No. 1 and 3 imposed the penalty of stoppage of four increments with cumulative effects, although earlier it was proposed to impose the penalty of termination from service. In the reply to the 2nd show cause notice and also in the departmental appeal, the petitioner did not raise any grievance relating to any procedural irregularity in conducting the departmental enquiry. His only ground was that the agitational programme being in a democratic manner and it being a right for the Union Leaders, no departmental proceeding could have been initiated with eventual imposition of penalty.

15. Democratic right to launch agitational programme cannot lead to a situation in which only for the demand of cancellation of transfer order, a Union Secretary with other agitators can block the office, obstruct the functioning of the office and gherao the officers leading to such a situation in which they had to come out with the help of District Administration including police. In such circumstances, the Charge Nos. 1 and 3 having been established against the petitioner, if the Disciplinary Authority decided to impose the penalty in question, no fault can be attributed.

16. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed, leaving the parties to bear their own cost.