

(1994) 07 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 3464 of 1991

Kula Bhattacharjee

APPELLANT

Vs

The Assam State Co-Operative Marketing and Consumers
Federation Ltd. and Others

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 7, 8, 9
Constitution of India, 1950 — Article 311(2)
Payment of Wages Act, 1936 — Section 15

Citation : (1994) 2 GLR 444

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P. Pathak and K.N. Choudhury, for the Appellant; P.C. Deka, B.P. Bora and R.T. Phukan, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This application arises out of an order dated 25.6.91 issued by the Managing Director, Stated, Respondent No. 2 with a further prayer directing the Respondents not to give effect to the impugned order dated 25.6.91. The order dated 25.6.91 is Annexure "F" to the Writ application the same is quoted below:

ORDER

No. K-50/82/CON/59 Dated Guwahati, the 25th June, 1991.

Read the report of the Enquiry Officer submitted under his No. K-50/52/CON/55-59 dated 31.5.90 in the case of departmental proceedings against Shri Kula Bhattacharyya, Inspector, Stated which was initiated vide Memo No. K-50/82/CON/795 dated 12/19.12.83.

Also perused the papers referred to in the report of the Enquiry Officer.

The delinquent official Was charged with misappropriation of Rs. 42,335.05 being the value, of shortage of stock of the go down of which he was in charge and thus causing loss to the Federation, the Enquiry Officer, in his report, has discussed the evidentiary documents and statements in regard to the charge and found him responsible for the loss caused to the organization either by misappropriation or by neglect or by both.

I agree with, the findings of the Enquiry Officer and hold Shri Kula Bhattacharjee, Inspector guilty of the charge brought against him.

I consider that the punishment of removal from service would have been appropriate in this case. But having regard to the long period of service rendered to the Federation, I impose upon him the penalty of reduction in rank to the post of General Assistant. The reduction will be governed by the following conditions:

(a) The reduction will take immediate effect and will be for five years exclusive of any internal spent of leave before the period is completed.

(b) On completion of the period of reduction, subject to satisfactory conduct, he will regain his rank, of Inspector.

(c) The post of Inspector, now held by him, is temporarily converted to the post of General Assistant to accommodate him. On completion of his period of reduction, if he regains his rank of Inspector, the post will be reconverted to Inspector.

(d) His basic pay during the period of reduction will be his basic pay as on date. The same may be fixed at the same stage in the scale of pay for General Assistant if there be any or at the next below stage with personal pay for the difference.

(e) On restoration in rank as Inspector after expiry of the period of reduction, the period of his service as Inspector prior to the date of shall be counted for future increment.

Managing Director, Stated:: Guwahati

2. The brief facts are as follows:

The Petitioner joined in the Assam State Co-operative Marketing and Consumer Federation Ltd. (hereinafter called shortly Stated) as Inspector. On 12.12.82 a show cause was issued along with the statement of allegations wherein it was alleged that the Petitioner while working as Inspector Guwahati Branch during 1982-83 caused loss to the STATFED in as much as 23677 pieces of exercise books worth Rs. 42,335/- were found short. On 14.7.83 the Petitioner submitted his show cause reply denying the allegation set out in the show cause. The Petitioner was placed under suspension for the alleged misconduct. A departmental proceeding was drawn up against the Petitioner on 14.10.86 but the same was subsequently dropped and the Petitioner was reinstated in the service and the period of suspension was also treated as on duty. Consequent

upon passing the order dt. 14.10.86 whereby the period of suspension was treated as on duly the Petitioner was not paid the arrear salary amounting approximately to Rs. 40,000/- the Petitioner approached labour Officer-cum Conciliation-Officer, Respondent No. 4 for redressal of his grievances. The Respondent No. 4 issued a letter dated 24.6.91 to the Respondent No. 2 directing payment of arrear dues to the Petitioner within 3.7.91 to avoid any proceeding u/s 15 of the Payment of Wages Act i.e. Annexure "E" to the writ application. On 25.6.91, the Respondent No. 2 issued the impugned order dated 25.6.91 imposing penalty of reduction in rank and other penalties. Along with the impugned order the copy of the enquiry report dated 31.5.90 was also furnished to the Petitioner.

3. I have heard Shri K.N. Choudhury, Learned Advocate for the Petitioner and Shri P.C. Deka. Learned Advocate for the Respondents, Shri Deka has also produced before me the record of the enquiry.

4. The points urged by Shri Choudhury are as follows:

(i) The Petitioner submits that malafide intention of the Respondent No. 2 in passing the impugned order dated 25.6.91 is writ large. The departmental proceeding was Initiated against the Petitioner in 1983 but the enquiry report was submitted on 31.5.90 and the Respondent Mo. 2 after lapse of about 8 years and that too after 1 year from the date of submission the enquiry report passed the impugned order only when the Petitioner submitted the letter dated 24.6.91 issued by the Respondent No. 4 asking the Respondent No. 2 to pay his arrear salary.

(ii) Non-furnishing of the copy of time enquiry report to the Petitioner for making a representation as laid down by the Hon'ble Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, and a (sic) in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the departmental proceedings and the impugned order is liable to be set aside and quashed.

(iii) Impugned order is violative of Article 311(2) of the Constitution of India and Rule 7, 8, and 9 of the Assam Services (Discipline & Appeal) Rules 1964 and as such same is liable to be quashed.

5. The admitted position is that the departmental proceeding was initiated against the Petitioner in the year 1983 and the Enquiry Officer submitted, the Enquiry report only on 31.5.90 and the Respondent No. 2 after a lapse of 8 years and (sic) about a year from the date of submission of enquiry report passed the impugned order only after the Petitioner submitted the letter of the Respondent No. 4 dated 24.6.91 where by the Respondent No. 2 was directed to pay his legitimate dues.

6. In the enquiry report dated 27.12.89, there is no categorical and definite finding of the alleged misappropriation and/or negligence of the Petitioner. The finding of the Enquiry Officers is as follows:

I have no doubt that the accused responsible for the loss caused to the organization either by misappropriation or by negligence or by both.

7. In 1987 SC 2386 *Ranjit Thakur v. Union of India* the Supreme Court was dealing with the necessity of procedural safeguard and the Supreme Court quoted with approval the words of Frankfurter, J. in paragraph 5 as follows:

...If dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add rightly so. He that takes the procedural sword shall perish with that sword.

"The history of liberty" said the same learned Judge "has largely been the history of observance of procedural safeguards."

8. The Supreme Court further pointed out in paragraph 9 that the judicial (sic) generally speaking is not directed against a decision but is directed against the decision making process.

9. In the instant case from the record it appears departmental the departmental enquiry the Enquiry Officer treated the delinquent official as an accused and he has mentioned him as an accused in large number of times. The Enquiry Officer cross-examined the delinquent as will be evident from the record. In the equity there was total violation of the procedural safeguards. In the record which was shown to me at the time of hearing, it contained the statement of the witnesses, Even the enquiry report does not contain any categorical finding that the action of the Officer caused loss to the Corporation. So, it is a case of no evidence. Further, non furnishing of the copy of the enquiry report for making a representation as required by the decision of apex court also vitiates the departmental proceeding.

10. Accordingly, for violation of the procedural safeguards relating to the enquiry and for furnishing the enquiry report as required by the decision of the Apex Court this departmental proceeding is liable to be quashed which I hereby do.

11. It will be revealed that in the enquiry only the statement of the Officer Shri Kula Bhattacharjee was recorded on 12.4.90 and the statement of the presenting Officer was recorded on 20.3.90. No other witness was examined, The Enquiry Officer further found that the plea of the Officer that the exercise books were destroyed by water insects in the godown is not unbelievable, No documentary evidence was produced to prove/establish the shortage, in the absence of it the finding of the Enquiry Officer that the Officer was responsible for the loss caused to the organization either by misappropriation or by neglect or by both is a perverse finding and based on no evidence.

12. Accordingly, the Writ application is allowed and the order dated 25.6.91 is set aside and quashed.

13. This disposes of the writ application.