
(1995) 05 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 205 of 1986

Leishangthem Joychandra Singh

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 29-05-1995

Acts Referred:

Citation : (1995) 2 GLJ 135

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

Bench : Single Bench

Advocate : L.Shyam kishore Singh, B.I.Sharma , Advocates appearing for Parties

Judgement

1. This application has been filed challenging the legality and validity of the seniority list dated 20.5.86 vide office order No.86 of CE (P) office. The grievance of the petitioner is that no opportunity was given to the petitioner who was affected by the said seniority list. It is submitted that the same is violative of the principle of natural justice.

2.1 have heard Sri BI Sharma, learned counsel for the petitioner and Sri L.Shyamkishore Singh, learned Govt. Advocate for the respondents No. 1,2and 3. None appeared for the respondents No.4 to 10.

3. The law on this point is settled by the Supreme Court reported in 1976 SLWR 633 (Union of India vs. Dr. RD Nanjiah & others) where in paragraph 7 of the judgment, the Supreme Court has laid down the law as follows :

? As the petitioner in the High Court, who is the respondent before us, was unrepresented. Mrs.Shyamala Pappu, appearing on behalf of Union of India very conscientiously, took us through Union of India & another vs. PK Roy & others, from which, learned counsel though, the following observations could perhaps be cited on behalf of the petitionerrespondent (at page 202).

It was argued by Mr. Ashok Sen that in regard to both these matter the respondents have a right of representation and the final gradation list should

have been published after giving them further opportunity to make a representation. Normally speaking, we should have thought that one opportunity for making a published would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case (See the decision of this Court in *Sri Bhagwan & others vs. V.Ram Chand & others* (1965) 3 SCR218, 222). In view of the special circumstances of the present case we think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Ashok Sen before the final gradation list was published. As no such opportunity was furnished to the respondents with regard to these two matters we hold that the combined final gradation list dated April 6, 1962 so far category 6 is concerned, is ultra vires and illegal and that part of the notification alone must be quashed by grant of writ in the nature of Certiorari. We think that any claim to have a say against the final list prepared, on an analogy with the second opportunity which is afforded to a person to be punished after arriving at a decision on the facts of a departmental trial and proposal to inflict a particular punishment upon him, is quite inappropriate. No element of punishment at all is involved in preparing either a provisional or a final seniority list. All that is done is that certain principles are applied in the preparation of the list. These principles are generally found in the rules or executive directions which are known to or are capable of being put before the persons affected. When a provisional seniority list is prepared, there is a possibility of some mistakes occurring about the facts of a case or in the application of those rules. It would, therefore, be quite fair to give a person affected an opportunity to be heard against the proposed list before it is finalised so that any possible mistakes, either on facts relating to his particular case or of law in applying the rules governing seniority to those facts, may be rectified. But, once he has had that opportunity, it cannot possibly be said that he should have a further opportunity against even a final list. If he was to have that opportunity the list would not final seniority list. If he was to have that opportunity the list would not really be final but only provisional or preliminary. It will be obviously contradictory to hold it to be a final list and yet declare it subject to modification on further objections. We are unable to find any rule of natural justice having such a paralysing scope.?

The Supreme Court has held that even a final list can be vitiated by non observance of the condition precedent, i.e. if the petitioner is not given the opportunity to make his representation before the publication of the same. 4. In the writ application in paragraph 11 it is stated as follows : ? That, in the preparation of the impugned seniority list as per the aforesaid Chief Engineer (Power)'s office order No.86, dated the 20th May, 1986 (Annexure A/6), no opportunity was given to the persons affected by the said seniority list. That it is

violative of all canons of natural justice, because he has (Annexure A/6), no opportunity was given to the affected persons by the said seniority list to make representations against any proposed seniority list. That it in violation of all canons of natural justice, because they have been deprived of the right to represent in the matter. That omission to give opportunity to have their say in respect of the proposed seniority list amounts to infringement of the guarantees enshrined in Articles 14 and 16 (1) of the Constitution.?

5. Accordingly, after hearing the learned counsel for the parties and on perusal of the materials on record, and also considering the law as laid down by the Apex Court of the land, I allow this writ application and the Annexure A/5 i.e. order dated 26th February, 1992 and Annexure A/6 i.e. office order dated 26th May, 1986 shall stand quashed with regard to the petitioner and the respondent Nos.5 to 10 only as these persons have been made parties in this writ application. The seniority position of the other persons shall not be affected by this order.

6. With the above direction, this writ application is allowed and disposed of. No costs.