

(2004) 03 GAU CK 0051
In the Gauhati High Court
Case No : W.A. No. 62 of 2003

Md. Farhad Ali

APPELLANT

Vs

Secretary, Assam State Agriculture Marketing Board and
Others

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9

Citation : (2004) 3 GLR 66 : (2004) 2 GLT 1586

Hon'ble Judges : P.P. Naolekar, C.J;Ranjan Gogoi, J

Bench : Division Bench

Advocate : A.S. Choudhury, R. Mazumdar, I. Hussain and N.N. Ahmed, for the Appellant; D. Goswami and S. Saikia, for the Respondent

Judgement

P.P. Naolekar, C.J.—The appellant-petitioner, at the relevant time, was working as Assistant Secretary in the Baharihat Market Committee and was posted at Baharihat. The Secretary of the Committee issued Show Cause Notice to the appellant-petitioner for commencing of the departmental proceedings against him on 1.8.1994 wherein various charges were levelled against the appellant-petitioner. After the service of the notice and taking some time, the appellant-petitioner filed his Written Statement denying all the charges. The Enquiry Officer after proceeding exparte against the appellant-petitioner, held him guilty of the charges framed against him on the basis of certain documents which have been collected from the official records of the marketing Committee. The Enquiry Officer admittedly, has not served the enquiry report to the appellant-petitioner. After perusal of the enquiry report, the disciplinary authority has imposed the penalty of reduction of rank wherein the appellant-petitioner was reduced to the rank of Marketing Inspector. Aggrieved by the order passed reverting him to the lower status, the appellant-petitioner filed a writ petition in the High Court.

2. The learned Single Judge has found that although the enquiry report was not given to the appellant-petitioner at the relevant time but as it was served to the

appellant-petitioner in the Court and as no prejudice is caused to the appellant by not serving the enquiry report prior to the order of reduction in rank was passed, the non-service of the enquiry report does not go to the root of the matter, to set aside the enquiry and the ultimate order of punishment. The Court has also recorded the finding that there was admission of guilt by the appellant-petitioner and, therefore, the non-conduct of the enquiry, as provided under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 will not vitiate the enquiry and the ultimate order of punishment. Aggrieved by the said order, the present appeal is filed before us.

3. Admittedly, the enquiry proceedings which have been taken up against the appellant-petitioner are governed by the Assam Services (Discipline and Appeal) Rules, 1964. Rule 9 of the Rules elaborately prescribes the procedure of conduct of enquiry. What we find from the enquiry report that the procedure prescribed under Rule 9 of the Rules has not at all been followed by the Enquiry Officer. The Enquiry Officer has relied on certain documents from the office files and found the appellant-petitioner guilty of the charges. There is no evidence laid by the department. There is nothing on record that the appellant-petitioner was given an opportunity to take the steps to defend himself in enquiry. In fact, it is not even the case of the department that the procedure adopted and the proceeding taken up by the Enquiry Officer are akin to the procedure permissible under the Rules. The learned counsel for the appellant could not point out proceedings taken up by the Enquiry Officer in accordance with Rule 9 of the Rules after filing of the Written Statement by the appellant. The Written Statement submitted by the appellant-petitioner clearly indicates that he has denied all the charges and, therefore, it cannot be said that the finding arrived at by the Enquiry Officer are based upon admission of the appellant-petitioner. Apart from this, the enquiry report was not given to the appellant-petitioner. Had it been given at proper time, the appellant could have raised the question that the enquiry has not been properly conducted in accordance with the Rules and thus, no charges are legally proved against him nor any punishment can be imposed on the basis of the enquiry report, which is the result of illegal enquiry. In the circumstances, it cannot be said that the appellant-petitioner's right has not been prejudicially affected for non-service of the enquiry report. In any case, we are of the view that the enquiry has not been conducted as required under the law and, therefore, all further steps of consideration of the case by the disciplinary authority and the order of imposition of punishment cannot stand,

4. In the result, the order passed by the learned Single Judge is set aside. The order of imposition of penalty dated 9.1.1997 is set aside the appellant-petitioner shall be reinstated on the post of Assistant Secretary. However, it is made clear that if the department wants to proceed with the enquiry against the appellant-petitioner, they may proceed in the enquiry from the stage of filing of the Written Statement of the charges by the appellant-petitioner.

5. The appeal stands disposed of. There shall be no order as to costs.