(2001) 02 GAU CK 0008

In the Gauhati High Court

Case No : Writ Appeal No. 281 of 1997

Phani Bhusan Sharma APPELLANT

Vs

Executive Director, ASFC and Others RESPONDENT

Date of Decision : 12-02-2001

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

Citation : (2001) 1 GLT 395

Hon'ble Judges : P.G. Agarwal, J;H.K. Sema, J

Bench : Division Bench

Advocate : B. Malakar, for the Appellant; P.C. Deka, B. Kalita and P. Kalita, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—Heard Mr. B. Malakar, learned Counsel for the Appellant and Mr. B. Kalita, learned Counsel for the Respondent.

2. This writ appeal has been directed against the judgment and order dated 22.9.95 passed by the learned Single Judge in Civil Rule No. 1288/89 dismissing the writ petition. The Appellant challenged the order of termination passed on 31.7.87 by filing the aforesaid writ petition. The order of termination has been passed after the Appellant has been charge sheeted for 11 charges and after the enquiry officer submitted his report. Out of 11 charges levelled against the Appellant, the enquiry officer held that charge No. 4, charge No. 5. charge No. 8 and charge No. 10 have been found established against the Appellant. It is not necessary for us to go into the details of the charges. However, the charge No. 5 and Charge No. 10 found against the Appellant were of serious nature.

3. Charge No. 5 relates to sale of 250 Mt. of super phosphate as sub-standard at lower price than that fixed for standard products with the intention of giving undue financial gain to the buyer. The enquiry officer was of the opinion that the delinquent officer should not have submitted the note for disposal of super

phosphate as sub-standard without obtaining definite clearance from the Chemist to that effect in writing.

4. Charge No. 8 is with regard to Sales tax declaration forms to be collected from some parties against sales of sulfuric acid products of the company. This charge leads to the heavy financial lose to the company. The enquiry officer was accordingly of the view that he is held responsible for not taking timely action in collecting sales tax declaration forms for which the company has suffered financial loss due to non compliance of sales tax declaration forms collection.

5. Charge No. 10 is with regard to the raising of sale bills on different parties with rebate on the selling price without reasonable authority incurring heavy financial loss to the company. This charge was found established against the Appellant and the enquiry officer was of the view that the delinquent officer was not competent under the rules of the company to grant rebate on sale price. Therefore his action was without jurisdiction and without any authority.

6. Even after the aforesaid charges were established against the Appellant the company thought of taking a lenient view of the matter and decided to reinstate the Appellant in service and accordingly he was asked to resume duties immediately and without back wages. However, this offer was declined by the Appellant and he was served with the order of termination dated 31.7.87.

7. Before us Mr. B. Malakar, learned Counsel for the Appellant raised two contentions. That Rule 9(e) of the Assam Services (Discipline and Appeal) Rules, 1964 has been violated and as such the enquiry officer has not followed the procedure prescribed under the rules while conducting the enquiry. This allegation has been made as according to the Appellant, he was not given any chance of cross examining the witnesses. A thorough perusal of the contents of the writ petition shows that no such plea has been raised in the writ petition. The only plea raised by the writ Petitioner was in para-24 where he stated that in the written statement the Petitioner wanted that certain witnesses named be examined, relevant documents be produced and he be heard in person. The Petitioner was heard in person during the enquiry. Sufficiency or insufficiency of the materials/evidence before the enquiry officer will not be gone into by this Court. The scope and jurisdiction of this Court is limited to procedural illegalities and the violation of the principles of natural justice.

8. The next contention of Mr. Malakar is violation of the principles of natural justice. The doctrine of natural justice is not embodied rules. Its application depends on the facts and circumstances of each case. To sustain the allegation of non observance of the principles of natural justice, he must establish that prejudice has been caused to him for non observance of the principles of natural justice. As already stated, in the enquiry proceeding the Appellant was given personal hearing. Therefore, in our view no prejudice has been caused to him. Mr. Malakar also submitted that the Chemist who was to give opinion has not been examined by the prosecution witnesses. The finding given by the enquiry

officer is based on evidence on record that the Petitioner has given the rebate without any authority. Such finding can not be based on evidence as no amount of evidence would give him the jurisdiction. It is purely a question of law. On the Ors. hand, the Chemist who has given opinion should have been cited by the Appellant as a witness by examining him as D.W. He has not done that.

9. In the facts and circumstances as stated above, in our view, the order passed by the learned Single Judge warrants no interference. In the result, there is no merit in this appeal and it is accordingly dismissed.