
(1997) 05 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 1182 of 1995

Promila Boro

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Pension Rules, 1969 — Rule 24

Citation : (1997) 2 GLR 315

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : S.A. Laskar, for the Appellant; D.P. Chaliha, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—This Writ Application was originally filed by one Khagen Chandra Boro, who was an employee of this Registry and during the pendency of his application the Petitioner died and his wife and son were substituted in his place. The charge on (sic) Petitioner is at annexure-1 i.e. quoted below:

... THE GAUHATI HIGH COURT

NO. HC.V-66/90/23106/Estt. Dated 25.10.90 To, Shri Khagen Boro, Barkandaz, Gauhati High Court, Guwahati. Dated Guwahati the 25th Oct, 1990

It is reported that from the last six months, you have not attended your duties properly. You come to office at 10.00 AM and after putting your signature on the Register Book, leave office without any intimation to the authority which amounts to gross indiscipline and negligence of duty on your part.

You are, therefore, asked to explain as to why disciplinary action should not be taken against you for your indiscipline and negligence of duty on your part.

You should submit your explanation to the undersigned within 3 days from the date of receipt of this communication.

Sd/- R. Ahmed, 25.10.90 Deputy Registrar (Admn.)

2. The Petitioner filed his show cause and denied the charge so levelled against him and thereafter a regular enquiry was conducted against the Petitioner and he was dismissed from service vide Annexure-4 of the petition.

3. An appeal was filed before the Hon'ble the Chief Justice of this Court against the order of dismissal and that appeal was not disposed of by the authority. A Civil Rule being No. 4226/91 was filed before this Court and the said Civil Rule was disposed of on 17.8.94 by this Court directing the Authority to dispose of the appeal filed by the Petitioner within three months from the date of the order. Accordingly the authority disposed of the matter by dismissing the appeal by order dated 3.11.1994. Thereafter the present Civil Rule was filed.

4. I have heard Mr S.A. Laskar, learned Counsel for the Petitioner as well as Mr D.P. Chaliha, learned Counsel for the Respondents, namely, Respondents 2, 3 and 4. The law with regard to an order of termination or punishment of an employee is that the court can not assume the role of crusader to strike down or quash each and every order of dismissal for minor infraction or violation of any or every Rule. It must be shown by the employee that for the infraction or violation of a particular rule prejudice has been caused to him. The touchstone is to find out the validity of such order on the anvil of prejudice caused by deviation from the laid down procedure. But in the instant case nothing has been stated in the Writ Petition which shows that the enquiry was not conducted in a proper manner. But no doubt the employee is entitled to his procedural safeguard and he can question the decision making process, a Writ Court cannot re-appreciate or re-assess the evidence, what it can look is the decision making process in exercise of power of judicial review. If the decision making process is fair, there is the end of the matter. No doubt, in exercise of power of judicial review the Court can look into other aspects of the matter i.e. whether the punishment imposed on the employee is inequitable or disproportionate to the gravity of the offence, that can be looked into or scrutinised in view of Article 14 of the Constitution of India. That is also not in case in hand.

Accordingly this Writ Petition is dismissed. I leave the parties to bear their own costs.

5. Sri Laskar learned Counsel for the Petitioner produced before me Rule 24 of the Pension Rules, 1969 which is quoted below:

...24 Misconduct or inefficiency: No pension may be granted to an officer dismissed or removed for mis-conduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances or/and land compassionate gratuity may be granted when they are deserving of special consideration; provided that the allowance/gratuity granted to any officer shall not exceed two-thirds of the pension/gratuity which would been admissible to him if he had retired on medical certificate....

The Petitioner may approach the authority for consideration of that aspect of the matter. But this Court cannot issue a mandamus to the authority as prayed for inasmuch as no demand on this count was made to the authority, question of mandamus may arise only if a demand is made and that is refused by the authority.

6. Smt. Sudha Shrivastava Vs. Comptroller and Auditor General of India, particularly in paragraphs 13 and 14. That case is not relevant for the present case. Record of the enquiry was produced before me by Mr Chaliha, the learned Counsel for the Respondents No. 2, 3 and 4.