
(1995) 02 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 314 of 1989

Rajdeo Rai

APPELLANT

Vs

Assam Administrative Tribunal and Ors.

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1995) 1 GLJ 193

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

Bench : Single Bench

Advocate : B.K.Sharma , B.Banerjee, Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed challenging the legality and validity of the judgment and order dated 19.11.88 passed by the Assam Administrative Tribunal at Guwahati in Case No.56 ATA/ 82 which is Annexure 14 to the writ application.

2. The brief facts are as follows: The petitioner was appointed as a driver by the then Deputy Commissioner, Kamrup and earlier for 7 years he worked as Bearer in the Circuit House, Guwahati. During the time of National Emergency one Shri R. Banerjee, was the SubDivisional Officer (Civil) at Nalbari and the petitioner was under his control. The SDO was active against the antisocial, black marketeer and hoarders. With a view to check price rise and hoarding, he took initiative to raid, search, check and verify the suspected stocks, godowns and shops of essential commodities in the Nalbari Town. Naturally the petitioner had to accompany him as his driver on many such type of raids and he was also to help him in many respect apart from his usual duty as a driver and that created many enemies for the petitioner.

3. Out of the aforesaid animosity, some interested circle wanted to victimise the said SDO and the petitioner and eventually became successful in falsely implicating the petitioner alongwith others in a criminal case registered as GR

No.996/75 under section 162 read with section 34 IPC. It will be pertinent to mention here that the petitioner was on duty with the SDO (Civil) in his jeep when the alleged occurrence took place but even then, he was falsely implicated. The trial Court held the petitioner guilty of the offences by its judgment dated 24.10.77. On 7.3.79 the petitioner filed an appeal being Criminal Appeal No. 10 (K4)/77 against the said judgment of the trial Court in the Court of Sessions Judge, Kamrup, Guwahati. The Sessions Judge by judgment dated 7.3.79 allowed the appeal and the petitioner was honourably acquitted.

4. On 1.8.75 the petitioner was placed under suspension. Thereafter on 13.9.75 he was charge sheeted levelling altogether four charges of which Charge No. 2 was identical with that of the criminal charge. However, the petitioner was not provided with any list of witnesses and the documents along with the charge sheet violating the mandatory provisions of Rule 9 (2) of the Assam Service (Discipline and Appeal) Rules. 1964. Even when the criminal case was pending against the petitioner, on 1.6.76 the petitioner was dismissed from service invoking the provisions of Article 311 (2) (b) of the Constitution of India. However, this order was set aside on appeal by the Commissioner of Lower Assam Division, remanding the case to the Deputy Commissioner for recording reasons as to why it was not reasonably practicable to hold the enquiry.

5. Apart from being handicapped in absence of any list of witnesses and the documents, the petitioner was further handicapped by not furnishing to him a tape recorder allegedly containing his voice. However, after a great deal of delay, he was afforded with the opportunity to hear the same on 1.7.77 in the Court of the Executive Magistrate Shri K. Das who also happened to be the Enquiry Officer pertaining to the preliminary enquiry. On hearing of the same, the petitioner and other present did not find his voice.

6. On 4.7.77 the petitioner submitted his show cause reply against the charge sheet denying all the allegations. The petitioner also contended that the charges are untrue and vague. The petitioner also pointed out that the SDO (Civil) Nalbari Siiri R. Banerjee would justify his submissions as he was the most material witness to the allegations.

7. On 19.7.77 Shri KC Das who conducted the preliminary enquiry and before whom the tape recorder was given in the Court was appointed as the Enquiry Officer. Thus he could not have been appointed as Enquiry Officer to the prejudice to the defence of the petitioner. Although the Enquiry Officer was directed to complete the enquiry within one month, same continued for years together must to the detriment of the petitioner and the petitioner continued to be under suspension.

8. On 7.8.79 when the petitioner was acquitted by the Sessions Judge as stated above, there remained nothing to be proved against the petitioner departmentally and the petitioner preferred representation dated 9.12.79 urging for his reinstatement.

8. On 26.9.80 after a farcical enquiry in which the Enquiry Officer assumed the role of the Presenting Officer and totally denied the opportunities required to be given to a delinquent, the petitioner was dismissed from service by the Deputy Commissioner. However, he was not supplied with a copy of the enquiry report. The petitioner preferred appeal before the Commissioner, Lower Assam, but the same was also dismissed. Thereafter, the petitioner filed an Appeal No. 10 ATA/81 before the Administrative Tribunal, Assam. On 28.10.81 the Tribunal set aside the order of dismissal and remanded the matter to the disciplinary authority to dispose of the proceeding in accordance with the law.

9. On 2.12.81 the Deputy Commissioner without complying with the aforesaid order of the Tribunal simply removed the petitioner from service. He was also furnished with a copy of the Inquiry Officer that out of four charges, charge No. 2 and 3 had been established and charge No. 1 and 4 could not be established. On 2.12.81 the petitioner preferred a review petition under Rule 26 of the aforesaid Rules. The said review petition was rejected by a nonspeaking order dated 3.6.82. The Review Authority was the same authority who had earlier on dismissed the petitioner under Article 311 (2) (b) of the Constitution of India. Thereafter the petitioner preferred an appeal being Appeal No. 56 ATA/82 before the Tribunal and the Tribunal dismissed the appeal on 3.10.92 holding that no appeal lies to the Tribunal against an order of review. The petitioner again preferred Civil Rule No.36 of 1983 before this Hon'ble Court and the same was allowed by order dated 10.5.88 and directed the Tribunals dispose of the Appeal No. 56 ATA/82 on merit.

10. On 19.12.88 the Tribunal heard the matter on merit and by its judgment and order dismissed the appeal holding that though other charges have not been established, the charge No.2 has been established to the extent modified by the Tribunal. Thus, only one charge, that is, charge No. 2 as modified by the Tribunal stood on the way of the petitioner towards his reinstatement in service. Thereafter, against the said judgment and order, the petitioner has preferred the instant writ petition for setting aside and quashing of the said judgment and praying for reinstatement in service with all consequential benefits.

11. I have heard Mr. BK Sharma, learned counsel for the petitioner and Mr. Banerjee, learned counsel for respondents. Mr. Shurniu submits as follows :

(i) that there was no compliance with Rule 9 (2) of the Assam Services (Discipline and Appeals) Rules, 1964.

(ii) the petitioner being acquitted in a criminal case on the same charges, no departmental proceeding is tenable as against him.

(iii) there was violation of principles of natural justice in conducting the enquiry.

12. Relying on AIR 1983 SC 454 (Bhagatram vs. State of Himachal Pradesh & others), he submits that the petitioner was not given the proper legal assistance. The judgment of the Tribunal is perverse and the findings of the Tribunal that

charge No.2 was proved is against the evidence on record.

13. Reliance is also made in the case of *Shri Rupeswar Dutta vs. Oil India Limited & others* reported in 1990 (1) GLJ 192 where the Division Bench of this Court laid down the law as follows :

"... .. it is true that disciplinary proceeding for an "act" as misconduct, which, also is the subject matter of charge in a criminal trial, can be taken but where the trial has ended in acquittal, it is not reasonable to accept that in the disciplinary proceedings he can be found to have committed the said act. It is a different matter that the act complained of as misconduct may be related or may even be similar to the act which constitutes the charge in a criminal trial, but where the act is the same or identical as the act which constituted the charge in criminal trial and criminal trial results in acquittal, the disciplinary proceeding in action taken on its basis cannot be sustained, for the reason that a competent Court of law having found the person not guilty of having committed the "act" which constitutes the offence, it shall not be proper and just or in accordance with public policy to accept the same act as having been proved in a disciplinary proceeding for taking action against the concerned person... .."

14. In *Bhagatram vs. State of Himachal Pradesh & others* (supra) the Apex Court laid down as follows :

"It is well established that, in a disciplinary enquiry, the delinquent has a right to cross-examine witnesses examined on behalf of the disciplinary authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. The provisions contained in the Central Services Rules do make adequate provisions for the same and there should be substantial compliance of them. The principle deducible from the provision contained in subrule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice, if the Government servant declining to avail of the opportunity the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the joint inquiry of the delinquent and his superior officer shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a superior officer, the delinquent, is also represented by an officer of his choice to defend him, the absence of any one to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the inquiry. In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the disciplinary authority while, making appointment of a Presenting Officer to appear on his

behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate, the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Govt. servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the inquiry without obtaining assistance, one can say there is substantial compliance with the rules."

15. Admittedly, the petitioner was never told about the documents and the witnesses being examined at the enquiry. The petitioner was not given the opportunity of engaging a defence counsel. The petitioner was not issued with the list of documents and the witnesses alongwith the charge sheet as required as per the provisions of Rule 9 (2) of the Assam Service (Discipline and Appeal) Rules, 1964. The petitioner was not allowed to cross-examine the witnesses, the Enquiry Officer himself assumed the role of the Presenting Officer and he himself cross-examined the witnesses. The tape recorder in which the Enquiry Officer relied upon was never produced during the enquiry. His signature was not taken in the deposition.

16. A bare perusal of the impugned judgment dated 19.11.88 passed by the Tribunal will show that the Tribunal committed grave error of law inasmuch as it failed to appreciate that the appeal and the review petition filed by the petitioner to the Govt. of Assam against the order of dismissal having been entertained and dismissed, the Chairman of the Tribunal who was the Chief Secretary to the Govt. of Assam and had occasion in that capacity to deal with the petitioner's case and as such, he was biased against the petitioner and should not have decided the appeal of the petitioner. The Tribunal committed manifest error of the law in framing separate charge though the earlier charge was vague on the face of it. Such a vague charge was not maintainable in view of Rule 9 (2) of the Assam Services (Discipline and Appeal) Rules, 1964 which clearly provides for framing definite charge. The Tribunal after the acquittal of the petitioner by the Sessions Judge could not have come to different conclusion so as to inflict the extreme penalty of removal from service upon the petitioner, The Tribunal even after holding. "it is true that to a total stranger reading this charge and accompanied statement of allegations, the matter may appear to be impressive and vague." Came to the erroneous conclusion on extraneous consideration such as the petitioner participated in the criminal proceeding and after elapse of time, the petitioner allegedly got the expert legal advice both in criminal and departmental proceeding etc. which were not borne out of records. The Tribunal also failed to appreciate that the witnesses were not examined in presence of the petitioner, his signature were not obtained in the deposition and the Enquiry Officer himself assumed the role of the Presenting Officer and he himself

crossexamined the witnesses. This aspect of the matter has been simply brushed aside by the Tribunal holding that signature of the petitioner were not required to be taken in the deposition and the proceedings. On this score alone, the judgment of the Tribunal is liable to be set aside. The Tribunal also misread the verdict given by the Apex Court in Bhagatram case AIR 1983 SC 454. The Tribunal also committed manifest error of law by repeatedly observing that the petitioner had to his credit expert legal advice both in criminal and departmental proceeding which is based on inferences only and not on facts. The Tribunal has come to altogether a different finding having no nexus with the original charge No.2 "on which the petitioner was acquitted by the Sessions Judge" and erroneously held that "our finding have a strong nexus with the original charge and are not extraneous. For these reasons, we hold that charge No.2 has been proved against the appellant to the extent of our finding noted above." Thus apparently the Tribunal has brought into a new charge to the original charge the defence of which the petitioner was not afforded with any opportunity whatsoever. By such framing of a new charge altogether different from the original charge the Tribunal committed grave error of law to give definiteness to a charge otherwise vague on its mere perasalsand violated the principles of natural justice.

17. The finding regarding involvement of this person is quoted by the Tribunal in paragraph 6 of its judgment which is quoted below :

"The material findings in this judgment as far as the appellant (Rajdeo Rai) is concerned, are as follows :

"... .. there was no evidence as (of ?) Rajdeo Rai accompanying Birdhi Chand Agarwalla when money was demanded, or when the money was taken. There was not a iota of circumstantial evidence to show that Rajdeo Rai was in any way connected with Birdhi Chand Agarwalla in obtaining money from Prakash Chand Jain.,. ...There is no evidence in record that Birdhi Chand Agarwalla was set up by these two accused persons (viz: appellant and one Paban Kumar Khemka) or in any way had common intention to extract money from Prakash Chand Jain....."

18. The original charge No.2 was "that you (appellant) conspired with one Birdhi Chand to obtain a bribe of Rs.3,000/ from the shop of one Prakash Chand in the name of SDO, Civil and Birdhi Chand actually received Rs.3,000/ which you too would have shared and for which police have registered criminal prosecution against you. You are, therefore, charged with misconduct." But that charge was found not to be established by the Tribunal. But the Tribunal by framing a separate charge held that he is guilty of misconduct. This is rather a curious approach.

19. In view of the factual position and submissions as stated above, the instant writ petition deserves to be allowed by setting aside the impugned judgment of the Tribunal with the direction to reinstate the petitioner in service with all

consequential benefits. More so when the allegations/contentions made by the writ petitioner have not been controverted by filing any affidavit in opposition by any of the respondents even after elapse of about six years from the date of filing of the writ petition, the law on this point is well settled that not denial amounts to admission.

20. In view of that matter, I allow this writ application and the order of dismissal of the petitioner from service shall stand quashed. The petitioner shall be taken back in service immediately. The petitioner shall also be entitled to his back wages.

21. With the above directions and observations, this writ application is disposed of.