
(1999) 07 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 753 of 1997

Raju Kr. Dutta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Oil and Natural Gas Corporation (Conduct, Discipline and Appeal) Regulations, 1976 — Regulation 2, 36, 5

Citation : (1999) 3 GLT 276

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

Bench : Single Bench

Advocate : U. Baruah, A. Sharma and C.K. Das, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—Fair play in action is the thematic content of this proceeding which has arisen in the following setting:

2. The Petitioner was employed under the Respondent No. 2, the Oil & Natural Gas Corporation Limited (herein after referred to as Corporation) the Respondent Nos. 2, 4, 5, 6 and 7 are the Director (Technical), the Regional Director, General Manager Chief Engineer (Drill) and Cheif Manager (P & A) respectively. While the Petitioner was working as an Asstt. Technician (Electrical) in the Dhansiri Valley Project (herein after referred to as DVP) he was placed under suspension under Regulation 36 of the ONGC (Conduct, Discipline and Appeal) Regulations 1976 (herein after referred to as Regulations) vide order dated 24.1.91. The Respondents decided to hold an enquiry and accordingly the Petitioner was served with the article of charges along with statements of imputation of misconduct etc on 26.4.91. The articles of charges re-hearshed below:

Article of charges:

1. Shri R.K. Dutta, Asstt. Tech (Elect) unauthorisedly removed the indent No. 51464 dated 27.9.85 (overwritten as 27.12.85) from the Nazira Electrical Stores.
2. Shri R.K. Dutta tampered with the indent No. 51464 dated 27.9.85(overwritten as 27.12.85) by adding two items viz. (1)4 Nos. M.L. contractor-12(2)4 Nos. M.L. Contractor-8 and closed the indent with the marks "Items four only."
3. Shri R.K. Dutta malafidely drew 4 Nos. of M.L. contractor -12 and 4 Nos. of M.L. Contractor-8 from Electrical stores, Sibsagar.
4. He mislead the stock-holder by telling false vehicle No. ASW-9890 instead of ASW-9860.
5. Shri R.K. Dutta misappropriated the 4 Nos. of M.L. contractor-12 and 4 Nos. of M.L. Contractor-8 and caused pecuniary loss of Rs. 38240/- to the ONGC.

By the above acts of commission, Shri R K Dutta, Asstt. Tech (elct) DVP, Jorhat has rendered himself liable to disciplinary action under Regulation 2-(k) and Regulation 5 of ONGC CDA Regulation, 1976.

3. The Petitioner answered to the charges by filing a statement of defence in writing denying the allegation those were made in the charge-sheet and the imputation. The Respondents decided to proceed with the enquiry and appointed one Sri Onkarmal, General Manager (P & A) ONGC vide office order dated 15.10.92 During the course of enquiry 4(four) witnesses were examined on behalf of the ONGC. Apart from a number of documents produced in the inquiry in support of the case of the management. The enquiry officer after considering the evidence on record held that the charge of mis-conduct levelled against the Petitioner was established on all counts. In his report the enquiry officer criticised the conduct of Sri N Ahmed, S.C. Tyagi and Shri Arora the witnesses for the management and also found fault in the department not seizing some of the vital documents. The enquiry officer also disapproved the delay on the part of the department in conducting the investigation. The said report of the enquiry officer was submitted before the disciplinary authority on 1.10.93 and the disciplinary authority thereafter vide its order dated 18.2.94 communicated the Petitioner its acceptance of the enquiry report and found the Petitioner guilty of all the charges. The disciplinary authority by its aforesaid order imposed upon the Petitioner penalty of stoppage of four increments with cumulative effect, with effect from 1.1.95 to 1998. The suspension order dated 24.1.91 was also revoked and the period of suspension was ordered to be non duty for all intents and purposes. The Petitioner preferred a statutory appeal before the appellate authority alleging the breach of the statutory rules as well as the principles of natural justice. The Petitioner specifically alleged as to the non-furnishing of some of the materials documents amounted to the denial of the fair opportunity to defend his case effectively. Petitioner further pointed out about non-furnishing of the report of the enquiry authority. By its order dated 2.6.94 the Appellate authority dismissed the appeal. While dismissing the appeal the appellate

authority reduced the penalty of stoppage of four increments with cumulative effect imposed by the Disciplinary authority to stoppage of three increments with cumulative effect. The Petitioner thereafter moved the Corporation demanding justice by way of a further Appeal which was turned down by the Respondents vide communication dated 27.3.95. Hence the writ petition.

4. Ms. Usha Barua, the learned Counsel appearing on behalf of the Petitioner along with Sri Apurba Sarma & C. Das mainly confined her arguments on the alleged breach of the principle of natural justice. Ms. Barua the learned Counsel referring to Clause 36(3)(ii) and 38(1)(b) of the Regulations submitted that it was incumbent on the authority to furnish all the materials on the basis of which articles of charge proposed to be sustained. Admittedly statement of witnesses were recorded during the preliminary investigation behind the back of the Petitioner. The procedural safeguards demanded furnishing of the copies of statement, submitted Ms. Barua, the learned Counsel for the Petitioner. The learned Counsel further pointed out that the list of documents cited by the department along with the charge sheet referred to only were eight in numbers, whereas the enquiry officer relied upon 10 numbers of documents as mentioned in the enquiry report. The enquiry officer relied on the purported report dated 28.12.85 regarding of missing of indent number 51464 allegedly lost by Sri N. Ahmed as well as the preliminary investigation report dated 15.1.86 submitted by Sri S.C. Tyagi. The enquiry officer not only referred those documents but the aforesaid materials were also relied upon by him which influenced the ultimate decision. Ms. Barua, the learned Counsel submitted that finding of the enquiry officer can not be legally sustained so much so those two materials were never made available to the Petitioner at any stage. Ms. Barua referred to the list of documents and submitted that those two materials were relied by the enquiry officer behind the back of the Petitioner. Ms. Barua, the learned Counsel has drawn my attention to the note of the enquiry officer dated 23.7.93 during the course of recording of evidence of Sri Tyagi. Ms. Barua, the learned Counsel also submitted that enquiry officer in course of the enquiry obtained telephonic information about such report made by Sri Tyagi and on his telephonic instruction the said report was produced before the enquiry officer. Ms. Barua, the learned Counsel took serious exception on the aforesaid act of the enquiry officer which according to the learned Counsel amount to grave failure of justice. The learned Counsel also questioned the conduct of the proceeding in not providing the Petitioner a copy of the office copy (i.e. 7th copy of the indent from the indent book) pertaining to the entries of two edition those were made in the indent before the indenter. At the instance of the enquiry officer the Petitioner submitted an application on 1.9.92 requesting the authority to furnish him amongst Ors. the gate pass copy issued by the stock holders, the Central Stores Sibsagar on which the materials were recorded against indent No. 51464. Ms. Barua, the learned Counsel further submitted that the report of the enquiry officer suffered from the vices of perversity. Learned Counsel Ms. Barua further submitted that the report of the hand writing experts was not introduced during

the enquiry but the enquiry officer copiously relied on the hand writing experts. The learned Counsel also made a foray on the conduct of the Respondent/ authority in not supplying the copy of the enquiry report though under the Regulations it was the incumbent on the part of the authority to furnish a copy of the enquiry report. In support of her contention the learned Counsel referred to the following decision of the Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The learned Counsel also relied on the decision of the Supreme Court in the State of U.P. Vs. Shatrughan Lal and Another, in support of her contention of denial of natural justice due to non-supply of documents relied in establishing the charges. Ms. Barua the learned Counsel further critically assailed the conduct of the Respondents for inordinate delay in holding the enquiry which caused serious prejudice to the case and in support of her contention she relied upon the following decision of the Supreme Court: State of Punjab and Others Vs. Chaman Lal Goyal, Lastly Ms. Barua, assailed the other part of the order treating the period of suspension as dais-non. Ms. Baruah submitted that the authority no doubt is conferred with the power to pass order regarding pay and allowances to be paid to the employee for the period of suspension under the (ONGC) pay and allowances Regulations) 1972 but such order is to be passed in consonance with the principles of natural justice. Admittedly, Ms. Barua the learned Counsel in support of her contention relied upon the decision of the Supreme Court in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, O.P. Gupta v. Union of India reported in O.P. Gupta Vs. Union of India (UOI) and Others, In the end Ms. Baruah also assailed the manner of disposal of the Appeal by the Appellate authority as purfunctory.

5. Mr. D.K. Talukdar, the learned Sr. Counsel assisted by Sri B.J. Talukdar appearing on behalf of the Respondents supported the action of the Respondents and submitted that the Petitioner was afforded full opportunity to defend his case consonance with the prescribed procedure. Mr. Talukdar the learned Counsel took pain in referring to the materials on record including Ors. and placed before the Court the connected records in supporting the impugned order. Mr. Talukdar the learned Counsel submitted that principles of natural justice are not to be put into a straight jacket. The principles of natural justice will vary from case to case. It is the substance not the technicality that was required to be looked into, submitted the learned Counsel. Mr. Talukdar the learned Sr. Counsel referring to the arguments for the counsel for the Petitioner submitted that there might be some lapses here and there on the part of the Department in the matter of making available of some of the documents but the fact remained that the substantial justice was done to the Petitioner. Mr. Talukdar, the learned Counsel submitted that in such a situation it would be open for the Court to take into consideration the totality of the facts and circumstances of the case. Mr. Talukdar the learned Sr. Counsel submitted that the matter pertained to managerial domain of the employer in the exercise of its disciplinary jurisdiction and in the finding recorded therein, the High Court is not to act like that of an appellate Court. The power conferred under Article 226 are meant to be exercised to ascertain as to whether

the action are per-se lawful or not. The finding of the Departmental authority which are based on evidence on record and accepted by the appellate authority are not to be readily interfered with in exercise of power under Article 226 of the Constitution of India submitted the learned sr. Counsel. The enquiry officer in the instant case on evaluation of the factual matrix found the Petitioner guilty of the charges. The High Court in exercise of power under Article 226 is not go into adequacy or sufficiency of the evidence. Mr. Talukdar the learned Sr. Counsel submitted that even if the report dated 28.12.85 submitted by Mr. N. Ahmed as well as preliminary report dated 15.1.86 submitted Mr. Tyagi are excluded, even in that situation also the materials on record justified the finding of the disciplinary authority. Mr. Talukdar the learned Sr. Counsel submitted that the technical rules of evidence and test of proof beyond doubt are not applicable in the Departmental proceeding. A decision of the disciplinary authority can be sustained on pre-ponderance of probabilities. Mr. Talukdar, the learned Counsel in support of his contention referred to the decision of the Supreme Court in High Court of Judicature at High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , Government of Tamil Nadu and others Vs. S. Vel Raj, , Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, , High Court of Judicature at High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, State of Tamil Nadu and others Vs. M. Natarajan and another,

6. Ms. Barua, the learned Counsel is right in her contention that right to a fair hearing is rule of universal application in the area of administrative matters affecting the rights of persons. The disciplinary authority, charged with disciplinary power are also subject to law and such bodies are also to act justly and fairly and are subject to law and the control by the Courts. Their action are to be guided by the statutory rules, the accepted norms as well as the constitutional principles the fairness in action, commonly known as the principles of natural justice which is confined by no frontiers-It is often described as "substantial Justice" "fundamental justice". Universal Justice". A general duty to act fairly is a basic element of procedural propriety. Procedural fairness demands that the person liable to be directly affected by the proposed act is to be made aware in advance by adequate notice of the proposed action enabling such person to make representation on his or her behalf, or to appear for hearing or enquiry (if held) and effectively to prepare its defence and to answer to the case. There is no cut & dried formulae-What is required in a particular situation is in too inapt to defined. To recall the words of Lord Bridge in Lloyd v. McMahon (1987) ACC 625 The so called rules of Natural Justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial has to make a decision which will effect the rights of individuals depends on the character of the decision making body, the kind of decision it has to make and the Statutory or other framework in which it operates."

7. In the case in hand, an elaborate procedure is laid down in the conduct, Discipline & Appeal Regulation, 1976" to be obeyed by the Disciplinary authorities. Clause 36 of the Regulation prescribed the procedure for major penalty. The Regulation is comprehensive in scope providing procedural safeguards. The rules impose a duty on the authority of adequate disclosure to enable the delinquent officer to prepare his answers. A duty is cast on the authority to disclose the information or materials sought to be relied, on and normally are to be furnished to the officer well in advance but there is no hard and fast rule to this effect. In a given case the principles of natural justice will be satisfied, if the materials are disclosed at the hearing stage. In such a situation the hearing may be adjourned to enable the person to go through the materials and prepare his case.

8. To examine the contention of Ms. Barua in respect of preliminary investigation report dated 15.1.86 submitted by Mr. Tyagi and report dated 28.12.85 regarding missing of indent number allegedly lost by Mr. N. Ahmed. I have looked into the records of the proceeding. From the records of the proceeding it appears that Sri S.C Tyagi S.E. was examined on 23.7.93 by the presiding officer. The presiding officers amongst Ors. put the following question to the witnesses:

Q. 1 Please give your identity.

Ans: My name is Sri S.C. Tyagi, Serving as S.E. (Elect) presently posted at Dehradera. My C.P.F. No. 45567.

Q. 2: Whether you were posted in this Region and if so, the period?

Ans: Yes, for the period Oct. 1981 to April, 1989.

Q. 3. Do you know Sri Raju Kumar Dutta, and if so, how?

Ans: Yes, he was helper (E) with Electrical department at ERBC.

Q. 4 Whether the indent (Exh-II) was issued by you and if so what were the items indented for?

Ans: 5 Yes, indent No. 51464/1010 was issued by me which was filled for two items only i.e. Armaured clearner 10 litres and CTC-10 Ltrs. by Mr. N. Ahmed S.K. Gd-III on 2.9.85 posted with Electrical Deptt. at that time.

Q. 6. Do you know whether these two items were collected from stores by Sri N Ahmed S.K. Gd-III and if so whether the same were handed over to you?

Ans: No, to my knowledge these items were not issued by Central stores.

Q. 7- You have stated that the indent was for two items but the indent contains four items. How and when the addl. two items were included in the indent and why the date of the indent was changed to 17.12.85 pl. explain all the facts in this regard including the reasons for adding the addl. items.

Ans: The original indent was for two items only. How and when more items were

added, I do not precisely remember now. But a report was submitted by undersigned contained facts some-where in early 1986, which may be referred to please.

Note. Vigilance Section i.e. Sri A.N. Kajla, Sr. D.D. (Vig) contacted on telephone and enquired whether any report was submitted by Sri Tyagi. After verification Sri Kajla sent Sri Hussain to the Enquiry Board along with the documents and also conveyed an telephone that copies of these documents, if required by the delinquent official, may be furnished to him. As already requested for by the delinquent official Sri Dutta copies of the documents have been furnished to him.

Q. 8: (Sri Tyagi has been shown the above mentioned documents, i.e the complaint lodged by Sri N. Ahmed S.K. Gd III the report submitted by him. Did you take any written statements from anyone while making the preliminary investigation and if so for whom?

Ans: The investigation was assigned to undersigned by Dy. S.E. (Elect) i/c DBG on the complaint dated 28.12.85 (Exht. V) of missing of indent, made by Sri N Ahmed, then S.K. III in DBG Elect. verbal enquiries were made with all concerned as they were hesitant to give statements in writing. All these facts are recorded in my investigation report dated 15.1.86 (Exht. VI)....

9. Admittedly, the report/materials those were mentioned in the above note were not furnished to the Petitioner earlier, nor the Petitioner was allowed further time by the enquiry officer to ascertain the matter. Undoubtedly the aforesaid action on the part of the Respondents was not fair atleast the maxim justice must be seen to be done was not adhered to. The inquiry officer acted upon the said report and held the Petitioner guilty which apparently is in violation of the principles of natural justice.

10. Ms. Barua, the learned Counsel for the Petitioner strenuously submitted that violation of the Principles of natural justice by itself is a ground for quashing of the impugned order.

11. Mr. Talukdar, the learned sr. Counsel appearing on behalf of the Respondents has submitted that when there existed other admissible evidences on which the findings are based, question of setting aside the entire action did not arise. Mr. Talukdar, the learned Counsel submitted that there should not be rigidity in judging the principle of natural justice. There should be flexibility in the approach of the situation. Infraction of principles of natural justice on this count whether substantially prejudiced the Petitioner is the key question. Apart from the records mentioned above there are other evidence in support of the charge. The jurisdiction of the certiorari Court is not Appellate. A finding of facts reached by an authority as a result of appreciation of evidence or inference of facts for materials before it, is not to be reopened in a proceeding for certiorari on the ground that the evidence relied upon is inadequate or insufficient. The principles of natural justice is not to be confined into any frontier. There must always be flexibility in its approach to the facts situation of the case. In the

words of Lord Denning M.R." it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to the scope and extent. Everything depend on the subject matter R. v. Gaming Board for Great Britain Exp. Benaim and Khaida 1970 2 QB 417 There should be real flexibility in the application of the concept of fair play in action. The Court may decline to grant judicial review on the grounds of the failure to comply with the principles of natural justice. Some of the instances are cited in Judicial review of administrative action De Smith Woolf & Jowell in paragraph 10.031 (5th Edition) which reads as follows:

The Courts are not infrequently invited to decline to grant judicial review for an alleged failure to comply with the requirements of procedural fairness on the ground that to grant a remedy would make no difference to the ultimate result. The invitation may be phrased in number of different ways: any remedy would be pointless, because it would not benefit the applicant, who has already received all that he would obtain by way of relief; the applicant has not suffered any real prejudice; the decision would have been no different if the decision maker had followed the precepts of natural justice (either because the merits of the case are weak or because the applicant is underserving). In each case, the Court is in some measure invited to look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to the wider question to whether a decision properly taken would or could have benefited the applicant.

12. As mentioned earlier on face of the materials on record the non furnishing of the aforesaid documents has not in any way affected the final out come of the proceeding.

13. The Respondents under the Scheme of the Statute were required to furnish a copy of the inquiry report to enable the Petitioner to submit an affective representation before taking a final decision by the appellate authority. Admittedly, enquiry report was furnished after the decision was taken by the disciplinary authority and after filing of the appeal. A copy was, however furnished to the Petitioner before the appal was disposed of. There were some lapses on the part of the authority, but the same were subsequently mended.

14. Keeping in mind the case in its entirety the decision making process of the Respondents could not be invalidated on that ground also. The appellate authority on its own examined the matter and upon considering the materials on record interfered in the matter and reduced punishment. In the facts and circumstances of the case, the impugned order of stoppage of 3(three) increment with cumulative effect in the circumstances can not be held to be unsustainable. I have given my anxious consideration on the submission of Ms. Barua, the learned Counsel pertaining to delay in completion of the Departmental proceeding. The enquiry officer also made his comment on the issue by deprecating the practice. No good reason was shown for the delay in completion of the proceeding. When the enquiry was allowed to proceed and reached its conclusion this Court is not inclined to delve on in the matter further more, save

and except in expressing its indignation on the matter. It was not fair on the part of the authority to procrastinate with the proceeding. An employee has a right for expeditious disposal of a disciplinary proceeding. The disciplinary authority is not to hang on a disciplinary proceeding putting the employee to under go mental agony as well as pecuniary loss for no fault of his own. Prolongation of proceeding cause prejudice to the promotional prospect of the Petitioner. In the instant case, the authority procrastinating the proceeding and also hindered the expectation of career advancement of the Petitioner. When the proceeding was delayed not due to the fault of the employee the authority ought to have taken up the matter for promotion of the Petitioner, during the pendency of the enquiry if he was found fit for promotion, subject to the outline of the proceeding.

15. Ms. U. Baruah, the learned Counsel is however in a firm footing in her contention that the disciplinary authority fell into serious error in treating the period of suspension as the period not spent on duty on the ground of infringement of the principles of natural justice. It is a trite law that no decision must be taken affecting the rights of any person without affording the person concerned an opportunity to put forward its case. There is always a duty to act objectively under Clause 14 of the ONGC (Pay and Allowances) Regulations, 1972 while passing an order under sub Clause 3 of the Rules as regards to the pay and allowances to be paid to the employee for the period of suspension. An order under the aforesaid provisions which is equivalent to an order under F.R. 56 is to be passed on objective consideration. An order can only be passed on assessment of facts situation after giving an opportunity to the person concerned. Since the order likely resulted to the pecuniary loss to the employee. The nature of the function indicates a duty on the authority to decide judicially. In such a situation a duty is cast on the authority to act fairly by affording opportunity to the concerned person against the action proposed. Admittedly it was not done in the present case and accordingly the aforesaid order of the authority treating the period of suspension as period "spent on non duty" is liable to be struck down as arbitrary and violative of the principles of natural justice. The aforesaid direction of the Respondents treating the period of suspension is accordingly set aside and quashed. The petition is thus allowed to the extent indicated above. There shall, however, be no order as to costs.