
(2005) 04 GAU CK 0059
In the Gauhati High Court
Case No : W.P (C) No. 440 of 2003

Rakhal Chandra Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 107 FLR 1171 : (2005) 3 GLR 88

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : A.L. Saha, for the Appellant; T.D. Mazumder, for the Respondent

Judgement

I.A. Ansari, J.—Heard Mr. A. L. Saha, learned counsel appearing on behalf of the petitioner and Mr. T. D Mazumder, learned counsel appearing on behalf of the respondent.

2. By making this writ application under Article 226 of the Constitution, the writ petitioner, who while working, at the relevant time, as a Cook-cum-Attendant-cum-Chowkidar at Gomati Forest Division under the Department of Forest, Government of Tripura, was removed from service, has challenged the order, dated 10.3.2003, issued by respondent No. 3, namely, the Principal Chief Conservator of Forests, Government of Tripura.

3. This writ petition has a history. The petitioner was departmentally proceeded against on two charges and the departmental proceeding ended with an order, dated 20.5.1998, passed by the respondent No. 3, whereby the respondent No. 3, as the disciplinary authority, concurred with the findings of guilt reached by the Enquiry Officer and imposed the penalty of removal from service on the petitioner. The Department appeal preferred, on 5.6.1998, having failed, the petitioner came before this Court by way of a writ application, which gave rise to Civil Rule No. 234 of 1998. By the judgment and order, dated 4.6.1999, this Court disposed of the Civil Rule setting aside the order, dated 20.5.1998,

aforementioned and directed reinstatement of the petitioner in service making it clear that the petitioner would not be entitled to back wages. The directions so given by the Court were based on its finding that no copy of the enquiry report had been furnished to the petitioner and he had not been given adequate opportunity to have his say against the findings reached by the Enquiry Officer. The direction for reinstatement was treated by the respondents/authority concerned as a direction of reinstatement of the petitioner in service for the purpose of bringing the disciplinary proceeding to conclusion in accordance with law. Proceeding on these premises, the respondent No. 3, as the disciplinary authority, while, vide order, dated 23.9.1999, furnishing a copy of the enquiry report to the petitioner, directed him to make his representation against the same. That an employee, on being reinstated as a result of setting aside of the inquiry on the ground of omission to furnish to the employee concerned report of the inquiry can be proceeded against is not disposed, for, there can be no doubt that the reinstatement on the ground aforementioned does not mean that the inquiry would not be resumed and proceeded after furnishing to the employee concerned a copy of the inquiry report. Such reinstatement is, in fact, meant for the purpose of holding of the enquiry from the stage of furnishing of the report to the employee concerned. The law in this regard is explicitly laid down in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., thus : "... The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held."

4. The petitioner, however, as it appears from the record, under a mistaken belief that he had been exonerated of the charges, did not make any representation against the findings readied by the Enquiry Officer in the said enquiry report; rather, he made a representation to the respondent authority concerned stating that the High Court, having directed his reinstatement in service, he could not have been proceeded against any further. As the petitioner did not submit his representation against the enquiry report, an order was passed, on 10.3.2003, by the respondent No. 3 removing the petitioner from service. Aggrieved by this order, the petitioner preferred an appeal, which was also turned down by an order passed, on 28.10.2003, by respondent No. 2.

5. Considering the matter in its entirety, I am of the view that the petitioner proceeded under a mistaken impression that his reinstatement in service had the effect of exonerating him completely of charges, whereas his reinstatement in service was, in fact, for the purpose of curing the defects in the proceeding of the departmental enquiry. In this view of the matter, the petitioner ought to have made his representation against the enquiry report aforementioned instead of expressing his grievances against the resumption of the enquiry from the stage of furnishing of a copy of the enquiry report to the petitioner.

6. Considering, therefore, the matter in its entirety and in the interest of justice,

the order, dated 10.3.2003, aforementioned, whereby the petitioner was removed from service and also the order, dated 28.10.2003, whereby his appeal has been rejected, are hereby set aside and quashed. The petitioner shall, within a period of 4(four) weeks from today, make his representation against the findings contained in the enquiry report and if the representation is made, as directed, the same shall be considered and disposed of by respondent No. 3 in accordance with law within a period of two months from the date of receipt of the representation aforementioned by respondent No. 3. If the petitioner feels aggrieved by the order that may be passed by the respondent No. 3 in terms of the directions given hereinbefore, the petitioner shall be at liberty to take recourse to such steps as are permissible under the law.

7. With the above observations and directions, this writ petition shall stand disposed of.

8. No costs.