
(1993) 02 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 94 (K) of 1991

S. Adinarayana

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 11-02-1993

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Nagaland Services (Discipline and Appeal) Rules, 1967 — Rule 1

Citation : (1993) 2 GLR 152

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : R.S. Bedi, for the Appellant; E.Y. Renthungo, Jr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—In this writ petition, the Petitioner has, assailed the memorandum of article of charges dated 11th September, 1991 (Annexure--29) issued by the third Respondent by its letter No. DAN/CON-3/90/10 and the order of suspension dated 30-6-1990 (Annexure-20) issued by the Chairman, Development Authority of Nagaland on the ground that the same are violative of Article 311 of Constitution of India.

2. I have heard Mr. R.S. Bedi learned Counsel for the Petitioner as well as Mr. E.Y. Renthungo learned Junior Govt. Advocate.

3. Considering the facts and law points to be determined in this writ petition, it may not be necessary to recite facts leading to the filing of this writ petition. At the relevant point of time, the Petitioner was serving as Superintending Engineer, in the Establishment of Development Authority of Nagaland (in shore DAN) it appears from Annexure--20 that an Enquiry Committee was confirmed to enquiry into the additional works in Nagaland House based at Calcutta. The Enquiry Committee after the completion of enquiry submitted its report on 23-4-1990. The Enquiry Committee found that the awarding of contract, signing

of work order and making of payment indicate gross and criminal irregularities on the part of Superintending Engineer, (Petitioner). The Enquiry Committee therefore, recommends that the Superintending Engineer should be immediately dismissed and that a criminal case be filed against the Superintending Engineer. The suspension order issued by the second Respondent is obviously on the basis of this finding of the Enquiry Committee.

4. It is argued by Mr. R.S. Bedi that the Enquiry Committee enquired into the conduct of the Petitioner is no enquiry of all in the eyes of law as the said enquiry was conducted ex-parte and no opportunity of being heard was afforded to the Petitioner and as such the same is violative of Article 311(2) of the Constitution.

5. A reasonable opportunity of being heard as enshrined in Article 311(2) would mean (a) an opportunity to deny his guilt and establish his innocence and (b) an opportunity to defend himself by cross-examining the witnesses produced against him by examining himself or any other witnesses in support of his defence.

6. I have gone through the enquiry report submitted by the Enquiry Committee on 23-4-1990: Although the Committee recommended the dismissal of the Petitioner immediately, neither the Petitioner was examined nor any opportunity whatsoever appears to have been afforded to the Petitioner to deny his guilt. Such a grave findings arrived at without affording any reasonable opportunity to the Petitioner. This is a clear violation of the mandate of Article 311(2) of the Constitution. Therefore the report of Enquiry Committee submitted on 23.4.1993 and consequential order of suspension of 30th June, 1990 passed by the Second Respondent are hereby quashed.

7. The Memorandum of Article of Charges issued by the third Respondent by its Memorandum dated 11 September, 1991 has been assailed on the ground that the third Respondent is not a competent authority to issue such Memorandum of Article of Charges in as much as the third Respondent is not the appointing authority. In Rule 1(d) of the Nagaland Services (Discipline and Appeal) Rules, 1967, the disciplinary authority would mean the authority competent under the Rules to impose the penalty. The authority competent to impose penalty is the appointing authority. Admittedly the third Respondent is not the appointing authority of the Petitioner. Therefore, he is not the competent authority to impose penalty. This apart, a specific statement has been made in paragraphs 48 of the writ petition that according to the Rules, the disciplinary proceedings can be instituted and charge sheet framed by the disciplinary authority and the disciplinary-authority it the appointing authority or the superior authority; but cannot be lower than the appointing authority. It is further stated that the article of charge in the instant case have been framed by the third Respondent who is not the appointing authority of the Petitioner and as such the impugned Memorandum of Article of Charge issued by the third Respondent was without power of jurisdiction and are void ab-initio. The Respondents have filed counter through the third Respondent. Surprisingly enough, may be rightly so, the

Respondents have not denied the statement made in paragraph 48 of the Writ Petition. Not a word has been said with regard to the statements made in paragraph 48 of the writ petition. Thus, the position stands as an admitted fact that the third Respondent is not a competent authority to initiate a proceeding against the Petitioner. Therefore, the Memorandum of Article of Charge issued by the third Respondent by its order dated 11th September, 1991 (Annexure-29) are hereby quashed.

8. There is yet another submission of Mr. Bedi which deserves careful consideration by this Court. It is submitted by Mr. Bedi that the whole proceeding initiated against the Petitioner is engineered by the third Respondent malafide and out of animosity. In this connection Mr. Bedi (sic, has) drawn my attention to the adverse remarks in the A.C.R. of the Petitioner for the period ending 31st December, 1988 written by the third Respondent (Annexure-18). After going through the adverse order, I felt unhappy about the tone and tender and the language used in the adverse report. In fact the adverse report appears to be highly motivated and without the application of mind. From the adverse report it appears that the Petitioner has failed in his performances on all accounts. To cite only few, the tone and tenor in which the adverse entry is made by the third Respondent is extracted hereunder:

(a) Aptitude, initiative drive and efficiency for

(I) Arrangement for work - Haphazard, windy and unsystematic.

(II) Execution of work - He lacks initiative and found leathargic in his work. He has yet to prove his efficiency in execution of work.

(b) Power of character personality

Instead of showing frankness, open minded and bold, he is found unscrupulous by nature.

(c) Sociability (Manners) -

He tries to cut his eyes from his superiors.

(d) Capacity for maintenance of discipline in the office staff and condition of office with regard to promptness and correspondence & payment of bills.

He breeds indiscipline among the staff etc. etc.

(c) Co-operation with fellow officers and subordinate staff and ability to get work out of them.

He creates ill feelings and suspicion among staff, puts one man against the other by his habit of instigation, loose talk and casualness etc. etc.

(i) Intergrity, moral sense and character in General.

He is found disloyal to his superior, insincere and untrustworthy.

4. Whether or not you consider him fit for advancement to the next higher rank.

He is found unfit for holding any responsible position in the DAN His further stay in the DAN will be most harmful to the Organisation and the organisation will break from within.

9. From the above remarks the tone and tenor to which the adverse entry in the A.C.R. of the Petitioner has been made by the third Respondent are not only too crude but many of them are as well unnecessary. Therefore, the adverse entry in the A.C.R. of the Petitioner by the third Respondent appears to be highly motivated and too personal.

10. In view of what has been stated above the order dated 11th September, 1991 (Annexure-20), the order dated 30-6-1990 (Annexure-20) are hereby quashed and set aside.

11. In the result, this Writ Petition is allowed. Parties are asked to bear their own cost. This order would however, not act as a bar for the Respondents to institute a fresh enquiry, if so advised, and in such event the reasonable opportunity shall be afforded to the Petitioner to defend himself. It is further observed that in the event the Respondents so decide to conduct a fresh enquiry, the third Respondent shall in no way involve himself in conducting the enquiry. In the event it is decided to institute a fresh enquiry against the Petitioner, he shall not be put under suspension again.