

(1999) 04 GAU CK 0024
In the Gauhati High Court
Case No : W.A. No. 258 of 1996

State Bank of India and Others

APPELLANT

Vs

Ralkapzawna

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Citation : (2000) 1 LLJ 829

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : B. Kalita, M.C. Nath and A.N. Zaman, for the Appellant; B. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Brijesh Kumar, C.J.—This appeal is preferred against the judgment and order passed by the learned single Judge dated May 15, 1996 passed in Civil Rule No. 30/95.

2. The petitioner-respondent after drawal of the departmental proceeding was discharged from service by way of punishment. In the Civil Rules several points seems to have been taken about inadequate opportunity of hearing provided to the petitioner-respondent. Yet, another point seems to have been taken was that a copy of the enquiry report was not furnished, hence, there was violation of principle of natural justice as he was deprived of an opportunity to challenge the findings of the Enquiry Officer. As such, the order of punishment is bad. Learned single Judge considered this aspect of the matter. It may be noticed that there is no denial of the fact that a copy of the enquiry report was not furnished to the petitioner-respondent before passing the final order of punishment. It may also be noted that copy was furnished to the respondent-petitioner even after he had preferred the departmental appeal against the order of punishment. Learned single Judge accepted the contention raised on behalf of the petitioner respondent that the principle of natural justice was violated and the order of punishment was bad. It was, however, provided that the appellant would be at

liberty to proceed with the enquiry from the stage of supply of the report of the enquiry officer, if so advised. Learned single Judge also clarified the legal position that disciplinary authority would properly consider the representation, in case a copy of the enquiry report was furnished, without being influenced by any order passed by any authority including the appellate authority on the merit of charges.

3. Learned counsel for the appellant has pressed only one ground before us that no prejudice has been caused to the delinquent by non-supply of the copy of the report of the enquiry officer, hence it was not a case for interference in the writ proceedings. In support of his contention he has placed reliance upon a decision of the Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., On the basis of this case it is submitted that non-supply of the copy of the enquiry report to the delinquent will not cause any prejudice to the petitioner, inasmuch as, the petitioner-respondent had already submitted an effective reply to the show cause against the proposed punishment and a detailed appeal was also filed. This ground as taken by the appellant, is mentioned in para 7 of the Memo of Appeal. It is, however, difficult to accede to the submission made on behalf of the appellants. Filing of an appeal or submission of reply to a show cause against proposed punishment, would not necessarily take away the opportunity which a delinquent will have to challenge the findings of the enquiry officer in the event of supply of a copy of the report of the enquiry officer. I The delinquent would be able to see and challenge as to whether the findings recorded against him are based on evidence or not and further as to whether the evidence which has been adduced in the proceedings has been rightly read and appreciated by the enquiry officer as well. Here, the petitioner loses the opportunity to see as to whether what has been said or indicated by the delinquent in his defence was considered or the same was totally ignored by the Enquiry Officer. There may be several other aspects which may be taken by the delinquent only if the report of the enquiry officer is supplied. Therefore, the submission that no question of prejudice would arise since he had the opportunity to show cause against the proposed punishment or preferred an appeal, does not appeal to us. There is no dispute about the fact that this case relates to non-supply of enquiry report after the law was laid down in Union of India and others Vs. Mohd. Ramzan Khan,

4. In our view the learned counsel appearing for the respondent has rightly urged that non-supply of the copy of the report of the Enquiry Officer to the petitioner deprived him of an opportunity to attack the findings recorded adverse to him. Hence prejudice was caused to the respondent. We find that the learned single Judge has rightly passed the order keeping it open to the appellant to resume the enquiry from the stage of supply of the enquiry report. The order of the learned single Judge does not call for any interference. There is no merit in this appeal. It is accordingly dismissed without cost.