
(2001) 07 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 6043 of 1997

Surendra Barman

APPELLANT

Vs

Assam Co-operative Marketing and Consumers Federation
Ltd. and Others

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Citation : (2002) 1 GLT 255

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : S.S. Dey and M. Nath, for the Appellant; P.C. Deka, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—This writ application has been filed challenging the order dated 20.10.97 passed by the Managing Director, STATFED, Guwahati passed in the Departmental Proceeding initiated against the Petitioner on the basis of certain charges contained in the Memo No. AUD-3/88-89/Vol-III/CON/93/49 dated 31.5.93 (Annexure-4). Accepting the report of enquiry submitted by the Enquiry Officer holding the charges to be proved, the Disciplinary authority has imposed the punishment of reduction of rank of the Petitioner to that of General Assistant for a period of five (5) years with effect from the date of the order, namely 20.10.97 and recovery of the misappropriated amount of Rs. 1,02,277.17 at the rate of Rs. 1,500/- per month from the monthly salary of the Petitioner.

2. The factual matrix lies within a short compass. Two different charges of misappropriation of Rs. 82,252.23 and Rs. 39,087.00 respectively were brought against the writ Petitioner by memo dated 31.5.93. The aforesaid memo was proceeded by certain orders of the authorities of the STATFED directing recovery of an amount of Rs. 1,21,230.22 from the writ Petitioner which had led to the initiation of a writ proceeding before this Court, culminating in an order of this Court dated 27.5.93 passed in Writ Appeal No. 72/93. The aforesaid writ appeal

was disposed of by this Court by a direction to the authority to permit the writ Petitioner to examine all relevant records and further permitting the writ Petitioner to file a detailed representation in the matter before the authority, which representation was required to be considered by the authority after giving the writ Petitioner an adequate opportunity.

3. The Petitioner filed his reply to the charge and the same having been found to be unsatisfactory an Enquiry Officer was appointed, who conducted an enquiry in the matter and submitted a report on 20.12.1996. As evident from the report of the enquiry which is enclosed to the writ petition, several documents were exhibited in the course of the enquiry and witnesses were examined and cross examined on behalf of the rival parties. The report of enquiry would also go to show that the Enquiry Officer had given detailed reasons in support of the conclusions reached". Specifically, the Enquiry Officer has held that pursuant to the order of this Court passed in Writ Appeal No. 72 of 1993 the accounts and documents relevant to the period in question were re-examined in presence of the charged officer and the writ Petitioner was given the benefit of certain payments made by him. The misappropriated amount under the 1st Charge thus stood reduced to Rs. 77,772.23 while under the second charge, it stood reduced to Rs. 29,504.94, totalling Rs. 1,07,271.17. The Enquiry Officer has categorically found that the re-examination of the documents was conducted in presence of the writ Petitioner and it was accepted by the Petitioner who in token of such acceptance had put his signature on the said accounts. On the basis of the aforesaid conclusion reached, the learned Enquiry officer held the charges against the Petitioner to be proved. The Disciplinary Authority while accepting the report, has recorded that in the present proceeding he was inclined to take a lenient view of the matter and on that basis. imposed the impugned punishment.

4. Aggrieved, the writ Petitioner has approached this Court by way of the present petition.

5. Three contentions in the main have been urged by Mr. S.S. Dey, learned Counsel appearing on behalf of the writ Petitioner. Mr. Dey has urged that the writ Petitioner was not afforded a real opportunity to examine the core of the documents relied upon by the Management in support of the charges. Elaborating, Mr. Dey contends that while it is true that the Petitioner was" allowed to i aspect the audit report and the supporting vouchers but the audit report being available at Guwahati and the supporting documents at Tezpur, the Petitioner was denied an effective opportunity to co-relate the audit report along with the supporting vouchers at any one given point of time. Mr. Dey has next contended that the writ Petitioner was in-charge of Shopping Corner of the STATFED Complex at Tezpur and the accounts books and registers were maintained by other staff and the Petitioner cannot be held responsible for the various discrepancies that may have been occurred in such books and accounts. Lastly Mr. Dey has urged that the writ Petitioner had given a list of three witnesses and taken steps to summon them to tender evidence in the enquiry.

However two of the witnesses chose not to appear which has caused prejudice to the Petitioner. Mr. Dey has urged that it was the bounden duty of the Enquiry Officer to ensure the presence of the aforesaid witnesses in the course of the enquiry. In support, Mr. Dey has relied on a decision of the Apex Court in the case of Hardwari Lal Vs. State of U.P. and Others,

6. Mr. P.C. Deka, learned senior counsel appearing on behalf of the Respondents has drawn my attention to the contents of two communications issued by the Petitioner, enclosed as Annexure-B and C to the affidavit filed by the Respondents. Mr. Deka contends that the said documents would go to show that the Petitioner has accepted the fact that all available and relevant documents were allowed to be inspected by him. Mr. Deka has also urged that two witnesses cited by the writ Petitioner for examination in course of the enquiry were summoned by the Enquiry Officer. However, for reasons not known the said witnesses declined to appear before the Enquiry Officer and Enquiry Officer not being vested with any power to enforce the attendance of the said witnesses, the absence of the aforesaid two witnesses would not ipso facto vitiate the enquiry.

7. I have considered the rival submissions made. In so far the first submission of Mr. Dey is concerned, a perusal of the report of the Enquiry Officer would go to show that the re-examination of the accounts was conducted by the authority pursuant to the order of this Court passed in Writ Appeal No. 72 of 1993. At the time of re-examination of the accounts, the writ Petitioner was present and the writ Petitioner was given the benefit of certain amounts which were claimed by him to have been deposited and the amount mentioned under the charges was proportionately scaled down. The writ Petitioner accepted the said accounts by putting an endorsement and his signature which endorsement and signature have been duly proved. The contents of the affidavit placed on record on behalf of the Respondent particularly Annexure-B and C thereof would go to establish the aforesaid position. In that view of the matter, the first contention of Mr. Dey has to fail.

8. The second contention of Mr. Dey that the books of accounts and other documents in the Shopping Complex were maintained by various other persons and not by writ Petitioner himself was an issue raised by the Petitioner before the Enquiry Officer and the Enquiry Officer has held that the writ Petitioner being the Officer-in-Charge of the Shopping Complex would be responsible for due and proper maintenance of all books and accounts pertaining to said complex considering the fact that the writ Petitioner was admittedly the in-charge of the Shopping Complex, he would be primarily responsible for due maintenance of accounts and this Court is not inclined to take a view different from the one recorded by the Enquiry Officer. The second submission of Mr. Dey, therefore, fails.

9. Coming to the third and last submission of Mr. Dey, namely regarding the failure of the Enquiry Officer to ensure the attendance of the two witnesses, cited by the Petitioner thereby causing prejudice to the writ Petitioner in the conduct of

his defence in the Departmental Proceeding, it is to be observed that the facts of the case reveal that there was no failure on the part of the Enquiry Officer to summon the witnesses. To what extent and in what manner the Enquiry Officer could have enforced the attendance of the said witnesses in the enquiry is a matter of great doubt. The Court is disinclined to go into the said aspect of the matter for the simple reason that the finding of the Enquiry Officer on the charges brought against him has proceeded on the basis of the admission of the writ Petitioner regarding the correctness of the re-audited accounts in acknowledgment of which, the writ Petitioner had put his endorsement and signature on the body of the said re-audited accounts. In view of the aforesaid admission on the part of the writ Petitioner, the non-examination of the witnesses or the absence of the witnesses cited by the writ Petitioner, in my considered view, does not vitiate the enquiry necessitating interference by this Court. The case cited by Mr. Dey, namely Hardwarilal (supra) was altogether in a different context. The Apex Court in the case of Hardwarilal (supra) found the enquiry to be vitiated on the ground that the person who lodged the complaint against the delinquent officer was not examined. The facts of the present case are wholly different and ratio of the law laid down by the Apex court in the case of Hardwarilal (supra) are not attracted to the facts of the present case. The third submission of Mr. Dey therefore fails. No other submissions have been advanced.

10. In view of the following discussions there is no merit in the writ petition and the same is dismissed.