

(2009) 06 GAU CK 0011
In the Gauhati High Court
Case No : W.A. No. 31 (AP) of 2006

Tabang Jamoh

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 226

Citation : (2009) 3 GLT 724

Hon'ble Judges : Iqbal Ahmed Ansari, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : C. Baruah, R.K. Dutta and P.K. Tiwari, for the Appellant; G. Deka, for the Respondent

Judgement

I.A. Ansari, J.—We have heard Mr. P.K. Tiwari, learned Counsel appearing for the Appellant, and Ms. G. Deka, learned Addl. Senior Govt. Advocate, appearing on behalf of the State Respondents.

2. The Appellant herein faced a disciplinary proceeding, drawn against him by Memorandum, dated 16.08.1999, for his alleged misconduct. The article of charge, framed against the Appellant, read as under:

Article-I

That the said Shri T. Jamoh, Forest Ranger, while holding the charge of Kanubari Forest Range under Deomali Forest Division during the period from October/94 to December/96 failed to maintain absolute integrity and devotion to duty as entrusted to him. As per final inventory report submitted by the D.F.O., Deomali Forest Division, 4118 Nos. of logs, volume 3587.7692 cu.m. were felled illegally during the year 1996 under Kanubari Forest Range which is quite high and that the Shri T. Jamoh, FR, failed to control the illegal of timber under his Range and due to his lack & integrity and division to duty such large scale illegalities occurred. Thus, the said Shri T. Jamoh, FR, is responsible for such large scale

illegal timber operation under his Range.

Sd/- (J.L.Singh) Conservator of Forests, Southern Arunachal Circle, Deomali.

3. The Appellant filed his statement of defence, wherein he denied the accusations made in the charge and asserted that he was not responsible for illegal felling of trees, which amounted to 3587.7692 cu.m. As the Appellant had denied the charge levelled against him, an inquiry was ordered. Having held an inquiry, on the charge, aforementioned, the Inquiry Officer submitted his report, dated 18.08.2000, wherein the Inquiry Officer concluded that while, as regards the imputations of breach of integrity, there was no proof, the charge, to the extent that there was failure to maintain devotion to duty, stood proved. The Inquiry Officer accordingly held that the charge stood partially proved. The Respondent No. 3, namely, the Conservator of Forests, Southern Arunachal Circle, Deomali, then, vide letter, dated 16.08.1999, served, as the disciplinary authority, a copy of the inquiry report on the Appellant with the direction that the Appellant, if he so desires, could make representation against the said Inquiry Report to the disciplinary authority. The Appellant, accordingly, made his representation on 15.09.2000. By order, dated 31.10.2000, the disciplinary authority passed an order awarding minor penalties, under Sub-rule (i) and (iv) of Rule 11 under Central Civil Services (Classification, Control and Appeal) Rules, 1965, the minor penalties being (i) censure and (ii) withholding of 2 (two) increments without any cumulative effect.

4. Subsequent to the passing of order, dated 31.10.2000, aforementioned, whereby the penalty, as described hereinbefore, had been imposed on the Appellant, the Apex Court, in T. Godavarman's case, which relates to felling of trees and depletion of forests, issued necessary directions to the Chief Secretaries of the North Eastern States. One of the directions, as contained in paragraph 12 of the order, dated 12.05.2001, passed in the aforementioned case, was for the Chief Secretaries of the North Eastern States to, immediately, review the action taken against officials and Ors. found responsible for "significant illegal felling" and against those involved in the movement of illegal timber seized and confiscated by the Special Investigation Team (SIT). It was further directed that wherever, it was found that the action taken is required to be reviewed, the concerned State Government shall take appropriate steps, be it in the nature of disciplinary/criminal proceeding, as may be permissible under the law. Following directions so issued by the Apex Court, on 12.05.2001, Chief Secretary to the Government of Arunachal Pradesh, on 30.05.2001, issued a show-cause notice to the Appellant, proposing to enhance the penalty imposed on him to a major penalty of dismissal from service. Having received the show-cause notice on 04.06.2001, the Appellant submitted his reply, on 11.06.2001, assigning reasons as to why he was not liable to suffer major penalty.

5. Subsequent to the reply to show-cause notice, dated 30.05.2001, aforementioned, the Appellant approached this Court with a writ application, made under Article 226 of the Constitution of India, which gave rise to WP (C)

928 (AP) 2001, seeking to get the show-cause notice, dated 30.05.2001, set aside and quashed. By judgment and order, dated 27.03.2003, a learned Single Judge of this Court disposed of the said writ petition declining to interfere with the impugned show-cause notice aforementioned and granted the Appellant liberty to file representation against the proposal to impose, on the Appellant, major penalty of dismissal from the service. The Appellant, accordingly, submitted Anr. representation, on 25.04.2003, against review and the proposed enhancement of his penalty. By order, dated 08.11.2003, issued by the Chief Secretary to the Government of Arunachal Pradesh, the penalty of compulsory retirement from service, with immediate effect, was, however, imposed on the Appellant.

6. The Appellant, then, filed Anr. writ petition, which gave rise to WP (C) 17 (AP) 2004. In this writ petition, the Appellant put to challenge the entire disciplinary proceeding from its very initiation, the minor penalty imposed on him, by order, dated 31.10.2000, and also the order, dated 08.11.2003, whereby major penalty of compulsory retirement from service had been imposed on the Appellant. By order, dated 07.07.2005, this writ petition was dismissed. While dismissing the writ petition, it was observed by the learned Single Judge that the Chief Secretary had duly considered the representation of the writ Petitioner (i.e. present Appellant), and it was on objective consideration of the whole matter, including the defence set-up by the writ Petitioner, that the impugned order, enhancing penalty, had been passed and that the authorities had taken a lenient view of the matter inasmuch as the writ Petitioner (i.e. the present Appellant), could have been dismissed from service on the basis of the charge, which stood proved. It is the finding so recorded by the learned Single Judge and the consequent dismissal of the writ petition, which from the basis of this writ appeal.

7. Though very drawing of the disciplinary proceeding, imposition of the minor as well as major penalty, have been challenged before us, on several grounds, we are of the view that the question of penalty, minor or major, would arise, if, on the basis of materials available on records, the conclusion reached by the Inquiry Officer that the charge stood proved, albeit partially, was correct and sustainable. It is worth noticing in this regard that the charge against the Appellant, as reflected above, was, that while the Appellant was holding the charge of Forest Ranger of Kanubari Forest Range, under Deomali Forest Division, between October, 1994 and December, 1996, he had failed to maintain absolute integrity and devotion to duty entrusted to him inasmuch as the final inventory reports, submitted by the Divisional Forest Officer, Deomali Forest Division, revealed that as many as 4228 numbers of logs, which amounted to 3587.7692 cu.m., by volume, had been felled illegally during the year 1996 under Kanubari Forest Range and that the Appellant had failed, while working as Forest Ranger, in the said Forest Range, to control illegal felling of trees and it was due to his lack of integrity and devotion to duty that such large-scale illegalities had taken place.

8. The accusations so contained in the charge, were, as already indicated above,

denied by the Appellant inasmuch as the Appellant, in no uncertain words, stated, in his statement of defence, that he denies his responsibility for the illegal felling of trees, amounting to 3587.7692 cu.m. volume, and that he also denies the charge that he had not maintained absolute integrity and devotion to duty during his tenure as Forest Ranger, in Kanubari Forest Range, between October, 1994 and December, 1996.

9. In view of the fact that the Appellant had denied the charge, an inquiry was held. We have perused the record of the disciplinary proceeding, in question, with the assistance of Ms. G. Deka, learned Addl. Senior Government Advocate, and what we are amazed to note is that in order to sustain and prove the charge, in question, no witness was examined on behalf of the disciplinary authority, though, we may point-out, Annexure-IV to the Memorandum, dated 16.08.1999, whereby the disciplinary proceeding was initiated, specifically stated the names of the witnesses, who had to prove the charge against the Appellant.

10. Though a charge in a disciplinary proceeding need not to be proved beyond reasonable doubt and can, indeed, be taken to have been proved on the basis of preponderance of probabilities, the fact of the matter remains that when the Appellant had pleaded not guilty and denied the imputations made against him, it was the duty of the disciplinary authority to bring on record materials to show that the seized timber, which the inventory reports disclosed, had actually been felled during the tenure of the present Appellant. It needs to be, immediately, pointed out that the inventory reports were prepared on 27.03.1999 and 23.04.1999 respectively, which were both referred to in the Memorandum, dated 16.08.1999, aforementioned. The admitted facts are that the Appellant joined on 22.10.1994, as Forest Ranger, Kanubari Forest Range, and worked there till 03.12.1996; whereas the inventories were prepared in the months of March/April, 1999, i.e., after more than 2(two) years. There was not even an iota of material brought on record to show, far less prove, that the seized timber had been cut and felled during the tenure of the Appellant. There was also not even a particle of evidence, brought on record, on behalf of the disciplinary authority, to even faintly indicate that no felling of trees took place after 03.12.1996, i.e., after the Appellant had already left the said Forest Range. The question, therefore, remained as to whether the timber, which had been seized in the months of March/April, 1999, had been cut and felled between 22.10.1994 and 03.12.1996 or between 1st of January, 1997 and March, 1999.

11. We have minutely scanned not only the materials available in the relevant records of the disciplinary proceeding, but also the Inquiry Report and we find that the conclusion, reached by the Inquiry Officer, was presumptuous in nature. This becomes more glaring to the eyes, when we notice that, while rejecting the Appellant's representation, the disciplinary authority, namely, Conservator of Forests, Southern Arunachal Circle, Deomali, observed that after the ban on the felling of timber had been imposed by the Apex Court, with effect from 12.12.1996, there could not have been any felling of timber in Kanubari Forest

Range and as such, whatever timber had been found felled in Kanubari Forest Range, ought to have been felled between October, 1994, and December, 1996. The conclusion, so reached by the disciplinary authority, was palpably, if we may reiterate, presumptuous in nature inasmuch as there is no material on records, as we have already pointed out, to show that no felling of trees took place, as a matter of fact, after 12.12.1996 and until the time, when the inventories were prepared in the months of March/April, 1999. The disciplinary authority, had, in fact, two distinct courses open to them for the purpose of proving the charge levelled against the Appellant. One way to prove the charge was to bring positive materials on record to show that the seized timbers had been felled during the tenure of the Appellant; whereas the other course, open to the disciplinary authority, was to prove that after the ban had been imposed and the Appellant had left the Kanubari Forest Range, no tree had been felled.

12. The disciplinary authority, however, neither proved that the seized timbers had been felled during the tenure of the Appellant nor did they prove that no felling of trees took place after the ban was imposed by the Apex Court. Viewed thus, there can be no escape from the conclusion that the very foundation of the conclusion, reached by the Inquiry Officer, that the charge stood proved, though partial, was wholly incorrect and perverse. This incorrect and perverse finding has been perpetuated by the disciplinary authority by agreeing and confirming the findings of the Inquiry Officer.

13. In the face of the materials on record, as discussed above, no penalty, far less, major, could have been imposed on the Appellant. The question, as to whether the charge stood proved or not, as it appears from the impugned judgment and order, had, indeed, not been examined in the writ proceedings. Since there was no material whatsoever, as already pointed out above, against the Appellant to sustain the charge, the mere fact that the disciplinary authority had upheld the finding was immaterial and ought to have been so held by the learned Single Judge. This apart, when the charge had not been proved, the question of enhancing penalty did not arise at all.

14. We may pause here to mention that Mr. Tiwari, learned Counsel for the Appellant, has also pointed out that the Inquiry Officer had first submitted, on 27.06.2000, his report, which reached the Principal Chief Conservator of Forests, Government of Arunachal Pradesh, Itanagar. As per this report, the Inquiry Officer found the charge not proved. However, reacting to the inquiry report so submitted, whereby the Inquiry Officer appears to have absolved the Appellant, the Principal Chief Conservator of Forests, Government of Arunachal Pradesh, wrote a letter, dated 07.08.2000 (as the record of the disciplinary proceedings indicate), to the Conservator of Forests, Southern Arunachal Circle, Deomali, stating, inter alia, that the Inquiry Officer, in his report, dated 27.06.2000, had completely absolved the Appellant of the charge, but this was unacceptable and the Inquiry Officer should be directed to examine the case critically, prepare the Inquiry Report and re-submit the same. It was, therefore, following the letter,

dated 07.08.2000, that the subsequent Inquiry Report, dated 18.08.2000, aforementioned, which became the basis of the imposition of penalty, on the Appellant, was submitted by the Inquiry Officer and acted upon by the disciplinary authority. In the face of these unavoidably noticeable facts, we find considerable force in the submissions made by Mr. Tiwari, learned Counsel for the Appellant, that the inquiry report, dated 18.08.2000, was an involuntarily rendered, and forcibly obtained, report and such a report could not have been the legally made basis for imposition of penalty, minor and major.

15. Because of what have been discussed and pointed out above, we are firmly of the view that the charge having not been proved against the present Appellant, no penalty could have been imposed on him. Hence, the minor penalty of imposition of censure and withholding of increment, as indicated hereinbefore, and also the penalty of compulsory retirement of the Appellant cannot but be interfered with.

16. Notwithstanding the conclusion that we have reached above, we must hasten to add that if any illegal felling of trees had taken place during the tenure of the Appellant, as Forest Ranger, in Kanubari Forest Range, and if such felling of trees was due to his negligence, lack of devotion to duty or lack of integrity, the Appellant shall remain liable to face appropriate disciplinary/criminal proceeding. Similarly, if such felling of trees took place either during the period, when the Appellant was the Forest Ranger, in the said Forest Range, or thereafter, but before preparation of the inventories in the months of March/April, 1999, the person(s), responsible for such felling of trees, shall remain liable for appropriate disciplinary/criminal proceeding as may be deemed necessary, proper and effective by the Disciplinary authority.

17. Because of what have been discussed and pointed out, we set aside the impugned judgment and order, dated 07.07.2005, the order, dated 31.10.2000, whereby minor penalties were imposed, and also the order, dated 08.11.2003, whereby major penalty of compulsory retirement from service was imposed on the Appellant.

18. We leave the State Respondents to take appropriate action against the Appellant or any other person(s), who may be found responsible for such acts of omission or commission as we have indicated hereinabove. The Appellant, shall, if not in service, be reinstated forthwith but he may be placed under suspension, if the disciplinary authority decides to proceed against him.

19. With the above observations and directions, this writ appeal stands disposed of. There shall be no order as to costs.