

(2017) 12 GAU CK 0013
In the Gauhati High Court
Case No : 6836 of 2015

The Union of India and Ors.

APPELLANT

Vs

Shri Dharmeswar Payeng

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 GAU CK 0013

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : S.C. Keyal

Judgement

1. Heard Mr. S.C. Keyal, learned Assistant SGI, for the petitioners. There is no representation today on behalf of the sole respondent, who is common in all the six writ petitions. The cause of action being similar, all the six writ petitions are taken up together and are being disposed of by this common order.

2. The charge(s) against the sole respondent is that he as a Member of the Selection Committee had recommended the names of 221 numbers of casual labourers under the Office of the Telecom District Engineer, Tezpur, which included 22 casual mazdoors under the Office of the Sub-Divisional Engineer (Phones), Tezpur, as Temporary Status Mazdoors, despite the fact that none of them were eligible for such regularisation. The said temporary status was conferred in May, 1996 which, however, was cancelled in October, 1997. According to the petitioner, the said recommendation had been made by the respondent in collusion with other members of the Selection Committee, without verifying the genuineness of the recommendation made by different Junior Telecom Officers/Sub- Divisional Engineers as well as the Certificates issued by Linemen etc., thereby having put the Telecom Department to huge financial loss.

3. Disciplinary proceedings against the respondent was initiated after about nine years with Charge Memo dated 15.01.2007. The Enquiry Officer submitted Report on 24.03.2009 holding the articles of charge as not proved. However, the

disciplinary authority disagreed with the findings and report of the Enquiry Officer and the same along with a copy of the Inquiry Report was made available to the respondent, enabling him to make representation. Meantime, the respondent retired from service on attaining the age of superannuation with effect from 31.10.2009. He submitted representation on 30.11.2009 which, according to the Disciplinary Authority, did not bring out any new facts or evidence to rebut the decision of the Disciplinary Authority. The case of the respondent was thereafter referred to the Union Public Service Commission (UPSC) for its statutory advice as regards the quantum of punishment, which was primarily on the required percentage of deduction from the pension of the respondent. On the basis of the advice tendered by UPSC, the respondent was imposed with the penalty of 20% cut in his monthly pension for a period of three years. The said order of 28.09.2011 was put to challenge by the respondent before the Central Administrative Tribunal, Guwahati Bench in O.A. No. 040/00084 of 2014.

4. The Tribunal considered the case on the standpoint of procedural irregularities as well as on the aspect of the inordinate delay caused in initiating the departmental proceedings. The Tribunal noticed that although the incident related to 1996-1997, proceedings against the respondent was drawn up only in the year 2007. Further, despite the fact that the respondent retired from service in the year 2009, the department could reach a conclusion only in the year 2011 by way of imposition of penalty. On alleged procedural lapses, the Tribunal noticed that the advice tendered by UPSC was not supplied to the respondent, whereas the same was relied upon to impose penalty on the respondent. This, according to the Tribunal, was contrary to the law laid down in the case of *Union of India and Others v. S.K. Kapoor*, reported in (2011) 4 SCC 589. Thus, the principles of natural justice had not been followed. Two other factors which weighed in the mind of the Tribunal were that one of the Member of the Committee had been exonerated by the Disciplinary Authority on the same set of charges and, further, the temporary status conferred upon the casual labourers since stood cancelled by the Authority concerned. The Charge Memorandum dated 15.01.2007 and the order of penalty dated 28.09.2011 were accordingly quashed. Aggrieved, the present writ petition was instituted. Facts are not in dispute. The issues for determination only involves as to whether the Tribunal was correct in allowing the original application on the ground of the delay in initiating disciplinary proceedings as well as on procedural lapses with regard to non-supply of the copy of the advice tendered by UPSC, purportedly causing prejudice to the respondent. It is well settled that unexplained delay in the initiation or in bringing a disciplinary proceeding to its logical conclusion would constitute good grounds for making interference with the proceedings. The same, however, is always subject to the nature and the gravity of the offence for which proceeding is initiated. In the instant case, the said ratio is perhaps not applicable as the disciplinary proceedings, despite belatedly initiated, was never the subject-matter of challenge in any forum at any time prior to the impugned

order(s) of penalty. Penalty already being imposed, it would not be permissible for the Court to reverse the clock and say that the delay in initiating the proceedings vitiated the charge and the consequential penalty.

5. As regards the other issue of non-supply of the copy of advice tendered by the UPSC, we agree with the findings and decisions of the Tribunal. The law laid down in *S.K. Kapoor (supra)* is squarely applicable in the present case. In the said case the Supreme Court held that it is a settled principle of natural justice that if any material is to be relied upon in a departmental proceeding, the same is required to be supplied in advance to the delinquent in order that he may get an opportunity to rebut the same. The observation of the Supreme Court may be usefully reproduced as under: "There may be a case where the report of the Union Public Service is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice."

6. The law being absolutely clear and the same being squarely applicable in the instant case, this Court is not required to go into the other issues which found favour with the Tribunal. The procedural impropriety being writ large, so much so, that there has been a clear violation of the cardinal principles of natural justice on the part of the petitioners, we find no good ground to disturb the findings and decisions of the Tribunal. The writ petitions being bereft of merit are accordingly dismissed, however, without any order as to costs.