
(2004) 12 GAU CK 0050
In the Gauhati High Court
Case No : WP (C) No. 178 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Kamal Roy

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 2(1), 3(1)

Citation : (2004) 12 GAU CK 0050

Hon'ble Judges : D. Biswas, Acting C.J.; Anima Hazarika, J

Bench : Division Bench

Advocate : D. Baruah, for the Appellant; B. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition is directed against the order dated 10.1.2001 passed in Original Application No. 181/98 by the Central Administrative Tribunal, Guwahati Bench.

2. The aforesaid Original Application was filed by the respondent Shri Kamal Roy challenging the order dated 18.6.1996 issued by the Director General (Security) imposing upon him the penalty of compulsory retirement from service. It may be mentioned here that the penalty of compulsory retirement was imposed on conclusion of the departmental proceedings initiated against the respondent in connection with two charges. For better appreciation the articles of charges are quoted below :-.

"Article - I

That the said Shri Kamal Roy, while functioning as Assistant in the office of the DIG, TC Haflong w.e.f. 12.12.1986, left the office in the afternoon on 9.9.1988 after submitting his leave application but without handing over proper charge of his office seat including restricted documents and Steel Almirah with keys, held by him under his charge. Thereby, the said Shri Kamal Roy, has committed an act most unbecoming of a Government servant and thus, violated the provisions

of Sub-rule-1 (iii) of Rule 2 of the CCS (Conduct) Rules, 1964.

Article - II

That the said Shri Kamal Roy, during the aforesaid period and while functioning in the aforesaid office, is absenting himself unauthorisedly from official duties with effect from 27.9.1988 till date. Thereby, the said Shri Kamal Roy, has committed an act most unbecoming of a Government servant and thus, has violated the provisions of Sub-rule-1(iii) of Rule 3 of CCS (Conduct) Rules, 1964."

3. We have heard Mr. D Baruah, learned Addl. CGSC for the petitioners and Mr. B Banerjee, learned counsel for the respondent. Mr. Baruah, learned Addl. CGSC submitted that the conduct of the respondent throughout his service career has been detrimental to the interest of public service. Allegations of misappropriation, unauthorised absence from duty and other malpractices are there against him. Mr. Banerjee, learned counsel for the respondent, however, submitted that the penalty of compulsory retirement was imposed on conclusion of the departmental proceedings. Therefore, any matter not covered by the articles of charges of the departmental proceedings and the materials connected therewith cannot be taken into consideration for the purpose of deciding the case at hand. Mr. Banerjee further submitted that the enquiry was conducted ex-parte, the written statement submitted by the delinquent employee was not considered and that the matters settled were reopened and reconsidered while awaiting the penalty of compulsory retirement.

4. After hearing the learned counsel for the parties and going through the records made available including the office file, we find that the period of unauthorised absence from 27.9.1988 to 23.2.1989 has already been regularised by the authority by granting leave on medical ground by the order communicated vide letter dated 19.3.1991. The medical certificates submitted by the respondent in pursuance of the direction given by the authority were accepted and the aforesaid order dated 19.3.1991 was passed. The disciplinary proceeding was initiated against the respondent vide order dated 17.8.1995 i.e. more than four years after the order of regularisation of leave was passed. The order dated 19.3.1991 passed by the authority regularising the leave has also been cancelled by the order dated 10.11.1997 imposing penalty of compulsory retirement.

5. The learned Tribunal, in para 6 of the impugned order, observed that the written statement submitted by the respondent was not taken into consideration, particularly the statement made to the effect that the respondent had handed over the keys of his almirah to one of his colleagues and that the restricted documents were in the custody of the Senior Instructor of Training. Besides, his absence from duty on 9.9.1980 has also been treated by the authority as dies non.

6. In the above facts and circumstances, we are unable to subscribe to the views of Mr. Baruah that no aberration crept in in the decision making process in the departmental proceedings. We are of the considered opinion that the order

passed by the learned Tribunal calls for interference by this Court.

7. At this stage, Mr. Baruah pointed out that the respondent has already attained the age of superannuation and, therefore, the question of his reinstatement does not arise.

8. In the above circumstances, we dismiss the writ petition with the observation that if the respondent has not attained the age of superannuation, he should be allowed to resume duties in pursuance of the direction of the learned Tribunal. Else, he should be paid his retiral benefits in accordance with the provisions of law.