General Manager, Loktak Power Station and Another Vs Md. Siraj Ahmed

Court: Gauhati High Court

Date of Decision: Sept. 5, 2003

Citation: (2004) 1 GLR 39 : (2005) GLT 823 Supp : (2004) 2 LLJ 772

Hon'ble Judges: P.P. Naolekar, C.J; I.A. Ansari, J

Bench: Division Bench

Advocate: N.K. Singh and R.K. Dev Choudhury, for the Appellant; M. Gunedhar Singh, for the Respondent

Judgement

I.A. Ansari, J.
While serving as a Field Assistant under the National Hydro Electric Power Corporation Ltd. at Loktak Hydro Electric

Project, the writ petitioner - respondent herein was departmentally proceeded against on the charge of lifting of 100 bags of cement from the site

of the said project and delivery thereof to unauthorised private individual. On completion of the departmental enquiry, the Committee, which was

constituted for the purpose of holding the enquiry, reported that the charge framed against the respondent-writ petitioner stood proved. A notice,

dated 22.6.1983, was, then, issued by the Disciplinary Authority to the respondent-writ petitioner directing him to show cause, within 7 days from

the date of issue of the said notice, as to why he should not be removed from service. The notice was received by the respondent-writ petitioner

on 28.6.1983, 29.6.1983 being the last date. However, the respondent-writ petitioner did submit his reply on 30.6.1983, whereupon vide order,

dated 4.7,1983, the respondent-writ petitioner was removed from service by the Disciplinary Authority. The respondent-writ petitioner, then,

preferred a departmental appeal, which was, eventually dismissed vide order, dated 10.11.1999. Feeling aggrieved, the respondent-writ petitioner

approached this Court and by the impugned judgment and order, dated 19.6.2003, passed in W.P. (C) No. 442 of 2002, the learned Single

Judge set aside the order of removal, dated 4.7.1983, as well as the appellate order, dated 10.11.1999 afore-mentioned and directed the

respondent-writ petitioner to be taken back in service with liberty given to the Disciplinary Authority to proceed with the enquiry, if so advised, in

accordance with law with further liberty given to the Disciplinary Authority to decide on the question of payment of back wages of the respondent-

writ petitioner. Aggrieved by the directions so issued by the learned Single Judge, the present appellants have approached this Court by way of this

appeal.

2. We have heard Dr. N.K. Singh, learned counsel appearing on behalf of the appellants, and Mr. M. Gunedhar Singh, learned counsel appearing

for the respondent-writ petitioner.

3. While considering this appeal, it is pertinent to note that it was agitated, on behalf of the respondent-writ petitioner before the learned Single

Judge, that while directing the writ petitioner to show cause against the proposed penalty of removal from service, the petitioner had not been

furnished with a copy of the enquiry report. Coupled with this, it was also agitated before the learned Single Judge, on behalf of the writ petitioner,

that the writ petitioner had not been given adequate time to submit his reply against the proposed penalty and even the reply, which the writ

petitioner submitted against the said notice of showing cause, was not considered by the authorities concerned before passing the impugned order

removing the writ petitioner from service. All the grievances, so agitated on behalf of the writ petitioner, were found to be correct and legally

sustainable by the learned Single Judge and on the basis of the findings so reached, the learned Single Judge issued the impugned directions, as

indicated hereinabove.

4. Nothing could be submitted on behalf of the appellants to show that furnishing of copy of the enquiry report to the writ petitioner was not

essential before he was asked to show cause as to why he should not be removed from service. In the case of Managing Director, ECIL,

Hyderabad, Vs. Karunakar, etc. etc., the Apex Court considered the decision in Union of India and others Vs. Mohd. Ramzan Khan, which had

taken into account the effect of 42nd Amendment of the Constitution, and other relevant authorities on the subject, and held that when the enquiry

officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer''s report before the disciplinary

authority arrives at its conclusions with regard to the guilt or innocence of the employee in respect of the charges levelled against him and that the

right to receive report of the enquiry is a part of the employee''s right to defend himself against the charges levelled against him. A denial of the

enquiry officer''s report before the disciplinary authority takes its decision on the charges is, in fact, a denial of reasonable opportunity to the

employee to prove his innocence and is a breach of the principles of natural justice.

5. While laying down the law on the subject, as indicated hereinabove, the Apex Court in B. Karunakar (supra), further held that if the enquiry

officers report is not furnished to the delinquent employee, reinstatement in service shall not follow as a corollary; rather, the Court shall get the

copy of the enquiry report furnished to the aggrieved employee and give him an opportunity to show cause as to how his/her case was prejudiced

because of non-supply of the enquiry report. If, upon hearing the parties, the Court or Tribunal concludes that non-supply of the report would have

made no difference to the ultimate findings and punishment given, the Court or Tribunal should not interfere with the order of punishment.

6. The Apex Court has further held in B. Karunakar (supra) that where the Court or Tribunal sets aside the order of punishment following the

procedure indicated hereinabove, the proper relief to be granted should be to direct reinstatement of the employee with liberty given to the

authority/management concerned to proceed with the enquiry by placing the employee under suspension and continuing the enquiry from the stage

of furnishing of the report to him. The Apex Court has further made the position of law clear by observing thus :

The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should he treated as a reinstatement for the

purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the

correct position in law.

7. In the case at hand, apart from the fact that the NHPC Conduct, Discipline and Appeal Rules provide for furnishing of the enquiry report to the

delinquent employee before imposing any major penalty on him, in the face of the law laid down in B. Karunakar (supra), there can be no escape

from the conclusion that mere non-furnishing of the enquiry report cannot be sufficient to hold that non-furnishing of the enquiry report has caused

prejudice to the writ petitioner. Neither at the time of hearing of the writ petition nor at the time of admission hearing of the present appeal, the writ

petitioner could show as to how he was prejudiced on account of non-furnishing of the enquiry report. Be that as it may, the admitted position is

that by notice, dated 22.6.1983, the writ petitioner was directed to show cause, within 7 days from the date of issuance of the notice, as to why he

should not be removed from service. The notice was dated 22.6.1983 and the reply was directed to be furnished on or before 29.6.1983. The

respondent-writ petitioner received the notice on 28.6.1983 and thus, he was merely given one day''s time to submit his reply. The time so given to

the respondent-writ petitioner was undoubtedly, grossly inadequate. However, the respondent-writ petitioner submitted his reply on 30.6.1983

and the impugned order of removal was passed on 4.7.1983.

8. Contrary to what was contended before the learned Single Judge and what has been contended before us, a bare reading of the order, dated

4.7.1983, clearly shows that the respondent-writ petitioner''s reply, dated. 30.6.1983, was never considered by the Disciplinary Authority before

the penalty or removal from service was imposed on him. The non-consideration or the respondent-writ petitioner''s reply by the Disciplinary

Authority was contrary to the principles of natural justice and was, as correctly held by the learned Single Judge, sufficient to interfere with the

impugned order of removal. Viewed from this angle, we see no reason to interfere with the impugned judgment and order of the learned Single

Judge to the extent that the same sets aside the order of removal, dated 4.7.1983, and the appellate order, dated 10.11.1999. However, so far as

the direction given to the authorities by the impugned judgment and order of the learned Single Judge to take the writ petitioner back in service

forthwith is concerned, it is important to bear in mind, in the light of the law as laid down in B. Karunakar (supra) and discussed hereinabove, that

the reinstatement in service shall be for the purpose of enabling the authorities concerned to proceed with the enquiry by keeping, if necessary, the

employee under suspension.

9. Considering, therefore, the matter in its entirety, while upholding the impugned judgment and order of the learned Single Judge to the extent that

the same quashes the order of removal, dated 4.7.1983, and the appellate order, dated 10.11.1999, we direct the appellants/ authorities

concerned to take back the respondent-writ petitioner in service and proceed with the enquiry after furnishing him with a copy of the enquiry

report and do the needful in accordance with law. While taking back the respondent-writ petitioner in service, the appellants shall remain at liberty

to keep the writ petitioner under suspension, if so advised, and proceed with the enquiry.

10. The writ appear shall stand disposed of in terms of the above directions.

11. There shall be no order as to costs.