(2001) 01 GAU CK 0013

Gauhati High Court (Imphal Bench)

Case No: WP (C) No. 120 of 2000

Ch. Surchandra Singh	APPELLANT
Vs	
State of Manipur and Another	RESPONDENT

Date of Decision: Jan. 16, 2001

Acts Referred:

- Central Civil Services (Temporary Service) Rules, 1965 - Rule 5(1)
- Constitution of India, 1950 - Article 309, 311(2)

Citation: (2003) 3 GLR 518

Hon'ble Judges: H.K.K. Singh, J

Bench: Single Bench

Advocate: Ng. Premkumar Sing, for the Appellant; R.S. Reisang, for the Respondent

Judgement

H.K.K. Singh, J.
Heard Mr. Ng. Prem Kumar Singh, the learned counsel for the petitioner. Also heard Mr. R. S. Reisang, learned Government Advocate.

2. The petitioner has been serving as Chowkidar in the Directorate of Youth Affairs and Sports, Manipur. He was appointed on 11.11.1982 by the Director of Sports Phy. Edn. & Youth Services, Government of Manipur. By an order dated 13.10.1986 passed by the Director, Youth Affairs & Sports, Government of Manipur under Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rule 1965 the services of the petitioner were terminated. Against the said order of termination the petitioner approached this court and by a judgment and order dated 12.8.1996 passed in Civil Rule No. 312 of 1989 this court quashed the termination order dated 13.10.1986 and liberty was given to the authority concerned to take departmental action against the petitioner in accordance with the provisions of law, if so advised. Thereafter a departmental proceeding was initiated against the petitioner by issuing Memorandum dated 14.1.1997 incorporating article of charges and statements of imputation of mis-conduct. It appears that the Inquiry Officers submitted a report

exonerating the petitioner but the Disciplinary Authority dis-agreed with the report of the Inquiry Officer and passed an order dated 10th June, 1999 thereby removing the petitioner his service.

3. Mr. Ng. Premkumar Singh, the learned counsel for the petitioner has questioned the legality of the aforesaid order of punishment, i.e., removal of the petitioner from his service on many grounds. The learned counsel has submitted that copy of the report of the Inquiry Officer was not made available to the petitioner and also that no opportunity whatsoever was ever given to the petitioner as to why the report of the Inquiry Officer should not be dis-agreed and the charge levelled against the petitioner should not be held proved, by the Disciplinary Authority, The learned counsel has also submitted that copies of some of the documents relied upon at the time of enquiry were not made available to the petitioner thereby denying of affective defence.

4. It may have be noted that inspite of several opportunities having been given to the Respondent, no counter affidavit has been filed. Again in the petition itself the petitioner has averred that a statutory appeal has been filed to the Appellate Authority as early as on 27th June, 1999 but the Appellate Authority did not consider the matter at all. Thus, the petitioner approached this court. From the records of the case it is found that learned Government Advocate sought for time on several occasions and this court granted time to enable the Appellate Authority to dispose of the matter. Here also inspite of several opportunities and even upon giving direction to dispose of the statutory appeal filed by the petitioner, the same has not yet been disposed of. Considering the nature of the point involved in this case which I am going to discuss herein, I propose to decide the present case without waiting for any decision to be arrived at by the Appellate Authority.

5. It is the case of the petitioner that copy of the enquiry report was never made available to the petitioner even though the report was favourable to him. But, the important point involved in the present case is that when the Disciplinary Authority tentatively inclined and decided to dis-agree with the decision arrived at by the Inquiry Officer, the question, therefore, is whether in such a case the delinquent official is entitled to have right of hearing so that he could make his own defence/ case to the proposed decision of the Disciplinary Authority. Law on this point is clear and settled. One of the recent decision of the Apex Court reported in Yoginath D. Bagde Vs. State of Maharashtra and Another, in the case of Yoginath D. Bagde, Appellant v. State of Maharashtra and Anr., Respondents may be seen. In the aforesaid reported decision after considering earlier decisions of the Apex Court reported in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and also Constitution Bench decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., held at para 33 :

"In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges

levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank, except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of finding to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution".

6. In the present case no opportunity was given to the delinquent official by the Disciplinary Authority as to why the report of the Inquiry Officer should not be dis-agreed and the finding of prove of the charge should not be recorded. Thus, without going any further into the matter I am of the opinion that the impugned order of punishment passed by the Director, Youth Affairs & Sports, Govt. of Manipur (Disciplinary Authority) on 10th June, 1999 contained in Annexure-A/7 cannot stand in the eye of law. Accordingly the same is quashed and set aside.

7. It is clarified that in view of the fact that the petitioner had to fight long battle even coming to the court in two innings, I am of the opinion that the petitioner should not be brow beaten on the same allegation again. The petitioner should be re-instated. Regarding back wages, it is left with the wisdom of the authority concerned to decide the same according to law.