
(2003) 07 GAU CK 0030

Gauhati High Court

Case No: Civil Rule No. 209 of 1998

Md. Rustom Ali

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: July 23, 2003

Citation: (2004) 1 GLR 296 : (2003) 2 GLT 465

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: B. Choudhury, for the Appellant; M.K. Choudhury, for the Respondent

Judgement

Ranjan Gogoi, J.

An order dated 5th June, 1996 passed by the disciplinary authority of the Assam State Co-operative Marketing and Consumers" Federation Limited ("STATFED") imposing the penalty of reduction of rank on the writ petitioner along with recovery of the amount misappropriated is the subject matter of challenge in the present proceeding. As the aforesaid order passed by the disciplinary authority has been affirmed in appeal by the appellate authority of STATFED by order dated 22nd September, 1997, the said order is another connected aspect of the challenge made herein.

2. By a charge memo dated 21st 1993, as many as four different charges were brought against the writ petitioner. The writ petitioner was charged with misappropriation of stock amounting to Rs. 30,608.84 for the year ending 31.3.1993. A further charge of dereliction of duty, leaving of HQrs, without prior permission and without handing over charge, with effect from 7.4.1993 and further charges of misappropriation of two different amounts, i.e, Rs. 4,480.62 and Rs. 2,584.85 were also brought against the writ petitioner. The reply of the writ petitioner to the charge memo not having satisfied the disciplinary authority, it was decided to hold an enquiry. Accordingly, an Enquiry Officer was appointed and in the proceedings in enquiry, one witness was examined in support of the charges. The charges were also sought to be proved by bringing on record a number of documents. The writ

petitioner, delinquent officer, did not examine any witness; neither any documents were adduced by him. At the conclusion of the enquiry, the Enquiry Officer in his report dated 17th February, 1994 found the writ petitioner guilty of all charges. The disciplinary authority concurred with the said findings of the Enquiry Officer and imposed the punishment in question by order dated 5th June, 1996. The appeal against the said order filed by the petitioner having been dismissed on 22nd September, 1997, the instant recourse to the writ remedy has been made by the writ petitioner.

3. I have heard Mr. B. Chakraborty, learned, counsel for the writ petitioner and Mr. M.K. Choudhury, learned counsel appearing on behalf of the respondents.

4. The power of the writ Court in matters relating to disciplinary proceeding and imposition of penalty after holding of an enquiry are well settled. This Court is not to act as an appellate authority over the findings recorded in the enquiry proceedings. Findings of enquiry are required to be examined by the writ Court only to satisfy itself that the proceeding against the delinquent had been held fairly and in consonance with the principles of natural justice. Interference with the findings recorded in the enquiry are not made by the writ Court unless such findings partake the character of perverse findings. The valiant attempt made by the learned counsel for the petitioner to persuade the Court to have a close look into the manner in which enquiry was conducted was eminently successful and this Court considered the findings recorded by the Enquiry Officer in his report through a painstaking process, at the end of which, this Court is left with no doubt that none of the findings recorded by the Enquiry Officer can be reasonably levelled as perverse or even as unjustified. The conclusions recorded by the Enquiry Officer are based on the materials on record and even if this Court takes a different view with regard to the said conclusions, which this Court otherwise is not inclined to, there would be no occasion to cause any interference with the said findings. The Enquiry Officer in his report clearly and categorically recorded his findings on each of the charges, indicating the materials on the basis of which the said findings have been reached and there would be hardly any reason for this Court to take a different view in the matter.

5. This would take the Court to certain other more fundamental issues, as raised by the learned counsel for the petitioner. It has been argued that the petitioner was not made aware of his right to have the service of a defence assistant; the enquiry must necessarily fall through, it was sought to be argued. Time and again, it has been held by numerous judicial pronouncements including a recent judgment of this Court in the case of *Saroj Kr. Bhattacharyya v. Union of India and Ors.*, reported in 2003 (2) GLT 72 that failure of the disciplinary authority or the Enquiry Officer to apprise the delinquent of his right to have the services of a defence assistant does not necessarily give rise to fatal consequences. The fatality would depend on prejudice and the prejudice like any other question of fact has to be pleaded and

proved. In the present case, no prejudice is even remotely pleaded in the writ petition.

6. Next, it has been argued that the Presenting Officer was examined as witness in support of the charges which fact alone would be enough to vitiate the enquiry. In the present case, the Presenting Officer examined himself as a witness for the limited purpose of proving the documents in support of the charge. No authority has been cited nor any law or rule has been placed to enable this Court to come to the conclusion that the examination of the Presenting Officer would ipso facto vitiate the proceeding. In any case, the conclusions of the Enquiry Officer are based on documents brought on record in the course of the enquiry proceedings and in so far as the first charge of misappropriation is concerned, the physical verification report on which reliance was placed by the Enquiry Officer, was prepared in the presence of the delinquent officer who had also signed the same. The second argument advanced, therefore, is of no avail.

7. Lastly, it has been argued that by the impugned order dated 5th June, 1996, the disciplinary authority had directed that the period of suspension of the petitioner is not to be treated as on duty and except for the subsistence allowance drawn by the petitioner during the said period, he would not be entitled to any other remuneration. Learned counsel for the petitioner contends that the aforesaid order with regard to the period of suspension has been passed by the disciplinary authority in flagrant violation of principles of natural justice which require an opportunity to be afforded to the affected employee. Reliance has been placed in this regard on a judgment of the Apex Court in the case of *Manzoor Ahmed Mazumdar v. State of Meghalaya*, (1997) 11 SCC 374. The position is not disputed by Mr. Choudhury, learned counsel for the respondents. Accordingly, following the ratio of law laid down by the Apex Court in the case of *Manzoor Ahmed Mazumdar* (supra), the impugned order dated 5th June, 1996 shall stand interfered with to the extent that the same relates to the period of suspension of the petitioner. It will be open for the respondent authority to pass appropriate orders with regard to the period of suspension after giving the petitioner due notice and opportunity.

8. Accordingly and for the reasons stated above, this writ petition shall stand partly allowed to the extent indicated above.