
(2001) 09 GAU CK 0028

Gauhati High Court

Case No: Civil Rule No. 3937 of 1997

Md. Safiqul Haque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Sept. 13, 2001

Citation: (2001) 3 GLT 146

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: B.K. Sarma, M.K. Choudhury and T.R. Srinivsan, for the Appellant; H.K. Mahanta, for the Respondent

Judgement

Ranjan Gogoi, J.

The instant writ application seeks to challenge the legality and validity of a departmental proceeding initiated against the petitioner by a show cause notice dated 30.10.1991. The validity of a subsequent order directing a de novo enquiry in respect of the said charges as well as the entitlement of the petitioner to the grant of retirement benefits have also been sought to be raised in the instant writ application.

2. To appreciate the controversy that has arisen in the instant case it may be necessary to briefly set out hereunder the relevant facts.

3. By an order dated 9.3.1991 the petitioner, who at the relevant time, was serving as the Superintendent of District Jail, Dibrugarh, was put under suspension pending drawal of departmental proceedings. A show cause notice dated 30.10.1991 was issued to the petitioner setting out as many as five charges and asking the petitioner to submit his reply to the said charges. The petitioner submitted his reply on 10.2.1992 and the said reply not having been found to be satisfactory an enquiry officer was appointed to hold an enquiry into the charges levelled against the petitioner. In the meantime by order dated 2.9.1992 the order of suspension against the petitioner was revoked and the petitioner was allowed to resume duties. The

enquiry against the petitioner was completed on 14.8.1993. The matter was thereafter kept in animated suspension for reasons not disclosed. Eventually on 10.4.1996 the enquiry officer submitted his report to the disciplinary authority. As it now appears, the report of enquiry was in favour of the writ petitioner exonerating him from the charges levelled. In between the completion of the enquiry on 14.8.1993 and submission of report of the enquiry to the disciplinary authority on 10.4.1996 the petitioner retired from service with effect from 31.5.1994. Notwithstanding the retirement of the petitioner and the favourable report of enquiry submitted to the disciplinary authority, by order dated 21.5.1997 the Stat authority took a decision to disagree with the findings of the enquiry officer and to hold a de novo enquiry in respect of the charges levelled against the petitioner. The aforesaid decision of the authority was communicated by WT message dated 13.7.1997 to the petitioner asking the petitioner to be present before the enquiry officer at 11 AM on 28.7.1997. Aggrieved, the instant writ petition has been filed.

4. An affidavit in opposition has been filed on behalf of the respondent No. 1. In paragraphs 14 and 15 of the said affidavit it has been stated that the disciplinary authority not being satisfied with the report of the enquiry had decided to hold the de novo enquiry into the charges brought against the petitioner and for the said purpose the Commissioner of Upper Assam Division at Jorhat was appointed as the new enquiry officer.

5. I have heard Mr. B K Sarma, learned senior counsel for the petitioner and Mr. H K Mahanta, learned State Counsel.

6. From the respective pleadings and counter pleadings of the parties and the arguments advanced before the court what transpires is that neither the report of enquiry, submitted by the enquiry officer on 10.4.1996, nor a notice intimating to the petitioner the tentative conclusions of the disciplinary authority to disagree with the views of the enquiry officer was furnished to the petitioner. On the aforesaid facts Mr. B K Saram, learned senior counsel appearing for the petitioner has vehemently argued that the conclusions of the disciplinary authority to hold a de novo enquiry; the decision to the said effect taken by order dated 29.5.1997 as well as the WT Message dated 13.7.1997 all stand vitiated in law and needs to be appropriately interfered with by the writ court. In support of his submission Mr. Sarma relies on the decisions of the Apex Court In the case of [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), in [Punjab National Bank and Others Vs. Sh. Kunj Behari Misra](#), in [Yoginath D. Bagde Vs. State of Maharashtra and Another](#), as well as the decision of the Apex Court in the case of S.B.I. and Ors. v. Arvind K. Shukla, reported in AIR 2001 SC 2398. The first decision in the case of Managing Director, ECIL v. B. Karunakar (supra) is pressed into service by Mr. Sarma in respect of his contention that the non-furnishing of the report of the enquiry officer has the effect of vitiating the entire proceeding. The latter three judgments relied upon by Mr. Sarma are in respect of the proposition that de hors the question of the legal

effect arising from the non-furnishing of the report of the enquiry officer, the failure of the disciplinary authority to serve a notice on the petitioner indicating the tentative conclusions of the disciplinary authority to disagree with the views of the enquiry officer, vitiates the subsequent decision to hold a de novo enquiry against the writ petitioner.

7. I have considered the submissions made by Mr. Sarma as well as the case law relied upon by the learned counsel in support of his arguments. In the case of *Managing Director, ECIL v. B. Karunakar* (supra) the Apex Court has laid down the law that furnishing of a copy of the report of enquiry to the delinquent officer so as to persuade the disciplinary authority not to record any adverse findings against the delinquent officer is a mandatory requirement of law. Naturally such a copy of the enquiry officer's report is to be given to the delinquent officer at a stage prior to the formation of any conclusion by the disciplinary authority. In the aforesaid judgment the Apex Court has laid down that non-submission of the report of the enquiry officer would vitiate the proceedings and the findings recorded including the punishment, if any, awarded, if prejudice has been caused to the delinquent. If the court upon consideration of the facts and circumstances of the case come to the conclusion that non-furnishing of a copy of enquiry officer's report has in fact caused prejudice the proceedings would stand nullified. However, the disciplinary proceedings may at the discretion of the disciplinary authority commence from that stage. Having regard to the facts of the instant case when the views of the enquiry officer in the report of enquiry was in favour of the delinquent employee and such views have been subsequently disagreed with by the disciplinary authority, non-furnishing of a copy of the enquiry officer's report to the delinquent, in the considered view of this court, has caused prejudice resulting in an apparent breach of the doctrine of reasonable opportunity.

8. In so far as the second submission of Mr. Sarma is concerned, it is to be noticed that the Apex Court in the case of *S.B.I. and Ors. v. Arvind K. Shukla* (supra) had formulated the following question to have arisen in the facts of that case - whether in a case where disciplinary authority disagrees with the enquiring officer on certain articles of charges, then before it records its findings of such charge, is it duty bound to record its tentative reasons for such disagreement and give the same to the delinquent officer an opportunity to represent before it ultimately records its finding? The Apex Court, taking note of the earlier decisions rendered in the case of *Punjab National Bank and Ors. v. Kunj Bihari Misra* (supra) and in the case of *Yoginath D. Bagde v. State of Maharashtra and Anr.* (supra) has answered the question in the affirmative.

9. Adverting to the facts of this case this court finds that a similar question arises in the instant case. The tentative conclusions of the disciplinary authority to disagree with the views of the enquiry officer and hold a de novo enquiry were not intimated to the delinquent officer. Following the ratio of the law laid down by the Apex Court

in the above noted decisions, this court has no hesitation in holding that the impugned actions of the disciplinary authority in disagreeing with the views of the enquiry officer and in proposing to hold a de novo enquiry would all stand vitiated in law.

10. In view of the conclusions reached and In the facts of the case and the law as discussed above, the impugned order dated 29.5.1997 passed by the disciplinary authority to hold a de novo enquiry as communicated to the writ petitioner by WT message dated 13.7.1997 shall stand quashed. All consequential actions in terms of the present order including the question of entitlement of the petitioner to pensionary benefits shall be completed by the authority within a period of three months from the date of receipt of this order. The aforesaid time frame has been fixed keeping in mind that the charges against the petitioner were initiated in the year 1991 and the petitioner has superannuated from service in the year 1994.

11. The writ petition stands disposed of as above.