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(2004) 1 GLR 266

Gauhati High Court (Itanagar Bench)

Case No: Writ Petition (C) No. 257 (AP) of 2002

Oni Dai	APPELLANT
Vs	
State of Arunachal Pradesh and Others	RESPONDENT

Date of Decision: Aug. 6, 2003

Acts Referred:
Central Civil Services (Conduct) Rules, 1964 â€" Rule 3(1)#Constitution of India, 1950 â€" Article 226

Citation: (2004) 1 GLR 266

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: R.P. Sarma, B. Chakraborty and U. Das, for the Appellant; B.L. Singh, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari, J.
This writ petition should serve as a reminder to the Government servants/Government employees that they are

servants/employees of the Government and not of any superior officer or of any other person, however, high or mighty such a person may be, and

that when a Government servant acts against the instructions/directions/orders of the Government in order to comply with the

instructions/directions/orders of his superior officer or of any other person, the law may not protect such an Act.

2. In this writ application, the petitioner, an Assistant Conservator of Forest, in the Department of Forests, Government of Arunachal Pradesh,

was, at the relevant time, holding the charge of the office of the Divisional Forest Officer, Khollong Forest Division, Balukpong. While the

petitioner was so serving as DFO, In-Charge of the Division, during the year 1995-96, he allegedly issued permits for felling/removing of trees

from the said Division for in excess of the quota fixed by the Government. For the alleged issuance of permits exceeding the quota allotted, the

petitioner was served with an office memorandum, dated 15.12.1997 (Annexure-H to the writ petition), informing the petitioner that a disciplinary

proceeding stood initiated against him on the articles of charges furnished therewith. There were altogether four articles of charges framed against

the petitioner. The petitioner submitted his reply showing cause against the charges so framed, his case being to the effect, inter-alia, that he had

been functioning as the In-Charge, DFO, under tremendous pressure from the Ministers concerned, his superior officers and local inhabitants and

though he had repeatedly drawn the attention of all concerned that they should not make any recommendation for issuance of permit beyond the

quota allotted for the Division, he was over-flooded with recommendations made by his superior officers as well as by the Ministers concerned

and under such circumstances, he had to issue, unwillingly, the permits as per the recommendations made. There was, according to the petitioner,

no mala fide in issuing the permits and, hence, he had not committed any misconduct.

3. In course of time, the departmental inquiry was held. The Inquiry Officer found the accusations made against the petitioner under Article Nos. 3

and 4 not proved. The Inquiry Officer, however, found the accusations made in the Article Nos. 1 and 2 as proved. The Inquiry Officer

accordingly submitted his inquiry report (Annexure-I). These findings were accepted by the disciplinary authority and thereafter, penalty of

reduction to lower stage from Rs. 9500 to 8900 in the time scale of pay of Rs. 6500-200-10500 p.m. for a period of 3 (three) years with effect

from 1.5.2000 was imposed on the petitioner with further direction that he will not earn increment of pay during the period of reduction and that on

the expiry of this period, the reduction will have the effect of postponing his future increments of pay. Feeling aggrieved, the petitioner preferred an

appeal. The appeal too was turned down.

4. The petitioner has, now, with the help of the present application made under Article 226 of the Constitution of India, approached this Court

seeking issuance of appropriate writ(s) setting aside and quashing not only the impugned order of punishment, dated 20.4.2000, but also the

charge-sheet, dated 15.1.2000 (Annexure-F), etc.

5. The State respondents have contested this case by filling their affidavit, the case of the respondents being, in brief, thus : the departmental inquiry

conducted against the petitioner reveals that the petitioner had exceeded the quota of the permits granted by the Government. The petitioner, being

a senior Government servant holding the post of trust and responsibility, ought to have stopped entertaining the recommendations from Ministers,

local MLA, politicians, bureaucrats and student leaders, when the quota stood exhausted. The petitioner had been given specific instructions not to

exceed the quota allotted except when recommendations were made by the Chief Minister or the Minister of Environment & Forests as special

cases. Since the petitioner misused his official position and failed to maintain absolute integrity, he deserves to be adequately punished. The penalty

imposed on the petitioner is not disproportionate to the gravity of the misconduct committed by him.

6. I have perused the materials on record. I have heard Mr. R. P. Sarmah, learned counsel for the petitioner, and Mr. B. L. Singh, learned Senior

Government Advocate appearing on behalf of the respondents.

7. It needs to be noted, at the very outset, that though a number of grounds have been taken in the writ petition challenging the issuance of charge-

sheet against the petitioner as well as the findings in the inquiry report, etc., yet, at the time of hearing, the only grievance, which has been

expressed, on behalf of the petitioner, is that the respondents were very harsh in dealing with the petitioner and that the petitioner"s case deserved

to be treated leniently inasmuch as the petitioner had to unwillingly issued permits in order to maintain his existence under the pressure of his

superior officers and Ministers. It is also submitted, on behalf of the petitioner, that the petitioner never acted with any ulterior motive or mala fide

and that there is no allegation that he has gained anything wrongfully from the issuance of such permits and, hence, his case deserves to be leniently

dealt with. The penalty imposed on the petitioner is, according to Mr. R. P. Sarmah, grossly disproportionate to the gravity of his misconduct.

8. Controverting the above submissions made on behalf of the petitioner, the respondents have submitted that in view of the findings arrived at by

the Inquiry Officer, the penalty imposed on the petitioner is just and proper.

9. In view of the fact that the findings of the inquiry report are not challenged before me at the time of hearing and in view also of the fact that the

observations made therein have been relied upon by Mr. Sarmah with a view to showing that the petitioner''s case deserved to be dealt with

leniently, let me quote hereinbelow, for the sake of brevity, the relevant observations as well as findings of the Inquiry Officer :

1. (a) Statement of Article of Charge:

ARTICLE-1 : That the said Shri Oni Dai, ACF while functioning as Divisional Forest Officer, Khellong Forest Division, Bhalukpong during the

year 1995-96 had granted 935 tree permits under six Ranges (Bhalukpong 398, Namorah-70, Amartala-49, Seijusa-167, Foothill-220 and

Rowta-31) against the allotted quota of 456 (Divisional Annual normal quota-350+Discretionary quota) by exceeding 479 in excess tree permits

thereby the said Shri Oni Dai, ACF has violated the provision of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

Defence of Government servant

ARTICLE-I : During the course of inquiry, Shri Oni Dai, ACF stated that he distributed the permit quota judiciously among the deserving people

of the area and exhausted the entire quota. Subsequently further recommendations from PCCF, Hon''ble Chief Minister, Hon''ble Ministers came

for issuing permits to more persons and accordingly to honour their recommendations, he issued permit afresh and thus exceeded the quota. He

further stated that he sent a WT to PCCF requesting him not to forward any application further for issuing tree permits or additional quota may be

provided.

(c) Assessment of evidence in respect of Article of charge.

ARTICLE-I : During the course of inquiry as mentioned above, Shri Oni Dai, ACF has already accepted that he exceeded the permit quota.

However, he mentioned some ground/reason as to how he exceeded the quota. As per practice the quota used to be fixed by the PCCF against

each division. But certainly while forwarding applications of various applicants to the concerned DFO to issue permits. Similarly, Hon''ble Ministers

also used to send recommendations to issue permits enclosing the list of applicants but DFO was supposed to entertain all these cases referred by

PCCF or Hon''ble Ministers within the quota until and unless it has been clearly stated in the letter of PCCF to exceed the quota to a certain extent

to be adjusted/regularised subsequently by the PCCF.

Findings of the Article of charge and reasons thereof.

ARTICLE-I : From the statement of the officer during enquiry, it is already established that he exceeded the quota. However, he narrated grounds

as to how the exceeded the quota. Shri Oni Dai should have stopped entertaining the recommendations from PCCF or Hon''ble Ministers when

the quota exhausted and should have waited for the reply over the WT as stated to have been sent to PCCF by him and until and unless additional

quota were granted, he should not have entertained nay application at all. Therefore, the article of charge levelled against the officer that he

exceeded the permit quota by 479 has been established. But the ground on which the quota was exceeded has to be viewed leniently by the

competent authority.

II. (a) Statement of article of charge

ARTICLE-II : That during the aforesaid period and while functioning in the aforesaid office the said Shri Oni Dai, ACF had issued 4 tree permits

under Foothill Forest Rang in the name of Shri Phuntso, Smti. Tashi, Mrs. Dorjee and Mrs. Norbu which are titles only and thereby failed to verify

the antecedents before issuing tree permits. Shri Oni Dai, ACF had granted 7 (seven) permits to the persons namely, Shri Ashinka Libasaw, BK

Khabisow, Dilip Dususow, Menba Aka, Chege Ramdasow, Gedang Dususow and Udro Jebisow of which the first 3 persons have never applied

for grant of tree permits and the rest 4 persons are fake and thereby Shri Oni Dai, ACF has contravened the provision of Rule 3(1)(i), (ii) & (iii) of

CCS (Conduct) Rules, 1964.

(b) Defence of Government Servant.

ARTICLE-II : Shri Oni Dai ACF took the plea during the course of inquiry that Hon''ble Ministers and even Hon''ble Chief Minister used to send

recommendations over the applications duly signed by them for issuing permits and in some cases, the name of the applicant used to be only

Surnames"" mentioned in the list and to honour the recommendations of the VIPs, he used to issue the permits mentioning the surname only of the

applicants thinking that when the case has been recommended by the VIPs, the applicants must be genuine and deserving persons.

(c) Assessment of evidence in respect of article of charge.

ARTICLE-II : The pleas of Shri Oni Dai, ACF regarding issuing of permits only in surnames or even in full name also without verifying the

antecedents before issuing the permits dose not hold good as the VIPs or public leaders simply recommended/forward the cases whoever

approaches them. But as a Government official, i.e., as DFO it was certainly his duty to verify the antecedents/genuineness of every applicant and

particularly in case of applicants where surnames was only given to know the full name of the applicant and address. Further as per Shri GR

Yadav''s report, Shri Oni Dai, ACF has accepted that he issued permits in the name and title of Aka community, i.e., in fake names and to have an

amicable settlement he donated Rs. 40000 to the Aka community for their Society fund of Bhalukpong.

Finding on the article of charge and reasons thereof.

ARTICLE-II : From the statement of Shri Oni Dai, ACF as well as from his accepted statements regarding payment of Rs. 40000 to Aka

community by him, this article of charge also established that the permits were issued in fake names by Shri Oni Dai as he himself accepted during

the public meeting held on 14.9.1996 regarding issuing of permits in fake names and donated Rs. 40000 for amicable settlement.

Finding on the article of charge and reasons thereof.

ARTICLE-III : This article of charge is not proved as it could not be established that the permit grantees of titles were related to Shri Oni Dai,

ACF.

Finding on the article of charge and reasons thereof.

ARTICLE-IV : This article is not proved as the instructions itself from PCCF was not clear as well as the system adopted by PCCF regarding

discretionary quota was itself not clear and DFO"s immediate controlling officer, i.e., Conservator of Forests was also not having any knowledge

about the discretionary quota and therefore now drawing charge sheet against the DFO that he did not interpret PCCF"s letter properly while

issuing permits against discretionary quota does not hold good and therefore this article of charge is not proved.

10. On a careful reading of the findings reached by the Inquiry Officer in respect of Article No. 1, there can be no escape from the conclusion that

the petitioner exceed the quota fixed for issuance of permit and that he had issued as many as 479 permits beyond the quota fixed by the

Government. The fact that the petitioner exceeded the quota, as fixed by the Government, is not in dispute. The petitioner claims to have acted

under pressure from Ministers and other superior officers as well as local political leaders. A Government servant, who bends himself under the

pressure of any politician or his superior officer or acts at the dictates of such a person, does not deserve to be leniently dealt with, for, he must

bear in mind that a Government employee is not an employee of any individual, but of the Government and his loyalty shall be to Government and

not to any one else. This apart, there is nothing discernible from the materials on record to show that the petitioner was under any threats

compelling him to issue the permit. In fact, the issuance of the permits was on the basis of the recommendations made. The recommendations are

mere recommendations and cannot take the shape of law or statutory directions. There is nothing on record to show that the petitioner was

directed by any one to exceed the quota. If the Government employees are allotted to work and behave in the manner as the petitioner has done,

the politicians and the Government officers may survive, but the existence of the Government itself may become difficult.

11. Coupled with the above, it is also of immense importance to note that the petitioner made no effort whatsoever to even determine as to who

were the persons concerned in whose favour the petitioner had issued permits inasmuch as the findings in the inquiry report in respect of Article II

reveal that the petitioner had issued permits even on the basis of such recommendations in which the full name of the persons concerned had not

been mentioned. It, thus, appears that the petitioner was mechanically carrying out the recommendations made by the persons aforementioned and

was not discharging his duties as a responsible Government servant. The result was that permits were, admittedly, issued in the names of even

fictitious persons.

12. In view of the findings in the inquiry report, the petitioner''s case did deserve to be dealt with leniently. Even then, the petitioner has been

leniently dealt with, the penalty imposed on the petitioner is far from being harsh and/or disproportionate to the gravity of the misconduct

committed by him.

13. Considering, therefore, the matter in its entirety, I see no merit in this writ petition and the same is accordingly dismissed. No order as to costs.