

Hauzel Haukung Vs The Principal Chief Conservator of Forest, Govt. of Manipur and Another

Court: Gauhati High Court

Date of Decision: April 11, 1994

Acts Referred: Central Civil Services (Conduct) Rules, 1964 " Rule 3
Constitution of India, 1950 " Article 226, 311(2)

Citation: (1994) 2 GLR 150

Hon'ble Judges: N.G. Das, J

Bench: Single Bench

Advocate: Ng. Kumar Singh, for the Appellant; R.K. Sanajaoba, Government Advocate, for the Respondent

Judgement

N.G. Das, J.

By means of this application filed under Article 226 of the Constitution of India, the Petitioner Shri Hauzel Haukung has challenged the Validity of the order of Principal Chief Conservator of Forest, Govt. of manipur, dated 11th February, 1994 contained in

Annexure-A/10 and made a prayer for quashing the same.

2. I have heard Mr. Ng Kumar the learned Counsel appearing on behalf of the Petitioner and Mr. R.K. Sanajnoba Singh, the learned Counsel

appearing on behalf of the Respondents.

3. The only question that falls for decision in this ease is whether the disciplinary authority, namely, the Respondent No. I is entitled to pass the

impugned order contained in, Annexure-A/10) without furnishing a copy of the report of the enquiring officer to the Petitioner, namely, the

delinquent official.

4. A disciplinary proceeding was started against the Petitioner on the allegation that while functioning as Cashier of the Divisional Forest Office,

Southern Forest Divn. Office, Churachandpur during the period from 8-6-87 to 31-3-89 he violated the Rule 3 of the Central Civil Services

(Conduct) Rules, 1964 inasmuch as that he violated the order/instructions of the superior authority in encashing an amount of Rs. 2.70 lakh

belonging to the Government with some ulterior motive, The matter was assigned to some enquiring officer who after making necessary enquiry as

per the procedure held the Petitioner guilty of the charge that was framed against him, On the basis of the enquiry report the disciplinary authority

namely, the Principal Conservator of Forest passed the impugned order.

5. The only point of criticism advanced by Mr. Ng. Kumar Singh, the learned Counsel appearing on behalf of the Petitioner is that the impugned

order is bad in law and that cannot be sustained simply because no copy of the enquiry report was furnished to the Petitioner before the impugned

order was passed. In support of his contention Mr. Kumar has placed reliance in a decision rendered by the Apex Court in the case of Union of

India and Ors. Appellants v. Mohd. Ramzan Khan, Respondent, reported in Union of India and others Vs. Mohd. Ramzan Khan, In the aforesaid

judgment Their Lordships held under para 13 that:

Disciplinary inquiry is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the

material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. With the Forty

Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the sub-missions

made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent

officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing

the contents thereof although such material is used against him by the disciplinary authority, The report is an adverse material if the Inquiry Officer

records a finding of guilt and proposes a punishment so far as the delinquent is concerned, In a quasi-judicial matter if the delinquent is being

deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his

conclusion, rules of natural justice would be affected.

6. The next decision referred to by Mr. Kumar is the case of Managing Director, ECIL, Hyderabad and Ors. Appellants v. B. Karunakar and

Ors. Respondents reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., In this judgment also Their Lordships examined

the scope of Article 311(2) of the Constitution and held:

The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry,

which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and

to assist him), the employees' reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an

integral part of such inquiry.

Hence, 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 with regard to the charges

levelled against him. That right 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 a denial of reasonable opportunity to the employee to prove

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

7. It would, therefore be quite apparent from the decisions referred to above that the delinquent official is entitled to get a copy of the report of the

Enquiry Officer when enquiry Officer is an officer other than the disciplinary authority. In the instant case, it is an admitted fact that the Enquiry

Officer who submitted the report of the disciplinary proceeding is an officer other than the disciplinary authority.

8. Mr. R.K. Sanajaoba, the learned Counsel appearing on behalf of the Respondents also submitted that in view of the aforesaid decisions a

delinquent official is entitled to get a copy of the report of Enquiry Officer in case the report goes against him and on the basis of that report his

departmental authority awards any sort of punishment

9. But what he has contended quite strenuously is that this requirement of furnishing copy of the report of the Enquiry, Officer can be dispensed

with if the delinquent official is given post decisional hearing after furnishing copy of the enquiry report to the delinquent official. In support of his

contention Mr. Sanajaoba has referred to a decision of this Court reported in (1993) 1 GLR 204. The other decision referred to by the learned

Counsel for the Respondents is of the case of Charan Lal Sahu v. Union of India which is most popularly known as Bhopal Gas Disaster case

reported in Charan Lal Sahu Vs. Union of India,

10. So far as the case of (1993) 1 GLR 204 is concerned I find that this is a case in respect of acceptance of some grounds. Actually the court was

not called upon to give a decision in respect of the provisions laid down under Article 311(2) of the Constitution. Similarly, in the case of Bhopal

Gas Disaster the court was not called upon to give a decision as to this scope and ambit of Article 311(2) of the Constitution. So, these two

decisions do not appear to be applicable to the present case.

11. Mr. Kumar in support of his contention has also placed reliance upon a decision rendered in the case of K.I. Shephard and Ors. etc.,

Petitioners v. Union of India and Ors. Respondents reported in K.I. Shephard and Others Vs. Union of India (UOI) and Others, In this case Their

Lordships observed in para 16 of the Judgment that there is no jurisdiction to think of a post decisional hearing. On the other band, the normal rule

should apply.

12. So, upon consideration of all the facts, circumstances and the principles of law enunciated by the Apex Court I am of the considered opinion

that the impugned order of Principal Chief Conservator of Forest dated 11th February, 1994 contained in Annexure -A/10 is not tenable in law

and accordingly it is quashed.

13. Learned Counsel for the Petitioner has submitted that Petitioner has already been furnished with a copy of the enquiry report and hence no

fresh copy of the enquiry reports is required to be supplied to him. The Petitioner is, therefore, granted 10 days time from today to submit this

reply, if any, to meet, explain and controvert the enquiry report to the disciplinary authority who in turn must dispose of the matter after affording

fair opportunity to the Petitioner to meet the report of the enquiry officer within a period of two weeks from the date of submission of the reply of

the Petitioner.

14. The writ petition is accordingly disposed of. But under the circumstances make no order as to costs