

GAHC040011682023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP(C)/437/2023

Smti Nada Dumi

Age: 0

Occupation :

Address:D/o Nada Gyabo

Village- Hlja

PO/PS Ziro

District Lower Subansiri

Arunachal Pradesh. Mobile No. 9957650164

VERSUS

The State of AP and Anr.

Age: 0

Occupation :

Address:represented by the Secretary Personal Government of Arunachal Pradesh
Itanagar.

2:The Deputy Commissioner

Age: 0

Occupation :

Address:Lower Subansiri District

Ziro

Arunachal Pradesh.

Advocate for : Khoda Tari

Advocate for : GA (AP) appearing for The State of AP and Anr.: Advocate , appearing
for 2, respectively.

BEFORE
HONBLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 11-10-2023

Heard Mr. K. Tari, learned counsel for the petitioner.

Also heard Ms. R. Basar, learned Junior Government Advocate, Arunachal Pradesh, appearing for the State respondents.

2. This writ petition is directed against the Order, dated 25.08.2023, issued by the Deputy Commissioner, Lower Subansiri District, Ziro, vide no. E-7962/96/813(a) whereby, the petitioner, Ex-peon has been terminated from service w.e.f. 28.05.2014 who was placed under "dies non" w.e.f. 28.05.2014 due to her prolonged wilful absence from duty.

3. The case of the petitioner, in a nutshell, is that he had filed Writ Petition No.147/2020 challenging the order No.E-7962/96, dated 24.04.2020 by which her service was terminated by the respondent No.2. This Court vide order, dated 10.11.2022 had set aside and quashed the said termination order, dated 24.04.2020 directing the respondent authority to reinstate the petitioner back into service. Accordingly, the respondent authority, vide order No. E-7976/1996, dated 08.06.2023 reinstated the service of the petitioner, but her service was placed under 'dies non' status as was on 25.04.2014. Being aggrieved by the 'dies non' status the petitioner submitted a representation for alteration/modification of the order, dated 08.06.2023 vide representation, dated 13.06.2023. But, as the said representation has not been considered the petitioner again filed the connected WP(C) No.427/2023 on 25.08.2023, which is pending adjudication. However, on the same day, that is, on 25.08.2023 the impugned termination order, dated 25.08.2023 was issued against the petitioner. Being aggrieved by the said termination order the petitioner has filed the instant writ petition.

4. Mr. K. Tari, learned counsel for the petitioner, submits that Article 311(2) of the Constitution of India provides that only after an inquiry a regular employee can be removed or dismissed from service and on the other hand, Rule 14(4)(a) of the CCS(CCA) Rules prescribes the mode of inquiry. However, the petitioner has been terminated from service on 25.08.2023 without any inquiry in accordance with the prescribed manner in law. Mr. Tari further submits that the petitioner was terminated by the respondent No. 2 by an order ,dated 24.04.2020, which was set aside and quashed by this Court by the judgment and order, dated 10.11.2022 and accordingly, she was reinstated in service. Accordingly, although the respondent authority reinstated her in service, her service has been placed under 'dies non' status as was on 25.05.2014. Aggrieved by the aforesaid status of 'dies non' she filed the connected WP(C) No. 427/2023 on 25.08.2020, which is pending adjudication and on the same day, the impugned termination order, dated 25.08.2023 has been issued against the petitioner without following the due procedure of law.

5. Ms. R. Basar, learned Junior Government Advocate, appearing for the respondents fairly admits that the writ petitioner has been terminated from service without following the prescribed procedure and as such, the impugned termination order, dated 25.08.2023 may be set aside and quashed and a direction may be issued for reinstatement in service of the petitioner with liberty to draw up appropriate departmental proceeding at the discretion of the respondent authority.

6. I have considered the above submissions made by the learned counsel for both sides and perused records including the original D.P. File No. E-7962/96/2023. Also perused the affidavit-in-opposition filed by the respondent

No. 2.

7. It may be mentioned that Article 311(2) of the Constitution of India provides that no person who is a member of a civil service of the Union or an All India Service or a civil service of a state or holds a civil post under the Union or a state shall be dismissed or removed or reduced in rank except after an inquiry in which he/she has been informed of the charges against him/her and given a reasonable opportunity of being heard in respect of those charges. There is no dispute that in respect of a civil servant under the state of Arunachal Pradesh, the provisions of the CCS(CCA), 1965 apply. The same provides for the procedure and the manner in which disciplinary action and on having proved the charges against the delinquent government servant can be imposed with major penalty like termination from service. In this context, Rule 14(4)(a) of the CCS(CCA) Rules provides that the Disciplinary Authority shall deliver or cause to be delivered to the government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained.

8. Rule 14(3), 14(4) and 14(5) of the CCS(CCA) Rules provide a detailed procedure to be followed in inquiry by the disciplinary authority as hereunder extracted-

“14.

(3) *Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up-*

(i) *the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;*

(ii) *a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-*

(a) *a statement of all relevant facts including any admission confession made by the Government servant;*

(b) *a list of documents by which, and list of witnesses by whom the articles of charge are proposed to be sustained.*

(4)(a) *The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained.*

(b) *On receipt of the articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extended for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorized by the Disciplinary Authority on his behalf:*

Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed forty-five days from the date of receipt of articles of charge.

(5)(a) *On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule(2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule*

15.

(b) *If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an Inquiring Authority for the purpose.*

(c) *Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.*

Explanation –For the purposes of this rule, the expression 'Government servant' includes a person who has ceased to be in Government service."

9. The Disciplinary Enquiry Report is extracted hereinbelow-

"DISCIPLINARY ENQUIRY REPORT"

In pursuance of Deputy Commissioner's Lower Subansiri District, Ziro order No. E-7962/96 dtd 17/8/2023, the members of Constituted Departmental enquiry Committee has assembled in the office Chamber of Addl. Deputy Commissioner on 25/08/2023 at 11.30 hrs to examine the disciplinary proceedings against Smti Nada Dumj, Ex-peon DC's office, Ziro.

All the relevant records and documents like personal file, service books and other related documents pertaining to Smti Nada Dumj, Ex-Peon was placed before the board members. On going through the records and careful examination it was found that Smti Nada Dumj, Ex-Peon was habitual absente from duty from the date of her joining in the service MTS(Peon) w.e.f. 12/11/1996. It is observed that till 28/5/2014 when she was placed dies-non with attendant disabilities under FR-17(A)(iii), she had been served one warning letter and 6(six) times show cause notice for her willful absence from duty which speaks itself her uninterested in services. It is also observed that each time she had applied all kinds of leave for regularisation of her absence period under medical ground but never submitted medical fitness certificate to resume the duty which is mandatory as per CCS rules.

It is seen from the records that because of prolong willful absent from duty, her pay and allowances were held up w.e.f. 28/5/2014 vide No. E-7962/1996 dtd ziro the 11th August 2014, subsequently she was placed under Dies-non with attendant disabilities under FR-17(A)

(iii) w.e.f. 28/5/2014 vide No. E-7962/1996 dated Ziro the 25th Aug 2014.

Since then neither she turn up for duty nor she was approach to appropriate authority for condonation or relaxation of her absence period till march'2020.

It is also observed that the authority, by showing a leniency has issued a notice to her for joining in the duty as a last chance within the 7 days from the date of issue of notice vide No.E-7962/96 dated Ziro the 13th March 2020 but she submitted her joining report after expiry of 7 days on 20/3/2020 that is also without medical fitness certificate as a result the authority did not accept her joining.

From the above observation it is evident that in the entire episode. She did not try to improve her conduct nor interested in service. It is also found that she was absent from duty more than 5(five) years at a stretch without prior permission and intimation from competent authority which shall be considered as willful absent from duty without authorisation. The competent authority has given a reasonable opportunity to improve her conduct but failed.

As per sl.No. 2 synopsis under FR 73 in Jai Shankar V State of Rajasthan AIR 1966 SC 492, the Supreme Court has held that absence for a period exceeding five years is a fault on the part of the employee which may entitle Government in a suitable case to dismiss or remove him from service. Also as per Memo No. 083622/434/Adm-I/4/82-2/6-9-82, Employees who had been in continuous unauthorised absence from duty for more than 5 years, may be removed from service. Also sub section(b) of section 2 of Rule 7 of the All India Services (Leave) Rules 1955 says that a member of the service shall be deemed to have resigned from the service if he/she is absent from duty for a continuous period exceeding five years even if the period of unauthorised essence is less than a year.

In view of the fact stated above in the instant case, the employee was absence without authorisation for more than 5 years continuously, hence the board recommended for removal or termination her from service.

*(Tage Tatung)EAC
Member*

*(Dr. Singpor Rigia) i/c DMO
Member*

*(Tasso Butung)DAO
Member*

*(Hage Yana Jopier)FAO
Member*

*(Millo Kojin) ADC
Chairman"*

10. A perusal of the file of the Departmental Proceeding shows that the petitioner was a regular government servant in the post of Peon in the

establishment of the Deputy Commissioner, Ziro and the above procedure prescribed in Rule 14 of the CCS(CCA) Rules, extracted hereinabove was not followed before/during and after the Disciplinary Proceeding was completed leading to her termination from service vide the impugned order, dated 25.08.2023 (Annexure-7). The aforesaid termination order was passed in violation of Article 311 of the Constitution of India as well.

11. In view of the above reasons, the impugned service termination order issued by the respondent No.2, dated 25.08.2023 is hereby quashed and set aside and accordingly, it is directed to reinstate the petitioner in service with immediate effect, after receipt of a certified copy of this judgment and order which shall be furnished by the petitioner.

12. However, liberty is granted to the respondent authorities to initiate fresh departmental proceedings as may be permissible in law, if so advised.

With the above observations and directions the writ petition stands disposed of.

JUDGE

Comparing Assistant