

GAHC010097022018



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

Case No. : WP(C)/3027/2018

DULAL MAHANTA
SON OF LATE GOPI KANTA MAHANTA, RESIDENT OF PRATAP SHARMA
ROAD, AMOLAPATTY, P.O.- NAGAON, DISTRICT- NAGAON, ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD. AND 2 ORS.
REPRESENTED BY THE CHAIRMAN, BIJULEE BHAWAN, PALTAN BAZAR,
GUWAHATI.

2:THE CHAIRMAN AND MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI.

3:THE CHIEF GENERAL MANAGER (D)
ASSAM POWER DISTRIBUTION COMPANY
BIJULEE BHAWAN
(CENTRAL ASSAM ZONE)
PALTAN BAZAR
GUWAHATI

Advocate for the Petitioner : MR. T J MAHANTA (SR. ADV).

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

13-09-2023

Heard Ms. P. Bhattacharyya, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Assam Power Distribution Company Limited (APDCL).

2. This petition is preferred by the petitioner, who was an employee of the Assam Power Distribution Company Limited (APDCL). The petitioner was appointed as a Junior Engineer in APDCL on 31.08.1997 and since then he has been rendering his services in the APDCL. Subsequently, the petitioner was promoted to the post of Deputy Manager and was posted at Nagaon Electrical Sub-Division-III, CAEDCL, Nagaon on 20.12.2007. During his tenure as a Deputy Manager in Nagaon, pursuant to an FIR lodged in the Hoiborgaon Police Outpost a criminal case being Nagaon Police Case No.978/2007 under Section 409/411 was registered against the petitioner and accordingly, investigation was carried on by the police. The Charge Sheet was filed in connection with Nagaon Police Case No.978/2007 under Section 409/41 and the case proceeded against the petitioner before the Chief Judicial Magistrate (CJM), Nagaon on

31.07.2008 .

3. In spite of the final report being submitted and the criminal proceedings dropped against the petitioner, the Departmental Authorities initiated a departmental proceedings by issuing a show cause under the Regulation 10 of the ASEB (General Service) Regulations (for officers), 1960. The petitioner was asked to submit his written statements within 10 days from the date of receipt of the show cause notice. The petitioner submitted his reply to the show-cause. However, the authorities instituted a disciplinary proceeding against the petitioner. Pursuant to the enquiry conducted the enquiry officer submitted his enquiry report on 28.08.2009 stating that the charges against the petitioner has been proved. Thereafter, the Disciplinary Authority accepted the enquiry report and issued another show-cause to the petitioner asking him to show-cause as to why the proposed penalty of reduction to lower stage by five increments with cumulative effect should not be imposed. The petitioner was also permitted to appear personally before the Disciplinary Authorities.

4. In response to the subsequent show-cause notice, the petitioner submitted his reply and also appeared personally before the authorities requesting not to impose the proposed punishment. However, by order dated 29.10.2009, the Chairman-cum Managing Director, LAEDCL ordered imposition of the punishment

of stoppage of one increment with cumulative effect on the petitioner. The petitioner preferred an appeal before the appellate authority which also came to be rejected. Being aggrieved, the petitioner has approached this court by filing the writ petition being WP© No.2948 of 2011 challenging the impugned enquiry report dated 28.08.2009, the order of the disciplinary authority dated 29.10.2009 and the order of the appellate authority vide minus dated 10.12.2010. This Court, by order dated 04.09.2017, disposed of the writ petition with a direction to the respondent No.2, namely, the Chairman and Managing Director, APDCL, to place the appeal of the petitioner before the Board within a period of 3 (three) weeks from the date of receipt of a certified copy of the order and thereafter, the Board was directed to consider and dispose of the appeal within a period of 2 (two) months from the date of receipt of the appeal by reconsidering the penalty imposed. The earlier order passed by the appellate authority was interfered with. Pursuant to the orders passed by this Court, the appellate authority reconsidered the matter. However, by order dated 08.12.2017, the Board declined to interfere with the quantum of penalty imposed upon the petitioner on 16.12.2009 and sustained the earlier punishment imposed. Being aggrieved, the present writ petition has been filed.

5. The learned counsel for the petitioner referring to Regulation 10 of the ASEB (General Service) Regulations (for officers), 1960, submits that the

punishment imposed on the petitioner was without any authority as the same went beyond the penalties prescribed under the Rules. It is submitted that the authorities imposed the penalty as per their whims and fancies. The penalties are prescribed under the Regulations and if the said penalties are required to be imposed, then the same shall be as per the penalties prescribed under the Rules. Under such circumstances, the impugned order dated 08.12.2017 passed by the Chief General Manager (HRA) APDCL as well as the order dated 29.10.2009 issued by the Chairman and Managing Director, LAEDCL need to be set aside and quashed.

6. Mr. D. Gogoi, learned Standing Counsel, APDCL submits with all fairness that the Rules prescribe the penalty "stoppage of increment for a specified period." He submits that the authorities are empowered to impose penalty for stoppage of increments, but the same has to be for a specified period.

7. Learned counsel for the parties have been heard. Pleadings on record have been carefully perused.

8. The Regulations of 10.2 (a) of the ASEB (General Service) Regulations (for officers), 1960 are extracted herein below:

10.2 (a) Without prejudice to the provisions of any law for the time being in force any of the following penalties may be imposed on an employee found guilty of misconduct-

(i) Warning.

(ii) Reprimand or Censure.

(iii) **Stoppage of increment for a specified period.**

(iv) Fine.

(v) Reduction to a lower post or to a lower time scale or to lower stage in a time scale.

(vi) Compulsory retirement;

(vii) Termination of employment;

(viii) Dismissal.”

9. A careful perusal of the Rules reveal that while there is a power prescribed punishment by the disciplinary authority, however, the same will have to be imposed as per the prescribed rules. On consideration of the provisions of Regulation 10.2(a) of the 1960 Regulation, it is seen that the disciplinary authority can impose the penalty of stoppage of increment for a specific period only on an employee found guilty of mis-conduct.

10. From a perusal of the Rules, it is clear that the authorities, although empowered to impose punishments under the Regulations the same can be imposed as prescribed under the Regulations. The punishments unless specifically prescribed under the Regulations cannot be imposed by the

authorities nor can they be altered by the disciplinary authority. Any punishment imposed which is not prescribed will have to be considered to be a punishment contrary to the Regulations as the same are not prescribed. In the facts of the present case, the Rules prescribe stoppage of increment for a specified period. What the disciplinary authority imposed on the petitioner in the form of penalty is stoppage of increment with cumulative effect. The effect of this penalty imposed is that the increment which was earned by the petitioner during his service tenure was stopped with cumulative effect. The petitioner superannuated from service on 31.07.2015. There is no proceeding pending against the petitioner at present, nor any order were passed by the disciplinary authority or any other competent authority withholding the pension payable to the petitioner. However, the effect of the penalty imposed on the petitioner, namely " stoppage of one increment with cumulative effect" will ultimately affect the pension payable to the petitioner. Such orders passed by the disciplinary authority besides being contrary to the punishments prescribed under the Regulations, will amount to exposing the petitioner to continue the penalty which is not contemplated under the Regulations.

11. In the earlier round of litigation i.e. WP© No.2948 of 2011 this Court by order dated 04.09.2017 had made an observation that the punishment imposed is beyond the prescriptions under the Rules. Although, the matter was left to the

authorities to revisit the imposition of penalty and pass appropriate orders, however, while remanding the matter back to the authorities, the coordinate bench had observed that the punishment was contrary to the prescription under the regulation. This finding of the coordinate bench has remained and has attained finality.

12. The authorities had chosen not to pursue their remedy before a higher appellate forum against the order passed by the Writ Court earlier. In view of such specific directions, there was no option for the authorities not to reconsider the penalty imposed and pass appropriate orders as directed earlier. The Board chose to sustain the penalties imposed earlier by dismissing the appeal of the petitioner by its 34th meeting of the minutes dated 10.12.2010 was already interfered with. It sustained the order notwithstanding the said decision of the Board was interfered with. In that view of the matter the impugned order dated 08.12.2017 whereby the penalty imposed earlier by the appellate authority was sustained is hereby set aside. The matter is remanded back to the authorities. The authorities will now reconsider the issue and pass appropriate orders as prescribed under the Regulation 10 of the ASEB (General Service) Regulations (for officers), 1960.

13. This exercise is required to be done as expeditiously as possible as the

petitioner has superannuated in the meantime. Accordingly, the directions above shall be carried out within a period of 30 (thirty) days from the date of receipt of a certified copy of this order.

In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant