

GAHC010118802019



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

Case No. : WP(C)/3525/2019

AMARENDRA NATH
S/O LATE MOHAN CHANDRA NATH, R/O HOUSE NO. 80, SANTIPUR HILL
SIDE, PNBG ROAD, PO AND PS- BHARALUMUKH, GHY-9.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPTT., DISPUR, GHY-6.

2:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GHY-6.

3:COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR, GHY

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : SC, EXCISE DEPTT.

B E F O R E
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

23-02-2023

Heard Mr. U.K. Nair, learned senior counsel assisted by Mr. A. Bora, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Excise Department for the respondents.

2. While the petitioner was serving as Officer-in-Charge of one M/s B.G. Bonded Warehouse situated at Lokra, Guwahati, an allegation was made against him with regard to misappropriation of Excise and VAT revenue while he was holding the post of Deputy Superintendent of Excise during 2012 to May, 2015. Accordingly, CID P.S. Case No.54/2015 under Section 120(B)/468/471/409 I.P.C., and read with Section 13(2) of Prevention of Corruption Act, was registered. The petitioner was placed under suspension with immediate effect by Notification dated 25.05.2017. The petitioner was accordingly arrested by the CID on 10.06.2017 in connection with the aforementioned case. Thereafter, the petitioner was granted bail by this Court by Order dated 21.09.2017 passed in B.A. No.1272/2017.

3. The petitioner was issued a show cause notice dated 18.08.2017 on the charge that while he was holding the post of Deputy Superintendent of Excise during 2012 to May 2015 at the M/s B.G. Bonded Warehouse, Lokhara, Guwahati, he was found to be involved in defalcation of an amount of Rs.19.86 Crores as excise revenue apart from sales tax, in terms of the communication dated 5th July, 2017 received from the Deputy Superintendent of Police, CID, Assam, Ulubari, Guwahati. Apart from the

show cause notice, no list of documents was furnished to the petitioner. However, subsequently, the same was furnished to him. Accordingly, the petitioner made his reply to the show cause notice on 22.04.2018.

4. In the meantime, the petitioner approached this Court by filing W.P. (C) No.7556 of 2017 challenging his suspension order. The said writ petition was disposed of by this Court on 16.11.2018 by setting aside the suspension order dated 24.05.2017. Accordingly, the petitioner was reinstated back to service with immediate effect and posted at Parbatjhora, Kokrajhar District as Deputy Superintendent of Excise by Notification dated 21.02.2019.

5. By Notification dated 27.12.2017, the State Enquiry Officer and the Presenting Officer were appointed. Thereafter, the Enquiry Officer by the letter dated 13.04.2018 wrote to the Commissioner and Secretary to the Government of Assam, Excise Department (Disciplinary Authority) observing that – (a) no list of witnesses has been provided with the case records; (b) no documents relating to the case has been provided with the case records; (c) the written statement of the petitioner in respect of the show cause notice has not been provided with the case records; and (d) the charges were not properly framed. Accordingly, the case record was returned for taking necessary action.

6. By another letter dated 25.06.2018, the Enquiry Officer again wrote back to the Disciplinary Authority requesting the later to frame the charge properly against the petitioner by mentioning specifically the Rule/procedure etc. that has been violated by the delinquent official for which he is charged with the specific accusation(s). The letter further

stated that it is not possible to prove or disprove a charge if it is not framed properly.

7. Consequently, another show cause notice was issued to the petitioner on 25.01.2019 and in the List of Documents; the show cause reply received from the petitioner on 22.04.2018 and the earlier show cause notice dated 18.08.2017 were listed along with the other five documents. Being aggrieved with the second show cause notice dated 25.01.2019, the petitioner is before this Court challenging the same on the ground that the show cause reply made by the petitioner on 22.04.2018 is being used against him and the same vitiate the second show cause notice dated 25.1.2019. Further, it is the case of the petitioner that the Enquiry Officer is not empowered to write back to the Disciplinary Authority directing him to frame fresh charges in terms of the Assam Services (Discipline and Appeal) Rules, 1964 (for short 'the Rule of 1964').

8. Mr. U.K. Nair, learned senior counsel for the petitioner also submits that if any further steps are to be taken, the same has to be done after the conclusion of the enquiry in terms of Rule 9(6) and thereafter to proceed with the procedure as laid down in Rule 9(7) of the Rules of 1964, and the explanation given thereto.

9. Mr. D. Gogoi, learned Standing Counsel, Excise Department, however, submits that the second show cause notice dated 25.01.2019 is an additional show cause notice supplementing the first show cause notice by framing definite charges against the delinquent officer. He, therefore, submits that as the disciplinary proceeding is yet to commence, no interference is required with the supplementary show cause notice dated

25.01.2019.

10. Learned Standing Counsel for the Excise Department has also placed reliance on the decisions of the Hon'ble Supreme Court in –

- (1) ***Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, (1995) 1 SCC 332;***
- (2) ***Union of India and another Vs. Kunisetty Satranarayana, (1996) 12 SCC 28;***
- (3) ***Sakiri Vasu Vs. State of Uttar Pradesh and ors, (2008) 2 SCC 409;***
- (4) ***Anant R. Kulkarni Vs. Y.P. Education Society and ors., (2013) 6 SCC 515;*** and
- (5) ***Union of India and ors. Vs. P. Gunasekaran, (2015) 2 SCC 610.***

11. I have considered the submissions made by the learned counsel for the parties. This Court has also perused the record produced by the learned Standing Counsel for the Excise Department.

12. Rule 9 of the Rules of 1964 provides for the procedure for imposing penalties and the process of disciplinary proceeding. Rule 9(6) and 9(7) are reproduced herein below :-

9. Procedure for imposing penalties –

(1) ...

....

(6) The Enquiring Authority shall, in the course of the enquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to adduce documentary and oral evidence in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing.

(7) At the conclusion of the inquiry, the inquiring Authority shall prepare a report of the enquiry, recording its findings on each of the charges together with reasons therefor.

Explanations – If in the opinion of the Enquiring Authority the proceedings of the enquiry establish any article of charge different from the original article of the charge it may record its findings on such article of charge :

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge.”

13. On perusal of the records produced by the learned Standing Counsel, Excise Department, this Court has also considered the letter dated 13th April, 2018 written by the Inquiry Officer to the Disciplinary Authority and the same is also reproduced below :-

**“GOVERNMENT OF ASSAM
OFFICE OF THE STATE ENQUIRY OFFICER : ASSAM :
ASSAM SECRETARIAT (CIVIL), DISPUR.**

No.ABE.2/2018/5

Dated Dispur, the 13th April, 2018.

**To : The Commissioner and Secy. to the Govt. of Assam.
Excise Department, Dispur, Guwahati – 781006.**

**Sub : Departmental Proceeding against Shri Amarendra Nath, Deputy
Superintendent of Excise, M/S B.G. Bonded Warehouse Lokhara,
Guwahati.**

Ref : Your Notification No. EX.253/93/Pt./45, dated 27th December, 2017.

Sir,

With reference to the Notification mentioned above initiating an enquiry under Rule 9 of the Assam Services (Discipline and Appeal) rules, 1964 in respect of the charges framed against Shri Amarendra Nath, Deputy Superintendent of Excise, M/S B.G. Bonded Warehouse Lokhara, Guwahati, it is observed that-

- 1. No list of witnesses has been provided with the Case Records**
- 2. No documents relating to the case has been provided with the case records.**
- 3. The Written Statement of Shri Amarendra Nath Deputy Supdt. of Excise in respect to the Show Cause Notice has not been provided with the case records.**
- 4. The charges have not been framed properly.**

Without the above documents, it is impossible to proceed with the enquiry.

The case record is therefore returned herewith for favour of necessary action.

***Yours faithfully,
Sd/-
Inquiry Officer
Secretary to the Govt. of Assam
Public Enterprises Department
as State Enquiry Officer, Assam."***
Enclo: As above.

14. Further the letter dated 25.06.2018 is also reproduced herein below :-

***"GOVERNMENT OF ASSAM
OFFICE OF THE STATE ENQUIRY OFFICER : ASSAM :
ASSAM SECRETARIAT (CIVIL), DISPUR.***

No.ABE.2/2018/97

Dated Dispur, the 25th June, 2018.

***To : The Commissioner and Secy. to the Govt. of Assam.
Excise Department, Dispur, Guwahati – 781006.***

***Sub : Departmental Proceeding against Shri Amarendra Nath, Deputy
Superintendent of Excise, M/S B.G. Bonded Warehouse Lokhara,
Guwahati.***

Ref : This Deptt.'s letter No.ABE.2/2018/5, dated 13th April, 2018

Sir,

With reference to the letter cited above, you are requested to once again to frame the charge properly against Shri Amarendra Nath, Deputy Superintendent of Excise, M/S B.G. Bonded Warehouse Lokhara, Guwahati by mentioning specifically the Rule/procedure etc. that has been violated by the Delinquent Official for which he is charged with specific accusation/s.

It is not possible to prove or disprove a charge if it is not framed properly.

The Case Record is returned herewith for your kind information and necessary action etc.

***Yours faithfully,
Sd/-
Inquiry Officer
Secretary to the Govt. of Assam
Public Enterprises Department
as State Enquiry Officer, Assam."***

Enclo: As above.

A perusal of the second show cause notice dated 25.01.2019 does not indicate that it is a supplementary show cause notice. The same clearly indicates that it is a fresh show cause notice and the show cause reply which was made by the petitioner against the first show cause notice dated 18.08.2017 is being used against the petitioner.

15. The affidavit-in-opposition filed by the Respondent No.2 has also been perused and paragraph-6 of the said affidavit reads as under :-

"6. That the deponent begs to state that the Disciplinary authority was not satisfied with the reply of show cause notice dated 18.08.2017 and therefore the State Enquiry Officer was asked to enquire into allowance dated 15.09.2019 was granted to the officer to increase the allowance of the petitioner. That the deponent begs to state that in compliance of the order of the Hon'ble High Court dated 16.11.2018 in W.P.(C) No. 7556/2017, the petitioner was reinstated on service and posted at Parbhatjora vide notification dated 21.01.2019. That the deponent begs to state that the State Enquiry Officer requested the Department to frame the charges properly and therefore, a fresh show cause was issued to the petitioner (Annexure-T page no 68-70 of the writ petition)."

In paragraph-6 of the affidavit-in-opposition, as reproduced hereinabove, it is clearly stated that the Enquiry Officer requested the

Department to frame charges properly and, therefore, a fresh show cause was issued to the petitioner. A reading of paragraph-6 of the affidavit-in-opposition and the submission made by the learned Standing Counsel, Excise Department is contradictory inasmuch as it is a fresh show cause notice in terms of the affidavit-in-opposition and not a supplementary show cause notice.

16. The authorities cited by the learned Standing Counsel, Excise Department has been considered by this Court. However, in my opinion, the same have no applicability to the case in hand and, in-fact, it supports the case of the petitioner.

17. After the first show cause notice dated 18.08.2017 was issued, it was incumbent on the part of the Enquiry Officer to have proceeded with the disciplinary proceeding and, thereafter, to bring it to its logical end. While bringing the same to its logical end, if the Enquiry Officer finds that during the proceedings of the Enquiry establishes any article of charge that is different from the original article of charge, it was upon for the Enquiry Officer to proceed in terms of the Explanation to Rule 9(7) of the Rules of 1964. This has not been done and, in-fact, the Enquiry Officer before proceeding with the disciplinary proceeding, had written to the disciplinary authority to frame specific charges which is not provided in the Rules of 1964.

18. In view of the above, I am of the opinion that the second show cause notice dated 25.01.2019 stands vitiated and is, accordingly, quashed and set aside. However, this Court is not interfering with the first show cause notice dated 18.08.2017 and the Enquiry Officer is directed to

proceed with the disciplinary proceeding in terms of the first show cause notice and conclude the same in terms of the Rules of 1964 within a period of four months from the date of receipt of a copy of this Court's order.

19. The writ petition is, accordingly, allowed. No cost.

JUDGE

Comparing Assistant