

GAHC010148012021



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

Case No. : Review.Pet./131/2022

SASHADHAR PATOWARY
S/O- LATE HARI CH. PATOWARY, GUWAHATI PUBLIC SCHOOL ROAD,
PANJABARI, BATAHGHULI, P.O. BHAGARBARI, P.S. SATGAON,
KAMRUP(M), GUWAHATI-781037.

VERSUS

THE HONBLE CHAIRMAN A.P.D.C.L, A.E.G.C.L AND A.P.G.C.L AND 3 ORS. B
BIJULEE BHAWAN, PALTANBAZAR, GUWAHATI-781001.

2:THE CHIEF GENERAL MANAGER (D AND S)

APDCL
(L.A.Z.) BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001.

3:THE CHIEF GENERAL MANAGER (F AND A)

APDCL
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001.

4:THE ASSTT. GENERAL MANAGER (EXECUTIVE ENGINEER)

GUWAHATI ELECTRICAL DIVISION (C) A.P.D.C.L. ULUBARI
GUWAHATI-781007

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 31-07-2023

(S.P. Khaund, J)

1. Heard Mr. P. Mahanta, learned Amicus Curiae for the petitioner/appellant. Also heard Mr. B. Choudhury and Ms. K. Phukan, learned Standing Counsel for respondent Nos. 1 and 2 respectively.

2. This is a review application filed by the petitioner/appellant Sri Sashadhar Patowary with prayer to review the judgment and order dated 04.06.2012 passed in W.A .No. 16/2012.

3. The petitioner was employed as a Meter Reader with respondent Board since 24.03.1970. On 28.05.1985 he was promoted to the post of Sr. Meter Reader. On 12.10.2001 as per Office Order No. CE(D)DP-117/2001/35, a show-cause notice along with statement of allegations was filed by the respondents under the Regulation 10 of the ASEB (General Service) Regulations, 1960 under the charges of fraud and dishonesty.

4. According to the statement of allegations, the petitioner had visited the premises of M/s. Sony Housing Development & Finance Co-operative Society at Ulubari in Guwahati on 01.09.2001 and 04.09.2001, without any authority posing as an Inspector of ASEB under a false pretence that he was deputed by the Addl. Chief Engineer (E), Guwahati Zone to inspect the premises. However, on receipt of information the petitioner was caught red-handed by the Executive Engineer, Guwahati Elect. Divn (Central) and the Executive Engineer Technical Inspection on 04.09.2001.

The second allegation was that on earlier occasion, the petitioner along with an unknown person conducted a series of unauthorised inspection at different premises in the Fancy Bazar area on 09.08.2001.

The third allegation was that the petitioner posed as an employee of the Vigilance Cell (Rev. Circle) of ASEB, Bijulee Bhawan, Paltanbazaar and visited the premises of Smt. Saroj

Devi Harlalkar at G.S. Road Guwahati on 01.09.2001.

5. On receipt of notice along with the statement of allegations, the petitioner submitted his reply stating that on verbal direction of the then Addl. Chief Engineer-1 he had inspected the temporary meter installed at M/s Sony Apartment in Ulubari. He has justified his act stating that he was a Meter Reader and he could take the reading as well as inspect and verify the electric meter, from time to time within the norms. He has denied that his inspection was illegal and unauthorised as he was on duty as a meter reader. Vide letter dated 06.09.2001, the petitioner had also informed the Addl. Chief Engineer (Electrical) Guwahati Division that he had visited the Sony Apartment on his verbal instruction.

6. An Enquiry Committee was formed by the respondents on 09.01.2002 to enquire into the matter. The authority thereafter passed the order dated 13.09.2001 and suspended the petitioner with immediate effect followed by a disciplinary proceeding drawn up against him. Several witnesses were examined by the Enquiry Committee to bring home the charges levelled against the petitioner.

7. It is contended by the petitioner that the respondent authority has not examined the then Addl. Chief Engineer Mr. Budhin Baruah, of Guwahati Zone, Narengi, ASEB under whose verbal order the petitioner had visited M/s Sony Apartment on 01.09.2001 and 04.09.2001. The Executive Engineer, Mr. Mukibur Rahman, who heard the verbal instruction of the Addl. Chief Engineer Mr. Budhin Baruah was also not examined as a witness. Another prime witness Mr. Ahmed, the Secretary of M/s. Sony Apartment and Smt. Saroj Devi Harlalkar, consumer at Fancy Bazaar area, was not examined in evidence. The petitioner was thus prejudiced. The petitioner had also raised this issue several times in various written replies but the respondent authority had ignored his prayer. The copies of the letters dated 09.04.2003, 17.04.2003 and 28.04.2003 are marked as Annexure-J series. On the basis of the enquiry the authority submitted charge-sheet against the petitioner on charges of fraud and dishonesty in connection with business of the Board or its property under Regulation 10 of the ASEB (General Service) Regulations, 1960. The defence of the petitioner was ignored by the disciplinary authority and thereafter vide penalty order No. CE(D)/DP-117/2001/138 dated

23.05.2003 the petitioner was demoted to a lower post as Meter Reader from Sr. Meter Reader mentioning that he will be promoted to the post of Sr. Meter Reader only after completion of 5 years of satisfactory service.

8. His suspension was revoked and he was reinstated in service as Meter Reader and posted at the Office of the Asst. Engineer, Sonapur Elect. Sub-Division, ASEB, Sonapur under Jagiroad Elect. Division. It is contended that even after completion of 5 years, the petitioner who was eligible to be promoted to the post of Sr. Meter Reader was not considered for promotion. After eight long years vide Office Order No. 125 dated 11.10.2011, the petitioner was promoted, and he joined as Sr. Meter Reader at Sonapur Electrical Sub Division on 12.10.2011 under the Office Order No. 345 dated 03.11.2011. The very next month i.e. on 31.12.2011 the petitioner had retired on superannuation.

9. It is submitted that after the penalty order dated 23.05.2003 the petitioner had filed writ petition registered as W.P.(C) No. 4598/2003 challenging the penalty order dated 23.05.2003 and vide order dated 24.10.2011, the writ petition No. 4598/2003 was dismissed. Against this order the petitioner filed a Writ Appeal vide WA No. 16/2012 but this writ appeal was also dismissed vide order dated 04.06.2012.

10. No reasons of delay in filing this review petition after a prolonged period of 9 years has been assigned by the petitioner. It is also contended by the respondents that the issue regarding non- examination of the Addl. Chief Engineer Sri Budhin Baruah in evidence was never raised at the time of appeal or at any earlier point of time. It is for the first time, the petitioner has assailed the failure of the disciplinary authority to examine the Addl. Chief Engineer Sri Budhin Baruah as a witness under whose instructions (as claimed by the petitioner), he conducted the series of inspection.

11. The appeal was dismissed because the only contention which had been pressed at the time of hearing was that the petitioner ought not to have been held liable of misconduct as he was performing his official duties by visiting the premises of the consumers.

12. This submission of the petitioner was not accepted as the Enquiry Officer after due consideration held that it was proved during the enquiry, the petitioner used to visit the premises of the consumers at different locations at Guwahati with others without the permission of the Controlling Officer and without informing the Controlling Officer.

13. The findings of the Enquiry Officer are reproduced herein below:

“(1) It is proved that Sri Sashadhar Patowary used to visit the premises of the Consumers at different locations of Guwahati alone or with others without permission of his controlling officer, without informing and taking representatives of the Sub-Divisional Officers of the respective Sub-Divisions. The same is the case with the consumer, M/s Sony Apartment, where he was caught red-handed on visiting consumers premises with malafide intension, Shri Patowary could have informed his failu (proposal ?) to inspect the premises of M/s Sony Apartment on 1st Sept/01 to his controlling officer or to the Sub-Divisional Officer, Ulubari, Elect. Sub-Division, Ulubari on 3rd Sept/01 or on 4th Sept/01 at 10 A.M. before going again to M/s Sony Apartment on 4th Sept/01. He did not bother to inform the same to the Addl. C.E. Guwahati Zone, on whose verbal instruction, Shri Patowary repeatedly claimed to have carried out inspection on 1st Sept/01”.

14. Vide Order dated 04.06.2012 in W.A. No. 16/2012 it was held that the findings of the Enquiry Officer clearly show that the petitioner visiting the premises of the consumers was malafide action without informing the concerned authority. The duty to check the loss of revenue had to be performed in accordance with the applicable procedure and bonafide. This appeal was preferred against the judgment and order dated 24.10.2011 in connection with WP(C) 4598/2003. The petitioner challenged the order of penalty dated 23.05.2003 passed by the Chief Engineer but the WP(C) No. 4598/2003 was dismissed upholding the findings of the Enquiry Committee.

15. It has surfaced from the orders impugned by the petitioner that during the Departmental Enquiry, there was no prayer by the petitioner to examine the Add. Chief

Engineer, Sri Budhin Baruah as a witness to put forward his defence. The Enquiry Officer had duly considered the defence of the petitioner. During enquiry, the evidence of the witnesses were recorded and the petitioner was allowed to cross-examine the witnesses. The findings of the Enquiry Officer clearly shows that the petitioner had visited the premises of the consumers without informing the authority. This is the reason why the findings of the Enquiry Officer was not set aside. Moreover, there was an inordinate and inexplicable delay in filing the petition of review. The order impugned was passed on 04.06.2012, in WA No. 16/2012 while this petition of review was filed on 14.09.2021. No explanation has been offered for this gross delay.

16. We therefore find no valid ground to interfere with the view taken vide order dated 04.06.2012 in WA No. 16/2012. In view of our foregoing discussions, we are constrained to hold that there appears to be no justified ground to review the order dated 04.06.2012.

17. The petition is hereby dismissed.

JUDGE CHIEF JUSTICE

Comparing Assistant