

GAHC010238282017



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

Case No. : WP(C)/3974/2017

GAUTAM CH. DEY
SPECIAL ATTENDANT, POOL DRIVER, SECRETARIAT ADMINISTRATION,
ESTABLISHMENT VEHICLE CELL, GOVT. OF ASSAM, S/O LT. GOPESH
CH.DEY R/O SONAIGHULI, HOUSE NO. 110, NEAR DONBOSCO SCHOOL,
P.O. AUKUCHI, GUWAHATI DIST. KAMRUP M, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, SECRETARIAT ADMINISTRATION DEPARTMENT, DISPUR,
GUWAHATI - 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM

SECRETARIAT ADMINISTRATION ESTABLISHMENT DEPARTMENT
VEHICLE CELL
DISPUR
GUWAHATI- 781006.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

SECRETARIAT ESTABLISHMENT DEPARTMENT
VEHICLE CELL
DISPUR
GUWAHATI - 781006.

4:THE DEPUTY SECRETARY

TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATIVE ESTABLISHMENT DEPARTMENT
VEHICLE CELL

DISPUR
GUWAHATI - 781006

Advocate for the Petitioner : MR.A K AZAD

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

09/11/2023

Heard Mr. A. K. Azad, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned Additional Senior Government Advocate.

2. This writ petition is filed by the petitioner praying for setting aside of the order dated 16.03.2015, whereby the petitioner was imposed punishment of penalty of stoppage of one annual increment with cumulative effect and under the provisions of Rule 7 (ii) of the Assam Services (Discipline and Appeal) Rules, 1964.

3. The further prayer of the petitioner is for interference of the order dated 17.02.2017, passed by the Appellate authority in the appeal, which was preferred by the petitioner against the order passed by the disciplinary authority.

4. The learned counsel for the petitioner submits that petitioner is employed as a Driver, Special Attendant, Pool-driver under Secretariat Administration (Establishment) Vehicle Cell, Government of Assam and was also a General Secretary of the 'Soudou Asom Sarkari Garichalak Aru Sahayak Santha'. During his service, the petitioner was served with the show-cause notice dated 07.01.2014, whereby the petitioner was asked to show-cause on 3 (three)

charges, on which penalty was proposed to be imposed.

5. As per the Charge No. 1, it was alleged that the petitioner had forcefully taken signatures of few drivers by printing a reply in response to Government resolution taken on 13.11.2013. The R.T.I application was alleged to have been submitted by the petitioner and by obtaining forceful signatures of other drivers by offering misleading suggestions. In terms of the Charge No.2, it was alleged that the petitioner had submitted certain replies by forcefully taking the signatures of other drivers and by misleading them. The Charge No.3 against the petitioner is that in a consent letter dated 16.11.2013, the petitioner, instead of replying either in 'yes' or 'no', challenged the resolution of the government decision stating what the government is supposed to require to do or not required to do. All these 3 (three) charges were seen to be misconduct under the provisions of the Assam Civil Services (Conduct) Rules, 1965. Therefore, proceeding was contemplated against the petitioner. In response to the said proceedings, petitioner submitted the reply and subsequently the disciplinary proceedings were initiated. The petitioner participated in the proceedings and it culminated in an enquiry report, which held that all the charges have been proved. The findings of the Enquiry Officer were accepted by the Disciplinary authority and by the impugned order dated 16.03.2015, the penalty was imposed. Against the said impugned order issued by the Disciplinary authority, an appeal was preferred, which was disposed of by the appellate authority dated 17.02.2017 rejecting the appeal filed by the appellate authority.

6. Mr. J. K. Goswami, learned Additional Senior Government Advocate appearing for the department submits that he would like to obtain instructions in the matter.

7. It is seen that notices in the matter were issued as far back as 10.07.2017.

Subsequently, on 17.07.2017 Rule was issued. However, no counter affidavit has been filed by the department. Mr. Goswami, however, submits that the records may be directed to be called for.

8. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The impugned orders dated 16.03.2015 and 17.02.2017 have also been carefully perused. It is seen that the petitioner, during the course of the enquiry, filed applications for obtaining certified copies of the statements recorded by him, which, however was denied by the competent authorities on the ground that these statements will be provided pursuant to conclusion of the Enquiry Report. From the pleadings it is seen that there is no reference to any letter or communication by the government by which the enquiry report was furnished to the petitioner. The disciplinary authority accepting the enquiry report furnished by the petitioner while passing the impugned order dated 16.03.2015 also does not record whether the enquiry report was furnished to the petitioner pursuant to the enquiry conducted.

9. The appellate Authority also did not examine the question of whether the enquiry report was furnished to the petitioner after the conclusion of the enquiry. The respondent department having not filed an affidavit in the matter, the Government counsel is also not posted with the required instructions as to whether the enquiry report was furnished to the petitioner or not.

10. The question of whether an enquiry report is to be furnished on a delinquent officer is well settled by the Apex Court in a catena of judgments. The Apex Court has consistently held that the enquiry report must be furnished to the Officer concerned or the Government servant. Reference may be made to the celebrated judgment of the Apex Court rendered in *Managing Director, ECIL, Hyderabad and ors Vs B. Karunakar and Ors.* reported in (1993) 4 SCC 727 and

the subsequent judgments thereafter. The Apex Court has categorically held that where the enquiry report has not been furnished to the officer concerned, the subsequent proceedings will be held to be vitiated and will commence from the stage the enquiry report is furnished to the Government servant. The Apex Court held that the findings and the recommendations of the Enquiry Officer recommending punishment are likely to affect the mind of the disciplinary authority while accepting or rejecting the findings of the Enquiry Report. The Government servant is therefore entitled to meet the reasoning and controvert the conclusions reached by the Enquiry Officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in the dark to know the findings and the reasons in support thereof for the recommendation of imposition of penalty. It will give the Government Officer an opportunity to pursuing the disciplinary authority that the findings is based on no evidence or that the relevant material for the evidence was not considered or overlooked by the Enquiry Officer in coming to the conclusions. For all of these purposes the delinquent Government servant needs a reasonable opportunity or a fair play in action which cannot be achieved without furnishing of the Enquiry Report. The furnishing of the Enquiry Report cannot be treated to be an empty formality or a ritual but rather it is aimed at providing an ample opportunity to meet the conclusions arrived at by the Enquiry Officer before the disciplinary authority can accept the reasoning and the conclusions of the Enquiry Officer. The entire process of conducting an enquiry by the Enquiry Officer is upon such orders of the disciplinary authority as the Enquiry Officer acts as a delegate of the disciplinary authority while conducting the enquiry.

11. The Apex Court held that the non furnishing of the Enquiry Report therefore causes grave prejudice and avoidable injustice to the delinquent

Officer, which cannot be cured or mitigated in an appeal or challenged under Article 226 of the Constitution of India. That apart in *Divisional Forest Officers, Kothagudem and Ors Vs Madhusudhan Rao* reported in 2008 (3) SCC 469, the Apex court had laid down the powers of the appellate authority while deciding a statutory appeal. While it is true that unless required under the Rules an appellate authority is not bound to give detailed reasons or agreeing and confirming an order of the lower forum, but it is the duty of the appellate authority to give atleast some reasons as to why the appeal preferred by the delinquent officer has been rejected. Such reasons are necessary in order that the delinquent officer is given an opportunity to know atleast the mind of the appellate or revisional authority in dismissing the appeal or the revision of the petitioner. The appeal preferred by the petitioner and which was disposed of by the impugned order dated 17.02.2017 is an appeal under the statute. The appellate authority, therefore, was duty bound to look into all the aspects of the matter, including the issues of whether there was any violation of natural justice prior to the imposition of penalty. These aspects are not found to have been elaborately discussed in the order of the appellate authority.

11. Having discussed the facts and circumstances in the matter as above, ordinarily this matter ought to have been remanded back to the authorities for furnishing of the enquiry report of the petitioner and thereafter the proceedings were commenced. However, neither the petitioner nor the respondents have placed before the court any material and are unable to submit to a pointed query made by the court as to whether the enquiry report was furnished for the petitioner. In that view of the matter, this Court is of the considered view that ends of justice will be met if the appellate order dated 17.02.2017 passed by the appellate authority is interfered with and the matter is remanded back to the

appellate authority to examine all the issues and pass a detailed order in the appeal.

12. While deciding the matter, the appellate authority will also take into consideration the judgments of the Apex Court as discussed, in respect of the adherence to the principles of natural justice and fair play.

13. The impugned order of the appellate authority dated 17.02.2017, is accordingly interfered with and set aside. The matter now stands remanded to the appellate authority, and the appellate authority will re-decide the matter afresh within a period of 60 (sixty) days from the date of receipt of the certified copy of this order and pass a detailed order.

14. While re-deciding the matter, the appellate authority will also take into consideration as to whether the enquiry report was at all furnished on the petitioner as per the reports available with the department. And if not, then consequential orders as deemed proper may be passed by the authorities concerned keeping in view the law laid down by the Apex Court in *Managing Director, ECIL, Hyderabad and ors Vs B. Karunakar and Ors.*

15. Writ petition is accordingly stands disposed of in terms of the above directions. No order as to cost.

JUDGE

Comparing Assistant