

GAHC010263792022



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

Case No. : WA/254/2023

THE CHIEF ENGINEER WATER RESOURCE DEPTT.
CHANDMARI, GUWAHATI, ASSAM 781003

VERSUS

1. SANJAY KUMAR DAS AND 4 ORS E
S/O- LATE SIBA NATH DAS,
R/O- CHANDANPUR, WARD NO. 8, BARPETA ROAD TOWN, P.O. AND P.S.
BARPETA ROAD, DIST- BARPETA, ASSAM-781315.

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCE DEPARTMENT, DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCE DEPARTMENT, DISPUR
GUWAHATI-781006.

4:THE SUPERINTENDING ENGINEER
GUWAHATI INVESTIGATION CIRCLE
WATER RESOURCE DEPARTMENT
CHANDMARI, GUWAHATI-781003.

5:THE EXECUTIVE ENGINEER
LOWER ASSAM INVESTIGATION DIVISION
WATER RESOURCE DEPARTMENT
BARPETA ROAD, ASSAM

For the Appellant : Mr. B. Goswami, Additional Advocate General,
Assam assisted by Mr. P. Kakati, Advocate.

For the Respondent(s) : Mr. B.D. Das, Senior Advocate assisted by
Mr. D. Kaliata, Advocate for respondent No.1.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

05.08.2023

The instant intra-Court writ appeal is preferred by the appellant Department being aggrieved of the order dated 20.09.2022 passed by the learned Single Judge rejecting Review Pet. No.144/2022 preferred by the appellant Department and the order dated 24.6.2022 passed by the learned Single Judge in WP(C) No.1151/2022, whereby the petition under Article 226 of the Constitution of India filed by the writ petitioner/respondent No.1 herein was accepted and order of penalty passed against him was interfered on the ground that copy of the enquiry report was not provided to him.

The appellant Department is aggrieved by the following direction in the impugned order :

“At this juncture, this Court also gives a caveat that since an authority had already taken a decision by applying his mind, the Department, if it wishes to go ahead with the matter, the Disciplinary Authority has to be a different entity of the same rank.”

Mr. B. Goswami, learned Additional Advocate General representing the appellant Department submits that there was no prayer by the writ petitioner/respondent No.1 that the fresh proceedings should be got conducted through a different officer. He submits that as the Disciplinary Authority of the appellant is the highest officer in the Division, i.e. Executive Engineer, by effect of the impugned order, the place of enquiry would have to be changed to

different division.

He further contended that the respondent No.1/ writ petitioner, not having made any allegation of malafides against the Disciplinary Authority, there is no reason behind the direction to get the matter conducted by a different officer. Mr. B.D. Das, learned Senior counsel assisted by Mr. D. Kalita, learned counsel representing the respondent No.1/writ petitioner is also not in a position to dispute the fact that though there was no prayer of the writ petitioner/respondent No.1 herein that the Disciplinary Authority should be changed or replaced by a different officer.

Otherwise also, having gone through the pleadings of the writ petition, we find that there is no allegation of malafides or ulterior motive against the Disciplinary authority. The order of the Disciplinary Authority has been interfered on a technical ground that the report of the Enquiry Officer was not provided to the delinquent employee.

In this background, we feel that the direction given by the learned Single Judge that the Disciplinary Authority has to be a different entity of the same rank was not warranted. An objective and dispassionate decision of departmental proceeding can be ensured by observing that the findings recorded in the order of penalty dated 14.02.2022 would not prejudice the outcome of the fresh decision making process.

As a consequence, we find no justification so as to sustain the direction given by the learned Single Judge in the impugned order that the Disciplinary Authority has to be a different entity of the same rank while undertaking the fresh proceedings. Consequently, the said direction is set aside.

However, it is clarified and reiterated that the fresh decision in the Disciplinary proceeding shall be taken by the Disciplinary Authority without

being prejudiced or influenced in any manner by the observations made in the order of penalty dated 14.02.2022 which is otherwise also *non est* having been quashed by the impugned order.

The instant writ appeal is disposed of accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant