

GAHC010301952019



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

Case No. : WP(C)/9095/2019

HOMENDRA NATH SONOWAL
S/O- LT. SOMESWAR SONOWAL, R/O- CHOWKIDINGEE, UDAIPUR, P.O. C.R.
BUILDING, DIBRUGARH, P/S DIBRUGARH, DIST- DIBRUGARH, ASSAM,
PIN- 786003.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY.-06.

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPTT.
DISPUR
GHY.-06.

3:THE PRINCIPAL SECY.
FINANCE DEPTT.
DISPUR
GHY.-06.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GHY.-29.

5:THE DY. COMMISSIONER
DIBRUGARH
P.O. AND P.S. DIBRUGARH
DIST.- DIBRUGARH
ASSAM
PIN- 786001.

6:THE TREASURY OFFICER

DIBRUGARH
P.O. AND P.S. DIBRUGARH
DIST.- DIBRUGARH
ASSAM
PIN- 786001

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 17/02/2023

Heard Mr. M.U.Mondal, the learned counsel appearing on behalf of the petitioner. Ms. A. Talukdar, the learned Junior Government Advocate appears on behalf of the respondent Nos. 1, 2 & 5, Mr. R. Borpujari, the learned standing counsel appears on behalf of the respondent Nos. 3 and 6 and Mr. R. Dhar, the learned counsel appears on behalf of the respondent No.4.

2. The instant writ petition has been filed by the petitioner seeking a mandamus thereby directing the respondents to provide/pay the regular pension as well as other allowances to the petitioner as per the provisions of law. The facts of the instant case is that the petitioner was initially appointed as a Junior Accounts Assistant in the Office of the Margherita Sub-Treasury Officer, Dibrugarh with effect from 26/3/1978. Subsequent thereto the petitioner was regularly appointed as Junior Accounts Assistant w.e.f. 15/5/1979 in the Office of the Dibrugarh Treasury. Thereafter, he was promoted as a Senior Accounts Assistant w.e.f. 18/1/1986 and posted at Satakhuwa Sub-Treasury Office and then transferred to Margherita as Senior Accounts Assistant in the year 1989. Subsequent thereto the petitioner was transferred to Dibrugarh Treasury as Accountant and was also promoted to the post of Superintendent and posted at Dibrugarh Treasury in the month of July, 2004. The petitioner took voluntary retirement w.e.f. 1/6/2018 under

the provisions of F.R.56 (c) of the F.R. and S.R.

3. It is the case of the petitioner that the pay of the petitioner was initially fixed at Rs.2035/- per month on 01/03/1989 with DNI on 01/03/1990. The District Treasury Officer had subsequently clarified vide his letter dated 29/10/2018 and 17/7/2019 that the pay in respect of the petitioner was stepped up with his junior Sri H.N. Handique (since deceased) under Rule 10 of the ROP Rules, 1990. At this stage, it may be relevant herein to mention that the petitioner upon his retirement was accorded provisional pension of Rs. 39,300/- along with other reliefs as well as medical allowances as admissible w.e.f. 1/6/2018 till final pension order is received from the A.G. Assam.

4. It is seen from the records that on 27th of September, 2018, the Senior Accounts Officer of the Office of the Accountant General (A & E), Assam had returned the pension papers of the petitioner stating inter alia that there was no mention in the service book that there was a stepping up of pay of the petitioner with his junior as per Rule 10 of the ROP Rules, 1990 with proper attestation and the copy of the order of stepping up of pay of the petitioner with his junior also was not furnished. Subsequent thereto on 29th of October, 2018, the Treasury Officer, Dibrugarh had issued a communication to the Assistant Accounts Officer in the Office of the Accountant General (A & E) stating inter alia that it was verified and found correct that the petitioner was entitled to receive enhancement of his salary by equalizing with the salary of Late Harendra Nath Handique by way of stepping up of salary in pursuance to Rule 10 of the ROP Rules, 1990. It was further mentioned that the fact of stepping up and the enhancement of salary in pursuance to Rule 10 of the ROP Rules, 1990 were inserted and subscribed in the service book duly at page No. 8 and consequently there remained no anomaly in the matter of salary of the petitioner. It was further mentioned that the Treasury Officer, Dibrugarh did not find any objection on the petitioner's availment of stepping enhancement of the salary from their end. Under such circumstances, the Treasury Officer, Dibrugarh requested the Office of the Accountant General (A & E) to consider payment of the pension early to the petitioner.

5. Pursuant to the said communication, the Senior Accounts Officer in the Office of the Accountant General (A & E) had again written a communication to the Treasury Officer, Dibrugarh stating inter alia that invocation of FR 27 is required and it is only the Finance Department who has the authority who can grant such type of stepping up of pay by invoking the F.R.27. The Treasury Officer, Dibrugarh was therefore requested to move the Finance Department for sanction of stepping up of the pay of the petitioner and after obtaining the concurrence of the Finance Department the same may be noted in the service book under attestation and a copy of the sanction order of the Finance Department may be kept in the service book for verification. It was also mentioned that alternatively the pay of the petitioner may be fixed on 1/3/1989 without any stepping up of pay and make necessary correction of the pay of the incumbent w.e.f 1/1/89 upto the date of his retirement in the service book under proper attestation and resultant over payment of pay and allowance w.e.f. 1/1/89 till the date of retirement including excess drawal of leave encashment may be calculated and intimated to the office of the Accountant General (A & E) along with a due and drawn statement for recovery of the same from the pensionary benefits. It was further mentioned in the said communication that although in the pension papers, the initial date of joining has been noted as 26/3/1978 but as per the notings in the service book, it revealed that the petitioner's regular service commenced w.e.f. 5/5/1979 which was also requested to be reviewed. It was under such circumstances, the pension papers of the petitioner was again returned to the Treasury Officer, Dibrugarh.

6. It further appears that the Treasury Officer, Dibrugarh again had communicated to the Assistant Accounts Officer in the office of the Accountant General(A & E)vide a communication dated 17/7/2019 stating inter alia that the stepping up of pay of the petitioner with his junior Late H.N. Handique was done in accordance with the procedure in force at that time and the petitioner's case was effected on 1/3/1989 which was duly recorded in the service book and much before the OM No. FEG.25/87/132 dated 10/9/1997. It was further mentioned that it was unfortunate that the cause of stepping up entry in the service book was recorded by the then Treasury Officer as the authority in

the case. Further upon scrutiny of the personal file of the petitioner, it appeared that the then Deputy Commissioner approved his case in the office order at page 27, 28 and 29 as the approving authority. It was also noted that the pay of the petitioner and Late H.N. Handique was same and equal till the retirement of Late H.N. Handique in January, 2003. Further it was mentioned that the stepping up of the pay of the petitioner with that of Late H.N. Handique was done in accordance with Rule 10 of the ROP (Rules), 1990 and before enforcement of the O.M. No. FEG.25/87/132 dated 10/9/1997. Under such circumstances, the Treasury Officer, Dibrugarh intimated the Accountant General (A & E) vide the said communication dated 17/7/2019 that the petitioner's case be considered as eligible for stepping up as per Rule applicable at that time and the Assistant Accounts Officer in the Office of the Accountant General (A & E) was requested to solve the pension case of the petitioner at an early date.

7. From two communication submitted by Mr. R. Dhar, the Standing Counsel of the Accountant General (A & E) it further appears that on 3/12/2019, the Senior Accounts Officer in the Office of the Accountant General (A & E) issued a communication to the Secretary to the Government of Assam, Finance Establishment (B) Department wherein it was mentioned that in pursuance to the request made by the DDO to take up the matter with the Finance Department for concurrence so that the pay regulation of the petitioner can be accepted at the end of the Office of the Accountant General (A & E) for finalization of his pension. Accordingly, a request was made from the office of the Accountant General (A & E) to kindly review the matter and to direct the DDO i.e. the Treasury Officer, Dibrugarh to take necessary steps for obtaining the concurrence of the Finance Department on the matter.

8. It further appears that on 2nd of December, 2020 the Senior Accounts Officer in the office of Accountant General (A & E) had again sent a reminder to the Secretary to the Government of Assam, Finance Establishment (B) Department stating inter alia that the pension case with required information as called for by the Office of the Accountant General had not been received and as such requested to expedite the resubmission of the pension papers after meeting up the observations for settlement of the pension case of

the petitioner.

9. It further appears that on 27th of January, 2022 an affidavit was filed by the Deputy Commissioner, Dibrugarh under whose establishment the petitioner was working. In the said affidavit, it has been mentioned that the pension paper of the petitioner was returned from the A.G. office several times. It was mentioned that the case of the petitioner was also forwarded to the Finance Establishment (B) Department and after receiving the service book of the petitioner on 11/9/2020, the Treasury Officer, Dibrugarh had verbal discussion with the office of the A.G., Assam in the matter and the Treasury Office, Dibrugarh prepared the service book of the petitioner and submitted the same to A.G., Assam on 27.1.2021 Assam vide letter No. GTP/34/908 dated 22/1/2021. The matter was about to be finalized but the Treasury Officer received a petition filed by the petitioner on 1/2/2021 stating that his pension case should not be submitted to the A.G. Assam as he is not agreeable to the pay and allowance to be drawn actually and his case is subjudiced before this Court. Under such circumstances, the petitioner pension case has not yet been finalized.

10. Upon hearing the learned counsel for the parties and upon perusal of the materials on record, it transpires that it is on the ground of the Finance Department having not invoked the powers in terms with FR 27, the petitioner's pension and his pensionary benefits have been stalled. It transpires from the various communications from the Treasury Office, Dibrugarh that the petitioner's stepping up of the pay was done on 1/3/1989 with DNI on 1/3/1990 with his junior late H.N. Handique under Rule 10 of the ROP Rules, 1990. It further transpires that initially the said aspect of the matter was not recorded in the service book, the attention of which was brought to the notice of the Treasury Officer, Dibrugarh by the office of the Accountant General. The said aspect of the matter was duly corrected and the corrected service book was placed before the Accountant General (A & E). The Accountant General (A & E) thereupon asked the Treasury Officer Dibrugarh to take steps for the purpose of getting the endorsement from the Finance Department in terms with F.R. 27 relating to stepping up of pay of the petitioner. It also appears that the Accountant General (A & E) have also by the

communication dated as 3/12/2019 and also 2/12/2020 had also intimated the Finance (Establishment-B) Department to take appropriate steps in tune with FR 27 so that the petitioner receives his regular pension and other pensionary benefits. This Court sees no reason why the Finance (Establishment-B) Department should not exercise their authority in terms with FR 27 in the facts and circumstances of the instant case.

11. Accordingly, this Court therefore directs the Secretary to the Government of Assam, Finance (Establishment-B) Department to invoke the provision of FR 27 in the peculiar facts of this case and pass appropriate orders as regards stepping up of pay to the petitioner which was already done in the year as on 1/3/1989.

12. The said exercise be done by the concerned official as expeditiously as possible from the date a certified copy of this order is served upon the Secretary to the Government of Assam, Finance (Establishment-B) Department. It is further directed that after passing such appropriate order (s) in terms with FR 27 by the Secretary to the Government of Assam, Finance (Establishment -B) Department, the said authority shall intimate the Office of the Accountant General (A & E), Assam to take appropriate steps so that the petitioner receives his regular pension as well as other pensionary benefits. Taking into account that the petitioner retired in the year 2018 and almost 5 years have passed by for the reasons above noted, the Respondent Authorities are directed to ensure compliance of this order within a period of 90 days from the date a certified copy of this Order is served upon the Secretary to the Government of Assam, Finance (Establishment-B) Department. Further the petitioner shall also serve certified copies of this order upon the Deputy Commissioner, Dibrugarh as well as the Accountant General (AE) for effective compliance.

13. With the above observations and directions, the instant writ petition stands allowed.

JUDGE

Comparing Assistant