

GAHC030003162020



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

Case No. : WA/9/2020

Union of India r/b the Secretary to the Govt. of India, Ministry of Defence and 3 Ors.
South Block, New Delhi 2: Joint Secretary
Border Road

VERSUS

Sh Rishi Gupta, EE (Civ), GREF
EE(Civ) GREF
Pushpak Aizawl Mizoram

Advocate for the Petitioner : Mr Samuel Vanlalhriata Chhangte

Advocate for the Respondent : Mr A.R. Malhotra

ORDER

Date : 13-06-2023
(M. Zothankhuma, J)

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr. Samuel Vanlalhriata Chhangte, learned counsel for the appellants as well as Mr. A.R. Malhotra, learned counsel appearing for the sole respondent.

2. This appeal has been filed against the impugned Judgment & Order dated 04.06.2019 passed by the learned Single Judge in WP(C) No. 96/2018.

3. The facts of the case is that the respondent had been imposed with the penalty of withholding of 1 (one) increment for 1 (one) year vide Order dated 30.08.2016. 2 (two) review petitions were filed by the respondents against the impugned Order dated 30.08.2016, which were rejected.

4. The brief facts of the case is that the petitioner, who was working as an Executive Engineer in the Border Roads Organization (BRO) as Officer Commanding 112 RCC (GREF) was served with a Memorandum of Charge dated 28.12.2015, informing him that action was proposed to be taken against him under Rule 13 of the CCS (CCA) Rules, 1965, on account of the respondents having failed to ensure that the costly vehicles/equipment/plants deployed under his area of responsibility were fitted with functional odometers and did not exercise any check to ascertain the condition of odometers. Thus, a large number of vehicles /equipment/plants of his sector were functioning either with defective odometers or without odometers. He did not issue guidelines/directives to ensure that the vehicles /equipment/plants were maintained as per General Maintenance instructions and did not take any effort to identify the vehicles/equipment/plants functioning with defective odometers or without odometers in consultation with the OIC Platoon/MT Supervisor of the unit and get the work orders placed on the dependent Field Workshop for repairs at any point of time.

5. In pursuant to the enquiry initiated against the petitioner, the petitioner was found guilty of the statement of imputations of misconduct or misbehavior and he was imposed with a penalty of withholding of one minor increment of pay for 1 (one) year under Rule 12 of the CCS (CCA) Rules, 1965, vide the impugned Order dated 30.08.2016.

6. The challenge made by the respondent before the learned Single Judge against the impugned Order dated 30.08.2016 was allowed by the learned Single Judge on two grounds. Firstly, though the respondent No. 3 BRO had initiated the Departmental Proceedings against the respondent, the appellant No. 3 was not the Disciplinary Authority under Rule 13 of the CCS (CCA) Rules, 1965. The other ground for setting aside the impugned Order dated 30.08.2016 was that the memorandum as well as the statement of imputation of misconduct or misbehavior issued to the respondent and on the basis of which the impugned penalty order had been issued was vague, as he did not spell out the details, which could have been responded too by the respondent in clear terms.

7. The learned counsel for the appellant submits that the appellant No. 3 is the competent Disciplinary Authority for initiating the Departmental Proceedings against the respondent, in terms of Rule 13 of the CCS (CCA) Rules, 1965. He also submits that the statement of imputation of misconduct or misbehavior, in pursuant to which penalty was imposed upon the respondent was not vague and could have been answered by the respondent.

8. Rule 13 of the CCS (CCA) Rules, 1965 states as follows:-

“13. Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may—

(a) institute disciplinary proceedings against any Government servant;

(b) direct a Disciplinary Authority to institute disciplinary proceedings against

any Government servant on whom that Disciplinary Authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clause (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties”.

9. As can be seen from the above, the President or any other authority empowered by General or Special Order may institute a Disciplinary Proceeding against any Government Servant or direct the Disciplinary Authority to institute the Disciplinary Proceeding against any public servant. To a query post to the appellants counsel as to whether the appellants had any General or Special order empowering the appellant No. 3 to institute a Disciplinary Proceeding against the respondent or to direct a Disciplinary Authority to institute Disciplinary Proceeding against the respondent, the learned counsel for the appellants stated that he did not have any such General or Special order.

10. The statement of imputation of misconduct or misbehavior which had been issued to the petitioner, vide Memorandum of Charge dated 28.12.2015 is reproduced below as follows:-

“Statement of imputations of Misconduct or Misbehaviour on which action is proposed to be taken against Shri Rishi Gupta, EE (Civ) (GO-3086P), presently serving at GREF Centre, Pune

1. That the said Shri Rishi Gupta, EE(Civ) (GO-3086P), while functioning as Officer Commanding, 112 RCC (GREF) (P) Setuk, was responsible for proper execution of works utilising men and material placed under him in the best interest of the Government.

2. *The said Shri Rishi Gupta, EE(Civ), being the Officer Commanding/ team leader of the unit and being responsible for the operation and maintenance of vehicles/equipment/plants should have kept himself in complete picture of his administration/technical state of the unit equipment. However, the officer failed to ensure that the costly vehicles/equipment/ plants deployed under his area of responsibility were fitted with functional odometers and did not exercise any check to ascertain the condition of odometers. A large number of vehicles/ equipment/plants of his sector were functioning either with defective odometers or without odometers.*

3. *The said Shri Rishi Gupta, EE(Civ), did not issue any guidelines/ directives to the personnel under him to ensure that the vehicles/equipment/ plants are maintained as per General Maintenance Instructions. He did not take any effort to identify the vehicles/equipment/plants functioning with defective odometers or without odometers in consultation with the OIC Platoon/MT Supervisor of the unit and get the work orders placed on the dependent Field Workshop for repairs at any point of time. He failed to depute his Elect & Mech staff or liaise with the Officer Commanding of Dependent Field Workshop for deputing their team for inspection of vehicles/equipment/plants working under his jurisdiction.*

4. *The aforementioned acts/commission and omission on the part of the said Shri Rishi Gupta, EE(Civ), establishes that he had failed to discharge his duties in violation of charter of his duties, procedures and policies/ instructions meticulously leading to rampant misuse of costly vehicles/ equipment/plants by the personnel under his command according to their wish, which has significant impact on fuel consumption and likely fuel pilferage.*

5. *By the above acts, the said Shri Rishi Gupta, EE(Civ), has failed to maintain devotion to duty, violating the provisions of Sub rule (1) (ii) of Rule 3 of CCS(Conduct) Rules, 1964."*

11. A perusal of the statement of imputation of misconduct or misbehavior, which was issued to the respondent, clearly shows that no specifics had been provided in the said statement of imputation of misconduct or misbehavior. What was the registration numbers of the costly vehicles, the type or equipments or plants that were not maintained by the Unit Command by the respondent. On perusing the statement of imputation of misconduct or

misbehavior, we failed to appreciate how the respondent could have submitted his written statement in defense in the absence of specific charges with regard to specific vehicles, equipments and plants.

12. In the case of ***Surath Chandra Chakraborty Vs. State of West Bengal***, reported in ***(1970) 3 SCC 548***, the Apex Court has held that the charge or charges with a statement of the allegations on each charge embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

13. In the case of ***Union of India Vs. Giyan Chand Chatter***, reported in ***(2009) 12 SCC 78***, the Apex Court has held that law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges.

14. In the present case, the statement of imputation of misconduct or misbehavior to which an explanation has to be given by the respondent by way of a written statement of defense, clearly shows that the charges are not specific or definite as the charges are vague. It could be said that the respondent has not been given a reasonable or adequate opportunity for defending himself. In that view of the matter, we are also of the view that the

Departmental Proceeding/Enquiry could not have been initiated on such vague charges, which was without specifics. In view the reasons stated above, we do not find any grounds to interfere with the impugned Judgment & Order passed by the learned Single Judge.

15. Appeal is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant