



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

Case No. : WP(C)/440/2019

KHODA ADO

S/O LT. KHODA KOJEEN, UDC, OFFICE OF DEPUTY COMMISSIONER, WEST
SIANG DIST. AALO. A.P, Ph. 9402233009

VERSUS

THE STATE OF AP AND 4 ORS.

REPRESENTED BY THE SECRETARY DISTRICT ADMINISTRATION, GOVT.
OF A.P, ITANAGAR.

2:THE DEPUTY COMMISSIONER, WEST SIANG DIST. AALO, A.P.

Age: 0 Occupation :

3:THE SECRETARY, DEPARTMENT OF TIRAP, CHANGLANG AND
LONGDING, GOVT. OF A.P, ITANAGAR.

Age: 0 Occupation :

4:THE COMMISSIONER, DEPARTMENT OF TIRAP, CHANGLANG AND
LONGDING, GOVT. OF A.P, ITANAGAR.

Age: 0 Occupation :

5:THE DIRECTOR, DEPARTMENT OF TIRAP, CHANGLANG AND LONGDING,
GOVT. OF A.P, ITANAGAR.

Age: 0 Occupation

Advocate for the Petitioner : Khoda Tari
H Gyati
G Riba
T Don
P Tamin
Advocate for the Respondents : GA (AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER(ORAL)

Date : 24.07.2024

Heard Mr. Khoda Tari, learned counsel for the petitioner. Also heard Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of all the respondents.

2. The petitioner has instituted the present proceeding assailing an Order dated 31.07.2018, passed by the Deputy Commissioner, West Siang District, Aalo(Disciplinary Authority), along with an Order, dated 04.10.2019, passed by the Appellate Authority rejecting the said appeal and upholding the Order of the Disciplinary Authority dated 31.07.2018.

3. The facts, in brief, requisite for adjudication of issues arising in the present proceedings is noticed as under;

(i). The petitioner, who is presently working as Upper Division Clerk in the establishment of the Deputy Commissioner, West Siang, Aalo, was appointed in the year 2010, as an Assistant in the Department of Tirap and Changlang Affairs, (now Department of Tirap, Changlang and Longding Affairs) on deputation. On 02.05.2011, when the petitioner was so working in his deputed organisation, an incident occasioned when the petitioner accompanied one Tagio Giba for withdrawal of an amount of Rs.7,19,073/- (Rupees Seven Lakhs Nineteen Thousand Seventy three only) from the State Bank of India, Itanagar Branch. The amount so withdrawn, being the amount required to be paid against the bills raised by contractors, was kept in the car of the petitioner and thereafter, the petitioner and the said Tagio Giba had proceeded for having lunch and while the petitioner and said Tagio Giba were having lunch, some miscreants had broken the glass of the window of the car and stolen the said amount so

withdrawn from the bank. On the said incident being brought to the notice of the authorities, an FIR came to be lodged by the concerned authority promptly.

(ii). The police on investigation submitted an FIR in the matter. On the culprits not being apprehended, a final report in the matter came to be filed. Thereafter, a report was submitted by the police before the Secretary, Department of Tirap, Changlang and Longding Affairs on 02.05.2013 and therein had on the basis of the investigation carried out reported that the suspicion against the petitioner and said Tagio Giba, as arising in the matter, could not be proved. The authorities, thereafter, drew up a Departmental Proceeding against the petitioner under Rules 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The petitioner, thereafter, vide an order dated 01.08.2011, placed under suspension, however, the said order of suspension was so revoked on 29.03.2012.

(iii). It is to be noted in here that the Tagio Giba, who was working as a skilled contingency staff in the organisation had submitted his resignation and the same was accepted by the competent authority on 17.05.2012 and he was released from the organisation.

(iv). Thereafter, a Memorandum of Charge under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, was issued against the petitioner on 16.01.2014 by the Secretary, Department of Tirap, Changlang and Longding Affairs, levelling therein 3(three) Article of charges against the petitioner. The petitioner submitted his representation in the matter, however, it is seen that although an enquiry was held in the matter, the same was not taken to its conclusion.

(v). The petitioner being aggrieved by the delay so occasioning in conclusion of the Departmental Proceeding so initiated against him, approached this Court by way of instituting a WP(C) No. 584 (AP)/2017 and this Court vide order dated 01.11.2017, had disposed of the same, requiring the authorities to proceed and conclude the Departmental Proceeding so initiated against the petitioner herein, within a period of 3(three) months from the date of receipt of aforesaid certified copy of the order.

(vi). It is to be noted that the petitioner was thereafter, repatriated to his parent organisation on 16.10.2012. The said incident having been so brought to the notice of the Deputy Commissioner, West Siang District, Aalo, and also the enquiry report of the Inquiry Officer as appointed in the Disciplinary Proceeding, initiated against the petitioner while he was on deputation, being placed before the said authority, a fresh Memorandum of Charges was issued to the petitioner on 22.12.2017, levelling against him, the same very charges as was levelled by the authorities of his deputed department. The petitioner submitted his written statement of defence in the matter and thereafter, an enquiry was held.

(vii). On conclusion of the enquiry and also on receipt of the enquiry report, the Disciplinary Authority of the petitioner i.e. the Deputy Commissioner, West Siang District, Aalo, vide order dated 31.07.2018, proceeded to concur with the findings of the enquiry officer as recorded in the enquiry report and by holding that the petitioner was guilty of loss of Government money to the tune of Rs.7,19,073/- (Rupees Seven Lakhs Nineteen Thousand Seventy three only) proceeded to direct for recovery of the same from his salaries in monthly instalment of Rs.5,500/- (Rupees Five Thousand

Five Hundred only) for 10(ten) years and 10(ten) months and the last instalment was so quantified to be so recovered at the rate of Rs.4073/-(Rupees Four Thousand Seventy Three only). The appeal as preferred by the petitioner against the said order, dated 31.07.2018, also came to be rejected by the appellate authority vide an Order, dated 04.10.2019.

- 4.** Being aggrieved, the petitioner has instituted the present proceedings.
- 5.** The learned counsel for the petitioner by reiterating the above noted facts has contended that in the enquiry the culpability of the petitioner for the loss so occasioning of the Government money kept in his car was not established and enquiry officer had held the charge so established without carrying out due examination of the matter. The learned counsel has further submitted that findings as recorded by the enquiry officer in the matter were not so recorded basing on evidence coming on record in the enquiry. The learned counsel has further submitted that the Disciplinary Authority without appreciating the manner, in which, the conclusions were so reached by the enquiry officer, proceeded to concur with the same and imposed the penalty of recovery of the amount so lost, from the salaries of the petitioner vide Order dated 31.07.2018. The learned counsel has accordingly, submitted that the Order dated 31.07.2018, cannot be sustained and requires this Court to interfere with the same, along with the order of Appellate Authority, dated 04.10.2019.
- 6.** Mr. Tapin, learned Senior Government Advocate, by placing reliance on the inquiry report, submitted that the enquiry officer has examined the matter from all angles and after considering the statements made in the enquiry by the petitioner, had come to the conclusion that the petitioner was responsible for the loss of Government money, so occasioning. Accordingly, it is contended that the findings as recorded by the enquiry

officer being so recorded basing on the materials available on records, the Disciplinary Authority had not committed any error in passing the Order, dated 31.07.2018, saddling the petitioner herein with the responsibility for the loss of Government money and the direction for recovery of the same is contended to be in terms of the procedure as mandated in the matter. In the above premises, Mr. Tapin, learned Senior Government Advocate, has submitted that the Order of Disciplinary Authority dated 31.07.2018 and the Order of the Appellate Authority dated 04.10.2019, would not call for any interference from the Court.

7. I have heard the learned counsels appearing for the parties and have also perused the materials available on record.

8. At the outset, it is to be noted that the enquiry report was not available in the records of the present proceeding and accordingly, Mr. Tapin, learned Senior Government Advocate, was directed on the last of hearing, to produce a copy of the enquiry report, which was accordingly, produced. A copy of the enquiry report was also furnished to the learned counsel for the petitioner and the matter was fixed today for consideration. The learned counsels have made their respective submissions after perusing the enquiry report.

9. The allegation so levelled against the petitioner in the Show-Cause Notice dated 22.12.2017, basically pertains to his involvement in the loss occasioning to the Government money from his private car on 02.05.2011. The enquiry officer in the enquiry report, has based his conclusions upon the one man enquiry report as submitted by one Langwang Sumpa, Deputy Secretary(UD/H), who was appointed as an enquiry officer in the first Departmental Proceeding so initiated against the petitioner, herein, by the Department of Tirap, Changlang and Longding Affairs. Thereafter, the enquiry officer proceeded to examine the petitioner herein and basing on

the said inquiry report and the statements of the petitioner; proceeded to draw his conclusions in the matter. The conclusions so drawn by the enquiry officer also contains a conclusion to the affect that a doubt was created about the mala fide intention of the petitioner in the matter. It is seen from the record that the report of one men enquiry report as submitted by one Langwang Sumpa, Deputy Secretary (UD/H), was also taken note of in the enquiry report for arriving at the conclusions so drawn against the petitioner. The said authority, however, was not examined in the said enquiry proceedings. Further, the conclusions in the enquiry report is also based on the statement of the petitioner, so made in the enquiry. The petitioner, in his statement, had categorically contended that while the money was to be withdrawn from the Bank, request was made to the Assistant Director for the vehicle to be used for the bank duties, however, the Assistant Director refused to spare the vehicle and the same on being informed by Shri Tagio Giba and seeing the huge amount involved, which would be not be safe to be brought on a motor cycle, the petitioner had accompanied the said Tagio Giba to the bank in his private car. The petitioner has also stated in the enquiry that he was verbally directed by the Assistant Director to take his private vehicle for the purpose. The enquiry officer had not taken any steps to verify the statement so made by the petitioner by examining the Assistant Director in the matter and had without making such examination, proceeded to draw conclusions adverse to the petitioner in the matter.

10. The Hon'ble Supreme Court in the case of **Moni Shankar Vs. Union of India &anr.** reported in **(2008) 3 SCC 484**, had concluded as follows:

“17.The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the

evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

11. The Hon’ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank & ors.**, reported in **(2009) 2 SCC 570**, had held that the nature of a departmental enquiry is in the form of quasi judicial proceeding and the function of the enquiry officer is also quasi judicial in nature. Accordingly, it was held that mere production or consideration of a document is not enough and contents of the documentary evidence have to be proved by examining witnesses. The charges levelled against the delinquent officer must be found to have been true and the enquiry officer is duty bound to arrive at the finding taking into consideration all materials brought on record. The conclusions as reached by the Hon’ble Supreme Court, in the matter, being relevant, the same is extracted herein below;

”23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

12. The enquiry officer in the present case having drawn conclusions in his Enquiry Report basing on the statements of the petitioner, herein, in the inquiry and the petitioner having not admitted to the charges levelled against him, the enquiry officer could not have recorded findings solely based on the statements so made by the petitioner in absence of legal evidence brought on record to establish the charge framed against the

petitioner, even on application of the principle of "preponderance of probability".

13. Applying the said decisions of the Hon'ble Supreme Court to the facts of the present case, it is seen that it can be safely concluded that the enquiry officer had not relied upon the relevant evidence for arriving at the conclusion so arrived at by him in the enquiry report and accordingly, findings so recorded by the enquiry officer in the enquiry report has to be held to have been so recorded basing on no evidence. The findings recorded by the enquiry officer being so based on merely ipse dixit, the same cannot be sustained and leads to only one conclusion that the same is perverse. It is trite law that materials brought on record pointing out the guilt of the delinquent are required to be proved. A decision must be arrived at on basing on some evidence, which is legally admissible. It is to be further noted that suspicion, as is well known, however, high may be, can, under no circumstances, be held to be substitute for legal proof.

14. The findings of the Inquiry Officer in the enquiry report having been concluded by this Court to be so based on no evidence and accordingly, perverse; the Order, dated 31.07.2018, issued by the Disciplinary Authority concurring with the findings of the enquiry officer in his enquiry report and holding the petitioner to be guilty for the loss of Rs.7,19,073/- (Rupees Seven Lakhs Nineteen Thousand Seventy three only), cannot be sustained and accordingly, the recovery as directed from the petitioner's salary vide the said Order, dated 31.07.2018, also cannot be sustained.

15. Accordingly, in view of the above position; the Order, dated 31.07.2018, stands set aside. The order, dated 31.07.2018, having been interfered; the order of the Appellate Authority, also cannot be sustained and the same would also stand set aside. The orders of the Disciplinary Authority as well as the Appellate Authority having been interfered; it is

hereby directed that, in the event, any recovery has been made from the salaries of the petitioner herein, in terms of the Order of Disciplinary Authority, dated 31.07.2018, the same would be so re-authorised to the petitioner within a period of 3(three) months from the receipt of a certified copy of this order.

16. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant