

GAHC010120062015



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

Case No. : WP(C)/5056/2015

PONARAM BORAH
S/O LT. KHATA BORA, R/O SENSWA BALIGAON, P.O. and P.S. and DIST-
NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
WATER RESOURCE DEPTT., DISPUR, GHY-6

2:THE CHIEF ENGINEER
WATER RESOURCE DEPTT.
CHANDMARI
GHY-3

3:THE SUPERINTENDING ENGINEER
NAGAON WATER RESOURCE CIRCLE
NAGAON

4:THE EXECUTIVE ENGINEER
NAGAON WATER RESOURCE DIVISION
NAGAON

5:THE ASSTT. EXECUTIVE ENGINEER
NAGAON WATER RESOURCE SUB- DIVISION
NAGAON

6:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON

BELTOLA
GHY-2

Advocate for the Petitioner : MR.K GOGOI

Advocate for the Respondent :

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. S Borthakur, Advocate.
For the Respondents	: Mr. RM Das, SC, Water Resource
Date of Hearing	: 12.02.2024, 05.03.2024
Date of Order	: 15.03.2024

JUDGMENT AND ORDER(CAV)

1. Heard Mr. S Borthakur, learned counsel for the petitioner. Also heard Mr. RM Das, learned standing counsel appearing on behalf of respondent Union of India.
2. The petitioner is aggrieved by an order dated 26.08.2013 whereby the petitioner was dismissed from service in exercise of power under sub clause (2)(a) of the Article 311 of the Constitution of India on the ground that the petitioner has been convicted under section 306/34 IPC by the learned Additional Sessions Judge, Nagaon and was sentenced to undergo rigorous imprisonment of 7 (seven) years with fine of Rs.10,000/- in default to simple imprisonment of 6 months.
3. Subsequently on an appeal being preferred, the said conviction and sentence was modified and the appellate court acquitted petitioner from the charges of offence under Section 306 IPC and convicted the petitioner

under section 498 A IPC and was sentenced him to undergo RI for one year.

4. In the aforesaid backdrop, the petitioner preferred a representation before his employer with a request to recall the order of dismissal. Such representation according to Mr. S Borthakur is still pending for consideration.
5. Mr. S Borthakur learned counsel for the petitioner contends that the employer has not applied their mind to the given facts of the present case inasmuch they have not followed the principle as laid down under Rule 10 of the Assam Services (Discipline and Appeal), Rules 1964 in this regard.
6. In this connection, Mr. S Borthakur learned counsel for the petitioner has also relied on the decision of the hon'ble Apex Court rendered in ***Union of India & others vs Tulsiram Patel and Others*** reported in **(1985) 3 SCC 398** and contends that the parameters laid down under the aforesaid judgment by the hon'ble Apex Court has also not been complied with, while dismissing the petitioner from service. The disciplinary authority has also not exercised their power on the application filed by the petitioner after the conviction was modified by the appellate court.
7. This court has given anxious consideration to the submissions made by the learned counsel for the parties.
8. Rule 10 of the Assam Services Disciplinary & Appeal Rule, 1964 (hereafter referred to as Rules, 1964) prescribes for special procedure in certain cases, which includes a prescription of procedure where a penalty is imposed on a Government servant on the ground of his conduct, which has lead to his conviction on a criminal charge. The principle mandated is

that the disciplinary authority should consider the circumstances of the case and pass such order as it deems fit.

9. Article 311 of the Constitution of India provides for certain condition for dismissal, removal or reduction in rank of persons employed in civil capacities under Union or States and it prescribes, amongst others, that no such person shall be dismissed or removed or reduced in rank except after an enquiry. However, there are exceptions to such prescription of enquiry and one of the exceptions is, when a person is dismissed or removed or reduced in rank on the ground of conduct, which led to his conviction on a criminal charge.
10. In the case of ***Tulsiram Patel (supra)***, the Hon'ble Apex Court, while dealing with a pari-materia provision of Rules 10 g of the Rules and referring to the earlier decisions of the Hon'ble Apex Court laid down certain proposition of law, which can be called out as follows:
 - I. The consideration to be made by the employer, while taking a decision to remove, dismiss or to reduce in rank an employer is to apply its mind and consider the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed on the delinquent employee on his conviction on a criminal charge.
 - II. Such provision confers powers on disciplinary authority to decide whether in the fact and circumstances of a particular case, what penalty, if at all, should be imposed on the delinquent employee.
 - III. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon and determine the nature and extent of the penalty to

be imposed on the delinquent and it is the discretion of the disciplinary authority, in a given case when it may even refuse to impose any penalty in spite of conviction.

IV. Where a situation envisages one of the three clauses of the Second proviso to Article 311 (2) or an analogous service rule arises, it is not mandatory that major penalty of dismissal, removal or reduction in rank should always be imposed upon the concerned Government servant.

V. The penalty which can be imposed may be some other major penalty or even a minor penalty, depending upon the fact and circumstances of the each case.

11. In the case in hand, the Rule 10 (i) is an analogous rule to that of Article 311 (2)(a). Therefore, the principle as laid down above in ***Tulsiram Patel (supra)*** case shall also be required to be applied.

12. In the case in hand, the fact remains that the petitioner was convicted under Section 306 IPC and was sentenced to undergo rigorous imprisonment for 7 years. The fact also remains that the appellate court reversed such conviction of the petitioner under Section 306 IPC. The petitioner was convicted under Section 498(A) IPC and was sentenced to undergo rigorous imprisonment of one year and to pay a fine of Rs. 20,000/- and in default of payment of fine to undergo rigorous imprisonment for 3 months.

13. However, prior to the appellate judgment, the petitioner was dismissed from service by way of the impugned order dated 26.08.2013 in exercise of power under Article 311 (2) (a). After the passing of the

appellate judgement, the petitioner had preferred a representation before his employer on 09.04.2014 for reconsideration of the penalty imposed in view of the change situation i.e. passing of the appellate judgement, however, such representation has not been decided till date.

14. In the backdrop of settled propositions of law as discussed hereinabove, the disciplinary authority i.e. the Executive Engineer, WR Division, Nagaon, who passed the impugned order dated 26.08.2013 and before whom the representation preferred by the petitioner is pending, is required to consider the case of the petitioner and pass a speaking order in terms of the principle as recorded herein above. Mr. RM Das, learned counsel representing the Executive Engineer, in his usual fairness submits that State being a model employer shall definitely consider the case of the petitioner in terms of the settled propositions of law.

15. In view of the aforesaid the writ petition stands disposed of with the following directions:

- A. The respondent No. 4 (Executive Engineer, WR Division, Nagao) shall consider the representation of the petitioner dated 09.04.2014 and pass a speaking order taking note of the settled propositions of law as discussed hereinabove.
- B. The petitioner shall be at liberty to file a fresh representation if so advised.
- C. The petitioner shall furnish a copy of this order along with a representation before the Executive Engineer, WR Division, Nagaon within a period of two weeks from today.
- D. The Executive Engineer, WR Division, Nagaon on receipt of the

copy of this order to be furnished by the petitioner shall consider the case of the petitioner within a period of two weeks.

16. Accordingly, this writ petition stands disposed of.

JUDGE

Comparing Assistant