

GAHC010130112013



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

Case No. : WP(C)/2902/2013

PALLAB CHOUDHURY,
S/O SRI HIREN CHOUDHURY
R/O MAYENG NARAH PATH, WARD NO. 3,
P.O., P.S. and DIST. DHEMAJI, ASSAM.

---VERSUS---

1. THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FINANCE TAXATION DEPARTMENT, DISPUR, GUWAHATI-06, KAMRUP M,
ASSAM.

2:THE COMMISSIONER OF TAXES, ASSAM,
"KAR BHAWAN" G.S. ROAD, DISPUR,
GUWAHATI-06, KAMRUP M
ASSAM THE APPELLATE AUTHORITY.

3:DEPUTY COMMISSIONER OF TAXES,
TEZPUR ZONE, DIST. TEZPUR, ASSAM.

4:THE SUPERINTENDENT OF TAXES,
OFFICE OF THE SUPERINTENDENT OF TAXES,
DIST. DHEMAJI, ASSAM,
THE DISCIPLINARY AUTHORITY,

5:THE SUPERINTENDENT OF TAXES,
OFFICE OF THE SUPERINTENDENT OF TAXES
NORTH LAKHIMPUR,
ASSAM- THE CHAIRMAN BOARD OF ENGQUIRY

Advocate for the Petitioner : MR.K BARUAH

Advocate for the Respondent : SC, TAXES, MR R. DHAR

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

29.01.2024

Heard Mr. R. Sarma, learned *Amicus Curiae*. Also heard Mr. B. Choudhury, learned counsel appearing for the respondents.

2. The petitioner, by way of instituting the present proceedings, has presented a challenge to an order dated 01.08.2012 (Annexure-L to the writ petition), by which, on conclusion of a departmental proceeding initiated against him, he came to be dismissed from service.

3. The brief facts, requisite for adjudication of the issue arising in the present proceedings, are noted hereinbelow:

The petitioner, while working as a Grade IV employee (Peon) in the Office of the Superintendent of Taxes, Dhemaji came to be placed under suspension vide an order dated 08.02.2012 for his alleged involvement in financial irregularities, submission of false challans etc. Thereafter, the Disciplinary Authority, vide a show-cause notice dated 27.04.2012, initiated a departmental proceeding against the petitioner basing on the charges of misappropriation of Government fund, breach of trust, indiscipline, forging of challans and causing loss to the Government revenue.

The petitioner, on receipt of the said show cause notice dated 27.04.2012, proceeded vide his written statement dated 15.05.2012 to deny the allegations and the charges levelled against him in the said show-cause notice.

The Disciplinary Authority, not being satisfied with the replies submitted by

the petitioner, proceeded to appoint an Enquiry Officer to enquire into the charges levelled against the petitioner.

The petitioner, as evident from the materials available on record, had participated in the enquiry proceeding and the Enquiry Officer, on conclusion of such proceedings, submitted his report vide his communication dated 19.06.2012 and therein held the petitioner to be guilty of the charges levelled.

The said enquiry report was forwarded to the petitioner for his comments vide a communication dated 07.07.2012 and the petitioner vide his representation dated 14.07.2012 had submitted his comments thereon.

4. It is seen from the records of the said enquiry report that the comments, submitted by the petitioner, was placed before a Board of Enquiry. The Board of Enquiry, after examining the matter also concluded that the allegations levelled against the petitioner stood established. The conclusions as reached by the Board of Enquiry was also forwarded to the petitioner vide a communication dated 23.07.2012 requiring his comments thereon.

5. The petitioner, on 30.07.2012, submitted his comments on the findings arrived at by the Board of Enquiry. Thereafter, on a consideration of the matter and also taking into account the representations as submitted by the petitioner against the Enquiry Officer's report as well as the report of the Board of Enquiry, the Disciplinary Authority, vide an order dated 01.08.2012, on being satisfied with the findings as recorded by the Enquiry Officer as well as by the Board of Enquiry and also noticing that the petitioner had admitted to the allegations levelled against him, proceeded to impose upon him the penalty of dismissal from service.

The petitioner thereafter submitted an appeal on 30.10.2012 before the

Appellate Authority and had instituted the present proceedings before this Court on 23.05.2012.

6. As none appeared on behalf of the petitioner in the present proceedings, on 08.08.2023, this Court had requested Mr. Rahul Sarma, learned counsel to act as *Amicus Curiae*.

7. Mr. Sarma, by accepting the said request of this Court, had appeared in the matter on the last date of hearing i.e. 25.01.2024 as well as today and has taken me through the materials available on record.

8. Mr. Sarma has also drawn my attention to the findings of the Enquiry Officer in the enquiry report dated 19.06.2012, wherein there is a categorical finding that the petitioner had accepted the allegation that the money received by him from the various dealers were not deposited by him in the designated Bank and he had submitted forged challans and receipts to such dealers as proof of deposit of amounts given to him. The said admission as recorded in the enquiry report was not countered by the petitioner in the representation as submitted by him against the enquiry report. Mr. Sarma also submits that such admission of the petitioner as recorded in the enquiry report was not disputed by the petitioner in the writ petition and there is no pleading to that effect in the writ petition.

9. Mr. B. Choudhury, learned counsel appearing for the respondents, by referring to the enquiry report as well as the report of the Board of Enquiry, has contended that the Disciplinary Authority's order is based on materials coming in the record. He further submits that the petitioner was given all due opportunity to defend the allegations levelled against him in the enquiry proceedings. Mr. Choudhury further submits that the penalty of dismissal from service imposed

upon the petitioner is commensurating to the allegations levelled against him and accordingly, the same does not call for any interference of this Court.

10. I have heard the learned counsel for the parties and also perused the materials available on record.

11. It is seen that the allegations levelled against the petitioner in the show cause notice dated 27.04.2012 is serious in nature and in the event such allegations are held to be established in an enquiry, the continuance of such person in service would not be permissible.

12. What is to be examined in the matter is as to whether the allegations levelled against the petitioner had been established basing on materials coming on record in the enquiry proceeding. Further it is to be also examined as to whether a fair procedure was adopted in the enquiry and the petitioner was afforded due opportunity to defend himself.

13. At the outset, it must be noted that on a perusal of the enquiry report dated 19.06.2012 reveals that the petitioner was given all opportunities for defending himself in the matter. The Enquiry Officer in his report has categorically recorded a finding that the amounts received by the petitioner from some of the dealers, who had deposed in the enquiry, were admitted to by the petitioner to not have been deposited in the designated bank account. He also further admitted to have given such dealers false and forged challans showing deposit by him of such amounts in the designated bank. The above position was not disputed by the petitioner at any stage.

14. The Enquiry Officer also in the enquiry report had brought on record that receipt of money by the petitioner was witnessed by the other employees in the office who had also deposed in the enquiry and the petitioner had not disputed

such statements coming on record. The said categorical findings as recorded by the Enquiry Officer in his report were not disputed by the petitioner in his reply against the enquiry report submitted on 14.07.2012. The report of the Board of Enquiry also contains the findings in tune with the findings that were recorded in the enquiry report by the Enquiry Officer and such findings were again also not disputed by the petitioner.

15. In view of the categorical admission by the petitioner with regard to the allegations levelled against him in the show cause notice, in the enquiry proceedings and there being no material brought on record in the present proceedings to content that such findings were so made, without there being any material available on record, this Court holds that the findings recorded by the Enquiry Officer that the charges levelled against the petitioner stood established, cannot be disputed and has to be accepted. Further, there is no material available on record to draw any conclusion that the petitioner was in any manner prejudiced in the enquiry and for that he was not given due opportunity to defend the allegations levelled against him.

16. In that view of the matter and also given the nature of the allegations levelled against the petitioner, the penalty of dismissal from service, as imposed upon the petitioner by the Disciplinary Authority vide order dated 01.08.2012, does not require interference and the same cannot be held to be disproportionate to the allegations levelled against him.

17. Mr. B. Choudhury, has today produced a communication dated 11.09.2023 issued by the Additional Commissioner of Taxes, Assam, wherein it has been highlighted that the appeal as purportedly submitted by the petitioner on 30.10.2012 has not been received by the office of the Commissioner of Taxes or in the Office of the Superintendent of Taxes, Dhemaji.

18. In view of the conclusions reached by this Court with regard to the penalty imposed upon the petitioner, the non-consideration of the appeal in question is not detrimental.

19. For the reasons recorded hereinabove, the writ petition is held to be without merit and accordingly, the same stands dismissed.

20. At this stage, I would like to place on record my appreciation for the service rendered by Mr. R. Sarma, learned *Amicus Curiae* in the matter and he shall be paid the honorarium as per entitlement for his valuable assistance.

JUDGE

Comparing Assistant