

GAHC010008142013



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

Case No. : WP(C)/3591/2013

PRADIP BARUAH
RETD. ASSTT. COMMISSIONER OF TAXES
S/O LT. ATUL CHANDRA BARUA
R/O H/NO.9
BHOG-LAKHMI
NANDAN NAGAR
SARUMOTORIA
P.S. DISPUR
P.O. SACHIVALAYA
DIST- KAMRUP METRO
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-6

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM and
DISCIPLINARY AUTHORITY
FINANCE TAXATION DEPARTMENT
DISPUR
GHY-6

4:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR

GHY-6
5:THE DY. COMMISSIONER OF TAXES
NAGAON ZONE
NAGAON
6:THE DISCIPLINARY AUTHORITY
FINANCE TAXATION DEPARTMENT
O/O COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
FINANCE TAXATION DEPARTMENT
ASSAM
DISPUR
GHY-6
7:THE ASSAM PUBLIC SERVICE COMMISSION APSC
REPRESENTED BY ITS SECRETARY
JAWAHAR NAGAR
KHANAPARA
GUWAHATI
8:THE ACCOUNTANT GENERAL AandE
ASSAM
MAIDAMGAON
BELTOLA
GHY-29
9:THE PENSION AND PUBLIC GRIEVANCES DEPARTMENT
GOVT. OF ASSAM
DISPUR
REPRESENTED BY ITS SECRETARY
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
ASSAM
DISPUR
GHY-6

Advocate for : MR B ACHARYYA
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 8 ORS

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

ORDER

Date : 25.01.2024

Heard Mr. B. Acharyya, learned counsel for the petitioner. Also heard Mr. H. Baruah, learned counsel appearing on behalf of Mr. B. Chaudhury, learned standing counsel for the Finance & Taxation Department; Mr. T. J. Mahanta, learned senior counsel assisted by Ms. P. Sharma, learned counsel for the Assam Public Service Commission; Mr. A. Hasan, learned counsel for the Accountant General, Assam as well as B. Deori, learned Junior Government Advocate appearing for the Pension and Public Grievances Department, Assam.

2. The petitioner, by way of instituting the present proceedings has assailed an order dated 08.10.2012, issued by the Commissioner & Secretary to the Govt. of Assam & Disciplinary Authority, Finance (Taxation) Department, imposing upon the petitioner the following penalties: -

- i) Recovery of 50% of the amount of DCRG due to the petitioner; and
- ii) Deduction of 1/3 of the gross pension authorized to the petitioner, for a period of 3(three) years.

3. The petitioner, while functioning as the Assistant Commissioner of Taxes, was served with a show-cause notice dated 21.10.2009, instituting against him a departmental proceeding basing on the allegations leveled against the petitioner therein. Basing on the allegations as contained in the show-cause notice dated 21.10.2009, charges of gross negligence of duty, insubordination and breach of trust resulting in loss of Government revenue

came to be charged against the petitioner.

4. The petitioner, on receipt of the said show-cause notice submitted his written statement of defense on 14.02.2010 and therein while denying the allegations so leveled against him, placed on record his clarifications in the matter. The disciplinary authority not being satisfied with the replies as furnished by the petitioner, vide notification dated 18.11.2010, directed for an enquiry to be held against the petitioner in pursuance to the show-cause notice dated 21.10.2009. Accordingly, an enquiry officer and a presenting officer came to be appointed. The petitioner participated in the enquiry so held and on conclusion of such enquiry, the enquiry officer submitted his report. The enquiry report as submitted by the enquiry officer was forwarded to the petitioner and the petitioner submitted his representation thereon. The disciplinary authority upon considering the findings of the enquiry officer as contained in the enquiry report as submitted as well as the representation preferred by the petitioner against the said enquiry report proceeded vide order dated 08.10.2012 to impose the following penalties upon the petitioner:-

“i) Recovery of 50% from the remaining amount of DCRG (after recovery of Rs. 1 lakh, inflicted as penalty to Delinquent Officer vide No. FTX.68/2008/125-A, dated 25.11.2011 in the earlier Departmental proceeding) of Shir Pradip Baruah, Assistant Commissioner of Taxes (since retired).

ii) Deduction of 1/3 of the gross pension of Shri Pradip Baruah, Assistant Commissioner of Taxes (retired), for a period of 3(three) years.”

5. At the outset, it is to be noted that the recovery of Rs. 100,000/- (Rupees One lakh) inflicted as penalty upon the petitioner vide order dated

25.11.2011, as noted in the penalty order dated 08.10.2012, has been interfered by this Court in the proceedings in WP(C)/3503/2013.

6. On conclusion of the enquiry held into the allegations as leveled against the petitioner vide the show-cause notice dated 21.10.2009, the enquiry office basing on the materials coming on record in the enquiry submitted his enquiry report on 27.06.2011. The conclusions of the enquiry officer with regard to the charge as leveled against the petitioner of causing loss of Government revenue is extracted herein below: -

“From above, it is established that the alleged 63 (sixty three) lower deduction certificates issued by Shri Pradip Baruah, Assistant Commissioner of Taxes as per the charged brought in the show-cause notice were actually issued which was subsequently cancelled by him. Issue of such undue certificates without consulting existing circular etc. of the competent authority speaks about the carelessness of the incumbent.

Regarding alleged loss of more than 11 crores as per charge brought in the show cause notice the same could not be examined by the undersigned as no relevant records were placed during the hearing. This may however be examined by the concerned authority of Finance (Taxation) Department at appropriate place and time.”

7. On perusal of the conclusions as recorded by the enquiry officer in his enquiry report it is revealed that the petitioner was not found to be guilty of any misconduct, gross negligence to duty and/or of insubordination. The only conclusion reached against the petitioner was that he was careless. The charges of misconduct, insubordination and gross negligence to duty having not been established in the enquiry, the petitioner basing on such enquiry report could not have been imposed with any penalty. The enquiry officer with regard to the charge of breach of trust leading to loss of Government

revenue had recorded a categorical finding that the loss as alleged could not be examined as no records were produced during the enquiry proceedings in this connection. Accordingly, the charge of breach of trust resulting in loss of Government revenue as charged against the petitioner could not be established in the enquiry. The disciplinary authority while passing the order dated 08.10.2012 had proceeded to effect recoveries from the DCRG of the petitioner as well as effecting a deduction in his gross pension, on the premises that the petitioner was responsible for loss of Government revenue amounting to Rs. 11.22 crores.

8. As noticed herein above, the charge with regard to petitioner being responsible for loss of Government revenue in this connection was not established in the enquiry and no materials in support thereof was also produced in the enquiry proceedings. The disciplinary authority by ignoring the conclusions reached by the enquiry officer had proceeded to record the finding in the impugned order dated 12.10.2012 that the petitioner was responsible for loss of Government revenue. Such a conclusion was recorded by the disciplinary authority in the order issued towards imposing penalty upon the petitioner without first issuing a disagreement note in the matter to the petitioner. In the absence of a disagreement note being issued by the disciplinary authority, disagreeing with the conclusions reached by the enquiry officer and giving his reasoning thereon and the petitioner thereafter given an opportunity to counter such reasoning, it was not open to the disciplinary authority to record findings contrary to the one as recorded by the enquiry officer in the enquiry report.

9. It is settled position of law that in the event a penalty is imposed for

recovery of loss of Government revenue upon an employee, who has during the pendency of the departmental proceedings initiated against him superannuated from his services, it is mandatorily required that the amount so sought to be recovered must be quantified in the enquiry that has been held. In the case on hand, the enquiry officer had recorded a finding that there was no material available to draw conclusions that the petitioner was responsible for loss of Government revenue amounting to Rs. 11.22 crores.

In view of the said findings of the enquiry officer there was no occasion for him to quantify the loss as alleged to have occasioned to the Government revenue. Accordingly, the imposition of penalty of recovery from the DCRG and the gross pension of the petitioner is clearly not sustainable.

10. It is also to be noted that the enquiry officer not having concluded that the petitioner was guilty of misconduct, insubordination and of breach of trust which resulted in loss of Government revenue, no penalty could have been imposed upon the petitioner by the disciplinary authority without first recording reasons contrary to the findings of the enquiry officer and thereafter issuing a disagreement note to the petitioner. The said procedure not having been adopted in the case of the petitioner, the penalty so imposed upon him vide the order dated 08.10.2012 cannot be sustained and accordingly, the same stands interfered with.

11. In view of the interference made with the order dated 08.10.2012, the petitioner shall be entitled to his full DCRG amount and the same, if not released to the petitioner, shall be released to him. Further, the petitioner shall be released the amount deducted from his gross pension in terms of the order dated 08.10.2012 and the amount so computed shall also be

released to the petitioner.

12. The exercise required to be carried out for implementation of the directions as passed by this Court herein above, shall be so carried out and concluded by the respondent authorities within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant