

GAHC010194602011



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

Case No. : WP(C)/5638/2011

SANDEEP SINGH
S/O- LT. J.B. SINGH, HQ CE, PROJECT UDAYAK, DOOMDOOMA, DIST.-
TINSUKIA, ASSAM.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY., MINISTRY OF ROAD TRANSPORT and HIGHWAYS,
GOVT. OF INDIA, SOUTH BLOCK, NEW DELHI- 110001.

2:SECRETARY
DEPTT. OF PERSONNEL and TRAINING
GOVT. OF INDIA
NEW DELHI- 110001.

3:SECRETARY
BORDER ROADS DEVELOPMENT BOARD
4TH FLOOR
B. WING
SENA BHAWAN
NEW DELHI- 110011.

4:DIRECTOR GENERAL
BORDER ROADS
SEEMA SADAK BHAWAN
RINGH ROAD NARAINA
DELHI CANTT.
NEW DELHI- 110010

Advocate for the Petitioner : MS.S NATH

Advocate for the Respondent : C.G.C.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 12-02-2024

1. Heard Mr. R. Mazumdar, learned counsel for the writ petitioner. Also heard Ms. A Gayan, learned CGC, appearing for the respondents.
2. Aggrieved by the initiation of disciplinary proceeding against the writ petitioner for wearing wrong "rank badge" while he was serving as Executive Engineer, Non-Functional Selection Grade (NFSG), the instant writ petition has been filed. During the pendency of this writ petition, the respondents have completed the disciplinary proceeding whereafter, the Under Secretary to the Government of India, Ministry of Defence had issued the order dated 13/04/2016 imposing the minor penalty of "Censure" upon the petitioner. The order dated 13.04.2016 is produced before this court by Mr. R Mazumdar learned counsel for the petitioner and the same is kept on record and marked with the letter 'X'.
3. The facts of the case, in a nutshell, are that the writ petitioner was originally appointed as Assistant Executive Engineer (Civil) under the Border Road Organization (BRO). He was subsequently promoted to the higher ranks and at present, he is holding the post of Superintendent Engineer (Civil) under the BRO. While serving as Executive Engineer, NFSG, the petitioner, along with his two other colleagues, viz. Sri Sandeep Singh and Sri Sunil Chandra

Srivastava, were found to be wearing the "rank badge" of Lt. Col. According to the respondents, the petitioner was not entitled to wear the "rank badge" of Lt. Col. and therefore, he had committed a misconduct, for which the petitioner was liable to be proceeded against. Consequently, a Memorandum of Charge dated 15/12/2009 was served upon the petitioner, calling upon him to submit his reply. The memorandum dated 15/12/2009 had contained the Article of Charge as Annexure-1.

4. On receipt of the Memorandum of Charge, the petitioner had approached this Court by filing WP(C) 1124/2010, inter-alia, contending that the disciplinary proceeding drawn against him was not maintainable in law. His two other colleagues, viz. Sri Umashankar Nagwanshi and Sri Sunil Chandra Srivastava had also received similar Memorandum of Charges, which had prompted them also to approach this Court by filing WP(C) No. 1124/2010 and WP(C) 1146/2010 respectively. These three writ petitions were taken up for disposal by a common order. The learned Single Judge had passed judgment and order dated 01/10/2010 disposing of all the three writ petition with the following directions :-

"46. All the above aspects of the matter needs serious consideration of the respondents before proceeding with the impugned departmental proceedings initiated against the petitioners. It will be in the fitness of the things that the respondents shall pass a speaking order dealing with all the above aspects of the matter including their stand in the earlier proceedings referred to above. Till such, the said order is passed by the appropriate authority of the respondents, more particularly, the authority which had issued the notification dated 12/02/2007 (Annexure-5), the impugned departmental

proceeding shall be kept in abeyance. 47. let the above exercise be carried out as expeditiously as possible and if need be, the petitioners should also be given personal hearing in the process. Till the exercise is carried out and finalized by passing a speaking order consistently with the observations made above, the impugned departmental proceedings shall be kept in abeyance."

5. In terms of the order dated 01/10/2010, a speaking order passed by the respondents, thereby, reiterating their stand that the disciplinary proceeding initiated against the writ petitioner was justified. Thereafter, an Enquiry Officer (EO) was appointed and the enquiry proceeding had proceeded.

6. On completion of the enquiry proceeding, the EO was of the view that the charge brought against the writ petitioner was not proved. However, instead of accepting the findings of the EO, the Disciplinary Authority (DA) had disagreed with the EO and issued a Disagreement Memorandum. The writ petitioner submitted his reply dated 14/04/2015 denying the allegations brought against him. Notwithstanding the same, by the order dated 13/04/2016 issued in exercise of powers conferred upon the President under Rule 12 of the CCS (CCA) Rules, 1965, minor penalty of 'Censure' was imposed upon the petitioner.

7. Mr. R. Mazumdar, learned counsel for the petitioner has invited the attention of this Court to the notification dated 12/02/2007 as well as the findings recorded in the judgement and order dated 01/10/2010 passed in WP(C) 1121/2010 and the connected writ petitions to argue that as per the notification of the Ministry of Defence dated 17/02/2007, EE(NFSG) was entitled to wear a badge of

Lt. Col. Mr. Mazumdar has further pointed out that due to omission on the part of the BRO to specify the badge applicable for the EE(NFSG) in the notification bearing No. BROO No. 03/1997, there was confusion amongst the ranks in the BRO as regards the correct badge to be worn by the EE (NFSG). Taking note of such confusion, the respondent authorities have themselves issued the notification bearing No. BROO 01/2011 whereby, it was provided that the badge for the rank of EE(NFSG) would be that of a Major. However, the aforesaid notification was issued after the charge memo was served upon the writ petitioner and during the pendency of the departmental proceeding initiated against him. Therefore, submits Mr. Mazumdar, the said notification could not have been applied retrospectively to cover the case of the petitioner. It is also the submission of Mr. Mazumdar that although the Disciplinary Authority had disagreed with the findings of the EO, no cogent reason has been recorded for adopting such an approach. Contending that the petitioner has already got the promotion to the rank of Chief Engineer but the penalty of 'Censure' is a stigma in his service record, Mr. Mazumdar submits that the impugned order is liable to be set aside by this Court.

8. Opposing the prayer made in the writ petition, Ms. A Gayan, learned CGC has argued that the petitioner has himself admitted of having worn the rank badge of Lt. Col. which was beyond his authority and competence and, therefore, the respondents were justified not only in initiating the disciplinary proceeding but also in imposing the penalty of 'Censure' by disagreeing with the findings of the EO. Ms. Gayan further submits that since the writ petitioner has

already got the promotions which were due to him, the prayer made in the writ petition is no longer relevant. Therefore, the writ petition is liable to be closed with such observation.

9. I have considered the submissions made at the Bar and have also gone through the materials available on record.

10. The only issue arising in this case is as to whether or not the order of penalty of 'Censure' issued on 13/04/2016 by disagreeing with the findings of the EO is valid in the eyes of law. The aforesaid issue would have to be considered in the backdrop of the contention of the parties outlined herein above.

11. At the very out-set, it is to be noted herein that there is already a corrigendum dated 12/02/2007 issued by the Ministry of Defence whereby, the comparison of rank badge to be worn by GREF Engineers with that of the regular Army has been laid down. The table appended to the notification dated 12/02/2007 is reproduced herein below for ready reference :-

<i>General Reserve Engineering Force</i>	<i>Regular Army</i>
<i>Chief Engineer</i>	<i>Major General</i>
<i>Superintending Engineer (Functional Scale)</i>	<i>Colonel</i>
<i>Executive Engineer (Non-functional Selection Grade)</i>	<i>Lieutenant Colonel</i>
<i>Executive Engineer</i>	<i>Major</i>
<i>Assistant Executive Engineer</i>	<i>Captain</i>

12. The question as to whether the said criteria would be applicable in case of all equivalent posts fell for consideration before the learned Single Judge in WP(C) 1121/2010 and the connected writ petitions wherein, it had been observed in para 44 of the judgement and order dated 01/10/2010, as follows :-

“44. The most important aspect of the matter is the Annexure-5 notification dated 12/02/2007 which classifies and places the EE (NFSG) to be in the rank of Lt. Col entitling them to put badges of the said rank. In the said notification, there is no post of SE(C). Although it was contended on behalf of the respondents that the said notification prescribing the equivalence of the posts was only for the purpose of the Army Act but the own stand of the respondents before this Court in the proceeding involved and the order dated 13/12/2007, by which the writ petition was disposed of will bely the same. By the said order, on the basis of the stand of the respondents, this Court has held that the equivalence of the post is for all practical purposes and not only for the purpose of the Army Act.”

13. From the above, it is clear that the question of applicability of the “rank badge” notified by the Ministry of Defence to all equivalent post is no longer open for debate and discussion. A perusal of the notification bearing No. BROO 01/2011 itself goes to show that even the authorities were aware that there was some confusion as regards the rank badges to be worn by GREF Officers and in order to dispel the doubts in the matter, the said notification was issued. The notification dated 28/01/2011 bearing No. BROO 01/2011 laid down, for the first time, the badge that the EE(NFSG) was entitled to wear. Although, an earlier notification of similar nature bearing No. BROO

03/1997 was issued by the department, yet, in the said notification, no indication was given as to the rank badge that would be applicable for EE(NFSG).

14. It is also to be noted herein that at the relevant point of time, it was not only the petitioner but two other officers of the similar rank who were found to have been wearing similar kind of badge, thereby, indicating that there was some confusion amongst the officers as regards the correct badge they were entitled to wear. The aforesaid fact, viewed in the light of the other facts and circumstances of the case, gives a clear indication that at the relevant point of time, there was some confusion as regards the badge to be worn by EE(NFSG). Therefore, it cannot be said that the petitioner was wearing a wrong badge with the deliberate intention of violating the protocol of "rank badge". There is nothing on record to indicate such an attitude on the part of the petitioner. Therefore, even assuming that the petitioner had worn a badge which he was not entitled to wear, the same in the opinion of this Court, appears to be a bona fide mistake due to the conflicting circulars holding the field at the relevant point of time. A mistake committed due to confusion arising out of mis-reading of conflicting circulars cannot, in the opinion of this Court, constitute a misconduct.

15. Situated thus, this Court is of the unhesitant opinion that there was no justifiable ground for the Disciplinary Authority either to initiate a disciplinary proceeding or to disagree with the findings of the Enquiry Officer so as to impose a penalty of 'Censure' upon the petitioner. Any order of penalty, is a stigma and, therefore, taints the

service record of an officer. As such, unless there is cogent ground to impose a penalty, the order of penalty cannot pass the scrutiny by the Court of Law.

16. For the reasons stated herein above, the order of **penalty dated 13/04/2016** is found to be unsustainable in law. The same is accordingly set aside.

17. Writ petition stands allowed. There would be no order as to costs.

JUDGE

Comparing Assistant