

GAHC010208842022



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

Case No. : WP(C)/6758/2022

BHARAT KALITA
S/O SRI LAKSHI RAM KALITA, R/O VILL- MAJ PATHORI, P.S.-SADAR, DIST-
NAGAON (ASSAM), PIN-782003

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, JUDICIAL
DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR, GUWAHATI-781006

2:THE GAUHATI HIGH COURT
REPRESENTED BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
MG ROAD
GUWAHATI-781001

3:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
MG ROAD
GUWAHATI-781001

4:THE DISTRICT AND SESSIONS JUDGE
KARBI ANGLONG
DIPHU
P.S. AND P.O.-DIPHU
DIST- KARBI ANGLONG
ASSAM
PIN-78246

Advocate for the Petitioner : MS. D SAIKIA, MR S A BARBHUYAN,MR SARFRAZ
NAWAZ,MR A W AMAN

Advocate for the Respondent : GA, ASSAM, SC, GHC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

24.09.2024

Heard Ms. D. Saikia, learned counsel for the petitioner. Also heard Mr. N.K. Sarma, learned counsel appearing on behalf of Mr. H.K. Das, learned Standing Counsel, Gauhati High Court/respondent Nos. 2-4. Ms. U. Das, learned counsel appears for the respondent No.1.

2. The petitioner is aggrieved with the impugned order dated 20.05.2022, by which the petitioner has been imposed with the penalty of withholding 3 annual increments, pursuant to a disciplinary proceedings initiated against the petitioner.

3. The petitioner's case is that a complaint had been submitted against the petitioner by one Himangshu Sarma, who was a Lower Division Assistant in the Court of District & Sessions Judge, Diphu, Karbi Anglong, which is to the effect that for the Independence Day celebration which was to be held on 15.08.2021, the staff and officers of the District & Sessions Judge, Diphu, Karbi Anglong were to reach the Court campus at around 9.30 a.m. on 14.08.2021, to make preparations for the Independence Day celebrations. However, the petitioner failed to do any work on the said date, even though he had reached the Court complex on time. Further, he had misbehaved the complainant and told him that he would not do any work on a holiday. The complaint was addressed to the Hon'ble District & Sessions Judge, Diphu, Karbi Anglong.

4. Pursuant to the complaint dated 16.08.2021, a show- cause-notice dated 16.08.2021 was issued to the petitioner by the District & Sessions Judge, Diphu, Karbi Anglong, wherein he was asked to show cause as to why a disciplinary proceeding should not be initiated against him, for avoiding his allotted duty on 14.08.2021 and misbehaving with the other staff including the Officer-in-Charge, which amounted to breach of official discipline and gross negligence of duty, the same being in violation of the Assam Service (Discipline and Appeal) Rules, 1964 (hereinafter referred to as the '1964 Rules').

5. The petitioner submitted his reply dated 25.08.2021, stating that he would do the work of blowing balloons only after doing some household chores, which were to be done in his house. The petitioner also stated that there was no intention on his part to insult the complainant. However, as he had been scolded by the complainant and had been driven out from the Court complex, he felt humiliated due to which he got emotional.

6. The District Judge, Karbi Anglong, on considering the show-cause-notice and the reply made by the petitioner, held that he was not satisfied with the reply made by the petitioner to the charges that had been stated in the show-cause-notice. Accordingly, the District & Sessions Judge deemed it fit and proper to initiate disciplinary proceedings against the petitioner under Rule 9 of the 1964 Rules.

7. In the disciplinary proceedings held against the petitioner, the Enquiry Officer came to a finding that the petitioner failed to maintain discipline and propriety and acted in a manner unbecoming of a government servant. Thus, the Enquiry Officer came to a finding that the petitioner was guilty of

misconduct in misbehaving and humiliating the complainant.

8. The enquiry report was thereafter sent to the petitioner to enable him to submit a representation against the same. After the petitioner submitted a representation, the disciplinary authority came to a finding that the misconduct of the petitioner had been proved and the petitioner was guilty of insubordination and indiscipline, which amounted to misconduct. He was accordingly imposed with the penalty of withholding 3 annual increments w.e.f. the date of the impugned order dated 20.05.2022.

9. The petitioner's counsel submits that though there were no procedural laps while conducting the disciplinary proceedings against the petitioner, the penalty imposed upon the petitioner was disproportionate to the offence and as such, the penalty should be reduced. She also submits that the penalty imposed upon the petitioner has not been clarified, inasmuch as, there is nothing to show that the withholding of 3 annual increments would be with/ or without cumulative effect.

10. Mr. N.K. Sarma, learned counsel appearing for the Gauhati High Court submits that there is no procedural lapse in the disciplinary proceedings conducted against the petitioner. Further, when a misconduct had been proved against the petitioner, the imposition of the penalty by the Disciplinary Authority should not be interfered with, as the punishment was not disproportionate to the charge framed against the petitioner.

11. I have heard the learned counsels for the parties.

12. It is not disputed by the parties that there was no procedural lapse while

conducting the disciplinary proceedings. With regard to the finding of guilt against the charge framed against the petitioner by the Enquiry Officer and the Disciplinary Authority, it would be profitable to refer to the decision of the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi Vs. Union of India and Ors.***, reported in (***1995***) ***6 SCC 749***, where the Supreme Court has held that the Disciplinary Authority is the sole Judge of facts. In the present case, it is not in dispute that the petitioner had misbehaved with the complainant. As such, this Court is of the view that there is no reason for this Court to come to any finding that there was any infirmity with the decision of the Enquiry Officer and the Disciplinary Authority, on coming to a finding that the petitioner was guilty of misconduct.

13. In the case of ***State Bank of India Vs. A.G.D. Reddy***, reported in ***2023 SCC OnLine SC 1064***, the Supreme Court has held in para 42 as follows:-

“42. It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to re- appreciate the same and arrive at an independent finding on the evidence. This lakshman rekha has been recognized and reiterated in a long line of judgments of this Court.”

14. With regard to the submission made by the petitioner's counsel that the punishment/penalty imposed upon the petitioner was disproportionate to the offence, it would be profitable to refer to the decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Ors. Vs. J.P. Saraswat***,

reported in **(2011) 4 SCC 545**, wherein the Supreme Court has held that judicial review is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the present case, there is no averment to the effect that the penalty was actuated by malice. The penalty imposed upon the petitioner is a minor penalty and keeping in view the fact that the petitioner has been found to be guilty of misconduct, this Court is unable to come to a finding that the penalty imposed is unconscionable or shocks the conscience of the Court.

15. Before closing with the present case, it is clarified that the penalty imposed upon the petitioner, i.e., withholding of 3 annual increments, is not with cumulative effect.

16. In view of the reasons stated above, this Court is not inclined to exercise it's discretion in the present case.

17. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant