

GAHC010215632024



2024:GAU-AS:12770

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

Case No. : I.A.(Civil)/3478/2024

1: THE STATE OF ASSAM AND ORS REP BY ADDITIONAL CHIEF
SECRETARY GOVT OF ASSAM REVENUE AND DISASTER MANAGEMENT
DEPT GUWAHATI ASSAM

2: THE PRINCIPAL SECRETARY GOVT OF ASSAM REVENUE AND
DISASTER MANAGEMENT DEPT GUWAHATI ASSAM 781006

3: THE DISTRICT COMMISSIONER
KAMRUP METRO GUWAHATI ASSAM 0

VERSUS

RAJ SOBHAN GOSWAMI
S/O LATE DHARMA SOBHAN GOSWAMI RESIDENT OF RUKMINI NAGAR,
NAMGHAR PATH 2, HOUSE NO. 18A, GUWAHATI 06 ASSAM

Linked Case : W.A. No.12126 of 2024 (Filing Number)

1: THE STATE OF ASSAM REP BY ADDITIONAL CHIEF SECRETARY GOVT OF
ASSAM REVENUE AND DISASTER MANAGEMENT DEPT GUWAHATI
ASSAM

2: THE PRINCIPAL SECRETARY GOVT OF ASSAM REVENUE AND DISASTER
MANAGEMENT DEPT GUWAHATI ASSAM

3: THE DISTRICT COMMISSIONER
KAMRUP METRO GUWAHATI ASSAM

VERSUS

RAJ SOBHAN GOSWAMI
KAMRUP METRO GUWAHATI ASSAM

For the Applicant/Appellant(s) : Mr. S. Dutta, Advocate.

For the Respondent(s) : Mr. B. Kaushik, Advocate.

– B E F O R E –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

17.12.2024
(Vijay Bishnoi, CJ)

The matter comes upon for consideration of the application preferred on behalf of the applicants under Section 5 of the Limitation Act, 1963 with a prayer to condone the delay of 112 days in filing the connected appeal.

The sole respondent has put in appearance through Mr. B. Kaushik, learned counsel, however, has not filed any counter to the interlocutory application but has simply said that the applicants have not satisfactorily explained the delay.

Having heard the learned counsel appearing for the parties and after going through the contents of the application, we deem it appropriate to condone the delay of 112 days in filing the connected writ appeal. Hence, the interlocutory application is allowed. The delay of 112 days in filing the connected appeal is condoned.

With the consent of the learned counsel appearing for the parties, the connected writ appeal, which is yet to be numbered, is heard finally at the motion stage itself.

The respondent has approached the Writ Court by way of WP(C) No.2546/2015 assailing the order dated 12.11.2013 issued by the disciplinary authority, i.e. the Additional Chief Secretary to the Government of Assam, Revenue & Disaster Management Department, whereby the penalty of withholding of 3(three) number of increments with cumulative effect had been

imposed upon the respondent.

The principal allegation against the respondent was that while he was serving as a Registering Officer at Kamrup (Metro) District from 2003 to 2008, he registered 15(fifteen) number of Deeds, which were under-valued. The Department has alleged that by registering the said under-valued Deeds, the respondent had violated Section 27A(I) of the Indian Stamp (Assam Amendment) Act, 2004. It was also alleged that the Revenue Department had issued a letter dated 05.12.2003 to all the Revenue Officers on the aspect of valuation of land in greater Guwahati, however, the respondent, without following the mandate of the letter dated 05.12.2003, had registered 15(fifteen) number of Deeds, which were under-valued.

The respondent in his defence has stated that the letter dated 05.12.2003 issued by the Revenue Department had never been communicated to him at any point of time and, therefore, while registering the 15(fifteen) number of Deeds in the year 2007, he failed to take note of the valuation of the properties, which were registered through the Deeds.

The learned Single Judge, after hearing the learned counsel appearing for the parties, has shown disinclination to accept the defence proposed by the respondent, however, has interfered with the penalty order on the ground that the Department had failed to prove the charges against the respondent by producing cogent and reliable evidence. The relevant portion of the judgment & order dated 14.05.2024 passed by the learned Single Judge in WP(C) No.2546/2015 is extracted hereunder:-

“16. There is no manner of doubt that the charge/ allegation against the petitioner is grave wherein the aspect of loss to the State exchequer of a huge amount is involved. In fact, the amount has been quantified as Rs.28,70,350/- involving 15 nos. of Deeds registered by the petitioner as the registering officer wherein there were gross undervaluation of the properties involved.

17. The contention raised on behalf of the petitioner that he was not aware of the communication dated 15.12.2003 issued by the Revenue Department on the aspect of valuation of properties in Greater Guwahati and that the said communication is an inter-office communication and was not served in the office of the petitioner, may not *prima facie* appear to be acceptable. The said communication was an existing communication for the last about 5 years when the Deeds in question were registered. The petitioner who was a Sub-Registrar at Guwahati at that point of time and it being on record that he was posted at Guwahati in the year 2004 as stated in paragraph 2 of the writ petition, it is appeared unreasonable to feign ignorance of the said communication dated 05.12.2003. This Court is also not inclined to accept the submission that no role was to be performed by the registration officer regarding valuation in terms of the letter dated 28.11.2005. This Court is also not inclined to accept the submission that there being a *suo moto* power of the Collector under Section 27A(3) of the Assam Amendment of the Stamp Act, 1809, the charge is not liable to be leveled against the petitioner.

18. Having observed that, it is however required to be examined as to the manner how the disciplinary proceeding and the enquiry was initiated and held. This Court however remind itself that such examination by this Court is on the *prima facie* aspect as this Court plays a secondary role in matters of disciplinary proceeding wherein the primary role is of the disciplinary authority.

19. The show-cause notice dated 10.09.2008 and the statement of allegations had mentioned 4 nos. of documents and two nos. of witnesses. The enquiry report submitted would reveal that while witness Pobitra Kumar Das had appeared and his statements were recorded, the other witness Shri Bipin Goswami had refused to make any statement. Further, the enquiry officer has recorded that in the statement of witness, Pobitra Kumar Das, he had denied having any knowledge about the subject as his work was on different aspects. The enquiry officer has in fact made the following observation so far as the aforesaid witness as

‘therefore, his statement is not of very essential in this case’.

This Court has also looked into the original records of the enquiry produced, from which it reveals that the said witness Pobitra Kumar Das did not say anything towards the culpability of the petitioner qua the charges.

20. It appears that the enquiry officer had come to a conclusion of establishment of the allegation only on the presumption that the petitioner was expected to have knowledge about the communication dated 15.12.2003. This Court is of the view that such presumption could not have been drawn as the categorical defence of the petitioner was that he was not aware of the said communication and the same was never served in his office. Even assuming that such defence was factually incorrect, the same was required to be *prima*

facie established in the enquiry through the witnesses who were named and as observed above, the same was not done.

21. *As regards the order of penalty dated 12.11.2013, the disciplinary authority appears to have proceeded on an entirely incorrect perspective with regard to the burden of proof. It has been held by the disciplinary authority as follows:*

‘it reveals from the enquiry report that the charged officer could not produce any evidence / documentary proof that he was not guilty in any way’

22. *The aforesaid approach of the disciplinary authority is contrary to the provision of law as the burden of proof, though may not be in strict conformity with the Indian Evidence Act has to be discharged by the Department which has leveled the allegation against the delinquent officer and there was a denial of the allegation by the said officer on record. A disciplinary proceeding cannot be culminated with an order of penalty only on the ground that such denial of the allegation is not acceptable and in fact it is only when the allegation is denied the same is required to be proved in an enquiry. However, in the instant case, the same was not done at all in the enquiry held.*

23. *In view of the aforesaid facts and circumstances, this Court is of the considered view that the impugned order of penalty dated 12.11.2013 passed by the Revenue and DM Department, Government of Assam of withholding three increments with cumulative effect is unsustainable in law and accordingly, the same is set aside. Consequently, the benefits of the aforesaid three increments are to be released to the petitioner. Further, since the petitioner has already been stated to have been retired from service on 30.09.2023, it is directed that his pensionary and other post retirement benefits are to be calculated on the correct rate of his salary at the time of his retirement.”*

In the impugned order, the learned Single Judge has observed that the charges levelled against the respondent were required to be *prima facie* established in the enquiry through the witnesses, who are named. The learned Single Judge has also observed that the Disciplinary Authority appears to have proceeded on an entirely incorrect prospective with regard to the burden of proof by holding that the charged Officer could not produce any evidence/ documentary evidence that he was not guilty in any way. The learned Single Judge has concluded that the aforesaid approach of the Disciplinary Authority is

contrary to the provision of law as the burden of proof though may not be in strict conformity with the Indian Evidence Act has to be discharged by the Department which has levelled the allegation against the delinquent Officer and there was a denial of the allegation by the said Officer on record.

Having heard the learned counsel appearing for the parties and after going through the material available on record, we do not find any infirmity in the observations and the findings of the learned Single Judge. Hence, no case for interference is made out.

The Registry is directed to register the connected writ appeal immediately and treat it as dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant