

GAHC010219812023



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

Case No. : WP(C)/5726/2023

MISBAH UDDIN LASKAR
S/O LATE KHAYER UDDIN LASKAR, R/O TULARGRAM PART-I, P.O. AND
P.S.-SONAI, DIST- CACHAR, ASSAM

VERSUS

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

2:THE DIRECTOR OF LAND RECORDS AND SURVEYS
ASSAM
RUPNAGAR
GUWAHATI-781032
ASSAM

3:THE DEPUTY COMMISSIONER
CACHAR
DIST-CACHAR
ASSAM

4:THE SETTLEMENT OFFICER
CACHAR
DIST-CACHAR
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 24-07-2024

Heard Mr. R.M. Deka, learned counsel for the writ petitioner. Also heard Mr. J. Handique, learned standing counsel, Revenue Department, Assam appearing for the respondent Nos. 1 and 2 and Ms. A. Talukdar, learned Govt. Advocate, Assam appearing for the respondent Nos. 3 and 4.

2. This writ petition has been instituted, *inter alia*, assailing the order dated 22-09-2023 issued by the District Commissioner, Cachar, i.e. the respondent No. 3 herein, proposing to impose major penalty of dismissal from service upon the writ petitioner.

3. The facts of the case, in a nutshell, are that the writ petitioner, while serving as Patowary (Lat Mandal) in the office of the Assistant Settlement Officer, Cachar was caught red handed while accepting bribe for an amount of Rs. 3000/- from a person named Mehboob Hussain Barbhuiya. Thereafter, Anti Corruption Bureau Case being ACB PS Case No. 22/2023 was registered under Section 7(a) of the Prevention of Corruption Act, 1988 on the basis of an ejahar filed by the complainant, viz. Mehboob Hussain Barbhuiya. The petitioner was arrested in connection with ACB PS Case No. 22/2023 on 28-03-2023. Thereafter, vide order dated 05-04-2023, the petitioner was placed under suspension on account of his arrest and detention in prison by invoking the powers under Rule 6(2) of the Assam Service (Disciplinary and Appeal) Rules, 1964 (hereinafter referred to as Rules of 1964). Later on, the petitioner was, however, released on bail by order dated 25-05-2023 passed by the learned Special Judge, Assam in connection with ACB PS Case No.

22/2023. A disciplinary proceeding was initiated against the petitioner and by the communication dated 23-05-2023, memorandum of charge along with the statement of allegations, was served upon the petitioner. A Enquiry Officer was also appointed to conduct the disciplinary enquiry. The petitioner had participated in the disciplinary proceeding. On completion of the enquiry, the Enquiry Officer had submitted his Enquiry Report dated 25-08-2023 holding that the charge brought against the petitioner had been established. Accordingly, it was suggested that punishment of dismissal from service be imposed upon the petitioner. On the basis of the Enquiry Report, impugned order dated 22-09-2023 was issued to the petitioner asking him to show cause as to why, penalty of dismissal from service with disqualification from future employment should not be imposed upon him. It was at that stage, the petitioner had approached this Court by filing the instant writ petition, *inter alia*, assailing the order dated 22-09-2023.

4. It is the submission of the petitioner's counsel that the order dated 05-04-2023, by means of which, the petitioner was placed under suspension had not been reviewed before the expiry of 90 days as is required under the law laid down in several judicial pronouncements. Therefore, the order of suspension has lapsed by operation of law and hence, the petitioner is liable to be reinstated in service. In support of his above arguments, Mr. Deka has relied on a decision of the Division Bench of this Court rendered in the case of ***State of Assam represented by the Commissioner & Secretary and Anr. Vs. Ajit Sonowal & Ors.*** reported in ***2023 SCC OnLine Gau 731*** to submit that due to the failure on the part of the respondents to review the order of suspension before expiry of 90 days, the same has automatically lapsed and therefore, the consequential

benefits of reinstatement ought to be given to the petitioner.

5. Mr. Deka has further argued that his client was never served with a copy of the Enquiry Report dated 25-08-2023. According to Mr. Deka, it was during the pendency of this proceeding that the respondent No. 3 had filed an I.A. being, I.A.(C) No. 1871/2024, with a prayer to vacate the interim order dated 27-09-2023 passed in this writ petition wherein, a copy of the Enquiry Report had been enclosed. It was only from the said enclosure in the I.A. that the petitioner for the first time became aware of the Enquiry Report. Mr. Deka has argued that his client is not only entitled to receive a copy of the Enquiry Report but under Rule 9(A) of the Rules of 1964, he was also entitled to make a representation before the authorities against the findings of the Enquiry Officer as well as the proposed penalty, which opportunity was not granted to the petitioner.

6. Relying upon a decision of the Supreme Court rendered in the case of ***UoI & Ors. Vs. Md. Ramzan Khan*** reported in ***(1991) 1 SCC 588***, Mr. Deka has argued that denial of opportunity to the delinquent to submit representation against the Enquiry Report would amount to violation of principles of natural justice. The learned counsel for the petitioner has, therefore, submitted that an order be passed by this Court reinstating his client by setting aside the order of suspension and also directing the respondent No. 3 to grant him an opportunity to submit a representation against the Enquiry Report.

7. Opposing the above submission, Ms. A. Talukdar, learned counsel for the State of Assam has argued that the petitioner has been found to be guilty by the Enquiry Officer for accepting bribe. That apart, he was caught red handed while accepting bribe of Rs. 3000/-. Subsequently, the petitioner had also submitted a letter addressed to the Addl.

Deputy Commissioner, Cachar admitting his guilt. Under the circumstances, it cannot be said that there is any procedural violation in this case due to non-furnishing of the report of the Enquiry Officer.

8. Similar is the argument of Mr. J. Handique, learned standing counsel, Revenue Department, Assam

9. Before recording any finding on the submission made at the Bar, it would be pertinent to note herein that taking note of the petitioner's case, by the order dated 27-09-2023, the learned Single Judge had suspended the operation of the order dated 22-09-2023, as an interim measure. As a result of the interim order dated 27-09-2023 passed by this Court, no penalty, as proposed in the letter dated 22-09-2023 could be imposed upon the petitioner on the basis of the Enquiry Report dated 25-08-2023. Situated thus, the respondents had approached this Court by filing I.A.(C) No. 1871/2023 with a prayer to vacate the interim order dated 22-09-2023.

10. It is to be noted herein that the materials available on record clearly establishes that the writ petitioner was caught red handed by the official of the Anti Corruption Bureau of Assam while accepting bribe of Rs. 3000/- from the complainant Mehboob Hussain Barbhuiya. Thereafter, ACB PS Case No. 22/2023 was registered against the petitioner and he was also arrested and detained in custody to be released subsequently on bail. The petitioner was also placed under suspension due to his arrest and detention in the prison beyond forty eight hours. Subsequently, a departmental proceeding was held against the petitioner in which the charge brought against him was established. It is not the case of the petitioner that he was not afforded sufficient opportunity to protect his

interest during the departmental proceeding. It is in the aforesaid factual backdrop that the respondent No. 3 had issued the impugned order dated 22-09-2023 asking the petitioner to show cause as to why, major penalty of dismissal from service with disqualification of future employment should not be imposed upon him. The respondent No. 3, however, did not initiate any action for reinstatement of the petitioner by revoking/ review the order of suspension.

11. The learned departmental counsel has submitted that the Enquiry Report was sent to the petitioner by post. However, Mr. Deka has denied receipt of such Enquiry Report by his client and has maintained that the petitioner became aware of the Enquiry Report only during the pendency of this writ proceeding.

12. On a reading of Rule 9(A) of the Rules of 1964, I find that under the Rules of 1964 the Disciplinary Authority is required to communicate to the Govt. servant any order made by the Disciplinary Authority, along with a copy of the report of the Enquiry Officer. In this case there is serious dispute as to whether, copy of the Enquiry Report was at all received by the petitioner.

13. In the case of **Ramzan Khan (Supra)** the Supreme Court had made the following observations:-

“18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

14. That was also a case where a disciplinary enquiry was initiated under Article 311(2) of the Constitution wherein an Enquiry Report was submitted against the delinquent. By taking note of the position which had emerged after the 42nd amendment of the Constitution dispensing with the requirement of furnishing copy of the Enquiry Report to the delinquent, the Supreme Court has held that notwithstanding such amendment, the delinquent will still be entitled to represent on the conclusion of the Enquiry Report contending that the charges or some of the charges had not been established against him. By applying the ratio of the decision rendered in the case of ***Md. Ramzan Khan (Supra)*** this Court is of the unhesitant opinion that the petitioner is entitled to one opportunity to submit a representation against the Enquiry Report dated 25-08-2023 ventilating his grievance, if any, in the matter.

15. Insofar as the prayer of the petitioner to direct his reinstatement in service pending issuance of final order of penalty, I am afraid such a prayer of the petitioner cannot be accepted by this Court. In the present case, as noticed above, the petitioner was not only caught red handed while accepting bribe but the charge brought against him has also been established in the Enquiry Proceeding conducted by following due process of law. As a matter of fact, the authorities are contemplating to impose maximum penalty of dismissal from service upon the petitioner. Therefore, even assuming that there is some lapses on the part of the authorities in their failure to furnish copy of the Enquiry Report to the petitioner, that itself cannot be a valid ground for this Court to ignore the fact that the charge of corruption brought against the petitioner has been established in an enquiry proceeding conducted in accordance with law. Since, there is a serious question raised on

the integrity of the writ petitioner, until and unless the findings and observations in the Enquiry Report is interfered with by a competent forum, the question of reinstating the writ petitioner may not arise in the eyes of law.

16. The decision relied upon by Mr. Deka in the case of ***Ajit Sonowal (Supra)*** did not contemplate a situation where a delinquent was found to be guilty in respect of serious charge of corruption/ bribery in a enquiry proceeding conducted in accordance with law. Therefore, I am of the opinion that the ratio in the case of ***Ajit Sonowal (Supra)*** would not have any relevance in the facts of the present case.

17. In the light of the discussion made hereinabove, this writ petition is disposed of by permitting 10 days time, with effect from today, to the petitioner to submit a representation before the respondent No. 3 ventilating his grievance, if any, against the Enquiry Report dated 25-08-2023 and the findings recorded therein. The petitioner shall also indicate as to whether he desires any personal hearing by the respondent No. 3 and if so, the petitioner be given an opportunity of being heard in the matter. Upon completion of the said process, it will be open for the respondent No. 3 and/ or Disciplinary Authority to pass appropriate order(s) dealing with the prayer of the petitioner for his reinstatement in service as well as imposition of penalty, if any, based on the Enquiry Report dated 25-08-2023.

16. If the petitioner continues to remain aggrieved in the matter even thereafter, it will be open for him to avail appropriate legal remedy as may be permissible under the law.

With the above observation, this writ petition stands disposed of. Consequently, the

I.A. stands closed.

JUDGE

GS

Comparing Assistant