

GAHC010258692013



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

Case No. : WP(C)/4849/2013

CHITTARANJAN SARMA S/O LT. DHARMESWAR DEV SARMA,
R/O BHANGAGARH, GHY-5, DIST- KAMRUPM, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FINANCE TAXATION DEPARTMENT, ASSAM, DISPUR, GHY-6,
DIST- KAMRUP, ASSAM

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

3:THE JT. SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT DISPUR GHY-6 DIST- KAMRUP ASSAM

4:THE COMMISSIONER OF TAXES ASSAM KAR BHAWAN GHY-6
DIST- KAMRUP ASSAM

5:THE JT. COMMISSIONER OF TAXES ASSAM KAR BHAWAN GHY-6
DIST- KAMRUP ASSA

Advocate for the Petitioner : MR.J PATHAK

Advocate for the Respondent :

:::BEFORE:::
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 07.02.2024

Date of Judgment: 07.02.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. N. G. Kundu, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned standing counsel, Finance Department, appearing on behalf of all the respondents.

2. By way of instituting the present proceedings, the petitioner has presented a challenge to an order, dated 05.06.2013, issued by the Commissioner and Secretary to the Government of Assam, Finance(Taxation) Department, by which the representation as submitted by the petitioner against the Inquiry Report, came to be rejected. The petitioner has also presented a challenge to an order, dated 06.06.2013, passed by the disciplinary authority imposing upon the petitioner, a penalty of withholding of 2(two) annual increments without cumulative effect.

3. The petitioner while working as the Superintendent of Taxes under the respondent authorities, was served with a Show Cause Notice, dated 27.06.2008, issued by the Principal Secretary to the Government of Assam, Finance Department, initiating a disciplinary proceeding basing on 2(two) allegations levelled against him therein. Basing on the allegations so levelled against the petitioner, a charge of gross negligence of duty, insubordination and breach of trust, resulting in loss of Government revenue, came to be levelled against him.

The petitioner on receipt of the said Show Cause Notice, proceeded to

submit his written statement of defence on 10.07.2008 and therein, denied the charges/allegations as levelled against him. The authorities not being satisfied with the reply as submitted by the petitioner in the matter, proceeded to appoint an Inquiry Officer vide an order, dated 10.03.2009. The Inquiry Officer, thereafter, initiated the inquiry. The said proceedings having not been taken to its logical conclusion and a long lapse of time occasioning thereon since its inception, the petitioner instituted WP(c)6286/2011 and WP(c)6274/2011 before this Court.

It is to be noted that the petitioner was also issued with another Show Cause Notice, dated 08.08.2005, which was also pending for disposal. Accordingly, this Court vide order, dated 18.05.2012, passed in WP(c)6286/2011, proceeded to dispose of the said two writ petitions requiring the authorities to finalize the inquiry proceedings initiated against the petitioner as early as possible but at any rate, not later than 30.06.2010. This Court also required the authorities to furnish a copy of the inquiry report to the petitioner, entitling him to make a representation against the same before passing any order in the matter. The respondent authorities, thereafter, vide an order, dated 07.08.2012, proceeded to impose upon the petitioner, a penalty of withholding of 2(two) annual increments without cumulative effect.

The petitioner assailed the said order, dated 07.08.2012, before this Court, by way of instituting WP(c)1440/2013 and this Court, vide order, dated 09.04.2013, in view of the submissions made by the respondent authorities that the penalty as imposed upon the petitioner, would be re-considered upon giving

an opportunity to the petitioner to submit a representation against the Inquiry Report, dated 19.06.2012, so available in the matter; proceeded to dispose of the said writ petition being WP(c)1440/2013, with a direction to the respondent authorities to re-consider the order of penalty, dated 07.08.2012, imposed upon the petitioner and pass fresh orders in accordance with law. Accordingly, the petitioner was forwarded with the Inquiry Report, dated 19.06.2012, and the petitioner submitted his representation thereon, on 05.02.2013. Thereafter, the said representation of the petitioner was considered and vide order, dated 05.06.2013, the said representation came to be rejected. Thereafter, the disciplinary authority vide order, dated 06.06.2013, proceeded to impose upon the petitioner a penalty of withholding of 2(two) annual increments without cumulative effect. It is the said orders, dated 05.06.2013, and 06.06.2013, that are presently under challenge in the present proceedings.

4. The learned counsels appearing for the parties have made their submissions in tune with the pleadings as brought on record and accordingly, the same is not reproduced herein.

5. At the outset; it is to be noted that the petitioner was issued with a Show Cause Notice, dated 27.06.2008, and therein, 2(two) allegations alleging misconduct committed by him, was so levelled against the petitioner. The petitioner, thereafter, participated in the inquiry proceedings and had also approached this Court considering the delay as occasioning in disposal of the said disciplinary proceedings drawn against him. The penalty of withholding of 2(two) annual increments without cumulative effect being issued to the

petitioner without furnishing to him a copy of the Inquiry Report, dated 19.06.2012, led the petitioner to institute further proceedings before this Court, wherein, this Court had directed for a re-consideration in the matter after the petitioner was given an opportunity to submit his representation against the said Inquiry Report, dated 19.06.2012. The grievance with regard to the fact that the petitioner, at the first instance, of not being furnished with a copy of the Inquiry Report, stood redressed, in pursuance of the directions passed by this Court vide order, dated 09.04.2013, in WP(c)1440/2013 and accordingly, the said aspect need not detain this Court any further in the present proceedings.

6. A perusal of the Inquiry Report, dated 19.06.2012, brought on record reveals that in the inquiry, materials had come on record, which established the charges/allegations levelled against the petitioner. The petitioner although given an opportunity to cross-examine the witnesses deposing in the departmental proceedings, the petitioner, for reasons not disclosed, had refused to cross-examine such witnesses. Basing on the materials coming on record, the Inquiry Officer proceeded to hold that the charges as levelled against the petitioner, stood established.

7. The petitioner has not brought on record any material to demonstrate that he was in any manner prejudiced in the conduct of the inquiry. Accordingly, the findings as recorded by the Inquiry Officer in his Inquiry Report, dated 19.06.2012, being so based on the materials coming on record in the said inquiry; the said Inquiry Report, dated 19.06.2012, requires no interference by this Court.

8. The petitioner on being furnished with a copy of the said Inquiry Report, dated 19.06.2012, in pursuance of the directions passed by this Court, had submitted his representation thereto, on 05.02.2013. The Inquiry Report along with the representation as submitted by the petitioner was again examined by the disciplinary authority and on such examination, proceeded to hold that the findings of the Inquiry Officer did not call for any interference and accordingly, the representation of the petitioner was rejected. It is only upon rejection of the representation of the petitioner that the disciplinary authority, vide order, dated 06.06.2013, proceeded to consider the penalty that is to be imposed upon the petitioner.

9. Upon examining the charges levelled against the petitioner as well as the findings of the Inquiry Officer in his Inquiry Report, dated 19.06.2012, and the representation of the petitioner, dated 05.02.2013, preferred against the said Inquiry Report; the disciplinary authority proceeded to impose upon the petitioner, a penalty of withholding of 2(two) annual increments without cumulative effect. The said penalty imposed upon the petitioner was so imposed after the same was endorsed by the Assam Public Service Commission(APSC).

10. Given the charges levelled against the petitioner as well as the findings of the Inquiry Officer in his Inquiry Report, dated 19.06.2012, and the contentions as raised by the petitioner in his representation, dated 05.02.2013, against the said Inquiry Report, dated 19.06.2012; it is to be found that the punishment as imposed upon the petitioner is not disproportionate to the charges as levelled against him.

11. The contention of the petitioner that the said punishment is absolutely disproportionate, does not merit acceptance of this Court in-as-much as it is a settled law that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of a Court/Tribunal, there is no scope for interference with the penalty so imposed on the ground of proportionality.

12. In view of the above conclusions that the disciplinary proceedings initiated against the petitioner, was so held strictly by following the principles of natural justice and the petitioner having been given due opportunity for defending the allegations as levelled against him and further the petitioner also being furnished with the copy of the Inquiry Report, dated 19.06.2012, in terms of the directions passed by this Court and the petitioner having submitted a detailed representation against the same and the same being duly considered by the authorities and further the penalty as imposed upon the petitioner not being found to be disproportionate to the allegations levelled against him; this Court is of the considered view that the contentions as made by the petitioner in the matter towards challenging the orders, dated 05.06.2013 and 06.06.2013, does not merit acceptance.

13. Accordingly, in view of the above conclusions, the instant writ petition being found to be devoid of merit, stands dismissed. However, there shall be no order as to costs.

14. At this stage, it is to be noted that the petitioner has raised a contention that he was entitled to be promoted to the rank of Assistant Commissioner of Taxes. It is a settled law that during the currency of a penalty, an employee cannot be considered for promotion. However, on conclusion of the currency of the penalty imposed, he would be entitled to have his case considered on merit, for such promotion.

15. In the case on hand, it has been stated in the Bar that upon the currency of the penalty imposed upon the petitioner ceasing to have effect, the case of the petitioner was considered for promotion to the next higher post and accordingly, he was promoted as an Assistant Commissioner of Taxes. The impugned orders of penalty having not been interfered with by this Court, no direction for any retrospective effect to such promotion as effected in the case of the petitioner, can be granted in the matter.

JUDGE

Comparing Assistant