

GAHC010263402023



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

Case No. : WP(C)/6946/2023

ABDUL ADUT MULLAH
S/O- LATE ABDUL BASED MULLAH, VILL.- BAHMURA, P.O. SONKUCHI, P.S.
AND DIST. BARPETA, ASSAM, PIN- 781314.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE ADDL. CHIEF SECRETARY TO THE GOVERNMENT
OF ASSAM, IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE SECRETARY TO THE GOVT. OF ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE CHIEF ENGINEER

IRRIGATION DEPARTMENT
ASSAM
CHANDMARI
GHY-3.

5:THE ADDL. CHIEF ENGINEER (M AND I)

IRRIGATION DEPARTMENT
ASSAM

CHANDMARI
GUWAHATI-3.

6:THE ADDL. CHIEF ENGINEER
(INSPECTION AND QUALITY CONTROL)
IRRIGATION DEPARTMENT
ASSAM
CHANDMARI
GHY-3.

7:THE EXECUTIVE ENGINEER

DHARMAPUR BARKHETRI NALBARI DIVISION (IRRIGATION)
NALBARI
P.O.
P.S. AND DIST. NALBARI
ASSAM
PIN- 781335.

8:THE ENQUIRY OFFICER-CUM-SUPERINTENDENT ENGINEER
NALBARI CIRCLE (IRRIGATION)
NALBARI
P.O.
P.S. AND DIST. NALBARI
ASSAM
PIN- 781335. (RETIRED ON 30.09.2023)

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : SC, IRRIGATION

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 14-06-2024

Heard Mr. M.K. Hussain, learned counsel for the petitioner as well as Mr. N. Upadhyay, learned standing counsel for the Irrigation Department.

2. The case of the petitioner in brief is that the respondent no.3 had issued a show-cause notice dated 20.07.2018 upon the petitioner along with

statement of allegations, list of documents and the list of witnesses and thereby a disciplinary proceeding was initiated against the petitioner. The petitioner had thereafter submitted his reply on 22.10.2018, before the Secretary to the Govt. of Assam, Irrigation Department.

3. The Disciplinary Inquiry was conducted and the Inquiry Report of the disciplinary authority was forwarded to the petitioner by the Deputy Secretary (C) (i/c), Irrigation Department by a forwarding letter dated 26.07.2021, requiring the petitioner to file his written representation or submission against the Inquiry Report. The petitioner had submitted his representation before the Commissioner and Secretary to the Govt. of Assam, Irrigation Department against the said inquiry report on 13.09.2021.

4. Pursuant to the said written statement dated 13.09.2021, the Secretary to the Govt. of Assam, Irrigation Department (respondent no.3), by an order dated 12.01.2023 ordered a *de novo* inquiry against the petitioner from the stage of recording of evidence by appointing a different inquiry officer.

5. The case projected by the petitioner is that the *de novo* inquiry has been initiated in violation of the provision of the Assam Services (Discipline and Appeal) Rules, 1964. In the said regard, the learned counsel for the petitioner had referred to the decision of the Supreme Court of India in the case of *Union of India and ors v. Anil Kumar Sarkar*, (2013) 0 Supp SC 249 : (2013) 4 SCC 161 as well as judgment and order dated 10.02.2021 passed by this Court in *WP(C) 306 of 2017- Sonamani Singha v State of Assam and 2 Ors.*, 2021 (2) GLT 620 : 2021 0 Supp (GAU) 403. In this writ petition, apprehension is expressed that the

juniors of the petitioner will be promoted in the meanwhile and accordingly, the present writ petition has been filed under Article 226 of the Constitution of India.

6. The learned standing counsel for the Irrigation Department has prayed for some more time to obtain instructions and to file an affidavit-in-opposition in the matter. On being asked about the reason for the delay in filing of the affidavit-in-opposition although he was in receipt of the para-wise comments by a communication dated 05.12.2023, the learned standing counsel for the Irrigation Department has submitted that as per the instructions received by him, the *de novo* inquiry from the stage of evidence was necessitated because of the prayer made by the petitioner wherein he had expressed dissatisfaction in the manner in which the inquiry was done.

7. In this regard, he has referred to the written statement dated 13.09.2021, filed by the petitioner against the Inquiry Report, whereby referring to the statements made in page-7, 8 and 9 of the said written statement, the petitioner has expressed that the inquiry was conducted in clear violation of the principles of natural justice and administrative fairplay and settled position of law and that the examination of witnesses were done behind his back and that the Inquiry Officer had failed to adhere to the essential procedures necessary for relying on the documents which were never exhibited through any witness.

8. It is submitted that he has been instructed that the respondent authorities had sought for legal opinion from the Legal Remembrancer of the State and thereafter, a decision was taken for a *de novo* inquiry. Accordingly, it

is submitted that for the said reasons, they wanted to have the complete set of documents to be produced before the Court.

9. In this writ petition, the petitioner has not made any statement that he had made any representation before the authorities that the inquiry was conducted behind his back without following the due process of law. Nonetheless, on examination of the materials available on record, there appears to be good and sufficient reasons why a *de novo* inquiry was ordered.

10. In this case, the petitioner was provided with an opportunity of filing a written statement against an Inquiry Report, pursuant to which he had submitted a written statement on 13.09.2021 and thereafter, the respondent authorities had ordered a *de novo* trial from the stage of recording of evidence.

11. The case of *Anil Kumar Sarkar (supra)*, cited by the learned counsel for the petitioner, is not on the point of non-maintainability of *de novo* departmental proceedings from the stage of recording of evidence. The said decision is only an authority on the point as to when a seal cover procedure should be applied. Therefore, the said judgment is applicable only in respect of the prayer no.3 of the writ petition wherein the petitioner has prayed for promoting the petitioner to the post of Executive Engineer.

12. Neither from the synopsis nor from the list of dates appended to the writ petition the date of DPC could be ascertained. Thus, there is no way to examine as to whether the charges against the petitioner was served after the DPC. In that event, the case of *Anil Kumar Sarkar (supra)* would not help the

petitioner in any way.

13. In the writ petition, the petitioner has also cited the case of *Sonamani Singha (supra)*. From the facts of the said case, it appears that the concerned disciplinary authority, who was not the Inquiry Officer, on receipt of the inquiry report did not find it satisfactory and therefore, a *de novo* inquiry by a different Inquiry Officer, which was held to be not sustainable. On facts the present case is distinguishable because in this case the Disciplinary Authority had not ordered *de novo* inquiry on non-satisfaction against the inquiry report. But, it is on the basis of written statement filed by the petitioner, wherein he had expressed his dissatisfaction in the manner in which the inquiry was conducted, on which the authorities deemed it appropriate to hold a *de novo* inquiry.

14. The provision of section 9 of the Assam Services (Discipline and Appeal) Rules, 1964 does not prescribe an absolute bar for the *de novo* inquiry to be ordered. Therefore, each case has to be examined on the basis of the facts and circumstances of each case.

15. Therefore, on facts the case of *Sonamani Singha (supra)* cannot be applied to this case.

16. Having arrived at a satisfaction that the *de novo* inquiry was based on the written statement filed by the petitioner on 13.09.2021. Under such circumstances, the Court does not find any merit in the writ petition and the same is dismissed.

17. The interim order passed on 06.12.2023 is vacated.
18. The respondent authorities shall ensure that the *de novo* proceedings against the petitioner is brought to an end within a period of 4(four) months from the date of furnishing of a certified copy of this order to the respondent no.3.
19. There shall be no order as to cost.

JUDGE

Comparing Assistant