



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

WRIT PETITION (CIVIL) No.7395 of 2023

1. The Union of India,
Represented by the Secretary,
Department of Posts, Government of
India, Ministry of Communication &
Information Technology, New Delhi-
110001.
2. The Director General (Posts),
Department of Posts, Government of
India, Dak Bhawan, Sansad Marg,
New Delhi-110001.
3. Central Vigilance Commission,
Represented by the Commissioner,
Satarka Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-110023.
4. The Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati, Assam, PIN-781001.

.....Petitioners

-Versus-

Sri Jayanta Kumar Nath,
S/o- Late Manik Chandra Nath,
Ex. Assistant Superintendent of Posts,
Diphu Sub Division, Village/P.O.-
Habibarangabari via- Charaibahi Sub
Post Office, Morigaon- 782106, Assam,

.....Respondent

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

For the Petitioner : Mr. S.K. Medhi, Advocate.

For the Respondents : Mr. S. Nath, Advocate.

Date of Hearing : 29.11.2024.

Date of Judgment : 29.11.2024.

JUDGMENT & ORDER (ORAL)

(Kaushik Goswami, J)

Heard Mr. S.K. Medhi, learned counsel appearing for the petitioners. Also heard Mr. S. Nath, learned counsel appearing for the respondent.

2. This writ petition under Article 226 of the Constitution of India is directed against the impugned order dated 28.06.2023 passed by the learned Central Administrative Tribunal, Guwahati Bench, in O.A. No. 272/2022, whereby the charge-sheet dated 18.07.2022 issued against the respondent/applicant was set aside and quashed.

3. The factual matrix of the case is as follows:-

The respondent/applicant, while working as officiating Assistant Director (Building, SB, FS and IPPB) was also looking after the charge of Assistant Director (Vigilance and Investigation), Circle Office, Guwahati during the period 05.10.2020 to 28.12.2020. During the said period a squad was constituted by Shri R.K.B. Singh, Chief Postmaster General (CPMG), Assam Circle,

(hereinafter referred to as 'the Disciplinary Authority') of three members including the respondent/applicant for the purpose of conducting inquiries against three complaints received by the Circle Office concerned against one Shri Aparajeet Pattanayak, SSPOs, Darrang Division, Tezpur, for alleged commission of the act of corruption. Accordingly, the said squad conducted the inquiry and thereafter submitted three separate reports to the Disciplinary Authority, i.e. Shri R.K.B. Singh, CPMG on 22.12.2020 and on 24.12.2020 against the three separate complaints lodged against Shri Aparajeet Pattanayak. Pertinent that all the three members of the said squad found the action of Shri Aparajeet Pattanayak against the rules.

It is the specific pleaded case of the respondent/applicant that after the said separate three reports were submitted by the squad members, the said Disciplinary Authority summoned all the three aforesaid members of the said squad including the respondent/applicant to his chamber. Upon the respondent/applicant and the other members appearing before the said Disciplinary Authority, he threatened them to submit the report in a manner favourable to Shri Aparajeet Pattanayak. However, the respondent/applicant and the other two members of the said squad decided unanimously to submit the Inquiry Report as per the materials and statements collected during the inquiry, i.e., against Shri Aparajeet Pattanayak.

4. Thereafter almost 1 ½ years from the submission of the aforesaid Inquiry Report by the respondent/applicant and the other two members, the Disciplinary Authority issued Memorandum of Charge-sheet dated 18.07.2022 against the respondent/applicant alleging *inter-alia* that the respondent/applicant has not conducted the inquiry as regards the charges of corruption against Shri Aparajeet Pattanayak properly and that the Inquiry Report is not based on the entire record of the matter.

Aggrieved by the aforesaid Charge-sheet, the respondent/applicant filed the application before the Central Administrative Tribunal, Guwahati Bench, wherein the learned Tribunal after hearing the parties set aside the said Charge-sheet. Situated thus, the present writ petition has been filed by the writ petitioner/respondent authorities.

5. Mr. S.K. Medhi, learned counsel appearing for the petitioner submits that the learned Administrative Tribunal did not consider the submission of the appellant/respondent on merit. He further submits that since the charges are yet to be established and the inquiry has not been commenced, the application is pre-mature and therefore, the order of the learned Central Administrative Tribunal allowing the said application is erroneous and warrants interference from this Writ Court.

6. We have given our prudent consideration to the arguments made by the learned counsel appearing for the parties and have perused the material available on record.

7. It appears that by order dated 18.07.2022, Shri R.K.B Singh, CPMG, Assam Circle, Guwahati, had issued the Memorandum of Charge to the respondent/applicant for alleged misconduct. The Articles of charge are reproduced hereunder for ready reference:-

“Statement of articles of charge framed against Jayanta Kumar Nath, the then Assistant Director (Vig/Inv) on adhoc, Circle Office, Guwahati - 781001 and now Assistant Superintendent Posts, Diphu under Rule-14 of CCS (CCA) Rules, 1965.

Article-I

That Jayanta Kumar Nath, while working as the Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati during the period from 05-10-2020 to 28-12-2020 failed to enquire into the complaint dated 20-07-2020 lodged by Sri Hiranya Bhuyan of Saikia Chuburi, Tezpur based on facts and available records for the allegation that Shri A. Pattanayak was transferred to Guwahati from Darrang Division in 2017 & again transferred back to Darrang Division by the grace of higher authority and reported in the Investigation Report dated 24-12-2020 that "the allegation of posting in the same Division by the grace of higher authority is found to be true." Jayanta Kumar Nath was the senior most member in the Enquiry Team and the conclusion drawn by him and the other two members about showing grace by the higher authorities in the said Investigation report is not born out of the facts on record.

Thus, by the above acts Jayanta Kumar Nath the then Assistant Director (Vig/Inv) on adhoc, Circle Office, Guwahati and now Assistant Superintendent Posts Diphu displayed serious laxity in discharging his assigned duties and thereby failed to maintain devotion to duty besides failure to perform and discharge his duties with the highest degree of professionalism and dedication to the best

of his abilities and he also failed to take steps to ensure devotion to duty on the part of other two Enquiry Team members as enjoined in Rule 3 (1) (ii), 3(1)(xxi) and 3 (2) (i) of CCS (Conduct) Rules, 1964.

Article- II

That the said Jayanta Kumar Nath, while working as the Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati during the period from 05-10-2020 to 28-12-2020 in the Inquiry Report dated 22-12-2020 as a member of the Squad formed for enquiring into the allegations made by the Circle Secretary, AIEU, Group C, Assam Circle through memorandum no. AIEU/Corr-02/2020 dated 27-02-2020 concluded that the lodging of Police Case against Sri Pranab Kakati was not found judicious even though it was stated that the three withdrawals made by him on 19-09-2019, 20-09-2019 and 21-09-2019 from the Ketekibari SO SB A/C of Sri Pradip Bora were irregular. The conclusion drawn is not as per records and procedure followed in Finacle Software which should have been drawn being a responsible officer of the department. The investigation was not done properly in the line of the process of closure of RD Accounts in the Finacle software which does prompt an error message when RD account without repayment of existing loan amount is tried to be closed and it is not possible to close RD account with loan without repayment of the due loan amount at first. As a responsible and senior most officer in the Enquiry Team, Jayanta Kumar Nath should have ensured examination of vital documents like SB -7 or Withdrawal Forms dated 19-09-2019, 20-09-2019 and 21-09-2019 submitted against the Withdrawals from the Ketekibari SO SB A/C number 3831739613 of Sri Pradip Bora so as to establish the facts on the basis of records and as regards violation of Rule 33 (3) (b) of POSB Manual Volume 1 by Sri Pranab Kakati.

Thus, by the above acts, Jayanta Kumar Nath, the then Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati and now Assistant Superintendent Posts, Diphu displayed serious laxity in discharging his assigned duties and thereby failed to maintain devotion to duty besides failure to perform and discharge his duties with the highest degree of professionalism and dedication to the best of his abilities and he also failed to take steps to ensure devotion to duty on the part of the other two

Enquiry Team members as enjoined in Rule 3 (1) (ii), 3 (1) (xxi) and 3 (2) (i) of CCS (Conduct) Rules, 1964.

Article-III

That the said Jayanta Kumar Nath, while working as the Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati during the period from 05-10-2020 to 28-12-2020 did not take into account the factual records in the investigation report dated 24-12-2020 related to the complaint dated 20-07-2020 lodged by Sri Hiranya Bhuyan of Saikia Chuburi, Tezpur and came to the conclusion that "So the allegation of suspicious and careless, act of Shri Pattanayak that all suspects got the opportunity of working at Tezpur HO is true." The said conclusion drawn in the report is not as per the documentary evidence hence superfluous and preconceived. As a responsible officer of the Department, Jayanta Kumar Nath should have consulted all the available records during the enquiry and being the senior most member of the Enquiry Team, he should have ensured that findings in the investigation report should have been based on facts and records only.

Thus, by the above acts Jayanta Kumar Nath, the then Assistant Director (Vig/Inv) on adhoc, Circle Office, Guwahati and now Assistant Superintendent Posts, Diphu displayed serious laxity in discharging his assigned duties and thereby failed to maintain devotion to duty and also failed to take steps for devotion to duty of the other Enquiry Team members as enjoined in Rule 3(1) (ii) and 3 (2) (i) of CCS (Conduct) Rules, 1964.

Article-IV

That Jayanta Kumar Nath while working as Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati during the period from 05-10-2020 to 28-12-2020 failed to prepare the investigation report dated 24-12-2020 objectively considering circumstantial evidences and had drawn the colourful and adventitious conclusion against the Memorandum from Secretary, NFPE, AIPEU, Group - C Assam Circle vide letter no. AIPEU/ Corr-07/2020 dated 02-04-2020 with allegation about the unsocial activities of SSPOS Tezpur (Darrang). Though it was reported that use of wine/alcohol had no evidence but finally investigation report was concluded with a note that the allegations made by the said Union Secretary are found to be true without material evidence and

without taking into consideration all the circumstantial evidences impartially during the investigation.

Thus, by the above acts Jayanta Kumar Nath, the then Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati and now Assistant Superintendent Posts, Diphu inspite being the senior most member in the Enquiry Team, displayed serious laxity in discharging his assigned duties and thereby failed to maintain devotion to duty and also failed to take steps to ensure devotion to duty of the other Enquiry Team members as enjoined in Rule 3(1)(ii) and 3 (2) (i) of CCS (Conduct) Rules, 1964.

Article-V

That the said Jayanta Kumar Nath, while working as Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati during the period from 05-10-2020 to 28-12-2020 stated in the Investigation Report dated 22-12-2020 on the allegations made by the Circle Secretary, AIPUE, Group C, Assam Circle about action taken by the SSPOS Darrang against the staff who had participated in dharna programme on 25-02-2020 that 'So the issuing of charge sheet against the participants in the Dharna is found not judicious in view of proper management of Union issues.' As the senior most member in the Enquiry Team and as a responsible officer of the department, Jayanta Kumar Nath should have drawn the conclusion for the infringement of Conduct Rules by the officials of Darrang Division but the conclusion drawn in the report is merely hypothetical and preconceived.

Thus, by the above acts, Jayanta Kumar Nath, the then Assistant Director (Vig/Inv) on adhoc at Circle Office, Guwahati and now Assistant Superintendent Posts, Diphu displayed serious laxity in discharging his assigned duties and thereby failed to maintain devotion to duty and also failed to take steps to ensure devotion to duty of the other Enquiry Team members as enjoined in Rule 3(1) (ii) and 3 (2), (i) of CCS (Conduct) Rules, 1964."

8. It is apparent from the perusal of the impugned Charge-sheet that the Disciplinary Authority had issued the same against the respondent/applicant on the ground that

while he was functioning as an Inquiry Officer to inquire into the allegation brought against Shri Aparajeet Pattanayak as per the three complaints received along with two other members of the said squad, he did not consider all aspects and thus did not submit a proper Inquiry Report, which allegedly amounts to misconduct. It is apparent that the respondent/applicant along with other two members of the squad after conducting the inquiry against Shri Aparajeet Pattanayak has submitted Inquiry Report before the Disciplinary Authority. It is further apparent that after a period of 1 ½ years from the submission of the said report, the Disciplinary Authority issued the impugned Charge-sheet alleging that the said inquiry was not conducted properly by the respondent/applicant. It shocks our conscience as how an Inquiry Officer can be charge-sheeted for committing misconduct, in the event the Disciplinary Authority does not agree with the findings of the Inquiry Report. An Inquiry Officer after conducting the inquiry applies his mind to the evidence available and forms an opinion, which is submitted to the Disciplinary Authority. The Disciplinary Authority is not bound to accept the report of the Inquiry Officer and it is open to the Disciplinary Authority to record the findings of disagreement and show cause the delinquent in the event the Disciplinary Authority is not accepting the Inquiry Report which is in favour of the delinquent before taking a final decision in the matter. However, in the event the Disciplinary Authority does not agree with the findings of the Inquiry Officer, the Inquiry

Officer cannot be charge-sheeted for not sharing the perception of the Disciplinary Authority in the context of the case. The character of such proceedings is quasi-judicial and as such an Inquiry Officer cannot be charge-sheeted for conducting inquiry merely because the Inquiry Report is not acceptable to the Disciplinary Authority. However, it is equally true that it shall not be correct to say that no disciplinary action can be taken against an employee in regard to actions taken or purported to be taken in the course of an inquiry as an Inquiry Officer. The Inquiry Officer, thus is not immune to a departmental action, however, the same shall depend on the facts of each case.

9. Reference is made to the decision of the Apex Court in the case of ***Union of India & Ors. Vs. A.N. Saxena***, reported in ***(1992) 2 SCC 124***, wherein the Apex Court has held that disciplinary proceedings can be held against an Officer performing judicial or quasi-judicial functions in terms of the charges. Paragraph 8 of the aforesaid judgment is reproduced hereunder for ready reference:-

“8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer

concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.”

10. In ***Union of India & Ors. Vs K.K Dhawan***, reported in **(1993) 2 SCC 56**, the Apex Court by following the judgment rendered in ***Union of India & Ors. Vs A.N. Saxena*** (supra) has held that when an Officer in exercise of judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person, he is not acting as a Judge and therefore, a disciplinary action can be taken against such an Officer. The Apex Court further laid down instances in respect of which disciplinary action can be taken against an Inquiry Officer. Paragraph Nos. 27, 28 and 29 of the aforesaid judgment are reproduced hereunder for ready reference:-

"27. This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind.

28. Certainly, therefore, the officer who exercises judicial or quasi- judicial powers acts negligently or recklessly, or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the

decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

11. Reading the aforesaid judgments of the Apex Court, it is apparent that the Officer who exercises judicial or quasi-judicial powers if acts negligently or recklessly or in order to confer undue favour on a person, is liable to be charge-sheeted. However, a disciplinary action is not

warranted against an Inquiry Officer for a mere technical violation or merely because the order is wrong.

12. Returning back to the facts of the present case, it appears that the allegations leveled against the respondent/applicant vide the impugned Charge-sheet, is to the effect that the respondent/applicant has not conducted the subject inquiry properly. It is thus apparent that the Disciplinary Authority has not agreed with the findings of the Inquiry Report submitted by the respondent/applicant and the other two members of the squad. Pertinent that there is no allegation in the impugned Charge-sheet that the respondent/applicant has acted negligently or recklessly or has acted in order to unduly favour a party or that he has been actuated by a corrupt motive. That being so, no disciplinary action is warranted against the respondent/applicant.

13. Apt at this juncture to refer to the relevant paragraphs of the Order of the learned Central Administrative Tribunal, Guwahati Bench which read as hereunder:-

“5. We have heard the parties, perused the materials on record. It is noted that the impugned Charge Sheet issued by the Disciplinary Authority on the ground that while functioning as Enquiry Officer to enquire into the allegations brought against Shri Aparajeet Pattanayak along with 2 other Members of the said Squad, he did not consider all aspects and thus did not submit a proper enquiry report, which amounts to misconduct. It is further noted that the applicant as a Member of an investigation Squad along with two other Members to investigate or enquire against the allegations brought against Shri Aparajeet Pattanayak.

While doing so he had submitted his enquiry report before the Disciplinary Authority, who was the Disciplinary Authority in the instant case also. The applicant had conducted the enquiry/investigation as a Member of the said Enquiry Squad, duly constituted by the Disciplinary Authority i.e. Chief Postmaster General Shri R.K.B. Singh, as a quasi judicial authority. Therefore, if the report submitted by the applicant was not acceptable to the Disciplinary Authority, he could have disagreed with the same and sent a disagreement note along with copy of the enquiry report to the delinquent officer or asked the Enquiry Officer to conduct further enquiry on the specific issues. However, instead of that the Disciplinary Authority surprisingly, without giving any disagreement note, charge sheeted the applicant on the ground that he had not conducted the enquiry properly.

6. The Hon'ble Apex Court in the case of **K.R. Deb vs Collector of Central Excise, 1971 SCR 375**, has observed:

‘.....if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring officer or officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come its own conclusion under Rule 9.’

In **Union of India vs. J. Ahmed, (1979) 2 SCC 286**, the Hon'ble Apex Court held as under:

‘No case, stricto sensu, for a disciplinary proceeding for misconduct had been made out against the respondent. Any deficiency in the discharge of one's duties would not constitute misconduct. The enquiry held was to establish that the respondent was not fit to hold a responsible post: it did not establish any misconduct on his part to deserve the punishment.’

In the instant case, also if the Disciplinary Authority was not in agreement with the findings of the enquiry report of the applicant on the ground that he did

not appreciate the materials available before him in proper way; in that case the Disciplinary Authority could have asked the applicant or the Squad to investigate/enquire further or to issue a disagreement note under Rule 15(9) of CCS (CCA) Rules, 1957 but instead of doing so, the Disciplinary Authority had showed sympathy towards the said accused officer Shri Aparajeet Pattanayak and charge sheeted the applicant.

6. In view of the above, we are of the opinion that the impugned Charge Sheet dated 18.07.2022 (Annexure A1) is liable to be quashed and set aside. Accordingly, we quash and set aside the impugned Memorandum dated 18.07.2022 and further direct the respondents to consider the case of the applicant for promotion, as he has been denied for the same due to the pendency of the Disciplinary Proceedings.”

14. It appears that the learned Tribunal has taken note of the aforesaid position in law and has accordingly set aside the impugned charge-sheet dated 18.07.2022. Thus, we are of the considered view that there is no legal infirmity with the order of the learned Tribunal dated 28.06.2023 and hence there is no bereft of any merit whatsoever in the writ petition. Accordingly, the writ petition fails.

15. Resultantly, the writ petition stands dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant