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

Case No. : WP(C)/6886/2023

GS 192257X MD HASHIM ANSARI
S/O- MD. ABDUL WAHAB, PRESENTLY SERVING AS LDC AT 528 SSANDTC
(GREF), C/O 99 APO PIN- 930528

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY JOINT SECRETARY (BR), MINISTRY OF DEFENCE
(EARLIER DESIGNATED AS SECRETARY (BRDB)), ROOM NO. 418, B WING
4TH FLOOR, SENA BHAWAN, NEW DELHI- 110011

2:DIRECTOR GENERAL
BORDER ROADS ORGANIZATION
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI- 110010

3:ADDITIONAL DIRECTOR GENERAL (EAST)
BORDER ROADS ORGANIZATION
HQ ADGBR (EAST)
JALUKBARI
LANKESWAR
GUWAHATI
ASSAM
PIN- 781014

4:CHIEF ENGINEER
PROJECT ARUNANK
PIN- 931719
C/O 99 APO

5:COMMANDER
756 BRTF
PIN- 930756
C/O 99 APO

6:OFFICER COMMANDING
528 SS AND TC (GREF) PIN- 930528
C/O 99 APO

7:ICAR RESEARCH COMPLEX FOR EASTERN REGION
(INDIAN COUNCIL OF AGRICULTURAL RESEARCH)
REPRESENTED BY DIRECTOR
HAVING OFFICE AT ICAR PARISAR
P.O. BIHAR VETERINARY COLLEGE
PATNA- 800014
BIHA

For the Petitioner : Mr. D. Bora, Adv.

For the Respondents: Mr. B. Chakravarty, CGC.

BEFORE

THE HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing & Judgement : 10/09/2024.

JUDGEMENT AND ORDER (ORAL)

- 1.** Heard Mr. D. Bora, learned counsel appearing for the writ petitioner. Also heard Mr. B. Chakravarty, learned CGC, appearing for the respondent nos. 1 to 6. None has appeared for the respondent no. 7.
- 2.** By filing this writ petition, the Memorandum of Charges dated 06/11/2023 served upon the writ petitioner, has been put under challenge *inter-alia* on the ground that the same is illegal, arbitrary and has been serve with the *mala fide* intent to cause injury to the writ petitioner.
- 3.** The facts of the case leading to filing of the writ petition, briefly stated, may be notice as hereunder :-
- 4.** The writ petitioner was serving as a Lower Division Clerk under the Border Road

Organization (BRO/GREF) and posted at Daporijo in the State of Arunachal Pradesh. On 06/07/2018, the respondent no. 7 i.e. the Indian Council of Agricultural Research (ICAR) had issued a vacancy circular for absorption of LDCs on transfer/absorption basis. In response to the circular dated 06/07/2018, the writ petitioner had applied for the post of LDC which was approved on 10/10/2018. According to the petitioner, his application was duly forwarded by his employer i.e. BRO authorities and on 13/06/2022, the ICAR had also approved the said application. Notwithstanding the same, by the letter dated 14/07/2022, the writ petitioner was informed that the earlier letter dated 10/10/2018 approving the forwarding of the application to the ICAR had been cancelled on the ground that his application was not forwarded by following the prescribed procedure under the relevant Rules. Being aggrieved by the order dated 14/07/2022, the petitioner had approached this Court by filing WP(C) No. 5232/2022.

5. It would be pertinent to mention herein that on an earlier occasion, the writ petitioner and few other employees of the BRO had sought NOC from the authorities to apply for certain posts in the Coal Mines Provident Fund Organisation. When no such NOC was issued, the writ petitioner along with other aggrieved persons had approached this Court by filing WP(C) 31/2017, which was allowed by this Court by judgment and order dated 21/02/2017 with a direction to the authorities to issue NOC to the petitioners. However, it appears that since the last date of submission of NOC was over, the petitioner could not avail the benefit of the order dated 21/02/2017 passed in WP(C) No. 31/2017.

6. Taking note of the facts and circumstances of the case, the observations made by this Court in the judgement and order dated 21/02/2017 passed in WP(C) 31/2017 as well as the materials available on record, the learned Single Judge was of the view that the writ petitioner had succeeded in making out a case for interference. Accordingly, the writ petition was allowed by making the following observations in paragraphs 14 to 17 of the judgement and order dated 10/10/2023 passed in WP(C) No. 5323/2022 :-

“14. In the instant case, this Court has also noticed that the application of the petitioner was forwarded on 10.10.2018 and the petitioner could not have any role in the procedure adopted while issuing such forwarding letter and this Court finds force in the argument that the petitioner had reasons to believe that the due process of law was fulfilled. This Court has also noticed that in the Offer Letter by the ICAR dated

13.06.2022 where certain conditions have been laid down, the said letter was addressed to the present employer of the petitioner and only copy thereof was marked to him. The conditions stated for such absorption which were required to be fulfilled could be reasonably assumed to have been done when the forwarding letter dated 10.10.2018 was issued. Shri Bora, the learned counsel for the petitioner has also informed that at no earlier point of time, the petitioner was informed that the initial letter of approval dated 10.10.2018 was cancelled on the very next date. This Court has also noticed that if such forwarding was cancelled on the very next date, how could an approval be issued by the ICAR as late as on 13.06.2022 ?

15. Be that as it may, without even going to that aspect of the matter, this Court has come to the conclusion that fulfillment of the conditions would require certain acts to be done by the present employer which would also require the clearance and approval from the appropriate authority as mentioned in the Offer Letter dated 13.06.2022. This Court in the earlier occasion while adjudicating WP(C)/31/2017 has already laid down the principles.

16. In view of the aforesaid facts and circumstances and following the order passed in the earlier writ petition, this Court directs that the respondent nos. 1 to 6 would take up the matter earnestly and complete all necessary formalities of fulfilling the conditions for facilitating the petitioner's absorption in the respondent no. 7 - ICAR. This Court has already noted that one post of LDC has been kept vacant in the ICAR pursuant to the interim direction of this Court and Ms. Bora, the learned counsel for the ICAR has also submitted that in case the application of the petitioner is properly routed, the respondent no. 7 would not have any difficulty, in principle, to absorb the petitioner. Consequently, the impugned order dated 14.07.2022 is accordingly set aside.

17. The aforesaid exercise be completed expeditiously and within an outer limit of 6 (six) weeks from today."

7. In the wake of the judgement and order dated 10/10/2023, the respondent nos. 1 to 6 had issued NOC to the writ petitioner, pursuant where to, he had joined under the respondent no. 7 and is presently serving in the said organisation. It was at that stage that

the respondent no. 5 i.e. the Commander had issued the Memorandum of Charges dated 06/11/2023 proposing to initiate disciplinary proceeding against the writ petitioner. The Article of Charges appended to the charge memo dated 06/11/2023 are reproduced herein below for ready reference :-

“ARTICLE -I

- 1. That, Shri Md. Hasim Ansari (GS-192257X LDC) of 528 SS&TC (GREF) while serving with Western Base Workshop (GREF), Pathankot, had applied for the post of LDC in Indian Council of Agricultural Research (ICAR) Patna (Bihar) on Permanent Transfer/Absorption basis directly by passing the proper channel of communication.*
- 2. That, Shri Md. Hasim Ansari (GS-192257X LDC) forwarded letter/application directly to ICAR, Patna for outside employment at his own risk and cost without following the laid down policy instruction/guidelines on the subject.*
- 3. That, Shri Md. Hasim Ansari (GS-192257X LDC) has not followed the laid down procedure to forward his application for the post of LDC to borrowing department i.e. ICAR, Patna while serving with WBW, Pathankot.*
- 4. That, later it was learnt that the appointment letter of Shri Md. Hasim Ansari (GS-192257X LDC) has been received from ICAR, Patna.*
- 5. Therefore, Shri Md. Hasim Ansari (GS-192257X LDC) of Western Base Workshop (GREF) now posted at 528 SS & TC (GREF) by the above act shows lack of devotion to duty and conduct a unbecoming of a Government servant by not following the laid down rules/policy instruction/guidelines/established procedures and thereby, violated Rule 3(1)(ii) & (iii) of CCS (Conduct) Rules, 1964 and therefore, disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 has been contemplated to be taken against the individual by the competent authority.”*

8. Aggrieved thereby, the writ petitioner has once again approached this Court by filing the present writ petition assailing the charge memo as well as the proposed move to initiate disciplinary proceeding against him on the grounds stated in the writ petition.

9. Mr. D. Bora, learned counsel for the petitioner has submitted that since the NOC was issued to the petitioner pursuant to the direction issued by the learned Single Judge by

judgement and order dated 10/10/2023, the impugned charge memo is nothing but a move to cause undue harassment and injury to the petitioner. According to Mr. Bora, issuance of the charge memo is nothing but an attempt to over-reach the jurisdiction of this Court and, therefore, the same is liable to be set aside on such count alone.

10. Responding to the above arguments, Mr. B. Chakravarty, learned CGC, appearing for the respondent nos. 1 to 6 has argued that the NOC issued to the writ petitioner permitting him to join under the respondent no. 7, was a provisional one. He submits that there are materials to indicate that the application of the writ petitioner was not forwarded to the respondent no. 7 through proper channel. Moreover, submits Mr. Chakravarty, under the relevant policy instruction, such an application was not permissible since the writ petitioner had not completed 10(ten) years of service under the BRO (GREF). Mr. Chakravarty, therefore, submits that although the NOC was provisionally issued in favour of the petitioner in compliance with the order dated 10/10/2023 passed by this Court, yet, the same would not preclude the BRO authorities from initiating a disciplinary proceeding against the petitioner for acting in violation of the Policy instruction/guidelines applicable to the BRO employees. On such count, Mr. Chakravarty has prayed for dismissal of the writ petition.

11. Ms. R.B. Bora, learned counsel submits that although she had earlier appeared on behalf of the respondent no. 7, yet, subsequently, she has been asked by the authorities not to appear in this case and, therefore, she would not make any submission in the matter.

12. I have considered the arguments advanced at the Bar and have also gone through the materials available on record.

13. From the facts alluded to herein above, it is apparent that the BRO authorities were totally reluctant to issue NOC to the writ petitioner so as to enable him to join on transfer/absorption basis under the respondent no. 7 in terms of the vacancy circular dated 13/06/2022 thus giving rise to a dispute. The dispute assumed such a proportion that the writ petitioner was compelled to approach this Court by filing WP(C) No. 5323/2022, which was allowed by the learned Single Judge by the judgment and order dated 10/10/2023. The operative part of the said judgement has already been quoted herein above.

14. From a careful scrutiny of the order dated 10/10/2023, I find that the learned Single Judge has recorded categorical finding in favour of the writ petitioner by recognizing his right to receive the NOC while negating the submission of the respondents that the application of

the petitioner was not forwarded to the authorities through proper channel. It is on the basis of such finding that a Writ of Mandamus was issued by the learned Single Judge to the respondents directing them to complete the process facilitating absorption of the writ petitioner under the ICAR/respondent no. 7. Accordingly, NOC was issued to the writ petitioner by the BRO authorities. Having done so, can the respondents now be permitted to initiate disciplinary proceeding against the writ petitioner on the Charges, as noted herein above? The answer to the said question, in the opinion of this Court, has to be in the negative for the following reasons :-

- (a) Firstly, the issue as to whether the application of the writ petitioner was submitted /forwarded to the ICAR through proper channel and if so, whether he was entitled to NOC to join the ICAR was the subject matter of dispute in WP(C) 5323/2022. After taking note of the facts and circumstances of the case as well as the stand of the contesting parties, the learned Single Judge has ruled in favour of the petitioner. The order dated 10/10/2023 has attained finality in the eyes of law, thus bringing a quietus to the dispute. Under such circumstances, it is no longer open for the respondents to rake up the said issue once again and initiate a disciplinary proceeding against the petitioner on the ground that his application was not forwarded through proper channel or that he was not entitled to the NOC.
- (b) Secondly, in WP(C) No. 5323/2022, the respondents had not reserved their rights to proceed against the writ petitioner by contending that the NOC, if issued, would be provisional. As such, it was not permissible for the respondents to initiate a disciplinary proceeding against a person who was no longer in their employment.
- (c) Thirdly, in so far as the plea raised by the learned CGC that the application submitted by the writ petitioner was contrary to the policy instruction as he had not completed 10 years of service in the department, I find that no such plea was taken up before the learned Single Judge. As such, the said aspect of the matter cannot be raised in the present proceeding.
- (d) Fourthly, once the respondents have issued NOC to the petitioner in compliance of the order passed by this Court, until and unless the judgement and order of the learned Single Judge is set-aside, it would not be permissible for the BRO to initiate disciplinary proceeding against the employee on the same issue which was the

subject matter of the writ petition as such a recourse would clearly amount to over-reaching the jurisdiction of this Court.

15. For the reasons stated herein above, this writ petition succeeds and is hereby allowed. The Memorandum of Charges is hereby set aside.

Parties to bear their own costs.

JUDGE

Sukhamay

Comparing Assistant