

GAHC010008292014



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

WP(c)1934/2014

Sri Loknath Mahanta
S/o Late Mangal Chandra Mahanta
Resident of Swastika Apartment, Juripar
Panjabari Road, PO Bagharbori
District Kamrup, Guwahati-37

..... Petitioner

-Versus-

1. The State of Assam, represented by the Principal Secretary to the Government of Assam, Personnel(A) Department, Dispur, Guwahati-6.
2. Secretary to the Government of Assam, Personnel(A) Department, Dispur, Guwahati-6.
3. Deputy Secretary to the Government of Assam, Personnel(A) Department, Dispur, Guwahati-6.

..... Respondents

By Advocates:

For the petitioner: Mr. R. Goswami

For the respondents: Mr. D. Borah, Government Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 21.03.2024

Date of Judgment: 21.03.2024

Judgment & order(Oral)

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Heard Mr. R. Goswami, learned counsel for the petitioner. Also heard Mr. D. Borah, learned Government Advocate, appearing on behalf of all the respondents.

2. The challenge in the present proceedings, is to an order, dated 21.02.2013, passed by the Principal Secretary to the Government of Assam, Personnel(A) Department, Dispur, imposing upon the petitioner a penalty of withholding of 2(two) increments without cumulative effect in pursuance of the departmental proceeding initiated against him. The petitioner has also assailed an order, dated 01.02.2014, passed by the appellate authority in the appeal as preferred by the petitioner against the said order, dated 21.02.2013, rejecting the same.

3. The petitioner on being selected by the Assam Public Service Commission(APSC), was appointed in the year 1992 as an ACS Class-I Officer and was posted as the Circle Officer-cum-Executive Magistrate at Badarpur. The petitioner joined his services on 25.05.1992 and thereafter, the petitioner riding the ladder of promotion; has reached the Senior Grade scale of pay of service. The petitioner while working as an Under Secretary to the Government of Assam in the Department of Agriculture, came to be issued with a Show Cause Notice, dated 21.06.2006, levelling allegations against him pertaining to the purported misconduct committed by him while serving as a Circle Officer, Sonapur Revenue Circle, Sonapur.

4. The petitioner, on receipt of the said Show Cause Notice, dated 21.06.2006, issued under the provisions of Rule 9 of the Assam Services(Disciplinary & Appeal) Rules, 1964, proceeded to submit his written statement in the matter denying the allegations levelled against him. The petitioner has also in his said written statement, put-forward his clarifications with regard to the allegations so levelled against him. The respondent authorities not being satisfied with the contentions as raised by the petitioner in the written statement submitted by him; proceeded to direct for holding of an inquiry in the matter and

an Inquiry Officer came to be appointed. The petitioner, on being so required, appeared before the Inquiry Officer and the inquiry proceedings was then taken forward. On conclusion of the inquiry, the Inquiry Officer vide his inquiry report, dated 26.08.2009, proceeded to exonerate the petitioner from the allegations so levelled against him vide Show Cause Notice, dated 21.06.2006. The disciplinary authority, thereafter, vide communication, dated 11.04.2012, forwarded a copy of the said inquiry report to the petitioner and required him to prefer his representation against the same within a period of 15(fifteen) days from the date of receipt of the said communication.

5. It is to be noticed that in the said communication, dated 11.04.2012, a statement of the reason for non-acceptance of the Commission's advice, was also enclosed. The petitioner on receipt of the said communication, dated 11.04.2012, proceeded to submit his representation against the same on 30.04.2012, and therein, prayed that the charges levelled against him be dropped and he be exonerated therefrom. The petitioner again clarified the allegations as levelled against him. The disciplinary authority thereafter, vide order, dated 21.02.2013, proceeded to impose upon the petitioner a penalty of withholding of 2(two) increments without cumulative effect. The petitioner being aggrieved, submitted an appeal in the matter and the said appeal was considered and rejected by the appellate authority vide order, dated 01.02.2014. Being aggrieved; the petitioner has instituted the present proceedings.

6. At the outset, it is to be noted that the petitioner has since retired from his services on attaining the age of superannuation. The Inquiry Officer as appointed to inquire into the charges and allegations levelled against the petitioner vide the Show Cause Notice, dated 21.06.2006, on consideration of the evidence coming on record in the inquiry; proceeded to exonerate the petitioner in the matter.

7. It is seen that the respondent authorities had, thereafter, forwarded the inquiry report along with a proposal for imposition of a penalty of withholding of 2(two) increments without cumulative effect on the petitioner to the Assam Public Service Commission(APSC) for its

advice. The Assam Public Service Commission(APSC), however, did not agree to the proposal and advised that in the event, the disciplinary authority disagrees with the findings of the Inquiry Officer, a second inquiry in the matter be ordered. However, the disciplinary authority disagreed with the advice given by the Assam Public Service Commission(APSC) and accordingly, issued the communication, dated 11.04.2012, to the petitioner and enclosed therein, the Note, by which the advice given by the Assam Public Service Commission(APSC), was rejected.

8. The learned Government Advocate has produced before this Court at the time of hearing of the matter, the Note, as issued by the disciplinary authority, disagreeing with the advice given by the Assam Public Service Commission(APSC).

9. In the case on hand, it is seen that the Inquiry Officer had clearly exonerated the petitioner in his inquiry report, dated 26.08.2009, basing on the materials coming on record in the inquiry. In the event, the disciplinary authority had disagreed with the findings as recorded by the Inquiry Officer in the matter, the disciplinary authority was required to record its reasons for such disagreement and thereafter, give an opportunity to the petitioner to represent before it in the matter.

10. In this connection, it would be gainful to refer to the decision of the Hon'ble Supreme Court rendered in the case of ***Punjab National Bank v. Kunj Behari Misra***, reported in **(1998) 7 SCC 84**. The relevant conclusions as arrived on the issue by the Hon'ble Supreme Court in the above-referred case, is quoted hereinbelow for ready reference:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

11. Applying the ratio of the said decision of the Hon'ble Supreme Court to the issue arising in the present proceedings; it is seen that the disciplinary authority proceeded to issue the order, dated 21.02.2013, imposing upon the petitioner a penalty of withholding of 2(two) increments without cumulative effect, without providing to the petitioner the disagreement Note and recording therein, the tentative reasons as to why the disciplinary authority disagreed with the findings as recorded by the Inquiry Officer in the matter.

12. The brief Note as annexed to the communication, dated 11.04.2012, does not confer to the requirement of a disagreement Note and the said Note was only for the purpose of disagreeing with the advice as given by the Assam Public Service Commission (APSC) in the matter.

13. A perusal of the said Note, also does not disclose that the disciplinary authority had recorded therein, the reasons as mandated to be so recorded for differing with the findings recorded by the Inquiry Officer in the inquiry.

14. In view of the above position and following the decision of the Hon'ble Supreme Court as rendered in the case of ***Kunj Behari Misra***(supra); the order of penalty, dated 21.02.2013, having been so issued, without first issuing to the petitioner, a disagreement Note and thereafter, providing to him, an opportunity to make a representation in the matter, stands vitiated and accordingly, the same cannot be sustained in the eye of law.

15. The order of the appellate authority, dated 01.02.2014, also in view of the fact that the order of the disciplinary authority is not sustainable; also requires to be interfered with by this Court. Accordingly, the order, dated 21.02.2013, issued by the disciplinary authority, and the order, dated 01.02.2014, issued by the appellate authority, are hereby set aside and quashed.

16. In terms thereof; the petitioner now would be entitled to all consequential benefits that

may be available to him on account of the interference made by this Court with the order, dated 21.02.2013, issued by the disciplinary authority and the order, dated 01.02.2014, issued by the appellate authority.

17. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant