

GAHC010013432022



2024:GAU-AS:10008

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

Case No. : WP(C)/708/2022

THE UNION OF INDIA AND 2 ORS
REP. BY THE GENERAL MANAGER, N.F. RAILWAY (CONSTRUCTION),
MALIGAON, GUWAHATI-781011, ASSAM

2: THE FINANCIAL ADVISER AND CHIEF ACCOUNTS OFFICER
N.F. RAILWAY MALIGAON GUWAHATI-781011 ASSAM

3: THE DEPUTY CHIEF ENGINEER (CONSTRUCTION)
N.F. RAILWAY JOGIGHOPA GOALPARA ASSAM

VERSUS

GANGADHAR DUTTA S/O- LATE PREMODHAR DUTTA, R/O- VILLAGE NO.2
LAKHIMIKHAT, P.O. DICHOLNAGAR, DIST. JORHAT, ASSAM, PIN- 785015.

Advocate for the Petitioner : MR S CHAKRABORTY,

Advocate for the Respondent : MR M CHANDA, DR G J SHARMA,MR S NATH

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 26.09.2024

Date of Judgment & Order : 03.10.2024

JUDGMENT & ORDER(CAV)

(N. Unni Krishnan Nair, J.)

Heard Mr. S. Chakraborty, learned CGC, appearing on behalf of the petitioners. Also heard Mr. S. Nath, learned counsel, appearing on behalf of the sole respondent.

2. The petitioners by way of instituting the present proceeding, has presented a challenge to an order, dated 16.07.2021, passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench, in O.A. No. 04000426/2019.

3. The facts, in brief, for adjudication of the issues as arising in the present proceeding, is noticed, as under:

The sole respondent while working as DMS/Gr.II/CON/ JPZ, was issued with a memorandum of charge, dated 08.07.2008. In the said memorandum; an article of charge to the effect that the sole respondent while working as DMS/Gr.II/CON/JPZ, had not maintained the stores entrusted to him properly resulting into huge deficiencies in stores under his custody as found-out after a stock verification. The value of the deficit stores was quantified at Rs. 2.04 crores approximately. Accordingly, the sole respondent was charged to have exhibited lack of integrity, lack of devotion to his duties and acted in a manner which was unbecoming of a railway servant. The sole respondent was, accordingly, charged of having violated Rule 3.1(i), (ii) and (iii) of the Indian Railway Service (Conduct) Rules, 1966.

As revealed from the materials available on record, the sole respondent submitted his written statement against the memorandum of charge, dated 08.07.2008, and not being satisfied with the contentions raised therein; the petitioners had instituted an inquiry into the matter. The Inquiry Officer on conclusion of the inquiry so held; submitted his Inquiry Report in the matter on 17.01.2009, holding the sole respondent of being

guilty with regard to the charge so framed against him vide the said memorandum of charge, dated 08.07.2008.

It is to be noted that with regard to the shortage of materials under the custody of the sole respondent; the Inquiry Officer concluded that the 'shortage of structural steel materials' to be partially proved while the shortage of 'P.Way materials' were held to have been proved. The Inquiry Report also with regard to the allegations of not having submitted the MAS returns in time, held the same, to be not proved.

The disciplinary authority, thereafter, on perusal of the materials coming on record in the inquiry as well as the Inquiry Report along with the representation submitted thereto by the sole respondent; proceeded vide order, dated 14.07.2009, to impose upon the sole respondent, the penalty of "Reduction to a lower Grade i.e. from present Gr. II to Gr. III without restoration to his original grade and placed at bottom seniority in Gr. III".

The sole respondent being aggrieved by the imposition of the said penalty, submitted an appeal in the matter before the appellate authority on 19.08.2009. The appellate authority, on consideration of the contentions so raised in the matter by the sole respondent, herein; proceeded vide communication, dated 14.12.2010, to reduce the penalty so imposed.

The penalty that was now imposed upon the sole respondent by the appellate authority, reads, as under:

"The penalty imposed earlier is revised to reduction to a lower grade i.e. from present DMS/Gr.11 to DMS/Gr.III with restoration to original grade and pay after 5 years period".

On conclusion of the said inquiry proceeding and after the appellate authority had reduced the penalty so originally imposed upon the sole respondent; the railway authorities issued a notice, dated 23.06.2010, to the sole respondent, herein, quantifying the amount recoverable from his salaries at Rs. 2,00,37,181/- . Thereafter, vide the memorandum of charge, dated 16.07.2010, the competent authority directed for effecting recovery of the said quantified amount from the salary bill of the sole respondent at the rate of Rs. 16,970/- per month.

Being aggrieved, the sole respondent, herein, as applicant, had instituted original application being O.A. No. 040/00023 of 2015 before the learned Central Administrative Tribunal(CAT), Guwahati Bench, assailing the notices/orders, dated 23.06.2010, 15.06.2010 and 16.07.2010, whereby, the recovery was so directed to be effected from his salaries.

The learned Central Administrative Tribunal(CAT), Guwahati Bench, vide order, dated 12.02.2016, proceeded to dispose of the aforesaid application by interfering with the impugned orders, dated 23.06.2010, and 16.07.2010. After interfering with the said impugned orders; the learned Central Administrative Tribunal(CAT), Guwahati Bench, had remanded the matter back to the railway authorities to investigate the matter properly as it was felt that there was a need for a thorough investigation before fixing responsibility only on the sole respondent.

Accordingly, in terms of the directions passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench, vide order, dated 12.02.2016; a 3-member committee was constituted in the matter and the said committee, accordingly, carried-out an inquiry into the allegations/charges so framed against the sole respondent, herein, vide the memorandum of charge, dated 08.07.2008.

On conclusion of the inquiry wherein the sole respondent had also participated; the said committee had returned a finding, holding that the article of charge No. 1 as levelled against the sole respondent vide the memorandum of charge, dated 08.07.2008, stood established. It was held that the shortage of materials pertaining to 'structural steel materials' stood partially proved while the shortage of 'P.Way materials' stood proved. The Committee had further returned a finding to the effect that the allegation of the MAS returns not being filed in time by the sole respondent, stood partially proved. The said Inquiry Report was submitted on 09.05.2018.

The sole respondent, thereafter, instituted an application being O.A. No. 040/00426/2019, before the learned Central Administrative Tribunal(CAT), Guwahati Bench, *inter alia*, praying therein, for a direction to the railway authorities for release of his retirement dues in full along with a prayer for declaration that the railway authorities are not legally entitled to make any recovery of the estimated loss of Rs. 2.04 crores from the sole respondent in terms of the recovery notices, dated 23.06.2010 and 16.07.2010, which were already interfered with by the learned Central Administrative Tribunal(CAT), Guwahati Bench.

The learned Central Administrative Tribunal(CAT), Guwahati Bench, thereafter, after hearing the learned counsels for the parties; proceeded vide order, dated 16.07.2021, to allow the said application with a direction upon the petitioners, herein, to disburse the pensionary benefits of the sole respondent immediately and if any amount was so recovered from his pension, to refund the same to him.

4. Being aggrieved, the petitioners i.e. the Railway authorities have instituted the present proceeding before this Court.

5. The facts as noticed, hereinabove, is not disputed by the parties to the proceeding.

6. It is seen that the Disciplinary Proceeding so instituted against the sole respondent vide the memorandum of charge, dated 08.07.2008, concluded with the imposition of a penalty of "Reduction to a lower Grade i.e. from present Gr. II to Gr. III without restoration to his original grade and placed at bottom seniority in Gr. III". The said penalty, on appeal, was reduced by the appellate authority, as under:

"The penalty imposed earlier is revised to reduction to a lower grade i.e. from present DMS/Gr.11 to DMS/Gr.III with restoration to original grade and pay after 5 years period".

7. It is required to be noticed, at this stage, that the disciplinary authority vide letter, dated 14.07.2009, while imposing the penalty upon the respondent No. 1; had not passed any order with regard to the recovery of the loss occasioning to the railways on account of the misconduct proved against the sole respondent, herein.

8. The appellate authority while reducing the penalty so imposed upon the respondent No. 1, vide the communication, dated 14.12.2010, had also not issued any direction towards effecting any recovery from the sole respondent for the loss occasioning to the railways, although the loss so occasioning to the railway authorities was established in the inquiry against the sole respondent in pursuance of the memorandum of charge, dated 08.07.2008.

9. Thereafter, the railway authorities had proceeded to issue communications to the sole respondent towards effecting recoveries from his salaries in the matter to recoup the loss occasioning to the railways. The said orders were challenged by the sole respondent, herein, by instituting original application being O.A. No. 040/00023 of 2015, before the learned Central Administrative Tribunal(CAT), Guwahati Bench. The learned Central Administrative Tribunal(CAT), Guwahati Bench, vide order, dated 12.02.2016, had interfered with the said orders, more particularly, the orders, dated 23.06.2010 and 16.07.2010, so issued to the sole respondent, herein. The matter was remanded back to the railway authorities to investigate the issue involved properly as it was felt that there was a need for a thorough investigation before fixing responsibility on the sole respondent.

10. It is seen that after the order, dated 12.02.2016, was so passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench; no fresh memorandum of charge came to be issued against the sole respondent, herein.

11. The petitioners, herein, had constituted a 3-member committee to inquire into the very charges that formed the basis of the memorandum of charge, dated 08.07.2008. The committee so constituted, proceeded to carry-out a *de novo* inquiry in the matter with regard to the charges so framed against the sole respondent vide the memorandum of charge, dated 08.07.2008 and thereafter, submitted its Inquiry Report in the matter on 09.05.2018, holding the sole respondent to be guilty of the charges so framed against him vide the memorandum of charge, dated 08.07.2008.

12. The learned counsels for the parties during the hearing of the present proceeding, have fairly submitted that prior to conducting of the inquiry by the 3-member committee so constituted in pursuance of the directions passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench, vide the order, dated 12.06.2012; no fresh memorandum of charge came to be issued against the sole respondent, herein.

13. On account of continuation of the inquiry so instituted against the sole respondent; his pension and pensionary benefits were not finalized and the sole respondent was authorized a provisional pension only. As noticed hereinabove; the disciplinary authority in pursuance of the memorandum of charge, dated 08.07.2008, had, on conclusion of the inquiry so held in the matter, imposed a penalty upon the sole respondent vide order, dated 14.07.2009, and therein, there was no direction issued for effecting any recovery from the salaries of the sole respondent. The appellate authority, thereafter, vide communication, dated 14.12.2010, while reducing the penalty so imposed upon the sole respondent, had also not directed for effecting any recovery in the matter.

14. The proceedings having been concluded with the orders issued by the appellate authority in the matter vide his communication, dated 14.12.2010; the proceedings so initiated in respect of the sole respondent vide the memorandum of charge, dated 08.07.2008, was taken to its logical conclusion.

15. The penalties as imposed upon the sole respondent, both, by the disciplinary authority vide the order, dated 14.07.2009, and the appellate authority, vide the order, dated 14.12.2010, were never a matter of challenge before any forum and accordingly; the same had attained its finality. The railways could not have, thereafter, carried-out a *de novo* inquiry in the matter and again inquired into the charges levelled against the sole respondent vide the memorandum of charge, dated 08.07.2008, after the same had attained its finality.

16. The learned Central Administrative Tribunal(CAT), Guwahati Bench, had also noticed the fact that the respondent authorities before proceeding to conduct the inquiry into the matter by the 3-member committee, had not issued any fresh memorandum of charge against the sole respondent. Accordingly, the *de novo* inquiry not being permissible in the facts and circumstances of the present case; the inquiry so conducted against the sole respondent by the said Committee; would be of no consequence.

17. Having noticed the said position and having concluded that the *de novo* inquiry as conducted in the matter by the respondent authorities was not in terms of the procedure mandated under the provisions of the Discipline and Appeal Rules, holding the field; this Court also notices that

the sole respondent, herein, had superannuated from his service on 31.12.2015.

18. On retirement of the sole respondent from his service, any proceeding that would have been now permissible to be instituted against him; would have been a proceeding under the provision of Rule 9 of the Railway Services(Pension) Rules, 1993. Rule 9 thereof, being relevant, is extracted hereinbelow:

“9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

(2) The departmental proceedings referred to in sub-rule(1)-

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not instituted while the railway servant was in service. whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 96 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule,-

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted,-
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

19. The provision of Rule 9(2)(b) of the Railway Services (Pension) Rules, 1993, mandates that if no proceeding has been instituted while the railway servant was in service whether before his retirement or during his re-employment; such proceeding shall not be instituted save with the sanction of the President and shall not be in respect of any event which took place more than 4 years before such institution.

20. The sole respondent having retired from his service w.e.f. 31.12.2015 on attaining the age of superannuation; no proceeding would be permissible to be so instituted against him, save with the sanction of the President and for a misconduct relatable to a period of 4(four) years prior to such institution. As evident from the materials on record, the allegations so levelled against the sole respondent, would be relatable to a period prior to the mandated period of 4 years as prescribed under the provisions of

Rule 9(2)(b)(ii) of the Railway Services(Pension) Rules, 1993.

21. In view of the above discussion, no *de novo* proceeding being permissible to be so instituted against the sole respondent, herein, for the charge that formed the basis of the memorandum of charge, dated 08.07.2008 after the same was so concluded and further, also the bar so coming into operation in view of the provisions of Rule 9(2)(b) of the Railway Services(Pension) Rules, 1993; we are of the considered view that the penalty as imposed upon the sole respondent by the disciplinary authority vide the order, dated 14.07.2009, and as reduced by the appellate authority vide the order, dated 14.12.2010, is the only penalty that would now be mandated to hold the field against the sole respondent and further proceeding against him in the matter; would, therefore, be not permissible.

22. In view of the above conclusions; we find no error in the directions issued by the learned Central Administrative Tribunal(CAT), Guwahati Bench, vide the order, dated 16.07.2021, in O.A. No. 04000426/2019, to release to the petitioner, his retirement benefits without any further deduction therefrom.

23. In the above view of the matter; the present writ petition is held to be bereft of any merit and the same, accordingly, stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant