

GAHC010011962013



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

Case No. : WP(C)/6142/2013

JYOTISH BARUAH
S/O LT. BIPIN BARUAH, PRESENTLY R/O AIRPORT AUTHORITY NEW
COLONY, KAHIKUCHI, BORJHAR, P.O. AZARA, DIST- KAMRUP, ASSAM

VERSUS

THE AIRPORT AUTHORITY OF INDIA and 2 ORS
REPRESENTED BY ITS CHAIRMAN, RAJIB BHAWAN, SAFDARJUNG
AIRPORT, NEW DELHI-110003

2:THE EXECUTIVE DIRECTOR AIRPORT AUTHORITY OF INDIA
RAJIB BHAWAN SAFDARJUNG AIRPORT NEW DELHI-110003

3:THE REGIONAL DIRECTOR NER LGBI AIRPORT
KAHIKUCHI P.O. AZARA GHY-1

Advocate for the Petitioner : MR.M B U AHMED

Advocate for the Respondent : SC, AAI

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

ORDER

Date : 08.02.2024

None appears for the petitioner, on call. However, Mr. R. Dubey, learned standing counsel, Airport Authority of India, is present on behalf of all the respondents.

2. The petitioner by way of instituting the present writ petition, has

presented a challenge to an order, dated 23.09.2013, issued by the Regional Executive Director, NER (disciplinary authority), imposing a penalty of dismissal from service upon the petitioner on his conviction by the judgment & order dated 27.02.2012 passed by the learned Special Judge, Assam, Guwahati, in Special Case No. 18(A)2008, convicting the petitioner for offences under Section 120(B) of the IPC and under Section 409/477-A of the IPC, by invoking the provisions of Regulation 33(1)(i)AAI Employees(C, D & A) Regulation, 2003.

3. A criminal case being Lahoal P.S. Case No. 72/1993 under Section 409 IPC came to be registered against the petitioner for the allegations of misappropriation of money in his capacity as Cashier. The said case upon investigation, having found the petitioner to be involved in the defalcation as alleged, a charge sheet came to be filed and the matter thereafter reached the Court of learned Special Judge, Assam, Guwahati, for trial in the form of a Special Case No. 18(A)2008. The petitioner was charged with Sections 409/477(A)/120(B) IPC read with Section 13(1)(c)/13(2) of the Prevention of Corruption Act. The learned Special Judge, Assam, Guwahati, upon conclusion of the trial, proceeded vide judgment & order dated 27.02.2012, to convict the petitioner u/s. 120(B) IPC and u/s. 409/477(A) IPC with sentences being passed for such conviction which were held to run concurrently. The petitioner, thereafter, instituted a criminal appeal being Crl.A. No. 42/2012 before this Court along with Crl. M.C. No. 190/2012.

4. This Court, vide order, dated 07.03.2012, was pleased to dispose of the said Crl. M.C. No. 190/2012 by suspending the sentence imposed upon the petitioner by the Court of the learned Special Judge, Assam, Guwahati, vide

order, dated 27.02.2012, and enlarging the petitioner on bail.

5. In terms of the conviction of the petitioner by the Court of learned Special Judge, Assam, Guwahati, in Special Case No. 18(A)2008, the petitioner vide Memorandum, dated 30.05.2012, was placed under suspension by the respondent authorities. Thereafter, vide Memorandum, dated 24.06.2013, the petitioner was required to explain as to why a penal action should not be taken against him in terms of Regulation 33(1) of the said Regulation of 2003 and he was required to submit his replies in the matter as to why the penalty of dismissal from service under the Airport Authority of India, should not be imposed upon him. The petitioner, thereafter, submitted a representation, dated 05.07.2013, to the Memorandum, dated 24.06.2013, and it was contended therein that it was not a fit case wherein, the penalty of dismissal from service ought to be imposed upon him. The disciplinary authority thereafter on consideration of the matter, proceeded vide order, dated 23.09.2013, to impose upon the petitioner the penalty of dismissal from service from the Airport Authority of India.

6. The petitioner in the present proceedings, has contended that this Court having suspended the sentence as imposed upon him by the learned Special Judge, Assam, Guwahati, in Special Case No. 18(A)2008, the respondent authorities ought not to have invoked the powers under Regulation 33(1) of the Regulation of 2003, and proceeded to impose upon the petitioner, the penalty of dismissal from service.

7. It is the further contention of the petitioner that the judgment & order, dated 27.02.2012, being subjudice before this Court in the proceedings of Criminal Appeal No. 42/2012; the respondent authorities acted in haste in issuing the order, dated 23.09.2013, imposing upon him, the penalty of dismissal from service.

8. The provisions of regulation 33(1)(i) of Regulation 2003, being relevant to the issues arising in the present proceedings, is extracted hereinbelow for ready reference:

“Regulation 33(1) of AAI Employees (C,D&A) Regulation, 2003”

Special procedure in certain cases: (1) Notwithstanding anything contained in regulation 29, judgment & order, dated 30.05.2018, and 31, the Disciplinary Authority may impose any of the penalties specified in regulation 27 in any of the following circumstances; namely:

(i) *Where the employee has been convicted on a criminal charges or on the strength of facts or conclusions arrived at by a judicial trial.”*

9. A perusal of the provision of regulation 33(1)(i) of Regulation 2003, reveals that the disciplinary authority is empowered to impose any penalty on an employee being convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial.

10. The petitioner admittedly having been convicted on a criminal charge and that conviction holding the field and not interfered with by a superior Court, the disciplinary authority of the petitioner was well within his rights to invoke the provisions of Regulation 33(1)(i) of the Regulation of 2003, and impose upon the petitioner any of the penalties as specified in Regulation 27 of the said Regulation of 2003.

11. The disciplinary authority after affording an opportunity of hearing to the petitioner, having imposed upon the petitioner the penalty of dismissal from service on account of his conviction on a criminal charge; the same, in the view of this Court, cannot be said to be a penalty so imposed, without jurisdiction.

12. Accordingly, given the provisions of regulation 33(1)(i) of the Regulation of 2003, the order, dated 23.09.2013, does not call for any interference.

13. In view of the conclusions as reached hereinabove; the writ petition is held to be devoid of merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant