

GAHC010008142013



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

Case No. : WP(C)/3503/2013

PRADIP BARUAH
RETD. ASSTT. COMMISSIONER OF TAXES, S/O- LT. ATUL CHANDRA
BARUA, R/O- HOUSE SNO. 9, BHOG- LAKHMI, NANDAN NAGAR,
SARUMOTORIA, P.S.- DISPUR, P.O.- SACHIVALAYA, DIST.- KAMRUP M,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, FINANCE
DEPTT., DISPUR, GHY- 6.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY- 6.

3:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM and
DISCIPLINARY AUTHORITY
FINANCE TAXATION DEPTT.
DISPUR
GHY- 6.

4:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GHY- 6.

5:THE DY. COMMISSIONER OF TAXES
NAGAON ZONE
NAGAON.

6:THE DISCIPLINARY AUTHORITY
FINANCE TAXATION DEPTT.
O/O- COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
FINANCE TAXATION DEPTT.
ASSAM
DISPUR
GHY- 6.

7:THE ASSAM PUBLIC SERVICE COMMISSION APSC
REP. BY ITS SECY.
JAWAHAR NAGAR
KHANAPARA
GUWAHATI.

8:THE ACCOUNTANT GENERAL A and E
ASSAM
MAIDAMGAON
BELTOLA
GHY- 29.

9:THE PENSION AND PUBLIC GRIEVANCES DEPTT.
GOVT. OF ASSAM
DISPUR
REP. BY ITS SECY.
PENSION AND PUBLIC GRIEVANCES DEPTT.
ASSAM

Advocate for the Petitioner : MR B ACHARYYA

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 25.01.2024

Heard Mr. B. Acharyya, learned counsel for the petitioner. Also heard Mr. H. Baruah, learned counsel appearing on behalf of Mr. B. Chaudhury, learned standing counsel for the (Finance & Taxation Department) and Mr. T.

J. Mahanta, learned senior counsel assisted by Ms. P. Sharma, learned counsel for the Assam Public Service Commission; Mr. A. Hasan, learned counsel for the Accountant General, Assam as well as B. Deori, learned Junior Government Advocate appearing for the Pension and Public Grievances Department, Assam.

2. The petitioner, by way of instituting the present proceedings has assailed an order dated 25.11.2011, by which on conclusion of a departmental proceeding initiated against him, a penalty of deduction of Rs. 1,00,000/- (Rupees One Lakh) from his Death-cum-Retirement Gratuity (DCRG) account came to be imposed upon him.

3. The petitioner, while functioning as the Assistant Commissioner of Taxes, was issued with an explanation call dated 28.05.2008, requiring clarification against the allegations leveled against him therein. The petitioner in response to the said explanation call dated 28.05.2008, placed his clarification on record vide his communication dated 10.06.2008. The respondent authorities not being satisfied with the clarifications as placed on record by the petitioner, proceeded vide notification dated 20.08.2008 to place the petitioner under suspension pending withdrawal of the departmental proceeding against him. Thereafter, vide the show-cause notice dated 05.11.2008; a departmental proceeding came to be instituted against the petitioner on the allegations as set out therein. Basing on the allegations as set out in the said show-cause notice dated 05.11.2008; the petitioner was charged with gross negligence, misconduct and breach of trust resulting in loss of Government revenue.

4. The petitioner vide his written statement of defense dated dated

14.11.2008 while denying the allegations and charges leveled against him, also placed on record the clarifications with regard to the same. The respondent authorities not being satisfied with the written statement as submitted by the petitioner in the matter, proceeded to direct for holding of an enquiry in the matter and accordingly, an enquiry officer along with a presenting officer came to be appointed by the Disciplinary authority vide order dated 05.03.2009. It is to be noted here that the enquiry officer so appointed had submitted his report on 28.07.2009. However, on perusal, the said report not being found to be satisfactory a *de novo* enquiry was directed vide the notification dated 11.02.2010. The petitioner, thereafter participated in the enquiry proceedings and therein the enquiry officer submitted his report vide a communication dated 24.06.2010.

5. The enquiry officer in his report concluded that the charge of misconduct could not be proved as it was not demonstrated that the petitioner had defied any specific order or showed insubordination to any superior.

Further the charge of breach of trust was held to be a general and wide one and accordingly, the explanation provided by the petitioner in the matter was accepted. The enquiry officer recorded a finding that the charge of negligence of duty against the petitioner was established and basing thereon concluded that the petitioner had committed gross and willful negligence of duty by not following the formal procedure as laid down in the Assam VAT Act, 2003. The said enquiry report was examined by the disciplinary authority and by recording a finding that there was a loss of Government revenue on account of the negligence of duty on the part of the petitioner proceeded vide order dated 25.11.2011, to impose a penalty of deduction of

Rs. 1 (one) Lakh from the DCRG account of the petitioner. The petitioner having superannuated from his services prior to the date of issuance of the order dated 25.11.2011, such penalties was issued under Rule-7 read with Rule-21 of the Assam Services (Pension) Rules, 1969. It is to be noted that the said penalty was so imposed after a due approval was received from the Assam Public Service Commission.

6. The nature of the penalty as imposed upon the petitioner reflects that the same was so imposed for recovering the loss of Government revenue caused by the action on the part of the petitioner.

7. It is settled position of law that in the event a penalty is imposed for recovery of loss of Government revenue upon an employee, who has during the pendency of the departmental proceedings initiated against him superannuated from his services, it is mandatorily required that the amount so sought to be recovered must be quantified in the enquiry that has been held. The enquiry officer in his report dated 24.06.2010 had vaguely contended that the petitioner was guilty of gross and willful negligence of duty, however, in the said report no materials have been indicated basing on which such a conclusion was drawn by the enquiry officer. Further, on perusal of the enquiry report, it reflects that the same does not quantify the amount of Government revenue that was purportedly lost on account of the negligence committed by the petitioner herein. The enquiry report also does not record any finding with regard to commission by the petitioner of any misconduct and of breach of trust; rather it has been categorically mentioned in the enquiry report that the charge of misconduct against the petitioner could not be proved.

8. The charge of misconduct against the petitioner not being proved in the enquiry, no penalty could have been imposed upon the petitioner. The negligence as alleged against the petitioner being not supported by materials cannot be deemed to be a gross negligence. At the cost of repetition, it is to be noted that the enquiry report having not quantified the purported loss occasioning to the Government revenue, no recovery could have been directed to be made from the petitioner.

9. In view of the conclusions reached herein above, the impugned order dated 25.11.2011 cannot be sustained and accordingly, the same stands interfered with.

10. In view of the interference made with the impugned order dated 25.11.2011, consequently, the penalty of recovery of Rs. 1 lakh from the DCRG account of the petitioner also stands interfered with.

11. The respondent authorities are now directed to release the said amount of Rs. 1 lakh, if so deducted from the DCRG account of the petitioner and/or, not released to him at the time of disbursal of his pension and pensionary benefits.

12. The order of suspension of the petitioner be regularized as 'on duty' and the salaries of the petitioner be released for the period he was under suspension by deducting the subsistence allowance, if any, paid to him for the said period.

13. The exercise required as above for implementation of the directions as passed by this Court herein above, shall be so carried out and concluded by the respondent authorities within a period of 90(ninety) days from the date

of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant