

GAHC010011642013



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

Case No. : WP(C)/5944/2013

SUBHAS CHANDRA DAS

GS - 171342M , S/O- LT. GOJENDRA MOHAN DAS, PRESENTLY SERVING AS
STORE KEEPER TECHNICAL S.K.T. AND BEING A PERMANENT R/O VILL.-
DUHALIA NO. 1, P.O. and P.S.- DUHALIA BAZAR, DIST.- KARIMGANJ,
ASSAM- 788724 AND PRESENTLY POSTED AT 1342 TRANSIT CAMPT GREF
CARE HQ CE P SETUK, C/O- 99 APO, GUWAHATI, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS

REP. BY THE SECY., BORDER ROADS DEVELOPMENT BOARD BRDB,
ROOM NO. 418, 'B' WING SENA BHAWAN, NEW DELHI- 110011.

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

3:GREF RECORDS OFFICE
ABHILEKH KARYALAYA SAMANYA ARAKSHIT ABHIYANTA BAL
DIGHI CAMP
PUNE- 15.

4:CHIEF ENGINEER
PROJECT SETUK
C/O- 99 APO.

5:OFFICER-IN-CHARGE
1342 TRANSIT CAMP
C/O- 99 APO

Advocate for the Petitioner : MR.D BORAH,

Advocate for the Respondent : MS.S BARUAHR-1TO5, C.G.C.,MR.K K PARASAR(R-1 to 5),MR.D K SAIKIA,ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

03.09.2024

Heard Mr. D. Borah, learned counsel for the petitioner and Mr. K.K. Parasar, learned CGC for all the respondents.

[2.] By filing this writ petition, the petitioner has challenged the order dated 30.04.2013 (Annexure-P/10) by which a major penalty was imposed on him viz; reduction to time Pay of Scale, Grade, Post or service and ordinarily a bar to promotion to the time-scale of pay, grade, post or service from which he was reduced and effective from 01.05.2013 until he is found fit by the competent authority to be restored to the original post. The petitioner was holding the post of Supply Supervisor and in view of the penalty imposed upon him, he was demoted to the lower post of Store Keeper.

[3.] The petitioner has also challenged the order dated 14.08.2013 (Annexure-P/12 series) by which the appeal filed by him was rejected and the penalty imposed by the Disciplinary Authority was confirmed. It may be

noted at this stage that the petition was never restored to his original post and he retired in the post to which he was demoted.

[4.] A Court of Inquiry was ordered by the respondent authority concerned to investigate into the alleged misappropriation i.e., receipt, issue and utilization of paints and thinner received under CA No. CE (P)/STK/05/E3 of 2005-06 by 1023 (I) ESPL/755 BRTF/STK. After the Court of Inquiry was conducted, the order was made on 10.02.2010 with a finding amongst others that out of the total 32,014 liters of paint procured, 10,396 liters of paint was found to be misappropriated and 7,800 liters was wasted as it outlived its shelf life. The petitioner and five (5) others were therefore recommended to be proceeded against by way of Disciplinary/Administrative action. In respect of the petitioner, a disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 was recommended.

[5.] Accordingly, a Memorandum of Charge was issued against the petitioner on 05.08.2011 (Annexure-P/2). As per Article-I of the Memorandum, it was stated that the petitioner while functioning as Store-in-Charge, 1023 (I) ESPL (P) Setuk w.e.f August, 2004 had misappropriated 10396 liters of paint by preparing fake issue vouchers bearing No. IV/1023/Paint/97/E3 dated 19/06/2006 for his personal gain causing a loss of Rs. 7,76,472/- to the State. Therefore, by the said act, the petitioner failed to

maintain absolute integrity, devotion to duty and acted in a manner which was unbecoming of a Government Servant and thereby, he violated Sub-rule (1) (i), (1) (ii) and (1) (iii) of Rule 3 of CCS (Conduct) Rules, 1964.

[6.] Upon conclusion of the inquiry, the Inquiry Authority submitted the Inquiry Report on 10.04.2012 with a finding that the charge against the petitioner was partially proved. After a copy of the Inquiry Report was furnished to the petitioner, the petitioner submitted his representation before the respondent authority concerned on 02.03.2013. However, the respondent authority did not agree with the Inquiry Report of the Inquiry Authority and for reasons mentioned in the impugned order dated 30.04.2013, found the charge to be proved against the petitioner and accordingly, imposed upon him a major penalty of reduction in rank as already stated herein above. The appeal filed by the petitioner was also rejected by the Appellate Authority.

[7.] Mr. D. Borah, learned counsel for the petitioner submits that as per the order of the Court of Inquiry, six (6) persons including the petitioner were recommended for being proceeded against by way of disciplinary action or administrative action but as far as the knowledge of the petitioner is concerned, disciplinary proceeding was drawn against him only. The learned counsel submits that the petitioner was only a Store Supervisor whose role was to prepare and issue voucher on the basis of the entries made in the

measurement book by the Assistant Administrative Officer and the Engineer in charge. He submits that it is not the duty of the petitioner to physically verify the receipt of the paint. The voucher issued and signed by the petitioner was again counter signed by the Assistant Administrative Officer and therefore, there is no question of the petitioner having misappropriated the paint as was alleged.

[8.] The learned counsel further submits that one Sh. Salu Kumar Tiwari was the Engineer in Charge of 1023 (I) ESPL (GREF) for Work Order No. 3 of HQCE(P) Situk-65/E3 of 2005-06. During the departmental proceedings, he was examined as the prosecution witness and he stated that he checked full quantity of stores received as per Work Order No. 3 which he then filled in the measurement book. He submits that as per the Inquiry Authority, there was no explanation from the prosecution's side as to how the petitioner had misappropriated the paint. The issue voucher as prepared and signed by the petitioner and counter signed by the Assistant Administrative Officer who was also the Officer Commanding (OC) 1023(I) ESPL. There was also no evidence either oral or documentary as to how the petitioner had disposed or misappropriated the 10396 liters of paint materials. There was also no anonymous or synonymous complaints about the paint materials having been sold illegally in the nearby market. Therefore, the Inquiry Authority was of

the view that involvement of other high level officials of task force and the contractor cannot be ruled out for the said misappropriation and there was no justification to single out the petitioner who was only a supervisor of the stores. In the said background, the Inquiry Authority opined that charge as partially proved against the petitioner.

[9.] The learned counsel submits that the Disciplinary Authority did not agree with the findings of the Inquiry Authority and by coming to its own conclusion imposed the impugned penalty upon the petitioner. The learned counsel submits that in the event of such disagreement, the Disciplinary Authority ought to have made a dissenting note and thereafter put the petitioner to notice requiring him to represent or rebut the disagreement recorded. Only then could have the Disciplinary Authority passed the impugned order of penalty against the petitioner. The learned counsel also submits that since no action had been taken against the others who have been named in the Court of Inquiry, the respondent authorities could not have proceeded only against the petitioner who was holding a low position in the organization.

[10.] The learned counsel further submits that the Assistant Administrative Officer who was also the OC contract for procuring the materials was not examined during the departmental proceedings. He submits that a number of

summons were issued to him but the said Officer on health grounds failed to appear in the departmental proceedings and the respondent authorities without taking any further steps simply dropped him from the proceedings. He submits that the OC contract as well as the Engineer-in-Charge were the ones to make the inspection of the materials procured and then to enter the same in the measurement book. On the basis of the entries made in the measurement book, the petitioner as Store Supervisor was required to issue the vouchers. He submits that under the circumstance, the petitioner cannot be held to be accountable for the alleged loss. He submits that even assuming that the petitioner had succumbed to certain pressures from the authorities in preparing the vouchers, he alone cannot be held to be accountable without fixing any liability upon any of those persons named in the order of the Court of Inquiry. The learned counsel thus submits that the impugned order should be set aside and the petitioner be given the consequential relief even though he has retired from service by now. In support of his submissions, the learned counsel relies upon the following authorities:-

- (i) *Punjab National Bank & Ors. Vs. Kunj Behari Misra (1998) 7 SCC 84*
- (ii) *Hardwari Lal Vs. State of U.P & Ors. (1999) 8 SCC 582*
- (iii) *Rajendra Yadav Vs. State of M.P & Ors. (2013) 3 SCC 73*

- (iv) *Raghu Bir Singh @ Hari Singh Sahota Vs. Union of India & Anr. 2013 (2) GLT 1162*
- (v) *Nipun Rajbongshi Vs. Union of India & Ors. MANU/GH/0459/2015 and*
- (vi) *Judgment & Order dated 14.08.2014 passed in WP(C) No. 993/2007 [Constable (Beguiler)] Hari Mohan Vs. Union of India & Ors.*

[11.] Mr. K.K. Parasar, learned CGC submits that although according to the petitioner, he prepared and issued the vouchers on the basis of the entries made in the measurement book by the Assistant Administrative Officer and the Engineer in Charge but the fact remains that the petitioner was aware that there was something wrong in the entries made in the measurement book since he clearly mentioned in his representation dated 02.03.2013 that the preparation of the vouchers was on account of huge pressure and intimidation made by the senior officials upon him. The authorities therefore taking into account all the relevant aspects of the matter took a lenient view and imposed the penalty of reduction in rank to the petitioner. The petitioner therefore cannot have any grievance against the action taken against him. The learned CGC however submits that no disciplinary action appears to have been taken in respect of the other persons named in the order of Court of Inquiry.

[12.] I have heard the submissions made by the learned counsels for the

rival parties and I have perused the materials available on record. Against the allegation made, a Court of Inquiry was conducted and as per the order passed by the Court of Inquiry, six (6) persons including the petitioner were named to be responsible for the irregularities on suggesting appropriate steps should be taken against them. As per the materials available on record, the disciplinary proceedings appear to have been drawn against the petitioner only. The Memorandum of Charge goes to show that the petitioner is alleged to have misappropriated 10396 liters of paint by preparing fake issue voucher for his personal gain and causing loss of Rs. 7,76,472/- to the State. The Inquiry Authority as per his Inquiry Report dated 10.04.2012 opined that there was no direct evidence, documentary or oral against the petitioner to have disposed of the misappropriated paint. There was also no explanation as to how the petitioner has misappropriated the same on the part of the prosecution.

[13.] The Work Order No. 3 dated 15.04.2016 was issued by the OC contract as per the approval of the competent authority and the supply of the paint was to be inspected by the Board of Official comprising of Engineer in Charge and the OC contract. Based on the measurement book, the petitioner as Store Supervisor was to prepare the voucher. During the departmental proceedings it was contended that the petitioner was pressurized by the OC

contract and other officials. The Inquiry Authority consequently submitted his report with a finding that the charge against the petitioner was partially proved while also giving the opinion that the involvement of other high officials of the taskforce and the contractor cannot be ruled out and that there was no justification for singling out the petitioner who was only a Store Supervisor.

[14.] The Disciplinary Authority however disagreed with the finding by arriving at the opinion that the petitioner had prepared the certified receipt vouchers as a token of having receipt a paint materials against Work Order No. 3 dated 15.04.2006 in the capacity of In-Charge Stock and which was counter signed by the Assistant Administrative Officer. That the petitioner has also confessed that he had prepared the voucher on account of immense pressure from the Assistant Administrative Officer who was also the then OC Contract. Further, as the paint materials were not physically received from the contractor, the question of how the petitioner had disposed of, misappropriated the paint material did not arise. Therefore, the preparation of the voucher without actually receiving the material physically were substantial evidence to prove the charge against the petitioner. Undisputedly, the disagreement of the Disciplinary Authority had not been communicated to the petitioner prior to issuance of the impugned penalty.

[15.] In the case of *Punjab National Bank & Ors.* (supra), the question which arose for consideration before the Apex Court as when the Inquiry Officer comes to the conclusion that all or some of the charges alleging misconduct against an official are not proved, than can the disciplinary authority differ from such conclusion and give a contrary finding without affording any opportunity to the delinquent. It was held by the Apex Court that where the disciplinary authority disagrees with the Inquiry 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 an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice 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. In the present case, the opportunity of representing against the disagreement of the Disciplinary Authority admittedly has not been given to the petitioner.

[16.] The Apex Court in *Hardwari Lal* (supra) in the given facts of that case

held that the non-examination of the complainant and another witness had greatly prejudiced the appellant as the examination of the said witnesses would have revealed as to whether the complaint made against the appellant was correct or not. Under the circumstance, the Apex Court held that no proper inquiry as held by the authorities and on this ground set aside and quashed the order of dismissal passed against the appellant. In the present case as well, it may be noticed that the OC contract and who was also the Assistant Administrative Officer who was a part of the Board of Officers to inspect materials ordered had not only been examined during the departmental proceedings but he was dropped from the proceedings for no reason. Grievance in this regard was raised by the petitioner in his appeal before the appellate authority but the same was not considered and his appeal as can be seen was routinely disposed as rejected.

[17.] Further, despite the fact that OC contract was also named as one of the officer responsible for the misappropriation by the Court of Inquiry, no proceedings were drawn against him. The stand of the petitioner was also that he was pressurized by the OC contract in preparing the voucher. Not only was the OC contract named by the Court of Inquiry but also other four (4) officers besides the petitioner. The materials on record does not reveal that proceedings were drawn against these other persons. The Apex Court in

Rajendra Yadav (supra) in the given facts of that case held that the doctrine of equality applies to all who are placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquent has also to be maintained when punishment is being imposed. To come to such a conclusion, the Apex Court had also referred to its earlier decision rendered in *Director General of Police & Ors. Vs. G. Dayasan* reported in (1998) 2 SCC 407 and also the case of *Anand Regional Coop. Oil Seedsgrowers' Union Ltd. Vs. Shailesh Kumar Hardshadbhai Shah* reported in (2006) 6 SCC 548. Though proceedings admittedly has not been drawn they were named in the order of the Court of Inquiry but the Inquiry Officer in his report has recorded the fact that the involvement of other officials, importantly the OC contract could not be ruled out.

[18.] Thus, upon due consideration of the materials available on record and the case in its entirety, this Court is of the considered view that prejudice was caused to the petitioner for not being given the opportunity to respond or reply to the dissenting note of the disciplinary authority that the charge was proved. As such, the impugned order dated 30.04.2013 is found to be unsustainable and accordingly, the same is set aside. As the petitioner has

now retired from service, he shall be deemed to have retired from his original post of Store Supervisor. However, having regard to the fact that the petitioner in his representation admitted that his action was due to pressure put upon him by his superiors, it is deemed fit to direct that he shall not be entitled to back wages i.e., the difference in the salary of Store Supervisor and Store Keeper. The respondent authorities shall without delay workout the difference in his pensionary entitlement in accordance with law and give him the benefit.

[19.] With the above observation and direction, the writ petition stands disposed of but without any order as to cost.

JUDGE

Comparing Assistant