

GAHC010009532012



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

Case No. : WP(C)/5332/2012

DANDA MATTACK

S/O- LT. BIRADHAR MATTACK, R/O HOUSE NO. 9 - A, PUB SIVA NAGAR,
MAGAZINE, P.O.- HENGRABARI, GHY- 36.

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE SECY., DEPTT. OF TRANSPORT, GOVT. OF ASSAM, DISPUR,
GHY- 6.

2:CHAIRMAN

ASSAM STATE TRANSPORT CORPORATION
PALTANBAZAR
GUWAHATI.

3:MANAGING DIRECTOR

ASSAM STATE TRANSPORT CORPORATION
PALTANBAZAR
GUWAHATI.

4:ANIL CHANDRA BARMAN

DY. GENERAL MANAGER OPERATION
HEAD OFFICE.
ASTC
PALTANBAZAR
GUWAHATI.

5:AJIT KUMAR SARMA

DY. GENERAL MANAGER
ASTC
BONGAIGAON.

6:GANGADHAR DOLEY

SR. DIVISIONAL SUPDT.
ASTC TINSUKIA

Advocate for the Petitioner : MR.C CHOWDHURY
Advocate for the Respondent : MS. M.D. BORAH, SC, TRANSPORT

Linked Case : I.A.(Civil)/877/2018

DANDA MATTACK
S/O- LT BIRADHAR MATTACK
R/O- H/NO. 9-A
PUB SIVA NAGAR
P.O. HENGERABARI
GHY-36
DIST- KAMRUP(M)
ASSAM

VERSUS

STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GHY-6

2:THE CHAIRMAN
ASSAM STATE TRANSPORT CORPORATION
PALTANBAZAR
GUWAHATI

3:THE MANAGING DIRECTOR
ASSAM STATE TRANSPORT CORPORATION PALTANBAZAR
GUWAHATI

4:ANIL CH BARMAN
DEPUTY GENERAL MANAGER (OPERATION)
HEAD OFFICE
ASTC
PALTANBAZAR
GUWAHATI

5:AJIT KR SARMA
DEPUTY GENERAL MANAGER
ASTC
BONGAIGAON

6:GANGADHAR DOLEY
DIVISIONAL SUPDT
ASTC
TINSUKIA

Advocate for : MR. C CHOWDHURY

Advocate for : SC
A S T C appearing for STATE OF ASSAM AND 5 ORS

Linked Case : I.A.(Civil)/878/2018

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DISPUR
GHY-6

2:THE CHAIRMAN
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6:GANGADHAR DOLEY
DIVISIONAL SUPDT
ASTC
TINSUKIA

Advocate for : MR. C CHOWDHURY
Advocate for : SC A S T C appearing for STATE OF ASSAM AND 5 ORS

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

Date of hearing : 12.06.2024

Date of Judgment : 12.06.2024

Judgment & order(Oral)

Heard Mr. C. Chowdhury, learned senior counsel, appearing on behalf of the petitioner. Also heard Mr. G. N. Sahewalla, learned senior counsel, assisted by Ms. K. Bhattacharjee, learned counsel, appearing on behalf of the respondents ASTC; and Ms. M. D. Borah, learned standing counsel, Transport Department, appearing on behalf of their respective respondents.

2. The petitioner by way of instituting the present proceeding, had prayed for restoration of his inter se seniority in the cadre of Deputy General Manager vis-à-vis respondents No. 4, 5 & 6, and for release of his backwages for the period w.e.f. 22.11.2001 to 19.02.2010. However, the learned senior counsel for the petitioner has submitted that the present proceeding is being limited only to the relief sought for towards release of the backwages of the petitioner for the period w.e.f. 22.11.2001 to 19.02.2010.

3. The facts requisite for deciding the issue arising in the present proceeding is noticed as under:

The petitioner, on contemplation of drawal of a Disciplinary Proceeding against him, was placed under suspension w.e.f. 15.12.2000. Thereafter, vide

Show Cause Notice, dated 02.04.2001, a Disciplinary Proceeding was initiated against the petitioner primarily on account of habitual unauthorized absence from his service.

The said Disciplinary Proceeding was continued with and on conclusion of the same; the petitioner vide order, dated 22.11.2001, was imposed with a penalty of removal from his service. The appeal as preferred by the petitioner in the matter not having been favourably considered, he approached this Court by way of filing a writ petition being WP(c)1829/2003. The said writ petition was given a final consideration and vide judgment & order, dated 25.01.2010, this Court proceeded to dispose of the same by setting aside the penalty as imposed upon the petitioner and with further direction for his reinstatement in service forthwith. However, this Court, in the said judgment & order, observed that payment of backwages, if any, would only be finalized after completion of such inquiry into the charges brought against the petitioner vide the Show Cause Notice, dated 15.12.2000, in the event, the employer was inclined to have the charges inquired into.

The respondent authorities in terms of the liberty granted by this Court, as noted-above, proceeded to issue a fresh Show Cause Notice, dated 30.03.2010, against the petitioner drawing up a Disciplinary Proceeding against him. The petitioner submitted his reply in the matter and thereafter, an inquiry was so conducted into the charges so framed against him. The Inquiry Officer submitted his inquiry report in the matter on 08.02.2011 and the same was, thereafter, considered by the disciplinary authority and on such consideration and holding that the charges levelled against the petitioner were found to be

established partially, he was issued with a warning to be careful in future and it was further provided that he would not be entitled to any backwages for the period w.e.f. 22.11.2001(i.e. date of his removal from service) till 19.02.2010(i.e. date of his reinstatement in service). The appeal as preferred in the matter by the petitioner was also not given its due consideration and accordingly, being aggrieved, he has instituted the present proceeding before this Court.

4. Mr. Chowdhury, learned senior counsel for the petitioner, has submitted that a perusal of the inquiry report of the Inquiry Officer, would reveal that none of the charges levelled against the petitioner was established. The Inquiry Officer with regard to the Charges No. 1 and 3, had returned a finding that the said charges were not established against the petitioner. However, with regard to the charge No. 2, an observation was made that the said charge was not fully established.

5. The learned senior counsel by drawing the attention of this Court to the findings of the Inquiry Officer in his report with regard to the charge No. 2, has submitted that the Inquiry Officer had accepted the justifications as advanced by the petitioner in the matter and accordingly, the said charge also should be held to be not established.

6. The learned senior counsel by referring to the impugned order, dated 16.05.2011, passed by the disciplinary authority in the matter, has contended that the disciplinary authority although had held that the charges levelled

against the petitioner were found to have been established partially which has been contended to be contrary to the findings arrived at in the matter by the Inquiry Officer and in the absence of a disagreement note being recorded by the disciplinary authority, it is the categorical contention of the learned senior counsel for the petitioner that the charges could not have been held by the disciplinary authority to have been partially established against the petitioner.

7. The learned senior counsel for the petitioner, has submitted that no penalty as mandated under the provisions of Rule 7 of the Assam Civil Services(Discipline and Appeal) Rules, 1964, came to be imposed upon the petitioner and the warning as issued to him not being a mandated penalty, it has to be construed that the petitioner was not imposed with any penalty in the proceedings so held against him and accordingly, it has to be held that the petitioner was not blame-worthy of the charges so levelled against him.

8. Accordingly, the learned senior counsel for the petitioner, has submitted that the conclusion reached by the disciplinary authority that the petitioner would not be entitled to any backwages for the period after his removal from service in accordance with the orders of the disciplinary authority already interfered with by this Court till the date of his reinstatement in service, i.e. w.e.f. 22.11.2001 to 19.02.2010, is clearly perverse and would require an interference of this Court with further direction to the respondent authorities to release to the petitioner his due salaries for the said period.

9. Per contra, Mr. Sahewalla, learned senior counsel appearing for the ASTC

authorities, has contended that the petitioner in the proceedings and the communications as submitted by him in the matter had admitted to the charges as levelled against him and accordingly, this Court vide the judgment & order, dated 25.01.2010, in WP(c)1829/2003; having subjected the payment of any backwages to the orders that would be passed in the event, fresh proceedings are initiated against the petitioner into the allegations existing against him; the ASTC authorities having so inquired into the allegations by way of drawal of a fresh proceeding and the charges so levelled against the petitioner having been partially established therein, the decision not to release to the petitioner his backwages for the period w.e.f. 22.11.2001 till 19.02.2010, does not call for any interference of this Court.

10. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

11. At the outset, it is to be noted that in view of the submission made by the learned senior counsel for the petitioner that the relief prayed for in the present proceeding, is limited to the claim of the petitioner for being authorized the backwages w.e.f. 22.11.2001 till 19.02.2010, this Court is, therefore, proceeding only to adjudicate the issue of payment of backwages to the petitioner.

12. As submitted at the Bar, the petitioner had retired from his service on 31.12.2014.

13. The petitioner was initially removed from his service on the charges

levelled against him to have been found to be established which was put to challenge in the proceedings of WP(c)1829/2003. This Court vide order, dated 25.01.2010, on examination of the matter and having found that the charges levelled against the petitioner were not inquired into and accordingly, the order of removal from service was found to have been so issued not basing on any acceptable basis; the same was interfered with by the Court and the said writ petition was allowed. However, the allegations as levelled against the petitioner in the matter being not so inquired into, in the manner required; this Court had required that the backwages of the petitioner for the period from the date of his removal from service till the date of his reinstatement, would only be finalized only after completion of such inquiry being conducted against the petitioner, in the event, the employer was inclined to have the charges inquired into.

14. It is found that in terms of the said directions passed by this Court, the ASTC authorities had instituted a fresh proceeding into the matter against the petitioner vide the Show Cause Notice, dated 30.03.2010, and therein, had brought on record, 3(three) charges against the petitioner.

15. For ready reference; the charges as levelled against the petitioner, is extracted hereinbelow:

“Charge No. 1: Habitual absence from duties and leaving office without permission or prior sanction from the competent authority causing loss of revenue of the Corporation.

While you were working as Divisional Supdt., ASTC, Jorhat, reports have been received from time to time that you are very irregular in attending office and remaining absent from your office without prior permission from the higher authority. It was also reported by the S.E., ASTC, Shri P.C. Devchoudhury, that during his last

visit on 16th & 17th June, 2000, he did not find you in the office. Being the seniormost traffic officer and controlling officer of Jorhat Division you are required to be present in the office regularly in the interest of Corporation. For your irregular attendance you were cautioned to be more careful in future vide H.O. Letter No. ASTC/PD/122/82/9584 dated 22-6-2000. You were also directed not to leave your office without permission from the Managing Director, ASTC. It is regretted to mention here that you were repeating the same practice of leaving the office. Most of the days of the week for which the earning of Jorhat Division deteriorated gradually since last part of July, 2000 as shown in the statement of allegation. Being a Divisional Supdt. of an important station like Jorhat you were to supervise the traffic operation and to gear up the earning in the interest of the Corporation. But in the instant case you did not discharge your duties sincerely and honestly for which ASTC had to suffer loss in its earning. Accordingly you are charged for habitually remaining absent from duties and leaving the office without intimation or prior sanction of leave from the competent authority causing loss of revenue of the Corporation.

Charge No. 2 Breach of trust and insubordination.

You remained absent frequently and leaving office without any intimation or prior sanction of leave from the office competent authority of the ASTC. During the last visit of Jorhat Division by Shri P.C. Devchoudhury, S.E., ASTC, Guwahati on 16th & 17th June, 2000, he did not find you in the office. Being the head of the Division, you are to run the administration and supervise the traffic operation of your division, but you have failed to discharge the said duties. For your habitual absence and leaving office Show Cause Notice was served on you vide H.O. Letter No. ASTC/PD/122/82/167-A dated 11-8-2000 and you were cautioned to be dutiful in attending your duties in future vide H.O. Letter No. ASTC/PD/122/82/9584 dated 22-6-2000. On 4-8-2000, the Managing Director had convened a meeting of all DSs, ASTC to discuss some important matters. But you did not attend the meeting and disobeyed the order of the Managing Director of ASTC. You are therefore, charged for breach of trust and insubordination.

Charge No. 3. Gross misconduct.

As stated above and also in the statement of allegation, you have also committed gross misconduct and you are charged accordingly.”

16. The essence of the charges as levelled against the petitioner, more particularly, in charge No. 1 is that he was in the habit of habitually absenting from duties and leaving office without permission or sanction from the competent authority which had caused loss of revenue to the Corporation. It was alleged that on a visit by a superior authority to the establishment wherein the petitioner was working on 16th and 17th June, 2000, he was not found in

the office during the office hours and accordingly, such absence of the petitioner being without any prior permission and the effect of the said conduct of the petitioner on the revenue of the establishment; he was charged with habitual absence from duties and/or leaving the office without intimation or prior sanction from the competent authority.

17. The charge No. 2 also contains allegations similar to the one as contained in charge No. 1 with a further addition that on 04.08.2000, the Managing Director, ASTC, had convened a meeting of all DSs, ASTC, to discuss some urgent issues but the petitioner did not attend the meeting and thereby, disobeyed the order of the Managing Director, ASTC, and therefore, he was charged with breach of trust and insubordination.

18. The charge No. 3 alleges that the petitioner, had, in view of the charges No. 1 and 2, committed gross misconduct and accordingly, he was charged for the same.

19. The matter upon conclusion of the inquiry held; the Inquiry Officer submitted his inquiry report and therein, held the charges No. 1 and 3 to not have been established. However, with regard to the charge No. 2, after recording his findings therein, it was observed that the charge of breach of trust and insubordination was not fully established.

20. Insofar as it concerns the Charge No. 2; a consideration being necessitated, the findings of the Inquiry Officer is being so considered. The

findings of the Inquiry Officer with regard to the Charge No. 2, is extracted hereinbelow:

“Enquiry of charge No. 2: Breach of trust and insubordination

A meeting of all DS was convened by the Managing Director on 4.8.2000 to discuss some important matters. Sri Mattack, the then directions, Jorhat did not attend the meeting. Prior to this, Sri Mattack was directed to attend office regularly and not to leave head quarter without prior permission from the Managing Director vide his letter No. ASTC/PD/122/82/9584 DTD 22.6.2000. Sri Mattack was issued Show Cause Notice vide No. ASTC/PD/122/82/9167-A DTD 11.8.2000. In reply, although Sri Mattack apologized for his leaving without formal approval in his original reply, the enquiry reveals that Sri D Mattack had applied for casual leave for 6(six) days from 1.8.2000. He had submitted his prayer for C/L in advance on 26.7.2000 and sent it to the Managing Director for approval and waited for approval upto the evening of 1.8.2000. Sri Mattack's only son was to undergo critical surgical operation at AMC, Dibrugarh and making all necessary local arrangement to look after the office of the Divisional Superintendent, Jorhat, Sri Mattack move to Dibrugarh in the afternoon of 1.8.2000. Hence although Sri Mattack had proceeded to avail C/L without approval from the authority the circumstances made him bound to leave the hq as it was his only son's life and death case. He had made all local arrangement to look after his office so that no dislocation takes place during his temporary outstation period and proceeded to leave in order to give company to his family members during a surgical operation of his only son and being the family head this very necessary. He, therefore, could not attend the meeting. Regarding the fall of earnings, some of the services shown passes through different divisions the DS, Jorhat alone cannot contribute to improve the earnings of all those services.

Hence, the charge of breach of trust and insubordination is not fully established.”

21. A perusal of the findings as recorded by the Inquiry Officer would reveal that the petitioner had submitted a Casual Leave application in advance on 26.07.2000 and had sent it to the Managing Director, ASTC, for approval for leave for 6 days w.e.f. 01.08.2000, on account of a critical surgical operation to be performed on his son. The further finding was recorded by the Inquiry Officer that the petitioner had waited for the approval till the evening of 01.08.2000 and thereafter, after making all necessary local arrangement to look after the works of the office of the Divisional Superintendent, Jorhat, the

petitioner had moved to Dibrugarh in the afternoon of 01.08.2000.

22. It was further observed that although the petitioner had without the approval of the Casual Leave application submitted by him, proceeded to leave his office, the same was so necessitated because of the circumstances he had found himself in and also on account of the fact that the operation, in question, to be performed on his son which was of a critical nature. It was further recorded that there was no dislocation of the activities of the office during the period, the petitioner had proceeded on Casual Leave for a period of 6(six) days w.e.f. 01.08.2000, which was held to be very necessary insofar as it concerns the petitioner. Accordingly, it was held that the petitioner could not attend the meeting convened by the Managing Director, ASTC, on 04.08.2000. With regard to the shortfall of the revenue of the establishment, it was held that the petitioner alone, cannot contribute to the improvement of earnings of all the services involved.

23. A perusal of the findings would bring to the forefront that absence of the petitioner on Casual Leave for a period of 6(six) days w.e.f. 01.08.2000, was held to be justified and accordingly, the contention of the petitioner as to the reasons as to why he could not attend the meeting as convened by the Managing Director, ASTC, on 04.08.2000, was also held to be justified.

24. In that view of the matter, on the basis of the findings recorded by the Inquiry Officer and noted hereinabove with regard to the charge No. 2, it has to be concluded that the said charge also could not have been held to be

established against the petitioner. This coupled with the fact that Charges No. 1 and 3 as levelled against the petitioner vide the Show Cause Notice, dated 30.03.2010, also not being held to be established by the Inquiry Officer, it has to be concluded that none of the allegations levelled against the petitioner in the Disciplinary Proceeding initiated against him, can be held to be established and/or proved in the inquiry so held against him.

25. This would now bring this Court to the consideration to the order, dated 16.05.2011, passed by the disciplinary authority. A perusal of the order, dated 16.05.2011, would reveal that the disciplinary authority i.e. Managing Director of the ASTC, had concluded that the charges levelled against the petitioner were not fully established as per the inquiry report. Thereafter, it is seen that the disciplinary authority had proceeded to consider the materials that were available on record in pursuance to the earlier Disciplinary Proceeding as initiated against the petitioner vide the Show Cause Notice, dated 15.12.2000, which already was interfered with by this Court. It is seen that the findings as recorded by the Inquiry Officer in his inquiry report, dated 08.02.2011, so submitted in respect of the allegations levelled against the petitioner vide the Show Cause Notice, dated 30.03.2010, was, in fact, not considered by the disciplinary authority while issuing the said order, dated 16.05.2011, and basing on the materials not germane to the inquiry so held against the petitioner as well as the report of the Inquiry Officer available in the matter, proceeded to conclude that the charges levelled against the petitioner were found, established partially. Having recorded the said conclusion; the disciplinary authority proceeded to issue a warning to the petitioner to be careful in future. However, without imposing any penalty upon the petitioner as provided for under the

provisions of the Assam Civil Services (Discipline and Appeal) Rules, 1964, proceeded to hold that the petitioner was not entitled to any backwages with effect from the date of his removal from service i.e. 22.11.2001, till the date of his reinstatement i.e. 19.02.2010. However, it was held that the petitioner was entitled to all other service benefits during the said period. It is this direction as contained in the impugned order, dated 16.05.2011, which is now being considered by this Court.

26. This Court, had, vide order, dated, 25.01.2010, passed in WP(c)1829/2003, while interfering with the penalty of removal from service imposed upon the petitioner, observed that the reinstatement of the petitioner in his service, would, however, be without any payment of any backwages which issue would now be finalized after completion of such inquiry in respect of the charges brought against the petitioner vide the Show Cause Notice, dated 15.12.2000, in the event, the employer was inclined to have the said charges inquired into.

27. In other words, this Court, vide order, dated 25.01.2010, had required that the payment of backwages to the petitioner for the period after he was imposed with the order of penalty i.e. w.e.f. 22.11.2001 to 19.02.2010, would be so considered basing on the outcome of a fresh proceeding if would be initiated against the petitioner. The said proceeding having been so initiated against the petitioner vide the Show Cause Notice, dated 30.03.2010, and in the inquiry so held in the matter pertaining to the allegations so levelled vide the Show Cause Notice, dated 30.03.2010; the Inquiry Officer having held that the charges so levelled against the petitioner to have been not established against the

petitioner and this Court having considered the findings of the Inquiry Officer with regard to the charge No. 2 and having concluded that the same also cannot be held to have been so established against the petitioner; a situation so arises that the allegations against the petitioner have to be held to have not been so established against him in the inquiry so held in the matter. This coupled with the fact that the petitioner not having been found to be guilty of a misconduct, warranting imposition of any of the penalty as mandated under Rule 7 of the said Assam Civil Services (Discipline and Appeal) Rules, 1964; it can be safely concluded that the allegations levelled against the petitioner were not so established.

28. The disciplinary authority having recorded that the charges against the petitioner were so established partially and the same being contrary to the findings recorded in the matter by the Inquiry Officer, it is to be noted that it is a settled position of law that such a finding can be recorded by the disciplinary authority in the matter only after a disagreement note is so recorded and an opportunity granted to the petitioner, herein, to respond thereto.

29. A disagreement note admittedly not having been recorded in the matter by the disciplinary authority contradicting the findings of the Inquiry Officer, it has to be held that the findings of the Inquiry Officer would hold the field and the conclusion of the disciplinary authority that the charges were so established in the inquiry partially, would be of no consequence.

30. In this connection, support is drawn from the conclusions reached by the

Hon'ble Supreme Court in the case of ***Punjab National Bank & ors. v. Kunj Behari Misra***, reported in ***(1998) 7 SCC 84***, wherein, in paragraph No. 19; the Hon'ble Supreme Court had concluded as under :

“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 it 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 favourable 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.”

31. The aforesaid course of action as laid down in the decision of the Hon'ble Supreme Court in the case of ***Kunj Behari Misra***(supra) not having been adopted by the disciplinary authority in the matter, it was not open for the disciplinary authority to record any conclusion contrary to the one recorded in the matter with regard to the charges levelled against the petitioner by the Inquiry Officer.

32. In view of the above conclusions; this Court is of the considered view that the charges levelled against the petitioner not having been established in the inquiry and noticing the directions of this Court contained in the order, dated 25.01.2010, in WP(c)1829/2003, that the payment of backwages to the petitioner, would be finalized after completion of the fresh inquiry initiated against the petitioner for which liberty was granted by this Court to the respondent authorities, such inquiry having been held and the petitioner not having been held to be liable to be imposed with any penalty; the withholding of his backwages for the period with effect from the date of his removal from

service i.e. 22.11.2001, till the date of his reinstatement in service i.e. 19.02.2010, cannot be upheld and accordingly, the order of the disciplinary authority denying to the petitioner his backwages for the period with effect from the date of his removal from service i.e. 22.11.2001, till the date of his reinstatement in service i.e. 19.02.2010, cannot be upheld by this Court and accordingly, the impugned order, dated 16.05.2011, to the extent of it denying to the petitioner, his backwages for the period, noted-above, stands interfered with by this Court.

33. The interference made with the order, dated 16.05.2011, as noticed hereinabove; would now require the ASTC authorities to compute the backwages of the petitioner for the period with effect from the date of his removal from service i.e. 22.11.2001, till the date of his reinstatement in service i.e. 19.02.2010, and to release the same to him, forthwith.

34. In view of the above directions and the ASTC authorities now being required to release to the petitioner, his backwages for the period involved, upon computation of the same; be released to the petitioner, herein, within a period of 3(three) months from the date of receipt of a certified copy of this order.

35. With the above directions and observations, this writ petition stands allowed to the extent indicated hereinabove.

JUDGE

Comparing Assistant