



GAHC010092592019



2024:GAU-AS:8543

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

Case No. : WP(C)/2770/2019

PULIN DAS
S/O- LT NIRANJAN DAS, R/O- H.NO. 12, SAHID VINOD SHARMA PATH,
FATASIL AMBARI TINIALI, GHY, P.O. AND P.S. FATASIL AMBARI, DIST-
KAMRUP (M), ASSAM, PIN- 781025

VERSUS

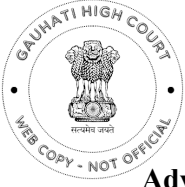
THE STATE OF ASSAM AND 4 ORS.
TO BE REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF HANDLOOM TEXTILE AND SERICULTURE, DISPUR, GHY-6

2:CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-6

3:DIRECTORATE OF HANDLOOM AND TEXTILE
ASSAM
TO BE REP. BY ITS DIRECTOR
HENGARABARI
GHY-5

4:DIRECTOR
HANDLOOM AND TEXTILE
HENGARABARI
GHY-5

5:ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GHY-2



Advocate for the Petitioner : MR. M K SHARMA, MS. S S SAIKIA, MR H DAS

Advocate for the Respondent : GA, ASSAM, R.DHAR, SC, HANDLOOM AND TEXTILE DEPARTMENT

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri MK Sharma

Advocate for the respondents : Shri R. Dhar, SC-Handloom & Textile

Date of hearing : **27.08.2024**

Date of Judgment : **30.08.2024**

JUDGMENT & ORDER

The instant petition has been filed challenging an order of removal from service dated 30.10.2015 after a disciplinary proceeding. The grounds of challenge, amongst others, are gross violation of the procedural laid down in law as well as violation of the principles of natural justice.

2. As per the facts projected, the petitioner was serving as the Assistant Director of the Handloom and Textile. Contemplating a departmental proceeding, he was placed under suspension vide an order dated 25.09.2003 which was followed by a show-cause notice dated 27.10.2003 wherein there were 2 nos. of charges. The first charge, in brief was insubordination as the petitioner had written directly to the Central Government for funds and the second charge is with regard to commission of forgery regarding a meeting of the State Level Project Committee. In response to the aforesaid show-cause notice, the petitioner had submitted reply on 02.11.2003. According to the



petitioner, no departmental proceeding was drawn up thereafter. After a gap of almost two years, on 18.06.2005, another show-cause notice was issued to the petitioner containing 4 nos. of charges. As per the first charge, the petitioner had not maintained the Cash Book Account; the second charge related to non-maintenance of the subsidiary Cash Book; the third charge was regarding issuance of supply orders without approval of the competent authority and therefore there was gross miss-utilization of power and the fourth charge was opening a Current Bank Account without intimation to the higher authorities. The aforesaid show cause notice was replied to by the petitioner on 12.09.2005. The reply having found not to be satisfactory, a disciplinary proceeding was initiated in which an enquiry was conducted which had culminated in submission of a report. However, vide order dated 19.08.2006 issued by the disciplinary authority, the aforesaid enquiry report was not accepted and a *de novo* enquiry was directed which had accordingly started. The *de novo* enquiry culminated in a report whereby the same opinion of the previous report was reiterated. It is the submission of the petitioner that the *de novo* enquiry was held behind his back and without following the procedure.

3. Be that as it may, on 19.07.2007, a third show-cause notice was issued to the petitioner containing 8 nos. of charges. As per charge no. 1, the petitioner was charged as being extremely irregular in his duties; charge no. 2 was being absent without intimation; charge no. 3 was related to applying for earned leave which was not submitted in proper format; charge no. 4 was pertaining to the aspect of not maintaining accounts; charge no. 5 was pertaining to issuing of supply orders without following the office procedure in which the cheques had also bounced; charge no. 6 was pertaining to issuance of supply orders for 500 sets of looms without following the procedure; charge no. 7 was again on the



issue of non-maintenance of accounts and charge no. 8 was on the aspect of receipt of funds from the Central Government without following the procedure. As per the petitioner, the charge nos. 3 and 4 of the show-cause notice no. 2 have been clubbed as charge no. 5 of the show cause notice no. 3. Further, charge nos. 1 and 2 of the show-cause notice no. 1 have been clubbed as charge no. 8 of the show-cause notice no. 3. On the aforesaid charges, enquiry was held which resulted in an enquiry report dated 04.09.2009. However, after a gap of more than 5 years, the second show-cause notice was issued to the petitioner on 09.10.2014 which the petitioner had replied to on 22.10.2014. Thereafter, vide the impugned order dated 30.10.2015, the petitioner was removed from service. The petitioner had preferred a departmental appeal and in relation thereto, he had filed WP(C)/793/2017 as the appeal was not disposed of. This Court, vide order dated 10.02.2017 had directed disposal of the appeal, pursuant to which, vide order dated 29.03.2018, the appellate authority had rejected the appeal and had confirmed the penalty of removal from service. The aforesaid action are the subject matter of challenge in this petition.

4. I have heard Shri MK Sharma, learned counsel for the petitioner. I have also heard Shri R. Dhar, learned Standing Counsel, Handloom and Textile Department, who has also produced the records of the disciplinary proceeding.

5. Shri Sharma, the learned counsel for the petitioner has submitted that the services of the petitioner with regard to the departmental action are governed by the Assam Services (Discipline and Appeal) Rules, 1964. As per Rule 9, the procedure for initiating a disciplinary proceeding is laid down. It is submitted that the show-cause notice no. 1 was issued on 27.10.2003 with 2 nos. of charges and when the petitioner had submitted the reply, no further action was taken. After about two years, the show-cause notice no. 2 was issued with 4



nos. of charges in which an enquiry report was submitted. However, the authority, vide order dated 19.08.2006 did not accept the enquiry report and had directed a *de novo* enquiry. The *de novo* enquiry resulted in a report whereby the same opinion of the previous report was reiterated. It however appears that no further action was taken on the basis of the report. The learned counsel has submitted that so far as the show-cause notice no. 3 dated 19.07.2007 is concerned, two charges of the show-cause notice no. 2, namely charges nos. 3 and 4 were clubbed and made to charge no. 5 in the show-cause notice no. 3. Similarly, charges nos. 1 and 2 of the show-cause notice no. 1 were made to charge no. 8 in the third show-cause notice dated 19.07.2007. It is submitted that the show-cause notice no. 3 which led to an enquiry had culminated in the report dated 04.09.2009 and ultimately the order of removal from service was passed on 30.10.2015 which was upheld by the appellate authority only after an intervention by this Court in WP(C)/793/2017. It is submitted that the enquiry was held behind the back of the petitioner and with regard to the allegations that the petitioner had avoided the enquiry, it is submitted that notices were sent to the Goalpara office when the petitioner was under suspension and therefore was not in a position to receive such notice. It is further contended that the petitioner was on medical treatment. The learned counsel has also emphasized that the date of his superannuation was on the very next date of passing of the order of removal from service. It is also submitted that the petitioner was not dealt with fairly at all and at the whims of the authorities, different proceedings were initiated at different times without following the due process of law.

6. The learned counsel for the petitioner accordingly submits that interference is required to be made and since the petitioner had already



surpassed the age of superannuation, his pensionary benefits be paid.

7. *Per contra*, Shri Dhar, the learned Standing Counsel of the Department has submitted that the charges against the petitioner are grave in nature and the order of removal is commensurate. He has also submitted that so far as the penalty order dated 30.10.2015 is concerned, the same pertains to the show-cause notice dated 19.07.2007 in which the petitioner chose not to participate after submitting his response. It is submitted that notices were sent to the petitioner which was in fact received by his brother and therefore it cannot be contended on behalf of the petitioner that he was not aware of the enquiry proceeding. It is submitted that the disciplinary authority had applied his mind before issuing the impugned order of removal of service dated 30.10.2015. It is also submitted that the appellate authority had rejected the appeal on 29.03.2018 by a detailed order. He submits that the matter of disciplinary action is within the domain of the employer and unless a case of gross perversity or violation of the Rules governing the field is established, this Court would not interfere.

8. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

9. It transpires that after that show-cause notice no. 1 was issued on 27.10.2003 with 2 nos. of charges, as mentioned above and after filing of the reply by the petitioner, no departmental proceeding appears to have been drawn up. After about two years, show-cause notice no. 2 was issued on 18.06.2005 with 4 nos. of charges, the gist of which have been mentioned above. The notice was replied on 12.09.2005 whereafter an enquiry was held culminating in a report. However, the disciplinary authority namely the Secretary to the Government of Assam, Handloom and Textile Department, vide order dated



19.08.2006 had rejected the findings of the report and directed a *de novo* enquiry into the charges. Whether such an action was legally permissible to the disciplinary authority is itself a debatable issue. Be that as it may, from the records it appears that the *de novo* enquiry had culminated in a report which was forwarded to the petitioner on 09.10.2014. A reading of the same would however reveal that the earlier report which was rejected was again endorsed. The enquiry report which has been annexed as Annexure-5 to the writ petition would show that no proceeding, as such was held before submitting the report. However, there is nothing on record to suggest that any action was taken on the basis of the said report. Subsequently, the show-cause notice no. 3 was issued on 19.07.2007 with 8 nos. of charges. A bare look at the show-cause notice no. 3 would show that charges no. 3 and 4 of the show-cause notice no. 2 dated 18.06.2005 are clubbed as charges no. 5 in the show-cause notice no. 3. Similarly, charge nos. 1 and 2 of the show-cause notice no. 1 dated 27.10.2003 have been clubbed as charges no. 8 in the show-cause notice no. 3.

10. Without even going to the aspect of making repeated enquiries in the same charge, this Court has noticed something very intriguing in the impugned order of removal dated 30.10.2015. A bare reading of the impugned order would show that it proceeds on the premises of two departmental proceedings which were initiated on 18.06.2005 and 19.07.2007. It may be noted that the show-cause notice no. 2 was dated 18.06.2005 and the show-cause notice no. 3 was dated 19.07.2007. When the enquiry report pertaining to the show-cause notice no. 2 was admittedly not accepted by the disciplinary authority, as would be revealed from the order dated 19.08.2006, it is a matter of surprise as to how the said show-cause notice could be taken into consideration while imposing the penalty. Though there may not be any bar to initiate different



proceedings for distinct and separate charges, initiation of subsequent proceedings on the same set of charges is not permissible in law. Apart from the fact that charges of the show-cause notice no. 1 as well as charges of the show-cause Notice No. 2 were clubbed and made charges in the show-cause notice no. 3 dated 19.07.2007, the disciplinary authority while taking into consideration the earlier show-cause notice dated 18.06.2005 had committed manifest error of law *inasmuch as* the orders to be passed after the show-cause notice no. 3 could not have taken into account the show-cause notice no. 2 of the year 2005. This Court has also noticed that the proceedings against the petitioner started in the year 2003 which was not concluded. The show-cause notice no. 2 was of the year 2005 and though the enquiry was done, the same was kept dragging till the year 2013. In the meantime, show-cause notice no. 3 was issued in the year 2007 constituting charges which were the charges in earlier proceedings. The enquiry report appears to be dated 04.09.2009 and it is not understood as to why it took more than 5 years to issue the second show-cause notice on 09.10.2014 seeking the response of the petitioner on the enquiry report. The response was made on 22.10.2014 on the enquiry report and the disciplinary authority had gone beyond the ambit of the show-cause notice dated 19.07.2007 by taking into consideration the show-cause notice of the year 2005 also. The removal order was of the year 2015 whereafter the appeal was preferred in time and the petitioner had to approach this Court in the year 2017 by filing WP(C)/793/2017 for a direction for disposal of the appeal. It is a matter of concern that even after the said order was passed, more than a year was taken by the appellate authority to pass the final orders in the appeal whereby it was rejected. While the action of timely rejection would have been treated in a different manner, the time taken by the authorities to drag the matter would be



a factor which would go against them.

11. This Court also finds force in the contention advanced on behalf of the petitioner that the enquiry was held behind his back and the health condition of the petitioner which was made known to the authorities were not taken into consideration. It is on record that the petitioner was on medical treatment and it is also admitted that on the very next date of the penalty order he would have retired from service.

12. This Court has also carefully scrutinized the original records produced. There is nothing to show that the enquiry was done in the manner prescribed in the 1964 Rules. Rule 9 of the said Rules lays down a detailed procedure of holding the enquiry. As indicated above, the records do not even suggest that the procedure was followed. Denial of the reasonable opportunity to safeguard the interest to a delinquent would be fatal in a disciplinary proceeding. While the charges may be serious in nature, the requirement of law is to give a reasonable and fair opportunity to a delinquent by following the procedures laid down in law. In the instant case, it appears that the authorities, on their own whims had dragged the matter and had totally disregarded the procedure and had acted on circumstances which suit them and the aspect of giving a fair opportunity to the petitioner was totally overlooked.

13. In view of the above, this Court does not have any other option but to interfere with the impugned order of removal from service dated 30.10.2015 and also the appellate order dated 29.03.2018. This Court has taken into account that the petitioner would have retired from service on 31.10.2015. In view of the above, without going into the aspect of payment of earlier salaries, it is directed that the pensionary and other post-retirement benefits to the petitioner be released to him in accordance with law. Since almost a decade had



passed from the date of his removal, the authorities are directed to expeditiously process the matter of payment of pension with an order of deemed reinstatement.

14. The entire process be completed, preferably within a period of 4(four) months from the date of receipt of certified copy of this order.

15. The writ petition accordingly stands allowed.

16. The records in original be returned back to the learned Standing Counsel, Handloom and Textile Department.

JUDGE

Comparing Assistant