
(2019) 12 GAU CK 0027
In the Gauhati High Court
Case No : Writ Petition (C) No. 863 Of 2016

Golap Chandra Hazarika

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Assam Services (Discipline And Appeal) Rules, 1964 — Rule 9
Assam Services (Pension) Rules, 1969 — Rule 21, 22
Constitution Of India, 1950 — Article 311

Citation : (2019) 12 GAU CK 0027

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : B Hazarika

Final Decision : Disposed Off

Judgement

1. Heard Mr. U.K. Nair, learned senior counsel for the petitioner and Mr. D. Nath, learned Additional Senior Government Advocate for the respondent authorities.

2. The petitioner, who was working as a Superintendent in the Food, Civil Supplies and Consumer Affairs Department of the Government of Assam, was served with a show cause notice under Rule-9 of the Assam Services (Discipline and Appeal) Rules, 1964 (in short Rules of 1964) read with Article 311 of the Constitution of India on the following charges:-

"That while you were serving as the Superintendent, Food, Civil Supplies & Consumer Affairs, Sivasagar you put your signature in the authority letters bearing No.SVSL.4/96/Pt.II dtd.29/03/2007, No.SVSL.49/99/Pt.I/2003/41 dtd.15/3/2007 and No.SVSL.49/99/Pt./2003/39 dtd.23/2/2007 in favour of M/s Brahmaputra Thika Aru Jugan SS Ltd without keeping proper record in the office register, though it is mandatory to do so.

On the strength of the above mentioned authority one Sri Jiten Dutta, an employee of M/s Brahmaputra Thika Aru Jugan SS Ltd lifted 2000.00 (Two

Tousand) qntls of APL Rice and 300.00 (Three Hundred) qntls of sugar and sold the entire quantities in the open market. The above action on your part led to black marketing of 2000.00 (two thousand) qntls of APL Rice and 300.00 (three hundred) qntls of Levy Sugar belonging to Public Distribution System.

You are therefore chartged with misconduct, misappropriation of PDS items and violation of Government rules and instructions."

3. The petitioner submitted his written statements and participated in the enquiry, but as the proceeding was not concluded, the present writ petition is preferred seeking a direction to the respondent authorities to conclude the departmental proceeding as early as possible with further direction to promote the petitioner to the cadre of Assistant Director of Food and Civil Supplies with retrospective effect from the date when the other similarly situated persons were promoted vide notification dated 03.01.2011. It is stated that during the pendency of the writ petition, the enquiry report dated 09.12.2016 was furnished to the petitioner on 16.05.2017.

4. After receiving the enquiry report, the petitioner submitted an undated representation to the Joint Secretary to the Government of Assam in the Food, Civil Supplies and Consumer Affairs Department, wherein it is stated as follows:-

"That, at the very outset I am constraint to state that the inquiry report appears to be vague and it does not pinpoint any kind of involvement of the actual accused/perpetuators who were involved at the grassroots level, when the PDS item were misappropriated and sold in the open market. The undersigned herein is bereft of some vital documents for example the statement of the witnesses (3 witnesses) who are said to have ben examined by the State Inquiry Officer, the list of documents the State Inquiry Officer has relied upon to establish the case and any other evidence relied upon by the State Inquiry Officer while coming to the conclusion that the undersigned is involved in the alleged misconduct.

That, as I have not been furnished with any kind of documents/evidence relied upon by the State Inquiry Officer, I would need a copy of the said documents like the statement of witnesses recorded in the course of the inquiry in order to submit an effective reply/statement of defense. Further, it may be mention herein that although the inquiry officer has recorded a finding in the inquiry report that the statement of the witnesses were recorded in my presence, but in fact I was only asked to appear for recording my statement, and the statement of the witnesses if any recorded were not done in my presence, neither my signature was taken in such recorded statements of the witnesses. As such, I am in complete dark as to the evidence adduced by the said witnesses."

5. From the undated representation, it is discernible that the petitioner was unable to give his reply to the enquiry report as because certain documents were not available with him and consequently copies thereof were sought for. Mr. D. Nath, learned Additional Senior Government Advocate on the other hand refers to a communication dated 26.07.2017 of the Joint Secretary to the Government

of Assam in the Food Civil Supplies and Consumer Affairs Department, by which the petitioner was allowed to inspect the documents for the purpose of submitting his reply to the enquiry report. Although, the petitioner came and inspected the documents, but also desired to have copies of the same. The respondents make a verbal submission that they are unable to provide him with any such copies. In the circumstance, the proceeding initiated against the petitioner remained inconclusive.

6. As during the pendency of the writ petition, the petitioner had been provided with the copy of the enquiry report and for the purpose of giving a reply to it, he requires certain documents, for which, the undated representation had been submitted, we are of the view that the interest of justice will be met if the respondent authorities gives a due consideration to the undated representation of the petitioner and pass a reasoned order thereon as to whether the copies sought for would be provided and if not, the reasons thereof.

7. Any order to be passed, shall be communicated to the petitioner so as to enable him to further participate in the disciplinary proceeding. The reasoned order to be passed be made within a period of 15 days from today. After the reasoned order being provided to the petitioner, it would be for the petitioner to further participate and cooperate in the proceeding so as to bring the same to its logical end at the earliest and thereafter the respondent authorities shall not cause any further delay without any reason.

8. It is stated that in the meantime, the petitioner had superannuated from service on 31.12.2017, but by referring to the disciplinary proceeding initiated against him neither the regular pension, nor the provisional pension had been paid to the petitioner. Rule-22 of the Assam Services (Pension) Rules, 1969 (in short Rules of 1969) provides as follows:-

"22.(1) Where any departmental or judicial proceeding is instituted under rule 21 or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

(2) Payment of provisional pension made under clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or

withheld either permanently or for a specified period."

9. A reading of Rule 22(1) of the Rules of 1969 makes it implicit that in the event a disciplinary proceeding is continued against the delinquent under Rule-21 of the Rules, he is mandatorily required to be paid the provisional pension, which should not exceed the maximum pension that would otherwise have been admissible to the delinquent on the basis of his qualifying service up to the date of retirement.

10. Accordingly, we direct that in furtherance of Rule 22(1) of the Rules of 1969, the respondent authorities shall pass appropriate order providing provisional pension that the petitioner may be entitled. The required order for provisional pension be passed within a period of one month from today.

11. Let a copy of this order be furnished to Mr. D. Nath, learned Additional Senior Government Advocate.

With the above observations, the writ petition stands disposed of.