

(2026) 02 GAU CK 1609
In the Gauhati High Court
Case No : WP(C) Of 7302 Of 2023

Khabir Uddin Ahmed

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 07-02-2026

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 120(B), 406, 409, 465, 468, 471, 420, 511

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 3, 6(2), 7(v), 9(2), 15

Citation : (2026) 02 GAU CK 1609

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : J. Abedin, A. M. Ahmed, K. Konwar, A. Kalita, M. Kalita

Final Decision : Dismissed

Judgement

Devashis Baruah, J

1. Heard Mr. J. Abedin, the learned counsel appearing on behalf of the Petitioner and Mr. K. Konwar, the learned Additional Advocate General as well as the Standing counsel of the P&RD Department appearing on behalf of all the Respondents.

2. The present writ petition has been filed by the Petitioner assailing the order dated 16.09.2023 by which the major penalty of compulsory retirement under Rule 7(v) of the Assam Services (Discipline and Appeal) Rules, 1964 (for short 'the Rules of 1964') was imposed upon the Petitioner and the notification dated 26.09.2023 whereby the order dated 16.09.2023 imposing the major penalty was duly notified and given effect to.

3. The question involved in the instant writ petition is as to whether imposition of the penalty of compulsory retirement vide the order dated 16.09.2023 was in accordance with law.

4. At the outset, it is very pertinent to take note of that though the Petitioner had

an alternative and efficacious remedy of preferring an appeal in terms with Rule 15 of the Rules of 1964, the Petitioner did not avail the said remedy but approached this Court. It is also very pertinent to take note of that the Petitioner has also not challenged the findings of the enquiry dated 21.06.2023.

5. Be that as it may, for the purpose of deciding the instant writ petition, this Court finds it pertinent to take note of the brief facts which led to the filing of the instant writ petition.

FACTUAL PERSPECTIVE QUA THE PLEADINGS:

6. The materials on record would show that an FIR was lodged by the Chief Executive Officer of the Zilla Parishad, Dhubri before the Officer In-charge of Dhubri Police Station dated 08.07.2021 alleging misappropriation of money against Shri Saddam Hussain, Shri Abdullah Al Masud Mollah and Shri Jahidul Hoque. The said FIR was registered as Dhubri P.S. Case No.1097/2021 under Sections 120(B)/406/409/465/468/471/420/511 of the IPC.

7. It appears that the Petitioner herein in pursuance to the said FIR was arrested on 05.09.2021. On the basis of the arrest, the Petitioner was suspended in terms with Rule 6(2) of the Rules of 1964. The Petitioner thereupon filed an application for bail before this Court which was registered and numbered as Bail Application No.3144/2021 and the learned Coordinate Bench of this Court released the Petitioner on bail vide an order dated 26.11.2021.

8. Thereupon, on 04.01.2022, the Petitioner was issued a Show Cause Notice in terms with Rule 9(2) of the Rules of 1964 thereby charging the Petitioner with gross negligence of duty and breach of conduct in performing duties and violation of Rule 3 of the Assam Civil Service (Conduct) Rules, 1965. The Petitioner submitted his statement of defence. Pursuant thereto, an Enquiry Officer was appointed for the purpose of carrying out the necessary enquiry.

9. It is pertinent to mention that during this period, the Petitioner was also reinstated to his service vide a notification dated 10.03.2022. The Enquiry Report was submitted on 21.06.2023. In respect to both the charges, it was opined by the Enquiry Officer that the said charges levelled against the Petitioner were proved beyond doubt.

10. At this stage, it is very relevant to take note of another aspect prior to the submission of the Enquiry Report dated 21.06.2023. The Deputy Commissioner, Dhubri, submitted a letter dated 08.06.2022 reporting that the Petitioner herein was unable to monitor daily activities/progress of important schemes and requested his transfer due to poor performance. When the request for such transfer was placed before the Chief Minister of Assam, an order dated 07.10.2022 was issued directing the Department to consider the Petitioner for compulsory retirement in larger public interest.

11. Be that as it may, the enquiry so initiated against the Petitioner continued and on 21.06.2023 as aforesaid, the Petitioner was found guilty as charged.

Thereupon, the Enquiry Report being placed before the Departmental Review Committee, it was decided that the Petitioner should be given an opportunity to submit his objections/views to the fact finding Enquiry Report dated 21.06.2023 and accordingly, a second Show Cause Notice was issued to the Petitioner. The Petitioner replied to the second Show Cause Notice. The reply to the said second Show Cause Notice however did not find favour and accordingly, the Petitioner was imposed the major penalty of compulsory retirement vide the impugned order dated 16.09.2023. The said order dated 16.09.2023 was subsequently given effect to vide a notification dated 26.09.2023 which is also impugned in the instant proceedings. The Petitioner thereupon filed the instant writ petition on 11.12.2023 and this Court vide an order dated 18.12.2023 issued notice.

12. Pursuant thereto, an affidavit-in-opposition was filed by the Respondent No.2 justifying that the imposition of penalty of compulsory retirement was proportionate to the charges levelled against the Petitioner and further the Petitioner cannot raise any issues as regards the findings of the enquiry. In addition to that, a preliminary objection was taken that this Court ought not to exercise its jurisdiction under Article 226 of the Constitution taking into account that there is an alternative and efficacious remedy. The Petitioner thereupon submitted a reply by reiterating his stand in the writ petition and denying to the various factual assertions made in the affidavit-in-opposition.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PARTIES:

13. Mr. J. Abedin, the learned counsel appearing on behalf of the Petitioner submitted that the allegations so made against the Petitioner are in respect to a period when the COVID pandemic was going on. On account of the floods, it was of urgent necessity that works were to be carried out and in view of the COVID pandemic, there were no person who was willing to perform such works. It is under such circumstances, the Petitioner was compelled to request various empanelled contractors more particularly Shri Jahidul Hoque who is the proprietor of Jahidul Enterprise to carry out the work. The learned counsel further submitted that it was not the responsibility of the Petitioner as a Programme Officer to look into the details which were overseen only by the concerned engineers. The learned counsel for the Petitioner further submitted that at best what can be alleged against the Petitioner is a case of negligence but not a case of abdication of duty or misappropriation as charged. The learned counsel for the Petitioner further submitted that the imposition of penalty of compulsory retirement vide the impugned order dated 16.09.2023 did not take into consideration the previous years of dedicated service rendered by the Petitioner and as such, the learned counsel submitted that without the said consideration, the penalty of compulsory retirement could not have been imposed upon the Petitioner. He further submitted that penalty of compulsory retirement is disproportionate to the charges levelled against the Petitioner.

14. Mr. K. Konwar, the learned Additional Advocate General submitted that both the charges levelled against the Petitioner were held to be proved. The Petitioner

has not challenged the Enquiry Report and therefore the only question which can be decided in the instant proceedings is as to whether the penalty so imposed upon the Petitioner was disproportionate to the charges levelled. The learned Additional Advocate General submitted that the scope of judicial review for interfering with the proportionality of the punishment is very limited and it is only in a case of gross disproportionality, the powers of judicial review can be exercised. In that regard, he referred to the judgment of the Supreme Court in the case of Chief Executive Officer, Krishna District Cooperative Central Bank Limited and Another Vs. K. Hanumantha Rao and Another reported in (2017) 2 SCC 528.

ANALYSIS AND DETERMINATION:

15. This Court has duly heard the learned counsels appearing on behalf of the parties and perused the materials on record.

16. Though there is no challenge to the Enquiry Report dated 21.06.2023, but this Court finds it pertinent taking into account the submissions so made to look into as to whether the power of judicial review can be exercised as regards the findings in the Enquiry Report more so, when such findings have a direct nexus with the punishment imposed.

17. This Court has perused the Enquiry Report and from a perusal of the Enquiry Report, the charges which have been levelled against the Petitioner and the findings thereupon arrived at on the basis of the evidence do not appear to be perverse or there is any violation to the provisions of law. The fact that the Petitioner violated the MGNREGA Operational Guidelines have been proved against the Petitioner. The fact that the Petitioner choose to grant the contracts to M/s Jahidul Enterprise in violation of the MGNREGA Operational Guidelines were apparent not only for the findings of the Enquiry Officer but also from the self admission of the Petitioner as is apparent from the writ petition itself. Nothing has been placed by the Petitioner which would enable this Court to come to a finding that certain vital evidence which would have changed the findings of fact were not considered.

18. Considering the above, this Court therefore does not find any ground to interfere with the findings of fact so arrived at by the Enquiry Officer in its report dated 21.06.2023.

19. This Court has also taken note of that in pursuance to the Enquiry Report dated 21.06.2023, the Petitioner was issued a Show Cause Notice giving opportunity to place views/objections for/against the Enquiry Report. The Petitioner though submitted his views on 01.08.2023 but upon consideration of the reply, the impugned order dated 16.09.2023 was passed providing due reasons why the Petitioner was imposed the major punishment of "Compulsory Retirement".

20. This Court has also taken note of that earlier a request was made by the

Deputy Commissioner seeking transfer of the Petitioner on account of his poor performance. The Disciplinary Authority after considering all the aspects, were of the opinion that as the Petitioner was found to be inefficient, the punishment of compulsory retirement was imposed upon the Petitioner. This Court finds it pertinent to take note of the judgment of the Supreme Court in the case of Chief Executive Officer, Krishna District Cooperative Central Bank Limited (*supra*) which was relied upon by Mr. K. Konwar, the learned Additional Advocate General as regards the scope of judicial review in respect to imposition of punishment in Disciplinary Proceedings. Paragraph Nos. 7.3 of the said judgment being relevant is reproduced herein under:

"7.3. The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. In *Lucknow Kshetriya Gramin Bank v. Rajendra Singh*, this principle is formulated in the following manner : (SCC pp. 380-81, paras 13-14)

"13. Indubitably, the well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the disciplinary authority. In *Apparel Export Promotion Council v. A.K. Chopra* this principle was explained in the following manner: (SCC p. 773, para 22)

'22. ... The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. ... The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.'

14. Yet again, in *State of Meghalaya v. Mecken Singh N. Marak*, this Court reiterated the law by stating : (SCC pp. 584-85, paras 14 and 17)

'14. In the matter of imposition of sentence, the scope of interference is very

limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.”

21. Taking into account the settled principles of law laid down in the said judgment, it is the opinion of this Court that on the basis of the facts which have already been narrated above and the analysis so made, nothing has been placed before this Court which would shock the judicial conscience of this Court upon the punishment imposed. The findings of fact in the Enquiry Report clearly show that the Petitioner not only was inefficient which led to loss of revenue but the Petitioner also violated the Operational Guidelines which the Petitioner being the Programme Officer was required that the Petitioner had knowledge of the same. In matters where public money is spent, the Officer concerned cannot be allowed to take a stand that he did not know. The Operational Guidelines were clear and in spite of that pleading, ignorance only shows complete lack of efficiency on the part of the Petitioner. Negligence which results in loss to the public exchequer for want of knowledge of the required norms is a sheer case of inefficiency requiring such Officer to be shorn off from service as dead wood. Apart from that, even prior to imposition of punishment, a request was made seeking the Petitioner’s transfer for poor performance. Under such circumstances, this is not a fit case for interference with the punishment imposed upon the Petitioner.

22. Considering the above, it is the opinion of this Court that the instant writ petition lacks merit for which the instant writ petition stands dismissed. No costs.