
(2024) 09 GAU CK 1096
In the Gauhati High Court
Case No : WP(C) Of 3270 Of 2024

Manjit Sonowal

APPELLANT

Vs

The State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 27-09-2024

Acts Referred:

Citation : (2024) 09 GAU CK 1096

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : R Mazumdar, T Wapangla, R Deka, P Rai

Final Decision : Disposed Of

Judgement

Suman Shyam, J

1. Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam appearing for the respondents.

2. This writ petition has been instituted by the petitioner inter-alia praying for a writ of certiorari quashing the memorandum of charge dated 03.12.2020 with a further prayer to issue a writ of mandamus directing the respondents to consider his case for promotion to the next higher post of Assistant Conservator of Forest (ACF).

3. The facts of the case, in a nutshell, are that on 03.12.2020, while the petitioner was serving as Forest Range Officer posted in the Bokakhat Range, a memorandum of charge was served upon him based on which a department proceeding was initiated against the petitioner. An Enquiry Officer was appointed by the department so as to enquire into the charges. Accordingly, the petitioner had appeared before the Enquiry Officer on receipt of communication dated 25.10.2023. The first hearing in the departmental proceeding took place on 28.10.2023. In the meantime, the Departmental Promotion Committee (DPC)

had met in the year 2023 for considering the eligible candidates for promotion to the rank of ACF but the case of the petitioner has been considered in a "sealed cover" due to the pendency of the aforesaid departmental proceeding. The grievance of the petitioner is that the enquiry proceeding has not been concluded till today, which has resulted in delay in the process of promotion thus, causing serious prejudice to the interest of the petitioner.

4. Mr. Mazumdar, learned counsel for the petitioner submits that on the same set of charges, the ACF, Doomdooma has been exonerated in a departmental proceeding initiated against him and the Divisional Forest Officer, Doomdooma was exempted from the departmental enquiry on the same set of allegations. Under the circumstances, submits Mr. Mazumdar, there is every possibility that the enquiry proceeding against the petitioner would result in his exoneration in respect of the charges brought against him. However, due to the delay in conclusion of the departmental proceeding, the petitioner has been deprived of the benefit of promotion.

5. On the basis of the order dated 23.09.2024 requiring the departmental counsel to obtain instruction, Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam has produced a copy of the instruction dated 23.09.2024, a perusal of which goes to show that Dr. V. C. Mathur, IFS, the then FDTP, Manas was appointed as the Enquiry Officer in this case but till date the enquiry report has not been submitted. Although an explanation was called for from the Enquiry Officer for the delay in submission of the enquiry report, no response has been received till today. Mr. Gogoi has further submitted that the Enquiry Officer Dr. V. C. Mathur has gone on deputation to a Central Government organization as a result of which, no further development has taken place in the departmental proceedings.

6. Responding to the above, Mr. Mazumdar, by relying on the decision of the Supreme Court rendered in the case of State of Punjab and others Vs. Chaman Lal Goyal reported in (1995) 2 SCC 570, has submitted that since there is inordinate delay and uncertainty in conclusion of the departmental proceedings and in view of the fact that the seniors of the petitioner have been exonerated in the departmental proceedings initiated against them on the same set of charges, the present is a fit case where the "sealed cover" proceeding is required to be opened and the petitioner be promoted by making his promotion subject to the outcome of the departmental proceeding.

7. Mr. Gogoi, learned departmental counsel, on the other hand, submits that he does not have any specific instruction from the department to take a stand in the matter on the above point and therefore, he submits that the department would abide by the order that may be passed by this Court.

8. After hearing the submissions of the learned counsel for the parties, this Court has noticed that there is already substantial delay in the departmental proceeding initiated against the petitioner in the year 2020 and at the moment,

there is no clarity as to how much further time would be required to conclude the departmental proceeding. The two striking features that have caught the special attention of this Court in the present case is that firstly, the seniors of the petitioner have been admittedly exonerated/exempted in respect of the same set of charges. Secondly, when the Enquiry Officer has gone on deputation to a Central Government organization wherein, the period of deputation usually ranges between 3 to 5 years, under such circumstances, there is every likelihood that the departmental proceeding may not be concluded anytime soon in the near future. In such an eventuality the scope of promotion of the petitioner would be further delayed for no fault on the part of the petitioner. But at the same time, the departmental proceeding also cannot be interfered with by this Court at this stage on the aforesaid grounds. As such, a balanced approach will be called for in this matter.

9. Dealing with a situation of similar nature, the Supreme Court in the case of Chaman Lal Goyal (supra) in paragraph 12 has observed as follows :-

"12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

10. Applying the ratio of the decision in Chaman Lal Goyal (supra) in the facts of this case, this Court is of the opinion that for ends of justice the petitioner would be entitled to same relief in this case. Therefore, this writ petition is hereby disposed of by providing that the departmental proceeding initiated against the petitioner be brought to its logical end within a period of 60 days from today. If for any reason not connected with the writ petitioner, the departmental enquiry cannot be concluded within 60 days from today, then the sealed cover proceeding would be opened by the authorities and promotion, if recommended by the DPC, shall be given to the petitioner making the same to be subject to the

outcome of the departmental proceeding initiated against him. The entire exercise, as directed by this Court, shall be carried out and concluded within an outer limit of 90 days from today.

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