

(2025) 02 GAU CK 0809
In the Gauhati High Court
Case No : WP(C) Of 5668 Of 2024

Mehdi Hassan

APPELLANT

Vs

The State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 25-02-2025

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g)
Assam Civil Services (Conduct) Rules, 1965 — Rule 3, 7

Citation : (2025) 02 GAU CK 0809

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : M K Choudhury, M Sarma, Anasuya C, P Bhardwaj

Final Decision : Allowed

Judgement

Suman Shyam, J

1. Heard Mr. M. Sarma, learned counsel for the writ petitioner. I have also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam, appearing for the respondents.

2. The writ petitioner is serving as Forest Ranger under the Forest Department, Government of Assam and is presently posted at the S.F. Range, Sonari. While the petitioner was posted as Range Officer, Charaideo under the SF Range, a show cause notice dated 19/09/2020 was served upon him directing the petitioner to explain as to why, disciplinary action should not be initiated against him for violation of Rules 3 & 7 of the Assam Civil Services (Conduct) Rules, 1965 for criticizing the Government. The allegation against the petitioner was to the effect that by disseminating messages through his social media (Face Book account), the petitioner had tarnished the images of the Union Government and the State Government, which was unbecoming of a Government servant.

3. In response to the show cause notice dated 19/09/2020, the petitioner had submitted a detailed reply dated 21/09/2020, denying the allegations brought

against him. However, not being satisfied with the reply submitted by the petitioner, a departmental proceeding was initiated against him. There were 2 (two) Article of Charges brought against the petitioner, which are as follows :-

“(i) Violation of Rule 3 of the Assam Civil Services (Conduct) Rules, 1965 by indulging in act unbecoming of a Government Servant with considerable stature in the society by endorsing adverse comments/criticisms on the functioning and administration of the Central as well as the State Government portrayed in the social media forum which is tacit criticism of the Government.

(ii) Violation of Rule 7 of the Assam Civil Services (Conduct) Rules, 1965 through unwarranted comments in the social media tantamount to criticism of the Government.”

4. The petitioner participated in the enquiry proceeding. After taking note of the materials brought on record as well as the stand of the parties, the Enquiry Officer, who was an IFS Officer of the rank of Additional PCCF, had recorded the following finding in the Enquiry Report dated 01/07/2023 with regard to the charge no. 1, which are reproduced herein below :-

“While the Charged Officer was posted as the Range Officer in Charaideo Social Forestry range, he disseminated the thirteen messages (Exhibits I to XIII) through his individual Facebook Account which he honestly admits to be done by him. Thus, in the prima facie scrutiny it appears that the messages which have comments and content which can potentially tarnish the image of the Union and State Government and thus as per Rule 3 of the Assam Civil Services (Conduct) Rules, 1965, it may be interpreted as its violation tantamount to indulging in the act of unbecoming of a Government Servant by Shri Mehdi Hassan. However, through the defence statement provided by the charged officer vide letter No. Mehdi/FRO/DDM/01-03 dated 26/10/2022 (Annexure-D) and the statements recorded during the inquiry on 01/07/23 (Annexure-F) it has been observed that the remarks/comments made by the charged officer on social media are not made with any specific motive. In his comments he has made use of random words such as “Mirinda Monkeys”. “Fanta Monkeys” which do not point at any particular person/policy of the Union of State Government. Thus his intention, as stated by him, while disseminating such messages appears to be purely for entertainment purpose rather than with the intention of tarnishing the image of the Government or criticizing any of its policies.

Moreover, he has in his statement humbly submitted that after realizing that his actions could be interpreted objectionably and could tantamount to indulgence in an act of unbecoming of a Government Servant, he immediately deleted the messages from the Facebook Account and thereafter has not posted such potentially objectionable content which indicates that the Charged Officer did not possess the intention of criticizing the functioning of the Government. Also, in his statement he admits to have committed the mistake inadvertently and assures to be more cautious about his actions in the social media.

Being a responsible Government servant, the Charged Officer should indeed have anticipated the gravity of his actions instead of being so casual about sharing such content on social media which has amounted to the indulging into an action of unbecoming of a Government servant, thereby violating Rule 3 of the Assam Civil Services (Conduct) Rules, 1965. However it may also be considered that there is an absence of the inherent intention of criticizing the Government through his action and thus it may be treated that the Rule 3 has not been violated."

5. In so far as the charge no. 2, pertaining to violation of Rule 7 of the Assam Civil Services (Conduct) Rules, 1965 is concerned, the findings recorded by the Enquiry Officer are as hereunder :-

"While the Charged Officer was posted as the Range Officer in Charaideo Social Forestry range, he disseminated the thirteen messages (Exhibits I to XIII) through his individual Facebook Account which he honestly admits to be done by him. Thus, in the prima facie scrutiny it appears that the messages which have comments and content which can potentially tarnish the image of the Union and State Government and thus as per Rule 7 of the Assam Civil Services (Conduct) Rules, 1965, it may be interpreted as its violation tantamount to indulging in the act of unbecoming of a Government Servant by Shri Mehdi Hassan.

However, through the defence statement provided by the charged officer vide letter No. Mehdi/FRO/DDM/01-03 dated 26/10/2022 (Annexure-D) and the statements recorded during the inquiry on 01/07/23 (Annexure-F) it has been observed that the remarks/comments made by the charged officer on social media are not made with any specific motive. In his comments he has made use of random words such as "Mirinda Monkeys". "Fanta Monkeys" which do not point at any particular person/policy of the Union of State Government. Thus his intention, as stated by him, while disseminating such messages appears to be purely for entertainment purpose rather than with the intention of tarnishing the image of the Government or criticizing any of its policies.

Moreover, he has in his statement humbly submitted that after realizing that his actions could be interpreted objectionably and could tantamount to indulgence in an act of unbecoming of a Government Servant, he immediately deleted the messages from the Facebook Account and thereafter has not posted such potentially objectionable content which indicates that the Charged Officer did not possess the intention of criticizing the functioning of the Government. Also, in his statement he admits to have committed the mistake inadvertently and assures to be more cautious about his actions in the social media.

Being a responsible Government servant, the Charged Officer should indeed have anticipated the gravity of his actions instead of being so casual about sharing such content on social media which has amounted to the indulging into an action of unbecoming of a Government servant, thereby violating Rule 7 of the Assam Civil Services (Conduct) Rules, 1965. However it may also be considered that

there is an absence of the inherent intention of criticizing the Government through his action and thus it may be treated that the Rule 7 has not been violated.”

6. From the Enquiry Report, it is clear that the Enquiry Officer was of the opinion that none of the two charges brought against the writ petitioner could be established. Notwithstanding the same, the Disciplinary Authority had issued the order dated 01/01/2024 imposing the penalty of “withholding 2 (two) increments with cumulative effect of promotion” under Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964 upon the petitioner. Aggrieved thereby, the instant writ petition has been filed.

7. Mr. Sarma, learned counsel for the petitioner has invited the attention of this Court to the materials available on record to submit that the petitioner had never created any message but had merely forwarded some of the messages which emanated from reputed portals. Since he did not express any opinion about any of the circulated messages and considering the fact that those messages were not circulated with the intent to bring disrepute to the Government, as has also been found by the Enquiry Officer, there was no occasion for the respondents to impose penalty upon the petitioner based on the enquiry report dated 01/07/2023.

8. By referring to a recent decision of the Hon’ble Supreme Court rendered in the case of Kaushal Kishor Vs. State of Uttar Pradesh and others reported in (2023) 4 SCC 1, Mr. Sarma has further argued that freedom of speech of an individual would include the right to circulate and the right to circulation would include the right to optimize/maximize the volume of such circulation. Contending that the right of the petitioner to circulate any social media post without expressing any opinion, would be a facet of Right to Freedom of Speech guaranteed under Article 19(1)(g) of the Constitution of India, Mr. Sarma has argued that the impugned order of penalty is unsustainable in the eyes of law.

9. The State has not filed any counter affidavit controverting the stand taken by the petitioner in the writ petition. As a matter of fact, Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam, during the course of hearing, has submitted in his usual fairness that the order of penalty imposed upon the petitioner does not appear to be in accordance with law, inasmuch as, the enquiry report did not find that the two charges had been proved against the petitioner. To that extent, submits Mr. Gogoi, he would not be defending the order of penalty imposed upon the petitioner.

10. I have considered the stands taken by the learned counsel for both the sides and have also gone through the materials available on record.

11. At the very outset, it would be pertinent to note herein that although the allegations brought against the petitioner is of circulating objectionable posts in the social media, yet, neither in the Article of Charges nor in the Statement of Allegations, there is mention of any of the attending posts circulated by the

petitioner, which were perceived to be defamatory and / or objectionable from the point of view of the Central Government or the State Government. If that be the case, it is not understood as to how, the petitioner was expected to defend his interest against such vague and unsubstantiated charge.

12. Be that as it may, notwithstanding the fact that the Article of Charges was totally vague, the petitioner had not only submitted his reply but also furnished sufficient materials to substantiate his stand that those circulations were neither defamatory nor were they intended to bring disrepute to the Central or the State Government. Not only that, the learned Enquiry Officer has also accepted such stand of the petitioner and found that he was not guilty of misconduct within the meaning of either Rule 3 or Rule 7 of the Assam Civil Services (Conduct) Rules, 1965. Notwithstanding the same, based on the enquiry report dated 01/07/2023, the aforesaid penalty was imposed upon the petitioner.

13. What would be significant to note herein is that law is well settled that if the Disciplinary Authority is not in agreement with the findings recorded by the Enquiry Officer, it would be open for the authority to record its own finding, albeit after issuing notice upon the delinquent officer and after considering his stand in the matter. In the present case, not to speak considering the stand of the officer, no notice, whatsoever, was issued to the delinquent officer asking him to show cause as to why a different view should not be taken in the matter by the Disciplinary Authority and as to why the charges should not be held to have been proved.

14. If that be so, this Court is left with no element of doubt that the order of penalty was not preceded by a fair and transparent procedure of enquiry and/or departmental proceeding conducted against the petitioner. On the contrary, this Court finds that the petitioner has been subjected to an order of penalty without there being any reasonable basis for doing so. Be that as it may, in view of the stand taken by the learned departmental counsel Mr. D. Gogoi that he does not wish to defend the order of penalty, no further discussion or deliberation in this regard will be called for.

15. For the reasons stated herein above, the impugned order dated 01/01/2024 stands set aside.

The writ petition stands allowed. There shall be no order as to costs.