

(2004) 11 GAU CK 0008

Gauhati High Court

Case No: Civil Rule No. 5293 of 1998

Madhab Chandra Borpujari

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Nov. 23, 2004**Acts Referred:**

- Assam Services (Discipline and Appeal) Rules, 1964 - Rule 24
- Penal Code, 1860 (IPC) - Section 409, 468

Citation: (2005) GLT 749 Supp**Hon'ble Judges:** B.K. Sharma, J**Bench:** Single Bench**Advocate:** None appeared, for the Appellant; R. Chakravarty, for the Respondent**Final Decision:** Allowed

Judgement

B.K. Sharma, J.

The petitioner is aggrieved by the order dated 10.6.1998 by which he has been imposed with the penalty of reduction in rank pursuant to the departmental proceeding. It is the case of the petitioner that he had entered the services of the Respondents as a Lower Division Assistant and thus could not have been reduced to the rank of Peon which is lower than the rank of LDA to which grade he was originally appointed. The facts as narrated in the writ petition are that the petitioner while was serving under the Respondents was placed under suspension by an order dated 30.6.1989. When the order of suspension was not revoked the petitioner approached this Court by filing a writ petition which was registered and numbered as Civil Rule No. 2304/92. The writ petition was disposed of by order dated 24.11.1992 providing for revocation of the order of suspension.

2. After the aforesaid order of this Court the petitioner was reinstated in service by an order dated 15.12.1992. In the mean time, a criminal case was registered against the petitioner u/s 409/468 IPC vide Sibsagar Police Station case No. 58 of 1989. The

petitioner was acquitted of the charges by judgment dated 24.4.1995.

3. Claiming regularisation of the intervening period when the petitioner was under suspension, the petitioner once again approached this Court by filing another writ petition which was registered and numbered as C.R. No. 231 of 1996. The writ petition was disposed of granting liberty to the Respondents to initiate departmental proceeding if allowed by law and to complete the same within a period of 6 months.

4. After the aforesaid order of this Court, a departmental proceeding was initiated against the petitioner and on conclusion of the same the impugned order of penalty was imposed on the petitioner by order dated 10.6.1998. By the said order the petitioner was reduced in rank from his original rank of LDA to that of Peon, i.e., from Grade III to Grade IV. The main plea of the petitioner is that he could not have been reduced in rank placing him in a rank which is lower than the rank and the grade to which he was originally appointed. The petitioner has not annexed other relevant documents such as chargesheet, written statement, enquiry report representation, written briefs etc. and has only annexed the impugned order dated 10.6.1998 on the aforesaid ground that he could not have been reduced to the rank lower than the rank to which he was originally appointed.

5. Being aggrieved by the aforesaid impugned order dated 10.6.1998 the petitioner preferred an appeal before the Registrar of Co-operative Societies, Assam. The said appeal was preferred on 25.6.1998 and it is the grievance of the petitioner that although as per the requirement of Rule 24 of the Assam Services (Discipline and Appeal) Rules, 1964, such appeal was required to be disposed of within 3 months, the appellate authority did not do so forcing him to invoke the writ jurisdiction of this Court.

6. In the aforesaid fact situation of the matter the petitioner has prayed for setting aside and quashing of the impugned order dated 10.6.1998 primarily on the ground that he could not have been reduced to a rank which is even lower than the rank to which he was initially appointed.

7. This Court while entertaining the writ petition by order dated 28.10.1998 extended the interim protection to the petitioner by staying the impugned order of penalty dated 10.6.1998. It is argued that the petitioner is still continuing in his Grade and rank of LDA to which he was originally appointed.

8. Charge which is stated to be proved against the petitioner is very serious in nature. The impugned order indicates that the petitioner was responsible for misappropriation of Government money to the tune of Rs. 1,0504.20. As per the impugned order charges against the petitioner was fully established and he was provided with the second show cause notice. However, in absence of any materials before this Court, this Court is not in a position to appreciate the manner and method in which the departmental proceeding was conducted and concluded

against the petitioner. The petitioner has also not made any grievance in respect of the procedure adopted in the said departmental proceeding. As per the impugned order of penalty, the charge against the petitioner was established and on consideration of the same he was imposed with the aforesaid penalty of reduction in rank.

9. Law is well settled that there cannot any reduction in rank to the post lower than the post to which the incumbent was initially recruited. In this case I may gainfully rely on the decision as reported in [Nyadar Singh Vs. Union of India \(UOI\) and Others](#),

10. In view of the above, the impugned order imposing the penalty of reduction in rank is not sustainable and liable to be set aside and quashed. The setting aside and quashing of the order of penalty is on the law that there cannot be any reduction in rank in respect of an employee to the rank which is below the rank to which he was originally appointed. There is no denial that the petitioner was appointed as LDA and at the time of imposing the aforesaid penalty he was still holding the said rank of LDA. Thus he could not have been reduced to the rank of Peon from that of LDA. It is only on this legal proposition, the order of penalty is liable to be set aside.

11. It is made clear that such interference with the order of penalty on the aforesaid legal formulation cannot absolve the petitioner from the liability of imposing other penalty as may be deemed fit and proper by the appellate/disciplinary authority on the basis of the disciplinary proceeding in which the charge of misappropriation of Government money has been stated to be proved. Since the penalty has been set aside only on the aforesaid ground it will be open for the disciplinary Authority/Appellate Authority to act in accordance with the rules towards imposition of any other penalty against the petitioner including the penalty of recovery from his pay for the pecuniary loss caused to the Government, if so advised. In this regard the Appellate Authority may entertain the Annexure H appeal dated 25.6.1998 to deal with all the grounds which have been urged by the petitioner including the ground relating to illegality committed in reducing the petitioner to the rank of Peon.

12. For the foregoing reasons and discussions the impugned order dated 10.6.1998 stands interfered with the liberty to the Appellate/ Disciplinary Authority to impose any other penalty as per rules, if so advised. Writ petition stands allowed as indicated above.

13. Learned State counsel Ms R. Chakravarty be supplied with a copy of this judgment for her necessary follow up action.