

## Rabindra Nath Kalita Superintending Engineer (PwD) Vs State of Assam and Others

**Court:** GAUHATI HIGH COURT

**Date of Decision:** Feb. 16, 2016

**Acts Referred:** Assam Services (Discipline and Appeal) Rules, 1964 " Rule 9

**Citation:** (2016) 3 GauLJ 486 : (2016) 4 GauLR 616 : (2016) 2 GauLT 955 : (2016) 3 NEJ 382

**Hon'ble Judges:** Ujjal Bhuyan, J.

**Bench:** Single Bench

**Advocate:** J. Roy, Advocate, for the Appellant; I. Choudhary, Standing Counsel, P.W.D and H. Buragohain, Standing Counsel, P.W.D(Roads), for the Respondent

**Final Decision:** Allowed

### Judgement

Ujjal Bhuyan, J. - This case was heard at length on 04.02.2016. Though it is tagged with two other cases i.e. WP(C) Nos. 1843/2013 and

4200/2014 filed by the same petitioner, since this case has been heard, Court is of the view that it would be proper to take up this case for

disposal independently.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of notification dated 22.08.2012 passed by the

Commissioner and Special Secretary to the Govt. of Assam, PWD (Building and NH) by which penalties of censure and withholding of 1 (one)

increment with cumulative effect were imposed on the petitioner.

3. Case of the petitioner is that he had entered service in the Public Works Department (PWD) as Assistant Engineer in the year 1983. In the

course of his long service career he had earned successive promotions. Ultimately, he was promoted to the post of Superintending Engineer.

4. While the petitioner was serving as Executive Engineer in the Rangia NH Division, a show-cause notice dated 14.06.2010 was issued to him by

the Commissioner and Special Secretary to the Govt. of Assam, PWD (Roads) whereby petitioner was asked to show-cause under Rule 9 of the

Assam Services (Discipline and Appeal) Rules, 1964 (1964 Rules) read with Article 311 of the Constitution of India as to why any of the penalties

prescribed under Rule 7 of the 1964 Rules should not be imposed on him on the allegation that while he was serving as Executive Engineer in

PWD, Guwahati City Division-II, revised plan and estimate was prepared for construction of flyover at Six Mile at a cost of Rs. 76.08 crores but

before submission of the revised plan and estimate petitioner did not maintain proper procedure. Thus petitioner was charged with gross negligence

of duty, lack of transparency and financial irregularity. The show-cause notice was accompanied by a statement of allegation, list of documents and

list of witnesses to prove the charge framed against the petitioner.

5. It appears that petitioner had submitted his written statement on 11.08.2010 denying the charge brought against him. Petitioner therefore

requested the disciplinary authority to drop the charge against him.

6. Thereafter impugned notification dated 22.08.2012 was issued whereby the departmental proceeding drawn up against the petitioner was

concluded by imposing the penalties of censure and withholding of one increment with cumulative effect.

7. Aggrieved, present writ petition has been filed seeking the relief as indicated above.

8. Heard Mr. J. Roy, learned counsel for the petitioner and Mr. I. Choudhury, learned Standing Counsel, PWD (Building and NH). Also heard

Mr. H. Buragohain, learned Standing Counsel, PWD (Roads).

9. Mr. Roy, learned counsel for the petitioner by referring to various documents on record submitted that there was no basis for the disciplinary

authority to arrive at the conclusion that the charges of negligence, financial irregularities and lack of transparency were proved against the

petitioner. No departmental proceeding was conducted against the petitioner. There was no enquiry. Without enquiry and without holding

departmental proceeding, the disciplinary authority erroneously held that the charges against the petitioner stood proved. Referring to the

provisions of Rule 9 of the 1964 Rules, Mr. Roy submits that the provisions of Rule 9 which lays down the detailed procedure for holding of

departmental proceeding were not followed. Provisions of Rule 9 are mandatory in character. For non-compliance of the mandatory requirement

of Rule 9, impugned notification would stand vitiated and therefore should be quashed by this Court.

10. Per contra, Mr. Choudhury, learned Standing Counsel submits that the allegations against the petitioner were very serious. Show-cause notice

was issued to the petitioner where-after he had filed his reply. Disciplinary authority on due consideration of the show-cause notice, reply of the

petitioner and other relevant materials on record which have been mentioned in the impugned notification, came to the conclusion that petitioner

could not absolve himself from the serious charges. The view taken by the disciplinary authority is a possible view on the facts of the case.

However, the disciplinary authority took a rather lenient view of the matter and imposed the lesser penalties of censure and withholding of one

increment with cumulative effect. He has referred to the Cabinet decision dated 18.11.2008 as well as report of enquiry and re-enquiry which

were considered by the disciplinary authority. He therefore submits that no interference is called for.

11. Mr. Buragohain, learned Standing Counsel, PWD (Roads) supports the submissions advanced by Mr. Choudhury.

12. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13. Since the notification dated 22.08.2012 has been impugned in this proceeding, it would be apposite to examine the same at the threshold. For

better appreciation, relevant portion of the impugned notification is extracted hereunder:-

Read

(i) Show cause notice issued by the Govt. of Assam in PWD(R) under Rule 9 of the Assam Services (Disciplinary and Appeal) Rules, 1964

against Sri Rabindra Nath Kalita, the then Executive Engineer, PWD, Guwahati City Division-II vide No. CON.45/2008/61 dated

14.07.2010.

ii) Reply in defence submitted by Sri Rabindra Nath Kalita vide No. 2468 dated 31.08.2010.

iii) Cabinet decision held on 18.11.2008 on additional item No. 8.

iv) Enquiry report submitted by Sri Khagendra Choudhury Retd. Secretary PWD Assam vide No. Nil dated 12.02.2009.

v) Report of re-enquiry submitted by the Addl. Chief Engineer, PWRD (Western Zone) vide No. CE/STBR/CON/21/11/3 dated

23.05.2011.

vi) Disciplinary Authorities findings-

Findings-

After thorough examination of relevant papers/documents furnished by the enquiry officer along-with two report and also other relevant

documents relating to the matter of alleged involvement of Sri Rabindra Nath Kalita, the then E.E., PWD, Guwahati City Division-II in the

preparation of plan and estimate for construction of Sixth Mile Flyover and preparation of incorrect DPR with faulty foundation design of the

flyover and submission of DPR to Govt. for approval has been partially substantiated. Although the delinquent officer has denied from (sic)

any kind of involvement in such allegation but he cannot be absolved from the following charges-

1. Negligence.

2. Financial indiscipline and impropriety.

3. Non observance of the prescribed administrative procedure for approval.

Order

After careful consideration of all aspects, it is ordered to conclude the Departmental proceedings drawn up against Sri Rabindra Nath

Kalita, the then Executive Engineer, PWD, Guwahati City Division-II with the following penalty.

1. Censure with withholding of (one) increment with cumulative effect.

14. First part of the impugned notification shows that the disciplinary authority had considered the show-cause notice and the written statement of

the petitioner. Disciplinary authority had also considered Cabinet decision dated 18.11.2008, enquiry report submitted by Sri Khagendra

Choudhury, retired Secretary, PWD, Assam on 12.02.2009 and report of re-enquiry submitted by Addl. Chief Engineer, PWD (Roads) (Western

Zone) on 23.05.2011.

15. A perusal of the Cabinet decision which has been placed on record would go to show that the Cabinet had discussed the proposal of revised

estimate for construction of the Flyover. After directing the PWD to make efforts for reduction of the revised cost and for completion of the

construction expeditiously, the Cabinet directed initiation of disciplinary proceeding against the erring officials. Possibly this led to issuance of

show-cause notice to the petitioner.

16. The report of Sri Khagendra Choudhury dated 12.02.2009 is a voluminous one. In his report Sri Choudhury observed that though the project

had to incur additional cost which had to be paid to the contractor, no violation of rules came to light during scrutiny. Regarding financial loss to the

Department certain steps were suggested by the officer after observing that there was lack of transparency while finalising the contract. As the

execution of the work involved several stages of hierarchy in the PWD, he suggested that the Government may initiate steps to identify the officers

involved in the process for fixing responsibility/accountability.

17. In his report dated 23.05.2011, the Addl. Chief Engineer made a detailed analysis of the technical and financial aspects of the contract work

relating to Six Mile flyover. Reasons for revised estimate were also gone into. In his report he concluded that revision of estimate for construction

of the flyover at Six Mile was fully justified, as it was prepared considering the points of structural safety, aesthetics, and longevity of the flyover.

One commonality between the Cabinet decision dated 18.11.2008 and the enquiry report dated 12.02.2009 is that those were prior to issuance of

the show-cause notice dated 14.06.2010. Therefore, those cannot be said to be consequent upon the show-cause notice. In so far report of re-

enquiry is concerned though it is subsequent to issuance of the show-cause notice, it is totally unconnected with the show-cause notice. It cannot

be said to be part of the departmental proceeding. Be that as it may, the said report of re-enquiry did not find fault with any aspect though the first

enquiry report suggested action against erring officials.

18. A perusal of the show-cause notice dated 14.06.2010 would show that petitioner was asked to show-cause under Rule 9 of the 1964 Rules

read with Article 311 of the Constitution as to why any of the penalties prescribed under Rule 7 of the 1964 Rules should not be imposed on the

petitioner.

19. Rule 9 lays down the procedure for imposing penalties specified in Rule 7. As per Sub-rule (1), no order imposing on a Government servant

any of the penalties specified in Rule 7 shall be passed except after an enquiry held as far as may be in the manner provided in Rule 9. Thus, no

penalty can be imposed without holding enquiry. As per Sub-rule (2), disciplinary authority is required to frame definite charges on the basis of

allegations on which the enquiry is proposed. The charges must be supported by a statement of allegations along-with list of documents and list of

witnesses by which the charges are proposed to be sustained. After the Government servant submits his written statement, the disciplinary authority

may himself enquire into the charges which are not admitted or may appoint an enquiry officer to conduct enquiry. In the enquiry conducted by the

enquiry officer the disciplinary authority may nominate a presenting officer to present the case of the disciplinary authority. The Government servant

may present his own case with the assistance of other Government servant with approval of the disciplinary authority. The enquiry officer in the

course of the enquiry may take into consideration all documentary and oral evidence adduced and thereafter record his findings on the charges. On

conclusion of the enquiry, he shall forward his findings on each of the charges together with the reasons therefor to the disciplinary authority.

Disciplinary authority shall consider the record of the enquiry and record his findings on each charge. The disciplinary authority shall furnish a copy

of the enquiry report to the Government servant and after considering the response of the Government servant may impose such penalty as may be

deemed fit and proper (as per recent amendment) in case of both major and minor penalty. Sub-rule (12) is relevant for the purpose of the present

case and is extracted hereunder:-

12 (a) Notwithstanding anything contained in this rule it shall not be necessary to follow the procedure laid down in the preceding sub-rules

in cases where it appears to the authority competent to impose the penalty at the initial stage of the proceedings that the penalty of censure

would be adequate, but if at any later stage it is proposed to impose any other penalty specified in Rule 7, the procedure laid down in the

said rules shall be followed.

(b) No order imposing the penalty of censure shall, however, be passed except after:

(i) the Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to

be taken and given an opportunity to make any representation he may wish to make; and

(ii) such representation, if any, is taken into consideration by the Disciplinary Authority.

20. A perusal of Sub-rule (12) of Rule 9 would go to show that the procedure prescribed under Rule 9 may not be followed if the disciplinary

authority takes the view at the initial stage that penalty of censure would be adequate but if at a subsequent stage the disciplinary authority takes the

view that imposition of other penalty would be justified, the procedure laid down in Rule 9 would then have to be followed. Even in case of

imposition of the penalty of censure, the Government servant would have to be informed in writing that imposition of penalty of censure is

proposed against him on the allegations and the Government servant should be given an opportunity to make any representation if he wishes to do

so. On consideration of such representation the disciplinary authority may impose the penalty of censure.

21. From a careful analysis of the provisions laid down in Rule 9 of the 1964 Rules it is evident that for imposition of any penalty mentioned in Rule

7 of the 1964 Rules, be it minor or major, except the penalty of censure, the procedure prescribed in Rule 9 would have to be followed. Before

imposition of penalty holding of enquiry is mandatory. Such enquiry is quasi-judicial in character. Rule 9 which includes holding of enquiry lays

down a fair procedure encompassing therein the principles of natural justice. This Court has held in a catena of judgments that the procedure

prescribed in Rule 9 is of mandatory character and non-compliance to such procedure would vitiate the departmental proceeding drawn up against

the Government servant.

22. In so far imposition of the penalty of censure is concerned, the Government servant would have to be put on notice by the disciplinary authority

at the threshold that on the basis of the allegations the disciplinary authority proposes to impose the penalty of censure and to seek his response.

After the Government servant submits his response, the same is required to be considered by the disciplinary authority where-after the penalty of

censure may be imposed, if considered necessary.

23. At this stage, a brief reference to Rule 7 may be made. Rule 7 mentions the penalties which may be imposed on a Government servant, starting

from censure to dismissal from service. It is seen that both censure and withholding of increment or promotion are distinct and separate penalties.

24. As noticed above, the show-cause notice was issued under Rule 9 of the 1964 Rules read with Article 311 of the Constitution of India.

Provisions of Rule 9 have already been discussed. Article 311 provides for constitutional protection to persons employed in civil capacities under

the Union or under a State in the case of dismissal, removal or reduction in rank. It provides that no such punishment should be imposed except

after an enquiry and after giving reasonable opportunity of being heard in respect of those charges.

25. Therefore, a careful reading of the show-cause notice dated 14.06.2010 would go to show that it was clearly the intention of the disciplinary

authority to hold departmental proceeding for imposition of major penalty on the petitioner. Reference to Article 311 of the Constitution is a clear

pointer to the above intention of the disciplinary authority. Petitioner had responded to the said show-cause notice by submitting his written

statement. Rule 9 of the 1964 Rules provides that on receipt of the written statement from the Government servant the disciplinary authority may

himself enquire into the charges which are not admitted or may get the charges enquired into by an enquiry officer. Natural corollary would be that

disciplinary authority must be satisfied that the written statement submitted by the Government servant does not explain the charges in a manner

whereby he could be exonerated of the charges. The disciplinary authority may also take the view that the charges brought against the Government

servant having not been satisfactorily explained are required to be enquired into. A decision has to be taken in this regard. Thereafter, it has to

be enquired into either by himself or by an enquiry officer. In the enquiry, which is a quasi-judicial proceeding, principles of natural justice would

have to be complied with. The procedure prescribed under Rule 9 would invariably have to be followed in case of imposition of any penalty other

than censure.

26. From a reading of the impugned notification, it is seen that firstly, the disciplinary authority had come to the conclusion that the charges against

the petitioner stood partially substantiated and that he could not absolve himself from the charges. This conclusion was arrived at without holding

any enquiry which is a mandatory requirement under Rule 9. Consequently, following such finding returned by him, the disciplinary authority

imposed two penalties on the petitioner, one of censure and the other of withholding of one increment with cumulative effect. For imposing the

penalty of withholding of increment with cumulative effect the disciplinary authority was required to hold enquiry and to follow the procedure

mandated by Rule 9. The same was not done. Even in case of censure, procedure prescribed under Rule 9 (12) (b) has not been complied with.

Thus without holding enquiry and without complying with the mandatory requirement of Rule 9, the impugned penalties have been imposed which

has rendered the impugned decision void.

27. In view of the findings arrived at as above, it may not be necessary to deal with other aspects of the challenge.

28. Accordingly, impugned notification dated 22.08.2012 being wholly unsustainable in law, is accordingly set aside and quashed.

29. Writ petition is allowed. No cost.