



GAHC010114982016

Page No.# 1/5



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4157/2016

DR. RANA PADA DUTTA
SUB DIVISIONAL MEDICAL and HEALTH OFFICER, NORTH LAKHIMPUR
CIVIL HOSPITAL, LAKHIMPUR

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER and SECY. DEPTT. OF HEALTH and F.W.,
DISPUR, GHY-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-6

3:THE SUPERINTENDENT
DISTRICT JAIL
NORTH LAKHIMPU

Advocate for the Petitioner : MR.B K BHATTACHARJEE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 06-12-2022

Heard Mr. B K Bhattacharjee, learned counsel for the petitioner. Also heard Mr. D Upamanyu, learned counsel for the respondents no. 1 and 2 being the authorities under the Health and Family Welfare Department of the Government of Assam and Mr. A Chakraborty, learned counsel for the respondent no. 3 being the Superintendent, District Jail, North Lakhimpur.

2. The petitioner was posted as the Medical and Health Officer-I at district-Jail, North Lakhimpur. During his tenure, one UTP namely Haliram Saikia died while he was in custody in the district Jail, North Lakhimpur. The death of the UTP also resulted in a proceeding before the Assam Human Rights Commission wherein by the judgment and order dated 19.01.2012 in AHRC No. 4565/2003 there was a recommendation that disciplinary proceeding be initiated against the petitioner. As a result thereof, the show-cause notice dated 22.05.2012 under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (in short, the Rules of 1964) read with Article 311 of the Constitution of India was served on the petitioner requiring him to show cause as to why any of the punishments provided under Rule 7 of the Rules of 1964 should not be inflicted upon him.

3. The show-cause notice dated 22.05.2012 provides for the charges against the petitioner are extracted as below:

“While you were working as M&HO-I at District Jail, North Lakhimpur one UTP named Haliram Saikia, S/o Dharmaeswar Saikia of Buwalguri had died at N. Lakhimpur CH on 9/6/2033 (on the day of admission) at 10.30 PM due to negligence of duty on your part as revealed in the enquiry reported submitted by Addl. Deputy Commissioner, Lakhimpur and Addl. CJM, Lakhimpur.”

4. In the show-cause notice dated 22.05.2012, reference is also made to a statement of allegations that was attached to the show-cause notice.

5. The statement of allegations is also extracted as below:

“STATEMENT OF ALLEGATIONS

That while Dr. R. P. Dutta was working as M&HO-I at District Jail, N. Lakhimpur one UTP Hali Ram Saikia died on 9/6/2003 at 10.30 PM on the day of admission at N. Lakhimpur CH due to his negligence of duty.”

6. Based on the aforesaid charges and the statement of allegations, the proceeding against the petitioner under Rule 9 of the Rules of 1964 was initiated and brought to its end culminating in the order dated 03.08.2015 of the Deputy Secretary to the Government of Assam in the Health and Family Welfare Department. The order of punishment dated 03.08.2015 refers to the judgment of the Assam Human Rights Commission as well as to an enquiry report dated 12.03.2014 submitted the Enquiry Officer.

7. The petitioner also submitted his statement of defence against the show-cause notice. In the order of punishment, the conclusion was arrived that having gone through the charges and statement of allegations as well as the reply made by the petitioner and as revealed in the enquiry report, the petitioner did not discharge his duties faithfully and was negligent and casual in treatment of the UTP Haliram Saikia resulting in his death. Accordingly, a penalty of reduction to a lower stage in time scale was imposed on the petitioner.

8. A reading of the statement of charges in the show-cause notice dated 22.05.2012, the statement of allegations accompanying the show-cause notice as well as the impugned order imposing the punishment reveals that the disciplinary authority was all along of the view that the death of the UTP Haliram Saikia was due to negligence on the part of the petitioner. No specific imputation of any kind is noticed either in the show-cause notice or in the statement of allegations accompanying the show-cause notice or in the order imposing punishment as to in what manner the petitioner was negligent in duty.

9. The law in this respect has been settled by the Supreme Court in *Sawai Singh v. State of Rajasthan reported in (1986) 3 SCC 454* wherein in paragraph 16 it had been held that the charges involving the consequence of a punishment on the delinquent must be specific although a departmental enquiry is not like that of a criminal trial. In *Surath Chandra Chakravarty v. the State of West Bengal reported in AIR 1971 SC 752*, it had been held that it is not permissible to hold an enquiry on vague charges as the same do not give a clear picture to the delinquent to make out an effective defence, as he will be unaware of the exact



nature of the allegations against him, and as to what kind of defence he should put up for rebuttal thereof. In *Anant R Kulkarni v. Y.P Education Society & ors. reported in (2013) 6 SCC 515* in paragraph 16 it had been held that where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such situation also as both constitute the same document, it cannot be held that the charges were not specific but when the statement of charges as well as the statement of allegations are both not clear, specific and definite, the proceeding would not be sustainable.

10. In the instant case, as noted above, neither the show-cause notice dated 22.05.2012 or the statement of allegations accompanying the show cause notice nor the impugned order of punishment dated 03.08.2015 provide in clear and specific terms as to what were the allegations against the petitioner.

11. The respondents in the affidavit-in-opposition filed before the Court in this writ petition in paragraph 8 attempts to take a stand that the petitioner did not attend the hospital in the morning of 08.06.2003 from 11.20 AM to 11.27 AM and again from 11.35 AM to 12.05 PM.

12. We are unable to accept the contention of the respondents that the statement made in paragraph 8 of the affidavit-in-opposition can now be substituted to be a clear and specific charge or allegation against the petitioner in the show-cause notice, even though it may be factually correct or it may have an implication on the conduct of the petitioner. Firstly, the said information was not available in the show-cause notice dated 22.05.2012 and secondly, as per the law laid down by the Supreme Court in paragraph 16 in *Mohinder Singh Gill Vs. Chief Election Officer, New Delhi reported in (1978) 1 SCC 405*, a reason not forthcoming in an administrative order cannot be substituted by way of an affidavit in a proceeding before the Court subsequently.

13. For the reasons stated above, the impugned order dated 03.08.2015 imposing the punishment of reduction to a lower stage in time scale on the petitioner is not sustainable in law and accordingly is set aside.

Writ petition stands allowed in the above terms.

JUDGE



Comparing Assistant