



GAHC010173682018

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

Case No. : WP(C)/5365/2018

REDAUL HUSSAIN KHAN
S/O- LT HAJI MD. HUSSAIN KHAN, R/O- TARUN NAGAR, BYE LANE- 2, P.S.
DISPUR, GHY-6, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-6

2:THE COMMISSIONER ANND SECY. TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPTT.
DISPUR
GHY-6

3:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPTT.
DISPUR
GHY-6

4:THE PRINCIPAL SECY.
TO THE GOVT. OF ASSAM
HILL AREAS DEPTT.
DISPUR
GHY-6

5:THE PRINCIPAL SECY.
NC HILLS AUTONOMOUS COUNCIL
DIMA HASAO
HAFLONG
DIST- DIMA HASAO
ASSAM



PIN- 788819

6:THE DIRECTOR
SOCIAL WELFARE
ASSAM
BAL BHAWAN
UJAN BAZAR
GHY-

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	:	Mr. D. Das, Senior Advocate. Assisted by Mr. R. Islam. Advocate.
For the Respondents	:	Mr. D. Mazumdar, Addl. Adv General, Assisted by Mr. S. S. Roy, Advocate. Mr. A. Khanikar, Advocate.
Date of Hearing	:	19.12.2023, 06.02.2024
Date of Judgment	:	06.02.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. D. Mazumdar, learned Additional Advocate General, Assam assisted by Mr. S. S. Roy, learned counsel for the respondent Nos. 1, 2, 3, 4, and 6 and Mr. A. Khanikar, learned Standing Counsel, NC Hills Autonomous Council for the respondent No. 5.

2. The challenge:

By way of filing this writ petition, the writ petitioner has assailed an order dated

17.05.2018 issued by the Principal Secretary to the Government of Assam, Social Welfare Department whereby the petitioner was dismissed from his service in exercise of power under Article 311 (2) of the Constitution of India read with Rule 10 of the Assam Services (Disciplinary and Appeal) Rules, 1964.

3. The facts:

The litigational history can be summarised as follows:-

- I. While the petitioner was serving as Deputy Director, Social Welfare Department and was posted at Haflong under the administrative control of North Cachar Hills Autonomous Council, he was arrested in connection with Basistha P.S Case No. 170/2009 registered under Section 120(B)/121/121(A) IPC read with Section 25(1) (d) (A) Arms Act.
- II. Subsequently, the Union of India directed the National Investigating Authority to take up the investigation of the aforesaid Basistha Police Station Case. Accordingly, the Basistha Police Case was renumbered as NIA Case No. 01/2009.
- III. In view of arrest of the petitioner as discussed hereinabove, the petitioner was put under suspension on 06.06.2009 in exercise of powers under Rule 6 (1) (2) of the Assam Service (Discipline and Appeal) Rules, 1964.
- IV. Subsequently, on 13.08.2012, a disciplinary action was proposed and a show cause notice was issued to the petitioner by the respondent No. 2 while the petitioner was in jail.
- V. Being aggrieved, the petitioner challenged the show cause by filing a writ petition registered as WP(C) No. 1655/2014, primarily on the ground that he could not submit any reply to the show cause as he was in jail.

- VI. This Court by its judgement and order dated 02.06.2015 directed the respondents to keep the departmental proceeding in abeyance till petitioner is released from jail or till conclusion of the criminal proceeding.
- VII. Thereafter, the petitioner faced the trial in connection NIA Case No. 01/2009 and the learned trial court by its judgement and order dated 23.05.2017, convicted the petitioner under Section 17 of the UA (P) Act, 1967 and under Section 120(B) of the IPC and sentenced him to suffer Rigorous Imprisonment for 12 years with fine of Rs. 25,000/-.
- VIII. Being aggrieved, the petitioner preferred an appeal before this Court which was registered as Criminal Appeal No. 233/2017.
- IX. Thereafter, on being convicted by the learned trial Court below, the impugned order dated 17.05.2018 was passed as discussed hereinabove and being aggrieved, the present writ petition is filed.
- X. During pendency of the writ petition, the Criminal Appeal No. 233/2017 preferred by the petitioner was allowed and it is ended in acquittal of the petitioner.
- XI. In the aforesaid backdrop, the petitioner urges that the order of dismissal dated 17.05.2018 from service requires to be interfered with.

4. Argument advanced on behalf of the petitioner:-

Mr. D. Das, learned Senior Counsel for the petitioner argues the following:-

- I. Admittedly, there was no departmental proceeding against the writ petitioner prior to issuance of his dismissal order inasmuch as such dismissal order was passed only for the reason that the petitioner was convicted by the learned trial Court. Such conviction having been set aside

by the appellate Court, the foundation for issuance of such order no more exists and therefore, the impugned order dated 17.05.2018 is liable to be set aside and quashed and as a natural corollary thereof, the petitioner should be directed to be reinstated. In support of such contention, Mr. Das, learned Senior Counsel, relies on a decision of this Court rendered in the ***Board of Secondary Education, Assam –Vs- Sri Kushal Das (Writ Appeal No. 136/2021)*** decided on 22.12.2021.

- II. As the writ petitioner has ultimately been acquitted by the appellate Court, the involvement of the appellant in the alleged criminal offence cannot be made the basis of terminating him from the service and since the petitioner was acquitted and it was a clean acquittal, the stigma attached to him having been prosecuted in a criminal case should have been treated to have disappeared and no argument can be allowed to be raised for justifying the order of dismissal on the ground of petitioner's involvement in a criminal case. In support of his contention, Mr. Das, learned Senior Counsel relies on the decision of the Hon'ble Apex Court in the case of ***Nar Singh Pal –Vs- Union of India and Others*** reported in ***(2000) 3 SCC 588***, and in the case of ***S. Bhaskar Reddy and Another –Vs- Superintendent of Police and Another*** reported in ***(2015) 2 SCC 365***.

5. Argument advanced on behalf of the respondent State:

Per contra, Mr. D. Mazumdar, learned Additional Advocate General, Assam representing the State respondents argues the following:-

- I. The petitioner has not been honourably acquitted rather the allegation regarding misappropriation of public money, fraud etc. has been left open for other investigating authority to investigate if so advised and the

acquittal is only on the premise that prosecution has failed to establish that DHD (J) is a terrorist organisation. That being the position, the appellate court has not entered into the other aspect of the matter and the charges against the petitioner.

- II. Therefore, it cannot be said that it is a clear and honourable acquittal and that being the position, the employer is within its right to apply its own mind to the determination made by the Appellate Court while acquitting the petitioner and take a decision.
- III. It is further contended that admittedly one of the main reasons for acquittal of the petitioner is that most of the witnesses had become hostile and in that background, it cannot be said that it was an honourable acquittal.
- IV. Mr. Mazumdar, learned Senior Counsel further contends that mere acquittal of government servant does not automatically entitle him to reinstatement inasmuch as it would be open for the appropriate competent authority/employer to take a decision, whether any enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law. That being the position, this Court may not like to interfere with the order of dismissal only on the ground that the petitioner has been acquitted and an opportunity should be given to the employer to apply their own mind in the given facts of the present case whether the case is a clear acquittal or a benefit of doubt has been granted and such exercise may not be carried out in exercise of power of judicial review by this Court. In support of such contention, Mr. Mazumdar, learned Senior counsel relied on the decision of the Hon'ble Apex Court rendered in the case of ***Union of India and Ors –Vs- Bihari Lal Sidhana*** reported in ***(1997) 4 SCC 385***. Mr. Mazumdar, learned

Senior counsel in support of his contention also relies on the decision of the Hon'ble Apex Court rendered in the case of ***Deputy Inspector General of Police –Vs- S. Samuthiram*** reported in ***(2013) 1 SCC 598*** and in the case of ***Ajit Kumar Nag –Vs- General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Others*** reported in ***(2005) 7 SCC 764***.

V. Mr. Mazumdar, learned Senior counsel further contends that acquittal of the petitioner in a criminal court will not preclude the employer to initiate a departmental enquiry against the petitioner. It is further submitted that disciplinary authority is not bound by the judgment of the criminal Court if the evidence i.e. produced in the departmental enquiry is different from that produced during the criminal trial. At this stage, Mr. Mazumdar, learned Senior counsel, also submits that in such a case, the employer is within its competence to initiate a departmental proceeding. In support of his contention, he relies on the decision of the Hon'ble Apex Court rendered in the case of ***Karnataka Power Transmission Corporation Limited –Vs- C. Nagaraju and Another*** reported in ***(2019) 10 SCC 367***.

VI. Mr. Mazumdar, learned Senior counsel therefore, concludes that the employer be given a chance to apply its own mind to the relevant factors in the case in hand and take a decision in this regard.

6. Determination:

This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the materials available on record.

- I. From the decisions relied on by the learned counsel for the parties, the following propositions of law can be culled out:
- A. Acquittal by a criminal court does not preclude a departmental authority to proceed departmentally against a delinquent officer.
 - B. The disciplinary authority is not bound by the judgement of a criminal court, if the evidence that is produced in departmental enquiry is different from that produced during the criminal trial inasmuch as the object of a departmental enquiry is to find out whether the delinquent is guilty of misconduct under the Conduct Rule for the purpose of determining whether he should be continued in service or not.
 - C. The standard of proof in a departmental enquiry is not strictly based on the rules of evidence.
 - D. A mere acquittal does not entitle an employee to reinstatement in service until and unless the acquittal is honourable.
 - E. Even if an employee is honourably acquitted by a criminal Court, no right is conferred on the employee to claim any benefit including the reinstatement who is dismissed from service after a Departmental Proceeding for the reason that the standard of proof required for holding a person guilty by a criminal Court and in an enquiry conducted by a disciplinary proceeding is entirely different. Therefore, the issue whether an employee has to be reinstated in service or not depends upon the question whether service rules contain any such provision for reinstatement and not as a matter of right.
- II. The term "Honourable Acquittal" has not been defined in the code of criminal procedure. Whether an acquittal is honourable or is on the basis of

benefit of doubt, again depends upon the facts and circumstances of each case. When an accused is acquitted or discharged for the reason of certain technicality, even after having some evidence against him, such acquittal means an acquittal on benefit of doubt. However, when an accused is acquitted from the charges on the basis of consideration of prosecution witness and such witnesses are disbelieved, the same would mean the failure of prosecution to prove the charges and therefore, such acquittal shall amount to honourable acquittal. In the case of **Reserve Bank of India Vs Bhopal Singh Panchal** reported in **1994 1 SCC 541**, the Hon'ble Apex Court went on to say that when an accused is acquitted after fully considering the evidence of prosecution and the prosecution has failed in proving the charges against the accused, the acquittal is honourable. It is also equally well settled that even in case of an acquittal, where there is no mention that such acquittal is on the basis of any benefit of doubt, then also such acquittal may be treated as an honourable acquittal inasmuch as an accused is to be treated as innocent until proven guilty. Articles 19 and 21 of the Constitution of India also prescribes such a principle.

III. Now coming to the case in hand, the Hon'ble Division Bench while acquitting the petitioner and similarly situated accused in it's appellate judgement, recorded the following facts and conclusions:-

- a. The petitioner, along with one Karuna Saikia, one Jayanta Kumar Ghosh, one Sandip Kumar Ghosh and one Debashish Bhattacharjee were convicted by the trial Court primarily on the allegations that they were facilitators, who conspired with some other accused and transferred money illegally.
- b. No finding is required to be recorded as regards the findings of the trial Court of charges for criminal misappropriation, criminal breach of

trust, cheating, fraud and forgery against the said accused persons as prosecution did not propose any of such charges.

- c. The major thrust of the prosecution is that the officials of NCHA Council i.e. the petitioner and one Karuna Saikia facilitated the illegal transfer of funds to the firms of Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh and the funds were transferred to the terrorist activities and such irregularities, misappropriation etc., were done under the directions of the accused Mohet Hojai.
- d. All the accused persons were acquitted by the trial Court of the charge under Section 18 of the UA(P) Act, and they were convicted for a broader offence of conspiracy punishable under Section 120 B IPC.
- e. Such convictions for the offence under Section 120B IPC simpliciter has been done without recording specific findings that accused conspired with each other and committed the offence of fraud etc.
- f. Therefore, the guilt of two public servant i.e. R. H. Khan (petitioner) and Karuna Saikia have not been recorded for the actual substantive offences they allegedly committed but by branding them to be in conspiracy with the members of DHD(J).
- g. Neither the charges for substantive offences reflected from the allegations were proposed by the prosecution nor were any such charges framed by the trial Court.
- h. The prosecution has not been able to prove beyond doubt that DHD(J) was a terrorist gang indulged in terrorist activities which were to be funded by illegally siphoning off money with the aid and assistance of these five appellants (which includes the petitioner).

- i. The entire thrust of the prosecution case in the charge sheet that DHD(J) was involved in terrorist activities was purely based on statements of witnesses recorded under Section 161 of Cr.P.C. There was no direct evidence regarding alleged terrorist activities of DHD(J).
- j. The prosecution has measurably failed to produce reliable admissible and legally acceptable evidence in order to establish its primary allegation that DHD(J) was a terrorist gang involved in any kind of violence activities or that the funds allegedly siphoned off from NC Hills Autonomous Council were routed through the cadres of DHD.
- k. Therefore, the allegation that the funds allegedly defalcated were routed to the members of the DHD(J) for the purpose of funding procurement of arms are not based on legally admissible and reliable evidence.

IV. From the aforesaid, it is crystal clear that according to the appellate Court the fundamental allegation that DHD(J) is a terrorist organisation and that government funds were transferred through the DHD(J) cadres for procurement of arms were based on no evidence and the prosecution has measurably failed to prove beyond doubt such allegation and also that the DHD(J) is a terrorist organisation. It was also specific finding that the petitioner was convicted under Section 120B of IPC without there being any specific finding that the accused conspired with each other and committed the offences. The further ground of acquittal was that no finding has been recorded by the trial Court for the actual substantive offence which the petitioner allegedly committed but branded them to be with conspiracy with the member of DHD(J) and the prosecution has failed to prove that DHD(J) is a terrorist organisation and that it procured arms from the money siphoned off from the government. Therefore, the

acquittal of the petitioner was for the reason of the failure on the part of the prosecution to prove the charges for want of evidence.

V. The aforesaid conclusion, in the considered opinion of this Court has been arrived at by the Appellate Court after full consideration of the prosecution evidence.

VI. That being the position, this Court cannot but hold that the acquittal of the petitioner was not an acquittal on doubt but an honourable acquittal.

VII. Accordingly, the order of dismissal passed in exercise of power under Article 311 (2) of the Constitution of India read with Section 10 of the Assam Services (Discipline and Appeal) Rules, 1964 is liable to be interfered with.

VIII. Now, coming to the case of Departmental Proceeding, the show cause notice was issued on 13.08.2012 with the following charges:-

- i. The petitioner was involved in illegal and unlawful activities and corrupt practices.
- ii. The petitioner was also charged for corrupt practices and misappropriation of funds resulting in loss of government money meant for various schemes of the government.
- iii. The Statement of allegation amongst others alleges withdrawal of money from government exchequer to the tune of Rs. 17.02 crore which includes Rs. 9.85 crores routed through cash book etc. The statement of allegation relevant for determination of this case are quoted herein below:-

“That during 2008-09 the office of the Deputy Director, Social Welfare Department in N.C. Hills received Rs. 20.38 crores from the Council Authority and

released Rs. 9.85 crores for implementing various schemes. The consolidated closing balance of all the six cash book (maintained for various schemes) was Rs. 10.53 crores on the date of seizure of records by NIA (19.06.09 & 20.08.09). However, on verification of Bank statements of three current Accounts, it was found that combined total bank balance was only Rs. 4.99 crores on the same case which resulted in shortage of Rs. 9.85 crores was routed through Cash Book.

In respect of Six Schemes Rs. 17.02 crore was withdrawn from the banks by the Dy. Director, Social Welfare Department, Haflong. However, only Rs. 9.85 crores was routed through Cash Bool.

A cheque of Rs. 8.00 crores received (26.2.2009) for state priority schemes (seven schemes) was shown as deposited (28.2.09) to the bank (A/C No. 11315095622). However, physical availability of the amount could not be explained/traced out as deposit of said amount was neither appearing in the stated Bank account nor in other two bank accounts”.

- IX. The list of witnesses discloses that the witnesses are all office staff of the office of the Deputy Director, Social Welfare Department, Haflong
- X. This Court in its order dated 02.06.2015 passed in WP(C) No. 1655/2014 preferred by the petitioner directed the respondent authority to keep the departmental proceeding in abeyance till the petitioner is released from jail or till conclusion of the criminal proceeding. Thus, it is seen that a departmental proceeding was initiated and the said proceeding was kept in abeyance by this Court till release of the petitioner from jail or till conclusion of the criminal proceeding.
- XI. Even though the petitioner has been honourably acquitted by the appellate Court, no right is conferred upon the petitioner to claim any benefit in the departmental proceeding for the reason that the standard of

proof required for holding a person guilty by a criminal Court and in an enquiry conducted by a disciplinary proceeding is entirely different. Further, on a bare perusal of the Charge memo it is clear that the not only charges in the departmental proceeding and the charge framed in the Criminal trial are different but the witnesses are also different.

- XII. On a bare perusal of the judgement of the appellate Court in criminal appeal and the charge memo, it is crystal clear that charges in the departmental proceeding are regarding siphoning off money from the government exchequer while serving as a government employee and the criminal charges are conspiracy with DHD(J) cadre and transferring money to such terrorist gang for procurement of arms.
- XIII. Above that the object of a departmental enquiry is to find out whether the petitioner is guilty of misconduct under the Conduct Rule for the purpose of determining whether he should be continued in service or not. The standard of proof in a departmental enquiry is not strictly based on the rules of evidence.
- XIV. Therefore, the acquittal of the petitioner shall not preclude the respondent employer to continue with the departmental proceeding as initiated by issuing the show cause notice dated 13.08.2012 inasmuch as this Court has clarified such position that the departmental proceeding is kept in abeyance only for the period of conclusion of the criminal proceeding and the criminal proceeding is concluded by virtue of the acquittal of the petitioner.
- XV. Therefore, acquittal of the petitioner from the criminal charges shall not debar the employer to proceed with the departmental proceeding already initiated.



7. Direction:

1. Accordingly, the impugned order of dismissal dtd.17.05.2018 issued by the Principal Secretary to the Government of Assam, Social Welfare Department is set aside. The petitioner be taken back in service forthwith.

2. The respondent employer shall proceed with the departmental proceeding already initiated by issuing charge memo dtd.13.08.2012.

3. As the petitioner was under suspension with effect from 06.06.2009, he will continue to be under suspension for a period of three months from today. During such period of three months, the employer shall review the need for continuation of such suspension and pass necessary orders. For continuation of such suspension further, the employer shall strictly follow the mandate of the Hon'ble Apex Court rendered in **Ajay Kumar Choudhary –Vs- Union of India** reported in **(2015) 7 SCC 291**.

8. The writ petition is answered in the aforesaid terms. Parties to bear their own cost.

JUDGE

Comparing Assistant