



GAHC010007372023

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

Case No. : WP(C)/246/2023

BHASKAR OJAH
S/O- PADMA NATH OJAH, R/O- SUNDARIDIA, KALAYAHATI, BARPETA,
ASSAM, PIN- 781301.

VERSUS

THE STAE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-781006

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioner: Shri K.N. Choudhury, Sr. Advocate

Shri R.M. Deka, Advocate.

Advocates for the respondents : Shri D. Mazumdar, Addl. AG, Assam.

Ms. M. Bhattacharjee, Advocate.

Date of hearing : 05.10.2023

Date of judgment : 11.10.2023

1. The legality and validity of a Departmental Proceeding initiated vide a Show Cause Notice dated 08.12.2022 is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India. The principal ground of challenge is that the said proceeding is *de novo* on same / similar set of charges which was proceeded on the basis of a previous Departmental Proceeding leading to an order dated 06.08.2022 of exoneration from the charges passed by the Disciplinary Authority.



2. Before going to the issue which has arisen for determination, it would be convenient if the facts of the case are narrated in brief.

3. The petitioner is an APS Officer under the State of Assam and presently holding the rank of a Deputy Superintendent of Police. While serving in the aforesaid capacity at Dhubri, an FIR was lodged leading to registration of Dhubri P.S. Case No. 654/2018 in which the petitioner was the Investigating Officer. However, while acting in the aforesaid capacity, there was an allegation of demand of bribe by the petitioner and in connection thereof, another Police Case was registered which was numbered as Dhubri P.S. Case No. 1043/2018 under Section 7 of the Prevention of Corruption Act, 1988.

4. The petitioner was accordingly issued a Show Cause Notice on 05.09.2018. It is the case of the petitioner that he had denied the allegations by submitting a written statement of defence and being not convinced with the said defence, an enquiry was done which culminated in an Enquiry Report dated 31.08.2021. The petitioner had submitted his response to the Enquiry Report. The Disciplinary Authority, however on perusal of the materials of the Disciplinary Proceeding was of the opinion that there were no materials to come to a conclusion of establishment of the allegations and accordingly an order was passed on 06.08.2022 whereby the Disciplinary Proceeding was closed. However, on 08.12.2022, another Disciplinary Proceeding has been initiated by issuance of a Show Cause Notice which, according to the petitioner is based on the same allegations. It is contended that such course of action is impermissible and therefore, the present writ petition has been filed.

5. On the other hand, as per the version of the respondents, the Disciplinary Proceedings initiated vide the impugned order dated 08.12.2022 is based upon a different allegation though related to the same incident and therefore, there is no embargo in law to initiate such proceedings.

6. I have heard Shri K.N. Choudhury, learned Senior Counsel assisted by Shri R.M. Deka, learned counsel for the petitioner. I have also heard Shri Dilip Mazumdar, the learned Addl. Advocate General, Assam assisted by Ms. M Bhattacharya, learned Government Advocate. The materials placed before this Court have been carefully examined.

7. Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that the charges / allegations as would appear from the impugned order dated 08.12.2022 are same as those contained in the Show Cause Notice dated 05.09.2018 in which the Disciplinary Authority had come to a conclusion that none of this allegations would be established and therefore, the petitioner was exonerated vide order dated 06.08.2022. Under those facts and circumstances, he submits that the impugned Show Cause Notice dated 08.12.2022 is not sustainable in law. The learned Senior Counsel submits that even if for technical reasons, the allegations are held to be not similar to the earlier allegations, he submits that in the earlier enquiry held pursuant to the Show Cause Notice dated 05.09.2018, the aforesaid allegations had cropped up and was discussed by the Enquiry Officer and in fact, the petitioner was also held guilty in the said enquiry which however was not accepted by the Disciplinary Authority vide order dated 06.08.2022. He, therefore submits that it is the substance of the allegations and not the form which has to be looked into and since the allegations are substantially similar / same as those of the earlier allegations which were gone into in the earlier enquiry, a second enquiry in the same

allegations is barred in law.

8. By Referring to the Assam Services (Discipline and Appeal) Rules, 1964, more, particularly Rule 9 (9), the learned Senior Counsel for the petitioner has submitted that under the said provision, the Disciplinary Authority is to consider the record of the enquiry and give his findings on each charge. The learned Senior Counsel submits that the aspect of the allegations contained in the impugned Show Cause Notice dated 08.12.2022 has been gone into which was not accepted by the Disciplinary Authority and therefore, it cannot be reopened.

9. In support of his submission, the learned Senior Counsel for the petitioner has relied upon the following case laws.

(i) *K.R. Deb vs. The Collector of Central Excise, Shillong* reported in **(1971) 2 SCC 102.**

(ii) *Union of India vs. K.D. Pandey and Anr.* reported in **(2002) 10 SCC 471.**

(iii) *Vijay Shankar Pandey vs. Union of India and Anr.* reported in **(2014) 10 SCC 589.**

(iv) *Moloy Bora vs. State of Assam* reported in **(2015) 3 GLR 152.**

10. In the case of ***K.R. Dev*** (supra), the Hon'ble Supreme Court was considering a matter of directing a fresh enquiry. In paragraph 12 of the said judgment, the following has been stated.

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the

Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9."

11. In the case of **K.D. Pandey** (supra), the Hon'ble Supreme Court had interfered with a matter of a similar nature by laying down that there is no justification on the part of the disciplinary authority to commence a fresh enquiry on the same set of charges.

12. In the case of **Vijay Shankar Pandey** (supra), the Hon'ble Supreme Court was again considering a matter wherein a fresh enquiry was directed by the Disciplinary Authority. It was held that such a procedure is not acceptable in law. However, the interference was only with regard to the second enquiry report and the scope of a further enquiry was not totally ruled out.

13. In the case of **Moloy Bora** (supra), this Court was considering a challenge made to a *de novo* / fresh enquiry on the same set of charges when the previous enquiry report was in favour of the delinquent. This Court had held that such a procedure is not permitted in law.

14. What is however required to be noted is that in all the aforesaid cases, the charges in both the enquiries were the same and under those circumstances, the principles have been laid down.

15. *Per contra*, Shri Mazumdar, the learned Addl. Advocate General of the State has submitted that the allegations contained in the first Show Cause Notice dated 05.09.2018 are not the same as those contained in the impugned Show

Cause Notice dated 08.12.2022. He submits that during the enquiry proceedings initiated vide the first Show Cause Notice, certain misconduct had emerged from the facts and since charges were not specifically leveled against the delinquent petitioner, the said aspect could not be gone into as it is not legally permissible. He submits that the Department is simply following the law and procedure of giving reasonable opportunity by framing the allegations which are distinct and different. The learned State Counsel accordingly submits that the fresh Show Cause Notice has been issued on 08.12.2022 on the allegation of receipt of the envelop which admittedly has not been seized or mentioned in the Case Diary of the Police Case which was being investigated by the petitioner as the I.O. The learned Senior Counsel for the State further submits that the procedure adopted has been done in the interest of justice wherein the opportunity has been given to the petitioner to defend himself and therefore, there should not be any interference by this Court. The learned AAG further submits that though there is no dispute with the propositions of law laid down in the citations relied upon by the learned counsel for the petitioner, the facts are completely different and in the instant case, the allegations are distinct for which a fresh Show Cause Notice has been issued which does not call for any interference.

16. Shri Choudhury, the learned Senior Counsel for the petitioner, in his rejoinder has submitted that the present charge of not seizing the compact disc or reporting of the same in the Case Diary is substantially a part of the first proceeding. He has also drawn the attention of this Court to Clause 6.18.1 of the Manual of Departmental Proceedings and has submitted that the petitioner has already given his defence and therefore, there is no requirement of again asking for his defence on the same charges.

17. The rival submissions made by the learned counsel for the parties have

been duly considered and the materials placed before this Court have been examined.

18. The issue which has arisen is to examine as to whether the charges / allegations contained in the impugned Show Cause Notice dated 08.12.2022 is the same as that of the earlier Show Cause Notice dated 05.09.2018. To examine the said aspect, it would be necessary to look into the statement of allegations contained in both the Show Cause Notice notices. In the first Show Cause Notice dated 05.09.2018, the statement of allegations is as follows:

“That while Shri Bhaskar Ojah, APS (U/S) was posted as Deputy Superintendent of Police (HQ), Dhubri, a case vide Dhubri PS Case No. 654/2018 U/S 341/352/323 IPS R/W Sec. 7 of the prevention of the corruption Act, 1988 was registered against Abu Anis Aftab Momin, Principal, Hudurhat, Dharmasala H. S. School and the case was endorsed to him for investigation. Accordingly, Shri Abu Anis Aftab Momin, accused to the case was arrested and forwarded to Judicial Custody on 23/05/2018. During investigation of the case, Shri Ariful Islam, brother of Shri Abu Anis Aftab Momin (Accused) appeared before him and requested to send Case Dairy of the case to the Hon'ble Court in time for bail matter. He refused to do the same, instead he demanded Rs.1,00,000/- (Rupees one lakh) case as bribe from Ariful Islam and then Shri Ariful Islam agreed to pay the demanded amount. Later on, Shri Ariful Islam paid Rs.60,000/- (Rupees sixty thousand) only by cash and handed over to him at his office chamber. Thereafter, as per his direction, Shri Ariful Islam handed over Rs.25,000/- (Rupees twenty five thousand) to his residential orderly namely Shri Krishna Nath (Home Guard) on 04/06/2018 which was also video recorded by Shri Ariful Islam through his mobile phone. He also demanded money from Md. Abu Anis Aftab

Momin after his release on bail.

In this regard, Shri Ariful Islam, S/o Lt. Khairat Hussain of Vill. Choto Basjani, PS and Dist- Dhubri submitted an FIR on 24/07/2018 at Dhubri PS against him and a case was registered vide Dhubri PS Case No.1043/2018 U/S 7 of the Prevention of the Corruption Act, 1988. The case is presently under investigation.

His above acts tantamount to gross misconduct, indiscipline conduct and dereliction of duty on his part.

He is, therefore, charged with gross misconduct, indiscipline conduct and dereliction of duty."

19. In the impugned Show Cause Notice dated 08.12.2022, the statement of allegations is as follows:

“While Shri Bhaskar Ojah, APS was posted as Deputy Superintendent of Police (HQ), Dhubri a case vide Dhubri PS Case No. 654/2018 U/S 341/352/323 IPC R/W Sec.7 of the Prevention of Corruption Act, 1988 was registered against Shri Abu Anis Aftab Momin, Principal Hudurhat, Dharmasala H. S. School and the case was endorsed to him for investigation of the case. During investigation of the case, one Shri Ariful Islam, S/o Lt Khairat Hussain of Vill Choto Badjani, PS and Dist- Dhubri submitted an FIR on 24/07/2018 at Dhubri PS against Shri Bhaskar Ojah, APS alleging that he (Bhaskar Ojah) demanded money from Shri Ariful Islam and a case was registered vide Dhubri PS Case No.1043/2018 U/S 7 of the Prevention of Corruption Act, 1988 In connection with this, a Departmental Proceeding was drawn up against him vide No.HMA 373/2018/16 dated 05 09 2018. The said Departmental Proceeding was disposed of vide No HMA 373/2018/366 dated 06.08.2022. However, the Inquiring Officer in his Enquiry Report submitted vide No SB.XI/PF/IHB-

8/2016-21/39 dated 31.08.2021 mentioned that "in his (Shri Bhaskar) defence statement Shri Bhaskar Ojha admitted to have received an envelope but stated that it contained a CD (Compact Disc). Further, during examination by the inquiry authority, he (Shri Bhaskar) stated that, the CD (Compact Disc) was relevant to C/No.654/18 U/S 341/352/323 IPC RW Sec. 7 P.C. Act of which he (Shr) was the investigating Officer. Also, during examination he (Shri Bhaskar) Stated that he (Shri Bhaskar) did not report about the receipt of the CD (Compact Disc) to his (Shri Bhaskar) supervisory officers and neither seized nor mentioned about it (the compact disc) in the case diary of Dhubri PS C/No.654/18-

Being a member of disciplined force and responsible Police Officer, his above act shows as gross misconduct, indiscipline conduct and dereliction of duty.

Hence, he is charged with gross misconduct, indiscipline conduct and dereliction of duty."

20. Upon a careful reading, it is seen that in the first Show Cause Notice dated 05.09.2018, the allegation was with regard to receipt of illegal gratification by the petitioner, who was the Investigating Officer in Dhubri P.S. Case No. 654/2018. As per the allegations, the petitioner had demanded an amount of Rs.1,00,000/- (Rupees One Lakh) as illegal gratification in the said case and the said amount was allegedly paid to the petitioner by two installments. It is the specific allegation that the second installment of Rs.25,000/- (Rupees Twenty Five Thousand) was paid to the petitioner through his residential Orderly on 04.06.2018 and the same was also video recorded by the complainant. There is also allegation of demand of money from the accused in that case after his

release from bail.

21. From the proceedings of the enquiry which was instituted on being not satisfied with the explanation given by the petitioner, it transpires that one of the witnesses of the Department had deposed that the second installment was given in an envelope to the Orderly of the petitioner at his residence. The records of the enquiry would show that while the petitioner had admitted the receipt of an envelope, he had given an explanation that the said envelope had contained a compact disc which however, was blank. The petitioner had also admitted of not seizing the compact disc and not entering the aforesaid facts in the Case Diary.

22. Though the Enquiry Officer in the Report dated 31.08.2021 had held that the charges against the petitioner was proved, the Disciplinary Authority vide the order dated 06.08.2022 had come to a finding that upon examination of the statements of the witnesses, the charges against the petitioner did not appear to have been proved and accordingly, the proceeding was dropped.

23. It is the contention made on behalf of the petitioner that the allegations / charges in the impugned Show Cause Notice dated 08.12.2022 is the same as the earlier Show Cause Notice dated 05.09.2018. On a comparison of the two Show Cause Notices, the aforesaid contention does not appear to be correct. The learned Senior Counsel for the petitioner had also argued that even though the allegations may not be the same, those are similar and those allegations were also gone into by the Enquiry Officer and a finding was given which however was not accepted by the Disciplinary Authority.

24. The earlier order dated 06.08.2022 passed by the Disciplinary Authority is *qua* the charge made in the first Show Cause Notice dated 05.09.2018. Though

the present fact of receipt of the compact disc had cropped up in the enquiry proceedings, it was revealed during the said proceeding that the said compact disc was neither seized nor reported or mentioned in the Case Diary. Though, it is true that the aforesaid fact was noted by the Enquiry Officer, the charges of gross misconduct, indiscipline and dereliction of duty were with regard to the statement of allegations which was a part of the Show Cause Notice dated 05.09.2018 and could not be construed to be those in respect of certain facts which has emerged during the enquiry. It is trite law that without framing definite charges, a delinquent cannot be held guilty of the same.

25. This Court is also of the view that the closure of the earlier Disciplinary Proceeding vide the order dated 06.08.2022 is only with regard to the specific allegations made against the petitioner which has been held by the Disciplinary Authority to have been not established by the statements of the witnesses and materials on records.

26. So far as the case laws cited on behalf of the petitioner, all the case laws are on the aspect of a *de novo* enquiry on the same set of charges in which the Enquiry Officer had given a report favourable to the delinquent and which was not acceptable to the Disciplinary Authority. The law settled in the aforesaid cases is that if an Enquiry Report is in favour of a delinquent, the findings of which are not acceptable to the Disciplinary Authority, a *de novo* enquiry cannot be ordered. It is a different matter that in such a situation, the Disciplinary Authority can very well issue a Show Cause Notice to the delinquent on the aspect as to why the findings favourable to the delinquent should not be differed by the Disciplinary Authority. However, in the instant case, the present allegations contained in the impugned Show Cause Notice dated 08.12.2022

were not the allegations at all in the earlier Show Cause Notice dated 05.09.2018. Therefore, the question of proceeding against the petitioner on such allegations without framing a definite charge would not have arisen at all in the enquiry held pursuant to the Show Cause Notice dated 05.09.2018. This Court also finds force in the argument of the learned Addl. Advocate General of the State that without there being specific charges, a delinquent cannot be imposed any penalty.

27. Under Rule 9 (2) of the Rules of 1964, definite charges are to be framed on the basis of the allegations. For ready reference the aforesaid provision is extracted herein below:

“9. PROCEDURE FOR IMPOSING PENALTIES-

(1)...

*(2) The Disciplinary Authority **shall frame definite charges** on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person.”*

28. This Court therefore is of the view that the present Show Cause Notice dated 08.12.2022 does not suffer from any legal infirmity. This Court is also of the view that challenge to the said Show Cause Notice would rather be pre-empting the Disciplinary Authority to enquire into the allegations which has emerged in the enquiry held pursuant to the earlier Show Cause Notice dated 05.09.2018. This Court has also taken into consideration that the allegations are serious which touches upon the integrity of the petitioner who is a protector of Law being a Police Officer. In the opinion of this Court, interference in a case of



this nature would amount to precluding the Department from enquiring into certain allegations which have cropped up and the same would not be in the interest of justice.

29. Under the aforesaid facts and circumstances, this Court is of the view that no case for interference is made out and accordingly, the writ petition is dismissed. The interim order passed earlier stands vacated.

30. No order as to cost.

JUDGE

Comparing Assistant