

GAHC010125322022



2026:GAU-AS:4631

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

Case No. : WP(C)/4362/2022

SUNANDA DAS @ SUNENDRA DAS
S/O- KAMINI DAS , R/O- VILLAGE- CHAIBARI,
P.S- PATACHARKUCHI, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND ANR
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF
HOME AFFAIRS, NEW DELHI, PIN-110001

2:THE DIRECTOR
OF CENSUS OPERATIONS
ASSAM
GUWAHAT

Advocate for the Petitioner : MR S BORTHAKUR, MS. P BORAH

Advocate for the Respondent : ASSTT.S.G.I., MR. S K MEDHI (r-1)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved	:	N/A
Date of pronouncement of judgment	:	31.03.2026
Whether the pronouncement is of the		
Operative part of the judgment	:	N/A
Whether the full judgment has been		
Pronounced	:	Yes

Judgment & Order (Oral)

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC for the respondents.

2. The challenge made in this petition is to the order dated 01.06.2011, passed by the Director of Census Operations, Assam, by which the petitioner has been dismissed from service on the ground of conviction under Sections 448/304 Part-I/325 of IPC under Clause (a) of second proviso to Article 311 (2) of the Constitution of India and The Central Civil Service (Class, Control & Appeal) Rules, 1965 [hereinafter referred to as the CCS (CCA) Rules, 1965] on the basis of the judgment and order passed by the Sessions Court in Sessions Case No. 57(K)/2007. The petitioner is also aggrieved by the non-consideration of his appeal dated 01.06.2020 for reinstatement in the service by recalling the impugned order dated 01.06.2011 on the ground that the High Court has set aside the conviction and sentence of the petitioner under Sections 448/304 Part-I IPC and affirmed the conviction under Section 325 IPC and after completion of the sentence, he has been released.

3. The petitioner was appointed as Chowkidar in the Directorate of Census Operations, Assam, in the year 2000 and his service was confirmed after completion of 2 years of probation period.

4. Shorn of unnecessary details, the case of the petitioner is that on 08.07.2004, an FIR was lodged against the petitioner pursuant to which a case was registered being Dispur P. S. Case No. 598/2004 and after completion of investigation, a Charge Sheet was filed against the petitioner under Sections

448/325/302 IPC. The petitioner was arrested on 16.06.2005 and subsequently, granted bail on 13.09.2005. On his arrest, the petitioner was placed under suspension.

5. On conclusion of the trial, the learned Trial Court convicted the petitioner in Sessions Case No. 57(K)/2007 under Sections 448/304 Part-I/325 of IPC and to undergo Simple Imprisonment for 2 (two) months and to pay a fine of Rs. 500/- in default Simple Imprisonment for another 1 (one) month for the offence under Section 448 IPC, to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 5,000/- in default Rigorous Imprisonment for another 6 (six) months for the offence under Section 304 Part-I of IPC, and to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs. 2,000/- in default Rigorous Imprisonment for another 3 (three) months for the offence under Section 325 of IPC.

6. The petitioner filed a criminal appeal, being Criminal Appeal No. 114/2010, before this Court. Initially, the Court stayed the operation of the judgment and order passed by the learned Sessions Judge. However, the miscellaneous case in which the stay was granted was subsequently dismissed.

7. The respondent authority, vide impugned order dated 01.06.2011, dismissed the petitioner from service on the basis of the judgment and order dated 26.05.2010 passed in Sessions Case No. 57(K)/2007, as the petitioner was convicted and sentenced to undergo Rigorous Imprisonment under Sections 304 Part-I and 325 of the IPC and Simple Imprisonment for the offence under Section 448 IPC, with default stipulation.

8. Vide an order dated 03.03.2020, this Court disposed of Criminal Appeal No.

114/2010, whereby the conviction of the petitioner under Section 304 Part-I of the IPC has been set aside, while confirming the conviction and sentence under Section 325 of the IPC.

9. Thereafter, the petitioner filed an appeal on 01.06.2020 before the Director of Census Operation, Assam, for modification or cancellation of the impugned order dated 01.06.2011, as the petitioner was dismissed from service under Article 311(2) of the Constitution of India and the CCS (CCA) Rules, 1965, on the basis of the conviction and sentence of the petitioner vide judgment and order dated 26.05.2010 passed by the Sessions Judge, Kamrup, Guwahati.

10. Mr. S. Borthakur, learned counsel for the petitioner, submits that the respondent authorities have not applied their mind, as they have not followed the provisions under Rule 19 of the CCS (CCA) Rules, 1965. He has relied on the judgments of the Hon'ble Supreme Court in **Union of India vs. Tulsiram Patel**, reported in **(1985) 3 SCC 398** and **Union of India vs. Sunil Kumar Supra**, reported in **(2001) 3 SCC 414**, to submit that the principles of law laid down in the above judgments were not followed while dismissing the petitioner from service. He further submits that the respondent authorities failed to exercise the power conferred on them, by not considering the appeal filed by the petitioner after his conviction and sentence was modified by the Appellate Court.

11. I have considered the submissions of the learned counsel for the parties and also perused the materials available on record.

12. Article 311 of the Constitution of India lays down certain conditions for the dismissal, removal, or reduction in rank of persons employed in civil capacities

under the Union or State Governments. It prescribes, among other things, that no such person shall be dismissed, removed, or reduced in rank except after an inquiry. However, there are exceptions to this requirement, one of which is when a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

13. Rule 19 of the CCS (CCA) Rules, 1965 provides a special provision in certain cases, which lays down that where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or where the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules, the disciplinary authority may consider the circumstances of the case and make such orders as it deems fit, provided that the government servant may be given an opportunity to make a representation on the penalty proposed to be imposed before any order is made in a case where a penalty is imposed on the ground of conduct leading to a criminal conviction.

14. In the case of **Tulsiram Patel** (supra), the Hon'ble Supreme Court, while dealing with Article 311 of the Constitution, has held as under:

“127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal

*from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in *Shankar Dass v. Union of India and another*, [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."*

15. In **Sunil Kumar Sakar** (supra), the Hon'ble Supreme Court, having considered that the action in that case was taken under Rule 19 of the CCS (CCA) Rules, 1965, observed that Rule 19 is in conformity with the disciplinary procedure contemplated under Article 311(2)(a) of the Constitution, as it provides a summary procedure to take disciplinary action against a government servant who has already been convicted in criminal proceedings. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge.

16. The coordinate bench of this Court, vide judgment and order dated 15.03.2024 in the case of **Ponaram Borah vs. The State of Assam & 5 Ors., WP(C) No. 5056 of 2015**, after considering the judgment of the Hon'ble Supreme Court in **Tulsiram Patel** (supra), has succinctly culled out the following propositions as laid down by the Hon'ble Supreme Court, which are as under:

“...I. The consideration to be made by the employer, while taking a decision to remove, dismiss or to reduce in rank an employer is to apply its mind and consider the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed on the delinquent employee on his conviction on a criminal charge.

II. Such provision confers powers on disciplinary authority to decide whether in the fact and circumstances of a particular case, what penalty, if at all, should be imposed on the delinquent employee.

III. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon and determine the nature and extent of the penalty to be imposed on the delinquent and it is the discretion of the disciplinary authority, in a given case when it may even refuse to impose any penalty in spite of conviction.

IV. Where a situation envisages one of the three clauses of the Second proviso to Article 311 (2) or an analogous service rule arises, it is not mandatory that major penalty of dismissal, removal or reduction in rank should always be imposed upon the concerned Government servant.

V. The penalty which can be imposed may be some other major penalty or even a minor penalty, depending upon the fact and circumstances of the each case.”

17. In the present case, the petitioner was initially convicted under Sections 448, 304 Part-I, and 325 of the IPC. However, the appellate court has set aside the convictions under Sections 448 and 304 Part-I, thereby reversing the judgment and order of the learned Sessions Court. The conviction and sentence under Section 325 of the IPC, however, has been upheld. The petitioner has

already undergone the sentence under Section 325 IPC and has been released from jail.

18. The impugned order was passed by the respondent authority prior to the judgment of the appellate Court, whereby the petitioner was dismissed from service in exercise of powers under Article 311(2)(a) of the Constitution and Rule 19 of the CCS (CCA) Rules, 1965. The petitioner subsequently filed an appeal on 01.06.2020, following the judgment of the appellate Court, due to the changed circumstances, which is still pending consideration.

19. In such view of the matter, the respondent authorities are required to consider the case of the petitioner and pass a reasoned and speaking order, taking into account the principles of law laid down by the Hon'ble Supreme Court.

20. Accordingly, this writ petition is disposed of with a direction to the respondent authority, i.e., the Director of Census Operation, Assam, to dispose of the appeal dated 01.06.2020 filed by the petitioner and to pass a reasoned and speaking order in accordance with the principles of law laid down by the Hon'ble Supreme Court. The exercise as directed herein shall be completed within 3 (three) months from the date of receipt of the certified copy of this order.

21. The writ petition stands disposed of in the terms above.

JUDGE

Comparing Assistant