



GAHC010131532013



2024:GAU-AS:702

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

Case No. : WP(C)/5315/2013

KIRAN KUMAR CHAKRABORTY
S/O- LT. KARUNAMOY CHAKRABORTY, R/O- RABINDRASHARANI,
HAILAKANDI TOWN, WARD NO. 4, P.O., P.S. and DIST.- HAILAKANDI,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, PUBLIC WORKS DEPTT.,
DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPTT. ROADS
ASSAM
CHANDMARI
GHY- 3.

3:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPTT.
N.E.C. DIVISION
HAILAKANDI
P.O. and DIST.- HAILAKANDI
ASSAM
PIN

Advocate for the Petitioner : MR.P SARMAH, M SHARMA,MR. S UPADHAY,MR B
SINHA,MR.S K SINGHA,MR.B KUMAR,MSR D KAKATI

Advocate for the Respondent : ,,,SC, PWD



**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 22-01-2026

Heard Mr. B. Singha, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned standing counsel, PWD appearing for the respondents.

2. The challenge in the present proceeding is to an order dated 09-07-2013 issued by the Executive Engineer, PWD, imposing upon the petitioner a penalty of withholding of one increment for a period of one year, i.e. up-to 30-06-2014 with further stipulation that such postponement shall not affect his future increment.

3. The petitioner, herein, was appointed as an Office Chowkidar in the establishment of the Executive Engineer, PWD, NEC Division, Hailakandi, i.e. the respondent No. 3 in the year 1998. Thereafter, the petitioner was transferred to the post of Office Peon vide order dated 08-11-2005. The petitioner while working as the Office Peon was entrusted with the responsibility of collecting and depositing money in the bank. The petitioner continued to discharge his duties as assigned to him. Subsequently, vide an order dated 07-01-2006 issued by the respondent No. 3, the petitioner was again reverted to his original post of Office Chowkidar. Thereafter, various orders came to be issued laying down the manner in which the petitioner is to discharge his duties. The petitioner being aggrieved by the reversion to the post of Office Chowkidar, approached the respondent No. 3 by way of a representation dated 30-03-2013 with a prayer to allow him to discharge his duties as Office Peon. No action having been taken in the matter by the respondent No. 3, the petitioner had preferred a representation before the Chief Engineer, PWD (Roads Division)



praying for his conversion from the post of Office Chowkidar to that of Office Peon. The said representation was not routed through the respondent No. 3, who was his controlling officer. Accordingly, the Addl. Chief Engineer, PWD (Roads Division) vide communication dated 13-02-2013 directed the respondent No. 3 to take necessary action against the petitioner for making such direct correspondence with the higher authorities by keeping his immediate superior in dark. Accordingly, the respondent No. 3 vide communication dated 14-03-2013 asked the petitioner to submit his explanation in the matter as to why a disciplinary action should not be taken against him for gross insubordination, in having approached the higher authority by way of representation without routing the same through the respondent No. 3. The petitioner had submitted his reply to the explanation call as issued vide communication dated 14-03-2013. Not being satisfied with the explanation given by the petitioner, a further communication dated 23-05-2013 came to be issued to the petitioner by the respondent No. 3 requiring the petitioner to clarify as to whether he had in-fact made such communication directly with the Chief Engineer, PWD (Roads Division) along with a copy to the Secretary to the Govt. of Assam, PWD. The petitioner also responded to the said explanation call vide his reply dated 03-06-2013. The respondent No. 3 on receipt of the said explanation submitted by the petitioner proceeded to issue an office order dated 09-07-2013, *inter-alia*, holding therein that the petitioner was found guilty of insubordination in making direct correspondence with the heads of the department keeping in dark his controlling officer and had thereby committed a breach of trust. Basing on the said conclusion, the respondent No. 3 proceeded to impose upon the petitioner a penalty of withholding of one increment due in



the month of July, 2013 for a period of one year, i.e. up-to 30-06-2014. Being aggrieved with the issuance of the said office order dated 09-07-2013, the petitioner has instituted the present proceeding.

4. Mr. B. Singha, learned counsel for the petitioner by reiterating the facts noticed hereinabove has submitted that the respondent No. 3 by the office order dated 09-07-2013 had invoked the provision of Rule 7 of the Assam Service (Discipline & Appeal) Rules of 1964 (in short "the Rules of 1964") for imposition of a penalty upon the petitioner. He submits that the said order dated 09-07-2013 was so issued without complying with the provisions of Rule 9 of the Rules of 1964. Mr. Singha has submitted that no departmental proceeding was instituted against the petitioner in terms of the provisions of Rule 9 of the Rules of 1964. Accordingly, he submits that it was not open for the respondent No. 3 to impose any penalty upon the petitioner invoking the provisions of Rule 7 of the Rules of 1964. He further submits that the provisions of Rule 9 of the Rules of 1964 not having been followed, the office order dated 09-07-2013 cannot be sustained and would require an interference by this Court.

5. Per contra, Mr. P. Nayak, learned counsel for the respondents has submitted that the insubordination committed by the petitioner being writ large on the face of the records and he having not denied the approaches made by him to the departmental heads without informing the matter and/ or routing the same through his controlling officer, i.e. the respondent No. 3, the penalty of withholding of one increment being a minor penalty as imposed by the respondent No. 3 vide order dated 09-07-2013 upon the petitioner would not mandate any interference.



6. I have heard the learned counsel for the parties and also perused the materials available on record.
7. The facts noticed hereinabove are not in dispute. The petitioner was vide order dated 09-07-2013 imposed with a penalty of withholding of one increment falling due on July, 2013 for a period of one year, i.e. up-to 30-06-2014.
8. The office order dated 09-07-2013 being relevant is extracted here-in-below:

*“GOVERNMENT OF ASSAM
OFFICE OF THE EXECUTIVE ENGINEER.P.W.D. HAILAKANDI. N.E.C.DIVISION.
HAILAKANDI.
OFFICE ORDER NO. 04 OF 2013-14*

Having examined both the reply of explanation Dtd. 21/03/2013 and Dtd. 03/06/2013 submitted by Sri Kiron Kumar Chakraborty, regular chowkider of this Division it is found contradictory and it is proved that Sri Kiron Kumar Chakraborty has intentionally committed gross insubordination with his superior authority by making direct correspondences with the Heads of the Department keeping in dark of his controlling officer and also committed breach of trust with his superior by furnishing a false statement.

After careful consideration of all the aspect the undersigned have is the opinion that Sri Kiron Kumar Chakraborty, Regular Chowkider is liable for punishment under Rule 7 of the Discipline & Appeal Rule 1964. Accordingly, the next annual increment of Sri Kiron Kumar Chakraborty, Regular Chowkider which falls due on July/2013 is hereby kept withheld for a period of 1 (One) year i.e, up to 30/06/2014 and such postponement shall not affects future increment.

*Executive Engineer, PWD,
Hailakandi NEC Division,
Hailakandi*

Memo No.EG-1/P-20/HKD/NEC/07-08/354-61

Dtd. 09/07/2013.”

9. A perusal of the said order would reveal that the respondent No. 3 had invoked the



provision of Rule 7 of the Rules of 1964 for imposing upon the petitioner the penalty as imposed upon him. It is settled position of law that for imposition of any penalty under Rule 7, the Disciplinary Authority is required to comply with the provision of Rule 9 of the said Rule of 1964. It is only on compliance of the provisions of Rule 9 that it would be permissible for the Disciplinary Authority to impose any penalty as prescribed under the provisions of Rule 7 upon a delinquent employee. In the case on hand, it is seen that no proceeding as contemplated under the provisions of Rule 9 was instituted against the petitioner, herein. No show-cause notice as mandated under the provision of Sub-Rule (2) of Rule 9 of the said Rules of 1964 came to be issued to the petitioner instituting against him a disciplinary proceeding. Accordingly, the imposition of the penalty upon the petitioner by invoking Rule 7 of the Rules of 1964 in the considered view of this Court was not permissible.

10. It is also relevant to note that in terms of the provisions of Rule 9, it is only upon completion of the enquiry, that it would be permissible for the Disciplinary Authority to decide as to whether to issue major penalty or minor penalty upon the delinquent officer. Accordingly, without issuance of a show-cause notice and following the procedure as mandated under Rule 9 of the Rules of 1964, it was not open to the respondent No. 3 to impose any penalty upon the petitioner, herein.

11. In view of the above position, admittedly there being no departmental proceeding instituted against the petitioner by issuance of a show-cause notice as contemplated under the provisions of Sub-Rule (2) of Rule 9 of the Rules of 1964, this Court is of the considered view that the penalty as imposed upon the petitioner vide the order dated 09-



07-2013 invoking the provisions of Rule 7 is not sustainable and accordingly, the same stands set aside.

12. Having interfered with the order dated 09-07-2013, this Court directs the respondent authorities to authorize the petitioner the increment which was withheld and thereafter to recalculate the pay and allowances due to the petitioner with effect from the date when the said increment was so withheld. The arrears as working out in the matter be released to the petitioner expeditiously but not later than 03 (three) months from the date of receipt of a certified copy of this order.

13. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant