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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 309/2004

R.A/C.P No.

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SECTION OFFICER (Judl.)

Sahib
14/11/17

FORM No. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App./Misc Petn/Cont. Petn/Rev. Appl.

309/04

Name of the Applicant(s) In O.A.
Gakul Ch. Sarma

Name of the Respondent(s)
H. V. I. Jais

Advocate for the Applicant
S. Sarma, Mr. H. Das

Counsel for the Railway/CGSC.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

29.11.2004

Heard Mr. S. Sarma, learned counsel for the applicant as well as Mrs. M. Das, learned Govt. Advocate for the State of Assam

Considering the facts and circumstances of the case, respondents are directed to complete the enquiry within three months time from the date of receipt of this order. So far the other reliefs are concerned, the petitioner can take up them in the appropriate forum.

The O.A. is disposed of accordingly at the admission stage itself.

Member

bb

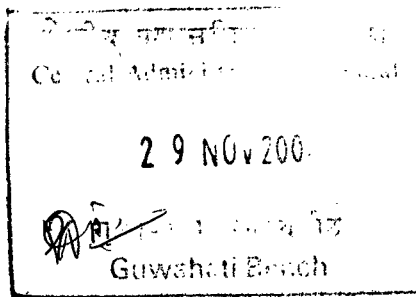
The application is on Form
is No. C.F. 10-1
C.F. 10-1
No. 209/11/37-12
Dated 22.11.04

Dy. Registrar

Steps not taken.

Received
copy of the
the order.

Received copy
on behalf of
Mrs. M. Das G. A. Assam
Kumar
1-12-04



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 309 of 2004

BETWEEN

Gakul Ch. Sarma..... Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

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Filed by : S. Sarma

Regn.No.:

File :

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act, 1985)

O.A.No. of 2004

BETWEEN

1. Sri Gakul Ch. Sarma
Son of Late B. Sarma
At present working as
Joint Secretary, Labour & Employment Deptt.
Dispur, Guwahati-6.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
Deptt. of Personnel, New Delhi.
2. The State of Assam
Represented by the Chief Secretary to the Govt. of Assam,
Dispur, Guwahati-781006.
Assam.
3. The State of Meghalaya
represented by the Chief Secretary
to the Govt. of Meghalaya
Shillong-1.
4. The Joint Cadre Authority
Assam-Meghalaya Joint Cadre
represented by the Chief Secretary
to the Govt. of Assam
Dispur, Guwahati-6.
5. The Union Public Service Commission,
represented by the Chairman,
Dispur House, New Delhi-1.

..... Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

Filed by the applicant
Through
Siddhanta
Sarm
Agent.
29-11-04

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This application is not directed against any particular order but is made praying for a direction to the respondents to consider the case of the applicant for promotion to IAS and to promote him to the rank of IAS without taking into consideration the farcical department proceeding initiated against him pursuant to the charge sheet dated 28.04.04.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant has approached this Hon'ble Tribunal praying for a direction to the respondents to consider his case for promotion to IAS without taking into consideration the farcical departmental proceed as has been initiated against him pursuant to the charge sheet dated 28.4.03. The applicant who is one of the senior most state civil Service Officer (ACS) is facing a series of illegalities by the respondents right from the year 99. The applicant who was expecting for his such promotion

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and in fact the State Govt. sent his name at Sl. No.1 to the UPSC but with a remark "prosecution Sanctioned". The respondents as such plea of prosecution sanction never considered his case for promotion to IAS. The respondents in fact to delay the matter initiated a Criminal Case against the applicant but later on the said criminal case disposed of in his favour. The applicant challenging the aforesaid action on the part of the respondents preferred OA No.322/99. During the pendency of the said OA the respondents took a decision to proceed departmentally against the applicant by issuing orders dated 7.7.00 and 7.2.2001 illegally to deprive him from the legitimate claim of promotion to IAS. The applicant challenging the said departmental proceeding approached the Hon'ble Guwahati High Court by way of filing WP(c) No.2411/01. The Hon'ble High Court after hearing the parties to the proceeding was pleased to dispose of the said writ petition to dispose of the said disciplinary proceeding within a stipulated period of time vide its judgment and order dated 7.6.01. The applicant accordingly participated in the said departmental proceeding and later on the Governor of Assam issued an order dated 15.12.01 by which the applicant was exonerated from in charges. The respondents in the early part of 2002 took decision for covering selection committee making for promotion to IAS and accordingly state Govt. sent the list of State Civil Service officer including the name of the applicant at the top of the list. Simultaneously the respondents with view to deprive him from the said promotion also initiated a farcical departmental proceeding by issuing a charge sheet dated 28.4.03. The selection committee took its consideration all the relevant case record found the applicant suitable for such promotion but his case was kept in sealed cover due to the pendency of the said disciplinary proceeding. It is noteworthy to mention here that as

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on dated nothing has been done so far in respect of the said disciplinary proceeding and same is still hanging over the head of the applicant. On the other hand the applicant who is at the verge at his retirement is likely to loose the action as such promotion. In fact the applicant highlighting his grievances made several correspondences but same yielded no result in positive. Situated thus the applicant having no other alternative and as a last resort has come under the protective hands of this Hon'ble Tribunal.

This is the crux of the matter of for which the present applicant has come under the protective hands of this Hon'ble Tribunal.

4.2. That the applicant is citizen of India and as such he is entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.3. That the applicant pursuant to passing his graduation in BA (Hons), with Gold Medal, he was selected for the Assam Civil Services and joined on 13.11.75 as EAS in Silchar and thereafter he continued to hold many responsible post without any blemish. The applicant prior to his posting as Joint Secretary was holding the post of Managing Director Assam Small Scale Industrial Development Corporation since 14.8.96. During his such posting he was posted as Managing Director Swahid, Kusal Konwar Samabai Sutakal Limited. The applicant while was posted as Managing Director at the said Sutakal Limited, an allegation was brought against him along with another. The State Govt. started an investigation and a criminal case was registered as Special

Case No.15(A)/97 before the court at Special Judge, Assam. The Learned special judge vide its order dated 5.4.99 discharged the applicant from all the charges.

4.4. That the applicant begs to state that taking into consideration his excellent service career as well as the length of service, he is one of the senior most State Civil Service officer to be considered for promotion to the rank of IAS. In fact the applicant was under the bonafide impression that his case would be considered in preparing the select list at 1999 for promotion to the rank of IAS. In fact his name was sent to the UPSC by the State Govt. but while doing so a remark has been put "Proceccussion Sanctioned" against his name. In such an eventuality his case could not be considered in the said select list.

4.5. That the applicant states that he being aggrieved by the aforesaid action on the part of the respondents preferred OA No.322/99 to deprive him from such promotion, doing the pendency of the said OA issued charge sheet dated 7.7.2000 and 7.2.2001. taking into consideration the same set of charge. The applicant having regard to the said subsequent development had to approach the Hon'ble High Court by way of filling writ petition which was numbered and registered as WP(c) No.2411/01. The Hon'ble High Court after hearing the parties to the proceeding ws pleased to dispose of the said WP(c) by its judgment and order dated 7.6.01 directing the respondents to finalise the said proceeding withing a stipulated time frame.

A copy of the said Judgment and order dated 7.6.01 is annexed herewith and marked as Annexure-1.

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4.6. That the respondents thereafter continued to proceed in the said departmental proceeding and accordingly the applicant also participated in the said proceeding. The aforesaid proceeding came to an end vide order dated 15.12.01 issued by the Governor Assam. By the aforesaid order dated 15.12.01 the applicant was exonerated from all the charges leveled against him.

A copy of the said order dated 15.12.01
is annexed herewith and marked as
ANNEXURE-2.

4.7. That the applicant begs to state that in view of such illegal action on the part of the respondents, his case for promotion to IAS, though considered favorably but could not be made effective, and he was unnecessarily deprived of the same. Thereafter the respondents in violation of the provisions of Rules holding the field, did not convene any select committee meeting for promotion to IAS. However, in the early part of 2003 the respondents took initiative for convening such meeting. The respondents prepared the list of eligible State Civil Service officers in which the name of the applicant appeared as one of the senior most eligible officers. The respondents however to deprive him again from the purview of such consideration issued a show cause notice/charge sheet dated 28.4.03 invoking the provisions at Assam Services (Disciplinary and Appeal) Rules 1964.

A copy of the said charge sheet dated
28.4.03 is annexed herewith and marked as
Annexure-3.

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4.8. That the immediately on receipt of the said chargesheet dated 28.4.03 submitted his defence by submitting representation dated 28.8.03 narrating the entire case.

A copy of the said reply dated 28.8.03 is annexed herewith and marked as Annexure-4.

4.9. That the applicant begs to state that in the charge sheet dated 28.3.03 the respondents name allegedly incorporated some false charge. The basic contention raised in the said charge sheet dated 28.4.03 is regarding not endorsing the office note dated 17.1.03 and not attending the meeting held in the residence of Minister Labour and Employment. In the said charge-sheet the respondents have incorporated the charge that the applicant never responded to an explanation called for from him by the Secretary, Deptt. of Labour and Employment. It is noteworthy to mention here that the note in question dated 17.1.03 was duly received by the applicant on the same day but while endorsing the same he due to oversight put the date as 18.1.03. In fact on 17.1.03 he along with the others were present in the meeting but only Deputy Secretary Labour and Employment was allowed to participate in the said meeting. On this score alone the charge No.1 could not stand as same is not factually correct.

That as regard the charge No.2 regarding non submission of explanation as called for by the Secretary Labour and Employment is totally a false statement. In fact as on date the applicant in regard to any of such incident and as such there is no question of submitting such explanation.

4.10. That the applicant narrating all these factual

aspect of the matter submitted the Annexure-4 reply but the respondents without taking into consideration the aforesaid representation took a decision to proceed departmentally against the applicant and to that effect the Joint Secretary to the Govt. of Assam, Deptt. of Personnel (A) issued an order dated 20.12.03 appointing enquiry officer as well as presenting officer to proceed further in the departmental proceeding.

A copy of the said order dated 20.12.03 is annexed herewith and marked as Annexure-5.

4.11. That the applicant begs to state that as stated above the State Govt. has forwarded the names of eligible State Civil Service Officers among which the present applicant in the senior most one with outstanding service career. Accordingly there is every likelihood of his being duly considered for promotion to IAS at the top of the list. However because of the pendency of the aforesaid proceeding the selection committee did not select him and his case has been kept pending. It is pertinent to mention here that as on date none of the said selected candidates have been offered with promotion order to IAS.

4.12. That the applicant begs to state that the respondents with an ulterior motive initiated the aforesaid departmental proceeding and same has been allowed to hang over his head only with a sole purpose to deprive him from the said promotion. It is further stated that even if the selection committee considers his case on merit, due to the pendency of the departmental proceeding such promotion would not been given effect to and the applicant for no fault on his would be deprived

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of his promotion to the rank of IAS.

4.13. That the applicant begs to state that the respondents basing on the reply submitted by him dated 28.8.03 ought to have dropped the entire proceeding instead of passing the order dated 20.12.03. From bare reading of the charge sheet dated 28.4.03 and his reply dated 28.8.03 the respondents ought to have issued the order dated 20.12.03. The aforesaid action on the part of the respondents clearly depicts total non-application of mind as well as their ulterior motive.

4.14. That the applicant begs to state that from the sequence of events and the series of farcical attempts that has been made to deprive the applicant from his legitimate claim of promotion, it is crystal clear that the respondents have acted with an ulterior motive. Right from the year 1999 the respondents have been trying to deny the applicant his legitimate claim of promotion, by various illegal modes and methods and in none of such illegal modes and methods were successful. However due to the delay in setting those proceeding virtually deprived the applicant once again from his legitimate claim of promotion in the year 1999 and thereafter. This time also the respondents have tried to deny him the said promotion by entangling him into a false and fabricated charge without any basis. In such an eventuality the applicant having no other alternative has come under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

4.15. That the applicant begs to state that after the issuance of the charge sheet dated 28.4.03 there has been a little progress in the matter and from the attitude of the

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respondents it is clear that the said departmental proceeding may continue even years together without there being any finality. It is pertinent to mention here that on 28.4.03 charge sheet was issued against which the applicant submitted his written reply and the respondents only on 20.12.03 appointed IO and PO to continue in the process of enquiry. Till date the respondents could only schedule one date of hearing dated 4.11.04 directing attendance of the applicant but no hearing took place on 4.11.04. From the above sequence of dates clearly indicates the fact that the proceeding in question would continue for years together and the applicant who is due for retirement in the month of Feb '06 would never be considered for such promotion. The applicant having regard to the facts and circumstances of the case submitted a representation dated 26.10.04 requesting the concern authority to drop the proceeding and to consider his case for promotion to IAS without taking into consideration the said departmental proceeding.

A copy of the said representation dated 26.10.04 is annexed herewith and marked as Annexure-6.

4.16. That the applicant begs to state that in his said representation dated 26.10.04 he made a categorical prayer that since the promotion in question has been effected as on 2002 and as such the subsequent departmental proceeding could not have been taken as a hurdle for consideration of his case for promotion to IAS. Apart from that since in the charge-sheet there is no material relating to precautionary laws to the Govt. ex chequre as well as normal turpitude, the selection committee could not have denied him the right of promotion basing only on the said charge-sheet.

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4.17. That the applicant under this peculiar fact situation of the case has come under the protective hands of this Hon'ble Tribunal seeking an immediate and appropriate relief.

4.18. That this application has been filed bonafide and to secure ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:


5.1. For that the respondents have acted illegally in depriving the applicant from his legitimate claim of promotion and as such entire action on the part of the respondents are liable to be set aside and quashed.

5.2. For that the respondents have acted illegally and in contravention with the rules holding the field in issuing the charge sheet dated 28.4.04, on the basis of some false and fabricated issues without there being any factual disclosure of the case.

5.3. For that the respondents have acted illegally in issuing the order dated 20.12.03 deciding to proceed in the enquiry process ignoring the written reply dated 28.8.03 submitted by the applicant. On this score alone the entire proceeding is liable to be set aside and quashed.

5.4. For that the respondents have acted illegally in not considering the case of the applicant for promotion to the rank of IAS taking into consideration the aforesaid farcical issue and as such appropriate direction need be issued for the represents

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to consider the case of the applicant for promotion to the rank of IAS without taking into consideration departmental proceeding.

5.5. For that in any view of the matter the action/inaction on the parts of the respondents is not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to raise more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application

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be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned charge sheet dated 28.4.03 and the subsequent order dated 20.12.03 and to exonerate the applicant from the charges providing him all the consequential service benefit including consideration of his case for promotion to IAS along with the other selected candidates with retrospective effect with all consequential service benefits including seniority and arrear salary etc.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicant prays for an interim order directing the respondents to promote him to the post of IAS without taking into consideration the aforesaid departmental proceeding.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 20G 113712
2. Date : 22.9.04
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

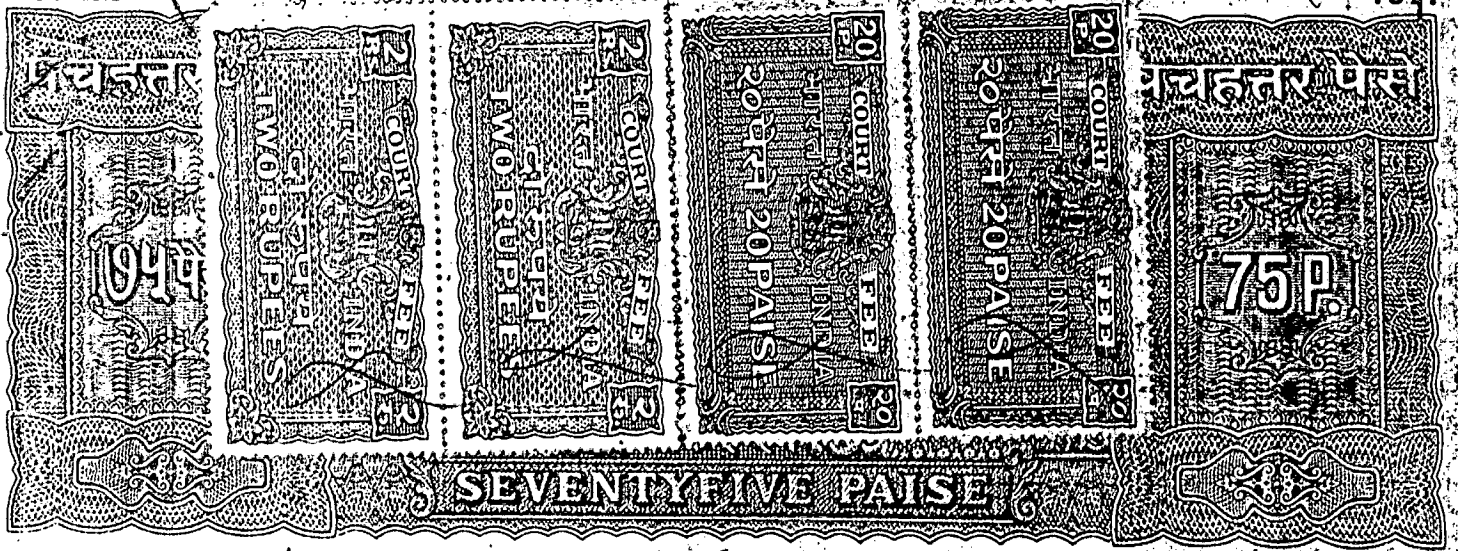
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VERIFICATION

I, Sri Bakul Ch. Sarma, son of Late B. Sarma, aged about 56 years, presently working as Joint Secretary, Labour and Employment, Dispur-6, resident of Pub Gitanagar, Guwahati, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 9-4, 14, 4, 16-4, 18 and 5 to 12. are true to my knowledge and those made in paragraphs 4, 1, 4, 3, 4, 4, 4, 5, 4, 6, 4, 7, 4, 8, 4, 15. are also matter of records and the rests are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 29th day of Nov. of 2004.

Bakul Ch. Sarma
Signature.



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
3/7/2001	28/7/2001	28/7/2001	28/7/2001	28/7/2001

IN THE GAUHATI, HIGH COURT

(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND A RUNACHAL PRADESH)

W.P.C. NO. 2411/2001.

Shri Gakul Ch. Sarmah, Managing Director, Assam small
Industries Development corporation, Guwahati.

..Petitioner.

-Vs-

- The State of Assam, represented by the Chief Secy.
to the Govt. of Assam, Dispur, Ghy- 6.
- The Commissioner and secretary, Department of
personal & Government of Assam, Dispur, Ghy- 6.

.. Respondents.

::PRESENT::

THE HON'BLE MR. JUSTICE RANJAN GOGOI.

For the petitioner :-Mr.B.K. Sharma, Mr. S. Sarma, Mr.U.K. Goswami.
For the respondent:- Govt. Advocate, Assam.

Date:-7.6.2001. ORDER

Heard Mr.B.K. Sharma, learned senior counsel for the
petitioner and Mr.B.J. Talukdar learned State counsel for the
respondents.At the very outset, Mr. Sharma made a statement that he
is modifying the prayer made in the writ petition and is only
praying for a direction from this court to the Respondents No. 1.

Contd...2/-

Attested
by
AdvocatePt No 11610
3/7/2001

(4/7/2001)

and 2 to complete the disciplinary proceeding initiated against the petitioner on the basis of the notice dated 7.7.2000 (Annexure- 2 to the writ petition). Mr. Sharma, learned counsel for the petitioner further prays that the directions may be issued for early conclusion of the disciplinary proceeding in view of the fact that the promotion of the petitioner to next higher post in the service is due and if the disciplinary proceeding continues to remain pending, the petitioner may not normally be considered for such promotion.

A perusal of the enclosures to the writ petition would go to show that the charges were communicated to the petitioner as far back as on 7.7.2000 to which the petitioner has submitted his written statement in defence on 5.9.2000. Thereafter, on 7.2.2001, Enquiry officer has also been appointed. According to Mr. Sharma, learned counsel for the petitioner, the enquiry has not yet commenced.

Considering the submissions made and the modified relief sought for, this court considers it appropriate to direct the Respondents No.1 and 2 to take all necessary steps by to commence the disciplinary proceeding initiated against the petitioner by chargesheet dated 7.7.2000 and conclude the same within a period of four months from today. Needless to say that will be open for the petitioner to raise all pleas in defence before the disciplinary authority as contended in the present writ petition.

With the above direction, the writ petition stands disposed of.

Sd/-RANJAN GOGOI

JUDGE.

W/3
20.7
TYPED BY
READ BY
COMPARED BY

Certified to be true Copy
Superintendent (Copying)
GAUHATI HIGH COURT
Authorized U.S. 76 Act of 1979
20/7/2007

Attending
Advocate
Pt No 11610
20/7/2007

Dated Dispur, the 15th Dec/2001.

ORDERS BY THE GOVERNOR OF ASSAM

Whereas a departmental proceeding against Shri Gakul Chandra Sarma, ACS, the then Managing Director, Assam Small & Industries Development Corporation, Guwahati, presently Joint Secretary to the Govt. of Assam, Labour & Employment Deptt. was drawn up vide show cause notice NO. AAP. 26/94/197, Dated 7-7-2000 for allegedly committing certain financial irregularities during his tenure as Managing Director Swahid Kushal Konwar Sambay Sutakall Limited, Dabidubi, Golaghat; and

Whereas, Shri Gakul Chandra Sarma, ACS, the then Managing Director, Assam Small Industries Development Corporation, presently Joint Secretary to the Govt. of Assam, Labour & Employment Deptt. submitted written statement in defence vide his letter No. GS/18/CON/4, Dated 5-9-2000 wherein he denied the charges framed against him; and

Whereas, after careful examination of the written statement in defence submitted by Shri Gakul Chandra Sarma, ACS, and the materials on records it was decided not to accept his written statement in defence and decided to hold an enquiry into the charges by appointing Inquiring Authority and accordingly Shri Sumeet Jerath, IAS, Commissioner & Secretary to the Govt. of Assam, Power (Electricity) Deptt. was appointed as Inquiring Authority to hold the enquiry and submit enquiry report vide order NO. AAP. 26/94/250, dt. 7-2-2001; and

Whereas, the Inquiring Authority submitted his enquiry report vide letter NO. 8/PCOM/ENQ/GCS/2KI, Dated 20-10-2001; and

Whereas, on persual of the enquiry report submitted by the Inquiring Authority, charges against Shri Gakul Chandra Sarma, ACS are not found proved; and

Whereas, after careful examination of the enquiry report submitted by the Inquiring Authority and the materials on records it has been decided to accept the enquiry report and to drop the proceeding against Shri Sarma,

Contd..2.

*Attested
for
Adm. Secy.*

Accordingly, the Governor of Assam is pleased to accept the enquiry report submitted by Inquiring Authority vide letter NO.8/PCOM/ENQ/GCS/2KI, Dated 20-10-2001 and drop the departmental proceeding drawn up vide show cause notice NO.AAP.26/94/197, Dated 7-7-2000 against Shri Gakul Chandra Sarma, ACS, presently Joint Secretary to the Govt. of Assam, Labour & Employment Deptt. and thus the departmental proceeding is finally disposed of.

By order and in the name
of the Governor of Assam,

Sd/- J.P. SAIKIA,
COMMISSIONER & SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
:::::

Memo NO.AAP.26/94/388-A::Dated Dispur, the 15th Dec/2001.
Copy to:-

- ✓ 1. Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Deptt., Dispur, Ghy-6.
2. The Commissioner & Secretary to the Govt. of Assam, Political Deptt., Dispur, Guwahati-6.
3. Shri Sumeet Jerath, IAS, Commissioner & Secretary to the Govt. of Assam, Power (Electricity) Deptt. & Inquiring Authority, Dispur, Guwahati-6.
4. The Commissioner & Secretary to the Governor of Assam, Dispur, Guwahati-6.
5. P.P.S. to Chief Minister, Assam, Dispur.
6. PS to Chief Secretary, Assam, Dispur.
7. Personal file of Shri Gakul Chandra Sarma, ACS.

By order etc.,

J. P. Saikia
(J.P. SAIKIA),

Commissioner & Secretary to the Govt. of Assam
Personnel::A::Deptt.

JK
15/12/2001

Kalita

*Attended
by
Advocate*

CONFIDENTIAL

BY HAND

NO.AAP.75/2003/ 1
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL)DISPUR
GUWAHATI-781006

Dated Dispur the 28th April/03

To : ✓ Shri Gakul Chandra, Sarma, ACS,
Joint Secretary to the Govt. of Assam,
Labour & Employment Department,
Dispur, Guwahati-6.

You are hereby required to shew cause under Rule 9 of the Assam Services (Discipline and Appeal) Rules 1964 read with Article 311 of the constitution of India, why any of the penalties prescribed in Rule 7 of the aforesaid Rules, should not be inflicted on you on the following charges based on the statement of allegations attached herewith-

Charge No.1. That a meeting of the State Level Advisory Board for Education was scheduled to be held on 17/1/2003 at 11-00 A.M. in the office chamber of the Hon'ble Minister, Labour & Employment at Janata Bhawan, Dispur. However, the time of the said meeting was subsequently deferred to 5 P.M. of the same day due to some unavoidable circumstances. Since, the Secretary to the Govt. of Assam, Labour & Employment Deptt. was not in a position to attend the said meeting, he addressed a note on 17/1/2003 to you and the other Joint Secretary of the Deptt. Smti Gupta informing about his availing Restricted Holiday on 17-1-2003 and casual Leave on 18-1-2003 and by the same note he instructed both of you to attend important office work during his absence and to inform Shri B.C. Sonowal, ACS, Deputy Secretary to the Govt. of Assam, Labour & Employment Deptt. to attend the meeting at 5 p.m. on 17/1/2003 in the residence of Minister, Labour & Employment. The Joint Secretary to the Govt. of Assam, Labour & Employment Deptt. Smti Gupta noted the instructions of the Secretary, Labour & Employment Deptt. But the said note of the Secretary, Labour & Employment was neither noted by you nor it was endorsed to Shri B.C. Sonowal, ACS, Deputy Secretary of the Department on 17/1/2003 by you and kept the said note of the Secretary, Labour & Employment Department with you intentionally and endorsed it next day on 18/1/2003 to Shri B.C. Sonowal, ACS, Deputy Secretary, Labour & Employment Deptt. i.e. one day after the meeting. It is surprising that being an officer of the status and rank of the Joint Secretary to the Govt. of Assam, you never bothered to go through the said small note of the Secretary, Labour & Employment Department, about the meeting to the attended by Shri B.C. Sonowal, ACS, Deputy Secretary, Labour & Employment Deptt. on 17/1/2003 and endorsed it to him one day after the meeting.

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By your above acts you had not only committed gross negligence and dereliction of duties but also acted in a manner most unbecoming of a Govt. servant of your status and rank.

You are, therefore, not only charged with gross negligence and dereliction of duties but also violation of rule 3 of the Assam Civil Service (conduct) Rules 1965.

Charge No. 2: That in connection with an enquiry about non-attending the meeting of the State Advisory Board for Education held in the office chamber of the Minister, Labour & Employment at 5.00 p.m. on 17/1/2003 by any of the officers from Labour & Employment Department, your written statement/explanation was required. Accordingly, the Secretary, of the Department, requested you to file your written statement/explanation for the same. But you did not bother to response to such request of your higher authority. However, the Secy. of the Department, made several attempts for obtaining your written statement/explanation, but he could not due to your absence in office for several days till reposting of the matter to the enquiry officer on 17/3/2003. By ^{your} such indeference to the request of the Secretary of the Department had not only committed gross insubordination but also acted in a manner most unbecoming of a Govt. servant of your status and rank.

You are, therefore, not only charged with insubordination but also violation of rule 3 of the Assam Civil Service (conduct) Rules 1965 and gross indiscipline.

You should submit your written statement in defence within 10 (ten) days from the date of receipt of this communication provided you do not intend to inspect the documents which have relevance with the issues under enquiry. In case you intend to inspect those documents, you should write to the undersigned for the same within 7 (seven) days from the date of receipt of this communication and submit your explanation thereafter within 10 (ten) days from the date of completion of the inspection.

Your written statement stating whether you desire to be heard in person should be submitted to the undersigned within the period specified above.

If the disciplinary authority decides to appoint an Inquiry Officer to enquire into the charges, you will be allowed to present your case, if you so desire, with the assistance of any other Govt. Servant approved by the disciplinary authority but will not be allowed to engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority, to present the case in support of the charges before the Inquiring Authority in a legal practitioner or unless the disciplinary authority, so permits.

Contd... 3/-

Attention
to
Advocate J.P.

List of documents and witnesses proposed to be relied upon for proving these charges and allegations, are also enclosed.

By order and in the name
of the Governor of Assam,

(J. P. SAIKIA)

28/4/03

COMMISSIONER & SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT.

Attested
by
Advocate.

-22-

STATEMENT OF ALLEGATIONS

1. That a meeting of the State Level Advisory Board for Education was scheduled to be held on 17/1/2003 at 11.00 A.M. in the office chamber of the Hon'ble Minister, Labour & Employment, Assam at Janata Bhawan, Dispur. However, the time of the said meeting was subsequently deferred to 5 P.M. of the same day due to some unavoidable circumstances. Since the Secretary of the Department was not in a position to attend the said meeting at 5 P.M., he addressed a note on 17/1/2003 to the Joint Secretaries, of the Department Shri G.C. Sarma, ACS and Smti P. Gupta informing them about his availing Restricted Holiday on 17-1-2003 and casual leave on 18-1-2003 and by the same note he instructed both the officers to attend important office works during his absence and to inform Shri B.C. Sonowal, ACS, Deputy Secy. of the Deptt. to attend the said meeting. One of the Joint Secretaries Smti P. Gupta noted the instructions of the Secretary, on the same day. But the other Joint Secy. Shri G.C. Sarma neither noted the instructions of the Secretary nor endorsed it to Shri B.C. Sonowal, ACS, Deputy Secy. to the Deptt. on 17/11/2003. He kept the note of Secretary, with him and endorsed it to Shri B.C. Sonowal, ACS, Deputy Secretary of the Department, next day the 18/1/2003 i.e. one day after the meeting when there was no utility of endorsing/informing Shri B.C. Sonowal, ACS for attending the meeting.
2. That the meeting of the State Level Advisory Board for Education held in the office chamber of the Hon'ble Minister, Labour & Employment, Assam on 17/1/2003 at 5 P.M. was not attended by any of the officers of the Deptt. except the Dealing Assistant. Since the matter was of Services nature an enquiry was instituted to find out how such occurrence could be happened. The Secy. of the Deptt. requested the officers concerned to file their written statement/explanations for their non-attendance of such an important meeting. Other officers, barring Shri G.C. Sarma, ACS, Joint Secy. of the Deptt. had filed their written statement following the instructions of the Secy. of the Deptt. But Shri G.C. Sarma, ACS, Joint Secy. of the Deptt. did not respond to his instructions. The Secretary of the Deptt. made several attempts to obtain his written statement but could not due the absence of Shri G.C. Sarma, ACS, Joint Secretary of the Deptt. in office for few days till reporting the matter to the Enquiry officer on 17/3/2003.

By order and in the name
of the Governor of Assam,

J.P. SAIKIA 128/403

COMMISSIONER & SECY. TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPARTMENT.

*Amended
Advocate*

- 23 -
LIST OF DOCUMENTS AND WITNESSES

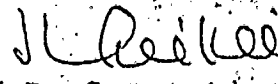
(A) Documents

1. Enquiry report dated 31-3-2002 of Shri J.P. Rajkhowa, IAS, Additional Chief Secretary to the Govt. of Assam.
2. Letter No. MLE.3/2002/212 Dated 18/1/2003.
3. Letter No. GLR(RC)89/91/pt-I/193 Dated 28/2/2003.
4. U.O. No. SEC/LE/1/2002/40 Dated 7-3-2003.
5. Letter dated 7/3/2003 of Smti P. Gupta, Joint Secy. to the Govt. of Assam, Labour & Employment Deptt.
6. Letter dated 7/3/2003 of Shri B.C. Sonowal, ACS, Deputy Secy. to the Govt. of Assam, Labour & Employment Deptt.
7. U.O. No. GLR(RC) 89/91/pt. I/197 Dated 15/2/2003.
8. U.O. No. SEC/LE/1/2002/44 Dated 17/3/2003
9. U.O. No. SEC/LE/1/2002/ Dated 16/1/2003.
10. Letter No. GLR(RC).89/91/pt-I/176 Dated 8/1/2003.
11. U/O No. GLR(RC)89/91/pt. I/177 Dated 9/1/2003
12. Secy., Labour & Employment Deptt's note dated 17/1/2003.
13. Secy., Labour & Employment Deptt's note to P.S. to Minister of State, Labour & Employment dated 17/1/2003

(B) Witnesses

1. Shri J.P. Rajkhowa, IAS, Additional Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6.
2. Shri Bhudev Basumatary, IAS, the then Secretary to the Govt. of Assam, Labour & Employment Deptt. presently Secy. to the Govt. of Assam, W.P.T. & B.C. Deptt., Dispur, Guwahati-6.
3. Shri P. Gupta, Joint Secretary to the Govt. of Assam, Labour & Employment Deptt., Dispur, Guwahati-6.
4. Shri B.C. Sonowal, ACS, Deputy Secy. to the Govt. of Assam, Labour & Employment Deptt., Dispur, Guwahati-6.

By order and in the name
of the Governor of Assam,


(J.P. SAIKIA)

COMMISSIONER & SECY. TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPARTMENT.

Advocate

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ANNEXURE - 4

GLR 240/2000/25

dated:28-8-2003

To

The Commissioner and Secretary to the Govt. of Assam
Personnel Deptt. (A) Dept.

Ref: Govt. Letter No.AAP75/2003/1 dated 28th April and
AAP75/2003/II/ dated 22nd August and my letter GLR 240/2000/22,
GLR 240/2000/23 dated 9.6.2003 and glr 240/2000/24 dated 21.8.03.

Sir,

With reference to the subject above, I beg to state the following in my self defence.

1. I have received the note regarding state level Advisory Board for Education '02 to be held on 17.1.2003 at 10.30 A.M. On 17.1.2003 where Sri B.C.Sonowal A.C.S. Dy. Secretary Labour and Employment to attend the meeting at Hon'ble Minister's chamber. I was only asked by the Secretary to see the routine works. on receipt of the note, I immediately called Sri Hari Tapi, Labour Investigator who is dealing with the file. The subject was not dealt by me as per work distribution list. Sri Hari Tapi took the note to Sri B.C.Sonowal, Dy. Secretary immediately on 17.1.2003 it self as per endorsing one. Mr. Gupta, Joint Secretary headed

Attested
Advocate

- 25 -

over the note to Sri Hari Tapi. Through over right, I had written the date as 18.1.2003 instead of 17.1.2003 which may kindly be excused. It is very clear in Hari Tapi's note that I had handed over the note of the Secretary to Sri Hari Tapi immediately on 17.1.2003 after endorsing to Sri B.C. Sonowal, Dy. Secretary using my inspection of documents, I did not find any u/o letter addressed to me by the Hon'ble Minister. Miss Pranati Bordoloi, the labour Investigators, Mrs. Gupta, Joint Secretary and my self were present in the office on 17.1.2003. Only Sri B.C. Sonowal, Dy. Secretary was allowed by the Secretary to attend the meeting. Through over sight and in business my endorsement date became 18.1.2003 instead of 17.1.2003 which may kindly be excused. If necessary, Miss Pranati Bordoloi, labour Investigator Officer, and Sri Hari Tanti, labour Investigators will give the evidence for this.

2. Charge No.2 is totally baseless. The then Secretary, labour and Employment has never asked me to submit written explanation in writing or verbally. There is no documentary evidence. The then secretary Labour and Employment said as per allegation that I was absent in the office for several days. It was totally false. I met him several times during the month of January 2003. He never asked me anything regarding the meeting which was not my subject. The files I signed will prove my presence in the office. The peon, attached to me in the office will prove it if it is necessary. So, this is totally false and baseless. The then Secretary, Labour and Employment never asked me to submit explanation in written or verbally. During my inspection of documents, I did not find any document asking to submit explanation by the then secretary, Labour and Employment.

*Attested
by
Asstt*

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- 26 -

Under the above circumstances, I beg to state that I
may be exempted from these two charges.

Yours faithfully

G.C.Sarma
Joint Secretary
Labour and Employment Deptt.
Dispur, Guwahati-6

Attended
for
Suman

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ANNEXURE - 5

NO.AAP.75/2003/17.

GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL (PERSONNEL : A)

ASSAM SECRETARIAT (CIVIL) DISPUR

GUWAHATI : 781006.

Dated Dispur, the 20th Dec./2003.

// ORDER //

Whereas, a departmental proceeding against Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Department was drawn up vide show cause notice No.AAP.75/2003/1 dated 28-4-2003 for negligence and dereliction of duties and act of insubordination ; and

Whereas, Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Department vide his letter No.GLR/2000/25 dated 28-8-2003 submitted written statement in defence wherein he denied the charges framed against him ; and

Whereas, after careful examination of the written statement in defence submitted by Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Department and materials on records, it has been decided to hold an enquiry into the charges against Shri Sarma by appointment of Shri P.K.Chowdhary, IAS, Commissioner & Secretary to the Govt. of Assam, Power Department as Inquiry Officer and Shri S.K.Roy, ACS, Commissioner, Guwahati Municipal Corporation as presenting officer.

Accordingly, the Governor of Assam in exercise of Powers conferred under sub-rule 4 of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 is pleased to appoint Shri P.K.Chowdhary, IAS, Commissioner & Secretary to the Govt. of Assam, Power Department as Inquiry Officer to hold an enquiry into the charges against Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Department and submit enquiry report early.

Contd.....2



- 2 -

The Governor of Assam, further in exercise of powers conferred under sub-rule 5 of the said rules, hereby appoints Shri S.K.Roy, ACS, Commissioner, Guwahati Municipal Corporation, as Presenting Officer, to present the case before the Inquiry Officer.

By order and in the name of
the Governor of Assam,

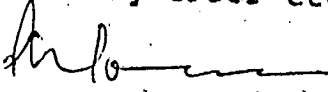
Sd/-D.K.Goswami,

Joint Secretary to the Govt. of Assam,
Personnel (A) Department.

Memo.No.AAP.75/2003/17-A Dtd. Dispur, the 20th Dec./2003.
Copy to :-

- 1) Shri P.K.Chowdhary, IAS, Commissioner & Secretary to the Govt. of Assam, Power Deptt. Dispur, Guwahati-6. Copies of show cause notice No.AAP.75/2003/1 dated 28-4-2003 and written statement in defence submitted under letter No.GLR/2000/25 dated 28-8-2003 are enclosed herewith. He is requested to conduct the enquiry and submit enquiry report at the earliest.
- 2) Shri S.K.Roy, ACS, Commissioner, Guwahati Municipal Corporation for information. Copies of Show cause notice and written statement in defence are enclosed. He is requested to collect all relevant records from this Department.
- 3) Shri Gakul Chandra Sarma, ACS, Joint Secretary to the Govt. of Assam, Labour & Employment Deptt. for information.

By order etc.,


Joint Secretary to the Govt. of Assam,
Personnel (A) Department.

- 29 -
No. GLR. 240/2000/48

ANNEXURE - 6
Dated Dispur, the 26th Oct' 2004

To : The Joint Secretary to the Govt. of Assam,
Department of Personnel (A),
Dispur, Guwahati - 6.

Sub :- In respect of Departmental proceeding initiated against
me vide personnel (A) Deptt's letters No. AAP/75/2003/17,
dt. 20th Dec, 2003.

Sir,

With reference to the subject above, I have the honour
to state you that the Departmental proceeding started against me
vide Deptt's Memo No. AAP/75/2003/17, dt. 20th Dec, 2003 has no
bearing to my nomination to IAS in 2002 batch. Because, nomination
to IAS was made for the year 2002 and the D.P. was initiated in
2003. Moreover, the said D.P. is not related to monetary matters
or any other thing. It is only regarding the date of a meeting so,
I request you kindly to consider my nomination in 2002 batch. The
present D.P. should not be a bar in my nomination to IAS in 2002
batch. Because, the present D.P. is initiated in the latter part
of 2003.

with regards.

Yours faithfully,

26-10-04
(G.C. Sarma),
Jt. Secretary to the Govt. of Assam,
Labour & Employment Deptt.,
Dispur, Guwahati-6.

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