

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 040/00012/2019

Date of Order: This, the 23rd day of January 2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER**

Shri Nirmal Ghose
Divisional Accountant
Barak Valley Division
Brahmaputra Board, Silchar, Assam.

...Applicant

By Advocates: Mr. H. Chanda, Mr. R. Dhar & Mr. S. Das

-Versus-

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Water Resources
River Development and Ganga
Rejuvenation, New Delhi.
2. The Vice Chairman, Brahmaputra Board
Basistha, Guwahati – 29.
3. The Secretary, Brahmaputra Board
Basistha, Guwahati – 29.
4. The Under Secretary, Brahmaputra Board
Basistha, Guwahati – 29.
5. The Chief Engineer-II, Brahmaputra Board
Basistha, Guwahati – 29.
6. The Deputy Financial Adviser
Brahmaputra Board, Basistha, Guwahati – 29.

7. The Superintending Engineer
Guwahati Circle, Brahmaputra Board
Basistha, Guwahati – 29.
8. The Superintending Engineer
Tinsukia Circle
Brahmaputra Board, Tinsukia.
9. The Executive Engineer
Barak Valley Division
Brahmaputra Board, Chirukandi, Silchar – 3.

...Respondents

O R D E R (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

By this O.A., applicant makes a prayer for a direction upon the respondents to immediately consider the 3rd stage of financial up-gradation under MACP scheme in the Pay Band PB-Rs. 9,300/- to Rs. 34,800/- plus Grade Pay Rs. 5,400/- (Pre-revised) (Level=9) as per Revised Pay Scale. .

2. Mr. R. Dhar, learned counsel appearing on behalf of the applicant submits that while the applicant was posted as Divisional Accountant in the Brahmaputra Board, Lakhimpur Division, the respondent No. 6 issued a Memo to the applicant vide Memo No. BB/ACS/AUD/346/2011/1 dated 15.03.2011 by

which it was informed that while checking the final Bill against the work "Raising and strengthening" of embankment of Brahmaputra Dyke from Tekelephuta to Kamalabari for Ch. 0.00 M to 13522 M (Ph-1) vide Vr. No. 242 dated 31.03.2010, it appears that advance payment of Rs. 8,00,000/- paid on 29.01.2010 vide Vr. 92 had not adjusted in the final bill while paying to Sri Madan Khanikar, Contractor. The respondent No. 8 vide letter dated 29.04.2011 informed the applicant and one incumbent Sri J.N. Choudhury, AEE of the Board that an amount of Rs. 8,00,000/- was paid as advance had not been recovered/adjusted at the time of payment of final bill on 31.03.2010 in respect of Sri Madan Kanikar. However, the contractor finally refunded the money on 31.03.2011.

3. In was further informed that due to non-recovery/non-adjustment of the advance amount at the time of final payment resulted in loss of Govt. Exchequer as the same was with the contractor for a period of one year till the date of refund. Accordingly, the applicant and the AEE was directed to deposit an amount of Rs. 92,000/- being 11.5% panel interest to the Executive Engineer, Lakhimpur Division, Brahmaputra Board, North Lakhimpur, within one month. Pursuant to the letter dated 29.04.2011, the applicant deposited an amount of

Rs. 46,000/- i.e. 50% of Rs. 92,000/-. However, after a lapse of 5 years or more, without going through the records, the Vice Chairman issued a Memorandum dated 03.02.2016 alleging that the applicant failed to realize the mistake by himself even after lapse of one year. According to the learned counsel, the lapse on the part of the applicant was detected by the internal Audit which proves that his also negligent as an Accountant. Accordingly, 10 (ten) days time was given to the applicant to reply to the said Memorandum where he replied. Thereafter, the Financial Advisor/Disciplinary and Appointing Authority vide order No. BB/Vig-5/2015/Pt-I-3 dated 14.09.2016 imposed a minor penalty in terms of Rule-11(i) of CCS (CCA) Rules 1965 and thereby imposed penalty of 'Censure'.

4. Against the said penalty order dated 14.09.2016, applicant filed an appeal on 28.09.2016 wherein he has brought to the notice that he cannot be vexed twice for an offence and subsequent minor penalty of awarding 'Censure' is nothing but double jeopardy.

5. Learned counsel for the applicant has drawn our attention to the impugned office order vide Memo No. BB/3382/10/37 dated 04.09.2018 by which it was notified that in

pursuance of DoPT O.M. No. 35034/3/2008-Estt(D) dated 19.05.2009 issued by respondent No. 4 and as per approval of the competent authority, the 3rd stage of financial up-gradation under MACP Scheme in the Pay Band of Rs. 9300-34800/- plus Grade Pay Rs. 5,400/- are hereby granted to the following Section Officer (Accounts) and Divisional Accountants of Brahmaputra Board. However, although the applicant was entitled, debarred from the benefits of the 3rd stage of financial up-gradation under MACP Scheme. Being aggrieved with the action of the respondent authorities, applicant submitted a representation before the respondent No. 3 on 20.09.2018 through proper channel which was duly forwarded by respondent No. 9 to the respondent No. 7. However, the said representation is still pending for adjudication.

6. Learned counsel fairly submits that for proper adjudication of the matter, let the pending representation dated 20.09.2018 be decided first by the respondent authority.

7. In view of the above, by accepting the prayer made by the learned counsel for the applicant, without going into the merit of the case and without issuing notice to the respondents,

in the interest of justice, we direct the respondents more particularly respondent No. 3 or 7 i.e. The Secretary or the Superintending Engineer, Guwahati Circle, Brahmaputra Board, Basistha, before whom representation made by the applicant is pending, to consider and dispose of the pending representation dated 20.09.2018 in accordance with law within a period of three months from the date of receipt copy of this order.

8. It is made clear that whatever order to be passed by the respondent No. 3 or 7 should be reasoned and speaking and be communicated to the applicant forthwith.

9. With the above directions, O.A. stands disposed of accordingly at the admission stage. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)