

GAHC010082562024



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

**Case No. : WP(C)/2211/2024**

AVATAR SINGH  
S/O- LATE PRITAM SINGH,  
R/O- ELITE RESIDENCY, ADARSHPUR, NEAR SARBA SIKSHA MISSION  
OFFICE,  
P.O- KAHILIPARA, GUWAHATI-19, KAMRUP(M), THE THEN  
SUPERINTENDING ENGINEER, PHE

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE ADDITIONAL CHIEF SECRETARY , TO THE GOVT. OF ASSAM,  
PUBLIC HEALTH ENGINEERING DEPARTMENT, DISPUR, GUWAHATI-06

2:THE ADDITIONAL CHIEF SECRETARY

TO THE GOVT. OF ASSAM  
PUBLIC HEALTH ENGINEERING DEPARTMENT  
DISPUR  
GUWAHATI-06

3:THE INQUIRY OFFICER  
THE ADDITIONAL CHIEF ENGINEER

TO THE GOVT. OF ASSAM  
PUBLIC HEALTH ENGINEERING DEPARTMENT

O/O THE CHIEF ENGINEER (PHE)  
ASSAM  
HENGRABARI  
GUWAHATI-36

4:THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS CHAIRMAN  
JAWAHAR NAGAR  
KHANAPARA  
GUWAHATI-2

For the Petitioner : Mr. D.N. Bhattacharyya, Adv.

For the Respondents: Mr. D. Gogoi, SC, PHE Deptt. Assam.  
Ms. P. Sarma, SC, APSC.

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing & Judgement : 27/02/2025.

**JUDGEMENT AND ORDER (ORAL)**

- 1.** Heard Mr. D.N. Bhattacharyya, learned counsel for the writ petitioner. I have also heard Mr. D. Gogoi, learned Standing Counsel, Public Health Engineering (PHE) Department, Assam, appearing for the respondent nos. 1, 2 & 3 and Ms. P. Sarma, learned Standing Counsel, APSC, appearing for the respondent no. 4.
- 2.** In the present writ petition, the order of penalty dated 14/12/2023, dismissing the petitioner from service with disqualification in future employment, purportedly issued under Rule 9(10) and 7 (vii) of the Assam Services (Discipline and Appeal) Rules, 1964 (*herein after referred to as **the Rules of 1964***) has been put under challenge on several grounds. However, the primary ground urged by the petitioner's counsel is that the order of penalty has been issued without following the prescribed procedure laid down in Rule 9 of the Rules of 1964 or after giving proper opportunity to the petitioner to defend his interest.
- 3.** It appears that the writ petitioner was posted as Executive Engineer, PHE Department, Nalbari Division in the year 2022 when, an enquiry was conducted by the Deputy Commissioner (*now District Commissioner*), Nalbari into the allegation of misappropriation of Government fund by the petitioner. On conclusion of such enquiry, conducted through the Superintending Engineer, PHE, Nalbari Circle, a report was submitted on 04/04/2022. Copy of the Enquiry Report dated 04/04/2022 was also forwarded to the

Government. Taking note of the report dated 04/04/2022, on 13/06/2022, the Commissioner and Secretary to the Government of Assam, PHE Department, Assam, had initiated Departmental Proceeding against the writ petitioner by issuing show cause notice, framing the following charge:-

*“(1) That while you were serving as Executive Engineer (PHE), O/o. the EE (PHE), Nalbari Division, it is alleged that major misappropriation of Govt. money under SBM-G under Nalbari District took place due to which objective of Swachh Bharat Mission (Gramin) has suffered which violates Rule 3 of Assam Civil Service (Conduct) Rules 1965. You are therefore charged with misappropriation of Govt. money.”*

**4.** The show cause notice dated 13/06/2022 was accompanied by the following statement of allegations :-

*“That while you were serving as Executive Engineer (PHE), O/o the EE (PHE), Nalbari Division, Nalbari, it is alleged that a major misappropriation of Govt. money under SBM-G under Nalbari District took place by making payment of 6 nos. of false bills for an amount of Rs. 34.20 lakh in two occasions on dtd. 05.02.2021 for an amount of Rs. 6,00,000.00 and on dtd 21/03/2021 for an amount of Rs. 28,20,000.00 in favour of Hames Society due to which objective of Swachh Bharat Mission (Gramin) has suffered which violates Rule 3 of Assam Civil Service (conduct) Rule 1965. You are therefore charged with misappropriation of Govt. money.”*

**5.** It is the case of the petitioner that he was not afforded any opportunity to present his case or to produce evidence in his defence. On the contrary, on 27/04/2022, the Deputy Commissioner, Nalbari, had furnished copy of the enquiry report dated 04/04/2022 to the Additional Chief Secretary to the Government of Assam, PHE Department, Assam, holding that the petitioner was guilty of misconduct of embezzlement of public money. Based on such report, the impugned order dated 14/12/2023 was issued, thereby, dismissing the petitioner from service, without holding any Disciplinary Proceeding as per law.

6. It is the specifically pleaded case of the petitioner that before the impugned order dated 14/12/2023 imposing the major penalty of dismissal from service was issued, no enquiry, within the meaning of Rule 9 of the Rules of 1964, was conducted nor was the petitioner given any opportunity of being heard in the matter. The learned counsel for the petitioner has also argued that even the charge brought against the petitioner was completely vague, thus, depriving the petitioner of a reasonable opportunity to respond to the charge. Under such circumstances, submits the petitioner's counsel, the impugned order of dismissal from service date 14/12/2023 is vitiated by complete arbitrariness and illegality and hence, the same deserves to be set aside by this Court.

7. Responding to the above arguments, Mr. D. Gogoi, learned counsel appearing for the PHE Department, Assam, submits on instruction that in so far as the allegation regarding non-compliance of provisions of Rule 9 of the Rules of 1964 and the failure to hold a proper departmental enquiry before dismissing the petitioner from service is concerned, such allegation cannot be denied by the respondents as it is a matter of fact that no such enquiry was held before issuing the order of penalty. However, submits to Mr. Gogoi, even if the order of major penalty of dismissal from service is interfered with by the Court, considering the nature of allegation brought against the petitioner, he cannot be exonerated of such serious allegation of embezzlement of public money on a technical ground. Therefore, the Department be granted liberty to proceed in the matter afresh by following the prescribed procedure as laid down in the Rules of 1964. In support of his above arguments, Mr. Gogoi has placed reliance on a decision of the Hon'ble Supreme Court rendered in the case of ***Union of India and others Vs. Kunishetty Satyanarayana*** reported in **(2006) 12 SCC 28** to submit that mere procedural lapses in conducting a departmental enquiry would not be a ground to exonerate the delinquent official unless the charges are found to be wholly unsubstantiated.

8. Responding to the arguments of the learned departmental counsel, Mr. Bhattacharyya, learned counsel for the petitioner, by relying upon two decisions of the Supreme Court rendered in the case of ***Surath Chandra Chakrabarty Vs. State of West Bengal*** reported in **1970 (3) SCC 548** as well as in the case of ***Transport Commissioner, Madras -5 Vs. A. Radha Krishna Moorthy*** reported in **(1975) 1 SCC 332** has argued

that unless the delinquent officer is made aware of the specific charge which is required to met and the statement of allegation furnishes the necessary particulars and details thereof, the Officer cannot be made to face a departmental enquiry. As such, submits Mr. Bhattacharyya, this is not a fit case where this Court would permit the authorities to conduct a fresh proceeding against the petitioner.

**9.** I have considered the arguments made at the Bar and have also gone through the materials available on record.

**10.** At the very outset, it deserves to be mentioned herein that since the petitioner is in service under the Government of Assam, hence, the provisions of Rules of 1964 would be applicable to him. Rule 7 of the Rules of 1964 specify the penalties that can be imposed on a Government servant. Rule 9 of the Rules of 1964 lays down the procedure for imposing penalties, which is reproduced herein below :-

***“9. Procedure for imposing penalties.***

*(1) Without prejudice to the provisions of the Public Servant; (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.*

*(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 allegation 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.*

*[At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained.]*

*(3) The Government servant shall, for the purpose of preparing his*

*defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto:*

*Provided that when a Government servant is permitted to inspect and take extracts from official records due case shall be taken against tampering removal or destruction of records.*

*(4) On receipt of the written statement of defence, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquiry into such of the charge as are not admitted or, if it considers it necessary so to do, appoint for the purpose a Board of inquiry or an Inquiring Officer.*

*(5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the Authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case so permits.*

*(6) The Inquiring Authority shall, in the course of the inquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant*

*shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person, and to adduce documentary and oral evidence in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing.*

*(7) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor.*

*(8) The record of the inquiry shall include-*

*(i) the charges framed against the Government servant and the statement of allegations furnished to him under sub-rule (2);*

*(ii) his written statement of defence, if any;*

*(iii) the oral evidence taken in the course of the inquiry;*

*(iv) the documentary evidence considered in the course of the inquiry;*

*(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and*

*(vi) a report setting out the findings on each charge and the reasons therefore.*

*(9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its finding on each charge.*

**(10) Major Penalties.** - *If the Disciplinary Authority having regard to its findings on the charges and on the basis of evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 7 should be imposed on the Government servant it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:*

*Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the Disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.]*

**(11) Minor Penalties.** - *If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clause (i) to (iii) of Rule 7 should be imposed, it shall, pass appropriate orders and in every case in which it is necessary to consult the Commission, shall do so, after consulting the Commission.*

**(12)(a)** *Notwithstanding anything contained in this rule, it shall not be necessary to follow the procedure laid down in the preceding sub-rules in cases where it appears to the authority competent to impose the penalty at the initial stage of the proceedings that the penalty of censure would be adequate, but if at any later stage it is proposed to impose any other penalty specified in Rule 7, the procedure laid down in the said rules shall be followed.*

*(b) No order imposing the penalty of censure shall however be passed, except after-*

*(i) the Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and*

*(ii) such representation, if any, is taken into consideration by the Disciplinary Authority.”*

**11.** It can be seen from the Rules that according to Rule 9(10), major penalty can be imposed upon a Government servant only if the Disciplinary Authority, having regard to the findings in the enquiry proceeding on the charges and on the basis of evidence adduced during the enquiry, is of the opinion that any of the penalties specified in the clauses (vi) & (vii) of the Rule 7 needs to be imposed upon the Government servant.

**12.** In the present case, as has been noted herein above, the Deputy Commissioner, Nalbari, had apparently initiated an enquiry against the petitioner, which was conducted by the Superintending Engineer. An enquiry report dated 04/04/2022 was thereafter, submitted which was forwarded to the higher authorities recording adverse findings on the conduct of the petitioner. There is nothing on record to suggest that the Enquiry Report dated 04/04/2022 was prepared after granting any opportunity to the writ petitioner to defend his interest. Although, a charge sheet (show cause notice) dated 13/06/2022 was served upon the petitioner containing the Article of Charge along with the Statement of the Allegation, yet, it appears that the proceeding initiated on the basis of the show cause notice was not taken forward by the Disciplinary Authority. On the contrary, merely acting on the enquiry report of the Superintending Engineer, the order of penalty dated 14/12/2023 was served upon the petitioner. Such a recourse was undoubtedly impermissible under the Rules of 1964.

**13.** It is to be noted herein that under the Rules of 1964, an order of major penalty cannot be imposed upon a Government servant without following the procedure prescribed under Rules 7 & 9 of the Rules of 1964. Moreover, as per the Rules of 1964, it is the

Disciplinary Authority, which can alone initiate a departmental proceeding against a Government servant and thereafter, impose penalty. There is no dispute at the Bar that the Deputy Commissioner, Nalbari was not the Appointing Authority of the petitioner, who was serving as an Executive Engineer in the PHE Nalbari Division at the relevant point of time. Therefore, the action initiated by the Deputy Commissioner, Nalbari, cannot be treated to be an action initiated within the meaning of Rule 9 of the Rules of 1964.

**14.** In so far as the show cause notice dated 13/06/2022 is concerned, it is no doubt correct that the said notice can be treated as a notice initiating departmental proceeding against the petitioner. However, this Court has noticed that before initiating such departmental proceeding, the petitioner was not given an opportunity to explain his conduct. The failure of the departmental authorities to give an opportunity to the petitioner to explain his conduct, in the considered opinion of this Court, indicates a pre-determined mindset of the Disciplinary Authority to come to a conclusion, even before holding a proper departmental enquiry on the charge of misconduct brought against the writ petitioner. Permitting such a recourse, in the opinion of this Court, would not only run counter to the scheme of Rule 9 of the Rules of 1964 but would also amount to extending complete unfair treatment to the petitioner.

**15.** There can be no doubt about the fact that the Disciplinary Authority would be wholly empowered under the law to initiate action and impose penalty on an erring official including Major Penalty, if he/she is found to be guilty of misconduct. However, such penalty can only be imposed by following the procedure prescribed under the Rules *lest* the same would be at the peril of being declared invalid by the Court of law.

**16.** For the reasons stated herein above, this Court is of the opinion that the impugned order of dismissal from service dated 14/12/2023 is vitiated by arbitrariness and illegality. The same is accordingly set aside. Consequently, the writ petitioner shall be reinstated back in service forthwith. However, having regard to the peculiar facts and circumstances of the case and the nature of allegation brought against the petitioner, this Court is of the opinion that the fact of the case do not justify exoneration of the petitioner on such technical grounds, without subjecting him to a proper enquiry proceeding. As such, the Department is granted liberty to initiate a fresh proceeding against the petitioner from the stage of issuing notice upon the petitioner to explain his conduct.

**17.** If such explanation to be furnished by the writ petitioner is found to be unsatisfactory, it will be open for the Disciplinary Authority to draw up Disciplinary Proceeding against him as per law. Since the petitioner is due for retirement from service with effect from February, 2026, it is made clear that whatever proceeding is to be initiated against the petitioner by the Disciplinary authority, the same shall be concluded within a period of 6 (six) months with effect from 01/03/2025, failing which, the petitioner would be entitled to seek appropriate relief for protection of his interest.

**18.** In the case of ***Surath Chandra Chakrabarty (supra)*** and ***Transport Commissioner, Madras-5 (supra)***, the issue was pertaining to vagueness of charge. However, since this Court has granted liberty to the Disciplinary Authority to initiate a fresh process by serving notice upon the petitioner to explain his conduct and if the same is found to be unsatisfactory, then only, departmental proceeding be initiated against him, this Court is of the opinion that the decisions relied upon by the learned counsel for the petitioner, would be of no help to him in the facts and circumstances of the present case.

**19.** Needless to say that subject to the outcome of the fresh proceeding, if any, the petitioner would be entitled to receive consequential service benefits.

The writ petition stands allowed to the extent indicated above.

There shall be no order as to costs.

**JUDGE**

**Comparing Assistant**