

GOVERNMENT OF ASSAM
PANCHAYAT & RURAL DEVELOPMENT DEPARTMENT
ASSAM SECRETARIAT (CIVIL), DISPUR ::GUWAHATI-781006

NO. PDB 380/2004/234

Dated Dispur, the 11th October, 2010

READ Appeal petition dtd. 31/5/2010 filed by Shri Nazrul Islam against the Govt. order imposing the penalty of "dismissal from service" upon him issued vide Memo No. PDB 380/2004/176-A dtd 21/4/2010 wherein he has brought out interalia, the following grounds for consideration and withdrawal of the penalty imposed upon him

1. The Charge No. 2 and the allegation made in Police case are same. There is no evidence to prove the allegation made in the Police case and accordingly the final report was submitted. The Disciplinary Authority failed to consider the above aspect and passed the impugned order which is bad in law.
2. The Disciplinary Authority has failed to supply a copy of the enquiry report to the appellant which vitiate the deptt proceedings.
3. The Disciplinary Authority ought to have considered the allegation brought in the charge No. 1 to be baseless as there is no evidence to prove the charge as the criminal case on the same allegation had been closed accepting the final report of the CJM, Dhubri.
4. That the appellant's requisition for rice does not mean his involvement in taking out the rice. The labourers were not present at the time of seizure of the food grains which does not mean that the appellant misappropriated the same or he had malafide intention for getting pecuniary advantage.
5. The records show that the food grains were duly released following prescribed guidelines and the labourers admitted that the food grains were released for labour payment.
6. That seizure of the truck beyond the Block boundary, absence of the appellant at godown at the time of inspection by the Executive Magistrate, Dhubri and recording of casual leave in the register can not construe that the appellant had malafide intention of getting pecuniary advantage.

Unless this factum of sale is proved beyond reasonable doubt how can it be concluded that there was every likelihood of malafide intention. The driver and handyman of the concerned truck and the labourers against whom the foodgrains were released were not

examined in the proceedings. The final report accepted by the CJM, Dhubri itself reveals that the appellant was not involved in any offence of misappropriation.

7. That the charge of "misappropriation" was not proved and therefore how the second part of the charge i.e. "malafide intention for getting pecuniary advantage" would be proved. Under the criminal jurisprudence no people can be punished for his malafide intention unless that intention acted upon constituting any offence.
8. That for the second charge an amount of ₹ 68,000/- only was released out of the estimated amount of ₹ 1,00,000/- for implementation of the scheme. By this amount 80% construction work was completed and a certificate was issued to that regard. It is therefore, not correct that the total amount was released for the construction work. In that case how completion of the work is expected. Therefore the question of misappropriation by the appellant does not arise. The Disciplinary Authority has misconstrued the fact.

Also read – Records of Disciplinary Proceedings drawn up vide show case Notice No. PDB 380/2004/82 dtd. 31/8/2005 against the Appellant Shri Nazrul Islam

ORDER

On examination of the appeal petition dtd. 31/5/2010 submitted by Shri Nazrul Islam and the materials on record, the grounds put forwarded by Shri Arun Kumar, IAS, Principal Secretary, P&RD, Assam, it would appear that in line with points 3,4,5,6 and 7 above, resulted in the Hon'ble CJM Court, Dhubri accepting the final report submitted by police. The points 1 & 8 relate to charge No. 2 which were proved during the enquiry beyond doubt. The final report accepted by the Hon'ble CJM reveals that the food grains in question relate to four schemes, namely – (1) Construction of protection bundh of Tipkai river by bamboo placiding from Jhatopara to Changbandhkhuti (2) Construction of road cum bundh from Tipkai river to Alokjhari village (3) Construction of bamboo palaciding (protection work) on Tipkai river irrigation dong to Paharghat and (4) Bamboo palaciding of sparks on Tipkai river from Sahrab Ali house to Alimuddin house. Thus the final report accepted by the Hon'ble CJM, Dhubri does not have any relation with the second charge. Further, the Hon'ble High Court Order referred to in the appeal petition granting the appellant pre-arrest bail can not be a mitigating factor on the

issue in as much as the Hon'ble High Court granted the bail after perusing the case diary only that too in the case of charge No. 1. Furthermore the appellant submitted a report on 14/8/2004 stating that the construction work of community Hall at Kharaghat Paulapara Mohendra L.P. School was completed. But during inspection by the Executive Engineer, DRDA, Dhubri it came to light that the construction work was half done inspite of the total estimated amount including the food grains were released.

The Point No. 2 above is not true as the appellant was provided with a copy of the enquiry report as appears from memo No. 11 of the Govt. order No. PDB 380/2004/116 dtd. 21/4/2010.

The ground brought out by Sri Nazrul Islam can not be accepted considering the facts mentioned above.

Therefore, the Governor of Assam is pleased to reject the appeal dated 31/5/2010 filed by Shri Nazrul Islam.

By order and in the name
of the Governor of Assam

Sd/-

Arun Kumar

Principal Secretary to the Govt. of Assam,
Panchayat & R.D. Department
Dated, the 11th Oct., 2010

Memo No. PDB 380/2004/234-A

Copy to :-

- 1) Shri Nazrul Islam (removed), S/o. Abdul Jalil, Vill : Kayakuchi Bazar, P.O. : Barpeta, Dist : Barpeta, Assam.
- 2) The Commissioner & Secretary to the Governor of Assam, Rajbhawan, Guwahati
- 3) The Commissioner, Panchayat & Rural Development, Assam, Panjabari, Juripar, Guwahati - 37
- 4) The Director, NIC. To place on site

Suppl. K
11-10-2010
TD (R.D.)

By order etc.,

Gm 11/10/10
Deputy Secretary to the Govt. of Assam,
Panchayat & Rural Dev. Department

ab/-