

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH).**

SHILLONG BENCH

W.P. (C) No. (SH) 52 of 2008

Dr Debabrata Roy,
Animal Husbandry & Veterinary Officer
Mahendraganj State Veterinary Dispensary
District-West Garo Hills (Meghalaya)

::: Petitioner

-Versus-

1. The State of Meghalaya,
Through the Commissioner & Secretary,
to the Govt. of Meghalaya,
Animal Husbandry & Veterinary Department
Meghalaya, Shillong.
2. The Officer on Special Duty to the Govt. of Meghalaya,
Animal Husbandry & Veterinary Department, Shillong.

::: Respondents

**BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI**

For the Petitioner	:	Mr M Chanda, Mr S Nath, Mr S Choudhury, Mr P Nongbri, Mr N Mozika, Advs
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For the Respondents	:	Mr. S. Sen, GA.
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Date of Hearing	:	21.03.2011
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Date of Judgment	:	21.03.2011
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JUDGMENT AND ORDER (ORAL)

The petitioner is aggrieved by the non-consideration of the adverse remark made by the respondents/authority in his ACR for the period from 01.01.2006 to 31.12.2006 and of the resultant denial of his promotion to the post of.

2. The facts of the case, which are relevant for disposal of this writ petition, are that he, while working as Junior Grade-II Animal Husbandry & Veterinary Officer, was posted on 21.09.2000 as Block Development Officer on deputation in the Selsella CD Block under the Deputy Commissioner, West Garo Hills, Tura in the Department of Community & Rural Development, Meghalaya. On 15.05.06, he was repatriated to his parent cadre and was posted as Junior Grade-II Animal Husbandry & Veterinary Officer at Mahendraganj State Veterinary Dispensary, West Garo Hills at the time of filing this writ petition. While working as Block Development Officer, Selsella CD Block on deputation basis, the Project Director of the District Rural Development Agency (DRDA) Tura had released some fund in the account of Selsella CD Block for construction of low cost houses in various villages under the said Block. The petitioner accordingly released the funds to the NGO as per the direction of the Deputy Commissioner, West Garo Hills District. However, on the direction of the Deputy Commissioner, West Garo Hills District, this fund was recovered by the petitioner from the concerned village organizations/NGOs in the presence of Block Officers and the fund was credited on 24.05.06 into the account of the Block Development Officer,

Selsella Development Block, West Garo Hills. Notwithstanding the recovery of funds, the Deputy Commissioner, West Garo Hills had lodged an FIR at Phulbari PS on 06.03.2007 for investigation into the alleged misappropriation of funds etc., for the period 20-9-2000 to 15-5-2006 which gave rise to GR Case No.48/2007 before the learned District Magistrate, Tura, and was still pending at the time of filing of this writ petition. A departmental enquiry was also launched side by side against him vide memorandum of charge sheet dated 19.03.2007 on identical set of facts, allegation and evidence of misappropriation of funds by him. When the criminal proceeding and disciplinary proceeding were not yet completed, the respondents authorities communicated to him the adverse entries made in his ACR that “there are some complaints with regard to his functioning as BDO, specifying in IAY Programme” for the period already indicated earlier. In the meantime, a Departmental Promotion Committee was held in the month of August, 2007 for consideration of promotion to the next higher grade i.e. Grade-II (Sr) Animal Husbandry & Veterinary Officer. On the recommendation of the Departmental Promotion Committee at least two juniors of the petitioner were promoted vide order dated 05.09.07, while his case was neither considered nor recommended by the Departmental Promotion Committee. It is however stated at the Bar today that his case was kept in a sealed cover. The representation submitted by him for consideration of his promotion as his juniors had superseded him did not yield any tangible result. The contention

of the petitioner is that as per law, merely on the basis of certain complaint, no adverse remark can be recorded in the ACR of any Govt. employee until and unless the said complaints are substantiated either in the disciplinary or criminal proceeding and that the entries of adverse remark in the ACR in the absence of any finding against him in the disciplinary as well as the criminal proceeding launched against him and the consequent denial of promotion to him are illegal. These are the sum and substance of the case of the petitioner as projected in this writ petition.

3. The writ petition is contested by the State respondents by filing their affidavit-in-opposition. The basic contention of the State respondents in their affidavit-in-opposition is that as the Head of the Block, the responsibility and fairness of administration is cast upon the petitioner for verifying all the relevant documents/particulars before recommending the name of the beneficiaries of the scheme sponsored by the Ministry of Rural Development, Govt. of India. The answering respondents flatly deny that any direction was issued by the Project Director, Tura to release the fund in favour of the Gambil Ading Women's Organization, a non-Governmental organization. Both the Departmental Enquiry as well as the Criminal Proceeding were initiated against the petitioner as the Deputy Commissioner, West Garo Hills found him guilty of lapses and negligence on the conduct of his official duties regarding the implementation of the scheme. The finding of the enquiry against him was reported to the Chief Secretary,

Govt. of Meghalaya vide letter dated 25.05.06 and also recovery for recovery of ` 49.94 lakhs from the Gambil Ading Women's Organization which fraudulently had withdrawn ` 31.78 lakhs from the account of the Block Development Officer, Selsella during his tenure as Block Development Officer. For all these reasons, the Departmental Enquiry was launched against him as there was a prima facie case against him. According to the respondents, the petitioner had submitted false reports on the utilization of funds for the release of the 2nd installment. In so far as the adverse remark made in the ACR of the petitioner is concerned, the contention of the State respondents is that the impugned adverse remark was based on solid ground and the Government had communicated the same to him as per the established rules. His representation was impartially examined but as the irregularities committed by him have a bearing on his integrity, there was nothing wrong in launching the disciplinary and criminal proceeding against him hand in hand. The Departmental Promotion Committee was held on 30.07.07 for consideration of promotion of the Officers to the next higher grade i.e. Grade-II (Sr), and the name of the petitioner was found into the zone of consideration. However, taking into account the serious adverse entry recorded in his ACR pertaining to the mismanagement in the implementation of the Government Scheme such as IAY, etc. and on the direction of this Court in PIL No.63 of 2006 (Shri. Sailang R Marak Vs. State of Meghalaya) with regard to the allegation of embezzlement of public funds, more particularly in Resubelpara, C & RD,

Chockpot C & RD and Sellsella Block in which he was Block Development Officer, Sellsella Block and the fact that the NGO had refunded the amount fraudulently withdrawn from the Offices of the Block Development Office including the amount fraudulently withdrawn from the Office of the petitioner, the Departmental Promotion Committee have kept the case of the petitioner in a sealed cover in the custody of the competent authority. These are the main contention of the State respondents and the remaining paragraphs of the affidavit are mostly a repetition of the earlier paragraphs, which need not be referred to.

4. The learned counsel for the petitioner submits that the adverse remark made against the petitioner in his ACR were done before the departmental enquiry and the criminal proceeding were initiated against him. According to the learned counsel, adverse entry should be based on established fact and not on mere suspicion as has been illegally done in this case. He also brings to the notice of this Court, which is not disputed at the Bar that both the departmental enquiry and the criminal proceeding have ended in exonerating him from the charges and submits that on the basis of this admitted position, I am of the view that the writ petition has merit. Even before exoneration of the petitioner in the departmental enquiry as well as the criminal proceeding, the State respondents ought to have accepted the representation of the petitioner for expunction of the impugned adverse entry as the entry had been made by the Reporting Officer and accepted by the Accepting authorities

without proper verification or before completion of the departmental enquiry and the criminal proceeding. The well-established practice and procedure is that no employee should be adversely affected by prejudicial report recorded without fullest consideration, and remarks like "Doubtful character", "complaint received about taking illegal gratification:", are not permissible as such entries shall have to be based on established facts and not on mere suspicion. The action of the State respondents in refusing to expunge the impugned adverse entry, on the facts and circumstances, cannot, therefore, be sustained in law. The consequential denial of promotion to the post of Animal Husbandry and Veterinary Officer, Grade-II (Sr.) on the basis of such illegal action on the part of the respondent authorities is equally illegal. That apart, as the petitioner has now been exonerated of the charges both in the departmental enquiry as well as the criminal proceeding, he is now, even though belatedly but better late than never, entitled to consideration of his promotion after opening the sealed cover.

5. Under the circumstances, this writ petition is allowed with the following directions:-

1. The impugned letters No. VET(E) 231/2005/43 dated 15.05.2007 and No.VET (E) 231/2005/46, dated 23.08.2007 are hereby quashed.

2. The respondents authorities are accordingly directed to constitute a review Departmental Promotion Committee to re-consider the promotion of the petitioner to post of Animal Husbandry and Veterinary Officer, Grade-II (Sr.) by

opening the sealed cover and promote him to that post, if he is found entitled in accordance with law, from the date when his juniors were promoted with consequential benefits.

3. The entire exercise shall be carried out by the respondent authorities within a period of two months from the date of receipt of this judgment.

A copy of this Judgment will be furnished to the learned State counsel for communication to the respondents.

JUDGE

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