

GAHC010203382022



2025:GAU-AS:11412

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

**Case No. : WP(C)/6731/2022**

SUMIT DEY  
S/O- TUSHAR KANTI DEY ,  
PERMANENT RESIDENT OF HOUSE NO-7, BILPURA COLONY NEAR TATA  
TOWER,  
VFJ JABALPUR, MADHYA PRADESH,-482009

PRESENTLY RESIDING AT LEPETKATA,  
P.O AND P.S- DIBRUGARH,  
DIST- DIBRUGARH, ASSAM, 786004

VERSUS

UNION OF INDIA AND 5 ORS  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF OIL AND  
NATURAL GAS, NEW DELHI-110001

2:BRAHMAPUTRA CRACKER AND POLYMER LIMITED  
A PUBLIC SECTOR UNDERTAKING OF THE GOVT. OF INDIA UNDER THE  
MINISTRY OF PETROLEUM AND NATURAL GAS HAVING ITS REGISTERED  
OFFICE AT 1ST FLOOR  
HOUSE NO-6  
BHUBAN ROAD  
UZANBAZAR  
GUWAHATI  
ASSAM  
781001

3:THE MANAGING DIRECTOR  
BRAHMAPUTRA CRACKER AND POLYMER LIMITED

1ST FLOOR  
HOUSE NO-6

BHUBAN ROAD  
UZANBAZAR  
GUWAHATI  
ASSAM  
781001

4:THE DIRECTOR (FINANCE) AND REVIEWING AUTHORITY  
BRAHMAPUTRA CRACKER AND POLYMER LIMITED  
ADMINISTRATIVE BUILDING

P.O. LEPETKATA-786006  
DIST. DIBRUGARH  
ASSAM.

5:THE CHIEF GENERAL MANAGER  
BRAHMAPUTRA CRACKER AND POLYMER LIMITED  
ADMINISTRATIVE BUILDING

P.O. LEPETKATA-786006  
DIST. DIBRUGARH  
ASSAM.

6:THE DEPUTY GENERAL MANAGER  
HUMAN RESOURCES DEPARTMENT

BRAHMAPUTRA CRACKER AND POLYMER LIMITED  
ADMINISTRATIVE BUILDING

P.O. LEPETKATA-786006  
DIST. DIBRUGARH  
ASSAM

**Advocate for the Petitioner** : MR. P J SAIKIA, SR. ADV, MS S MOCHAHARI,MR. S DUTTA,MR S DUTTA,MR SISHIR DUTTA,MR K J SAIKIA,MS M NIROLA

**Advocate for the Respondent** : ASSTT.S.G.I., MR. S S ROY (r-1),MR A K BORO (r-2 to 6),MR. S MITRA (r-2 to 6)

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**

**JUDGMENT**

**Date : 27-08-2025**

Heard Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. S. Mitra, learned counsel for respondent Nos. 2 to 6.

**2.** The instant writ petition filed under Article 226 of the Constitution of India, is for setting aside the impugned Memorandum No. BCPL/DF/2022-23/1053 dated 14.06.2022 issued by respondent No. 4 informing the petitioner that the review authority had decided to review the findings of the Disciplinary authority and the impugned order No. BCPL/DF/2022-23/RA/1063 dated 01.09.2022, imposing the minor penalty of "censure" upon the petitioner in violation of Rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013.

**3.** The case of the petitioner is that the Brahmaputra Cracker and Polymer Limited (herein referred to as BCPL)/respondents, had issued an advertisement dated 15.11.2023, inviting applications for various posts including the post of Senior Officer, Fire & Safety (E-2). One of the essential qualifications for the candidates is to have 1 year post qualification of executive experience (including experience as GET/ET/MT). The petitioner having the requisite qualification and experience for the post of Senior Officer, Fire & Safety, applied for the post vide application dated 28.11.2013 and submitted his educational qualification certificates, experience certificates and other testimonials. The petitioner being found suitable was offered appointment vide letter dated 18.06.2014 on probation for 1 (one) year, to which the petitioner submitted an attestation form dated 26.07.2014 at the time of joining. On 18.02.2017, the petitioner submitted a representation for confirmation of his service. Thereafter, on 20.08.2018, the petitioner was served a copy of Memorandum issued by respondent No. 5, initiating disciplinary proceeding against him on the allegations of providing false information regarding work experience certificate submitted by the petitioner at the time of joining in the said post of Senior Officer, Fire & Safety, BCPL and thereby, alleged violation of rule 4(i), 4(iii) and thereby committed misconduct under rule 5(xii), 5(xxiii) and rule 5(xxx) of BCPL Employees (Conduct, Discipline and Appeal) Rules, 2013. The petitioner in response

submitted his written statement dated 05.09.2018 denying all the allegations and charges leveled against him. The enquiry officer thereafter, on conclusion of the enquiry submitted the Enquiry report dated 10.12.2019 before the disciplinary authority which was forwarded to the petitioner. The petitioner submitted his final representation on 02.01.2020, requesting the disciplinary authority to exonerate him as the Article of Charges leveled against him were not proved. The disciplinary authority/respondent No. 5 vide order dated 13.01.2020 found that the charges against the petitioner were not proved and accordingly, exonerated the petitioner from all the allegations leveled against him. The petitioner had also filed a writ petition WP (C) No.1749/2021 for the confirmation of his services. Subsequently, the services of the petitioner was confirmed on 13.10.2023 during the pendency of the writ petition.

However, the petitioner was served a copy of the impugned Memorandum dated 14.06.2022, informing the petitioner that the reviewing authority had decided to review the matter of appointment of the petitioner by invoking rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013 and asked the petitioner to submit his written statement within 15 days of receipt of the said memorandum. Accordingly, on 29.06.2022 the petitioner submitted his written statement against the memorandum dated 14.06.2022 denying all the allegations leveled against him. Thereafter, a copy of the impugned order No. BCPL/DF/2022-23/RA/106 dated 01.09.2022 was received by the petitioner, wherein, it was stated that the review authority, in exercise of rule 28 and rule 29 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013 imposed minor penalty of "censure" on the petitioner. Aggrieved by the orders dated 14.06.2022 and 01.09.2022, the instant writ petition has been filed.

**4.** Mr. S. Dutta, learned counsel for the petitioner submitted that the entire action of the respondent authority imposing the penalty vide order dated 01.09.2022 upon the petitioner, by way of reviewing the appointment of the petitioner is without jurisdiction and the same is liable to be set aside and quashed. The learned counsel submitted that the respondent authorities had invoked rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013, by disagreeing with the 'Final order' dated 13.01.2020, passed by the disciplinary authority/respondent No. 3, whereas rule 39 provides that the power of review can only be exercised within 6 (six) months of the 'final order'. However, the respondent No. 4 has exercised its power of review after a lapse of almost 2½ years, which is in violation of the aforesaid rules. The learned counsel submitted that since the order was passed at a belated stage, after a lapse of almost 2½ years, the impugned order dated 01.09.2022 issued by respondent No. 4 imposing minor penalty of 'censure' is liable to be set aside and quashed. The learned counsel also submitted that although rule 41 of the aforesaid Rules provides to condone the delay of the time limit, however, no sufficient reason or cause, is shown by the concerned authority to allow the review of the 'final order' passed by the disciplinary authority after a lapse of almost 2½ years as mandated under the said rule 41.

**5.** The learned counsel for the petitioner further submitted that the charge against the petitioner is that, in the attestation form given by the petitioner at the time of joining, he submitted the work experience certificate with M/s Cummins India Ltd. was from 04.07.2011 to 07.05.2013 however, on verification from M/s Cummins India Ltd, it was found that the petitioner had worked from 04.07.2011 to 05.11.2012 and that there were discrepancies in the certificates issued by them and the ones filed by the petitioner. The petitioner had however explained that he had also stated that his period of executive experience (work

experience) was from 04.07.2011 to 05.11.2012 in his application form, which is an experience of more than 1 year. However, since the original certificates filed by the petitioner was misplaced, the petitioner has been alleged of producing false experience certificate showing his executive experience from 04.07.2011 to 07.05.2013. The learned counsel submitted that it was clear from the original certificates submitted by him, that he already had the requisite work experience of 1 year from 04.07.2011 to 05.11.2012 and therefore, there was no reason for him to tamper with his experience certificate or submit a false certificate, increasing the date of his work experience by stating that it was from 04.07.2011 to 07.05.2013. The learned counsel further submitted that the respondent No. 3 is at fault in misplacing the original certificates of the petitioner and that the petitioner has the Photostat copy of his original certificates, showing his work experience from 04.07.2011 to 05.11.2012

**6.** The learned counsel further submitted that the disciplinary authority found that the charges against the petitioner was not proved since the original certificates were not found and had exonerated him from all charges vide the 'final order' dated 13.01.2020. He submitted that on the perusal of the findings of the reviewing authority, it is clear that there was no evidence against the petitioner, wherein, the reviewing authority had rejected the 'final order' of the disciplinary authority without any basis or any evidence. The learned counsel has relied on the judgment of the Apex Court in ***State of Karnataka v. N. Gangaraj***, reported in ***(2020) 3 SCC 423***, wherein it was held that *courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record.*

**7.** Mr. S. Mitra, learned counsel for the respondent Nos. 2 to 6, on the other hand submitted that it has already been decided by the Apex court in a catena of judgments that the scope of the court for judicial review in cases filed against a disciplinary proceedings is very limited. He submitted that this court is not to look into the merits of the case, but, is to look only into whether there is any procedural lapse committed by the respondents during the disciplinary proceedings against the petitioner and is confined to look only into the decision making process.

**8.** The learned counsel submitted that the review authority vide its order dated 01.09.2022, found that false information was submitted by the petitioner regarding his period of experience and therefore, committed 'misconduct' as per rule 5 (xii) of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013 and therefore, in exercise of rule 28 & 29 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013 had imposed the minor penalty of "censure" upon the petitioner and since there was no procedural lapses on the part of the respondent authorities, there was no scope for the court to interfere with the order dated 01.09.2022. The learned counsel also submitted that it was also discovered that the petitioner had committed fraud by using forged seals in the attestation forms submitted, which had cast grave doubts on his integrity and the same was also sent for verification to the concerned authorities.

In support of his submission that this court had a limited role to play in view of departmental proceedings, the learned counsel has relied on the judgment of the Apex Court in ***Pravin Kumar Vs. Union of India & Ors.***, reported in **(2020) 9 SCC 471** (para 25, 30, 31, 33 & 34 ) and **State Bank of India vs. A.G.D Reddy** in Civil Appeal No.11196 of 2011,

2023 INSC 766.

**9.** The learned counsel for the respondents further submitted that the delay of 2½ years in reviewing the 'final order' dated 13.01.2020, has been explained, which is due to the Covid pandemic. The learned counsel submitted that in view of Covid-19 pandemic situation, the Hon'ble Apex Court in **Suo Moto Writ Petition (Civil) No. 3/2020** had directed the time period from 15.03.2020 to 28.02.2022 would not be taken into account for the purpose of qualification in the period of limitation. He submitted that in the instant case, the disciplinary proceedings was concluded on 13.01.2020 and subsequent to which the period from 30.03.2020 to 15.12.2021 not being taken into account for the purpose of limitation, accordingly, the decision of the review was taken within 62 days which is well within the prescribed limitation period of 6 (six) months, prescribed under rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013.

**10.** The learned counsel for the respondents further submitted that though rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013, provided that the review proceedings is to be completed within 6 (six) months, however, rule 41 of the BCPL Employees (Conduct, Discipline and Appeal) Rules, 2013 also provides for condonation of the delay. Accordingly, the competent authority, who is the Director (Finance), as per schedule I-B of the rules, had condoned the delay which is shown in the letter dated 15.12.2021, annexed in the counter-affidavit.

**11.** The learned counsel for the petitioner in rebuttal submitted that even during the pandemic period, the office of the respondents was functional and therefore, cannot take the plea of delay due to Covid-19 pandemic.



**12.** The learned counsel further prayed that this case may be delinked from WP(C) 5393/2024, which has been tagged along with the instant writ petition, to which Mr. S. Mitra learned counsel for the respondent is also in agreement.

**13.** Accordingly, on the submissions of both the parties, the said WP(C) 5393/2024 stands delinked from the instant case.

**14.** Having considered the submissions made by the learned counsels for both the parties, this court finds that from the projections made, the points for consideration that emerges are ;

i) whether the reviewing authority had erred in reviewing the 'final order' of the disciplinary authority, dated 13.01.2020, after a lapse of 2 years 6 months, while rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013, provided that the review proceedings is to be completed within 6 (six) months.

ii) whether the decision of the reviewing authority rejecting the 'final order' of the disciplinary authority which exonerated the petitioner was without any basis or evidence and is thus liable to be set aside.

**15.** This court finds that the 'final order' was passed on 13.01.2020, which can be said to be during the Covid-19 pandemic. To address the challenges posed by the pandemic in computing the period of limitation, it is seen the Hon'ble Apex court in **Suo Moto Writ Petition (Civil) No. 3/2020** had held that the time period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Thus, when the disciplinary

proceedings was concluded on 13.01.2020 in the instant case, this court finds that the decision of the Apex court cited above is aptly applicable in computing the period of limitation of 6 (six) months, prescribed under rule 39 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013, even though the office of the respondents was then functional. Furthermore, it is seen that rule 41 of the BCPL Employees (Conduct, Discipline and Appeal) Rules, 2013 also provides for condonation of the delay, wherein, the Director (Finance) being the competent authority, as per schedule I-B of the rules, had condoned the delay which is shown in the letter dated 15.12.2021, wherein reasons for allowing the same have been highlighted.

**16.** For the aforesaid reasons, this court finds that the impugned order dated 14.06.2022, issued by respondent No. 4 informing the petitioner that the review authority had decided to review the findings of the disciplinary authority and the subsequent order No. dated 01.09.2022, imposing the minor penalty of "censure" upon the petitioner cannot be held to be barred by the period of limitation under rule 39 of the BCPL Employees Rules, 2013.

**17.** This court finds that the Apex court in a catena of judgments have held that the courts are not to act as an appellate court and reassess the evidence led in departmental enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries.

The Apex court in ***State of Karnataka v. N. Gangaraj, (supra)*** had observed as follows:-

*“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] and Bank of India v. Degala I [High Court of Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”*

**18.** The Apex court in ***Pravin Kumar v. Union of India (supra)*** had also observed that :

*“28. It is thus well settled that the constitutional courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.”*

**19.** Likewise, in ***State Bank of India vs. A.G.D Reddy (Supra)*** a writ petition was initially filed challenging the order of the disciplinary authorities and the appellate authority, the petitioner moved the writ petition, which resulted in the learned Single Judge and the Division Bench allowing the writ petition. Aggrieved, the appellants had approached the Apex

court wherein, the orders of the learned Single Judge and that of the Division Bench were set aside.

The Apex court had observed as herein under :

*“39. The law is well-settled that if in a disciplinary proceeding, the order of penalty can be imposed on the charges proved and the punishment imposed is lawfully sustainable on those charges, it is not for the Court to consider whether those grounds alone would have weighed with the authority in imposing the punishment. No doubt, on the facts of the present case, on some aspects of the charge, the proof may have been found wanting. However, since the law laid down by this Court is that unless punishment imposed is only co-relatable to any of those charges found not proved, the penalty cannot be set aside. In this case, the punishment can be sustained even if the charges held not proved are severed.”*

**20.** In the backdrop of the above cited cases of the Hon’ble Apex court, the impugned order dated 01.09.2022, imposing the minor penalty of “censure” upon the petitioner is examined, to see whether the findings in issuing the impugned order was not based on any evidence and was clearly perverse.

It is seen that the main charge against the petitioner was the discrepancy found in the attestation form filed by the petitioner, wherein he submitted the work experience certificate with M/s Cummins India Ltd. was from 04.07.2011 to 07.05.2013, however, on verification from M/s Cummins India Ltd, it was found that the petitioner had worked from 04.07.2011 to 05.11.2012. Though the petitioner had stated that he had also initially mentioned that his work experience with M/s Cummins India Ltd. was from 04.07.2011 to 05.11.2012, however, on the basis of the documents filed, the petitioner was held to give false information, which was found to be a violation of rule 4(i), 4(iii) and thereby committed misconduct under rule 5(xii), 5(xxiii) and rule 5(xxx) of BCPL Employees (Conduct, Discipline and Appeal) Rules,

2013. The petitioner had given her detailed statement of defence and the enquiry officer found that in the event of the original documents filed by the petitioner reported to be missing, the petitioner was given the benefit of doubt and found the articles charged against her not proved. The disciplinary authority had agreed with the findings of the enquiry officer and exonerated the petitioner from all the charges leveled against him.

**21.** On a perusal of the findings of the reviewing officer, it is seen that the reviewing officer has considered the whole aspect in a detailed manner by referring to the enquiry report, defense statement of the petitioner and the findings of the disciplinary authority and had found that the petitioner had repeatedly changed his statement in respect of the certificate which showed his work experience with M/s Cummins India Ltd. from 04.07.2011 to 07.05.2013, which was found to be fake on verification. The reviewing officer found the petitioner to be inconsistent in his statement and explanations given by him and thus came to the conclusion that the petitioner had submitted false information regarding his work experience with M/s Cummins India Ltd and accordingly imposed the minor penalty of "Censure" upon the petitioner.

**22.** That this stage, this court finds it appropriate to refrain itself from delving deeper into the analysis of the findings of the reviewing authority, but find it suffice to note that the reviewing authority had based its findings on the evidence adduced by the enquiry officer, defense statements of the petitioner and the findings of the disciplinary authority.

Thus, on finding that there are no procedural errors, and that the findings of the review authority was based on the recorded evidence, this court finds no grounds to interfere with findings as recorded by the reviewing authority and the subsequent order dated

01.09.2022, imposing the minor penalty of 'censure' upon the petitioner in exercise of rule 28 and rule 29 of the BCPL Employees (Conduct, Discipline & Appeal) Rules, 2013.

**23.** Accordingly, WP(C) No. 6731/2022 stands dismissed and disposed of.

No Cost.

**JUDGE**

**Comparing Assistant**