

GAHC010315312019



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

Case No. : WP(C)/9445/2019

MACHUM AHMED LASKAR
S/O- ASKAR ALI LASKAR, R/O- VILL- DAKSHIN MOHANPUR PT-I, P.O.
GOBINDANAGAR, P.S. SONAI, DIST.- CACHAR, ASSAM, PIN- 788003

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME DEPTT.,
DISPUR, GHY-06

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-07

3:THE DY. INSPECTOR GENERAL OF POLICE (SR)
SILCHAR
ASSAM- 788001
DIST.- CACHAR

4:THE DY. INSPECTOR GENERAL OF POLICE (TAP)
ASSAM
ULUBARI
GHY-07

5:THE ASSTT. INSPECTOR GENERAL OF POLICE (AP)
(TAP)
ASSAM
ULUBARI
GHY-07

6:THE DY. INSPECTOR GENERAL OF POLICE (A)
ASSAM
ULUBARI

GHY-07

7:THE COMMANDANT
15TH A.P. (IR) BN.
ERALIGOOL
KARIMGANJ
PIN- 788723
DIST.- KARIMGANJ
ASSAM

8:STANDING MEDICAL BOARD
SILCHAR MEDICAL COLLEGE AND HOSPITAL
REP. BY ITS CHAIRMAN
SILCHAR
ASSAM
PIN- 78800

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri R. Mazumdar, Advocate.

Advocate for the respondents : Shri R. Dhar, State Counsel

Date of hearing : 30.07.2024

Date of judgment : 30.07.2024

An order dated 12.05.2014 passed in a disciplinary proceeding by which the petitioner was removed from service is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India. The grounds of challenge is both on the merits of the charges as well as the procedure adopted

in the disciplinary proceeding.

2. Before going to the issue which has arisen for determination, it would be convenient if the facts of the case are narrated in brief.

3. The petitioner was appointed as a Constable in the 16th Assam Police (IR) Battalion w.e.f. 05.07.2009. The petitioner was transferred and was last posted in the district of Karimganj. On the allegation of unauthorised absence / over stay of leave, a disciplinary proceeding was initiated against him. It is the specific case of the petitioner that certain medical certificates which were relied upon in the proceeding were sent for verification and on such verification, no manipulation was detected. However, the opinion of the Medical Board was relied upon by which it was opined that the ailment noted was not sufficient for unauthorised absence or over stay in leave.

4. It is the case of the petitioner that the proceeding was not brought to a logical conclusion and yet he was not allowed to join his services. The petitioner had accordingly filed WP(C) 5282/2015 for a prayer for completion of D.P. 09/2013 which was also followed by filing of Contempt Case No. 3/2018. However, during the pendency of the contempt case, the impugned order of the removal of service dated 12.05.2014 was produced. Accordingly, the present application has been filed challenging the same.

5. I have heard Shri R. Mazumdar, the learned counsel for the petitioner. I have also heard Shri R. Dhar, the learned State Counsel who has also filed the affidavit-in-opposition through the respondent no. 7.

6. Shri Mazumdar, the learned counsel for the petitioner has submitted that firstly, the allegations were not very grave in nature and the petitioner had *bona fide* reasons for not being able to rejoin his services after expiry of the leave

period. It is also submitted that at no point of time the petitioner was declared as a deserter and he on his own volition had gone to rejoin his services which was declined. He has highlighted the aspect that in the disciplinary proceeding, reliance has been taken on the opinion of the Medical Board without the materials being furnished to him by which the petitioner had suffered grave prejudice in safeguarding his interest.

7. The learned counsel has also submitted that notwithstanding his grounds of challenge on the merits of the charge and the procedure adopted in the enquiry, there is a gross irregularity as well as prejudice caused by the action of the disciplinary authority while issuing the second show cause notice.

8. By referring to the second show cause notice dated 06.05.2014, the learned counsel has submitted that while the report of the enquiry was forwarded to the petitioner to have his views, the disciplinary authority had already come to a finding of agreement with the views of the Enquiry Officer. He submits that in fact by the said notice, the disciplinary authority has also reached a tentative finding to impose the penalty of removal from service. It is submitted that while there is no requirement to seek the views of a delinquent on the nature of the penalties which is proposed to be imposed, the requirement to give the delinquent an opportunity to represent against the report of the Enquiry Officer is mandatory in nature.

9. In this connection, the learned counsel has referred to the following cases:

(i) ***Union of India and Ors. vs. Mohd. Ramzan Khan*** reported in **(1991) 1 SCC 588**

(ii) ***Managing Director, ECIL Ltd. & Ors. vs. B. Karunakar and Ors.*** reported in **(1993) 4 SCC 727**

(iii) Babul Das vs. State of Assam & Ors. reported in **2004 (2) GLT 259.**

(iv) Babul Hussain vs. The State of Assam & Ors. [Judgment dated 29.09.2023 passed in WP(C)/1136/2013]

10. It is submitted that the furnishing of the copy of the enquiry report is necessary to ensure that adequate safeguard is given to a delinquent facing a disciplinary proceeding.

11. *Per contra*, Shri Dhar, the learned State Counsel has submitted that the petitioner was a member of a disciplined force and over stay of leave is a serious offence. By justifying the penalty imposed, the learned State Counsel has submitted that even during the pendency of the proceeding, the petitioner was again absent and thereby he can be deemed to be habitual absentee. It is submitted that the police force cannot afford to have a member who is not disciplined and is not present in the duties and such absence was without any authority of law.

12. The rival submissions have duly considered.

13. The grounds of challenge, as indicated above are mainly on two counts, firstly, on the merits of the charges and the procedure adopted in the enquiry. The second ground is the procedure adopted by the disciplinary authority after completion of the enquiry. As regards the 1st ground which involves the merits of the charges, the role to be played by a Court in exercise of powers under Article 226 of the Constitution of India while examining disciplinary proceeding is a secondary role and the duty of this Court is only to oversee whether the proceeding was held in consonance with the principles of natural justice and whether proper safeguard was given to the delinquent to defend himself,

14. This Court on the second ground of challenge has noticed that while the

enquiry report was forwarded vide the second show cause notice dated 06.05.2014, the disciplinary authority had reached a conclusion that he agrees with the findings of the Enquiry Officer and held the charges to be proved. The response was sought for only on the proposed penalty which was contemplated as removal from service.

15. The requirement of seeking a response on the proposed penalty is not a mandatory requirement after the 42nd amendment of the Constitution of India. However, such requirement is mandatory so far as the aspect of seeking the response of a delinquent on the findings by an Enquiry Officer before the disciplinary authority takes a call on such findings. It is incumbent upon the disciplinary authority that before he comes to a finding, he is required to take into consideration the response, if any, by the delinquent on the findings which are against the delinquent in the enquiry.

16. The safeguards given to a Government Servant facing a Disciplinary Proceeding is given under Article 311 of the Constitution of India. The prime objective of the said Article is to provide adequate and reasonable safeguard to a delinquent facing an enquiry. It may be mentioned that prior to the 42nd amendment of the Constitution of India, there was a requirement to notify the delinquent on the proposed penalty, which however has been done away with. However, what is required is that in the enquiry, all reasonable safeguards are to be afforded to the delinquent officer and on completion of the same, a copy of the said Enquiry Report is required to be forwarded to the delinquent by the Disciplinary Authority before concurring with the findings so that the delinquent is given an opportunity to persuade the disciplinary authority to take a view in favour of the delinquent based on the materials on record and not to concur with the findings of guilt arrived at by the Enquiry Officer. The requirement to

give an opportunity to cross examine the witnesses produced by the management and to adduce evidence as defence and also to have the assistance of a defence representative are some of the mandatory inbuilt mechanism to ensure that the process is done fairly and transparently.

17. The Hon'ble Supreme Court in the case of ***Ramzan Khan*** (supra) had laid down that furnishing of the Enquiry Report is mandatory so as to give the delinquent an opportunity to persuade the disciplinary authority not to accept the said report. In the subsequent case of ***Managing Director, ECIL Ltd.*** (supra) it has been clarified that the decision of ***Ramzan Khan*** (supra) would be prospective in nature. In subsequent cases, it has also been clarified that depending on the particular facts and circumstances, the delinquent would also have to plead suffering of prejudice due to non-supply of the Enquiry Report

18. With regard to the second show cause notice dated 06.05.2014 by which the disciplinary authority had asked for the views of the petitioner on the Enquiry Report, it appears that the said authority had stated that the findings of the Enquiry Officer were already concurred with. The aforesaid action on the part of the Disciplinary Authority is not in consonance with the requirement of affording a reasonable opportunity to a delinquent to safeguard himself as such opportunity is required to be given at all stages of a Disciplinary Proceeding.

19. In the cases of ***Babulal*** (supra) and ***Babul Hussain*** (supra), this Court has laid down that if the Disciplinary Authority, before taking the views of the delinquent on the Enquiry Report concurs with such findings, it is apparent that he has acted with a predetermined mind which is not in consonance with the requirement in law.

20. Be that as it may, this Court is of the view that even if the enquiry is held

to be done in accordance with law, acting on the same by the Disciplinary Authority before giving a reasonable opportunity to the petitioner to submit his reply to the said report is not in accordance with law and accordingly the same is interfered with and the impugned order of removal from service dated 12.05.2014 is set aside.

21. Resultantly, the petitioner is directed to be reinstated in service. However, taking into consideration the nature of charges, the respondent authorities, if so advised, may proceed from the stage of issuing the second show cause notice against the report of the Enquiry Officer and thereafter to take a decision strictly in accordance with law. In that event, interest of justice would require that the role of the disciplinary authority should be played by any other person competent to discharge the said role, other than the officer who was the disciplinary authority at that relevant point of time.

22. It is, further observed that on the reinstatement, as directed above, the petitioner would not be entitled to any back wages, but would be entitled only for the notional benefits, including seniority and fitment in the appropriate scale of pay.

23. Writ petition accordingly stands allowed in terms of the directions made above.

24. No order as to cost.

JUDGE

Comparing Assistant