



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

Case No. : WP(C) 218/2021

1:Manik Chandra Dutta
S/O Late Dambaru Dutta, aged about 62 years, permanent resident of Lakhimpuria
village, Simen Chapori, Dhemaji Distt. Assam.
Phone no. 9871800723

VERSUS

1:The State of AP and 4 Others
represented through the Secretary (Home), Govt. of A.P, Itanagar.

2:the Secretary
(Home)
Govt. of A.P Itanagar.

3:The Director General of Police
Police Headquarters
Itanagar
A.P

4:The Assistant Inspector General of Police (E)
Police Headquarters
Itanagar
A.P

5:The Superintendent of Police
Daporijo
Upper Subansiri Distt. A.

Advocate for the Petitioner : Mr. S. Roy&
Mr. G. Singh.

Advocate for the Respondent : Mr. S.Tapin,
Sr. Govt. Advocate.

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN**

Date of Hearing : 16.06.2023.

Date of Judgment : 26.06.2023.

JUDGEMENT & ORDER (CAV)

Heard Mr. S. Roy, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Sr. Govt. Advocate, Arunachal Pradesh appearing for the State/respondents.

2. This Writ Proceeding, under Article 226 of the Constitution of India, is being instituted by the petitioner - Sri Manik Chandra Dutta, praying for following relief(s):-

- (1) To issue direction to the respondent authorities, to pay the salary of the petitioner, with all cumulative benefits, w.e.f. 22.10.1997 to 30.06.2017, on which date he had superannuated.
- (2) To issue direction to the respondent authorities to process and pay the pensionary and other gratuity benefits, due to him.
- (3) To pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

3. The background facts, leading to filing of the present writ petition is adumbrated herein below :-

“The petitioner herein joined in the Arunachal Pradesh Police, in the rank of constable, on 02.11.1978. After his joining, the petitioner served at various places of the State of Arunachal Pradesh, like Kalaktang in West Kameng District, Roing of Lower Dibang

Valley District, Changlang and Miao in Changlang District, etc. While he was serving in Miao, the petitioner was transferred to Diyun in Changlang District, in the month of March, 1990. And thereafter, while he was serving in Diyun, he was transferred to Daporijo, vide order No.PHQ/ESTT-A/145/93, dated 13.04.1993.

However, the petitioner could not join at Daporijo immediately, due to advance stage of pregnancy of his wife and also due his medical condition. Thereafter, the petitioner joined at Daporijo on 29.10.1997, however his joining report was not accepted by the Superintendent of Police, Upper Subansiri District, Daporijo and instead the petitioner was referred to the Assistant Inspector General of Police, Arunachal Pradesh for further necessary action.

Accordingly, on reporting at the Police Headquarter at Itanagar, the petitioner was informed that a Departmental Proceeding vide order dated 28.06.1994, has been initiated against the petitioner for remaining absent from duty and joining of the petitioner would be decided after completion of the Departmental Proceeding. Thereafter, in the month of December, 1998, the Enquiry Officer recorded the statement of the petitioner and other witnesses. However, no further order was passed and the Departmental Proceeding was kept pending for around 23 years, without any valid reason. Thereafter, consequent to the sending of an E-mail, by the petitioner's daughter, dated 25.01.2017 to the Director General of Police, Arunachal Pradesh, the Departmental Proceeding was re-opened and vide the order dated 22.05.2017, the Superintendent of Police, Daporijo imposed the punishment of withholding of two service increments with cumulative effect, treating the period of unauthorized absence, w.e.f. 18.05.1993 to 21.10.1997, as extra-ordinary leave. And financial benefit, whatsoever he was entitled to, has not been paid to the him for the unauthorized period on the principle of "No Duty No Pay" basis. However, the petitioner has neither been paid his salary w.e.f. 22.10.1997 till his superannuation on 30.06.2017, nor the petitioner's pensionary benefits, due to him has been paid till date."

4. Being aggrieved, the petitioner has approached this Court, by filing the present Writ Petition, praying for relief(s) as aforesaid.

5. The respondent Nos.3, 4 and 5 have jointly filed an affidavit-in-opposition denying the assertions made in the petition. It is stated that the petitioner was serving at Diyun Police Station in the year 1993. Thereafter, pursuant to an order No.PHQ/ESTT-A/145/CONST/93, he was transferred from Diyun Police Station to Daporijo Police Station and the Superintendent of Police, Changlang, vide order No.CAPP/TP-8/90, dated 10.05.1993, had released him from his establishment, for enabling him to join at his new place of posting. Thereafter, the petitioner did not report at Daporijo Police Station in Upper Subansiri District, citing health reason. Thereafter, a Departmental Enquiry was being initiated against him and Memorandum of Article of Charges was furnished to him on 28.06.1994. It is also stated that the petitioner had never submitted any representation to the DIG (P) on 03.11.1998, regarding refusal to accept his joining report by the Superintendent of Police, Daporijo. Then after completion of enquiry, the Enquiry Officer has submitted his report on 30.06.1999, and the same was forwarded to the Superintendent of Police, Changlang District, Changlang instead of Superintendent of Police, Daporijo in Upper Subansiri District. And because of his unauthorized absence from duty w.e.f. 18.05.1993 to 20.10.1997, without any intimation or prior permission from the authority concerned, he was not paid any salary for the aforesaid period and that he could have approached the DIG (P) and the higher authorities, if his joining report was not accepted by the Superintendent of Police, Daporijo and AIGP, PHQ, Itanagar and since he was engaged himself in employment outside his service/duty, he is not entitled to any salary for that period and he never submitted any representation on 25.06.2007, to the DGP, PHQ Itanagar, seeking regularization of his period of absence and appointment of his daughter in Police Department.

It is also stated that thereafter, another representation submitted by the petitioner, and then the Superintendent of Police, Daporijo has examined the record, and thereafter, vide order No.DRJ/ESTT/DE-24/16-17/3072, dated 22.05.2017, the Superintendent of Police, Daporijo imposed the penalty of withholding of two increments with cumulative effect for the unauthorized period, w.e.f. 18.05.1993 to 21.10.1997, treating the same as extra-ordinary leave and as he himself engaged in other employment, he is not entitled to get salary for the period 20.10.1997 till 26.04.2017. It is also stated that the petitioner was given all opportunities to defend himself pursuant to the Rule 14 of the CCS (CC&A) Rules, 1965 and he was also allowed to engage defence assistant besides an opportunity to cross-examine the

witnesses and therefore, it is contended to dismiss the petition.

6. Mr. S. Roy, the learned counsel for the petitioner, submits that the petitioner was serving at Diyun Police Station, from which he was transferred to Daporijo Police Station in the year 1993 and thereafter, on account of advance stage of pregnancy of his wife as well as on account of his mental illness, he could not report for joining. Mr. Roy also submits that after fourteen days, he went to Daporijo Police Station, but the Superintendent of Police, Daporijo did not allow him to join and after fourteen days, he left the said place and thereafter, a departmental enquiry was initiated against him. It is the further submission of Mr. Roy that no show cause notice was served to him and no opportunity was given to him to defend himself and the Enquiry Officer has only recorded his statement and thereafter, on 25.06.2007 he had submitted one representation to the Director General of Police, enquiring about the status of the departmental proceeding. But, he found no response and thereafter, on 25.01.2017, the daughter of the petitioner had sent one E-mail to the Director General of Police again, seeking status of the departmental enquiry and requesting him to close the same. In response to her E-mail, the petitioner has reported at Daporijo on 27.04.2017, as asked for, and there he retired on 30.06.2017, on superannuation. But he has never been paid any salary for the aforesaid period.

7. Referring to two case laws in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & another**, reported in **AIR 1999 SC 1416** and **Prem Nath Bali vs. Registrar, High Court of Delhi & another**, in Civil Appeal No.958/2010, Mr. S. Roy, the learned counsel for the petitioner submits that it is in the interest of the employer and employee both to conclude the departmental enquiry proceeding within six months as an outer limit and where it is not possible for the employer to conclude the same due to certain unavoidable reason it should be concluded within such extended period, but not more than a year. Mr. Roy further submits that the petitioner is entitled to subsistence allowance for the period of 18.05.1993 to 21.10.1997, as he had to be deemed under suspension for the said period and also he is entitled to full salary for the rest of the period. Therefore, Mr. Roy has contended to allow the petition.

8. Per contra, Mr. S. Tapin, learned Sr. Govt. Advocate, for the state respondents submits that the question of providing subsistence allowance does not arise as the petitioner was never suspended from service and as such, the petitioner is not entitled to subsistence allowance, in view of Fundamental Rule 52 and 53. Further, Mr. Tapin submits that such a prayer was not made in the writ petition also and without such pleading, the petitioner cannot claim such a relief from this Court. However, Mr. Tapin submits that there was some lapses on the part of the State respondents, in drawing up the Departmental Enquiry against the petitioner, but there is no substance in the averments made by the petitioner that he was not allowed to join at Daporijo by the Superintendent of Police, Upper Subansiri District at Daporijo and he never complained about the same to the Director General of Police of the State and he slept over for more than 23 years and the charges in the Departmental Proceeding has been proved and therefore, the Department has imposed punishment order for the same. Mr. Tapin further submits that the petitioner has never challenged the legality of Departmental Enquiry and the consequent punishment imposed upon him. Mr. Tapin further submits that now the Department has initiated the process for providing the other service benefits to the petitioner and the same will be completed soon.

9. In reply to the submission of Mr. Tapin, learned Sr. Govt. Advocate, the learned counsel for the petitioner, Mr. S. Roy, submits that the daughter of the petitioner has received one letter dated 02.03.2022, where some documents have been sought for by the Deputy Superintendent of Police, Upper Subansiri District at Daporijo to settle the pensionary benefits. But Mr. Roy pointed out that in respect of drawing up of the Departmental Enquiry, the petitioner has not received any Memorandum of Article of Charges and there is no evidence of acknowledging the same by the petitioner.

10. In view of the assertions made in the pleadings of the parties and also in view of the submission of learned Advocates of both sides, the issues, that have arisen for consideration of this court, to be formulated as under:-

- (i) Whether the petitioner is entitled to salary for the period from 12.10.1997 to 30.06.2017, the date of his superannuation ?

- (ii) Whether the petitioner is entitled to subsistence allowance for the period from 21.10.1997 to 30.06.2017, and whether the said period can be treated as deemed suspension in absence of any such order ?
- (iii) Whether the petitioner is entitled to any other service benefit(s)?

11. Having heard the submissions of learned Advocates of both the sides, I have carefully gone through the documents placed on record and also perused the case laws referred by Mr. S. Roy, learned counsel for the petitioner.

12. It is not in dispute that on 02.03.2022, the daughter of the petitioner had received one letter from the Deputy Superintendent of Police, Upper Subansiri District at Daporijo, requiring her to furnish some documents. A copy of the said letter was produced before the court at the time of hearing by learned counsel for the petitioner. Perusal of the said letter reveals that the Deputy Superintendent of Police, Upper Subansiri District at Daporijo, had asked the daughter of the petitioner to produce following documents:-

- (1) List of family details with Dt. Of Birth Certificates/colour p/port size photos & adhaar cards.
- (2) NOC for no govt. land encroachment in r/o retired incumbent.
- (3) Loan clearance certificate in r/o retired incumbent.

13. It is well settled by a catena of decision of Hon'ble Supreme Court that gratuity and pensions are not bounties. An employee earn these benefits by dint of his long continuous, faithful and unblemish service. It is, thus, a hard earned benefits which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law as provision of Article 300-A of the Constitution of India and CCS Pension Rule. **[See State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Ors, reported in (2013) 12 SCC 210].**

14. There is no quarrel at the Bar about the proposition of law laid down in the case law discussed above. Mr. S. Tapin, learned Sr. Govt. Advocate also fairly submitted that the process for payment of pensionary benefits to the petitioner has already been initiated and it

will be completed soon. In view of above, and also and also in view of the ratio laid down in case of **Jitendra Kumar Srivastava**(supra) this Court is of the view that the petitioner is entitled to pensionary and other service benefits which he is legally entitled to. Issue No. III, that has been formulated above, is accordingly answered in affirmative.

15. Now, coming to the Issue No.I, I find that the petitioner was transferred from Diyun Police Station to Daporijo Police Station in the year 1993, vide order No.PHQ/ESTT-A/145/CONST/93, dated 13.04.1993 and he has been released from Diyun P.S. to enable him to join at Daporijo on 15.05.1993. But, immediately after his transfer, he could not report at his new place of posting, due to advance stage of pregnancy of his wife and also due to his medical condition and thereafter, he had reported at Daporijo on 29.10.1997, but, his joining report was not accepted by the then the Superintendent of Police, Daporijo and instead, the petitioner was referred to the Assistant Inspector General of Police, Arunachal Pradesh for further necessary action and when he reported at the Police Headquarter, Itanagar, then he was informed that a Departmental Enquiry has been initiated against him for his unauthorized absence from duty, vide order dated 28.06.1994, and he was asked to wait till completion of the Departmental Proceeding.

16. Thereafter, in the month of December, 1998, the Enquiry Officer recorded his statement and of other witnesses and the matter remains pending for around 23 years. Thereafter, the daughter of the petitioner had sent one E-mail to the Director General of Police, Arunachal Pradesh to close the proceeding against the petitioner. Then the enquiry was reopened and on completion of the same, vide the order dated 22.05.2017, the Superintendent of Police, Daporijo imposed the punishment of withholding of two service increments with cumulative effect and the period of unauthorized absence w.e.f. 18.05.1993 to 21.10.1997, was treated as extra-ordinary leave and no financial benefit whatsoever is extended to him on the basis of the principle "No Duty, No Pay". But, indisputably, no order has been passed about the entitlement of salary w.e.f. 21.10.1997, till his assuming the office at Daporijo on 27.04.2017. And also indisputably, no salary was paid to him for the period after his assuming the office on 27.04.2017, till his superannuation on 30.06.2017. Mr. Tapin fairly submits that the period, for which the petitioner has rendered service, the pay and other benefits, will be

extended to him for the said period.

17. That, as regard the payment of salary to the petitioner for the period of 21.10.1997, till assuming office by the petitioner at Daporijo on 27.04.2017, no decision is appears to be taken by the respondent authority. It appears that the petitioner had reported for duty at Daporijo on 21.10.1997, with one medical certificate. But, the Superintendent of Police has, Daporijo has did not accept his joining report, instead forwarded his joining report with and medical certificate to the Asstt. Inspector General of Police vide his letter dated 03.11.1997, No. DRJ/ESTT-33/1997. It also appears that the petitioner then approached the authority at Police Head Quarter and then he was told that decision of acceptance of his joining report will be considered only on completion of the departmental enquiry. Then awaiting for a week at Itanagar, the petitioner left for Diyun. Thereafter also on 03.11.1998 the petitioner had filed another representation to Deputy Inspector General of Police. But, the same also failed to evoke any response from the authority. Then after elapse of 8 years the petitioner had submitted another representation to the Director General of Police (DGP), requesting his reinstatement and service benefits and to appoint his daughter in the department to mitigate his sufferings. The same also failed to evoke any response. Then on 25.01.2017, the daughter of the petitioner had submitted another representation to the DGP requesting to close the departmental enquiry, that was pending for long 23 years. Thereafter, vide his letter dated 19.04.2017 the Director General of Police had asked the daughter of the petitioner to inform the petitioner to join his duty at Daporijo and also directed the Superintendent of Police, Daporijo to take decision on the departmental enquiry. The petitioner then reported for duty at Daporijo on 27.04.2017 and served there until his superannuation on 30.06.2017.

18. It is the stand of the respondent that salary for the period the petitioner had rendered will be paid and process has been already initiated. But, the respondents have taken a stand that no salary will be paid for the period starting from 21.10.1997, till 27.04.2017 as during the aforesaid period he was engaged himself in other employment. But, unfortunately, the respondent authority could not produce any proof of such employment undertaken by the petitioner for the aforesaid period and that he kept mum for a period of 20 years. Thus, the

ground for denial of salary to the petitioner for the period indicated above is flimsy and unjustified and unacceptable. Instead of acknowledging its fault, the respondents now trying to cover up their lapses under the carpet.

19. It is not in dispute that the respondent authorities took long 23 years to take the Departmental Enquiry initiated against the petitioner to its logical conclusion. There is no documentary proof to indicate issuance of show cause notice to the petitioner and furnishing the Memorandum of Article of Charges and the reply submitted by him. There is also no proof of examination of witnesses in presence of the petitioner and about providing opportunity of cross-examining the witnesses to the petitioner and furnishing copy of the Enquiry Report to the petitioner before imposing the punishment. These are some fundamental flaws in conducting the Departmental Enquiry against the petitioner. And this court has no slightest doubt in its mind about impairment of the right of the petitioner by these flaws. But, unfortunately, these have not put to challenged in this petition. Therefore, this court is not inclined to go into the said questions.

20. It is to be mentioned here that in paragraph No.11 of the Affidavit-in-Opposition the respondent authorities have admitted in no uncertain terms that on 21.10.1997 the petitioner joined at SP office, Daporijo. However, his joining report along with the medical certificate and other record were sent to Police head Quarter, with regard to acceptance of the joining report. But, as discussed in the foregoing paragraph the same failed to evoke any response. Thereafter also, the petitioner had filed several representations to conclude his departmental enquiry. But the same also failed to evoke any response. And ultimately in response to an e-mail sent by the daughter of the petitioner the Director General of Police vide his letter dated 19.04.2017, asked the daughter of the petitioner to inform the petitioner to join his duty at Daporijo and also directed the Superintendent of Police, Daporijo to take decision on the departmental enquiry. The petitioner then reported for duty at Daporijo on 27.04.2017. Thus, there appears to be no fault or lapse, whatsoever, on the part of the petitioner. It took long 23 years in completion of the departmental enquiry and the respondent authorities are on fault for the same. In the case of **Capt. M. Paul Anthony** (supra) and **PremNath Bali** (supra), Hon'ble Supreme Court has emphasized

early completion of departmental enquiry, by stating that - it is in the interest of the employer and employee both to conclude the departmental enquiry proceeding within six months as an outer limit and where it is not possible for the employer to conclude the same due to certain unavoidable reason it should be concluded within such extended period, but not more than a year.

21. This being the position, for no fault of the petitioner, his salary can be denied for the period of 21.10.1997, till 27.04.2017. Else, it would amount to penalizing him for lapse on the part of the respondent authorities. It is, however, a fact that the petitioner did not work for the said period, as he was not allowed to work though he had made several requests to that effect, by sending several representations. Under the facts and circumstances discussed herein above, this court is of the view that end of justice would be meted out if the respondent authorities are directed to pay 50 % of the salary and allowances to the petitioner for the period covering 21.10.1997, till 27.04.2017. In arriving at such a conclusion, this court derived authority from a decision of Hon'ble Supreme Court in **Raj Bahadur Sharma (Dead) vs. Union of India**, reported in **(1998) 9 SCC 458**. The issue No. II, as formulated herein above is answered accordingly.

22. Now, coming to the issue of entitlement of subsistence allowances for the period of 21.10.1997 to 30.06.2017, I find that though the learned counsel for the petitioner submits at the time of hearing that though the petitioner was not suspended from his service by issuing any order, yet for the period 18.05.1993 to 21.10.1997, he was not allowed to work and the petitioner has to be treated to be deemed on suspension and for the said period, he is entitled to subsistence allowance, which is his fundamental right, yet, such a plea is not there in his pleading. Mr. S. Tapin, learned Sr. Govt. Advocate has vehemently opposed in entertaining such plea without there being any pleadings. There appears to be substance in submission of Mr. Tapin. Indisputably, the petitioner was not suspended from service. The question of subsistence allowance would arise as and when an employee is suspended from service. Though there is a concept of deemed suspension in the service jurisprudence, yet, the same concept, to the considered opinion of this court, cannot be made applicable in the case of the petitioner.

23. I have carefully gone through the case laws **Capt. M. Paul Anthony** (supra) and **Prem Nath Bali(supra)**, so referred by the learned counsel for the petitioner in support of his submission of subsistence allowance. And I find the ratios, so laid down therein, has to be treated to be restricted to its own facts and the same never advance the case of the petitioner any more.

24. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this court, the respondent authorities are directed to:-

- (i) pay 50 % of the salary and allowances to the petitioner for the period covering 21.10.1997, till 27.04.2017.
- (ii) pay pensionary and other service benefits, which the petitioner is legally entitled to, treating the period of suspension as well as the period covering 21.10.1997, till 27.04.2017, on duty.

25. And this exercise has to be carried out within a period of three months from today. Failure to carry out the exercise within the period stipulated, will entail 8% interest upon the total sum, the petitioner is entitled to, as his salary and other pensionary benefits. The respondent No.2, the Secretary (Home), Government of Arunachal Pradesh is further directed to carry out an enquiry as regard the delay 23 years in completion of departmental enquiry against the present petitioner and to fix responsibility upon the erring officers and to take remedial measures, while the out limit of completion of such departmental enquiry has been fixed by various judicial pronouncements, by the Apex court, as one year.

26. In terms of above, this writ petition stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant