

GAHC040006632022



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

Case No. : WP(C) 205/2022

1: Tai Tache
S/o Tai Nikam,
Chimpu Village, PO RK Mission, Itanagar, PO RK Mission, PS Itanagar, Papumpare
District, Arunachal Pradesh.
Presently serving as Lance Naik, 1st AAP Bn, BHQ, Chimpu, Itanagar Arunachal
Pradesh.

VERSUS

1: THE STATE OF AP and 3 Ors.
Through the Secretary, Home Department, Govt. of Arunachal Pradesh, Itanagar.

2: The Inspector General of Police
Govt. of Arunachal Pradesh
PHQ
Chimpu
Itanagar.

3: The Deputy Inspector General of Police
Govt. of Arunachal Pradesh
PHQ
Chimpu
Itanagar.

4: The Commandant
1st AAPBn
BHQ
Chimpu
Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE SONGKHUPCHUNG SERTO**

ORDER

Date : 02.02.2023

Heard Mr. L. Perme, learned counsel appearing for the petitioner. Also heard Mr. Y. Riram, learned Government Advocate appearing for the State respondents.

2. In the year 2015, an enquiry was conducted against the petitioner on the charge that he had made a claim over a plot of land, which is under the possession of 1st AAPBn since the year 1989, and also that he had taken money from the highway construction agency for the trees which were grown therein. In the said enquiry, the Enquiry Officer found that the allegation- so far as taking of money for the standing trees in the land in question is concerned, there were no materials proving the same. Therefore, the competent authority, i.e. the Commandant of the 1st AAPBn, vide his order dated 18.11.2016, closed

the enquiry by accepting the report of the Enquiry Officer, but directing that a separate or another enquiry be conducted against the petitioner for the charge that he is occupying a plot of land already allotted to the police department. Following the direction given, a Departmental Enquiry was conducted on the charge mentioned above and at the end of the enquiry, the petitioner was held guilty of having occupied a plot of land allotted to the police department and was awarded a punishment of withholding 2 (two) increments. The said order was put to challenge by the petitioner by filing a writ petition, being WP(C)/100/2019. The matter was heard on 06.04.2022 and this Court found that the order, holding the petitioner guilty of the charge and awarding the punishment, as stated above, is illegal and not maintainable in law and, therefore, interfered with the same and at the same time remanded the matter to the Disciplinary Authority to consider afresh whether the act of unauthorised occupation of a plot of government land amounts to misconduct and indiscipline in service law and to pass a reasoned order depending on the conclusion that may be arrived at. In pursuance of the order of this Court, the matter was once again taken up by the Disciplinary Authority and at the end of the whole process, the impugned order No. BHQ/BN-1/DE-111/TT/2016/797, dated 26.05.2022, was passed by the Commandant of 1st AAPBn holding that the petitioner is guilty of having committed misconduct under Section 6 Rule 2 (II) of CCS (Conduct) Rules for reason of having occupied a plot of land already allotted to the 1st AAPBn and therefore, he is awarded the penalty of withholding of 1 (one) increment with cumulative effect w.e.f. 14.02.2019.

3. Being aggrieved by the said impugned order, the petitioner has come once again before this Court challenging the same on the ground that there is no

provision such as Section 6 Rule 2 (II) of CCS (Conduct) Rules and therefore, the punishment meted out to the petitioner is illegal.

4. Mr. L. Perme, learned counsel for the petitioner, submitted that in the entire CCS (Conduct) Rules, there is no provision such as Section 6 Rule 2 (II) of CCS (Conduct) Rules and therefore, the petitioner cannot be held guilty under that supposed law and as such, he cannot be awarded punishment under that non-existing law. He also submitted that there is a clear admission in the affidavit of the State respondents that such provision of law is not in existence and, therefore, the impugned order is illegal and is liable to be quashed and set aside.

5. Mr. Y. Riram, learned Government Advocate, submitted that though it is an admitted fact that the provision of law, mentioned in the impugned order is a non-existent law, but the fact remains that the petitioner has been under occupation of a plot of land allotted to the 1st AAPBn, therefore, the sentence or punishment given in the impugned order should stand.

6. I have considered the submissions of both the learned counsels.

A person cannot be held guilty of having committed an offence which does not exist. It is admitted fact that Section 6 Rule 2 (II) of CCS (Conduct) Rules does not exist. For that reason, the charge against the accused cannot stand. Since the charge has no basis, the punishment or sentence given against the petitioner also cannot stand because it would have no basis to stand.

7. For the aforesaid reasons, I find that the impugned order dated 26.05.2022, passed by the Commandant of 1st AAPBn, BHQ, Chimpu, Itanagar, vide No. BHQ/BN-1/DE-111/TT/2016/ 797, is illegal and accordingly the same is quashed and set aside.

8. Accordingly, the writ petition stands disposed.

JUDGE

Comparing Assistant