

GAHC010010492023



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

Case No. : Review.Pet./13/2023

SEKHAR KANTI SARKAR
S/O SRI SUNIL CHANDRA SARKAR, R/O NILOMONI ROAD, P.O.
KARIMGANJ, DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPTT., DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEAD QUARTER AT ULUBARI
GUWAHATI- 7
ASSAM.

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE (COMMUNICATION)
ULUBARI
GUWAHATI- 7.

4:THE DIRECTOR OF POLICE (COMMN)
ASSAM
APRO HEAD QUARTER AT ULUBARI
GUWAHATI- 7
ASSAM.

5:THE INSPECTOR GENERAL OF POLICE (COMMN)
ASSAM
APRO HEAD QUARTER AT ULUBARI
GUWAHATI- 7
ASSAM.

6:THE SUPERINTENDENT OF POLICE (COMMN)

ASSAM
APRO HEAD QUARTER AT ULUBARI
GUWAHATI- 7
ASSAM.

7:THE SUPERINTENDENT OF POLICE (COMMN)
ASSAM
HQ-II
ASSAM
APRO HQ
GUWAHATI- 7.

8:MRIDUL KUMAR SARMA
SI (COM)
C/O- APRO HQ
GUWAHATI- 7.

9:SUNIL KUMAR NATH
SI (COM)
C/O- APRO HQ
GUWAHATI- 7

Advocate for the Petitioner : MR. N NATH

Advocate for the Respondent : GA, ASSAM

Linked Case : WA/355/2017

SRI SEKHAR KANTI SARKAR
S/O SRI SUNIL CHANDRA SARKAR
R/O NILOMONI ROAD
P.O. KARIMGANJ
DIST. KARIMGANJ
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GHY- 7.

Advocate for : MR.D THAKUR

Advocate for : appearing for THE STATE OF ASSAM and 8 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 17-05-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. N Nath, learned counsel for the review petitioner. Also heard Mr. D Mazumdar, learned Additional Advocate General, Assam for the respondents.

2. This review petition is instituted against the judgment and order dated 03.08.2018 rendered in WA No.355/2017. WA No.355/2017 was instituted against the judgment and order dated 09.06.2017 in WP(C)No.3561/2016. WP(C)No.3561/2016 was instituted against the order dated 30.05.2016 by which the petitioner who was serving as Sub-Inspector of Police (Wireless Technician) in the Assam Police Radio Organisation was dismissed from service. A disciplinary proceeding was initiated against the petitioner on an alleged misconduct that he had failed to undergo certain mandatory trainings to successfully complete and pass the Grade III and Grade II Police Wireless Technician Trade Courses of 9 months and 6 months duration respectively. While the petitioner was in service, he was called on seven occasions to undergo the Grade III training at the APRO Training School at Jalukbari, but during the period i.e. from 2006 to 2013, he had failed to undergo the training by remaining absent. In the resultant departmental proceeding, an enquiry was conducted in which the enquiry report dated 10.07.2015 was submitted. On the basis of the said enquiry report, the disciplinary authority issued notice dated 30.04.2016 upon accepting the conclusions arrived at in the enquiry report. As no representation was made by the petitioner against the said notice dated

30.04.2016, the disciplinary authority had deemed it appropriate to dismiss the petitioner from service.

3. In the WA No.355/2017, the appellate court examined the procedures adopted by the disciplinary authority and by taking note of the provisions of law applicable in respect of the procedure to be adopted in a disciplinary proceeding arrived at its conclusion that as no procedural aberration was noticed, therefore, the order of the learned Single Judge dated 09.06.2017 in WP(C)No.3561/2016 does not require any interference. Accordingly WA No.355/2017 was dismissed. The result thereof was that the order of dismissal against the petitioner by the order dated 30.05.2016 of the disciplinary authority had attained its finality.

4. In the meantime, the petitioner had been offered and is under employment as per the order dated 11.07.2017 of the Registrar of Mahapurusha Srimanta Sankaradeva Viswavidyalaya as an Assistant Registrar (Administration). Subsequently, by another order dated 07.04.2021 of the Registrar of Mahapurusha Srimanta Sankaradeva Viswavidyalaya, the petitioner was appointed as Deputy Registrar (Administration).

5. This review petition is instituted on the premises that the writ appellate court had not gone into the question as regards the proportionality of the punishment that was meted to the petitioner against the aforesaid misconduct. The circumstance under which the review petition is instituted is explained by the petitioner that as he is in employment under the Mahapurusha Srimanta Sankaradeva Viswavidyalaya and there is a possibility that if the order of

dismissal from service remains he may be found to be ineligible for any further employment because of the dismissal from service. Accordingly, in the instant review petition, the petitioner intends to raise the issue as regards proportionality of the punishment meted to him for the alleged misconduct that he had failed to undergo the mandatory departmental trainings as indicated above. The mandatory trainings that were required to have been undertaken by the petitioner as indicated above may be a part of the conditions of service without which he may be ineligible to be retained for continuing in service any further. From such point of view, the punishment that may be meted to the petitioner for severance of the employer employee relation with the disciplinary authority may be acceptable. But at the same time, we have noticed that the alleged misconduct is that the petitioner failed to undergo some of the mandatory trainings during the course of his employment and although the same may be a misconduct under the law, but it does not appear to us to be a misconduct of such serious nature or having imputations of moral turpitude of serious nature or of any such misconduct which may render the petitioner to be ineligible for any further employment in any other organization.

6. As the said aspect was not gone into either by the disciplinary authority or was not appropriately examined in the writ appellate judgment, we are of the view that considering the aspect that the only misconduct of the petitioner is that he had failed to undergo certain departmental trainings, the extreme punishment of dismissal from service will be disproportionate. If the act of the petitioner in not undergoing the required departmental trainings would be a reason for the authorities not to retain him in service any further, the purpose can also be achieved with a punishment of removal from service, in which

circumstance, the petitioner would remain eligible for any further employment in any other organization.

7. Considering the matter in its entirety as well as balancing the equity and also taking note of that the respondent authorities having severed the employee employer relation with the petitioner, could not be adversely affected in any manner if the impugned order dated 30.05.2016 passed by the Superintendent of Police (Commn.) HQ-II, APRO HQ, Guwahati, Assam imposing the punishment of dismissal from service is interfered to the extent that it shall now be converted to that of removal from service.

8. It is ordered accordingly that the order dated 30.05.2016 of the Superintendent of Police (Commn.) HQ-II, APRO HQ, Guwahati, Assam is now to be read to be a punishment of removal from service, meaning thereby that the petitioner would remain eligible for employment in any other organisation, if so advised.

9. Review petition stands partly allowed as indicated hereinabove and the judgment and order dated 03.08.2018 rendered in WA No.355/2017 stands modified accordingly.

JUDGE

JUDGE

Comparing Assistant