

GAHC010073122022



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

Case No. : WA/164/2022

PANKAJ BEZBARUAH
S/O SRI AJIT BEZBARUAH
RESIDENT OF VILLAGE PUBSARIAHTALI, PO HATI NAMATI, DIST
NALBARI, ASSAM, 781337

VERSUS

UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE HOME AFFAIRS, NORTH
BLOCK, CENTRAL SECRETARIAT, NEW DELHI 110001

2:DEPUTY INSPECTOR GENERAL OF POLICE

CENTRAL RESERVE POLICE FORCE HYDERABAD RANGE
HYDERABAD
PIN - 500005.

3:ADDITIONAL DEPUTY INSPECTOR GENERAL OF POLICE

GROUP CENTRE
CEPF
AMERIGOG
GUWAHATI
ASSAM
PIN - 781023.

4:COMMANDANT 5 BN CRPF

MAHAVIR NAGAR
TILAK NAGAR
NEW DWLHI
PIN - 110018

5:ASSISTANT COMMANDANT 5BN

CRPF
MAHAVIR NAGAR
TILAK NAGAR
NEW DELHI- PIN -11001

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Appellant : Mr. B.K. Das, Advocate.

For the Respondents : Mr. R.K.D. Choudhury,
Deputy Solicitor General of India

Date of hearing & judgment : 27.04.2023.

JUDGMENT & ORDER

S. Mehta, C.J.

This instant intra-Court writ appeal is directed against the judgment dated 17.03.2022 passed by the learned Single Judge, whereby WP(C) 6002/2017 preferred by the appellant herein to challenge his dismissal from service vide order dated 12.10.2011, based upon the conclusion of the disciplinary proceeding, was dismissed.

2. We have heard learned counsel for the parties and have gone through the impugned order and the material placed on record.

3. A perusal of the record would reveal that the disciplinary proceeding was undertaken against the appellant for the charge of unauthorised absence from duty for a period of 347 days. The Article of Charges communicated to the appellant in this regard would have a material bearing on the outcome of this writ appeal and, hence, the same is reproduced hereinbelow for the sake of ready reference:

“STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO.075136708
CT/GD PANKAJ BEZBARUAH OF C/5 BN. CRPF

ARTICLE-J

That the said No.075136708 CT/GD Pankaj Bezbaruah of C/5 BN CRPF, while functioning as a CT/GD in C/5 Bn, CRPF, Mahavir Nagar Campus New Delhi has committed an act of misconduct in his capacity as a Member of the Force under Section 11(1) of CRPF Act 1949 in that he deserted from the Coy lines on 14/10/2010 at about 1700 hrs and still absconding without any information or any prior permission of the Competent Authority which is prejudicial to good order and discipline of the Force.”

4. Enquiry was conducted wherein the appellant initially participated but thereafter, on a purported excuse of suffering from mental ailment, he did not appear before the Enquiry Officer (referred to as the Investigation Officer in the report). The enquiry officer found the charge levelled against the delinquent proved vide report compiled in September, 2011. Copy of the report was forwarded to the appellant by post. The disciplinary officer, i.e. the Commandant, proceeded to pass the order dated 12.10.2011 observing that the Enquiry Officer, after conducting the enquiry, has held the Article of Charges framed against the delinquent fully proved beyond any shadow of doubt and, as a consequence, the penalty of dismissal from service was imposed upon the

delinquent. Relevant paragraphs from the order dated 12.10.2011 are reproduced hereinbelow for the sake of ready reference:

“4. Shri James Rongmei, A/C, (Local Rank) the Enquiry Officer has submitted the DE proceedings duly completed in all respects vide his letter No.G.II-1/2011-J.R dated 8/09/2011. I have gone through the D.E. proceedings and find that the same have been drawn correctly as per the Rules. Reasonable opportunities were provided to the delinquent from time to time by the Enquiry Officer at various stages of Enquiry. The Enquiry Officer has therefore, drawn his report in which he mentioned that the delinquent deserted from the Coy lines w.e.f. 14/10/10 at about 1700 hrs and reported back at his own on 01/07/2011 (A.N) for participating the inquiry after absent of 261 days. He again deserted from the Coy. Lines w.e.f. 19/07/2011 (FN). The Enquiry Officer after conducting the Enquiry has held that the Articles of Charges framed against the delinquent stands fully proved beyond any shadow of doubt.

5. Before taking any action on the report of the Enquiry Officer, a copy of the Enquiry Officer's report was forwarded to the delinquent at his known home address by registered post with AD, vide this office letter No.P.VIII-1/2011-5 EC-II dated 19/9/2011, with a direction to submit his representation against the report, if any, within 15 days of receipt of the report. The delinquent has not submitted any representation till date. Therefore, after taking into consideration all aspects of the case, I am of the opinion that the delinquent No.075136708 CT/GD Pankaj Bezbaruah of C/5 BN CRPF, deserted from lines of this Unit on 14/10/2010 at about 1700 hrs and he reported back at his own on 01/07/2011 (AN) and again deserted from lines on 19/07/2011 (FN) without any information and prior permission from the Competent Authority. Hence he is not fit to be retained in Force/Service. I, therefore, in exercise of the powers vested in me under Section 11(1) of CRPF Act-1949 read with Rule 27 of CRPF Rules 1955 do hereby impose upon No.075136708 CT/GD Pankaj Bezbaruah of C/5 BN CRPF, the penalty of **“DISMISSAL FROM SERVICE”** with effect from the date of issue of this order i.e. 12/10/2011. This will meet the ends of

natural justice.”

5. The appellant herein preferred an appeal, albeit after some delay, to the DIGP, Range HQR, CRPF, Hyderabad (AP) for challenging the order imposing penalty. The said appeal was rejected by order dated 09.05.2017. Being aggrieved, the appellant preferred the captioned writ petition in this Court, which has been dismissed by the impugned judgment and order dated 17.03.2022.

6. Mr. Das, learned counsel representing the appellant urged that specific argument was advanced before the learned Single Judge, that neither the Article of Charges stated that the absence of the appellant from duty was wilful nor did the Enquiry Officer conclude so against the appellant. He further submits that even the disciplinary authority, while passing the order of dismissal from service, did not hold the appellant responsible for wilful absence from duty. Moreover, the disciplinary authority did not record any specific finding as to whether the appellant herein was responsible for “more heinous offence” as defined under Section 9 of the Central Reserve Police Force Act, 1949 or “less heinous offence” as defined under Section 10 of the said Act. Thus, it was the fervent contention of the appellant’s counsel based on the Hon’ble Supreme Court judgments in the cases of ***Krushnakant B. Parmar vs. Union of India and another*** reported in ***(2012) 3 SCC 178, Union of India & Anr. vs. R.K. Sharma (Civil Appeal No.4059/2015)***, decided on 30.06.2022 that the penalty of dismissal from service imposed upon the appellant was totally unwarranted, unduly harsh, disproportionate and unjustified. He thus implored the Court to accept the appeal; reverse the impugned judgment and order passed by the learned Single Judge and quash the same and as a consequence,

quash/reverse the order imposing the penalty of dismissal from service upon the appellant.

7. Per contra, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that no such argument was ever advanced on behalf of the appellant before the learned Single Judge that the impugned proceeding suffered from any procedural defects or irregularities. His assertion was that even the argument on lack of finding regarding allegation of wilful absence from duty was not advanced on behalf of the appellant before the learned Single Judge. He submitted that the only challenge which was laid on behalf of the appellant before the Writ Court was based on a flimsy theory that the appellant/writ petitioner was suffering from mental ailment. He thus urged that the impugned judgment is based on an apposite appreciation of the material available on record and does not warrant interference.

8. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record.

9. At the outset, we may note that there is inherent lack of the phraseology "wilful absence" in the article of charges as well as the order imposing penalty. The pertinent ground spelt out from the pleadings in the writ petition is that there was no allegation against the appellant/writ petitioner of being wilful absent from duty. In this regard, we would like to refer to the averments made in paragraph 17 of the writ petition. This argument was raised before the learned Single Judge which has been taken note at paragraph 13 of the impugned judgment but, in a contradictory finding at paragraph 14 of the impugned judgment, the learned Single Judge observed that the petitioner has

not made challenge to the dismissal order on the ground of procedural irregularities. The observations appearing in paragraphs 13 and 14 of the impugned judgment are inconsistent to each other.

10. In this view of the matter and having regard to the preceding discussion, we are of the opinion that the writ petition filed by the petitioner (appellant herein) deserves fresh consideration on merits after adverting to the pertinent grounds of challenge laid to the impugned order of dismissal from service, based on procedural irregularities as alleged by the petitioner. Hence, the appeal deserves acceptance. The impugned judgment and order dated 17.03.2022 is hereby reversed and the matter is remanded to the learned Single Judge for fresh consideration of WP(C) 6002/2017 which shall be restored to its original number and will be heard and decided afresh as per law.

The appeal is allowed accordingly.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant