

GAHC010233342017



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

Case No. : WP(C)/1401/2017

INDRA KALPA BORA
EX-SUB INSPECTOR UB, VILL. RATANPUR, P.S. TANGLA, DIST- UDALGURI,
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, MINISTRY OF HOME
AFFAIRS, DISPUR, GHY-5

2:THE DY. INSPECTOR GENERAL OF POLICE
WESTERN RANGE WR
ASSAM
BONGAIGAON

3:THE SUPERINTENDENT OF POLICE
BARPETA
ASSA

Advocate for the Petitioner : MR.M CHANDA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

28.08.2023

Heard Mr. S. Choudhury, learned counsel for the petitioner. Also heard Ms.

M. Bhattacharjee, learned Addl. Sr. Government Advocate for the State.

2. This writ petition has been filed by the petitioner who is aggrieved by the disciplinary proceedings initiated against him, impugned penalty order issued removing him from service as well as the order of the appellate authority, whereby his appeal preferred against the disciplinary proceedings has been rejected on the ground of delay.

3. The petitioner was working as a Sub-Inspector (UB) and was the In-charge of Mandia police outpost under Bagbhor Police Station, Barpeta District in the year 2017. It is submitted that in the month of October 2011, the petitioner suffered from some medical issues like acute pain in the abdomen and back ache for which he underwent medical treatment. As his health condition was not improving, he was referred to the Gauhati Medical College & Hospital, Guwahati for due investigation. The petitioner was registered for medical investigation from 11.10.2011 and he was under medical treatment in GMC till December 2011. Thereafter, he was under protracted medical treatment under the Sipajhar CHC/FRU, which continued from February 2012 to 15.03.2016.

4. The learned counsel for the petitioner has referred to the medical prescriptions, copies of which are enclosed with the petition as Annexures. It is submitted that in view of such ailments that the petitioner suffered for a considerable period of time, it is submitted that he suffered from depression and as a consequence thereof, he failed to attend to his duties with effect from 09.10.2011. He could not attend the official formalities under the Rules and was incapacitated due to his illness to take proper decisions in respect of his service and steps as required towards his official obligations.

5. Under such circumstances, the petitioner was served with a show-cause notice dated 22.03.2012. The Office of the Superintendent of Police, Barpeta

issued the show cause to the petitioner asking him to show-cause as to why he being In-charge of outpost and a Government Servant left his place of posting without any leave or permission from the competent authority. It was further stated therein that in spite of attempts made by the authorities to communicate with the petitioner through phone etc, he could not be contacted. Under such circumstances, he was charged with violation of the service Rules, desertion of lawful duties and gross negligence towards duty. The petitioner was asked to show cause and submit his explanation. He was permitted to inspect the documents within seven days from the date of the communication and thereafter submit his explanation within a period of ten days from the date of completion of the inspection.

6. The learned counsel for the petitioner submits that because of his prolonged medical treatment and state of health, the petitioner failed to respond the show-cause notice issued. In the absence of the response from the petitioner, the enquiry was proceeded with ex-parte and the enquiry Officer completed the enquiry and submitted its report. The Competent Authority, thereafter, by second show-cause notice dated 06.07.2013 put the petitioner to notice informing him that the Enquiry Officer had completed its enquiry and has held that the charges levelled against the petitioner have been held to be proved. It is further stated that the Disciplinary Authority upon examination of the enquiry report has provisionally come to the conclusion that the punishment to be inflicted on the petitioner would be dismissal/removal from service. By the said show-cause notice, the petitioner was asked to show-cause as to why the action contemplated to be taken by the Disciplinary Authority against the petitioner ought not to be taken. Copy of the enquiry report was also enclosed to the said show-cause notice.

7. The learned counsel for the petitioner submits that the petitioner again because of his poor health condition could not respond to the show-cause Notice. Thereafter, by order dated 12.09.2013, the competent Authority issued the order of removing him from services and thereby he ceased to be a Police Officer henceforth.

8. After being served with the order of removal from service by order dated 12.09.2013, petitioner preferred an appeal before the Competent Authority by his appeal dated 03.04.2016. The appeal came to be dismissed on the ground of limitation as it was stated that the appellant failed to give any reasons or causes for inordinate delay and the appeal was rejected by order dated 22.06.2016. Being aggrieved, the present writ petition has been filed.

9. The respondents have filed the affidavit disputing the contentions of the petitioner.

10. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused.

11. The Rule on the basis of which the Disciplinary proceedings in respect of State Government Servants of Assam, including the proceedings initiated against the petitioner are initiated under the Assam Services (Discipline and Appeal) Rules, 1964

12. A perusal of the Rules reveal that against the order passed by the competent authority, there are provisions for preferring appeals. Under Rule 17, the period of limitation prescribed for any such appeal is three months from the date on which the appellant receives a copy of the order against which the appeal has been filed. Rule 20 of the Rules prescribes for withholding the appeals in a case where the authority feels that the appeal is not an appeal within the provisions of the Rule as mentioned in Rule 20 itself. One of the

reasons for withholding the appeal is the appeal not being filed within the period of limitation, which is Rule 17.

13. A perusal of the affidavit filed by the respondent department shows that the appeal preferred by the petitioner on 03.04.2016 was forwarded to the Deputy Inspector General (WR), Bongaigaon, Assam. The mandate of the Rules of 1964 lays down the provisions that appeals against orders prescribed under Rule 16 can be filed within the limitation prescribed which is three months. The appeal is to be preferred before the authority which has passed the order and against which the appeal is filed. In the facts of the present case, the appeal was submitted before the Superintendent of Police, Barpeta, Assam who had passed the order dismissing the petitioner from Service. The appeal papers if not withheld under Rule 20, are to be transmitted to the competent authority as prescribed under Rule 22. In the event of withholding of the appeals under Rule 20, the same are to be returned within 15 days from the date of receipt of the appeals as prescribed under Rule 21. Rule 20, 21 and 22 are extracted below:

“20. Withholding of appeals: *The authority which made the order appealed against may withhold the appeal if-*

(i) it is an appeal against an order from which no appeal lies; or

(ii) it does not comply with any of the provisions of Rules 18; or

(iii) it is not submitted within the period specified in Rule 17 and no sufficient cause is shown for the delay; or

(iv) it is a repetition of an appeal already decided and new facts or circumstances of material importance are adduced:

Provided that an appeal withheld on the ground only that it does not comply with the provisions of Rule 18 shall be returned to the appellant and, if resubmitted within one month thereof after compliance with the said provisions, shall not be withheld:

Provided further that where an appeal is withheld, the appellant shall be informed of the fact and the reasons therefor.

21. Submission of return of appeal withheld- *Within fifteen days from the commencement of each quarter a list of the appeals withheld by any authority*

during the previous quarter, together with the reasons for withholding them, shall be furnished by that authority to the appellate authority.

22. Transmission of appeals- (1) *The authority which made the order appealed against shall, without any avoidable delay which in no case shall exceed one month transmit to the appellate authority every appeal which is not withheld under Rule 20, together with its comments thereon and the relevant records.*

(2) *The authority to which an appeal lies may direct transmission to it of any appeal withheld under Rule 20 and thereupon such appeal shall be transmitted to that authority together with, the comments of the authority withholding the appeal and the relevant records."*

14. What is evident from the pleadings is that although the appeal dated 03.04.2016 was preferred before the competent authority which is well beyond the period of limitation prescribed under Rule 17, the appeal was not withheld as it could have been under Rule 20(iii) if the authorities desired as under Rule 20, an appeal can be withheld by the authority who made the order appeal against if it is not submitted within the period prescribed under Rule 20 or if no sufficient cause is shown for the delay. The averment made in the affidavit makes it clear that although the appeal was filed well beyond the limitation period, the same was not withheld and the papers were not returned to the petitioner rather the papers of the appeal were transmitted to the competent authority by the Superintendent of Police vide Memo numbers BPTA/CB/16/PT/350 dated 17.04.2016. The said appeal was thereafter dismissed by the Appellate Authority by holding that the appeal was preferred after a lapse of more than two years and after the expiry of the limitation of appeal. It is further mentioned in the impugned order that the appellants had failed to give reasons and causes for inordinate delay in filing the appeal.

15. Upon a careful perusal of the Rules of 1964 as well as the appeal memo and the impugned orders of the removal from service as well as the impugned order of the appellate authority dated 22.06.2016, it is seen that in the appeal which is preferred by the petitioner, the reasons as to why the petitioner was

unable to participate in the disciplinary proceedings was clearly mentioned. That apart, it was also mentioned that he has been struggling with his life due to continued protracted illness which did not improve. He suffered from mental depression and was not in a proper stage of physical and mental condition to comply with the service formalities. He admitted that he had failed to intimate the authorities about his illness and his state of mind incapacitated him from performing all necessary duties and formalities. He had also stated that besides his ailments, his wife had also suffered serious medical issues and he had old aged parents to look after who were also not in a good state of health. Under such circumstances, it is not understood as to why the appellate authority dismissed the appeal on the ground of delay and by holding that the appellant had failed to give reasons and causes for inordinate delay. The appeal was not dismissed on the ground of insufficiency of reasons for the causes of delay, but for lack of reasons explaining the delay. Such findings arrived at by the appellate authority; upon a bare perusal of the appeal memo which is enclosed to the writ petition cannot be countenanced. That apart, as prescribed under Rule 20, once the appeal has been preferred before the competent authority who had passed the order against which the appeal is preferred, the competent authority has been bestowed with the powers for withholding the appeal, if the appeal is not filed within a period of the limitation prescribed or no sufficient cause is shown for the delay. The period of limitation as discussed above is prescribed under Rule 17 of the Rules. Therefore, the competent authority could have withheld the appeal filed by the petitioner on the ground that it was filed beyond the period of limitation or the reasons for delay have not been properly explained and the appeal papers could have been returned to the petitioner as prescribed under Rule 21. But instead, as is evident from the averments made in the

affidavit, the appeal was transmitted to the appellate authority vide memo No. BPTA/CB/16/PT/350 dated 17.04.2016.

16. Under such circumstances, this Court is of the considered opinion that rejection of the appeal preferred by the petitioner upon being forwarded by the disciplinary authority as prescribed under the Rules of 1964 on the ground of delay does not appear to be proper. That apart the Appellate authority further held that there are no reasons explaining the delay which on a bare perusal of the appeal memo does not appear to be correct statement.

17. Under such circumstances, exercising the powers bestowed on this Court under Article 226 of the Constitution of India, this Court considers it appropriate to interfere with the impugned order dated 22.06.2016 passed by the appellate authority. The matter now stands remanded to the appellate authority, namely the Deputy Inspector General (WR), Assam, Bongaigaon or any other competent authority who is presently the appellate authority. The appellate authority will re-decide the appeal memo preferred by the petitioner and pass appropriate orders thereon.

18. The petitioner be afforded an opportunity of personal hearing by the authority and thereafter a speaking order will be passed by the appellate authority on the appeal.

19. The prayer No. (iii) made by the petitioner is allowed. This Court is not inclined to decide on the prayers No. (i) and (ii) made in the writ petition in view of it's decision as regards prayer No. (iii) in the writ petition.

20. The writ petition stands allowed to the extent indicated above. No order as to cost.

JUDGE

Comparing Assistant