

GAHC010235392017



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

Case No. : WP(C)/2516/2017

RAMEN BORGOHAIN
S/O LT. S ARAT CHANDRA BORGOHAIN VILL- MADURI GOHAIN GOAN P.O.
MADURI DIST. SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF CIVIL DEFENCE
AND COMMANDANT GENERAL OF HOME GUARDS
ASSAM
BELTOLA
GUWAHATI-28.

3:THE COMMANDANT

ASSAM SPECIAL RESERVE POLICE FORCE BATTALION-II
KARAGAON
KARBI ANGLONG
ASSAM- 78248

Advocate for the Petitioner : MS.S N RENGMA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.03.2023

Heard Mr. S. Hoque, the learned counsel appearing on behalf of the petitioner. Mr. D. Borah, the learned counsel appears on behalf of all the respondents.

The case of the petitioner herein is that he was initially appointed as a constable on 24/12/1984 at the Assam Special Reserve Force Battalion-(II) Koragaon, Karbi Anlong. Vide an order dated 03/02/2011, the petitioner was placed under suspension without granting subsistence allowance as on the date of filing of the writ petition i.e. on 07/07/2017. It is the case of the petitioner that the departmental proceedings has not concluded and he has not been paid any subsistence allowance for which the instant writ petition was filed for the purpose of setting aside the suspension order dated 03/02/2011; for a direction to complete the departmental proceedings against the petitioner within a stipulated period of time and to direct the Commandant, ASRF, Battalion-II to release forthwith the subsistence allowance to the petitioner w.e.f. from 03/02/2011 till date.

Mr. D. Borah, the learned counsel appearing on behalf of the respondents submitted that vide order bearing No. 1458 dated 11/11/2014, the petitioner was removed from service with immediate effect and the period of unauthorised w.e.f. 29/7/1998 till the date of the said order was treated as dies-non. The learned counsel therefore submitted that nothing survives in the instant petition in view of the order dated 11/11/2014.

On the other hand, the learned counsel appearing on behalf of the petitioner submits that till date the petitioner had not been served a copy of the order dated

11/11/2014.

I have heard the learned counsel for the parties and this Court finds it relevant to quote the order dated 11/11/2014 which is reproduced herein under:

“Government of Assam

Office of the Commandant Assam Special Reserve Force BN.II Karagoan Karbi
Anlong Assam Pin-782480

B.O. No. 1458 dated 11/11/2014.

I have gone through the Enquiry Report submitted by the Enquiry Officer and all the relevant documents in support of departmental proceeding against Constable No. 337 Romen Borgohain(U/S) of this Unit and I agree with the findings of the Enquiry Officer opined that the charges of unauthorized absence, negligence of duty, insubordination and gross misconduct have been proved beyond reasonable doubt.

However, I take the matter leniently but found nothing scope to retain him in service, as the delinquent Constable No. 377 Sri Romen Borgohain (U/S) of this unit remained absent from duty since 29/7/1998 without authority and after several correspondence he paid no heed at all till date. I have no any other alternative besides dismissal him from service.

Therefore, taking into consideration of his past record and the present case too, he is removed from the service of ASRF Bn.II with immediate effect. The period of unauthorised absence w.e.f. 29/7/1998 to till date is treated as dies-non.

The D.P. is disposed off with the above order.

Commandant,
ASRF Bn.II, Karagaon,
Karbi Anlong, Assam.”

Taking into account that the petitioner had already been removed from service vide the order dated 11/11/2014 and the period of unauthorised absence w.e.f. 29/07/1998 till 11/11/2014 has been treated as dies-non, the question of granting the relief as sought for in the writ petition does not arise. Accordingly the instant writ petition stands dismissed.

It is however, observed that the dismissal of the instant writ petition shall not preclude the petitioner to challenge the order dated 11/11/2014 in accordance with

law and the question as to whether the said order has been duly served upon the petitioner or not, shall be decided upon such challenge being made in accordance with law.

It is also relevant to take note of that during the course of the hearing, the order dated 11/11/2014 so furnished by the learned counsel appearing on behalf of the said respondents is kept on record and marked with the letter "X".

The petitioner shall be at liberty to take the certified copy of the said document through the Registry of this Court.

JUDGE

Comparing Assistant