

GAHC010241172022



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

Case No. : WP(C)/7676/2022

ARJAN ALI BARBHUIYA
S/O. LT. HARICH ALI BARBHUIYA, VILL. BARJALENGA PART-VI, P.O. JOGIA
BASTI, NARSINGPUR PART-VI, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HOME
AND POLITICAL DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR GENERAL OF CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS

ASSAM
BELTOLA
GUWAHATI-28

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

27.01.2023

Heard Mr. A. Wahab, the learned counsel for the petitioner and Mr. H. Sarma, the learned Additional Government Advocate appearing on behalf of both

the respondents.

The instant writ petition has been taken up for disposal at the motion stage itself.

The brief fact of the instant case is that the petitioner joined as Battalion (Naik) in the Assam Special Reserve Force on 01.03.1985. Subsequent thereto, vide an order dated 18.05.2010, the petitioner was promoted to the post of Havildar and was posted at AISF Bn.II, Chabua. Accordingly, by an order dated 04.06.2010, the Commandant, ASRF Bn. II, Karagaon released the petitioner to join the post of Havildar at AISF Bn.II, Chabua. The petitioner at present is posted at Lakuya BCPL Gas Industry 2nd AISF Battalin, H-Company in the district of Charaideo.

The case of the petitioner, as mentioned in the writ petition, is that in the year 1992, the petitioner was posted in the Office of the Commandant, 1st ASRF Battalion, Barjhar, Nalbari. Two disciplinary proceedings being DP Nos.34/92 and 43/92 were drawn against the petitioner and the petitioner was placed under suspension on 10.09.1992. However, vide an order dated 03.12.1993, the petitioner was reinstated in service without any prejudice to the aforesaid Departmental Proceedings pending against him. In both disciplinary proceedings, the petitioner was found to be guilty and accordingly, in DP No.34/92, the Disciplinary Authority, i.e. the Commandant, 1st Assam Special Reserve Force Battalion, Barjhar, Nalbari by an order dated 22.09.1994 awarded punishment of stoppage of 5 (five) annual increments for good. Similarly, in the Departmental Proceedings being DP No.43/92, the petitioner was awarded the punishment of 3 (three) annual increments for good. Therefore, it is the case of the petitioner that on the basis of the orders dated 22.09.1994 and 31.12.1994, total 8 (eight) numbers of annual increments of the petitioner were stopped with effect from 1993 which ended in the year 2000. However, after 2000, the authority continued

to stop the annual increment till 2010. The petitioner has repeatedly submitted representations to the respondent authorities, however, the respondent authorities did not act upon the said representations for which the petitioner has approached this Court under Article 226 of the Constitution.

Vide an order dated 30.11.2022, this Court directed Mr. H. Sarma, the learned Additional Government Advocate to obtain instructions in the matter. Subsequent thereto, vide another order dated 19.12.2022, this Court had asked the respondents to explain as regards the meaning "punishment of stoppage of 5(five) annual increments for good". Today, when the matter has come up, the learned counsel appearing on behalf of the respondents has submitted that the terms "punishment of stoppage of 5(five) annual increments for good", as per his instructions, means stoppage of 5(five) annual increments for good with cumulative effect.

I have heard the learned counsel for the parties and perused the order dated 22.09.1994 as well as the order dated 31.12.1994. A perusal of the order dated 22.09.1994 shows that the Disciplinary Authority awarded the petitioner punishment of stoppage of 5(five) annual increments for good. In the order dated 31.12.1994, the Disciplinary Authority awarded the punishment with stoppage of 3 (three) annual increments for good. Therefore, on the basis of the said two orders dated 22.09.1994 and 31.12.1994, the petitioner cumulatively would not be entitled to 8 (eight) annual increments. It is the case of the petitioner that the respondent authorities have stopped the annual increments from the year 1993 and the punishment of stoppage of 8 (eight) annual increments would end in the year 2000. It is, therefore, the case of the petitioner that from 2000 onwards till 2010, the petitioner could not have been deprived of the annual increments as the same would be in violation to the provisions of Rule 9 of the Assam Service (Discipline and Appeal) Rules, 1964 which mandates that sans an enquiry, a Government servant cannot be imposed with the penalty

specified in Rule 7 of the Rules of 1964.

In the backdrop of the above, this Court upon hearing the learned counsel for the parties, this Court disposes of the writ petition with a direction to the respondent authorities, more particularly, the respondent No.2 to look into the matter as to whether in pursuance of the orders dated 22.09.1994 and 31.12.1994, the petitioner could have been deprived of the annual increment for the period from 2001 to 2010. If the respondent No.2, on the basis of the orders dated 22.09.1994 and 31.12.1994, is of the opinion that the petitioner could not have been deprived of the annual increment for the period from 2001 to 2010, the respondent authorities are directed to pay the petitioner the amount to which the petitioner is entitled to by making necessary verification and computation as regards the annual increment.

It is also mentioned that in the circumstance the respondent No.2 is of the opinion that the petitioner is not entitled to the annual increment on the basis of the orders dated 22.09.1994 and 31.12.1994, then in that case, the respondent No.2 shall pass a reasoned order in that regard.

This Court further directs that the respondent No.2 shall carry out the entire exercise within a period of 30 (thirty) days from the date of receipt of the certified copy of the instant order.

It is made clear that in the circumstances if the petitioner is still aggrieved on the basis of the order passed by the respondent No.2, the petitioner is given the liberty to avail such remedies as available under the law.

With the above observations and directions, the instant writ petition stands disposed of.

JUDGE