

GAHC040000842013



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

WP(C) No. 565(AP)/2013

Shri Wangngam Lowang,

S/o Shri Wanghai Lowang, a permanent resident of Muktowa Village,
P.O. Dadam, P.S. Khonsa,

District: Tirap, Arunachal Pradesh serving in the 2nd Arunachal Pradesh
Armed Police Battalion, A-Coy, Roing,

District: Lower Dibang Valley, Arunachal Pradesh.

...PETITIONER

VERSUS

1. The State of Arunachal Pradesh,

represented by the Secretary of Home, Government of Arunachal
Pradesh, Itanagar.

2. The Inspector General of Police,

Government of Arunachal Pradesh, Police Head Quarter, Itanagar.

3. The Dy. Inspector General of Police, Battalion),

Police Head Quarter, Itanagar.

4. The Commandant, 2nd Arunachal Armed Police,
Battalion Headquarter, Aalo,
District: West Siang, Arunachal Pradesh.

5. The Commandant, 2nd Arunachal Armed Police,
Battalion Headquarter, Aalo,
District: West Siang, Arunachal Pradesh.

6. The Commandant, 2nd AAP, BN, A-Company,
Roing, District: Lower Dibang Valley, Arunachal Pradesh.

...RESPONDENTS

Advocate for the Petitioners : Mr. T. Jamoh, Adv.

Advocate for the Respondent : Ms. G. Ete, G.A.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 04.06.2024
Date of Judgment & Order : 14.06.2024

JUDGMENT & ORDER (CAV)

Heard Mr. T. Jamoh, learned counsel for the petitioner. Also heard Ms. G. Ete, learned Government Advocate for the State respondents.

2. This is an application under Article 226 of the Constitution of India praying for a writ in the nature of certiorari or mandamus or any other appropriate writ, directing the respondents to accord proportionate and commensurate punishment to the petitioner apart from major penalty.

3. This writ petition has been filed challenging the Departmental Enquiry Proceeding and punishment Order No. DE-020/2NDBN/RNG/07, dated 14.11.2008, issued by the Commandant, 2nd AAP BN BHQ, Aalo, whereby the petitioner has been inflicted with major punishment of reduction of lower stage in the same time scale of pay with cumulative effect permanently, i.e. Rs. 3,200/-, and the period of suspension w.e.f. 12.11.2007 to 27.03.2008 treated not spent in duty.

4. The case of the petitioner, in brief, is that the petitioner along with 5 (five) numbers of police personnel, were detailed to guard Judicial Custody, Roing w.e.f. 29.10.2007 for 1 (one) month. As the duty deployment was for 1 (one) long month in the static post, the petitioner (Guard Commander) and the IInd Guard Commander decided to command guard of Judicial Custody alternatively on roster basis, i.e. 12 hours each a day. Accordingly, the roster was prepared by the petitioner along with the IInd Guard Commander and as per the roster duty, on 10.11.2007, the present petitioner was on guard duty from 8.00 a.m. to 12.00 noon and thereafter he was relieved by the IInd Guard Commander and accordingly, the petitioner went for his lunch and to take rest. At about 2.30 p.m., the petitioner reported to his guard post and relieved the IInd Guard Commander and from 2.30 p.m. to 5.30 p.m., he was the In-Charge of the Guard Commander and he being the Guard Commander also assured that the UTPs were given their meal at 6.00 p.m. and thereafter he went to his residence

to take rest as he was to relieve the IInd Guard Commander at 9.30 p.m. During his break hours, while he was on his residence on 10.11.2007, at around 9.15 p.m., he got a telephonic call from his IInd Guard Commander that 3 (three) UTPs managed to escape from their Judicial Custody, Roing. Immediately, the petitioner rushed to the Judicial Custody along with two Armed Police Personnel and tried their best to apprehend the escaped UTPs, but fails. On the day of incident, i.e. on 10.11.2007, at evening hours, after the petitioner left, one Constable, namely, Ct Moken Angu, was on Sentry duty from 8.00 p.m. to 10.00 p.m. under the command of IInd Guard Commander, opened the main door of the UTP Cell and took out one UTP, namely, Shri Bhoirab Urang, who was an accused of a murder case, and asked him to message his body. After getting his body message, the said Ct Moken Angu sent the said UTP outside of the UTP Cell to the residence of Ct Gemin Dai to purchase liquor twice. Thereafter, the said Ct Moken Angu collected the liquor from UTP and after consuming the liquor fetched by UTP Bhoirab Urang, he again asked the said UTP to bring more liquor leaving the Cell Key and service riffle to the UTP Bhoirab Urang in the Guard Room. The said Ct Moken Angu again brought one full bottle of liquor from the residence of one Lama's residence, which is about half kilometer far from his sentry post and thereafter he drunk the liquor and also shared the liquor with the said UTP. Under intoxication, the said Ct Moken Angu entered into the main UTP Cell leaving the UTP Bhoirab Urang in the Guard Room freely with the service rifle and keys of the UTP Cell. At that time, 3 (three) other UTPs, namely, Tagume Misso, Ragmuk Padu and Sanjit Borgohain, came out from the UTP Cell and went into the Guard Room and they pushed the UTP Bhoirab Urang inside the UTP Cell and locked the main door of the UTP Cell and very comfortably walked away from the Judicial Custody,

Roing. The entire incident took place between 8.00 p.m. to 9.15 p.m. when the petitioner was not in a shift duty and the command was under the Charge of IInd Guard Commander.

5. Accordingly, for the escape of the UTPs from the Judicial Custody, a common Departmental Enquiry was initiated against the petitioner along with 5 (five) others and Memorandum of Charges were also furnished to them. One Mr. J. K. Mehta, Dy.S.P., Roing was appointed as the Enquiry Officer. During the Enquiry, the petitioner submitted his written statement on 30.11.2007 to the Commandant, 2nd AAP, Battalion Headquarter, Aalo explaining the whole episode. The petitioner never admitted guilt at any stage of enquiry as he did nothing wrong. However, surprisingly, the Enquiry Officer, in his enquiry report dated 20.08.2008, has stated that the petitioner has admitted his guilt and arbitrarily recommended major punishment to the petitioner and no opportunity was given for explaining the case nor to adduce evidence, or examining or cross-examining the witnesses etc. Hence, it is stated that it is a clear case of violation of principle of natural justice. On the basis of said arbitrary Enquiry Report, the Commandant, 2nd AAP Battalion, Aalo, who is the Disciplinary Authority, vide his Order No. DE-020/2nd BN/RNG/07, dated 14.11.2008, awarded major punishment to the petitioner disproportionately and not commensurating to his case. The petitioner has been reduced to lower stage in the same time scale of pay with cumulative effect permanently, i.e. Rs. 3,200/- as per promotion ACP Scheme. The period of suspension, w.e.f. 12.11.2007 to 27.03.2008 has also been treated as not spent on duty.

6. On being aggrieved by the said arbitrary punishment order, the petitioner preferred an appeal before the appellate authority through proper channel on

06.12.2008. The appellate authority accordingly disposed of the appeal vide Order No. PHQ/DP-108/2007, dated 25.05.2009, and rejected the appeal filed by the petitioner and confirmed the punishment. Thereafter, the petitioner begged the appellate authority for leniency as the petitioner was not in the duty at the time of escaping of the UTPs which was resulted due to misconduct and negligence of Ct Moken Angu under the guard command of IInd Guard Commander. But the prayer for leniency was rejected by the authority concerned.

7. Thereafter, the petitioner came to know from the reliable sources that the respondent authority on one hand refused to extend any leniency to the petitioner, but on the other hand has extended leniency to the main erring police personnel, namely, Ct Moken Angu, who was removed from the service and his name was also struck off from 2nd AAP Bn from the date of order. Coming to know about the said leniency towards the said Ct Moken Angu by the respondent authority, the petitioner again made a representation before the respondent authority on 30.04.2013 praying for parity of treatment and to extend leniency to him taking the same yardstick and to reduce his punishment. However, the respondent authority paid no heed to his prayer and rejected his representation dated 30.04.2013.

8. It is further stated that since the main erring police personnel has been extended leniency by the respondent authority by reducing his punishment, the prayer for reduction of the punishment inflicted upon the petitioner ought to have been considered by the respondent authority when the fact has been reflected to them. The entire incident had happened in his absence as at the time of the incident, he was not in the duty and as per the roster, he was at his

residence when the incident had happened. The petitioner is diligent and dutiful police personnel and he never committed anything adverse throughout his service carrier. Simply the dereliction of the duty committed by other police personnel has ruined his carrier for no fault on his part. Hence, it is stated that it is a fit case wherein this Court can intervene and issue necessary direction to the respondent authority to consider his prayer and his case may be treated at par with the erring police personnel Ct Moken Angu. Accordingly, it is prayed that the proper direction may be given to the respondent authority to show leniency to the petitioner applying the principle of parity whereby they have already reduced the punishment inflicted on respondent No. 7, i.e. Ct Moken Angu, who is the main erring police personnel at the time of incident.

9. Mr. T. Jamoh, learned counsel for the petitioner, submitted that the present accused/petitioner was also acquitted by the learned Judicial Magistrate First Class, Roing vide its Order dated 08.05.2015, passed in G.R. Case No. 71/2007, and he along with some others were discharged from the charges under Section 223 IPC and the charges under Section 223 IPC was framed against the said Ct Moken Angu. He further emphasized on Clause 18 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, wherein it is stated that when the police personnel tried and acquitted by a Criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless :-

(1) the criminal charge has failed on technical grounds, or

(2) in the opinion of the court, or the Superintendent of Police, the prosecution witnesses have been won over, or

- (3) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police official concerned, or
- (4) the evidence cited in the criminal case disclose facts unconnected with the charge before the court which justify departmental proceedings on a different charge, or
- (5) additional evidences for departmental proceedings is available.

10. Accordingly, Mr. Jamoh submitted that as per the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, there cannot be any separate departmental proceeding when the petitioner was acquitted by a criminal court. He further submitted that in the entire circumstances of this case, the petitioner's case may be considered by the respondent authority by applying the law of parity and may reduce the major punishment inflicted on him for his no fault.

11. In this context, Ms. G. Ete, learned Additional Senior Government Advocate for the State respondent, has submitted that the delinquent police personnel Ct Moken Angu admitted his guilt before the authority concerned and hence, taking an extreme lenient view in the peculiar circumstances, the Reviewing Authority modified his earlier punishment to reduction of his pay to the initial stage in the time scale of pay and treated his period of suspension and period of absence from his removal and reinstate him in service vide order dated 07.03.2010. Whereas, the petitioner was imposed penalty by the Disciplinary Authority by reduction of lower stage in the same time scale of pay with cumulative effect permanently and further treated his period of suspension as not spent on duty for his proved misconduct of remaining absent from guard

room and dereliction of duty resulting escape of 3 (three) UTPs from judicial lock up, Roing vide order dated 14.11.2008. Accordingly, the Disciplinary Authority had dismissed and rejected his review application holding that the same is devoid of merit. It is further submitted by Ms. Ete that the petitioner cannot be escape from his proved misconduct of leaving Guard Room without furnishing prior permission of the competent authority resulting in escape of 3 UTPs from the Judicial Custody, Roing on the plea that he and the IInd Guard Commander were performing duties on the alternatively on mutual system and the UTPs escaped during the duty period of IInd Guard Commander. She further submitted that the rule does not permit such kind of mutual system and in such sensitive duty post, specially during the night hours and moreover without ensuring that at least 2/3 strength or more guard were present in the guard room in alertness. More so, in his written statement of defence, the petitioner also admitted that he was absent from the Guard Room and during his absence, the UTPs managed to escape from the Judicial Custody and thus, the Enquiry Officer rightly submitted the Enquiry Report based on the admission of guilt by the petitioner. More so, his appeal before the appellate authority was also dismissed by the authority as he could not produce any cogent and convincing grounds in the appeal to consider his application by the appellate authority. Rather, as per record, it was found that the petitioner did not perform his duty for which he was deployed for Judicial lock up at Roing and hence, the appellate authority passed the reasoned and speaking order while rejecting his appeal. On the other hand, the Reviewing Authority has considered the review application of the delinquent police personnel Ct Moken Angu as he admitted his unqualified guilt and therefore, taking extreme leniency in order to save his family plight, the respondent authority reduced the penalty of delinquent Ct Moken Angu from

removal of his service to reduction of his pay to the initial stage and reinstated him in service vide order dated 07.03.2010. Accordingly, it is submitted by Ms. Ete, learned Additional Senior Government Advocate, that the petitioner could not make out any case to be interfered with by this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

12. I have given my anxious consideration to the submissions made by the learned counsels for both sides and also perused the case record along with the annexures filed with the petition.

13. From the submissions made by the learned counsels for both sides, it is seen that the present petitioner, along with 5 (five) others, were detailed to guard the Judicial Custody w.e.f. 29.10.2007 for 1 (one) month, and on the day of incident, i.e. on 10.11.2007, the petitioner, along with other 5 (five) police personnel, were also under the detailment for the guard of the judicial custody. So, it is an admitted fact that during the detailment of the duty to guard the Judicial Custody, the incident had happened wherein 3 (three) numbers of UTPs were managed to escape from the judicial lock up. Accordingly, the Departmental Enquiry and Memorandum of Charges were framed against the present petitioner along with 5 (five) others and the Memorandum of Charges framed against the petitioner are extracted hereinbelow:-

"ARTICLE-I

That HC. Wangngam Lowang guard commander, Lnk. Pholin Lowang IInd guard commander along with Ct. Moken Angu, Ct. Khosen Wangpan, Ct. Gemin Dai and Tojon Modi of 2nd Bn D-Coy were detailed for round o'clock duty for guarding the UTPs at judicial lock-up Roing. On 10.11.07 at about 2000 hrs Ct. Moken Angu who was on sentry duty took out

1(one) UTP from judicial lock-up to massage his body and sent the UTP to bring alcohol from the market. He himself had also left duty place after locking the cell to bring alcohol. The keys of the judicial lock-up and rifle were left with one UTP Sri Bhairab Urang in guard room as no other guard personnel were present. After half and hours sentry Ct. Moken Angu returned to the judicial lock-up with full bottle of Rum and thereafter he opened the main door of judicial lock-up and consumed Rum with the UTPs. In this process at about 2115 hrs 3 (Three) UTPs came out to the guard room through open door and pushed back the UTP Bhairab Urang to the lock-up who was sitting in the guard room. They locked the door from outside and managed to escape from back side of judicial lock-up. This act on the part of HC. Wangngam Lowang, Lnk. Pholin Lowang, Ct. Moken Angu, Ct. Tojon Modi, Ct. Khosen Wangpan and Gemin Dai amounts to gross misconduct/deliberate negligence of duty/unbecoming of govt servant being a member of disciplined force which renders them unfit to retained in police force. Hence they are liable for strict disciplinary action under relevant rule.

ARTICLE-II

That on 10.11.07 HC. W. Lowang, Lnk P. Lowang, CT. Moken Angu, CT. T. Modi, CT. K. Wangpan and Ct. G. Dai of 2nd Bn Roing were detailed for round the clock duty at judicial lock-up Roing. But due to their negligence of duty 3 (Three) UTPs managed to escape from judicial lock-up Roing on 10.11.07 at about 2115 hrs and during the period of escape from 2000 hrs to 2115 hrs neither HC. W. Lowang, Lnk P. Lowang guard comndr/IInd guard comndr nor any other constables were present in the guard room which clearly indicates that they have not discharged their duty sincerely in such sensitive duty post. This act on the part of HC. W. Lowang, Lnk. P. Lowang, Ct. M. angu, Ct. T. Modi, Ct. K. Wangpan and Ct. G. Dai of 2nd Bn Amounts to gross misconduct/deliberate negligence of duty/unbecoming of a govt. servant being a member of disciplined force which renders them unfit to retain in police force. Hence they are liable for strict disciplinary action under relevant rule."

14. Accordingly, it was charged that on 10.11.2007, on the relevant day of incident, the petitioner being the Guard Commander along with one other Guard Commander and other police constables were detailed in the duty of judicial lock up where, due to their negligence, 3 (three) numbers of UTPs managed to escape from the judicial lock up, Roing at about 9.15 p.m. and at the relevant time of incident, no constables were present in the Guard Room which clearly indicates that they have not discharged their duty in such a sensitive duty post. However, during the Departmental Enquiry, the petitioner along with others were given the opportunity to file their written statement in their defence and the Enquiry Officer was also appointed who recorded the evidence and the statement and made a detail enquiry and accordingly came to a conclusion that on the very day of incident, i.e. on 10.11.2007, neither the Guard Commander nor any other constable were present in the Guard Room from 8.00 p.m. to 9.15 p.m. when the said incident had happened. On the basis of the said Enquiry Report, the Disciplinary Authority, vide its Order No. DE-020/2NDBN/ RNG/07, dated 14.11.2008, awarded the major punishment to the petitioner along with others whereby the petitioner has been reduced to lower stage in the same time scale of pay with cumulative effect permanently, Rs. 3,200/-, and the period of suspension w.e.f. 12.11.2007 to 27.03.2008 treated not spent in duty. Thereafter the petitioner filed a review application and also filed representation before the appellate authority which was accordingly rejected by the authority concerned.

15. It is a fact that the entire incident had happened during the duty hours of the present petitioner wherein 3 (three) numbers of UTPs were managed to escape from the judicial lock up, Roing and the present petitioner, along with 5 (five) others, were detailed for duty of the judicial lock up for a period of 1

(one) month w.e.f. 29.10.2007. However, it is the plea of the petitioner that at the relevant time of incident, i.e. around 8.00 p.m. to 9.15 p.m., he was not in duty and as per roster, he was relieved from his duty by the IInd Guard Commander and he was taking rest in his residential quarter. But there is no evidence that the duty roster was prepared with due permission of the authority concerned when they were detailed for such a sensitive duty in the judicial lock up. The incident might have happened while the IInd Guard Commander was in duty as per the roster they had prepared themselves, but for that reason only, the petitioner cannot abstain from his liability and responsibility. Being the Guard Commander, it was his duty to assure that the constables, who were on duty, were performing their duties with due diligence and with responsibility. But for their own convenience, the present petitioner, along with the other Guard Commander, had made a roster by themselves and with a very negligent manner, the duty was conducted by the petitioner along with others and for which, the said unfortunate incident had happened and thereby 3 (three) numbers of UTPs were managed to escape from the judicial lock up.

16. It is also a fact that the review application filed by the delinquent Ct Moken Angu was considered by the appellate/ reviewing authority and from the order, it is seen that his case was considered on submission of graphic description of the utter penury and on admission of unqualified guilt and the authority concerned take an extreme lenient view considering the entire peculiar circumstances and accordingly modified his sentence and reinstated in his service. In the same time, the review application as well as the appeal filed by the present petitioner was rejected by the concerned authority with a view that the punishment awarded to the present petitioner is appropriate and commensurate with the misconduct. It is also held by the concerned authority

that the oral submission of the petitioner is not found convincing and considering the evidence on record, it shows that 3 (three) numbers of UTPs managed to escape from the custody due to supervisory lapse from the petitioner as he was absent from his duty place. It is also considered that the remaining absent from the duty is also a misconduct and it becomes more serious when the negligence of the police personnel results into escape of UTPs from the police custody. In the case of Ct Moken Angu, the authority had considered his application with extreme lenient view as he was removed from his service and considering lenient view, he was reinstated by the authority concerned. But it is seen that the present petitioner is reasonably punished for his misconduct and negligent duty due to which 3 (three) numbers of UTPs managed to escape from judicial lock up.

17. Coming to the point raised by the learned counsel for the petitioner regarding the acquittal/discharge of the present petitioner passed by the learned Judicial Magistrate First Class, Roing vide its Order dated 08.05.2015, in G.R. Case No. 71/2007, at the time of framing of charge, and considering the materials in the Case Diary, the petitioner, along with some others, were discharged from Section 223 IPC under which the present petitioner along with others were charge-sheeted. However, the case was proceeded against the other delinquent Ct Moken Angu under Section 223 IPC. And, it is seen that after the enquiry conducted by the enquiry officer in the disciplinary proceeding, the report was submitted before the disciplinary authority and on the basis of which, the order was passed by the disciplinary authority on 14.11.2008, whereby the petitioner along with others were awarded the punishment. Thus, it is seen that the order of the disciplinary authority was passed much prior to the order of acquittal/discharge passed by the learned Judicial Magistrate First

Class.

18. The Apex Court in a case reported in **(2012) 13 SCC 142 (Avinash Sadashiv Bhosale (D) Thr. Lrs. Vs. Union of India & Ors.)** had expressed the view that the proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. In paragraph No. 47 of the said judgment, it has been held as under:

"47. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings."

19. In another case reported in **(2019) 7 SCC 797 (Shashi Bhusan Prasad Vs. Inspector General Central Industrial Security Force & Ors.)**, the Apex Court has made a similar observation, wherein also it is held that the acquittal by Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve delinquent from liability under disciplinary jurisdiction of authority instituted against him in which he had been held guilty and in sequel thereto punished with the penalty.

20. Accordingly, it can be held that the nature of evidence in criminal trial is entirely different from the departmental proceedings. In a criminal proceeding, the prosecution has to prove the case beyond all reasonable doubt on the touchstone of human conduct. But the standard of prove in a departmental proceeding is not the same as in the criminal trial. The evidence required in the departmental proceeding is not regulated by the Evidence Act and it is required to prove the fact only on preponderance of probability, whereas in criminal law,

the burden of proof is on prosecution and unless prosecution is able to prove the guilt beyond reasonable doubt, the accused cannot be convicted by a Court of law.

21. In view of discussion made above and also considering the entire aspects of the case, this Court is of the view that the petitioner has not made out any case requiring any interference of this Court in the impugned Departmental Enquiry Proceeding as well as Punishment Order No. DE-020/2NDBN/RNG/07, dated 14.11.2008, issued by the Commandant, 2nd AAP BN BHQ, Aalo. Resultantly, I find no merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to costs.

22. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant