



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

Case No. : WP(C)/416/2015

SRI KHODA TAKAR
EX-CONSTABLE, S/O KHODA LAJI, RESIDENT OF VILLAGE RERU, PO/PS
ZIRO, DIST. LOWER SUBANSIRI, AP, MOBILE NO. 8974951590

VERSUS

THE STATE OF A.P.
REPRESENTED BY THE SECRETARY, DEPTT. OF HOME, GOVT. OF AP,
ITANAGAR 2:THE DIRECTOR GENERAL OF POLICE

Age: 0
Occupation :

3:THE INSPECTOR GENERAL OF POLICE

Age: 0
Occupation :

4:THE SUPERINTENDENT OF POLICE

Age: 0
Occupation

Advocate for the Petitioner : MR.D Gumbo

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order (Oral)

Date : 14.03.2024

Heard Mr. H. Lampu, learned counsel for the petitioner. Also heard Ms. G. Ete, learned Addl. Senior Government Advocate for the State respondents.

2. The challenge made in this present proceedings is to an order dated 21.06.2012, issued by the Disciplinary Authority imposing a penalty of removal from service upon the petitioner on conclusion of a departmental proceeding drawn against him. The petitioner has also assailed an order dated 03.11.2014, issued by the Appellate Authority and an order dated 25.06.2015 issued by the Reviewing Authority upholding the penalty as imposed by the Disciplinary Authority.

3. The facts requisite to be considered in the present proceeding is noticed herein below: -

The petitioner, vide a memorandum of charge dated 16.09.2010 was charged of remaining un-authorizely absent from

duties w.e.f. 22.04.2010. The petitioner had not preferred any written statement against the allegation leveled against vide the said memorandum of charge dated 16.09.2010. Accordingly, vide an order dated 17.09.2010, the Disciplinary Authority proceeded to appoint an Enquiry Officer to enquire into the charge as leveled against him, the petitioner vide the said memorandum dated 16.09.2010.

The Enquiry Officer on entering appearance in the matter had issued notices to the petitioner on 08.09.2010 to appear before him on 07.10.2010. Accordingly, the petitioner appeared before the Enquiry Officer on 07.10.2010 and a preliminary enquiry was thereafter held. The petitioner thereafter, inspite of being issued with repeated notices, refrained from appearing in the enquiry and accordingly, the enquiry proceeded ex-parte against the petitioner. On conclusion of the enquiry, the Enquiry Officer submitted his report in the matter on 03.08.2011 holding the charge leveled against the petitioner to be proved.

The Disciplinary Authority, thereafter forwarded a copy of the enquiry report to the petitioner and required him to submit his representation against the same within 15(fifteen) days. The enquiry report was received by the petitioner on 31.01.2012 but, he refrained from submitting any representation against the same. Accordingly, the Disciplinary Authority vide his notice dated 14.05.2012 informed the petitioner that the penalty of removal from service was proposed to be imposed upon him and accordingly, required the petitioner to submit his representation in the matter. The petitioner did not respond to the said notice dated 14.05.2012

and accordingly, the Disciplinary Authority vide its order dated 21.06.2012, on examining the enquiry report and the evidences coming on record, proceeded to confirm the proposed penalty of removal from service of the petitioner and accordingly, the petitioner came to be imposed with the penalty of removal from service and the period of his absence w.e.f. 22.04.2010 was directed to be treated as "not spent on duty".

The petitioner, thereafter, submitted an appeal before the Director General of Police on 31.07.2012 and the said appeal was disposed of vide an order dated 03.11.2014, rejecting the same and upholding the order passed by the Disciplinary Authority. Thereafter, the petitioner filed an application for review of the penalty as imposed on him on 15.01.2015, the said application for review was duly considered and the same came to be rejected vide an order dated 25.06.2015, confirming the penalty as imposed upon the petitioner by the Disciplinary Authority on 21.06.2012. Being aggrieved, the present writ petition was instituted by the petitioner.

4. The learned counsels for the parties have made their submissions in tune with the pleadings as brought on record by them and accordingly, the same is not reproduced herein.

5. The petitioner, on receipt of the Office Memorandum dated 16.09.2010 had not submitted any representation in the matter and accordingly, an enquiry was directed against him. The enquiry report reveals that the petitioner appeared before the Enquiry Officer on

07.10.2010 and participated in the preliminary hearing held on that day. Thereafter, the petitioner, inspite of being issued with repeated notices for appearing in the enquiry proceeding, refrained from participating in the enquiry proceedings and on the authorities coming to a conclusion that the petitioner was not co-operating with the conduct of the disciplinary proceedings, directed that the departmental proceedings would be held ex-parte against the petitioner. Accordingly, the proceedings were taken forward and on conclusion of the same basing on the materials coming on record, the Enquiry Officer held the charges leveled against the petitioner to be proved. The copy of the enquiry report was furnished to the petitioner, however, he again refrained from submitting his representation against the same.

6. It is seen that the Disciplinary Authority vide the notice dated 14.05.2012 had again afforded an opportunity to the petitioner to have his say in the matter with regard to the penalty of removal from services that was proposed to be imposed upon him. It is also seen that the petitioner again did not respond to the said notice dated 14.05.2012 and accordingly, the Disciplinary Authority vide order dated 21.06.2012, upon considering all the relevant factors proceeded to impose upon the petitioner, the penalty of removal from service. Further, the period of his absence was w.e.f. 22.04.2010 was directed to be treated as "not spent on duty". The petitioner in the present proceeding has also not brought on record any justification with regard to the action on his part in not participating in the enquiry and or, responding to the notices issued to him by the Enquiry Officer during the enquiry; as well as by the Disciplinary Authority after conclusion of the enquiry proceedings.

7. The learned counsel for the petitioner has submitted the petitioner was not keeping well at the relevant point of time and accordingly, was not in a position to participate in the enquiry proceedings and in this connection, the learned counsel for the petitioner has referred to a communication dated 22.04.2010, issued by the petitioner to the Superintendent of Police, Ziro, wherein he had by referring to the ailments suffered by him prayed that he was not in a position to attend to his duties and may be granted leave for several days. Accordingly, it was submitted that the petitioner having duly intimated the authorities about his inability to resume his services on account of the ailments suffered by him, the respondent authorities ought not to have proceeded with the enquiry proceedings and ought to have waited till the petitioner was declared to be fit to resume his duties. It is to be noted here that the petitioner has failed to bring on record any medical certificate, wherein, the Doctor examining him for his purported ailments has certified that the petitioner was not fit to resume his duties. The only document relied upon by the petitioner is a certificate dated 25.07.2012, issued by which the Senior Medical Officer, Arunachal State Hospital, Naharlagun wherein it was certified that the petitioner was fit to resume his duties. However, the said certificate does not disclose the ailments suffered by the petitioner and or, the period for which he was advised rest on account of the ailments suffered to by him.

8. The enquiry report on perusal reveals that the petitioner had duly appeared before the Enquiry Officer on 07.10.2010 in pursuance towards notice issued to him for the purpose of 08.09.2010. The appearance of the petitioner on 07.10.2010 is after the date of the application for leave

submitted on 22.04.2010, the petitioner had not brought on record any material to show that after 07.10.2010, he was not in a position on account of his medical ailments to attend his duties or to participate in the enquiry proceedings. It is therefore, to be concluded that the petitioner had deliberately refrained from participating in the enquiry proceedings and as such being a member of a disciplined force, such conduct on the part of the petitioner cannot be accepted. The petitioner having not brought on record any irregularity committed in the process of enquiry and or, having not argued that the penalty as imposed upon him is disproportionate to the charges leveled against him, the enquiry report as well as the orders passed by the Disciplinary Authority does not call for any interference by this Court.

9. The Enquiry Officer having based his conclusions that the charge leveled against the petitioner to be established, on the evidences coming on record, the said enquiry report does not call any interference. The penalty of removal from service as imposed by the Disciplinary Authority upon the petitioner vide the order dated 21.06.2012 being supported by the materials coming on record against the petitioner in the enquiry and so issued after providing to the petitioner due opportunity to place his case against imposition of such penalty, the order dated 21.06.2012 does not call for any interference from this Court. Accordingly, the order dated 21.06.2012 issued by the Disciplinary Authority, consequently, is upheld along with the orders passed by the Appellate Authority and Reviewing Authority in the matter.

10. In view of the above conclusions, the writ petition is without any

merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant