

GAHC040001552017



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

Case No. : WP(C)/260/2017

SRI TABU BAYOR
CONSTABLE, COMPANY COMMANDER, E-COY, TEZU, DISTRICT LOHIT, AP.
MOBILE NO. 940228806

VERSUS

THE STATE OF A.P. AND 2 ORS. REPRESENTED THROUGH THE CHIEF
SECRETARY, GOVT. OF AP, ITANAGAR.

2:THE DIRECTOR GENERAL OF POLICE, GOVT. OF AP, ITANAGAR.
Age: 0 Occupation :

3:THE COMMANDANT, 2nd APP BN Dist West Siang, AP. Age: 0 Occupation

Advocate for the Petitioner : P Tamin, K. Dubey, L. Perme, P. Tamin
Advocate for the Respondent : Subu Tapin Senior Government Advocate

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

Date of hearing : 06.03.2024

Date of Judgment: 06.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Lissing Perme, learned counsel for the petitioner. Also heard Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of all the respondents.

2. The petitioner, has, by way of instituting the present proceedings, assailed the order, dated 19.02.2009, by which, on conclusion of a disciplinary proceedings initiated against him, a penalty of forfeiture of 2(two) service increments with cumulative effect, was imposed upon him with further stipulations that the period of suspension as undergone by him, shall not be treated as on duty.

3. The petitioner while working as a constable in 2nd Bn E-Coy, was detailed for sentry duty of judicial lock-up at Namsai and on 22.06.2007, an under-trial prisoner Nailialung Rongmai had expressed his desire to go to the toilet at around 8.30PM. The petitioner thereafter opened the cell of the under-trial prisoner and allowed the said under-trial prisoner to go to the toilet. It was found that the said under-trial prisoner managed to escape from the backside of the toilet through a gap between the CGI Sheets and the toilet wall. Basing on the said incident, an inquiry was done and accordingly, the petitioner came to be placed under suspension w.e.f. 25.06.2007.

4. The preliminary inquiry being done, a memorandum of charge came to be issued to the petitioner and other persons involved in the incident wherein the under-trial prisoner had escaped from the judicial custody. The said memorandum of charge was issued to the petitioner and others on 26.06.2007 and therein, 2(two) articles of charges pertaining to the said incident, was drawn against the petitioner and other involved persons. The petitioner, on receipt of the said articles of charges, submitted his written statement thereon. The said written statement of the petitioner not being found to be satisfactory,

an inquiry was directed to be done in the matter and an Inquiry Officer was so appointed for the said purpose. The petitioner participated in the said inquiry proceedings and on conclusion of the inquiry, the Inquiry Officer, vide his report, held that the charges as levelled against the petitioner was held to be proved. It is to be noted that a Joint Inquiry was held in the matter involving the petitioner and 4(four) others. A copy of the said Inquiry Report was furnished to the petitioner and the petitioner had submitted his representation against the same. The disciplinary authority, on receipt of the said representation of the petitioner, vide notice, dated 07.01.2007, required the petitioner to submit his representation as to why a penalty of withholding of 2(two) service increments with cumulative effect and treating the period of suspension undergone by him, as not spent on duty.

5. The petitioner submitted his representation in the matter and accordingly, the disciplinary authority, vide the order, dated 19.02.2009, confirmed the penalty of withholding of 2(two) service increments with cumulative effect on the petitioner with further direction that the period of suspension undergone by him w.e.f. 25.06.2007 till 31.07.2007 shall not be treated to be spent on duty.

6. Being aggrieved, the petitioner had submitted an appeal against the said order, dated 19.02.2009, and the appellate authority, vide the order, dated 16.06.2016, rejected the same. Thereafter, the petitioner submitted a review petition before the Director General of Police, Government of Arunachal Pradesh, Itanagar, on 27.07.2016, which was duly considered by the authority and vide the order, dated 29.09.2016, the same came to be rejected confirming

the imposition of penalty upon the petitioner by the disciplinary authority. It is the said orders that are presently under challenge in the present proceedings.

7. Mr. Perme, learned counsel for the petitioner, at the outset, submits that the very issuance of the memorandum of charge, dated 26.06.2007, is not sustainable in-as-much as the same was so issued in clear violation of Rule 23(3) of the Arunachal Pradesh Police(Discipline & Appeal) Rules, 1999, wherein, it is stipulated that for a misconduct alleged pertaining to escape of prisoners from police custody, a preliminary inquiry into the matter is a mandatory requirement and the same not having been carried-out in the present case; the memorandum of charge, dated 26.06.2007, cannot be sustained and he, accordingly, submits that the penalty as imposed upon the petitioner by the disciplinary authority vide order, dated 19.02.2009, also cannot be sustained and requires to be interfered with by this Court.

8. Mr. Perme, learned counsel, further submits that the inquiry as conducted in the matter, was so conducted by 2(two) different Inquiry Officers and he contends that the first Inquiry as conducted by the Inquiry Officer, should be treated as the preliminary inquiry conducted under the provisions of Rule 23(3) of the Rules of 1999 and accordingly, a fresh memorandum of charge was mandated to be issued to the petitioner in the matter before proceeding to impose the penalty upon him.

9. It is the contention of Mr. Perme, learned counsel, that the procedure as mandated under the provisions of Rule 23(3) of the Rules of 1999, having not

been followed; the disciplinary proceedings as well as the penalty imposed upon the petitioner, cannot be sustained and requires to be interfered with by this Court.

10. Per contra, Mr. Tapin, learned Senior Government Advocate, by relying on the records of the inquiry, submits that prior to issuance of the memorandum of charge, dated 26.06.2007; a preliminary inquiry was conducted in the matter through the Superintendent of Police, Lohit District, Tezu, and therein, the petitioner's negligence in the matter having been brought to the forefront; the respondent authorities proceeded to initiate the disciplinary proceedings against the petitioner and others, so involved.

11. Mr. Tapin, learned Senior Government Advocate, further submits that the petitioner was given all due opportunity to defend his case in the inquiry and the penalty as imposed upon the petitioner on conclusion of the inquiry thereof by the disciplinary authority, is in consonance with the gravity of the charge levelled against him in the disciplinary proceedings so initiated against the petitioner. Mr. Tapin, accordingly, submits that the penalty as imposed upon the petitioner does not call for any interference by this Court.

12. I have heard the learned counsel appearing for the parties and also considered the materials brought on record by the parties to the proceedings.

13. It is seen that the disciplinary proceedings as initiated against the

petitioner, was conducted in the manner required and the petitioner was given all due opportunity to defend the charge levelled against him and the petitioner had duly availed of such opportunity being given to him. In the pleadings brought on record, there is no contention that the petitioner was, in any manner, deprived of any opportunity to defend his case in the inquiry properly and/or that any prejudice was caused to him in the matter.

14. The contention of Mr. Perme, learned counsel for the petitioner that the memorandum of charge, dated 26.06.2007, so issued, was in clear violation of the provisions of Rule 23(3) of the Rules of 1999; is to be considered. It is the specific stand of Mr. Perme, learned counsel that the memorandum of charge, dated 26.06.2007, was so issued to the petitioner without there being any preliminary inquiry held into the matter to ascertain as to whether there was any negligence on the part of the petitioner leading to the escape of the under-trial prisoner from the judicial custody.

15. In this context; this Court has perused the records as produced by Mr. Tapin, learned Senior Government Advocate, and therein, it is seen that after the incident had occasioned on 22.06.2007, a due inquiry was conducted into the matter through the Superintendent of Police, Lohit District, Tezu, and therein, it was brought on record that the negligent act on the part of the petitioner had resulted in facilitating the escape of the under-trial prisoner from the judicial custody.

16. The provisions of Rule 23(3) of the Rules of 1999, mandates that in the

event, there is an incident of escape of prisoners from the police custody; an order of suspension can be issued if the inquiry establishes negligence or connivance in the escape of such prisoners. It also mandates that the inquiry would lead to drawal of either judicial proceedings and/or departmental proceedings against the police personnel and further action in the matter would be so carried-out basing on the outcome of such judicial proceedings and/or departmental proceedings so initiated against the police personnel.

17. In the case on hand; a preliminary inquiry having been so conducted and the memorandum of charge being issued to the petitioner in pursuance thereof; it is to be held that the provisions of Rule 23(3) of the Rules of 1999, was duly complied with. A perusal of the memorandum of charge, dated 26.06.2007, as available in the records as produced by the learned Senior Government Advocate reveals that the charge was so framed against the petitioner basing on the preliminary inquiry report and the said report was also made a part of the list of documents as annexed to the said memorandum of charge, dated 26.06.2007. Accordingly, the said contention of the petitioner's counsel does not merit acceptance and it is held that the memorandum of charge, dated 26.06.2007, was so issued by following the procedure as mandated under the provisions of the said Rules of 1999.

18. At this stage, it is to be noted that in the writ petition, there is no averment made with regard to the said contention as made by the learned counsel for the petitioner during the hearing of the matter. However, the issue being one relating to procedure for conduct of disciplinary proceedings, this

Court has taken-up the same for consideration and on perusal of the original records, had arrived at the above conclusions in the matter.

19. This now brings this Court to consider the second contention raised by the learned counsel for the petitioner that the inquiry as was held in pursuance of the issuance of the memorandum of charge, dated 26.06.2007, was so conducted by 2(two) different Inquiry Officers. The said issue need not detain this Court any further in-as-much as it is clear from the Show Cause Notice, dated 07.01.2009, issued to the petitioner, informing him of the tentative view arrived at with regard to the penalty that has been proposed to be imposed upon him issued by the disciplinary authority, that Inspector Mito Riba was appointed as the Inquiry Officer to inquire into the charges levelled against the petitioner and others and the said Inquiry Officer after conducting the inquiry, had submitted his report, wherein, he had stated that the earlier Inquiry Officer Inspector S. D. Roy had completed the inquiry and only the Inquiry Report was to be submitted and accordingly, the second Inquiry Officer had taken the matter forward and on consultation of the materials coming on record in the Inquiry, proceeded to submit the Inquiry Report in the matter. The said Inquiry Report was duly furnished to the petitioner and in his representation against the same, the petitioner had not raised any dispute as is being sought to be raised by him at the time of hearing of the present proceedings. Accordingly, on the said count also, it is to be held that no prejudice was caused to the petitioner, thus, the second contention as urged by the learned counsel for the petitioner, also does not merit acceptance by this Court.

20. The penalty as imposed upon the petitioner is to the effect of withholding of 2(two) service increments with cumulative effect with further stipulation that the period of suspension as undergone by him, shall not be treated to be spent on duty, the said penalty, in view of the nature of allegations levelled against the petitioner and the manner in which the same was so proved, does not warrant a conclusion that the same was not commensurating to the allegations as levelled against him. The petitioner being a member of the disciplined force, was required to act in discharge of his duty, with due caution and promptness which admittedly was missing on the part of the petitioner and such action on the part of the petitioner had facilitated the escape of an under-trial prisoner which is a misconduct of a very serious nature and accordingly, the penalty as imposed upon the petitioner, has to be held to be commensurating to the charges as levelled against the petitioner.

21. In view of the aforesaid conclusions; this Court is of the considered view that the disciplinary proceedings as initiated against the petitioner was so initiated against him in terms of the provisions of the Rules of 1999 and the petitioner was given due opportunity to defend his case. Further, the penalty as imposed upon the petitioner being held to be commensurating to the charges levelled against him; the contentions as made by the petitioner in the matter towards challenging the penalty as imposed upon him, does not merit acceptance and the writ petition is, accordingly, found to be devoid of merit.

22. In the above view of the matter, this writ petition stands dismissed. However, there shall be no order as to costs.

23. Registry shall return the original records to the learned Senior Government Advocate, forthwith.

JUDGE

Comparing Assistant