

GAHC040002192018

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

Case No. : WP(C)/668/2018

SHRI TAYI BODUNG
PRESENTLY SERVING AS HEAD CONSTABLE, AALO POLICE STATION,
AALO, WEST SIANG DIST. AP

VERSUS

THE STATE OF A.P. AND 3 ORS.
THROUGH TE SECRETARY HOME, GOVT. OF AP, ITANAGAR

2:THE DIRECTOR GENERAL OF POLICE

Age: 0
Occupation :
ARUNACHAL PRADESH
POLICE HEADQUARTER
ITANAGAR

3:THE INSPECTOR GENERAL OF POLICE

Age: 0
Occupation :
OPS
ARUNACHAL PRADESH
POLICE HEAD QUARTER ITANAGAR

4:THE COMMANDANT

Age: 0
Occupation :
2ND ARUACHAL ARMED POLICE BATTALION
BATTALION HEADQUARTER
AALO

WEST SIANG DIST. A

Advocate for the Petitioner : MR.V Jamoh, MrD Panging,Mr.M Doji,M Gibi,MS.E Perme,G Basar,Marge D,A Modi,O Tayeng,MS.D Tamuk

Advocate for the Respondent : , , , , , , , ,GA

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

Judgment & Order (Oral)

Date : 04-12-2024

Heard Mr. Dicky Panging, learned counsel for the petitioner. Also heard Ms. Goter Ete, learned Addl. Senior Government Advocate appearing for the State respondents.

2. The petitioner, in the present proceedings, has presented a challenge to an order dated 14.08.2012, issued by the Commandant 2nd AAP Bn, BHQ, Aalo; imposing upon the petitioner, the penalty of withholding 02(two) years' service increment with cumulative effect, on conclusion of a departmental proceeding so instituted against him.

3. A departmental proceeding was instituted against the petitioner along with three others personnel of 2ndBn D-Coy, Aalo, vide issuance of a Memorandum dated 22.03.2010. The petitioner and the other co-delinquents were so charged for negligence in guarding one UTP Jumdo Ete at District Hospital, Aalo. It was the specific allegation against the petitioner herein that he had slept during his sentry duty which had facilitated the UTP to escape from custody. The other three co-delinquents were also alleged to have not performed their duties in the manner required which had also facilitated escape of the said UTP. The written statement submitted by the petitioner not being found to be satisfactory, a departmental

proceeding was ordered in the matter and an Enquiry Officer along with a Presenting Officer came to be so appointed.

4. The Enquiry Officer, on conclusion of the enquiry, proceeded to submit his enquiry report in the matter on 30.03.2012; and therein, had held that the petitioner herein along with one Constable *Bunni Dui* were negligent in discharging their duties and the same had facilitated the said UTP to escape from custody. Accordingly, the charges so leveled against the petitioner vide the Memorandum of Charge dated 22.03.2010 was held to be proved. The said enquiry report was forwarded to the petitioner herein; however, no representation against the same was submitted in the matter by the petitioner. Accordingly, the disciplinary authority proceeded to consider the enquiry report and vide order dated 14.08.2010, after discussing the materials coming on record, as well as the findings so recorded by the Enquiry Officer, proceeded to impose the penalty of withholding of two years' service increment with cumulative effect on the petitioner herein, for his gross negligence of duty.

5. The petitioner instituted an appeal against the order dated 14.08.2010, passed by the disciplinary authority. The appellate authority, vide order dated 22.09.2016, on consideration of the contentions so raised in the appeal and also appreciating that the appeal was so submitted after a lapse of 06(six) years from the date of imposition of penalty upon him by the disciplinary authority, proceeded vide the order dated 14.08.2010, to reject the appeal on the ground of being time barred and also being devoid of merit.

6. The petitioner thereafter, preferred a revision petition. The revisioning authority, on consideration of the revision petition so filed by the petitioner, proceeded to reject the petition so preferred by the petitioner herein, thereby confirming the orders of the disciplinary authority and the appellate authority. Being aggrieved, the petitioner has instituted the present proceedings.

7. Mr. D. Panging, learned counsel for the petitioner had submitted that the penalty so imposed upon the petitioner for the lapse so noticed in discharge by him of the duties while guarding the UTP at District Hospital, Aalo on 05.03.2010, was so done without appreciating the fact that the petitioner, for the ailments suffered by him, was undergoing treatment and was taking medicines which had the effect of inducing sleep. It is submitted by Mr. Panging, learned counsel that on account of the medicines being so taken by the petitioner, he had felt asleep while guarding the UTP on the said date. It is further projected by Mr. Panging, that the others co-delinquents who were also detailed for guarding the UTP along with the petitioner herein, had also not discharged their duties in the manner required and accordingly, the petitioner could not have been imposed with such severe penalty.

8. Mr. Panging, learned counsel for the petitioner has further submitted that the enquiry proceeding stood vitiated on account of the fact that the petitioner, herein, was not permitted to cross-examine the witnesses cited against him or, to adduce evidence. Accordingly, he submits that the denial of the opportunity to cross-examine the witnesses so deposing against him, in the matter, had prejudiced the defence of the petitioner and on this count alone, the Enquiry is required to be interfered with.

9. Mr. Panging, learned counsel by referring to the penalties so imposed upon the co-delinquents has submitted that the penalties of withholding of two service increments with cumulative effect as imposed upon the petitioner, herein, in addition to being not in parity with the penalties so imposed upon the other co-delinquents, is disproportionate to the charge so leveled against the petitioner.

10. Ms. G. Ete, learned Addl. Senior Government Advocate by referring to the affidavit filed in the matter by the respondents, has submitted that the fact that the petitioner had slept during the time when he was detailed to guard the said UTP, has been established in the enquiry by the witnesses so deposing in the

matter. Ms. Ete, learned counsel has further submitted that in addition to examination of Force personnel, personnel of the Hospital were also examined in the enquiry and they had also univocally submitted that the petitioner was sleeping while he was detailed for guarding the said UTP.

11. Ms. G. Ete, learned counsel has further denied the fact that the petitioner herein, before taking charge of the said UTP at 23.00 hours in the said Hospital premises, had brought on record any materials to demonstrate that he was not in a position to carry out his duty of guarding the said UTP, on account of medicines being taken by him which has the effect of inducing sleep. It is submitted that the said contention of the petitioner is an afterthought and would not require a consideration by this Court.

12. Noticing the categorical submission made by the petitioner to the effect that he was denied an opportunity of cross-examining the witnesses so deposing in the matter against him, and a categorical denial of the said assertion by the respondents in their affidavit-in-opposition filed by them in the matter, this Court had required the learned Government Advocate, vide the order dated 02.12.2024 to facilitate perusal of the records of the departmental enquiry, by the learned counsel for the petitioner in her presence and fixed the matter on 04.12.2024 for further consideration.

13. Today, when the matter was called up for further consideration, Mr. D. Panging, learned counsel for the petitioner has, upon perusal of the records of the departmental enquiry, fairly submitted that the assertion made in the writ petition that the petitioner was not permitted to cross-examine the witnesses deposing against him, was incorrect; and the depositions so available in the records of the departmental enquiry perused by him, had projected a different picture. In that view of the matter, Mr. Panging, learned counsel submitted that the contention made in the present proceeding, that the enquiry stood vitiated on account of the

fact that the petitioner was not afforded an opportunity to cross-examine the witnesses, deposing against him in the matter, would not merit acceptance from this Court.

14. Mr. D. Panging, learned counsel has, however, submitted that the penalty so imposed upon the petitioner, in addition of being not in parity with that so imposed upon the co-delinquents, is disproportionate to the allegations leveled and proved against the petitioner, herein.

15. Considering the submission made by the learned counsel for the petitioner and noticed herein above, the issue as to whether the petitioner was given an opportunity to cross-examine the witnesses would not mandate a consideration by this Court in the present order. It is held that the petitioner was provided with all due opportunity to defend himself in the matter.

16. The further contention raised by the learned counsel for the petitioner that the penalty so imposed upon the petitioner herein, is disproportionate and further, the penalty was so imposed without maintaining parity with the penalty so imposed upon the co-delinquents, is being considered by this Court.

17. This Court, in this context, would refer to the decision of the Hon'ble Supreme Court in the case of **Chairman-cum-Managing Director, United Commercial Bank &Ors., Vs P.C. Kakkar**, reported in **(2003) 4 SCC 364**, wherein, the Hon'ble Supreme Court in this connection, had drawn the following conclusions:-

“15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971 (1) All E.R. 1148] observed "The giving of reasons is

one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

18. The allegation as leveled against the petitioner who is a member of a disciplined force, having been established in the enquiry and it being an admitted position that the petitioner did not discharge his duty of guarding the said UTP in the manner required, facilitating escape of a UTP from custody, a misconduct being writ large against the petitioner in the matter, the petitioner is not entitled to be extended with any sympathy.

19. The allegation leveled against the petitioner having been established and the

misconduct as committed by him being apparent, the penalty as imposed upon him cannot be stated to be disproportionate to his proved misconduct. It is a settled position of law that the penalty that is to be imposed upon the petitioner is the sole discretion of the disciplinary authority and of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making process while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the force, as well as extenuating circumstances, if any. Accordingly, the penalty as imposed upon the petitioner in the case in hand, in the considered view of this Court, is proportionate to the allegations leveled against him and established in the enquiry.

20. It is also a settled position of law that if the appellate authority is of the opinion that the case warrants a lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the departmental appellate authority is ordinarily not available to the court or a tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of the facts. In exercise of power of judicial review, however, this Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of this Court, lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities. This Court, in the present proceeding, has not found any extenuating circumstance warranting interference with the penalty as imposed

upon the petitioner.

21. It is only when the punishment is found by this Court to be outrageously disproportionate to the nature of the allegations leveled against the delinquent that the principle of proportionality would come into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of Wednesbury rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary.

22. The principle of proportionality was first propounded by Lord Diplock in **Council of Civil Service Unions v. Minister for the Civil Service** in the following words:(AC p. 410 D-E)

“..... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'.”

23. The Hon'ble Supreme Court had approved the aforesaid principle in the case of **Ranjit Thakur v. Union of India**, reported in **(1987) 4 SCC 611**, wherein, the Hon'ble Supreme Court by emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words in paragraph No. 25.

Paragraph No. 25 of the said judgment being relevant, is extracted hereinbelow for ready reference: (SCC p. 620, para 25)

"25. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

24. In view of the pronouncement, as noticed above in the matter of the Hon'ble Supreme Court; it is clear that it is not for the writ Court to interfere with the punishment imposed by the disciplinary authority, which is a matter within the domain and jurisdiction of the said authority. The petitioner, herein, is a member of the disciplined force and he is required to discharge his duties with a greater sense of responsibility which admittedly, is found missing in the matter. Accordingly, the penalty so imposed upon the petitioner by the disciplinary authority, on consideration, being found to be commensurate to the misconduct attributed and proved against a member of the disciplined force, it is not for the writ Court to describe another penalty in lieu of the penalty imposed by the disciplinary authority.

25. At this stage, it is required to be noted that one of the co-delinquent Constable *Bunia Dui*, who was also detailed for ground duty on the same day along with the petitioner herein, but was found to be absent from the Hospital during his duty period, came to be imposed a higher penalty of withholding of 4(four) years' service increment with cumulative effect. Accordingly, it is seen that the disciplinary authority had imposed penalties considering the gravity of misconduct established against the personnel detailed for ground duty at District

Hospital, Aalo. Consequently, the penalty so imposed upon the petitioner, herein, cannot be held to one so imposed disproportionate to the misconduct proved against him.

26. Accordingly, in view of the above discussions and conclusions, this Court is of the considered view that, given the facts and circumstances as existing in the matter; it has to be held that the penalty as imposed upon the petitioner commensurates to the misconduct as established against him in the matter and the same does not call for any interference from this Court.

27. The writ petition accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant