



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

**Case No. : WP(C)/461/2013**

CT. ATO MOMAI  
2ND APP BN, BHQ, AALO, WEST SIANG DIST. AP

VERSUS

THE STATE OF A.P. AND 3 ORS. REPRESENTED BY THE COMMISSIONER,  
DEPTT. OF HOME, ITANAGAR, AP

2:THE DIRECTOR GENERAL OF POLICE  
Age: 0  
Occupation :  
ARUNACHAL RADESH ITANAGAR

3:THE INSPECTOR GENERAL OF POLICE  
Age: 0  
Occupation :  
BN ARUNACHAL PRADESH ITANAGAR

4:THE COMMANDANT  
Age: 0  
Occupation :  
2ND AAP BATTALION BHQ AALO

**Advocate for the Petitioner** : Mr. O. Pada, G. Loyi

**Advocate for the Respondent** : GA (AP)

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

**JUDGMENT AND ORDER (ORAL)**

**Date : 06-03-2024**

Heard Mr. O. Pada, learned counsel for the petitioner and Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. The petitioner has by way of instituting the present proceeding presented a challenge to an order dated 18.08.2010 by which the Disciplinary Authority on conclusion of a Disciplinary Proceeding initiated against the petitioner had imposed the penalty of dismissal of service on him. The petitioner has also assailed an order dated 28.02.2011 passed by the appellate authority rejecting his appeal.

3. The brief facts requisite for adjudication of the issues arising in the present proceeding is noticed hereinunder:

The petitioner, in contemplation of a Departmental Proceeding to be drawn against him, came to be placed under suspension vide an order dated 03.11.2009. It is to be noted that along with the petitioner, 7 (seven) other persons were also placed under suspension vide the same order. Thereafter, the petitioner was issued a memorandum of charge dated 11.12.2009 drawing therein 2(two) charges against him. The Article of Charge no. I, insofar as it concerns the petitioner, pertains to an allegation that the petitioner while detailed for sentry duty at the R.P gate of the Battalion Headquarter at Aalo was found absent from such duty on 22<sup>nd</sup>, 28<sup>th</sup> and 31<sup>st</sup> of October 2009. The Article of Charge no. II, levels allegations against the petitioner pertaining to the penalties as awarded to him for his past misconducts. It is to be noted that the show-cause as issued to the petitioner was also issued to 7 (seven) other

similarly situated Police Personnel levelling similar allegations, therein. On receipt of the show-cause notice, the petitioner submitted his written statement of defence, thereon, categorically denying the allegation as levelled against him. With regard to the Article of Charge no. I, it was the specific stand of the petitioner that on the dates so mentioned i.e. 22<sup>nd</sup>, 28<sup>th</sup> and 31<sup>st</sup> of October, 2009, the petitioner had appeared for his duties and had put his signature in the detailment register as per norms. It was the categorical stand of the petitioner that he had attended his duties on the said dates. The Disciplinary Authority not being satisfied with the replies as submitted by the petitioner and others directed for a joint enquiry in the matter and an Enquiry Officer along with a Presenting Officer came to be appointed for the purpose. The petitioner appeared before the Enquiry Officer and the Enquiry Officer on conclusion of the proceedings, submitted his report thereon on 10.06.2010 holding that the charges levelled against the petitioner to be proved. Thereafter, the copy of the Enquiry Report was furnished to the petitioner and along with a Show-cause Notice, requiring the petitioner to submit his representation with regard to the imposition of the proposed penalty of dismissal from service upon the petitioner. The petitioner vide his communication dated 22.07.2008 submitted his detailed reply in the matter and thereafter, the Disciplinary Authority vide order dated 18.08.2010 on consideration of the Enquiry Report as well as the representation submitted by the petitioner, thereon, proceeded to confirm the imposition of penalty of dismissal from service upon the petitioner and the others as mentioned, therein. The period of suspension as undergone by the petitioner w.e.f. 03.11.2009 to 18.08.2010 was also directed to be treated as not spent on duty for all purposes. Being aggrieved, the petitioner submitted an appeal in the matter. The said appeal was considered by the appellate authority and vide order dated 28.02.2011, the same came to be rejected upholding the order of the Disciplinary Authority, dated 18.08.2010. Being aggrieved, the petitioner has

instituted the present proceedings before this Court.

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

5. I have heard the learned counsels for the parties and also considered the materials as brought available on record.

6. It is to be noted that the memorandum dated 11.12.2009 as issued against the petitioner was also issued to 7(seven) other similarly situated persons. The Articles of charge insofar as it concerns the petitioner is extracted hereinbelow:

*"...1/ARTICLE-I*

*That Lnk. Tateng Taja, Ct. Gekek Marde, Ct Tania Mara, Ct Bui, Ct Jonai Taiko, Ct. Wilson Mengu, Ct. Ajoy Ngukir and Ct. Ato Moamai of 2<sup>nd</sup> Bn BHQ Aalo who were detailed for sentry duty at R/P gate BHQ Aalo found absent from their duty without any intimation/permission from G/Commander as well as competent authority and their absent as mentioned below. In many occasion they were also found performing their duties under influence of alcohol.*

*1.....*

*2.....*

*3.....*

*4.....*

*5.....*

*6.....*

*7. Ct. Ato Momai :- 22<sup>nd</sup>, 28<sup>th</sup>, and 31<sup>st</sup>, Oct 09*

*This act on the part of Lnk. Tateng Taja, Ct. Gekek Marde, Ct Tania Mara, Ct Taje Bui, Ct. Jonai Taijong Ct. Wilson Mengu, Ct. Ajoy Ngukir and Ct. Ato*

*Moamai of 2<sup>nd</sup> Bn BHQ Aalo amounts to gross misconduct/indiscipline/dereliction of duty and unbecoming being a member of disciplined force which renders them unfit to retain in govt service. Hence they are liable to be proceeded with departmentally.*

#### **ARTICLE-II**

*As per service record their past conduct were not at all satisfactory. In many occasions they were found involved with misconduct,/absent from duty willfully and over staying from leave to which effect they were penalized several times by issuing several orders, but no any improvement shown by them towards their duties in spite of those penalties. The penalty imposed to them earlier shown below against them.*

.....

#### **Ct. Ato Momai**

- 1. Awarded 2(Two) hrs pact drill on 19-7-93 Vide order No. CAPP/2NDBN/D-COY/36/92-93 Dtd 15/7/93.*
- 2. Awarded "CENSURE" for his unauthorized duty absent on 25/7/2000 vide order No. CAPP/2NDBN/B-COY-29/99-2000 Dtd 27/10/2000.*
- 3. Awarded the penalty of "DIESNON" for 3 (Three) days for his absent from guard room vide order No.CAAP/NP/52/2001 Dtd 3/10/01.*
- 4. 1 (One) day absent period on 22-5-02 treated as E.O.L with warning not to repeat the same in future vide order No CAPP/P/ABSENT/41/98-99 Dtd 24/5/2002.*
- 5. Awarded 15 (Fifteen) days absent period wef.27/7/03 to 10/8/03 treated as E.O.L. vide order No OPS-010/BHQ/2NDBN/99-03 Dtd 13/8/03.*
- 6. He was WARNED" Vide order No OPS-043/KK/2NDBN/06 Dtd 14/6/07 for his misconduct.*
- 7. 63 (Sixty Three) days un-authorized OSL period WEF 30-10-96 to 31-12-96 treated as E.O.L. vide order No.PF-8920023/2<sup>nd</sup> BN/65 Dtd 14-7-97.*
- 8. He was WARNED vide order NO.PF-8920023/2<sup>nd</sup> BN/KNG/CT/AN dated 2/5/09 for his misconduct."*

7. A perusal of Article of Charge no. I would reveal that the allegation as levelled against the petitioner is that he on being detailed for sentry duty at the R/P gate of the Battalion Headquarter at Aalo was found to be absent from his duties without any intimation/permission from the group commander as well as competent authority on the dates as mentioned against the name of the petitioner. It was also alleged that on many occasions, the petitioner was found to be discharging his duties under influence of alcohol. The said charge was dealt with by the petitioner in his written statement of defence and therein, the petitioner had categorically denied that he was absent from his duties on the dates as reflected against his name in the said Article of charge no. I. It was also contended by the petitioner that he had discharged his duties on the said dates and had duly signed on the detailment register which is kept in the duty place and his such, discharge of duties were also witnessed by many persons. It was also contended that the duty time of the petitioner started from 11.00 am on the said dates and the petitioner had attended his duties promptly. In the enquiry so held, the Department had produced witnesses to substantiate the Article of charge no. I, so levelled against the petitioner. From the statements as made by the witnesses appearing on behalf of the Department in the enquiry, as reflected in the Enquiry Report, it is seen that most of the witnesses had made general statements to the effect that the petitioner was found absent for which necessary entries were stated to have been made in the duty detailment register maintained in the R/P gate. It was also disclosed by the witnesses that on many occasion the petitioner was found to be discharging his duties under influence of alcohol. Accordingly, the Assistant Commandant 2<sup>nd</sup> APP who had appeared as a witness contented that he had made a report in the matter to the Commanding Officer 2<sup>nd</sup> Battalion, Aalo for taking disciplinary action. Such statement of the Assistant Commandant was further reiterated by the Guard Commander. It is to be noted that the statements as made by the Assistant Commandant and the Guard Commandant are all vague and do not disclose as to whether the petitioner had not discharged his duties on the specific

dates as mentioned in the Article of Charge no. I against this name. The other witness who was stated to hold the charge of BHM of the 2<sup>nd</sup> Battalion Headquarter, Aalo had submitted that on 31.10.2009 at 1445 Hours he had checked the RP Gate duty party and found that Constable Tania Mara, Constable Gekek Marde and Constable Jonai Taijong (Taiko) to be absent and accordingly, he made necessary entries in the duty detailment register for the said date. It is to be noted that the said witness i.e. the BHM of the 2<sup>nd</sup> Battalion Headquarters, Aalo, had not disclosed anything with regard to the absence of the petitioner from his duty on 31.10.2009. It is to be seen that the petitioner has taken a stand that he had performed his entrusted duty, but at the time of checking by the authorities, he may have left the post. However, it is the contention of the petitioner that such leaving of the post was after his replacement had come for duty and was before around 10 to 15 minutes of the time when his duty period was to come to an end. The Enquiry Officer for the purpose of holding that the petitioner was absent from his duty on the date so mentioned against his name in the Article of charge no. I had relied upon the duty detailment register which was marked as an exhibit in the enquiry. It is to be noted that in the Show-cause Notice in the list of documents as appended to the memorandum of charge dated 11.12.2009, the detailment register is not included as one of the documents that would be relied in the enquiry. Basing on the said conclusion, the Enquiry Officer has returned the finding to the effect that the Article of charge no. I was established against the petitioner.

8. With regard to the Article of charge no. II, as extracted hereinabove, the same pertains to punishment awarded to the petitioner for his past misconduct pertaining mainly to absence from duty. The said being a matter of fact does not require further evidence to be proved, however, the same can be used by the respondent authorities for determining the quantum of penalty that is to be imposed upon the petitioner on the charge levelled against him under the Article of charge no. I being established.

9. At this stage, it is requisite to examine the materials as brought on record in the

enquiry and reflected in the report of the Enquiry Officer. Out of the 4 (four) witnesses who had deposed in the favour of the Department in the enquiry, none had brought on record materials to establish that the petitioner was absent from his duties on the dates so mentioned in the Article of charge no. I against the name of the petitioner. The BHM of the 2<sup>nd</sup> Battalion Headquarter, Aalo, had with regard to the inspection made on 31.10.2009 contended that such inspection was made at 1445 hours by him and found Constable Tania Mara, Constable Gekek Marde and Constable Jonai Taijong (Taiko) to be absent. There was nothing stated against the petitioner. In other words, the said witness who had undertaken the verification process on 31.10.2009 at 1445 hours had not deposed that the petitioner was found to be absent from his duties on 31.10.2009.

10. At this stage, the contention of the learned counsel for the petitioner is to be noted. The learned counsel for the petitioner had submitted that it is a fact that the petitioner in his pleadings had stated that on a few days the petitioner had left his post 10 to 15 minutes prior to the end of his duty period but had left his such post only after his replacement had come for discharge of duties. However, the learned counsel for the petitioner denied that the allegation that the petitioner was absent from duty on the dates so mentioned and contends that the findings recorded by the Enquiry Officer in the matter are perverse and has been made only for the purpose of showing the petitioner in bad light.

11. The respondents have on the other hand responding to the said contention of the learned counsel for the petitioners have contended that the petitioner in view of the finding recorded by the Enquiry Officer that he was found to be absent on the dates as mentioned against this name under the Article of Charge no. I, in the light of the Article of Charge no. II levelled against the petitioner reflects that he is a habitual offender and has been committing misconducts all along his service career. It was further contended that although penalised on eight occasions earlier, the petitioner

has not shown any improvement in his conduct towards his duties and accordingly, the Article of Charge no. I having been established, the Disciplinary Authority by reckoning the earlier penalties as imposed upon the petitioner during his service career had imposed the penalty of dismissal from service. It is contended that the penalties so imposed does not call for any interference by this Court inasmuch as the petitioner belongs to a disciplined force and accordingly, he is required to discharge his duties in the manner that is prescribed.

12. The witnesses as appearing in the enquiry as initiated against the petitioner having not brought on record any material to establish the Article of Charge no. I against the petitioner, and the said article being concluded to be established against the petitioner by the Enquiry Officer only basing on the detailment register, such finding having been so arrived at without consideration of the plea of the petitioner that he had attended his duties on the dates specified and may have left his duties 10 to 15 minutes prior to his closing time, renders such conclusion with regard to the Article of Charge no. 1 levelled against the petitioner unsustainable. The Enquiry Officer has also not reflected in the Enquiry Report as to in what manner the detailment register was produced in the enquiry inasmuch as the said register was not listed as a document to be relied upon in the list of documents annexed to the Memorandum of Charge in question.

13. Further the Enquiry Officer while proceeding to record a finding that the Article of charge no. 1 levelled against the petitioner to be established, failed to deal with the evidence adduced by the BHM of the 2<sup>nd</sup> Battalion Headquarter, Aalo, wherein, he had not stated that the petitioner was absent from his post during inspection on 31.10.2009. The Disciplinary Authority while concurring with the views of the Enquiry Officer failed to examine the manner in which the Enquiry Officer had recorded conclusions with regard to the Article of Charge no. I against the petitioner. The Disciplinary Authority without application of mind to the conclusions as reached by the

Enquiry Officer in the matter proceeded to propose vide the order dated 14.07.2010, the penalty of dismissal of service upon the petitioner. The petitioner in his reply to such notice dated 14.07.2010 had categorically stated that he had put his signature on the detailment register which is kept in the duty place on all the three dates and had further stated that he may have left the duty place before 10 to 15 minutes after his reliever had reported for duty. The Disciplinary Authority while proceeding to issue the order dated 18.08.2010 failed to appreciate such contention of the petitioner which would have gone to the root of the matter and in the event, it was found that the petitioner had in fact signed on the detailment register then the Article of charge no. 1 as levelled against him could not have been held to be established. It is to be reiterated that the Article of Charge no. I levelled against the petitioner is specific to the extent that the petitioner on 22<sup>nd</sup>, 28<sup>th</sup> and 31<sup>st</sup> of October 2009 was absent from his duties that is to say that he had not attended his duties on the said dates. While the other witnesses as noted hereinabove appearing in the enquiry had made vague statements, the specific statement was so made by the BHM of the 2<sup>nd</sup> Battalion who had categorically stated that on 31.10.2009 at 1445 hours he had checked on the R/P duty party and had only found three constables detailed for duty on that day to be absent. The name of the petitioner is not included amongst the three constables named by the said BHM of the 2<sup>nd</sup> Battalion BHQ, Aalo. However, such material as available on record was miserably failed to be appreciated by the Enquiry Officer and the Disciplinary Authority.

14. In that view of the matter, at least on 31.10.2009 there was no material to conclude that the petitioner was in fact absent from his duties. The manner in which the Enquiry Officer had concluded that the Article of Charge no. I levelled against the petitioner was established, suffers from procedural improprieties and can be held to be one which no sensible decisions maker, on the basis of the materials placed before him and within the framework of law could have arrived at. It is seen that for arriving

at such conclusions, the Enquiry Officer has relied upon irrelevant considerations while ignoring relevant considerations. As such, the conclusion of the enquiry officer that the petitioner was absent from duty on 22<sup>nd</sup>, 28<sup>th</sup> and 31<sup>st</sup> of October 2009, in absence of adequate materials brought on record in the enquiry has to be held to be perverse. Accordingly, the conclusions of the Enquiry Officer with regard to the Article of Charge no. 1 levelled against the petitioner cannot be sustained. The Disciplinary Authority having not examined the matter in its true prospective before accepting the conclusion of the Enquiry Officer and proposing the penalty of dismissal upon the petitioner vide his communication dated 14.07.2010, also cannot be sustained.

15. Accordingly, the order dated 18.08.2010 to the extent of imposing upon the petitioner the penalty of dismissal from service cannot also stand the scrutiny of law. It is to be noted that, it is only in the event, the Article of Charge no. I is found to be established against the petitioner, the Disciplinary Authority would be within his rights to consider the quantum of punishment to be imposed upon the petitioner by reckoning the past misconduct as denoted against him in Article of Charge no. II. The Article of Charge no. II cannot be used in the facts and circumstances of the matter independently to impose upon the petitioner any penalty. Accordingly, the penalty of dismissal from service as imposed upon the petitioner cannot be sustained and would require interference from this Court. The Disciplinary Authority's, order dated 18.08.2010 insofar as it concerns the petitioner having been held to be liable to be interfered with, to the extent as indicated above, consequently, the order of the appellate authority, dated 28.02.2011 cannot also stand and is also liable to be interfered with.

16. However, it is to be noted that the petitioner in his pleadings has clearly admitted that he had on several dates including on 22<sup>nd</sup> and 28<sup>th</sup> of October, 2009 left his post prior to conclusion of his duty period and this coupled with the allegations levelled against the petitioner under Article of charge no. 2 which shows that the

petitioner was guilty of misconduct worthy of imposition of penalty in the past, leads this Court to a conclusion that the petitioner is entitled to be imposed with a penalty inasmuch as being a member of discipline force he had deviated from the discipline and behaved in an untoward manner in the matter of discharge of his duties which is not conceived of. The petitioner although cannot be held to guilty of the charge as levelled against him under the Article of Charge no. I, he is admittedly guilty of having left his post before the conclusion of his duty period on the said specified dates, as such, this Court having concluded that the finding of the Enquiry Officer to be not based upon any evidence specific to the charge levelled against the petitioner, the only corollary would be to reinstate the petitioner in his services with all consequential benefits. However, such a course cannot be resorted to in the present matter where the petitioner has himself admitted of having left his post on the dates specified before conclusion of his duty period. This Court in view of the said special facts and circumstances arising in the case, therefore, concludes that the petitioner is liable to be imposed with a penalty for the misconduct as committed by him and as noted hereinabove. Accordingly, the following directions are called for in the matter:

- (i). The penalty of dismissal from service as imposed by the Disciplinary Authority vide the order dated 18.08.2010 along with the order of the Appellate Authority dated 28.02.2011 are hereby interfered with insofar as it concerns the petitioner.
- (ii). In the facts involved, this Court directs the Disciplinary Authority to impose upon the petitioner the penalty of compulsory retirement from service with effect from 18.08.2010.
- (iii). The petitioner, in view of the imposition of the penalty of compulsory retirement from service would be entitled to his pension and pensionary benefits, which will now be computed and released to the petitioner by the authorities.

(iv). While computing the pension and pensionary benefits of the petitioner, the qualifying service of the petitioner shall be treated till 03.11.2009 i.e. the date on which the petitioner was so placed under suspension inasmuch as the finding of the Disciplinary Authority with regard to the manner in which the period of suspension is to be treated is hereby restored by this Court after interference made with the order dated 18.08.2010.

(v). The petitioner would be entitled to his pension and pensionary benefits in terms of the directions passed hereinabove, w.e.f. 19.08.2010.

(vi). Accordingly, the respondent authorities now would calculate the pension and pensionary benefits of the petitioner and release the same to him within a period of 3(three) months from the date of receipt of the certified copy of this order.

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

**JUDGE**

**Comparing Assistant**