

GAHC010008132015



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

Case No. : WP(C)/600/2015

UPENDRA NATH SARMA
S/O- LT. RAJANI KANTA SARMA, RUKMINI NAGAR, HOUSING COLONY,
GUWAHATI, DIST.- KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM and 4 ORS,
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, HOME
DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR GENERAL OF POLICE ASSAM ULUBARI GHY- 7.

3:INSPECTOR GENERAL OF POLICE CWR ASSAM GUWAHATI.

4:SENIOR SUPERINTENDENT OF POLICE CITY GUWAHATI

Advocate for the Petitioner : MR.K BASUMATARY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 13.06.2024

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Addl. Senior Government Advocate, Assam, appearing on behalf of all the respondents.

By instituting the present proceeding, the petitioner has presented a challenge to an order, dated 03.09.2013, passed by the reviewing authority enhancing the penalty imposed upon him by the disciplinary authority on conclusion of a Disciplinary Proceeding initiated against him in the matter.

Basing on the allegations so levelled against the petitioner; a Disciplinary Proceeding being DP No. 18/2007 was so instituted against him. On conclusion of the inquiry and on submission of the inquiry report by the Inquiry Officer and the representation so preferred by the petitioner against it; the disciplinary authority proceeded vide order, dated 02.08.2012, to consider the matter and on such consideration, proceeded to impose upon the petitioner, the penalty of censure along with a warning not to repeat such conduct in future. The matter ought to have ended at that stage in-as-much as the petitioner did not prefer any appeal in the matter against the same.

However, it is contended by the petitioner in the writ petition that after a lapse of a year; the petitioner received the copy of the impugned order, dated 03.09.2013, by which the reviewing authority i.e. the Inspector General of Police(CWR), Assam, *suo moto*, had reviewed the order passed by the disciplinary authority in respect of the petitioner and proceeded to enhance the penalty as awarded to the petitioner by replacing the penalty so awarded by the disciplinary authority with the penalty of withholding of one increment with cumulative effect.

It is seen that the major penalty came to be imposed upon the petitioner

in the matter, however, what is to be noticed is that the petitioner was not afforded an opportunity of hearing before the penalty imposed upon him in the matter was so decided to be enhanced.

It is a settled law that for enhancement of any penalty by any authority in the hierarchy, the delinquent must necessarily be given an opportunity of hearing.

In the present case, a perusal of the impugned order, dated 03.09.2013, reveals that the same was so passed without even providing an opportunity of hearing to the petitioner in the matter. It further reveals that no notice seems to have been issued to the petitioner by the reviewing authority in the matter.

In view of the above, the impugned order, dated 03.09.2013, passed by the reviewing authority; in the considered view of this Court, cannot be sustained and accordingly, the same is set aside. The penalty as imposed upon the petitioner by the disciplinary authority vide order, dated 02.08.2012, shall continue to hold the field.

The penalty of withholding of 1(one) increment with cumulative effect having been interfered with; the respondents would now authorize to the petitioner, the said increment, with all consequential benefits. The amount now becoming due to the petitioner on reauthorization to him, the withheld increment, on computation, shall be released to the petitioner within a period of

2(two) months from the date of receipt of a certified copy of this order.

In view of the above, the writ petition stands allowed to the extent indicated hereinabove.

Interim order, vide order, dated 06.02.2015, stands merged with this order.

JUDGE

Comparing Assistant