

GAHC010055172022



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

Case No. : WP(C)/2156/2022

DEVENDER KUMAR NO. 941243521
S/O. SRI SARDAR SINGH, R/O. JHUKERA, P.O. PUSAWALI, P.S. GUNNOUR,
SAMBHAL, UTTAR PRADESH, PIN-243722, AND PRESENTLY SERVING AT
GROUP CENTER, CENTRAL RESERVE POLICE FORCE, AMERIGOG,
GUWAHATI-781023.

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN-
110001.

2:THE DIRECTOR GENERAL

CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI
PIN-110003.

3:THE DEPUTY INSPECTOR GENERAL OF POLICE

GROUP CENTER
CENTRAL RESERVE POLICE FORCE
AMERIGOG
GUWAHATI
PIN-781023.

4:THE COMMANDANT

GROUP CENTER
CENTRAL RESERVE POLICE FORCE
AMERIGOG

GUWAHATI
PIN-781023.

5:RAM AOTAR SINGH

COMMANDANT
GROUP CENTER
CENTRAL RESERVE POLICE FORCE
AMERIGOG
GUWAHATI
PIN-781023

Advocate for the Petitioner : MR. R MAZUMDAR, MR H BEZBARUA

Advocate for the Respondent : ASSTT.S.G.I., MR. S S ROY

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 21-08-2024

Heard Mr. R. Mazumder, learned counsel for the petitioner. Also heard Mr. S.S. Roy, learned CGC appearing for the respondents.

2. By filing this petition, the petitioner has put to challenge the memorandum bearing No.P.VIII-1/2022-EC-II dated 25.02.2022 issued by the Commandant GC CRPF, whereby it is proposed to hold a de-novo enquiry against the petitioner under Rule 27 of CRPF Rules, 1955.

3. Brief facts giving rise to present petition are that the petitioner was appointed as a Constable, GD, in the year 1994 in the CRPF. While he was posted at Group Centre, a joint departmental enquiry was initiated vide memorandum dated 30.06.2006. The allegation was that he had failed to react to and control another member of the CRPF, who was inebriated condition and who discharged his firearm on the guard room. The two other personnel were

also arrayed as delinquent in the said departmental proceeding on the same charge.

4. After the Departmental enquiry, the petitioner was imposed with a major penalty of removal from service vide order dated 02.11.2007. The petitioner filed a departmental appeal, which was rejected on 22.02.2008 and thereafter the Revision Petition, which was also rejected on 04.10.2008.

5. Being aggrieved, the petitioner approached this Court by filing writ petition being WP(C) 573/2012. This Court vide judgment and order dated 24.01.2019 disposed of the said writ petition, whereby, the order of removal from service of the petitioner dated 02.11.2007 was set aside. However, liberty was granted to the respondents to proceed with De-novo proceeding within the time frame of three months with a direction to reinstate the petitioner by treating the period spent outside the service as being on suspension.

6. The petitioner thereafter served with an order dated 22.04.2019 informing him of De-novo departmental proceeding based on the earlier charge-sheet/memorandum dated 30.06.2006. The enquiry/proceeding started on 04.09.2019 and the statement of the petitioner and prosecution witnesses were recorded.

7. During the pendency of the De-novo proceeding, the petitioner filed a writ petition being WP(C) 9235/2019 challenging the said de-novo proceedings. The said de-novo proceeding was suspended by this court in the above writ petition and other connected writ petitions. During the pendency of the above writ petition, the respondent No.4 has issued an office order dated 25.02.2022, whereby, the previous Charge Memo dated 30.06.2006 has been cancelled and withdrawn all charges with reference to the office order dated 22.04.2019.

Therefore, the de-novo departmental proceeding initiated against the petitioner vide order dated 22.04.2019 pursuant to the liberty granted by this Court by the judgment and order dated 24.01.2019.

8. Thereafter vide impugned memorandum dated 25.02.2022, memorandum was issued to the petitioner informing him that the Commandant, Group Centre, Guwahati has proposed to hold an enquiry against the petitioner again. Hence, this present petition.

9. It is contended by Mr. R. Mazumder, learned counsel for the petitioner, that a bare perusal of the contents of the impugned Memorandum goes to show that the same set of events have now been given a fresh spin despite the challenge to the earlier De-novo proceeding, a challenge to which is still pending before this Hon'ble Court and also the fact that the charges have already been withdrawn by the authority superior to the authority proposed to hold the enquiry.

10. Mr. R. Mazumder, learned counsel submits that the sequence of events clearly reflects that the authorities have attempted to bypass or circumvent this Hon'ble Court's order by asking a De-novo proceeding while abandoning the earlier De-novo proceeding of the charges without there being any change in the background incident, charge and imputation of mis-conduct attributed to the petitioner.

11. Mr. R. Mazumder, learned counsel, submits that this Court by the judgment and order dated 24.01.2019 in WP(C) 573/2012 has set aside and quashed an enquiry proceeding with a liberty granted to the respondents to proceed with De-novo within a period of three months from the date of receipt of the copy of the order. The present proceedings on the same set of facts are

being sought to be initiated after more than three years from the date of passing of the order by this Court and after the same charges on the same set of facts have been withdrawn. Therefore, he submits that the impugned memorandum seeking De-novo proceeding is arbitrary and irregular in all respect and as such, same is liable to be set aside and quashed.

12. Mr. S.S. Roy, learned CGC appearing for the respondents submits that this Court vide judgment and order dated 24.01.2019 in WP(C) 573/2012 has set aside and quashed the departmental proceedings and the consequential penalty of removal from service of the petitioner with a liberty to the respondents to proceed with De-novo proceeding. The respondent authorities had proceeded with the same vide order dated 22.04.2019, however same has been withdrawn. He fairly submits that the respondent authorities may not be permitted to issue the impugned memorandum for De-novo proceeding again inasmuch as, in the order of this Court, liberty was granted to proceed with the De-novo proceeding within a period of three months from the date of receipt of the certified copy of the order and there is no extension of time from this Hon'ble Court.

13. I have considered the submissions of learned counsel for the parties and the materials available on record.

14. The penalty of removal from service of the petitioner and the dismissal and rejection of Appeal and Revision Petitions were put to challenge by the petitioner before this Court in WP(C) 573/2012 and this Court by the judgement and order dated 24.01.2019 disposed of the said writ petition, whereby, the departmental proceeding and the consequential penalty of removal from service of the petitioner were set aside and quashed, with a liberty to the respondents to proceed with De-novo proceeding within period of three months from the

date of receipt of the certified copy of the order. It is also provided that the petitioner be reinstated and the period spent outside service be treated as being on suspension. It is noticed that the above judgment and order dated 24.01.2019 has attained finality.

15. Pursuant thereof, the petitioner was reinstated in service. Thereafter, a De-novo proceeding was initiated against him vide order dated 22.04.2019. The De-novo proceeding was put to challenge by the petitioner and some other similarly situated persons in WP(C) 9235/2019, WP(C) 9298/2019 and WP(C) 9369/2019. This Court has suspended the said de-novo departmental enquiry. It is noticed that vide Office Order dated 25.02.2022, the respondent No.4 has cancelled the previous Charge Memo dated 30.06.2006 and withdrawn all charges with reference to the Office Order dated 22.04.2019. Thereafter, the present impugned Memorandum dated 25.02.2022 has been issued to the petitioner by the respondent No.4 proposing to hold an enquiry against the petitioner again with statement of Article of Charges, and the statement of imputation of mis-conduct or misbehaviour in support of Article of Charges.

16. Perusal of the materials on record shows that the respondent has sought to initiate De-novo proceeding on the same set of events and the charges which have already been set aside by this Court and consequent earlier De-novo proceeding initiated against the petitioner vide order dated 22.04.2019 has been withdrawn by the respondent. It transpires that the respondent authority by proposing to initiate a De-novo proceeding again after withdrawal of the earlier de-novo proceeding and the charges pursuant to this Court appears to have attempted to circumvent the interim order of this Court, which in my view would not be permissible.

17. As noted above, this Court vide judgment and order dated 24.01.2019 has

set aside and quashed the order of penalty with a liberty to proceed with De-novo proceeding within a period of 3 (three) months from the date of receipt of the copy of the order. The impugned proposed de-novo proceeding on the same set of facts are sought to be initiated after the lapse of more than three years from the date of passing of the order by this Court, that too, after the earlier de-novo proceeding on the same set of facts and charges have been withdrawn. It is observed that de-novo proceeding cannot be initiated in summary and casual manner, particularly when the same charges have been withdrawn, which was initiated pursuant to the order of the Court. The impugned order of De-novo proceeding is sought to be initiated after a lapse of three years from the date of the judgment and order of this Court, admittedly, there is no extension of time of the three years, which was granted by this Court.

18. Having considered the materials, I am of the view that the impugned de-novo proceeding dated 25.02.2022 sought to be initiated against the petitioner after the Office Order dated 25.02.2022 which cancelled the Memorandum dated 31.10.2006, by which the de-novo proceeding was initiated against the petitioner, the charges itself came to be withdrawn, would not be permissible. If the charges are withdrawn, it is incomprehensible as to why a further De-novo proceeding on the basis of the same charges could be initiated against the petitioner. That apart, once the Court interfered with the penalty of removal from service of the petitioner, the entire proceedings starting from the memorandum of charges rendered nullified and redundant.

19. In view of the discussion made hereinabove and considering that a De-novo proceeding is sought to be initiated vide impugned memorandum dated 25.02.2022 after the lapse of three years as directed by this Court vide order dated 24.01.2019 in WP(C) 573/2022, without any modification of the direction,

I am of the considered view that the impugned De-novo proceedings vide dated 25.02.2022 against the petitioner would not be sustainable. Thus the same is set aside and quashed.

20. Writ petition is accordingly allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant