

GAHC010072622022



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

Case No. : WP(C)/2659/2022

DEEP NARZARY

S/O LATE MOHINI MOHAN NARZARY, R/O VILL-HADAIPURA, WARD NO. 8,
P.O. AND P.S.-KOKRAJHAR, DIST-KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF HOME AFFAIRS, DISPUR, GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM HEAD QUARTER
ULUBARI
GUWAHATI-7
ASSAM

3:THE INSPECTOR GENERAL OF POLICE (ADMINISTRATION) ASSAM
H.Q.
ULUBARI
GUWAHATI-7
ASSAM

4:THE ASSISTANT INSPECTOR GENERAL OF POLICE (ADMINISTRATION)
ASSAM
ULUBARI
GUWAHATI-7

5:THE SUPERINTENDENT OF POLICE SB(E)
KAHILIPARA
GUWAHATI-1

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri P. Kataki, Adv.

Advocate for the respondents : Shri CS Hazarika, GA-Assam

Date of hearing : **02.05.2024**

Date of Judgment : **02.05.2024**

JUDGMENT & ORDER

Heard Shri P. Kataki, learned counsel for the petitioner. Also heard Shri CS Hazarika, learned State Counsel appearing for all the respondents.

2. The subject matter of challenge in this writ petition is an order of dismissal dated 30.11.2021 from service of the petitioner as Sub-Inspector of Police, which has also been affirmed by the Appellate Authority vide an order dated 07.02.2022.

3. Bereft of details, the necessary facts, as projected are as follows.

4. The petitioner was serving as a Sub-Inspector in the Assam Police. He was served with a show-cause notice dated 03.01.2019 on the allegation of unauthorized absence for the period from 05.01.2013 to 08.10.2018. The petitioner had submitted his reply on 03.01.2019 itself whereafter vide communication dated 05.01.2019, the Enquiry Officer and the Presenting Officer were appointed. Thereafter, the enquiry was held and the charge against the petitioner was found to be established. The report of the Enquiry Officer was

forwarded to the petitioner by the Disciplinary Authority on 17.03.2021 asking for his views. It is however the case of the petitioner that he did not submit any response and thereafter on 12.08.2021 another notice was served upon him by the Assistant Inspector General of Police (Admn), Assam whereby the response of the petitioner was sought for as to why a major penalty should not be inflicted upon him. The said notice was responded to by the petitioner on 12.08.2021.

5. Thereafter, vide the impugned order dated 30.11.2021, a major penalty of dismissal from service was imposed upon the petitioner and the period of unauthorized absence was treated to be dies non. The petitioner had preferred a departmental appeal against the aforesaid order which however was also rejected by the Appellate Authority vide order dated 07.02.2022.

6. Shri Kataki, learned counsel for the petitioner has submitted that the procedure suffers from legal infirmity as the notice dated 12.08.2021 issued by the Assistant Inspector General of Police already indicates that the said authorities had come to a decision to inflict major penalty and therefore there was no scope for the petitioner to file any effective response. The learned counsel has also taken the ground that there was a change in the Disciplinary Authority as the initiation was done by the concerned Superintendent of Police and subsequently, the show-cause notice dated 12.08.2021 was issued by the Assistant Inspector General of Police. On the first ground, the learned counsel has submitted that there is no requirement to issue a second show-cause notice on the aspect of penalty which has been clarified by the 42nd Amendment of the Constitution of India. In this connection, reliance has been placed upon the case of ***Md. Nur @ Noor Islam Vs. State of Assam and Ors.*** decided by this Court in WP(C)/8313/2018 vide order dated 05.01.2022.

7. On the merits of the allegation, the learned counsel for the petitioner has submitted that there were cogent reasons for being absent which included the ill health of the petitioner, his wife and the death of his father after suffering from ailment.

8. The learned counsel accordingly submits that the impugned orders are liable to be set aside.

9. *Per contra*, Shri Hazarika, learned State Counsel has submitted that the basis on which the writ petition has been structured is fallacious. He submits that the notice dated 12.08.2021 though is on the aspect of the punishment is after furnishing the copy of the enquiry report to the petitioner to seek his views. The learned State Counsel however concedes that after the 42nd Amendment of the Constitution of India, there is actually no requirement of such notice which will however not vitiate the proceeding as a whole.

10. The learned State Counsel has also drawn the attention of this Court to the response of the petitioner dated 12.08.2021 wherein the petitioner had admitted the charges. It is further submitted that the services of the petitioner is in a disciplined force and the charges / allegations are serious in nature and therefore, the penalty also cannot be held to be disproportionate.

11. The rival contentions advanced by learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

12. A close scrutiny of the pleadings in the writ petition and from the arguments advanced, it transpires that the sole basis of making the present challenge is the show-cause notice dated 12.08.2021. The grounds, as projected are that the Disciplinary Authority had already come to a conclusion of inflicting

a major penalty before taking the views of the delinquent – petitioner. The aspect of the change in the Disciplinary Authority has also been raised in the writ petition.

13. The notice dated 12.08.2021 no doubt discloses the intention of the Disciplinary Authority to impose a major penalty is however not the second show-cause notice as understood in the parlance of a disciplinary proceeding. This Court has noticed that vide forwarding letter dated 17.03.2021, the enquiry report was already furnished to the petitioner and in essence, the aforesaid notice dated 17.03.2021 is the second show-cause notice which the petitioner chose not to respond to. Therefore, there was actually no requirement to issue another notice on the aspect of penalty which has also been done away by the 42nd Amendment of the Constitution of India. However, issuance of such notice would not vitiate the proceeding and the only objective of such amendment is that a delinquent cannot ask, as a matter of right regarding a show-cause notice on the aspect of imposition of a major penalty after completion of the enquiry and after taking the views of the delinquent on such enquiry report.

14. The charge against the petitioner is unauthorized absence. The period involved is more than 5 years. This Court, in the interest of justice, has also been examined the causes tried to be shown and the documents relied upon. None of the documents would even persuade this Court to come to a conclusion that there were sufficient and cogent reasons preventing the petitioner from attending his duties. Most of the medical certificates are of the initial period whereas the absence continued till October, 2018 which started from 05.01.2013.

15. The learned State Counsel has also highlighted the aspect of admission of

the allegation by the petitioner.

16. The facts of the case of ***Md. Nur*** (supra) which has been relied upon by the petitioner is distinguishable as in that case, interference was made by this Court as in the second show-cause notice itself, the Disciplinary Authority had come to the conclusion of inflicting a major penalty.

17. The services of the petitioner as Sub-Inspector of Police is in a disciplined force and unauthorized absence for a period of 5 years which has been held to be established in the enquiry will not lead this Court to come to a conclusion that there is any requirement to interfere with the penalty of dismissal.

18. The writ petition is accordingly found to be devoid of merits and is accordingly dismissed.

19. No order as to cost.

JUDGE

Comparing Assistant