

GAHC010088682023



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

Case No. : WP(C)/2264/2023

BIJOY KALITA
S/O LATE KALICHARAN KALITA, R/O HOUSE NO. 1(A), NATUN NAGAR,
NEAR T.V. TOWER, KAHILIPARA, P.O.-KAHILIPARA, P.S.-DISPUR,
GUWAHATI-781019, DIST-KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI-781007

3:THE COMMANDANT
12TH APBN
JAMUGURIHAT
SONITPUR
ASSAM

4:THE COMMANDANT
15TH AP(IR) BATTALION
ERALIGOOL
KARIMGANJ
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

20.03.2024

O R D E R

Heard Mr. K.N. Choudhury, learned Senior counsel, assisted by Ms. R. Kakati, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, for all the respondents.

2. Three women constables filed some complaints against the petitioner while he was serving as Inspector (AB), 12th APBn. alleging sexual harassment at workplace. Thereafter, the Internal Complaint Committee (ICC) submitted its enquiry report on 28.04.2021 before the Commandant, 12th APBn. for taking necessary action as per law by arriving at a finding that the allegation leveled against the petitioner was found to be true to the extent of outraging the modesty of women constables through verbal slander.

3. Pursuant to the said report of the ICC, the petitioner was transferred to 15th APBn. by an order dated 22.06.2021. Thereafter, disciplinary proceeding was initiated against the petitioner. The Enquiry Officer submitted his report and the relevant portion reads as under:-

“From the above facts, statements of the witnesses and victims, recorded conversation in the audio clips, it is in the opinion that the charge series misconduct and indisciplined conduct against ABI Bijoy Kalita (SM) 15th AP(IR) Bn. Eraligool, Karimganj as being a member of disciplined force is proved.”

4. Consequent thereto, the Disciplinary Authority by order dated 25th July, 2022 came to the finding that the enquiry conducted does not appear to be

satisfactory and, hence, the finding was not accepted and a fresh enquiry was ordered to be conducted. By the same order, the Disciplinary Authority appointed the Enquiry Officer as well as the Presenting Officer to conduct a fresh inquiry. Thereafter, second fresh enquiry was conducted and on the basis of the finding of the second enquiry, the Enquiry Officer submitted his enquiry report on 01.02.2023 with the finding as under:-

“FINDINGS. Considering the above discussion and on the preponderance of probability, the charges of serious misconduct and indiscipline act on the part of the delinquent is stated to be proved.

Submitted for favour of your kind perusal.”

5. Consequently, by order dated 31.03.2023 issued by the Disciplinary Authority, the petitioner was imposed a penalty of dismissal from service.

6. Being aggrieved, the petitioner is before this Court by way of the present writ petition.

7. Mr. K.N. Choudhury, learned Senior counsel for the petitioner, submits that it is a settled position of law that no fresh second enquiry can be held against a delinquent officer inasmuch as if the Disciplinary Authority is not satisfied with the first enquiry report, he may direct for further enquiry but cannot direct for a fresh enquiry as has been done in the present case and accordingly, the proceedings of the second fresh enquiry and the penalty imposed stands vitiated and are liable to be set aside.

8. Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam fairly submits that Rule 9(9) of the *Assam Services (Discipline and Appeal) Rules, 1964* is silent with regard to having a second fresh enquiry and, therefore, the matter may be remanded back to the Disciplinary Authority to take a call based on the report made by the first Enquiry Officer.

9. This Court has considered the submissions made by learned counsel for the parties.

10. In the case of ***K.R. Deb Vs. Collector of Central Excise, Shillong***, reported in ***(1971) 2 SCC 102***, the Hon'ble Supreme Court has held as under:-

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.”

11. In the case of ***Vijay Shankar Pandey Vs. Union of India and another***, reported in ***(2014) 10 SCC 589***, the Hon'ble Supreme Court has held as under:-

“26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognized the possibility of a further enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, it is not a ground for completely setting aside the enquiry report and ordering a second enquiry.”

12. In the present case, what is noticed is that after the first enquiry report was submitted, the Disciplinary Authority was not satisfied with the enquiry report and, therefore, directed to have a fresh enquiry conducted by

the order dated 25th July, 2022. By the same order, a new Enquiry Officer as well as Presenting Officer were also appointed to conduct a fresh inquiry. The manner in which the Disciplinary Authority proceeded is against the settled position of law inasmuch as if the Disciplinary Authority is not satisfied with the enquiry report, the same would not be a ground for completely setting aside the enquiry report and for initiating a fresh second enquiry. What the Disciplinary Authority could have done was to direct for further enquiry or for further evidence to be recorded.

13. Further, a reading of Rule 9(9) of the *Assam Services (Discipline and Appeal) Rules, 1964*, on the face of it, provides only for one enquiry. The said Rule is silent with regard to having a second fresh enquiry. Further, there is no provision under Rule 9(9) of the *Assam Services (Discipline and Appeal) Rules, 1964* for completely setting aside the previous enquiry on the ground that the Disciplinary Authority is not satisfied with the enquiry.

14. Accordingly, the second enquiry report is set aside and quashed. Consequently, the order dated 31.03.2022 by which the petitioner was imposed the penalty of dismissal from service on the basis of the second inquiry report is also set aside and quashed. The matter is remanded to the Disciplinary Authority to take a final call on the first enquiry report submitted by the Enquiry Officer on 31.03.2022 and pass appropriate orders in accordance with law as expeditiously as possible but not later than 3 (three) months from the date of receipt of a copy of this Court's order.

15. With the above observations and directions, the writ petition is disposed of. No costs.

JUDGE

Comparing Assistant