

GAHC010111092024



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

Case No. : WA/188/2024

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

1.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

For the Appellant : Mr. S. Dutta, Senior Advocate assisted by
Ms. A. Lala, Advocate.

For the Respondent(s) : Mr. R.K. Borah, Additional Senior Government
Advocate, Assam.

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

10.06.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 02.05.2024 passed by the learned Single Judge in WP(C) No.2659/2022, whereby the writ petition filed by the appellant has been dismissed.

2. The appellant filed the above referred writ petition against the order dated 30.11.2021 whereby the respondents imposed a major penalty of dismissal from service upon the appellant for being remained absent from duties unauthorizedly. It was further ordered that the period of unauthorized absence would be treated to be *dies non*.

3. The brief facts of the case are that the appellant was serving as a Sub-Inspector in the Assam Police and remained absent from duties from 05.01.2013 to 08.10.2018.

A show-cause notice was issued upon the appellant on 03.01.2019 which was replied by him. However, the respondents decided to initiate disciplinary proceedings against him and pursuant to that, Enquiry Officer and Presenting Officer were appointed.

The Enquiry Officer has concluded the enquiry and furnished the enquiry report to the Disciplinary Authority on 17.03.2021. The said enquiry report was served upon the appellant along with the show-cause notice. However, the appellant did not submit any response to it and thereafter on 12.08.2021,

another notice was served upon him whereby the appellant was asked to reply as to why a major penalty should not be inflicted upon him. The appellant filed reply to the said show-cause notice dated 12.08.2021. However the respondents passed the impugned dismissal order dated 30.11.2021.

4. Learned counsel for the appellant has argued that the show-cause notice dated 12.08.2021 is the second show-cause notice wherein it was already indicated to impose major penalty upon the appellant. It is contended that when the Disciplinary Authority already indicated to inflict major penalty, there was no scope for the appellant to file any effective response to it.

5. Learned counsel for the appellant has further submitted that the learned Single Judge has not appreciated this aspect of the matter in right perspective and therefore, the impugned order is liable to be set aside. No other ground is raised by the learned counsel for the appellant.

6. We have considered the arguments of the learned counsel for the appellant. However, we do not find any merit in the arguments so advanced.

The learned Single Judge has specifically dealt with the aforesaid argument in para No.13 of the impugned order which reads as under:

“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.”

7. We do not find any reason to take a different view than the view as has been taken by the learned Single Judge. It is also to be noticed that no effective response was filed on behalf of the appellant regarding his unauthorized absence from duties for more than 5(five) years and for that reason also the learned Single Judge has rightly not interfered in the matter.

Hence, we do not find any merit in this writ appeal and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant