

GAHC010128912023



2024:GAU-AS:12516

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

Case No. : WP(C)/3433/2023

MIACHAND ALI
S/O- LATE MAFIL UDDIH, R/O- DAHALPARA, SANTI PATH, P.O. AND P.S.
FATASIL AMBARI, GUWAHATI- 781025, DIST.- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH- THE SECRETARY, HOME AND POLITICAL (A) DEPTT., DISPUR,
GHY-06

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-07

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE
CID
ASSAM
ULUBARI
GHY-07

4:THE DEPUTY INSPECTOR GENERAL OF POLICE
CID
ASSAM
ULUBARI
GHY-07

5:THE SUPERINTENDENT OF POLICE
CID
ASSAM
ULUBARI
GHY-0

Advocate for the Petitioner : MR. S SEAL, MS. J CHETTRY, MS. S KANUNGOE

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (CAV)

Date of Hearing : 28.11.2024

Date of Judgment: 11.12.2024

Heard Ms. S. Kanungoe, learned counsel for the petitioner. Also heard Mr. D. Bora, learned Government Advocate appearing for all the respondents.

2. The petitioner, by way instituting the present proceeding has presented a challenge to an order dated 17.04.2023, issued by the Superintendent of Police (CID), Assam, imposing the penalty of dismissal from service upon the petitioner on conclusion of a departmental proceeding instituted against him. The petitioner has also challenged an order dated 29.05.2023, passed by the appellate authority, rejecting the appeal so preferred by the petitioner against the said order dated 17.04.2023. The petitioner has, in the alternative, prayed for imposition of a minor punishment upon re-instatement of the petitioner in his post of Naik (AB).

3. As projected in the writ petition, the petitioner was appointed as a Constable on 07.04.1994 w.e.f. 29.03.1994. The petitioner, on joining his services, continued to discharge his duties. Thereafter, vide an order dated 02.09.2021, the petitioner along with others were promoted to the post of Naik (UB). On his such promotion, the petitioner was permitted to continue at the Assam Police Head Quarters, on deputation and was attached to the Accounts Branch until further orders. Basing on an FIR lodged before the Officer In-charge ACB Police Station by the Head

Customer Experience, Assam and N. E. Circles, Bharti Airtel Limited, *interalia*, alleging therein that the petitioner herein had demanded an amount of Rs. 10,000/- (Ten thousand only) to expedite the process of clearance of the pending bills of the organisation. It was further alleged that after bargaining, the petitioner reduced the bribe so demanded to Rs. 2,000/- (Two thousand only). The official of the Bharati Airtel Limited, had recorded the telephonic conversation held in the matter with the petitioner and accordingly, pre-trap operation was carried out with the help of the Anti-corruption branch. The petitioner was arrested on 28.09.2022 and the amount so paid as bribe was recovered from him and ACB Case No. 44/2022, under Section 7(A) of the Prevention of Corruption Act, 1988 (as amended) came to be instituted.

4. On his arrest in connection with the said criminal case and his detention beyond 48 hours, the Superintendent of Police, CID, Assam, proceeded vide order dated 01.10.2022 to place the petitioner under suspension. The Superintendent of Police, CID, Assam, as the disciplinary authority of the petitioner, proceeded to issue a show-cause notice dated 01.12.2022, instituting a departmental proceeding against the petitioner. The petitioner, in the said show-cause notice, was alleged to have been caught red handed on 28.09.2022 and arrested for demanding as well as accepting bribe from one Nek Mohammad Ansari for clearance of ceiling of Bharti Airtel Ltd., which was pending since last quarter of Financial Year 2021-2022. The said act of the petitioner was projected to be a serious misconduct, tarnishing the image of a disciplined force, rendering him unfit to be retained in Assam Police. The petitioner was accordingly, charged with serious misconduct and dereliction of duty as defined in Section 78 & Section 98 of the Assam Police Act, 2007.

5. On receipt of the said show-cause notice, the petitioner submitted his reply thereto on 13.12.2022, denying the allegations so leveled against him. The

petitioner, in his reply, had projected that the amount of Rs. 2,000/- recovered from his back pocket was inserted therein, secretly, by said Nek Mohammad Ansari without his knowledge. The disciplinary authority not being satisfied with the reply so submitted by the petitioner to the show-cause notice dated 01.12.2022, proceeded to order for an enquiry against him in the matter and appointed a Enquiry Officer for the purpose. On conclusion of the enquiry so held, the Enquiry Officer, proceeded to submit his report on 13.02.2023 to the disciplinary authority. Thereafter, the disciplinary authority vide communication dated 28.02.2023, forwarded a copy of the enquiry report to the petitioner, requiring him to submit his representation against the same within a period of 7(seven) days from the date of receipt of the said enquiry report. The petitioner, on receipt of the said enquiry report, submitted his representation thereto, on 06.03.2023 and reiterated the stand that was so taken by him in his show-cause reply and had also raised contentions with regard to the manner in which the enquiry was conducted.

6. The disciplinary authority of the petitioner i.e., the Superintendent of Police (CID), Assam, on consideration of the enquiry report along with the representation submitted by the petitioner against it on 06.03.2023, proceeded vide order dated 17.04.2023 to conclude that the petitioner had, by his act, tarnished the image of a disciplined force and thereby, committed a serious misconduct. Accordingly, a penalty of dismissal from service came to be so imposed upon the petitioner, herein.

7. The petitioner being aggrieved, preferred an appeal before the appellate authority i.e. the Deputy Inspector General of Police, CID, Assam, against the said order dated 17.04.2023, issued by the disciplinary authority. The appellate authority, on receipt of the appeal so preferred by the petitioner, proceeded to consider the same in the light of the contemporaneous records and thereafter, recorded a conclusion that there was no illegality/infirmity in the manner in which

the enquiry was conducted. Accordingly, the appeal preferred by the petitioner came to be rejected, holding the same to be devoid of any merit. Being aggrieved, the petitioner has instituted the present proceedings.

8. Ms. S. Kanungoe, learned counsel for the petitioner, after having argued the matter at some length and having taken this Court through the show-cause notices and the enquiry report, on a query being raised as to whether any prejudice was caused to the petitioner in conduct of the enquiry, had categorically submitted that the petitioner having accepted the allegations so leveled against him, and such contention of the petitioner being sufficient for bringing it within the parameters of preponderance of probabilities, required to be applied in a departmental proceeding, she has submitted that in the departmental proceeding, the petitioner was given all opportunity for placing his defence in the matter. Ms. Kanungoe, learned counsel for the petitioner has further, fairly submitted that conclusion reached by the Enquiry Officer in the enquiry that the petitioner was guilty of having received bribe money from the officials of Bharati Airtel Limited for the purpose of getting their bills cleared, is borne out of the materials coming on record in the enquiry.

9. Having made the above submission, Ms. Kanungoe, has submitted that given the manner in which the said amount was paid to the petitioner and the pre-trap carried out in the matter, the penalty of dismissal from service so imposed upon the petitioner is disproportionate to the alleged offence established against the petitioner. Ms. Kanungoe, learned counsel has submitted that the amount that has been so recovered from the possession of the petitioner, admittedly, was not an amount which he had sought for himself, but the same amount, as projected by the official of the Bharati Airtel Limited, who had made the payment to the petitioner, was for the purpose tea expenses of the officials of the Treasury. Accordingly, Ms. Kanungoe, has submitted that the penalty of dismissal of service

as imposed upon the petitioner is required to be interfered with and the matter be remanded back to the disciplinary authority with a direction for imposition of a lesser penalty which would facilitate the petitioner to continue in his service.

10. Mr. D. Bora, learned counsel for the respondents by referring to the affidavits filed in the matter by the respondents as well as the enquiry report, has submitted that the enquiry was carried out by affording all requisite opportunity to the petitioner to defend his case. Mr. Bora, has further submitted that the stand taken by the petitioner that he had not received the bribe money, is clearly perverse, inasmuch as, upon recovery of the bribe money from the back pocket of the petitioner and the hand wash of the petitioner being carried out in Sodium Carbonate and Water Solution, the Solution had turned into pink colour, which is indicative of the fact that the petitioner had accepted or touched the money by his hands. Mr. Bora, has submitted that the petitioner being a member of the disciplined force, such a conduct is not expected from him and accordingly, the penalty of dismissal as imposed upon him, is commensurating to the allegation proved against the petitioner in the enquiry.

11. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

12. It is an admitted fact that a sum of Rs. 2,000/- was recovered from the back pocket of the petitioner on 28.09.2022 and thereafter, his hands being washed in Sodium Carbonate and Water Solution, the Solution had turned into pink colour which is indicative of the fact that the bribe amount so paid to the petitioner was in fact received by him. The said position was not disputed by the petitioner. It is also an admitted position that the demand for bribe money being so made by the petitioner initially of an amount of Rs. 10,000/-, which was subsequently, reduced to Rs. 2,000/-, the officials of Bharati Airtel Limited having informed the matter to the Anti Corruption Branch, a pre-trap was came to be laid to arrest the petitioner.

Accordingly, in terms of the trap so laid, the amount was duly paid by one Nek Mohammed Ansari to the petitioner and thereafter, the police of the Anti Corruption Branch, Assam had moved in and arrested him and recovered the amount from his back pocket and thereafter, arrested him.

13. On account of the said incident, ACB Case No. 44/2022, under Section 7(A) of the Prevention of Corruption Act, 1988 came to be registered against the petitioner herein. The petitioner, on account of his arrest on 28.09.2022 and being under detention for a period more than 48 hours, came to be placed under suspension vide order dated 01.10.2022, issued by the Superintendent of Police, CID, Assam. The Superintendent of Police, CID, Assam, thereafter, vide show-cause notice dated 01.12.2022, proceeded to institute a disciplinary proceeding against the petitioner. It is seen that the reply as submitted by the petitioner not being found to be satisfactory, a departmental enquiry was ordered in the matter. The petitioner duly participated in the enquiry so conducted and there is no material brought on record to project that the petitioner was, in any manner, prejudiced in placing his defence in the enquiry so held against him in the matter. The Enquiry Officer, on conclusion of the enquiry, proceeded to record a finding that the evidences brought on record clearly establishes the demand and acceptance of bribe money by the petitioner, which led to his subsequent trap and arrest in connection with ACB Case No. 44/2022. The charges of misconduct and dereliction of duty were held to be proved against the petitioner. The petitioner was furnished with a copy of enquiry report and he had also submitted a representation against the same. Thereafter, the disciplinary authority on examination of the matter and also taking note of the contentions made by the petitioner in his representation and submitted against the enquiry report, proceeded to agree with the findings so recorded by the enquiry officer. The disciplinary authority concluded that the petitioner had tarnished the image of a disciplinary force and thereby, committed a serious misconduct which would call

for imposition of a major penalty upon him. Having drawn the said conclusion, the disciplinary authority proceeded to impose upon the petitioner vide order dated 17.04.2023, the penalty of dismissal from service.

14. As noticed herein above, the appeal as preferred by the petitioner against the order of imposition of penalty upon him also, on consideration, came to be rejected by the appellate authority.

15. A perusal of the contention so made in the writ petition, would go to reveal that the petitioner has not raised any contention with regard to the manner in which the disciplinary enquiry was so conducted against him. The petitioner has all along contended that the money in question was not received by him, however, it is seen that the demand for the said money alleged to have been made by the petitioner was not disputed in the manner required, by the petitioner. The contention of the petitioner that he had not received the money so recovered from his back pocket from the official of the Bharati Airtel Limited is clearly belied on consideration of the fact that upon the recovery of the money and the hands of the petitioner having been washed with Sodium Carbonate and Water Solution, the Solution turned pink, which is indicative of the fact that the petitioner had received the said amount. It being a trap, the notes as paid to the petitioner were already marked by the Police.

16. In the above view of the matter, the stand of the petitioner would not merit an acceptance, more so, when in the departmental enquiry held, materials had come on record to establish the allegation/charge leveled against the petitioner.

17. Accordingly, in view of the materials considered in the enquiry report and the findings of the enquiry officer therein, this Court is of the considered view that no prejudice was caused to the petitioner during the conduct of the enquiry and the conclusions so drawn by the enquiry officer are germane to the issue and are based on evidences, coming on record in the enquiry. The enquiry having been

held to be proper and the findings of the enquiry officer having also concluded to be based on materials coming on record, this Court does not find any error in the penalty of dismissal from service imposed upon the petitioner by the disciplinary authority vide the order dated 17.04.2023.

18. Having concluded as above, with regard to the penalty so imposed upon the petitioner, this Court would now consider the submission of learned counsel for the petitioner that the penalty of dismissal from service is disproportionate to the allegation proved against the petitioner herein.

19. This Court, in this context, would refer to the decision of the Hon'ble Supreme Court in the case of **Chairman-cum-Managing Director, United Commercial Bank & Ors., Vs P.C. Kakkar**, reported in **(2003) 4 SCC 364**, wherein, the Hon'ble Supreme Court in this connection, had drawn the following conclusions:-

"15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971 (1) All E.R. 1148] observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale

is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

20. The allegation as leveled against the petitioner who is a member of a disciplined force, having been established in the enquiry and it being an admitted position that the petitioner, on account of the allegation leveled against him, having committed a serious misconduct, the petitioner would not be entitled to be extended with any sympathy.

21. The allegation leveled against the petitioner having been established and the misconduct as committed by him being apparent, the penalty as imposed upon him cannot be stated to be disproportionate to his proved misconduct. It is a settled position of law that the penalty that is to be imposed upon the petitioner is the sole discretion of the disciplinary authority and of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making process while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to

be maintained in the force where he so works, as well as extenuating circumstances, if any. Accordingly, the penalty as imposed upon the petitioner in the case in hand, in the considered view of this Court, is proportionate to the allegations leveled against him and established in the enquiry.

22. It is also a settled position of law that if the appellate authority is of the opinion that the case warrants a lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the departmental appellate authority is ordinarily not available to the court or a tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of the facts. In exercise of power of judicial review, however, this Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of this Court, lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities. This Court, in the present proceeding, has not found any extenuating circumstances warranting interference with the penalty as imposed upon the petitioner.

21. It is only when the punishment is found by this Court to be outrageously disproportionate to the nature of the allegations leveled against the delinquent that the principle of proportionality would come into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of Wednesbury rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary.

23. The principle of proportionality was first propounded by Lord Diplock in **Council of Civil Service Unions v. Minister for the Civil Service** in the following words:(AC p. 410 D-E)

“..... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'.”

24. The Hon’ble Supreme Court had approved the aforesaid principle in the case of **Ranjit Thakur v. Union of India**, reported in **(1987) 4 SCC 611**, wherein, the Hon’ble Supreme Court by emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words in paragraph No. 25. Paragraph No. 25 of the said judgment being relevant, is extracted herein below for ready reference: (SCC p. 620, para 25)

"25. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

25. In view of the pronouncement, as noticed above in the matters of the Hon'ble Supreme Court; it is clear that it is not for the writ Court to interfere with the punishment imposed by the disciplinary authority, which is a matter within the domain and jurisdiction of the said authority. The petitioner, herein, is a member of the disciplined force and he is required to discharge his duties with a greater sense of responsibility which admittedly, is found missing in the matter. Accordingly, the penalty so imposed upon the petitioner by the disciplinary authority, on considering the same to be commensurating to the misconduct attributed and proved against a member of the disciplined force, it is not for the writ Court to prescribe another penalty in lieu of the penalty imposed by the disciplinary authority.

26. In view of the above discussions and conclusions, this Court is of the considered view that, given the facts and circumstances as existing in the matter; it has to be held that the penalty as imposed upon the petitioner commensurates to the misconduct as established against him in the matter and the same does not call for any interference from this Court.

27. Accordingly, the writ petition is held to be devoid of any merit and the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant