

GAHC010135792022



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

Case No. : WP(C)/4641/2022

TAIZUDDIN LASKAR
S/O- LATE BASIR UDDIN LASKAR,
P.O.- KAHILIPARA POWER HOUSE, P.S.- DISPUR, DIST.- KAMRUP (M),
ASSAM- 781019.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE DEPUTY INSPECTOR
GENERAL OF POLICE (ADMIN.)
ASSAM
ULUBARI
KAMRUP (METRO)
GUWAHATI- 781007.

3:THE JOINT COMMISSIONER OF POLICE
POLICE COMMISSIONERATE
M.G. ROAD
PAN BAZAR
GUWAHATI
ASSAM- 781001.

4:THE DEPUTY COMMISSIONER OF POLICE (ADMIN.)
MG ROAD
PAN BAZAAR
GUWAHATI
KAMRUP (M)
ASSAM 781001.

5:KRISHNA KANTA DUTTA
APS
ASSISTANT COMMISSIONER OF POLICE (H.Q.) POLICE
COMMISSIONERATE
BHARALUMUKH
KAMRUP(M)
ASSAM GUWAHATI- 781009

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MS A AFREEN,B DAS,MS. R. R. SAIKIA,MRS S A CHOUDHURY,MR I RAFIQUE,MR J SINGH,MR. R SALOI,MR H AGARWAL,MR. R KALITA

Advocate for the Respondent : GA, ASSAM,

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

J U D G M E N T & O R D E R (Oral)

(03.12.2024)

Heard Mr. I. Rafique, learned counsel for the petitioner and Mr. K. Konwar, learned Addl. Advocate General, Assam assisted by Mr. A.K. Ghosh, learned counsel for the respondents.

[2.] By filing this writ petition, the petitioner who was working as Driver/Naik in the Assam Police has challenged the order by which he was dismissed he was dismissed from service and also the order by which his appeal was rejected by the Appellate Authority. The sole issue to be considered and decided is as to whether any prejudice has been cause to the petitioner for not giving him the opportunity to produce and examine the sole defense witness named by him.

[3.] The petitioner was served with a Show Cause Notice dated 31.08.2020 where it

was stated that in the investigation that was made, it was revealed that he was keeping in regular contact with known drug peddlers and that they were all together arrested on being found to be involved in a criminal case. Therefore, the Show Cause Notice was issued charging him of gross misconduct, indisciplined conduct and dereliction of duty rendering him unfit to continue in the force. He was therefore asked to submit his written statement in his defense within ten (10) days from the date of receipt of the communication. It was also stated that if he intended to examine any witness in his defense, the same should be submitted in his written statement of defense within the time specified. Further, if the Disciplinary Authority decided to appoint an Enquiry Officer to enquire into the charge, the petitioner will be allowed to present his case through a defense assistant who should be a Government Servant and approved by the Disciplinary Authority.

[4.] The petitioner thereafter submitted his written statement/show cause reply on 10.09.2020 denying the allegation and charges that was mentioned in the show cause notice. The petitioner also mentioned that he intended to examine one witness in his defense and gave his details alongwith his show cause reply.

[5.] Not satisfied with the reply submitted by the petitioner, the Disciplinary Authority proceeded to go ahead with the Departmental Enquiry by appointing an Enquiry Officer. Consequently, after the enquiry proceedings was over, the Enquiry Officer submitted the Enquiry Report with a finding that the charge leveled against the petitioner was found to be proved. The petitioner was therefore given a second show

cause notice on 31.05.2021 by enclosing a copy of the Enquiry Report and giving him seven (7) days time to submit his representation against the same. The petitioner therefore submitted his reply to the second show cause notice on 04.06.2021 and prayed for his exoneration from the charge. The petitioner also stated that although he furnished the name of one (1) defense witness to be examined in his defense but the same was turned down and therefore, serious prejudice has been cause to him. Despite the second show cause reply submitted by the petitioner, he was dismissed from service vide order dated 16.06.2021. The petitioner then preferred an appeal before the Joint Commissioner of Police on the grounds amongst others that he had not been given a chance to produce the defense witness named by him in his first show cause reply therefore, the was prejudiced. However, the said appeal was not disposed of by the Appellate Authority and in the meantime, the petitioner filed WP(C) No. 1830/2020. The said writ petition was disposed of at the motion stage itself vide order dated 28.03.2022 by directing the Appellate Authority to consider and dispose of the appeal filed by the petitioner within a period of one (1) month from the date of receipt of a certified copy of the order. Thereafter, the appeal of the petitioner was disposed of by the Appellate Authority vide order dated 06.05.2022 by rejecting his appeal and maintaining the order of his dismissal from service passed by the Disciplinary Authority. Aggrieved, the petitioner is again before this Court.

[6.] Mr. I. Rafique, learned counsel submits that despite the fact that the petitioner has provided the details of the lone defense witness to be examined in his defense in

his first show cause reply, the respondent authorities did not give him the opportunity to examine the said defense witness. Similarly, the petitioner again raised the issue of permitting him to examine the defense witness in his second show cause reply but again, the same was denied to him. Likewise, in his appeal before the Appellate Authority, the petitioner had taken a similar stand but the same was not considered and his appeal was rejected. The learned counsel submits that the examination of the lone defense is crucial to the case of the petitioner and denial of the same has caused grave injustice to the petitioner. The learned counsel submits that Rule 9(6) of the Assam Services (Discipline & Appeal) Rules, 1964 (Rules of 1964) provides that the person presenting the case in support of the charge shall be entitled to cross-examine the Government Servant and the witnesses examined in his defense. If the Enquiry Officer declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or immaterial, it shall record its reasons in writing. He submits that a similar opportunity is to be given to the charged officer i.e., to cross examine the departmental witnesses and examine defense witnesses in his/her defense. The learned counsel therefore submits that in view of the denial of the opportunity to the petitioner to present and examine the lone defense witness, the impugned order of dismissal from service and the rejection of the appeal should be set aside and he be re-instated back into service.

[7.] Mr. K. Konwar, learned Addl. Advocate General on the other hand submits that since the person named by the petitioner as defense witness is not even a

Government Servant, it is not the duty of the Disciplinary Authorities to summon such witness in the departmental enquiry. In fact, it is for the petitioner to produce such defense witness during the enquiry and the petitioner having failed to do so, no interference is called for on the impugned order of dismissal from service and the rejection of the appeal. The learned Addl. Advocate General also submits that the petitioner has failed to demonstrate or lay down the foundational facts as to how the lone witness sought to be produced can be of his assistance. He submits that from the version of the petitioner, the named defense witness was nowhere available in and around the place where the petitioner was arrested. According to the petitioner, he was proceeding towards the residence of the defense witness he named as he was suffering from an ailment. The learned Addl. Advocate General submits that all the formalities were followed during the departmental proceedings and therefore, the petitioner cannot have any legitimate grievance to make. The writ petition therefore should be dismissed. In support of his submission, the learned Addl. Advocate General relies upon the following authorities:-

(1) R.C Sharma –Vs- Union of India & Ors. (1976) 3 SCC 574

(2) Laxmi Shankar Pandey –Vs- Union of India & Ors. (1991) 2 SCC 488

(3) Naresh Govind Vaze –Vs- Govt. of Maharashtra & Ors. 2008 1 SCC 514

(4) Ram Subhak Ojha –Vs- The Commissioner of Police & Ors. 1964 SCC OnLine Cal 83 and

(5) State of Rajasthan and Ors. –Vs- Phool Singh 2022 SCC OnLine SC 1140.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As already stated in the preceding paragraph, the only issue raised and to be decided is as to whether prejudice has been cause to the petitioner for not having been given the opportunity to produce and examine his named defense witness. The materials available on record goes to show that the petitioner in reply to the first show cause notice dated 31.08.2020 mentioned one (1) defense witness namely, Nasiruddin Ahmed S/o Khalil Ali, R/o Jajori, P.S: Jajori, Dist: Nagaon, Assam. This in fact was in response to what was asked from him in the said show cause notice. Not satisfied with his reply, the Disciplinary Authority proceeded to go ahead with the departmental proceeding by appointing an Enquiry Officer and the Enquiry Officer finally submitted his report by coming to the conclusion that the charge against the petitioner was proved. When the petitioner was asked to submit his reply to the Enquiry Report by way of representation, he again took the plea that he was denied the opportunity to examine the defense witness named by him in his first show cause reply. Again, the same was not taken into consideration and the Disciplinary Authority on 16.06.2021 proceeded to pass the order of dismissal of the petitioner from service.

[9.] The petitioner aggrieved with the same submitted his appeal before the Appellate Authority wherein, one of the grounds taken by him again was that the defense witness named by him could not be examined as the Enquiry Officer turned down the request. It is noticed that the said stand of the petitioner has not been

addressed by the Appellate Authority as well while rejecting his appeal on 06.05.2022. Only a general finding was made to the effect that the petitioner was given ample opportunity to submit his stand on various issues during the entire departmental proceedings but he failed to establish his innocence and that he could not justify the reason for having proceeded beyond his jurisdiction without prior permission. It may be seen that Rule 9 (6) of the Rules of 1964 provides that the Government servant shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in person and to adduce documentary and oral evidence in his defense. Accordingly, in the first show cause notice dated 31.08.2020 issued to the petitioner, he was informed that in his written statement of defense, he should clearly state whether he intends to put forward any witness and which should be mentioned in his written statement of defense to be submitted within the time specified. The petitioner had mentioned the name of the lone witness that he wanted to examine as a defense witness. However, it only appears that no such opportunity was given to the petitioner to present the said defense named by him during the enquiry. The petitioner right from his reply to the first show cause notice, second show cause notice and in his appeal, had taken such a stand but however, the same has not been addressed at any stage. The learned Addl. AG had submitted that the petitioner has been unable to show in what manner the defense witness can be of assistance to the petitioner and without such demonstration, it cannot be presumed that prejudice has been caused to him. However, the fact as to whether the defense witness will be of any

assistance to the petitioner is a point to be considered by the Enquiry Officer while preparing the enquiry report. Thereafter, when the matter reaches the Disciplinary Authority, it is for that authority to consider as to whether the findings arrived at by the Enquiry Officer based on the evidence led on behalf of the department and by the delinquent officer can be accepted. In other words, unless such witnesses which are named by the parties are produced and examined during the departmental proceedings, it cannot be assumed that no useful purpose will be served to the party concerned by producing the witness/witnesses.

[10.] The case of *R.C Sharma* (supra) is only distinguishable to the facts and circumstances of the present case, inasmuch as, the instant petitioner has not produced a long list of witnesses to examine in his defense but only one witness. Rule 9 (6) of the Rules of 1964 provides for an opportunity to the Government Servant concerned not only to cross examine the departmental witnesses to prove the charge but also to give oral and documentary evidence in his defense. The same cannot be considered to be an empty formality. The other authorities relied upon by the learned Addl. Advocate General are also distinguishable and therefore found to be not applicable to the given facts and circumstances of the instant case.

[11.] In the result, this Court is of the considered view that the impugned order of dismissal from service and the rejection of the appeal of the petitioner is vitiated on account of denial of the opportunity to the petitioner to examine his lone

defense witness. Accordingly, the impugned orders dated 16.06.2021 (Annexure-8) and 06.05.2022 (Annexure-11) are hereby set aside and the matter stands remanded back for fresh consideration from the stage of examination of the lone defense witness by the petitioner in his defense. The defense witness may also be cross-examined on behalf of the department. Thereafter, the Enquiry Officer shall submit the Enquiry Report and the Disciplinary Authority shall proceed to conclude the enquiry proceedings in accordance with law as expeditiously as possible. Pending such conclusion and issuance of a speaking formal order, the petitioner shall be deemed to remain under suspension. It is also provided herein that in the event of the unavailability of the Enquiry Officer concerned for one reason or the other, the Disciplinary Authority will be at liberty to appoint a new Enquiry Officer who shall proceed and conclude with the case in accordance with law. The entire exercise shall be completed within a period of two (2) months from the date of receipt of a certified copy of this Order. The writ petition accordingly stands disposed of. No cost.

JUDGE

Comparing Assistant