

GAHC010141172013



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

Case No. : WP(C)/3435/2013

ABC/476 OM PRAKASH RAUT,
S/O LT. DUDH NATH ROUT,
R/O TINIALI BAGAN, NEAR FOOTBALL FIELD
P.S. TINGKONG, DIST. DIBRUGARH, ASSAM.

.....Petitioner

---VERSUS---

1. THE STATE OF ASSAM AND 3 ORS,
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
IN THE HOME DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE, ASSAM,
ULUBARI, GUWAHATI-7.

3:DEPUTY INSPECTOR GENERAL OF POLICE, ASSAM, GUWAHATI.

4:SUPERINTENDENT OF POLICE, DIBRUGARH, ASSAM.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Ms. T. Som, Advocate.

For the Respondents : Mr. D. Borah, Junior Government Advocate, Assam.

Date of Hearing & Judgment : 25.01.2024.

JUDGMENT & ORDER (ORAL)

Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. D. Borah, learned Junior Government Advocate, Assam appearing for the State respondents.

2. The challenge in the present proceedings is to an order dated 27.05.2013 issued by the Superintendent of Police, Dibrugarh, Assam, by which on conclusion of departmental proceedings initiated against the petitioner, he was imposed with the penalty of removal from service.

3. The petitioner was initially appointed as a Constable in the 16th AP(IR) Bn, Barmanipur, Morigaon in the year 1998. During the course of his service, he came to be attached as PSO of one Kukil Gogoi. The petitioner was issued with a show-cause notice on 07.05.2012, charging him with gross misconduct and negligence in discharging lawful duty. The allegations levelled against the petitioner was that on 13.09.2011, after handing over his arms and ammunitions to one Amar Bhuyan, he had gone for bringing meals for said Kukil Gogoi and his companions. During the period of absence of the petitioner, the said Kukil Gogoi had killed one Sonal Banerjee using the arms and ammunitions of the petitioner. It was further alleged that on return of the petitioner to the Resort, he had assisted said Kukil Gogoi and his companions to clean the room by removing the blood stains on the floor and also in disposing the dead body.

It is further alleged that the petitioner had not reported the incident as

occasioned on 13.09.2011 to his superiors.

4. On receipt of the said show-cause notice, the petitioner submitted his replies and therein raised a grievance to the extent that the arms and ammunitions were snatched by said Kukil Gogoi and that he was in no manner connected with the incident but had only followed the directions of said Kukil Gogoi.

5. The Disciplinary Authority, not being satisfied with the replies submitted by the petitioner, directed for holding an enquiry. Accordingly, an Enquiry Officer came to be appointed in the matter. On conclusion of the enquiry, a second show case notice came to be issued to the petitioner on 06.05.2013. The petitioner on 17.05.2013 submitted his replied to the second show cause notice.

6. Thereafter, upon examination of the matter in its entirety, the Disciplinary Authority proceeded to issue the order dated 27.05.2013 imposing the penalty of removal from service upon the petitioner.

7. Ms. T. Som, learned counsel for the petitioner, reiterating the facts as noted hereinabove, submits that the petitioner had not done any act as alleged on his own free will but was forced to follow the directions of said Kukil Gogoi with whom he was attached as PSO. It is further submitted by Ms. Som that the petitioner had disclosed about the said incident and surrendered before the police immediately after occasioning of the incident on his reaching Dibrugarh Police Reserve.

8. Ms. Som submits that the actions as alleged against the petitioner, not being done on his own free will, the petitioner ought not to have been subjected to a departmental proceeding and or imposed with the severe penalty of removal from service.

9. Ms. Som has also submitted that the penalty as imposed upon the petitioner is clearly disproportionate to the allegations levelled against him and he, not being involved in the murder of said Sonal Banerjee, the penalty imposed upon the petitioner requires to be interfered with by this Court and the matter be remanded to the authorities for imposition of any other penalty which would not have the effect of termination of the services of the petitioner.

10. Mr. D. Borah, learned Junior Government Advocate, Assam appearing for the respondents has submitted that the petitioner, after the said incident, on reaching Dibrugarh, had not disclosed about the said incident to any authority. It was only after his arrest on 17.09.2011 in connection with Sonapur P.S. Case No.202/2011, it came to light that he was involved in the incident that had occasioned on 13.09.2011. He submits that further investigation had revealed that the petitioner had handed over his allotted arms and ammunitions to said Amar Bhuyan which action was clearly unauthorized. Accordingly, the show-cause notice dated 07.05.2012 came to be issued instituting a departmental proceeding against the petitioner.

11. Mr. Bora, by taking this Court through the materials available on record, has submitted that the departmental proceedings were so conducted against the petitioner by giving due opportunity to him to defend himself and by following the principle of natural justice.

12. It is the contention of Mr. Bora that the petitioner has not brought any material to show that he was in any manner prejudiced during the conduct of the said disciplinary proceedings.

Accordingly, Mr. Bora submits that the penalty as imposed upon the petitioner commensurates to the misconduct alleged against him and the same

requires no interference from this Court.

13. I have considered the submissions advanced by learned counsel for the parties and also perused the materials available on record.

The allegation against petitioner of having handed over his arms and ammunitions to said Amar Bhuyan on 13.09.2011, is not disputed by the petitioner. What is contended by the petitioner is that the said arms were snatched from him by said person and he was sent out of the Resort where they were staying at the relevant point of time to bring food for Kukil Gogoi and his companions. The said plea is also reflected in the written statement as filed by the petitioner on 12.03.2012 in response to the show-cause notice dated 07.05.2012.

The show cause further alleges that the petitioner had assisted Shri Kukil Gogoi in destroying evidence in pursuance to the murder committed by the latter and also in disposing of the dead body. The further allegation against the petitioner is that after reaching Dibrugarh Police Reserve and depositing his arms and ammunition, he had not disclosed about the said incident to any person. The said allegation as leveled against the petitioner was tried to be covered up by the petitioner in his reply against the 2nd show-cause notice preferred on 17.05.2013, wherein the petitioner had contended that he had done the acts alleged against him under threat from said Kukil Gogoi who had threatened him and his family members with due consequences and that the said incident had put him under extreme mental trauma.

14. The petitioner also contended that he had narrated the entire story to the Superintendent of Police, Dibrugarh. The said contention of the petitioner was not proved in the enquiry and the further contention of the petitioner was that

he had on his own surrendered before the Superintendent of Police, Dibrugarh and was thereafter placed under suspension on 21.09.2011 is not supported by the materials available on record which demonstrate that the petitioner had not disclosed about the incident occasioned on 13.09.2011 and that he was arrested on 17.09.2011 in connection with Sonapur P.S. Case No.202/2011, which was registered in connection with the murder of said Sonal Banerjee. The said contention of the petitioner, not being supported by the materials available on record, the conclusion reached by the Disciplinary Authority holding the petitioner guilty of the allegations and charges levelled against him in the show-cause notice dated 07.05.2012 is justified.

15. The contention of the petitioner that the penalty of removal from service as imposed upon him vide order dated 27.05.2013 is disproportionate to the allegations levelled against him in the show-cause notice dated 07.05.2012, now requires to be considered, the petitioner is in service since 1998 and as of 2011, had completed more than 13 years of service and as such, he has the understanding that the arms and ammunitions as allotted to him cannot and should not, under any circumstances, be given to any person not authorized to receive the same. The petitioner had handed over his arms and ammunitions to said Amar Bhuyan, a companion of Kukil Gogoi. Even if the contention of the petitioner that such arms were snatched from him, is taken on its face value, the petitioner without delay was required to bring the same to the notice of his superiors or at least report about the same to the nearest police station, in absence of any material available on record, contentions made by the petitioner, cannot be given any credence.

Further, as evident from the materials available on record, the petitioner, not having disclosed about the said incident occasioning on 13.09.2011 to any

authority, and the involvement of the petitioner coming to light only after he was placed under arrest on 17.09.2011 in connection with Sonapur P.S. Case No.202/2011, registered in connection with the murder of one Sonal Banerjee, and these coupled with involvement of the petitioner in destroying the evidence after murder of said Sonal Banerjee and also the assistance provided by him in disposing the dead body, reflects that the petitioner, who is a member of a disciplined force had violated all norms mandated to be followed by him in discharging of his duties and as such, the penalty as imposed upon him of removal from service is not disproportionate to the misconduct alleged against him vide show-case dated 07.05.2012 inasmuch as the said allegations were established in the enquiry held in pursuance thereof.

16. In view of the said conclusions reached by me, with regard to the proceedings initiated against the petitioner and also having regard to the fact that the misconduct alleged against the petitioner stood established, I am of the view that the contentions raised by the petitioner requiring interference of this Court with the order of penalty imposed against him vide order dated 27.05.2013 does not merit any acceptance.

17. In view of the said position, the instant writ petition is without merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant