

GAHC010164982023



2024:GAU-AS:9056

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

Case No. : WP(C)/4258/2023

ABDUL KUDDUS
S/O LATE PESKAR ALI
R/O VILL- DOLOITOLA
P.O. SONIADI
P.S. HAJO
DIST. KAMRUP, ASSAM
PIN-781102

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE LEGAL REMEMBRANCER CUM COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM, JUDICIAL DEPARTMENT,
DISPUR, GUWAHATI, PIN-781006

2:THE LEGAL REMEMBRANCER CUM COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
JUDICIAL DEPARTMENT
DISPUR
GUWAHATI

PIN-781006

3:THE SENIOR GOVERNMENT ADVOCATE

ASSAM
GAUHATI HIGH COURT
GUWAHATI
ASSAM
PIN-781001

4:ENQUIRY OFFICER

ADDITIONAL SENIOR GOVERNMENT ADVOCATE
ASSAM

GAUHATI HIGH COURT
GUWAHATI
ASSAM
PIN-78100

Advocate for the Petitioner : MR. K N CHOUDHURY, MRS. R S DEURI, MR. T DEURI

Advocate for the Respondent : GA, ASSAM,

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 02.09.2024 & 05.09.2024

Date of judgment : 12.09.2024

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

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. T. Deuri, learned counsel for the petitioner and Mr. D. Mozumder, learned Addl. Advocate General assisted by Ms. M. Bhattacharjee, learned Addl. Govt. Advocate for all the respondents.

[2.] Challenge made in the instant writ petition is to the Inquiry Report dated 06.03.2021 (Annexure-F) submitted by the respondent No. 4 concluding that the charges drawn against the petitioner were proved, the Order dated 03.04.2021 (Annexure - I) issued by the respondent No. 3 compulsorily retiring the petitioner from service with immediate effect and

the Order dated 04.07.2023 (Annexure-N) passed by the respondent No. 2 rejecting the petitioner's appeal.

[3.] Facts of the case in brief is that the petitioner was working as Junior Administrative Assistant (JAA) in the Office of the Senior Govt. Advocate, Assam, Gauhati High Court, Guwahati and on account of certain allegation with regard to production of Case Diary (C.D) concerned, a written explanation was called from him by the respondent No. 3 on 05.06.2020 (Annexure-A) asking him to explain with supporting documents as to why the C.D relating to A.B No. 4147/2019 was not forwarded to the learned Addl. Public Prosecutor, Assam when the matter was taken up on various dates by the Court. The explanation was to be made on or before 08.06.2020 and if the explanation was not satisfactory, the authority may contemplate drawing disciplinary proceedings against him.

[4.] The petitioner submitted his explanation on 06.06.2020 (Annexure-B) which however was not accepted and therefore, three (3) charges were framed against him as follows:-

(1) Deliberately withholding Case Diaries pertaining to (i) Sonapur P.S Case No. 490/2019 in connection with AB No. 4147/2019 (ii) Sonapur P.S Case No. 419/2019 in connection with AB No. 3987/2019 (iii) Sonapur P.S No. 465/2019 in connection with AB No. 4198/2019 and (iv) Mankachar P.S Case

No. 380/2019

(2) Gross misconduct, negligence of duty and breach of trust thereby bringing disrepute to the Institution and

(3) violation of Rule 3 (1) of the Assam Civil Services (Conduct) Rules, 1965 (Conduct Rules for short) vide Memorandum of Charge/Communication dated 20.07.2020 (Annexure-C).

[5.] The petitioner was therefore asked to submit his written statement in defense within ten (10) days from the date of receipt of the Communication with an option to inspect the documents if he so desired by informing the authority within seven (7) days from the date of receipt of the communication and in which case, the ten (10) days time will be counted from the date of completion of the inspection. Along with the charge memorandum, a list of documents sought to be relied upon and the list of witnesses were also included.

[6.] The petitioner then submitted his written statement on 01.09.2020 (Annexure-D) by giving his explanation on the charge framed against him while stating that there was no willful gross misconduct, negligence of duty and breach of trust on his part and he therefore submitted that he should be exonerated from the charges and be re-instated back into service.

[7.] During the departmental proceeding, five (5) departmental witnesses

(DWs) were examined namely; Mr. B.B. Gogoi, Mr. B. Sarma, Mr. M.P. Goswami, Mr. H. Sarma and Mr. Brojen Chandra Das as D.W Nos. 1, 2, 3, 4 and 5 respectively. The petitioner on his part examined two (2) witnesses in his defense namely; Sh. Abdul Kuddus, the petitioner himself and Mr. Kamal Kumar Nath who is also a JAA in the same establishment where the petitioner was working. Consequently, the Inquiry Report was submitted by the respondent No. 4 stating that the charges against the petitioner were proved. Thereafter, a copy of the Inquiry Report was furnished to the petitioner on 18.03.2021 (Annexure-G) asking him to make a representation within a period of seven (7) days. The petitioner submitted his representation on 25.03.2021 and thereafter, vide the impugned Order dated 03.04.2021, he was compulsorily retired from service with immediate effect. The appeal filed by him was also rejected vide Order dated 04.07.2023. Aggrieved, the petitioner is before this Court.

[8.] Mr. K.N. Choudhury, learned Senior Counsel submits that the petitioner in his reply to the show cause notice and to the Memorandum of Charge clearly stated the reasons as to why the Case Diaries could not be produced. He submits that the petitioner also admitted of being required to produce the Case Diaries in respect of two (2) cases but the same was without any malafide intention. In respect of Sonapur P.S Case No. 490/2019, it was

written as 'disposed of' in the first page of the Bail Application i.e., AB No. 4147/2019. Therefore the records were kept in the disposed Section. He was under the bonafide impression that the case has been disposed of and therefore, the concerned C.D was not forwarded. The petitioner was transferred from Criminal Section on 01.06.2020 and therefore he was not responsible for sending the Case Diary. The learned Senior Counsel submits that the petitioner was only serving as JAA in the establishment and therefore, the entire blame could not have been put on him alone.

[9.] The learned Senior Counsel further submits that the departmental proceedings ought to have been drawn and conducted by an independent authority and not by the Government Counsels themselves in order to rule out any element of biasness. He submits that at any rate, the penalty of compulsory retirement imposed upon the petitioner is highly excessive and harsh and therefore, the same should be modified by this Court by setting aside the impugned orders. In support of his submission, the learned Senior Counsel has relied upon the following authorities:-

(1) *Bongaigaon Refinery & Petrochemicals Ltd. & Ors. Vs. Girish Chandra Sarma, (2007) 7 SCC 206*

(2) *Ramanuj Pandey Vs. State of Madhya Pradesh & Ors. (2009) 7 SCC 248 and*

(3) *Allahabad Bank & Ors. Vs. Krishna Narayan Tewari (2017) 2 SCC 308.*

[10.] Mr. R. Mazumder, learned Addl. Advocate General, Assam on the other hand submits that Court may consider examining as to whether the impugned orders were passed (i) in violation of the principles of natural justice (ii) pursuant to an inquiry drawn by the competent authority and (iii) pursuant to the findings and conclusions arrived at on the basis of some evidence. Mr. R. Mozumder, learned Addl. Advocate General submits that charges framed can be considered to be mainly twofold i.e., deliberately withholding of four (4) Case Diaries despite the same having been received and gross misconduct, negligence of duty, breach of trust and bringing disrepute to the institution.

[11.] To substantiate his submission, the draws the attention of the Court to the Memorandum of Charge dated 20.07.2020. According to the learned Addl. Advocate General, the second charge is in respect of gross misconduct, negligence of duty and breach of trust on the part of the petitioner thereby bringing disrepute to the Institution. He submits that from a bare perusal of the reply submitted by the petitioner through his written statement dated 01.09.2020, it can be seen that he has given his explanation without any substantive evidence to establish his claim. In other words, the reply of the petitioner is only flimsy and without any sense of responsibility.

[12.] Referring to the evidence made by the five (5) departmental

witnesses, the learned Addl. Advocate General submits that there is no dispute to the fact that the duty of the petitioner was to receive the Case Diaries and secure the same till it was required to be produced before the Court. He submits that the practice in the Office of the Public Prosecutor is that as and when the cases are listed, the petitioner who is in-charge of the Case Diaries has to place the same in the relevant brief and hand it over to the Public Prosecutor/Addl. Public Prosecutor handling the matter. From the statements made by the petitioner himself, it is clear that for no reason, he had failed to handover the Case Diaries to the Addl. Public Prosecutor resulting in the extension of the interim orders by the Court and also certain observation against the prosecution which has brought disrepute to the institution.

[13.] He therefore submits that the entire proceedings was carried out as per the established norms while giving the petitioner reasonable opportunity to rebut the allegation in his defense and therefore, no interference is called for on the penalty imposed upon the petitioner. As regards the proportionality of the penalty, the learned Addl. Advocate General submits that even if the Court is of the view that the same is on the higher side, matter should be remitted back to the disciplinary authority for passing appropriate penalty. He thus submits that the writ petition has no merit and the same should be

dismissed. In support of his submission the learned Addl. Advocate General relies upon the following authorities:-

(i) *Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. Vs. J. Hussain (2013) 10 SCC 106*

(ii) *Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Sriavastava, (2021) 2 SCC 612 and*

(iii) *B.C Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749.*

[14.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As can be noticed, there were three (3) charges drawn up against the petitioner. In respect of Charge No. 1 (i) pertaining to Sonapur P.S Case No. 490/2019, the charge was that the Case Diary was received in the office in connection with AB No. 4147/2019 on 03.12.2019. The Bail Application was initially listed on 20.11.2019 for motion where order was passed fixing 03.12.2019 for production of Case Diary. Although the Case Diary was received on 03.12.2019, the petitioner did not forward the Case Diary to the Court and as such, the learned Addl. Public Prosecutor submitted before the Court that the Case Diary has not be received. As such, the matter was posted on 13.12.2019 for production of Case Diary.

[15.] On 02.01.2020, the learned Addl. Public Prosecutor stated that Case Diary had been received but the Injury Report was not available in the Case Diary and

therefore it was directed that Case Diary be produced along with the Injury Report on 22.01.2020. When the matter listed on 05.02.2020, the case was again fixed for 14.02.2020 for production of Case Diary with Injury Report. On 29.05.2020, when the Bail Application was taken up, the Case Diary could not be produced as it was not forwarded by the petitioner to the Court leading to the observation of the Court that for the last nine (9) occasions, the prosecution failed to produce the Case Diary and therefore, 02.06.2020 was fixed as the next date for production of the Case Diary/Status report along with the statement of the victim, failing which the Investigating Officer was directed to remain personally present before the Court at 10:30 AM on the date fixed.

[16.] The I/O was personally present on 02.08.2020 and he stated that the Case Diary was sent on 03.12.2019 and thereafter, it was sent back. A second requisition was sent on 29.02.2020 and accordingly, the Case Diary was sent again to the Court. The learned Addl. Public Prosecutor however submitted that the Case Diary has not been handed over to him or any other Addl. Public Prosecutor, Assam for which delay had been caused. The Court therefore observed that without even going to the aspect of intention, if any, the negligence/laches is a factor which adversely affected proper dispensation of justice.

[17.] In reply to the above charge, the petitioner in his written statement stated that the Case Diary was received on 03.12.2019 vide Serial No. 910 dated

03.12.2019 and the same was forwarded to Court No. 20 vide Item No. 9. The same was forwarded again on 13.12.2019, 02.01.2020 and 22.01.2020 to Court Nos. 15, 18 & 7 respectively. Thereafter, the Case Diary was forwarded to Court No.7 on 05.02.2020. The petitioner further stated that on 14.02.2020, the connected AB No. 4147/2019 could not be traced out and he was a bit confused and for which, the Case Diary remain with the record.

[18.] As regards failure to forward the Case Diary on 25.09.2020, the petitioner stated that as it was written as 'Disposed of' in the first page of the Bail Application, the records were kept in the Disposed Section and as he was under the bonafide impression that the case has been disposed of, the Case Diary was not forwarded. In respect of failure to send the Case Diary on 02.06.2020, the petitioner stated that he had been transferred out from Criminal Section on 01.06.2020 and therefore, the allegation was not sustainable against him. He also stated that when the Case Diary is forwarded to the Court, it is recorded in the register maintained for the purpose but there is no practice of acknowledging the receipt of the Case Diary by the concerned Addl. Public Prosecutor handling the matter and therefore, the allegation against him is not sustainable.

[19.] The charge against the petitioner in respect of Charge No. 1 (ii) pertaining to Sonapur P.S Case No. 419/2019 was that the same was received in the Office in connection with AB Application No. 3987/2019 on 03.12.2019. The Bail Application

was moved on 11.11.2019 and the Court while granting interim protection to the petitioner, fixed the matter on 03.12.2019 for production of Case Diary. The petitioner failed to forward the Case Diary on 03.12.2019 and for which, the case was adjourned to 08.01.2020 and the interim order was extended till then. Similarly, when the matter was listed on 08.01.2020, the Case Diary was not forwarded and the Court re-fixed the matter on 31.01.2020 while continuing the interim order. The petitioner again failed to forward the Case Diary on 31.01.2020, 23.04.2020 and 04.06.2020. On 04.06.2020, the Court observed that although the matter was listed on six (6) occasions, the Case Diary could not be produced and accordingly, the interim bail granted to the petitioner was made absolute at the risk of the I/O concerned.

[20.] The petitioner in his written statement in reply to the allegation stated that the Case Diary was received belatedly on 03.12.2019 and therefore it could not be forwarded to the Court. In respect of Sonapur P.S Case No. 419/2019, two (2) Bail Applications were filed namely; AB No. 3987/2019 and AB No. 4373/2019. As per the instruction of the Public Prosecutor, the Case Diary was tagged with AB No. 4373/2019 which was moved on 05.12.2019 and the case was fixed for 21.01.2020 for production of Case Diary. As for AB No. 3987/2019, the same was listed on 08.12.2019 and 03.01.2020 and according to the petitioner, he forgot the fact that the Case Diary of Sonapur P.S Case No. 419/2019 was tagged with AB No.

4373/2019 and therefore, the Case Diary could not be sent to the Court. AB No. 4373/2019 was disposed of on 21.01.2019 and the Case Diary was tagged along with the file even after disposal. As there was no remark 'Disposed of' on the body of the said Bail Application, the fact of disposal of the case came to his knowledge only after receipt of the show cause notice when he downloaded a copy of the order to verify the allegation.

[21.] In respect of the Charge No. 1 (iii) relating to Sonapur P.S Case No. 465/2019, the charge was that the Case Diary was received in the office in connection with AB No. 4198/2019 on 17.12.2019 and the Bail Application was moved on 25.11.2019. The Court while granting interim protection to the petitioner fixed the matter for 19.12.2019 for production of Case Diary. Although the Case Diary was received on 17.12.2019, the petitioner did not forward the Case Diary to the Court and therefore the matter was listed on 09.01.2020, 20.01.2020, 24.01.2020 and 22.05.2020 but the petitioner did not sent the Case Diary on any of this dates. The case came to be disposed on 22.06.2020 after the Case Diary was produced.

[22.] In reply to the charge, the petitioner in his written statement stated that the Case Diary was sent on 19.12.2019 to Court No. 15 vide Item No. 52 and again on 09.01.2020 to the same Court vide Item No. 14 as per record. On 20.02.2020 and 24.01.2020, he could not trace out the relevant Bail Application and therefore,

he could not forward the Case Diary. Thereafter, the I/O took back the Case Diary on 18.03.2020 and therefore, the same could not be forwarded on 22.05.2020. He came to learn that the Case Diary was returned to the Office on 16.06.2020 but in the meantime, he was transferred out from Criminal Section on 01.06.2020. As such, there is no willful negligence, laches and misconduct on his part as was alleged.

[23.] In respect of Charge No. 1 (iv) pertaining to Mankachar P.S Case No. 380/2019, the allegation against the petitioner was that the Case Diary was received in connection with AB No. 3470/2019 on 04.11.2019 and the Bail Application was moved on 04.10.2019. The Court granted interim protection to the petitioner fixing the matter on 05.11.219 for production of Case Diary. Although the Case Diary was received on 04.11.2020, the petitioner failed to forward the Case Diary to the Court and therefore, the matter had to be fixed on 22.11.2019 and the interim order was extended. Similarly, the Case Diary could not be produced on 22.11.2019, 12.12.2019, 16.12.2019, 10.01.2020, 30.01.2020, 05.05.2020 and 29.05.2020.

[24.] On 29.05.2020, the Court recorded the failure on the part of the prosecution to produce the Case Diary on several occasions and fixed the case on 04.06.2020 for production of the same and failing which, directed the concerned I/O to be personally present before the Court at 10:30 AM. On 04.06.2020, the learned Addl.

Public Prosecutor submitted that a wrong Case Diary had been sent and to this, the Court made the interim bail granted to the petitioner absolute at the risk of the I/O concerned. Copy of the said Order was directed to be provided to the learned Addl. Public Prosecutor for onward communication to the Director General of Police, Assam and to the Superintendent of Police, South Salmara to bring to their notice the failure on the part of the I/O to produce the Case Diary and his disregard for the Court's order. It was further seen that the correct Case Diary had been received on 04.11.2020. Therefore, the petitioner was charged for having withheld the Case Diary deliberately.

[25.] The petitioner in reply to the charge stated in his written statement that the I/O forwarded the Case Diary of Mankachar PS Case No. 380/2018 instead of 380/2019 and therefore, the correct Case Diary was no available in the Office on 04.11.2019, 22.11.2019, 12.12.2019, 16.12.2019, 10.01.2020, 30.01.2020 to send to the Court. He stated that he gather about the submissions made by the learned Addl. Public Prosecutor before the Court on 04.06.2020 that the wrong Case Diary had been sent by downloading a copy of the Order dated 04.06.2020. He therefore submitted that there was no willful negligence, laches and misconduct on his part and he may be discharged from the allegation.

[26.] The Charge No. 2 against the petitioner was regarding gross misconduct, negligence of duty and breach of trust and thereby bringing disrepute to the

Institution and violation of Rule 3 (i) of the Conduct Rules. The petitioner in his written statement stated that there was no willful misconduct, negligence of duty and breach of trust on his part. He has been performing and rendering his sincere and best service to the Institution for the last 24 years without any blemish. That he never misused his position and failed to perform his duties. He had been promoted from the post of Record Arranger to JAA by the same authority and therefore, he pleaded that he may be discharged from the said allegation of gross misconduct etc. As regards the violation of Conduct Rules, the petitioner stated that he has maintained absolute integrity and devotion to his duty. He stated that if there was any shortcoming on his part, the same was only due to oversight and heavy work pressure. Again citing promotion from Record Arranger to JAA, which was on account of his integrity and devotion to his duty, he submitted that he be exonerated from the charge leveled against him and be reinstated in service.

[27.] In order to establish the charges, four (4) Departmental Witnesses (DW) were examined. DW-1 stated that on 02.06.2020, he appeared before the Court in connection with AB No. 4147/2019 which is connected to Sonapur P.S Case No. 490/2019. The I/O was personally present as directed by the Court and on the query made by the Court, the I/O submitted that he sent the Case Diary to the office of the Public Prosecutor on 03.12.2019. Thereafter, a second requisition was received from the Office of the Public Prosecutor on 29.02.2020 but the Case Diary

had been lying in the office of the Public Prosecutor since 03.12.2019.

[28.] He further stated that normally when a Case Diary is called by the Court, the same is requisitioned by the Office of the Public Prosecutor from the concerned Police Station. In response to the requisition, the Police Station use to send the Case Diary to the Office where the petitioner receives it. Whenever the case is listed before the Court, it was the duty of the petitioner to tag the Case Diary with the Bail Application and provide the same to the concerned Public Prosecutor for production before the Court concerned. In his cross-examination, DW-1 stated that he appeared before the Court on 02.06.2020 in AB Case No. 4147/2019 along with the Case Diary and the I/O also was also present. After perusal of the Case Diary, the matter was disposed of and that he has no knowledge about what happened in the case earlier.

[29.] DW-2 in his evidence stated that he could not recall as to whether he appeared in AB No. 4147/2019 on 29.05.2020 or in AB No. 3987/2019 on 29.05.2020. He also could not recall whether he appeared in AB No. 4198/2019 or in AB No. 3470/2019 on 04.06.2020. The petitioner declined to examine the said witness.

[30.] DW-3 in his evidence stated that on 03.12.2019, he appeared before the Court and submitted that the Case Diary had not been received in connection with AB No. 4147/2019. The case was fixed again on 13.12.2019 for production of Case

Diary. He appeared again on 02.01.2020 when the matter was listed wherein he submitted that the Case Diary was received but the Injury Report was not available in the Case Diary. He appeared before the Court on 16.12.2019 in AB No. 3470/2019 and submitted that the concerned Case Diary had not been received. The Court then fixed the case on 10.01.2020 on which date he appeared again before the Court and submitted that the Case Diary had not been received. He stated that normally they do not have the knowledge as to whether the Case Diary has been received or not. Whenever a case is listed before a Court, the concerned Assistant use to provide them the Case Diary along with the file and that was the procedure followed by them. In his cross-examination, he stated that he appeared in AB No. 2477/2019 on 16.12.2019 and on 10.01.2019 and on both occasions, the Case Diary was not available.

[31.] DW-4 in his evidence stated that on 05.11.2019, he appeared before the Court in AB No. 3470/2019 and submitted that wrong Case Diary had been sent along with the Bail Application from the office and accordingly prayed for time to produce the correct Case Diary. As per the practice, the Case Diary used to be tagged along with the Bail Application and sent to the concerned Court by the office and they use to produce the Case Diary before the Court. In his cross-examination, he stated that as wrong Case Diary was tagged along with the Bail Application and accordingly, the same was stated before the Court.

[32.] DW-5 in his evidence stated that he was serving in the Office for the last 24 years and was in a Criminal Section since 2016. He attends to cases related to Police Stations falling in Upper Assam and Barak valley region. Whenever Case Diary comes from a Police Station, he used to receive the same in the receipt register and whenever the cases are listed, he used to take out the Case Diary from the Office *almirah* and handover the same to the petitioner. The Case Diaries are entered in the dispatch register maintained in the Office and sent to the concerned Court. Apart from Upper Assam and Barak valley, the rest are done by the petitioner. Sonapur P.S and Mankachar P.S do not fall under him and he has no knowledge as to whether Case Diaries in connection with the two (2) Police Stations were received or not or sent to the Court or not. In his cross-examination, he stated that in the absence of the petitioner, other staff of the Office used to take care of the office work. In respect of Sonapur and Mankachar, he has no idea as to whether Case Diaries had come to their Office or not as the same is looked into by the petitioner.

[33.] The petitioner examined himself as defense witness No. 1. In his evidence, he stated that the Case Diary in respect of Sonapur P.S Case No. 490/2019 was received by him on 03.12.2019 vide Sl. No. 190 and on the same day itself, he sent the Case Diary to Court No. 20 against Item No. 9. Thereafter, Bail Application No. 4147/2019 was listed before Court No. 15 as Item No. 31 on

13.12.2019 and he sent the same to the Court. The Bail Application was listed on 02.01.2020 in Court No. 18 as Item No. 4 and he sent the Case Diary to the Court. Again on 22.01.2020, the Bail Application was listed before Court No. 7 as Item No. 54 and he sent the Case Diary on that day as well.

[34.] On 05.02.2020, the case was listed before Court No. 7 as Item No. 36 and Case Diary was sent to the Court. The Bail Application was listed again on 04.02.2020 but on that day he could not send the Case Diary and similarly on 29.05.2020, he could not send the Case Diary. On making an enquiry, he was informed by the Addl. Public Prosecutor concerned that the Case Diary was retained by the Court and that case might have been disposed of and therefore, he was asked to check the Case Diary from amongst the disposed of records. Upon checking, he could trace out the Case Diary and the Bail Application where the Addl. Public Prosecutor had written 'disposed of' in the first page of the Bail Application. He therefore sent the Case Diary to the Court on the same day i.e., 29.05.2020. On 01.06.2020, he was transferred from Criminal Section to Civil Section.

[35.] In so far as Sonapur P.S Case No. 419/2019 in connection with AB No. 3987/2019 is concerned, the petitioner stated that the Case Diary was received by him on 03.12.2019. The two (2) Bail Applications i.e., AB No. 3987/2019 and AB No. 4373/2019 were filed in connection with the said case. On 03.12.2019, he

received the Case Diary lately and although he sent the Case Diary to the Court, the same was returned as the matter was already over. On 05.12.2019, he sent the Case Diary in connection with AB No. 4373/2019 to the Court and likewise on 21.01.2020 as well. After perusal of the Case Diary, the Court disposed of the case on 21.01.2020. However, the concerned Addl. Public Prosecutor did not mention that AB No. 4373/2019 was disposed of and therefore, the Case Diary remained tagged with the Bail Application. He also did not know that the petition had already been disposed of and he came to know about the same later on.

[36.] The Case Diary in connection with AB No. 3987/2019 was not available on several dates and that the petitioner spoke to the O/C, Sonapur Police Station over phone as per the instruction of the concerned Addl. Public Prosecutor and asked for the Case Diary. When the Case Diary was not received the next day, the petitioner was asked by the Addl. Public Prosecutor concerned to call the O/C, Sonapur once again and when he called the O/C, he replied that he will send the Case Diary. The Bail Application was listed on 05.06.2020 and by that time he was transferred from Criminal Section and therefore, he did not know whether the Case Diary had been received thereafter or not.

[37.] In respect of Sonapur P.S Case No. 465/2019, connected to AB No. 4198/2019, the petitioner stated that he sent the Case Diary to the Court on 19.12.2019 and 09.01.2020. On 09.01.2020 the concerned Addl. Public Prosecutor

asked the petitioner to communicate to the Police Station to provide an up-to-date Case Diary as the Case Diary was received along time back. On 20.01.2020 and 24.01.2020, although AB No. 4198/2019 was listed, the Addl. Public Prosecutor directed the petitioner to send the Case Diary as the updated part of the Case Diary was not received and therefore, the Case Diary received earlier was kept in the office and not send to the Court. On 16.03.2020, the concerned Police Station took back the Case Diary and was not received back when the matter was listed on 22.05.2020 before the Court.

[38.] In respect of Mankachar P.S Case No. 380/2019 relating to AB No. 3470/2019, the petitioner relied upon the statements already made in his written statement. The petitioner further stated that his duty was to receive the Case Diary from the police and to keep the Case Diary in the locker. Whenever the cases were listed, he used to take Case Diaries out from the locker and tag the same with the Bail Application and give the same to the Public Prosecutor, Assam.

[39.] For the remaining two (2) charges, the petitioner stated that he had been serving in the office for the last 25 years and he has never received any show cause notice etc., from the authorities until the present incident and that he never neglected his duties. In respect of Mankachar P.S Case No. 380/2019, he contended that the Addl. Public Prosecutor never informed him that a wrong Case Diary has been sent to the Court although the case was listed on several occasions.

When was informed about the same, he gave a fresh requisition calling for the correct Case Diary. As he used to receive large number of Case Diaries from different police stations, he did not have the time to verify the case numbers. He also stated that photocopy of the documents mentioned in the chargesheet and statement of allegation were provide to him earlier and he has also seen the original of the said documents and that he has nothing to say on the same.

[40.] The petitioner examined one Sh. Kumal Kumar Nath as a defense witness and the said witness in his evidence stated that he has been serving in the Criminal Section since February, 2016. The Case Diary used to come before the fixed dates and it was their duty to tag the Case Diary with the Bail Application concerned and to send them to the Court where the matter was listed. Sometimes, the Case Diary used to reach late or on the day when the case is listed at around 11 to 12 and therefore they used to send the Case Diary to the Court on the same day. He further submits that he has no knowledge as to what happened in respect of the four (4) police stations case mentioned in the chargesheet served upon the petitioner which is the subject matter of the inquiry. After the witnesses were examined, the Inquiry Officer vide his Inquiry Report dated 06.03.2021 found all the charges proved against the petitioner.

[41.] From the appreciation of the entire evidence led by the parties including the petitioner himself, as set out in the preceding paragraphs, it can be seen that the

petitioner was assigned with the work of receiving the Case Diaries and keeping them in safe custody till they were required to be produced before the Court as and when the Bail Applications were listed by placing the Case Diary in the Bail Application. Therefore, in respect of the assignment given to the petitioner, there is no dispute with regard to his responsibility. The petitioner himself had admitted that on few occasions, he could not send the Case Diaries and for that, he has offered no explanation. It therefore only appears that there is some degree of negligence on the part of the petition in carrying out his duties and responsibilities. For the action/inaction of the petitioner, the Disciplinary Authority has imposed upon him a major penalty of compulsory retirement which was again confirmed against the appeal filed by the petitioner. It is a settled principle of law that the disciplinary authority is the sole judge of facts and judicial review should not be exercised to review the decisions as an appeal but to only examine the decision making process.

[42.] Having arrived to an opinion that there was some degree of negligence on the part of the petitioner, the question would be as to whether the penalty of compulsory retirement which is a major penalty imposed upon him is commensurate to his actions/inactions. The same under the facts and circumstances and in the considered view of this Court appears to be excessive. By applying the principle of law laid down by the Apex Court in *Deputy Commissioner,*

Kendriya Vidyalaya Sangthan & Ors. (surpa), this Court deems it fit to remand the matter back to the Disciplinary Authority to reconsider the penalty imposed upon the petitioner and for imposition of a lesser penalty other than compulsory retirement. Accordingly, the impugned orders dated 03.04.2021 and 04.07.2023 are hereby set aside and the matter remanded back to Disciplinary Authority to pass necessary orders as observed herein above within a period of four (4) weeks from the date of receipt of a certified copy of this Order. In passing the order as directed, the Disciplinary Authority shall also pass appropriate orders in respect of the entitlement of the petitioner on his reinstatement.

[43.] With the above observations and directions, the writ petition stands disposed of and the parties are directed to bear their own cost.

JUDGE

Comparing Assistant