

GAHC010170232024



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

Case No. : WA/376/2024

SIKANDER ALI AHMED
S/O. ABDUL HOQUE, R/O. VILL. KUMULIPARA, P/S. HOWLY, DIST.
BARPETA, ASSAM, PIN-781316.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-781006, DIST.-
KAMRUP (M), ASSAM.

2:THE DIRECTOR GENERAL OF POLICE ASSAM
ULUBARI, GUWAHATI, ASSAM

3:THE COMMISSIONER OF POLICE
GUWAHATI, DIST. KAMRUP(M), ASSAM

4:THE JOINT COMMISSIONER OF POLICE
POLICE COMMISSIONERATE
GUWAHATI, DIST. KAMRUP(M), ASSAM

For petitioner(s)/appellant(s) : Mr. B. J. Ghosh, Advocate
Mr. A.M.S. Mazumder, Advocate
For respondent(s) :

– **BEFORE** –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

08.11.2024

(Vijay Bishnoi,

1. This writ appeal is filed by the appellant being aggrieved with the order dated 19.07.2024, passed by the learned Single Judge in WP(C) No. 677/2021, whereby the learned Single Judge has dismissed the writ petition filed by the appellant, resulting in

affirmation of the dismissal order dated 23.06.2017, passed by the Disciplinary Authority, i.e. Deputy Commissioner of Police (Administration), Assam.

2. The brief facts of the case are that the petitioner was serving as a Constable in Unarmed Branch of the Assam Police. While the petitioner was in service, a Departmental Proceeding was initiated against him on the charge of misappropriation of money and, subsequently, he was put under suspension. Charges were framed against him and, after a full-fledged departmental enquiry, he was dismissed from service vide order dated 23.06.2017. The appellant preferred an appeal against the dismissal order, which was also dismissed by the appellate authority vide order dated 11.09.2020. Being aggrieved with the same, the appellant preferred the above-referred writ petition, which came to be dismissed vide the impugned order. Hence, this writ appeal.
3. The appellant assailed the dismissal order as well as the order passed by the appellate authority mainly on the ground that there were gross procedural lapses in the departmental enquiry conducted against him and he was also not provided with sufficient opportunity of hearing to defend his case.
4. Challenging the impugned order passed by the learned Single Judge, learned counsel for the appellant has invited out attention towards the order dated 11.09.2020 passed by the appellate authority and has submitted that the appellate authority, in its order, has pointed out several lapses and that itself is sufficient to interfere with the dismissal order. Learned counsel has argued that as no sufficient opportunity of hearing was provided to the appellant to defend his case, the dismissal order was liable to be interfered with. However, the learned Single Judge has committed error in not interfering with it.
5. We have heard the learned counsel for the appellant and have gone through the material available on record.
6. It is to be noted that while passing the impugned order, the learned Single Judge himself has examined the original records of the enquiry proceedings and thereafter

has recorded a finding that no significant procedural lapses had taken place in the disciplinary proceeding conducted against the appellant and that no case of violation of the principle of natural justice was made out.

7. The relevant observations made by the learned Single Judge are reproduced hereunder:

“21. The charge against the petitioner, who was a Constable with the Unarmed Branch is a definite one. The same pertains to forging and duplicating R.C. Books for collection of traffic fines and there was a marked difference between the fines recorded. The registration of two police case in this regard in which the petitioner was arrested is also not disputed. Therefore, it cannot be said that the Disciplinary Proceeding was commenced on non existing charges. The defence sought to be taken is that the petitioner as Constable was not the custodian of government money. What, however, is evident from the reading of the charge is that there was marked difference with the amounts actually collected as traffic fines for which duplicate and forged receipts were issued and the amount reflected in the original R.C. Books. Therefore, whether the petitioner as Constable could have been a custodian of government money or not is of no consequence. This Court is of the firm opinion that the allegations against the petitioner were based on definite facts.

22. It is now required to examine the aspect of the procedure adopted. At this stage, this Court is reminded itself that in exercise of judicial review over a matter concerning disciplinary proceeding, the role of this Court is a limited one. This Court performs a secondary role to oversee as to whether the procedure adopted in the disciplinary proceeding was in consonance with the principles of natural justice. The strict rules of evidence are not applicable in a disciplinary proceeding and what this Court is required to see is whether the proceeding was held in a transparent manner and as to whether the delinquent was given a fair opportunity to defend himself. Of course, this Court would also look into the aspect as to whether the provisions of the statute holding the field were complied with.

23. The thrust of the argument on the procedural aspect made on behalf of the petitioner was that no Presenting Officer was appointed. A bare look at the order dated 24.05.2015 issued by the Disciplinary Authority would reveal that by the said order, both the Enquiry Officer and the Presenting Officer were appointed. To rule out any confusion on this issue, this Court has examined the original records of the enquiry proceeding. The same reveals that the Presenting Officer was all along present in the enquiry and his signatures appear on each page of the enquiry proceeding. The aspect of not giving opportunity to the petitioner while recording the evidence has also been examined. The record reveals that the statements of the witnesses were recorded in the presence of the petitioner and he had indeed cross-examined some of the witnesses and declined to cross-examine few other witnesses. Though the record reveals that

there were no defence assistant, there is nothing to show that the petitioner had made such a request which was declined. The aspect of defence assistant would be relevant only when such request was made and denied and in absence of such request, the petitioner would be precluded from raising the said issue. It has also not been pleaded that the petitioner had suffered any prejudice in that aspect.

24. In the case of Rajen Bhuyan (supra) which has been cited in this regard, it is seen that while the requirement of informing the delinquent officer of his right to have a defence representative is highlighted, it is also qualified that by such commission, the delinquent officer had suffered. In the instant case, no such prejudice has been seen to have been suffered by the delinquent as he had cross examined the witnesses.

25. On the aspect that the petitioner was forced to make a statement against himself, a bare look at the statement made by the petitioner on 21.09.2015 would show that not to talk about any admission, the petitioner had, on the contrary denied all the charges against him. In any case, this Court is of the opinion that mere giving of a statement by a delinquent would not per se vitiate the proceeding and in fact such a disciplinary proceeding envisages adducing of defence witnesses. It is only when a delinquent is forced to make a statement against himself that such a proceeding would stand vitiated. However, that is not the case in hand.

26. As indicated above, the records of the enquiry reveal that all the statements of the witnesses bear the signatures of the delinquent and therefore, it cannot be accepted that such statements were recorded behind the back of the petitioner.

27. The order of Dismissal dated 23.06.2017 has been assailed that the same does not contain adequate reasons. A perusal of the order would however reveal that the Disciplinary Authority had not only examined the enquiry report but also the materials upon which such report was prepared and the response of the petitioner. The order also reveals that the predecessor of the Disciplinary Authority had given a personal hearing on 22.02.2017 and even the present Disciplinary Authority had given a personal hearing to the petitioner on 17.06.2017. The Disciplinary Authority had also considered the aspect of the nature of penalty to be imposed vis-a-vis the seriousness of the charges. It has been observed that the petitioner being a member of the disciplined force is not to be dealt with softly as the same will set a bad precedent.

28. This Court has also observed that the Appellate Authority had also examined all the aspects of the matter as reflected by the order dated 11.09.2020. The Appellate Authority had also considered the nature of the allegations and the fact that sufficient opportunity was granted to the petitioner in the disciplinary proceeding including personal hearing.

29. The allegations regarding violation of Rules 9 (5) & 9 (6) of the Rules of 1964 do not appear to be substantiated by the facts of the case which have been recorded above. The reference to the case of Mutum Shantikumar Singh (supra)

on the aspect of appointment of Presenting Officer would not come to the aid of the petitioner as a Presenting Officer was indeed appointed, as discussed above.

30. This Court is of the opinion that the role discharged by the Disciplinary Authority was in substantial compliance of the principles of natural justice whereby a fair opportunity was given to the petitioner.

31. On the aspect of proportionality of the penalty imposed, this Court is of the opinion that the quantum involved would not be of much relevance in a case of misappropriation, that too by a member of a disciplined force and this aspect was duly considered by the Disciplinary Authority while imposing the penalty.”

8. Having heard the learned counsel appearing for the appellant and after going through the material available on record and, particularly, taking into consideration the fact that the learned Single Judge has, after carefully scrutinizing the record of the disciplinary proceedings dismissed the writ petition with the finding that no significant procedural lapses had taken place in the disciplinary proceeding and that there was no case of violation of the principle of natural justice, we do not find any case for interference.

Hence, this writ appeal is dismissed *in limine*.

JUDGE

CHIEF JUSTICE

Comparing Assistant