

GAHC010192582020



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

Case No. : WP(C)/18/2021

BHARAT CHANDRA DAS
S/O- LT. KUHI RAM DAS, R/O- H.NO. 20, GANESHPARA, P.O. AND P.S.
FATASIL AMBARI, DIST.- KAMRUP (M), ASSAM, PIN- 781025

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY., HOME DEPTT., DISPUR, GHY-06

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

3:THE ADDL. DIRECTOR GENERAL OF POLICE (COMMN)
ASSAM
ULUBARI
GHY-07

4:THE SUPERINTENDENT OF POLICE (COMMN)
HQ-II
ASSAM
GHY-07

5:THE ENQUIRY OFFICER-CUM-THE DY. SUPERINTENDENT OF POLICE
(COMMN)
HQ
ULUBARI
GHY-07

6:THE INSPECTOR (T)
RESERVE INSPECTOR

APRO HQ
ULUBARI
GHY-0

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri S. Chauhan, Advocate.
Advocates for the respondents : Ms. M. Bhattacharya, Addl. Senior Govt. Advocate.
Date of hearing : **03.05.2024**
Date of Judgment : **03.05.2024**

JUDGMENT & ORDER

An order of penalty dated 25.09.2020 of withholding of one increment without cumulative effect and a subsequent order of 30.09.2020 of holding the period of suspension of the petitioner in service from 08.04.2020 to 10.09.2020 to be not on duty are the subject matters of challenge in this petition instituted under Article 226 of the Constitution of India.

2. Bereft of the details, the necessary facts, as projected are that the petitioner, who was appointed as Assistant Sub-Inspector of Police in the year 1992 was promoted to the rank of Sub-Inspector in the year 2016 and was posted in the APRO Head Quarter. On an incident relating to return of the file of an incumbent as communicated by the Senior Accounts Officer, a disciplinary proceeding was initiated against the petitioner in course of which he was placed under suspension vide an order dated 08.04.2020. The same was followed by a show cause notice dated 18.04.2020 in which 4 numbers of witnesses were cited along with documents. Though the petitioner had asked for copies of the documents, it is alleged that such copies were not furnished, however,

inspection of the same was granted. Accordingly, the petitioner had submitted his written statement of defense on 04.05.2020. Not being satisfied with the reply of the petitioner, an enquiry was constituted and vide order dated 11.05.2020, Enquiry Officer and Presenting Officer were appointed. In the meantime, vide an order dated 11.09.2020, the suspension was revoked and the petitioner was reinstated in service. On completion of the enquiry and submission of the enquiry report, the petitioner was issued a second show-cause notice on 14.09.2020 enclosing therewith a copy of the enquiry report dated 18.06.2020. The petitioner had accordingly submitted his reply to the second show-cause notice. However, it is the case of the petitioner that without taking into consideration the response of the petitioner in its proper perspective, the impugned order of penalty was passed on 25.09.2020 and as indicated above, vide the subsequent order dated 30.09.2020, the petitioner was treated to be not on duty for the period of suspension from 08.04.2020 to 10.09.2020.

3. I have heard Shri S. Chauhan, learned counsel for the petitioner. I have also heard Ms. M. Bhattacharya, learned Addl. Senior Govt. Advocate, Assam who has also produced the original records of the departmental proceeding.

4. Shri Chauhan, the learned counsel for the petitioner has submitted that there was no basis to formulate the charge as there was no misconduct of any insubordination which could have been attributed on the petitioner. By referring to the communication dated 18.10.2019 of the Senior Accounts Officer, the learned counsel has submitted that for such a trivial matter, the charge of insubordination could not have been leveled.

5. As regards the challenge on the procedure adopted in the enquiry, the

learned counsel has submitted that in the enquiry, the petitioner was not given any opportunity to cross examine the witnesses. In this connection, the learned counsel has referred to the reply filed to the second show-cause notice wherein the aspect of not allowing him to cross-examine the witness was highlighted. It is submitted that the petitioner was deprived of a fair opportunity in the enquiry which resulted in a finding against him. It is also submitted that the prime witness Bhaba Kumar Borah did not turn up in the enquiry proceedings and only his pre-recorded statement was utilized without giving any opportunity to the petitioner for cross-examining the said witness.

6. Shri Chauhan, the learned counsel has relied upon the following two decisions in support of his contention:

1. **(2011) 4 SCC 589** (Union of India and Ors Vs S. K. Kapoor)

2. **2018 (1) GLT 147** (Union of India & Ors Vs Dharmeswar Payeng)

7. In the case of ***S. K. Kapoor*** (supra), the Hon'ble Supreme Court has laid down the requirement of making available all materials to a delinquent in an enquiry in absence of which, there would be violation of the principles of natural justice. The said view was also taken aid of by this Court in the case of ***Dharmeswar Payeng*** (supra)

8. *Per contra*, Ms. Bhattacharya, the learned State Counsel has submitted that the role to be played by a Writ Court in matters of examining a disciplinary proceeding and its outcome can only extend to the aspect of an examination as to whether a fair procedure was adopted and the decision making process was lawful. By refuting the allegations that the petitioner was not afforded a chance of cross-examination, the learned State Counsel has submitted that the records

of the proceeding would reveal otherwise. By placing the said records before this Court, the learned State Counsel has submitted that the same would reveal that not only the statements were recorded of the witnesses who are present, the petitioner was given a scope of cross-examination and in fact questions were also put to him based on the said statements.

9. This Court has carefully looked into the records including the proceedings of the enquiry which reveal that the statements of the witnesses were recorded in presence of the petitioner and his signature appears on each page of such proceeding. To ensure fairness, the original records were also shown to Shri Chauhan, the learned counsel for the petitioner for his satisfaction.

10. This Court has come to a finding that the procedure adopted by the enquiry officer while conducting the enquiry appears to be a fair procedure wherein reasonable opportunity of defense was granted to the petitioner and fairness and transparency were maintained.

11. This Court is accordingly of the view that the enquiry and its findings cannot be found fault with.

12. Having held that, this Court has also looked into the nature of the allegation which is of insubordination in connection with not forwarding a file of an incumbent. Taking the same into consideration, while this Court is of the opinion that no case for interference is made out so far as the order of imposition of penalty dated 25.09.2020 is concerned, the subsequent order dated 30.09.2020 whereby the petitioner has been held to be not on duty for the period from 08.04.2020 to 10.09.2020 is required to be interfered with. It is accordingly directed that the suspension period from 08.04.2020 to 10.09.2020

be treated to be on duty and accordingly the balance amount of the salaries which would be admissible to him by deducting the subsistence allowance already paid to him be released to the petitioner. The said release be made within a period of 4 (four) months from the date of receipt of the certified copy of the order.

13. Writ petition accordingly stands disposed of in the manner indicated above.

14. The original records are handed back to the learned State Counsel.

JUDGE

Comparing Assistant