

GAHC010192602013



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

Case No. : WP(C)/2934/2013

DEB PRASAD HAZRA
CISF NO. 9440750421 CONSTABLE/BARBER, S/O LATE S.C. HAZRA CISF
UNIT, ASG, LGBI AIRPORT, GUWAHATI, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI

2:THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE
LGBI AIRPORT GUWAHATI

3:THE ASSTT. COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE ASG
IMPHAL AIRPORT IMPHAL PIN-795140

4:THE DY. COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE ASG
IMPHAL AIRPORT IMPHAL PIN-79514

Advocate for the Petitioner : MR.J LASKAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 08.02.2024

None appears on behalf of the petitioner, on call. However, Mr. K. Gogoi, learned CGC, appears on behalf of all the respondents.

2. The petitioner in the present proceeding, has assailed an order, dated 23.05.2012, passed by the Assistant Commandant, CISF Unit, ASG, Imphal, imposing upon him a penalty of "pay fine equal to 7 days pay" and an order, dated 21.07.2012, passed by the Deputy Commandant, CISF Unit, ASG, Imphal, enhancing the penalty as imposed upon him vide the order, dated 23.05.2012, to "withholding penalty of one increment for a period of one year without cumulative effect."

3. The petitioner while working as a Constable/Barber at the CISF Unit, ASG, Imphal, a departmental proceeding came to be initiated against him for imposition of a minor penalty with the following charge:

"CISF No. 944750421 Constable/Barber D.P. Hazra, ASG Imphal on 8/3/2012 at about 1800 hrs. came to the nearby road of the residence of Deputy Commandant CISF ASG Imphal and by taking the advantage of darkness and by knowing the fact that the residence of Deputy Commandant and at present, he is not at home pelted stones at the residence of Deputy Commandant with an intention to damage the window and broke the window glasses. Force member have done this act willfully which shows a gross misconduct and indisciplinary act. Hence the allegation is."

4. The petitioner submitted his reply to the said charge and thereafter, the Assistant Commandant, CISF Unit, ASG, Imphal, vide his order, dated 23.05.2012, proceeded to impose upon the petitioner a penalty of "pay fine equal to 7 days pay" with further observation that the petitioner shall not repeat the same fault in future. The petitioner, being aggrieved, filed an appeal in the matter on 20.06.2012. The Deputy Commandant, CISF Unit, ASG, Imphal, upon consideration of the said appeal, proceeded to dispose of the same as the appellate authority vide order, dated 21.07.2012 and thereon, enhanced the penalty of "pay fine equal to 7 days pay" to a penalty of "withholding of one

increment for a period of one year without cumulative effect” on the petitioner. The petitioner, thereafter, preferred a revision petition, dated 13.10.2012, before the Commandant, CISF Unit, LGBI Airport, Guwahati. The said review petition, on consideration, came to be rejected maintaining the order passed by the appellate authority. Being aggrieved, the petitioner has instituted the present proceeding.

5. At the outset, this Court would examine the challenge of the petitioner to the order, dated 21.07.2012, passed by the appellate authority, by which the penalty of “pay fine equal to 7 days pay” imposed upon the petitioner was enhanced to penalty of “withholding of one increment for a period of one year without cumulative effect”.

6. The power for enhancement of penalty imposed upon a delinquent member of the force is provided for under the provisions of Rule 52 of the Central Industrial Security Force Rules, 2001. However, what is to be noted here is that in the event, the appellate authority, on consideration of the matter, is of the view that the penalty as imposed by the disciplinary authority requires to be enhanced, the procedure as prescribed under Rule 52(2)(c)(iii); is required to be followed. The provisions of Rule 52(2)(c)(iii) of the Rules of 2001, being relevant to the issues arising in the present proceeding, is extracted hereinbelow:

“52. Consideration of appeals.

(1).....

(2) In the case of an appeal against the order imposing any of the penalties specified in Rule 34, or enhancing any penalty imposed upon the said Rules,

the appellate authority shall consider-

(a).....

(b).....

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders –

(i).....

(ii).....

(iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.”

7. What is evident from the provisions of Rule 52(2)(c)(iii) of the Rules of 2001 is that before enhancement of any penalty by the appellate authority, the delinquent must necessarily be given a reasonable opportunity for making a representation against such proposed enhanced penalty. In other words; in a situation where the appellate authority, on consideration of the matter, decides that the penalty as imposed by the disciplinary authority, requires to be enhanced, he is to record his reasons for the same and communicate the matter to the delinquent informing him to submit his representation thereon. It is only on receipt of such representation that the appellate authority can further proceed with the matter and impose the enhanced penalty on the delinquent.

8. In the case on hand; on perusal of the materials available on record, it is seen that the appellate authority had considered the appeal of the petitioner and proceeded with the matter ex-parte without affording to the petitioner any opportunity to show cause with regard to the decision arrived at for enhancement of the penalty imposed upon the petitioner by his disciplinary authority. The said procedure as adopted by the appellate authority in the

matter, being in clear violation of the provisions of Rule 52(2)(c)(iii) of the Rules of 2001; the enhanced penalty as imposed upon the petitioner is not sustainable and the same requires to be interfered with. Accordingly, this Court, in view of the clear violation of the procedures mandated for imposition of enhanced penalty on a delinquent; proceeds to interfere with the order, dated 21.07.2022.

9. This now brings this Court to consider the order, dated 23.05.2012, passed by the disciplinary authority against the petitioner imposing upon him, a penalty of "pay fine equal to 7 days pay". The said penalty as imposed upon the petitioner is in the nature of a minor penalty and has been provided for under the provisions of Rule 34 of the said Rules of 2001.

10. The petitioner was initially issued a memorandum, dated 25/26 April, 2012, framing therein against the petitioner, a charge as extracted hereinabove. It is to this charge that the petitioner had submitted his reply. As evident from the materials coming on record in this writ petition; the petitioner was not furnished with the materials basing on which the said charge was so framed. However, the disciplinary authority while proceeding to issue the order, dated 23.05.2012, relied upon the preliminary inquiry report and the statements of the witnesses as recorded therein and thereafter, formed his opinion for imposition of the said penalty upon the petitioner. The petitioner not having been afforded a reasonable opportunity to defend his case by furnishing to him all requisite materials in this connection; the order, dated 23.05.2012, stands vitiated rendering the same unsustainable in law.

11. In view of the fact that the order, dated 23.05.2012, was so issued by the disciplinary authority without affording due opportunity to the petitioner to defend his case by furnishing to him all requisite materials, the order, dated 23.05.2012, also cannot be sustained and the same also warrants interference. This Court, accordingly, interferes with the order, dated 23.05.2012.

12. On account of the interference made by this Court with the orders, dated 23.05.2012; and 21.07.2012; the order, dated 31.12.2012, passed by the revisional authority also has been rendered unsustainable and the same also stands interfered with.

13. In view of the conclusions reached hereinabove; the increment as withheld from the petitioner in terms of the order of the appellate authority, dated 21.07.2012, is now to be authorized to the petitioner.

14. In that view of the matter; the respondent authorities, shall, on reauthorization of the increment so withheld, recalculate the arrears working out thereof and release to the petitioner, the amounts so becoming due, within a period of 3(three) months from the date of receipt of a certified copy of this order.

15. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant