

GAHC010192802013



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

Case No. : WP(C)/3242/2013

INSPECTOR UB MUNINDRA DAS
RESERVE INSPECTOR 7TH ASSAM POLICE BATTALION CHARAIKHOLA,
DIST- KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM, HOME
DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-7

3:THE COMMANDANT
7TH ASSAM POLICE BATTALION
CHARAIKHOLA
KOKRAJHAR
DIST- KOKRAJHAR
ASSA

Advocate for the Petitioner : MS.S D CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

15.02.2024

Heard Ms. U. Nanda, learned counsel for the petitioner. Also heard Ms. D. Das Barman, Additional Senior Government Advocate for the respondents.

The petitioner by way of instituting the present proceedings has presented a challenge to the order dated 29.04.2023 by which the petitioner was imposed with the penalty of "Compulsory Retirement" from service in pursuance to a departmental proceeding initiated against him.

The petitioner was vide a show cause notice dated 08.05.2006 charged with unauthorized absence from duties w.e.f. 20.11.2004 till 19.01.2006. The charge as leveled against the petitioner being relevant to the adjudication of the issue arising in the present proceedings is extracted herein below:

"While you were posted at Majuly Gamur court as PSI, you were found absent on your duty w.e.f. 20.11.2004 to 19.01.2006 for a period of 425 days. Notices vide S/No. RO(J)/2004/7725-26 dated 24.12.2004, S/No.RO(J)/2005/97-99 dt. 10.01.2005 were issued directing you to resume your duty immediately, but you have failed to resume your duty in time. Being a responsible police officer, it is an act of gross negligence on your part.

Hence, you are charged for gross negligence of duty."

The petitioner, thereafter, on receipt of the said show cause notice did not submit any reply thereto and poised thus the Disciplinary Authority directed for an inquiry into the matter. An Inquiry Officer was appointed and the Inquiry Officer on entering into the matter issued repeated notices to the petitioner to appear in the Inquiry proceeding. However, the said notices were not responded to by the petitioner and accordingly the proceeding which was initiated in the year 2006 prolonged till the year 2012. Thereafter, the proceeding was directed to be proceeded ex-parte and accordingly the proceedings continued. On conclusion of the Inquiry, the Inquiry Officer submitted his inquiry report. The Inquiry Officer in his report highlighted that the charges against

the petitioner were all established by the evidences that had come on record. The Disciplinary Authority thereafter forwarded to the petitioner a copy of the said inquiry report requiring him to submit his representation thereon. The petitioner submitted his representation against the said inquiry report on 13.02.2013. A perusal of the said representation against the inquiry report reveals that the petitioner had not dealt with the findings as recorded by the Inquiry officer in the inquiry proceedings and has also not justified as to why he had not participated in the inquiry in spite of being issued repeated notices. Thereafter, the Disciplinary Authority on consideration of the matter and also on examination of the contentions as raised by the petitioner in his representation against the Inquiry report dated 13.02.2013, proceeded to agree with the findings as arrived at by the Inquiry officer and accordingly considering the gravity of the offence involved, proceeded to impose upon the petitioner the penalty of "Compulsory Retirement" from service. The period of suspension and absence was directed to be adjusted against any leave in the credit of the petitioner and the excess period of such absence not adjusted against leave in the credit of the petitioner was directed to be treated as leave without pay.

The petitioner being aggrieved, has instituted the present proceedings.

It is the case of the petitioner that on account of his ailments as well as the injury sustained in him in an accident on 09.01.2005 he was under treatment in Kanaklata Civil Hospital, Tezpur and on discharge from the said hospital, the doctor attending on him had advised him to take further treatment and to undertake complete rest. In this connection the petitioner has relied on a certificate dated 28.05.2005 issued by the doctor attending upon him in the said hospital.

On perusal of the said certificate it is revealed that the petitioner was advised to be under rest from 14.01.2005 to 28.05.2005 and thereafter on 28.05.2005 he was on examination declared to be fit to resume his duties. In spite of the said position, the petitioner had not resumed his duties and continued to remain unauthorizedly absent.

The inquiry on being directed to be held in pursuance to the show cause notice dated 08.05.2006 against the petitioner vide appointment of an Inquiry Officer, the Inquiry Officer on entering into the matter issued several communications to the petitioner to be present in the inquiry proceedings. However, the petitioner ignored such communications made to him and for the said reason the departmental inquiry initiated in the year 2006 could only be disposed of in the year 2013 after the matter taken up ex-parte on account of the non cooperation on the part of the petitioner. The petitioner has not disputed the findings of the Inquiry Officer as recorded in the inquiry report and has only taken a stand that he was advised rest by the doctor attending on him in Kanaklata Civil Hospital, Tezpur, which contention is totally perverse inasmuch as in the certificate dated 28.05.2005 the attending doctor had certified the petitioner to be fit to resume his duties. Other than the said certificate dated 28.05.2005, there is no material available on record to justify the absence of the petitioner.

The petitioner being a member of a disciplined force could not have treated his duties in such casual manner and the petitioner's absence admittedly being unauthorized and the same being established in the inquiry, the disciplinary authority was well within his rights to impose exemplary punishment on the petitioner. The conduct of the petitioner in the matter, clearly reflects the lack of discipline on his part.

The above conclusions with regard to the conduct of the petitioner in the matter having been drawn, brings this Court to a consideration as to whether the penalty imposed upon the petitioner commensurate to the charge leveled in the departmental proceeding against him. The petitioner being a member of a disciplined force had admittedly remained unauthorisedly absent for a considerable period of time. The petitioner had not taken part in the inquiry proceedings and as such he had not demonstrated before the inquiry officer as to the fact that his such absence was justified. The Inquiry Officer basing on the materials coming on record had concluded

that the petitioner's absence was without any justifiable reason and as such his such absence was concluded to be unauthorized. The petitioner in the writ petition has also not brought on record any material which would justify that the absence as alleged against him had so occasioned on account of circumstances which were beyond his control. The findings arrived at by the Inquiry Officer in the inquiry report not having been disputed by the petitioner by bringing on record the materials in the writ petition contradicting such findings, the conclusions as reached by the Inquiry Officer in the inquiry report has to be held to be justified and the consequential action taken by the Disciplinary Authority to impose upon the petitioner the penalty of compulsory retirement has also to be upheld.

The nature of the allegations leveled against the petitioner as well as his conduct during the inquiry proceedings, the absence of any justification towards his such absence in the writ petition, the medical certificate relied upon by the petitioner having found him to fit to resume duties w.e.f. 28.05.2005, the petitioner not having so resumed his duties clearly reflects lack of discipline on the part of the petitioner, such conduct not being permissible on the part of a member of a disciplined force, are circumstances which goes to establish that the penalty as imposed upon the petitioner commensurates to the allegations leveled against him.

In view of the said conclusion, the penalty of compulsory retirement as imposed upon the petitioner does not call for any interference.

Accordingly, the writ petition is held to be without any merit and the same is dismissed.

However, there would no order as to cost.

JUDGE

Comparing Assistant