

GAHC010203112017



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

Case No. : WP(C)/6575/2017

NO. 90006506 CONSTABLE GWJWN GWRA GOYARY
S/O- LATE SAMBHAR GOYARY, VILL- DHANBIL, P.O- DHANBIL, P.S-
BARBARI, DIST- NALBARI, ASSAM

VERSUS

THE UNION OF INDIA and 2 ORS.
REP. BY SECRETARY, MIN OF HOME AFFAIRS, NEW DELHI

2:THE DIRECTOR GENERAL BORDER SECURITY FORCE
2ND FLOOR BLOCK NO. 10 CGO COMPLEX
LODHI ROAD NEW DELHI- 110003

3:THE COMMANDANT 57 BATTALLION
BSF PRAHARI NAGAR TURA MEGHALAY

Advocate for the Petitioner : MR.S CHAUHAN

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

EFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 24.06.2024
Date of Judgment : 24.06.2024

Judgment & order(Oral)

Heard Mr. S. Chauhan, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC, appearing on behalf of all the respondents.

2. The petitioner, herein, by way of instituting this present proceeding, has presented a challenge to an order, dated 14.02.2016, by which on being reinstated in his service after the order of penalty of dismissal from service being interfered with by this Court; the period with effect from the date of his dismissal from service till the date of his rejoining in his service, came to be regularized.

3. The facts, in short, requisite for adjudication of the issue arising in the present proceeding, is noticed as under:

The petitioner was subjected to a Disciplinary Proceeding and on conclusion of the same, he was, vide order, dated 13.06.2007, came to be imposed with the penalty of dismissal of his service by the disciplinary authority. The statutory appeal as instituted by the petitioner against the said order of imposition of penalty of dismissal from service was also rejected by the appellate authority, vide order, dated 04.07.2007.

The petitioner being aggrieved with the penalty as imposed upon him, has approached this Court by way of instituting a writ petition being WP(c)1276/2008. This Court on consideration of the matter, proceeded, vide order, dated 18.08.2015, to dispose of the said writ petition by interfering with the order of penalty as imposed upon the petitioner. This Court, had, thereafter, remitted back the matter to the disciplinary authority for consideration of an alternative punishment by taking into account the lesser role of the petitioner in the cattle smuggling incident.

It is seen that in pursuance to the directions passed by this Court vide order, dated 18.08.2015, in WP(c)1276/2008; the petitioner, herein, was reinstated in his service on completion of the necessary formalities w.e.f. 15.01.2016. Thereafter, vide order, dated 14.02.2016; the period of absence of the petitioner with effect from the date of imposition of the penalty of dismissal from service i.e. w.e.f. 14.06.2007 till 14.01.2016, was regularized by granting to him, Earned Leave in his account, half-pay leave and the balance being so regularized by grant of Extra-ordinary Leave.

It is this order that is presently under challenge in the present proceeding.

4. The directions as passed by this Court vide order, dated 18.08.2015, in WP(c)1276/2008, being relevant, is extracted hereinbelow:

“11. As a result of the above discussion and noticing that the differential factors were not taken into account by the Authorities while imposing the same punishment on the Post Commander and his subordinate, I feel that the punishment for the constable is required to be revisited by the authorities. The various punishments awardable by the Security Force Court are specified in Section 48 of the Border Security Force Act, 1968 (hereinafter referred to as 'the BSF Act') and apart from dismissal, other punishment options are available under Section 48(1)(c) of the BSF Act. In my view the mitigating factors in respect of the delinquent constable were not taken into account by the BSF authorities and therefore the punishment of dismissal against the petitioner is held to be disproportionate and the same is accordingly quashed. The matter is thus remitted back to the disciplinary authority for consideration of alternate punishment, by taking into account the lesser role of the delinquent in the cattle smuggling incident. It is ordered accordingly.”

5. This Court, vide order, dated 18.08.2015, in WP(c)1276/2008, after interfering with the penalty of dismissal from service as imposed upon the petitioner, had remitted back the matter to the disciplinary authority for consideration of imposition of an alternative punishment.

6. It is seen that from the affidavit-in-opposition as filed by the respondent authorities in the matter that the respondents had not imposed upon the petitioner any alternative penalty in the matter. It is the categorical contention of the respondent authorities in the affidavit filed that no alternative punishment has been imposed upon the petitioner in terms of this Court's order, dated 18.08.2015, in WP(c)1276/2008. The above being the position; no penalty having been imposed upon the petitioner and the penalty of dismissal imposed upon him, having been so interfered with by this Court vide order, dated 18.08.2015, in WP(c)1276/2008; it has to be held that the petitioner, herein, has not been found blame-worthy for imposition of even a minor penalty in the matter and accordingly, the period the petitioner had to remain out of duty on account of imposition of penalty of dismissal from service, has to be now regularized only by treating the said period as to have been so spent on duty with release to the petitioner, all his due benefits in the matter.

7. In view of the above conclusions reached by this Court hereinabove and the categorical statements made by the respondent authorities in the affidavit-in-opposition filed in the matter; it is directed that the period of absence of the petitioner upon imposition of penalty of dismissal from his service w.e.f. 14.06.2007, till his reinstatement in service w.e.f. 15.01.2016, in pursuance to the order, dated 18.08.2015, passed by this Court in WP(c)1276/2008, has now to be regularized as spent on duty and the petitioner is entitled to be authorized his backwages for the said period.

8. The respondent authorities shall now compute the backwages due to the petitioner, herein, for the said period of absence i.e. from the date of imposition

of penalty of dismissal from his service w.e.f. 14.06.2007, till his reinstatement in his service w.e.f. 15.01.2016 and by applying the Revision of Pay coming into operation, shall release to the petitioner, the arrears of his pay.

9. The order, dated 14.02.2016, impugned in the present proceeding, accordingly, stands set aside. The arrears of pay as now accruing to the petitioner, in terms of the directions passed by this Court as directed hereinabove; shall be now so computed and released to the petitioner within a period of 3(three) months from the date of receipt of a certified copy of this order after deducting the amounts so paid to him in accordance with the regularization of his period of absence vide the said order, dated 14.02.2016.

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

JUDGE

Comparing Assistant