

GAHC010204152022



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

Case No. : WP(C)/6560/2022

DHARMENDRA BORO
S/O- SRI TINU BORO, R/O- VILL- NIZ BHUYANKHAT, P.S. KALAIGAON,
DIST.- UDALGURI, BODOLAND TERRITORIAL REGION, ASSAM, PIN-
784522

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
HOME AFFAIRS, JANATA BHAWAN, DISPUR, GHY-06

2:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE
DR. B.K.KAKATI ROAD
ULUBARI
GHY
PIN- 781007
ASSAM

3:THE DY. INSPECTOR GENERAL OF POLICE
TRAINING AND ARMED POLICE
ASSAM POLICE
DR. B.K.KAKATI ROAD
ULUBARI
GHY-07
ASSAM

4:THE COMMANDANT CUM DISCIPLINARY AUTHORITY
ASSAM COMMANDO BATTALION
MANDAKATA
NORTH GUWAHATI
PIN- 781030
DIST.- KAMRUP (R)
ASSAM

5:THE DY. SUPERINTENDENT OF POLICE CUM ENQUIRY OFFICER
ASSAM COMMANDO BATTALION
MANDAKATA
NORTH GUWAHATI
PIN- 781030
DIST.- KAMRUP (R)
ASSAM

Advocate for the Petitioner : MR S KHOUND

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

02.04.2024

O R D E R

Heard Mr. S. Khound, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, for all the respondents.

2. The petitioner while serving as Constable in the Assam Commando Battalion of the Assam Police Service availed casual leave for 8 days with effect from 01.09.2015 to 11.09.2015. However, after expiry of the casual leave period, the petitioner did not join back to his service and, accordingly, a show-cause notice dated 28.12.2015 was issued to the petitioner under Section 65 of the Assam Police Act, 2007 read with Rule 66 of the Assam Police Manual Part-III and Article 311 of the Constitution of India. The petitioner did not reply to the said show-cause notice. Accordingly, a reminder notice was issued on 11.02.2016 to reply to the first show-cause notice dated 28.12.2015. Another reminder notice dated 12.10.2016 was also issued to the petitioner indicating that a Disciplinary Proceeding has been

initiated against him and the petitioner was directed to appear before the Enquiry Officer on 21.10.2016.

Thereafter, by order dated 14.12.2015, the petitioner was placed under suspension with effect from 11.12.2015 for his unauthorized overstay in leave with effect from 12.09.2015. As the petitioner did not appear before the Disciplinary Proceeding, the Disciplinary Proceeding proceeded *ex parte* against the petitioner and after conclusion of the Departmental Enquiry, enquiry report was submitted by the Enquiry Officer on 09.01.2017.

3. Consequent to the enquiry report dated 09.01.2017, the Disciplinary Authority issued the order dated 13.02.2017 by which the petitioner was discharged from service with effect from 13.02.2017 with further direction that he should not be paid anything else whatever he has been paid earlier. Being aggrieved with the order dated 13.02.2017, the petitioner filed an appeal before the Deputy Inspector General of Police on 06.11.2019, which was disposed of by order dated 23.09.2020 on the ground that the appeal petition is time barred.

4. Being aggrieved, the petitioner is before this Court by way of the present writ petition.

5. Mr. S. Khound, learned counsel for the petitioner, submits that under the Assam Police Manual, particularly, Rule 66, there is no penalty of discharge from service and, therefore, the penalty of discharge could not have been imposed on the petitioner and on this count alone, the impugned order dated 13.02.2017 should be set aside and quashed.

6. Drawing attention of this Court to the enquiry report dated 09.01.2017, learned counsel for the petitioner also submits that evidence of the prosecution witnesses were not recorded and, therefore, in the absence of

such recording of statements of prosecution witnesses, the documents produced by the prosecution could not have been proved and, therefore, the enquiry report also stands vitiated.

7. Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam, in his usual fairness, submits that in the Assam Police Manual, there is no provision for imposing the penalty of discharge and, therefore, the respondents may be allowed to have a fresh enquiry within a specific period of time.

9. This Court has considered the submissions forwarded by learned counsel for the parties.

10. A perusal of the enquiry report dated 09.01.2017 clearly indicates that the delinquent officer and the prosecution witnesses as well as the cross-examination and recording of statements could not be taken by the Enquiry Officer. This is apparent on the face of the enquiry report at page 28 of the present writ petition. What this Court has also noticed is that the petitioner did not participate in the Disciplinary Proceeding despite several notices being issued to him.

11. In the case of ***Roop Singh Negi Vs. Punjab National Bank***, reported in ***(2009) 5 SCC 270***, the Hon'ble Supreme Court has held as under:-

“Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

12. Rule 66 of the Assam Police Manual Part-III reads as under:-

“66. Proceedings to be drawn up in cases of major punishment.-(AS corrected vide Government approval No. HPL 131/57/P/34 dated 16-11-67 on the correction slip No. 150 date 1-6-38 and C. S. No. 57 date 11-7-35). (I) The appointment of the police officers mentioned in column I of the schedule shall be made by the authorities mentioned in column 2.

(I) The following penalties may, for good and sufficient reason be imposed upon members of the service, namely :

Suspension.

- 1. Major penalties.—(a) Dismissal from service which shall ordinarily be a disqualification for future employment ; (b) Removal from service which shall not be disqualification for future employment; (c) Compulsory retirement; (d) Reduction to a lower service, grade or post or to a lower time scale or to a lower stage in a time scale; (e) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government, or any local or other authority to whom services of a Government servant had been lent; (f) Black mark ; (g) With-holding of increments or promotion; (h) Censure.*

- 2. Minor Penalties.—(a) Confinement to the Guard Room for a period not exceeding 28 days; (b) Confinement to quarters or barracks for a period not exceeding 15 days; (c) Punishment drill; (d) Extra guard, fatigue of other duty; (e) Reprimand.”*

13. A perusal of the major penalties prescribed under Rule 66 of the Assam Police Manual clearly indicates that discharge from service is not a prescribed penalty. Accordingly, this Court finds force in the submission of learned counsel for the petitioner that the Assam Police Manual does not prescribe a penalty of discharge from service and, therefore, the same cannot be imposed upon the petitioner.

14. In view of above, the impugned order dated 13.02.2017 issued by the Disciplinary Authority discharging the petitioner from service with immediate effect, i.e., from 13.02.2017 as well as the order of the Appellate Authority dated 23.09.2022 are set aside and quashed. The enquiry report dated 09.01.2017 is also set aside and quashed.

However, considering the seriousness of the charges, the respondents are permitted to proceed against the petitioner afresh, if so advised. In the event, the respondents initiate fresh Disciplinary Proceeding against the petitioner, the same shall be completed within a period of six months from the date of issuance of a fresh show-cause notice. It is also made clear that the petitioner shall cooperate in the Disciplinary Proceeding initiated against him.

The petitioner is directed to be reinstated in service. However, as the petitioner was under suspension when he was discharged from service, he shall continue to be under suspension. The petitioner shall, however, be paid the subsistence allowance.

15. The writ petition is allowed to the extent indicated above. No costs.

JUDGE

Comparing Assistant