

GAHC010122082012



2025:GAU-AS:7494

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

Case No. : WP(C)/4283/2012

ARUN KONWAR and ANR.
S/O SURENDRA KONWAR R/O BANGMURIA, KONWAR GAON P.S.
SIMALUGURI, SIBSAGAR

2: SRI ACHYUT HATIMURIA
S/O LT. SUKRAM HATIMURIA R/O BANGMURIA
KONWAR GAON
P.S. SIMALUGURI
SIBSAGAR

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT.

2:DY. INSPECTOR GENERAL OF POLICE

CR DIPHU
KARBI ANGLONG PIN-

3:SUPERINTENDENT OF POLICE
GOLAGHAT
PIN-

4:SUPERINTENDENT OF POLICE

JORHAT
PIN-

5:COMMANDANT

1ST A.P. BN. LIGIRIPUKHURI
NAZIRA

SIBSAGAR
PIN-

6:SUPERINTENDENT OF POLICE
DIBRUGARH
PIN

Advocate for the Petitioner : MS.A MAHANTA, MR. R C BARPATRAGOHAIN,MR. R D PHUKAN,MRS. S BORPATRA GOHAIN,MR. P P BARUAH,MR.U P CHALIHA,MR.D P CHALIHA

Advocate for the Respondent : , ,GA, ASSAM

Linked Case : MC/81/2024

ARUN KONWAR and ANR.
S/O SURENDRA KONWAR R/O BANGMURIA
KONWAR GAON P.S. SIMALUGURI
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VERSUS

THE STATE OF ASSAM AND ORS
S/O SURENDRA KONWAR R/O BANGMURIA
KONWAR GAON P.S. SIMALUGURI
SIBSAGAR

Advocate for : DR R C BORPATRA GOHAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ORS

Linked Case : I.A.(Civil)/3640/2024

ARUN KONWAR AND ANR
S/O SURENDRA KONWAR R/O BANGMURIA
KONWAR GAON P.S. SIMALUGURI
SIBSAGAR

2: SRI ACHYUT HATIMURIA
S/O LT. SUKRAM HATIMURIA R/O BANGMURIA
KONWAR GAON
P.S. SIMALUGURI
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VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT.

2:DY. INSPECTOR GENERAL OF POLICE

CR DIPHU
KARBI ANGLONG PIN-782460

3:SUPERINTENDENT OF POLICE
GOLAGHAT
PIN-785621

4:SUPERINTENDENT OF POLICE

JORHAT
PIN-785001

5:COMMANDANT

1ST A.P. BN. LIGIRIPUKHURI
NAZIRA
SIBSAGAR
PIN- 785685

6:SUPERINTENDENT OF POLICE
DIBRUGARH
PIN-786001

Advocate for : DR R C BORPATRA GOHAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ORS

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT AND ORDER (ORAL)

Date of hearing : **05.06.2025.**

Date of judgment : **05.06.2025.**

Heard Mr. R.C. Barpatragohain, learned Senior Counsel assisted by Mr. R.D. Phukan, learned counsel for the petitioners. Also heard Mr. T.C. Chutia, learned Addl. Senior Government Advocate for the State respondents.

2. By way of this writ petition under Article 226 of the Constitution of India, the petitioners is assailing the impugned Order of discharge from their service and for reinstatement thereof.

3. The brief facts of the case is that while the petitioners were serving as Constable in Police Department, a case 37/94 under the Terrorist & Disruptive Activities (Prevention) Act, 1987 (*hereinafter referred to as TADA Act*) was registered as Simaluguri PS, wherein the petitioners alongwith others have been named as accused. In view of the allegation in the criminal case to the effect that the petitioners were having close contact with ULFA and they were indulging in the activities of illegal outfit, the respondent No. 5 by his order dated 01.04.1994 discharged the petitioner No. 2 from his service w.e.f. 31.03.1994. However, the respondent No. 3 initiated a departmental proceeding under the Departmental Proceeding No. 3/94 vide Order dated 24.06.1994 against the petitioner No. 1 alleging that he was found involved in Simaluguri PS Case No. 37/1994 under Section 3/4 of the TADA Act. Thereafter, upon completion of the inquiry, the respondent No. 3 vide Order dated 27.10.2004 discharged the petitioner No. 1 from his service.

4. Thereafter, the petitioner No. 1 submitted an appeal before the respondent No. 2. However, the same was rejected by Order dated 27.04.2006. In the meantime, in the criminal case, the chargesheet was submitted against 6 accused persons including the petitioners and upon completion of the trial, the Criminal Court by Judgment and Order dated 21.07.2012 acquitted all the accused persons including the petitioners from the charges leveled against them.

5. Being acquitted from the criminal case, the instant writ petition has been filed for setting aside the impugned discharged order.

6. Mr. R.C. Barpatragohain, learned Senior Counsel submits that since the petitioners have been honorably acquitted from the charges framed against them in the criminal case, the departmental proceeding being based on the same charges, the order of discharged is not justifiable. He further submits that the charges in the criminal as well as departmental proceedings being identical, the impugned order of discharge from service warrants interference from this Court under Article 226 of the Constitution of India.

In support of the aforesaid submissions, he relies upon the following decisions:-

1) ***G.M. Tank Vs. State of Gujarat & Others*, reported in (2006) 5 SCC 446.**

2) ***Ram Lal Vs. State of Rajasthan & Others*, reported in (2024) 1 SCC 175.**

3) Maharana Pratap Singh Vs. State of Bihar & Others, reported in 2025 SCC Online SC 890.

4) Deputy Inspector General of Police & Another Vs. S. Samuthiram, reported in (2013) 1 SCC 598.

5) Rajendra Yadav Vs. State of Madhya Pradesh & Others, reported in (2013) 3 SCC 73.

7. He further submits that in respect of Sri Dipen Duarah, who was named as accused No. 3 in the criminal case though was initially placed under suspension, no departmental proceedings or any other disciplinary action was initiated against him and the respondent No. 4 by Order dated 31.12.2008 revoked the order of suspension and reinstated the aforesaid person. He accordingly submits that there being a discrimination in conducting departmental proceedings inasmuch as a person with similar charges was reinstated after trial, impugned order of discharge is bad in law.

8. In support of the aforesaid submission, he relies upon the decision of the Apex Court in the case of **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & Others** reported in **1991 Supp (1) SCC 600**. He further submits that the petitioners are entitled to adequate compensation for their suffering due to the arbitrary, unjust and unreasonable acts of the respondent authority and to buttress the aforesaid submission, he relies upon the decision of the Apex Court in the case of **Maharana Pratap Singh Vs. State of Bihar & Others** reported in **2025 SCC Online SC 890**.

9. Per contra, Mr. T.C. Chutia, learned Addl. Senior Government Advocate

submits that unless and until the accused is acquitted honorably and completely of the charges, the power of the disciplinary authorities to continue the departmental proceeding inquiry is not taken away nor its discretion in any way is fettered.

In support of the aforesaid submission, he relies upon the following decisions of the Apex Court:-

1) ***Corporation of the city of Nagpur Vs. Ramchandra*, reported in (1981) 2 SCC 714.**

2) ***G.M. Tank Vs. State of Gujarat*, reported in (2006) 5 SCC 446.**

3) ***Ajit Kumar Nag Vs. G.M. Indian Oil Corporation*, reported in (2005) 7 SCC 764.**

10. I have given my prudent consideration to the arguments advanced by the learned Senior Counsel appearing for the petitioners as well as the learned Addl. Senior Government Advocate for the State and have perused the materials available on record. I have also duly considered the case laws cited at the bar.

11. It appears that the writ petitioners have been discharged from their services while they were serving as Constable in the Police Department on the basis of the allegation that they were having close contact with ULFA and were indulging in the activities of illegal outfit.

12. It further appears that upon the petitioners being acquitted and exonerated from the aforesaid charges by the criminal Court, the instant writ

petition has been filed seeking setting aside of the impugned discharge order. The short question that arises for determination in this writ petition is whether the exoneration/acquittal of the petitioners in the criminal case would render the impugned discharge orders issued to the petitioners unjustified.

13. Apt at the outset to refer to the First Show Cause Notice issued to the petitioner No. 1 by Notice dated 24.06.1994, which reads as hereunder:-

“FIRST SHOW CAUSE NOTICE.

To,

UBC 49 Arun Konwar (U/Suspension)

Golaghat :D.E.F.

You are hereby required to show cause U/S 7 of the Police Act(Act Vof 1861) read with rule 66 of A.P.M. Pt. III and Article 311 of the Constitution of India as to why any of the penslting prescribed in the aforesaid rules should not be inflicted on you on the following charged based on the statement of allegation attached herewith.

That while you were serving as U.B. Constable in Golaghat D.E.F you were found involved in Simaluguri P.S. Case No. 37/94 U/S 3/4 T.A.D(P) Act. You made a confessional statement before the S.P. Sibsagar for having close contact with the ULFA activists as an active member of Bengmuria Unit of ULFA, Accordingly you were arrested and forwarded in to Judicial custody.

Being on active member of the ULFA, you managed your appointment in the Police deptt, with a view to bring disgrace to the Police deptt. as well as espionage for the ULFA.

Thus, by acting in a manner as stated above, you have exposed yourself to the charges of Criminal misconduct.

You are, therefore, charged with criminal misconduct.

You should submit your written statement in defence within 10 (ten) days on receipt of this communication provided you do not intend to inspect the documents which have relevance with the issue. In case you do not intend to inspect those

documents you should write to the under signed for the same within 7(seven) days on receipt of this communication and submit your explanation there after within 10 (ten) days from the date of completion of inspection.

Your written statement in defence stating whether you desire to be heard in person and whether you intend to adduce any defence witness you should submit to the undersigned within the period specified above.

Illegible

Superintendent of Police,

Golaghat."

14. Reading of the aforesaid show cause notice, it is clear that the petitioner No. 1 is charged with the allegation that he is an active member of the ULFA and he managed his appointment in the Police Department with a view to bring disgrace to the Police Department as well as espionage for the ULFA.

15. It appears that thereafter, departmental proceeding was initiated against the petitioner No.1 wherein in the inquiry, the Inquiry Officer examined 3 prosecution witnesses being i) S.I. Puspa Bora of Simaluguri Police Station, ii) Jyoti Prasad Phukan, informant and iii) S.I. Nundalal Hazarika of Simaluguri Police Station.

16. It appears that on the basis of the confessional statement made by the petitioner No. 1 before the Superintendent of Police, Sibsagar respondent No. 4 held the petitioner No. 1 guilty of the aforesaid charge.

17. It appears that thereafter a Second Show Cause Notice was issued to the petitioner No.1 by Notice dated 15.06.2004, whereby the petitioner No. 1 was informed that the Inquiry Officer appointed to enquire into the charges leveled against him by departmental proceedings No. 3/94 of Golaghat had

submitted his findings upon completion of his inquiry and that upon going through the findings of the Inquiry Officer, the departmental authority agrees with the aforesaid findings of the Inquiry Officer and has provisionally come to the conclusion that the petitioner No. 1 should be dismissed from his service immediately.

18. The aforesaid Second Show Cause Notice dated 15.06.2004 is reproduced hereunder for ready reference:-

“2nd Show Cause Notice

To,

UBC/49 Arun Konwar,
(under suspension)
Golaghat Police Reserve.

SUB :: 2ND SHOW CAUSE NOTICE.

REF :: DEPTL. PROCEEDING NO. 3/94.

You are hereby informed that the Enquiry Officer appointed to enquire in to the charges levelled against you vide departmental proceeding no. 3/94 of Golaghat DEF has already submitted his findings on completion of his enquiries. A copy of the findings submitted by enquiry officer is enclosed herewith for your information.

On going through the findings and on perusal of the records and having regard to the evidences and circumstances appearing in this dept. proceeding, I agree with the findings of the enquiry officer and hold that the charges levelled against you have been proved beyond all reasonable doubt. I, therefore, have provisionally come to the conclusion that you should be dismissed from your service immediately.

You are, therefore, required to show cause if any against the action proposed to be taken against you. Any representation may make in that connection will be duly

considered. Such representation if any should be made in writing and submitted so as to reach the undersigned within 10(ten) days from the date of receipt of this communication. Else, this departmental proceeding will be disposed of 'Ex-parte'.

*Illegible
Superintendent of Police,
Golaghat"*

19. Reading of the aforesaid Second Show Cause Notice, it is clear that the departmental authorities before issuing the Second Show Cause Notice to the petitioners has already decided that the petitioner is guilty of the charges leveled against him and that the petitioner No. 1 should be dismissed from his service.

20. It further appears that thereafter the departmental authorities by Order dated 27.04.2006 removed the petitioner No. 1 from service with immediate effect (w.e.f. 25.10.2004 vide D.O No.3944 dated 25.10.2004).

21. It further appears that ultimately the Criminal Court after completion of the trial acquitted the petitioner Nos. 1 and 2 from the said charges based on which they were found guilty in the departmental inquiry.

22. A perusal of the impugned Judgment and Order dated 21.07.2012 of the Criminal Court indicates that on the basis of an FIR alleging *interalia* that the informant had received a secret information that some ULFA extremists have been taking shelter at Safrai Barpathergaon and upon conducting a search, in the aforesaid location, some ULFA related documents were recovered from the possession of one Kamal Hussain alongwith Babul Konwar, Golap Ali@Pankaj

Gogoi, who were taking shelter at the location and upon being interrogated, it was learnt that the aforesaid accused persons were involved in some Anti Social activities and were members of Ban ULFA organization. Accordingly, a case was registered and after completion of investigation, chargesheet was submitted against the aforesaid persons as well as against the petitioner Nos. 1 and 2.

23. It appears that the two witnesses, whose statements were recorded in the departmental proceeding came to a conclusion of establishing guilt against the petitioner No. 1, were also examined as prosecution witnesses before the Criminal Court.

24. Apt to refer to the relevant paragraphs of the learned Criminal Court Judgment and Order which reads as hereunder:-

“37. What reveals from the evidence of Sri Krishna Kanta Sarma (PW-3) is that he recorded the confessional statement of the accused Maheswar Gogoi, Achyut Hatimuriah, Ghana Duarah and Babul Konwar but the said confessional statement were not corroborated by the evidence of other witnesses on record. The alleged confessional statement of the accused Maheswar Gogoi, Achyut Hatimuriah, Ghana Duarah and Babul Konwar were not corroborated by any other material. In the case of Arup Bhuyan VS State of Assam reported in 2011 (3) GLT (SC) 1 Hon'ble Supreme Court observed that confession is a very weak type of evidence particularly when alleged to have been made to the police, and it is not safe to convict on its basis unless there is corroborative materials. In the present case as I have found that there is no corroborative material to support the confessional statement of the accused persons recorded by the then Supdt. of Police, Sibsagar.

38. After going through the evidence of Sri Sidhiram Rajkonwar (PW-7) I have found that Sri Nitul Rajkonwar took shelter in his house amongst 3/4 persons on the ground that on that particular night there was raining and on humanitarian ground PW-7 allowed them including Nitul Rajkonwar (the accused) to stay for the night. But he categorically stated that he knew the accused Nitul Rajkonwar as he is from his same village and his neighbour. But said Sidhiram Rajkonwar nowhere deposed that the

said accused Nitul Rajkonwar did some antisocial activities in the name of ULFA organization.

39. So far the approval of the concerned Supdt. of police is concerned it was elaborately decided in the case of Rangku Dutta @ Ranjan Kumar Dutta Vs State of Assam reported in 2011 (3) GLT (SC) 12 that as per Section 20-A (1) -

(i) Notwithstanding anything contained in the Code no information about commission of offence under this act shall be recorded by the police without prior approval of the district Superintendent of Police.

(ii) No court shall take cognizance of any offence under this act without sanction or the case may be, commissioner of police.

40. It is obvious that Section 20-A (1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasis is mandatory nature, uses expression "NO" for the very clauses. Whenever the intent of the statute is mandatory, it is clothed with negative. On the basis of the said principle no information about the commission of an offence under the said act can be recorded by the police without the prior approval of the District Superintendent of Police. Therefore, the requirement of prior approval must be satisfied at the time of recording the information. If a subsequent investigation is carried on without a proper recording of the information by the DSP in terms of Section 20-A(1), that does not cure the inherent defect of recording the information without the prior approval of the District Superintendent of Police.

41. So it is clear that requirement of approval must be made at the initial stage of recording the information. If there is absence of approval at the stage of recording the information, the same cannot be cured by subsequent carrying on of the investigation by the DSP.

42. I have gone through the citations referred above and found that the facts and circumstances mentioned in that case is also similar and identical in the instant case, so far the approval, from the Sudpt. of police before launching of prosecution is concerned.

43. Apart from the absence of the approval and non corroboration of the confessional statement of the accused with other witnesses, I have found that the prosecution miserably failed to prove its case through the evidence of the witnesses on record.

44. The prosecution evidence, thus, does not reach its requisite standard of prove beyond all reasonable doubt which is insisted in a criminal trial and I suffered no hesitation in concluding that the prosecution case is wholly baseless and false.

45. I, therefore, hold that the prosecution has completely failed to substantiate and prove its case against the present accused persons beyond all reasonable doubt and the accused persons are found not guilty of the charges leveled against them and I accordingly acquit the accused persons from the charges leveled against them under benefit of doubt and set them liberty forthwith."

25. Reading of the aforesaid Judgment and Order of the learned Criminal Court, it is clear that the confessional statements based on which the Inquiry Officer has held the petitioner No. 1 guilty in the inquiry was found to be not proved and established in the criminal case.

26. It further appears that in the criminal case, the prosecution has failed to establish that the petitioner No. 1 is an active member of the ULFA Organisation. It further appears that the Criminal Court after perusing the evidences was of a clear opinion that the prosecution has miserably failed to prove its case through the evidence of the witnesses on record and accordingly, acquitted the accused persons including the petitioners.

27. There can be no doubt that the two proceedings i.e. criminal and departmental proceeding are entirely two different proceedings and operate in different fields and have different objectives. However, in the event, the allegation/charges are identical in the criminal as well as departmental

proceedings and the witnesses are also that of same when in such cases, the accused is acquitted honorably and completely exonerated of the charges, continuation of the departmental inquiry on the very same charges and or the order of discharge thereof is not justifiable. However, mere acquittal in criminal case shall not preclude the departmental authorities from taking an action if it is otherwise permissible or shall not automatically render the order of discharge unjustifiable.

28. In other words, the allegation, list of witnesses and the manner in which the acquittal has been reached and or granted is to be seen.

29. In the present case, it is clear that the charges are identical and the witnesses examined in criminal as well as departmental proceedings is the same. Apropos that from the record of the disciplinary proceedings which is placed before this Court by the learned counsel appearing for the respondents, it appears that in the confessional statement based on which the Inquiry Officer has held the petitioner No. 1 guilty of the charges leveled against him, the petitioner while putting his signature therein categorically stated that the confessional statement as recorded therein is not his version. Hence, the order of the disciplinary proceeding on the face of the record appears to be wholly perverse.

30. It further appears that in the Criminal Court as well, the prosecution had miserably failed to establish and prove the confessional statement alleged to have been made by the petitioner No. 1.

31. It is further apparent that the witnesses examined in the departmental

proceedings is also examined by the Criminal Court and upon analyzing the evidences, the Criminal Court has completely exonerated the petitioners from the charges, which is identical as that of the departmental proceedings.

32. Apt to refer to the decision of the Apex Court in the case of **Maharana Pratap Singh (Supra)**, wherein the Apex Court has held as under:-

“25. The issues for determination that emerge for decision are:

(i) Whether due process was followed in dismissing the appellant from service and whether his dismissal from service is justified, on facts and in the circumstances, that have unfolded before us?

(ii) Whether, in light of the facts, evidence, witnesses, and circumstances of the case, the charges in the criminal proceedings are substantially identical to those in the departmental proceedings, such that an acquittal in the criminal case would render the findings in the disciplinary proceedings vulnerable?

(iii) Whether the impugned judgment, which allowed the appeal of the respondents and dismissed the writ petition of the appellant, deserves to be upheld?

(iv) Whether the appellant is entitled to any relief, should the aforesaid questions be answered in his favour?

26. At the outset, it is pertinent to note that considering the nature of arguments advanced which required ascertaining facts by looking into the records of inquiry, which are not on record, we had required the respondent-State of Bihar vide order dated 17th December, 2024 to submit scanned copy of the complete departmental file by 10th January, 2025.

27. Under Section 114(g) of the Indian Evidence Act, 1872, if a party fails to produce evidence that is within its control, it is presumed that the withheld evidence would be unfavourable to it. Though reference to any authority is not required, we may

profitably refer to the decision in State (Inspector of Police) v. Surya Sankaram Karri in this behalf."

33. Pertinent that in respect of the petitioner No. 2, there was no departmental inquiry initiated and he was discharged from his service merely on the allegation that he is an active member of ULFA organization which on the basis of the allegation made in the criminal case. Such discharge of the petitioner No. 2 without holding disciplinary proceeding is bad in law.

34. Thus, the petitioners having fully exonerated from the charges based on which they have been discharged from their services, the impugned discharge orders are not justifiable. That apart, it appears that the departmental authorities before issuing the Second Show Cause Notice alongwith the copy of the inquiry report of the petitioner No. 1 to show cause as why the inquiry report should not be accepted has already agreed with the findings of the Inquiry Officer and have also decided to remove the petitioners from the service. Issuance of opportunity/Second Show Cause notice is not an empty formality. In fact, it is an opportunity given to the delinquent to explain as to why the inquiry report should not be accepted which is submitted against him therefore, while giving him the opportunity, if the departmental authorities have already agreed with the finding of the Inquiry Officer and had also decided the penalty, the same would render the Second Show Cause Notice obsolete and a useless formality which would be against the principle of natural justice.

35. Having noted that in the present case, the departmental authorities has already agreed with the finding of the Inquiry Officer and the proposed

punishment, the impugned discharged order on that count also is bad in law.

36. In any view of the matter, the impugned discharge orders cannot stand in the eye of law. Accordingly, the impugned order of discharge of the petitioners from their services being Orders dated 27.10.2004 and 01.04.1994 respectively are set aside and quashed.

37. Resultantly, the respondents are directed to reinstate the petitioners in service with all service benefits.

38. Accordingly, the writ petition stands allowed.

Disposed of.

JUDGE

Comparing Assistant