

GAHC010213552018



2024:GAU-AS:9377

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

Case No. : WP(C)/6914/2018

AJIT BEZBARUAH
EX CONSTABLE NO. 48, S/O- RAJEN BEZBARUAH, R/O- VILL- BAREGAON,
P.S- TAMULPUR, DIST- BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY, DEPTT OF HOME, DISPUR,
GUWAHATI- 06

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY- 07

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE (ADMN)
ASSAM
ULUBARI
GUWAHATI
ASSAM

4:THE ADDITIONAL DIRECTOR GENERAL OF POLICE(TAP)
ASSAM
ULUBARI
GUWAHATI- 07

5:THE DEPUTY INSPECTOR GENERAL OF POLICE (CWR)
ASSAM
ULUBARI
GUWAHATI- 781007

6:THE COMMANDANT 10TH APBN

KAHILIPARA
GUWAHATI- 1

Advocate for the Petitioner : MR. R MAZUMDAR, MRS P RAI, MR H BEZBARUA, MR. U SARMA, MRS. P BARMAN (BORKAKOTI), MR. V KUMAR

Advocate for the Respondent : ASSTT.S.G.I., MR. N. GOSWAMI, (GA, ASSAM)

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT & ORDER

Date : 17-09-2024

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Additional Senior Government Advocate for the State respondents.

2. By way of the instant writ petition under Article 226 of the Constitution of India, the petitioner is challenging the disciplinary proceedings and the order "Dismissal from Service" dated 03.07.2015 passed by the Commandant 10th Assam Police Battalion, Kahilipara, Guwahati- 19 and the order dated 02.04.2018 by the appellate authority upholding the findings of Disciplinary Authority.

The facts of the case are as follows:-

3. The petitioner who was a constable in the in 10th Assam Police Battalion upon having over stayed his leave, the disciplinary proceedings was initiated against him for his alleged unauthorized absence in Government duty.

4. After completion of the departmental proceedings by order dated 03.07.2015, the petitioner was dismissed from service against which an appeal

was preferred by the petitioner.

5. However, the said appeal was also dismissed by the appellate authorities by order dated 02.04.2018. Situated thus, the present writ petition has been filed.

6. Mr. R. Mazumdar, learned counsel for the petitioner submits that the case of the petitioner has not been fairly dealt by the respondent authorities and there has been gross violation of the principles of natural justice which is apparent on the face of the first show-cause notice dated 20.01.2014 and the second show-cause notice dated 18.05.2015, wherein the authorities have already presumed the guilt of the petitioner and decided the punishment to be imposed respectively.

7. In respect of aforesaid submissions Mr. R. Mazumdar, learned counsel for the petitioner relies upon the following decisions:-

(i) *ORYX Fisheries Private Limited Vs Union of India and others reported in 2010 13 SCC 427.*

(ii) *Keshri Mal Vs State of Rajasthan reported in 1978 0 RLW (Raj) 599 (Rajasthan High Court).*

(iii) *Shri Hiramohan Doley Vs The State of Assam 4 others reported in 2017 3 GauLJ 714 (Gauhati High Court).*

(iv) *Machum Ahmed Laskar Vs The State of Assam and 7 others in WP(C) No. 9445/2019 (Gauhati High Court).*

8. Per contra Mr. R. Dhar, learned Additional Senior Government

Advocate submits that the enquiry has been duly held following the requisite procedures by giving full opportunity to the petitioner, however, the petitioner did not participate in the enquiry nor submitted any reply or response whatsoever to the notices issued.

9. He further submits that the appellate authority referred the medical documents produced by the petitioner to one Dr. H. R. Phukan, Professor and HOD of Psychiatry, Gauhati Medical College Hospital for verification and the said doctor upon verification has stated that the signature put on the said certificates and OPD record does not belong to any member of the Department.

10. I have given my prudent consideration to the arguments made by the learned counsels for the both the parties and have perused the materials available on record.

11. It appears that the petitioner had availed casual leave with effect from 10.01.2006 to 30.01.2006 i.e. total 20 (twenty) days and that his casual leave has been sanctioned by the Commandant 10th Police Battalion and command certificate of casual leave had been issued.

12. It further appears that during the leave period, the health condition of the petitioner deteriorated and he had to undergo treatment at the local Civil Hospital, however, his health condition was not improved and he had been referred to Gauhati Medical College Hospital.

13. It further appears that thereafter the petitioner consulted the

doctors at Gauhati Medical College Hospital, therein he was diagnosed to have been suffering from "Depression and Psychosis" and was accordingly treated in the Psychiatry Department of the Gauhati Medical College Hospital under specialist doctor.

14. It further appears that requisite medical certificates issued by the doctors of the Gauhati Medical College Hospital certifying the treatment given to the petitioner with effect from 20.11.2006 to 13.08.2015 has been enclosed in the appeal filed by the petitioner before the appellate authority.

15. It appears that due to the over stayed of leave with effect from 31.01.2006 a show-cause notice was issued to the petitioner on 20.01.2014, whereby he was asked to show-cause as why any of the penalty prescribed in the Assam Police Act, 2007 read with Rule 26 of Assam Police Manual Part III should not be inflicted on the charges leveled against him.

16. A copy of the said show-cause notice dated 20.01.2014 is reproduced hereunder for ready reference:-

To,

Dtd. 20/01/2014

Cn.48 Ajit Bezbaruah

10h Assam Police Battalion

Kahilipara, Guwahati-19

Sub :- 1" Show-Cause Notice.

You are hereby required to show-cause under sec. 65 of Assam Police Act,2007 R/W Rule 66 of APM Part-III and Article-311 of the constitution of

India as to why any of the penalties prescribed in the aforesaid Act/Rule should not be inflicted on you on the following charges based on the statement of allegation attached herewith.

That while you were attached to Bn. H.Qr, 10th A.P. Bn, you were allowed to avail 12 (Twelve) days Casual Leave w.e.f. 10.01.2006 PM and the joining date was 30.01.2006 PM. But you have not yet joined in your duty and Over Staying Leave w.e.f. 31.01.2006 AM to till date. Your such absence from Govt. duty amounts to unauthorised absence from Govt. duty which is an act of gross indiscipline. Such act of your also amount to gross misconduct and conduct unbecoming of a Govt. Servant particularly considering the fact that you are serving in a discipline force.

In this regard, several notices were duly served to you vide this office Memo Nos. (1), Bn.10/R/PF/666, Dtd. 17.02.2006, (2) Bn.10/R/PF/1392, Dtd. 15.03.2006, (3) Bn.10/R/PF/2870-71, Dtd. 24.07.2006, (4) Bn.10/R/PF/1544-45, Dtd. 12.06.2007, (5) Bn.10/R/PF/4358, Dtd. 15.05.2008, (6) Bn.10/R/PF/6392, Dtd. 29.08.2008, (7) Bn.10/R/PF/3507, Dtd. 15.09.2010 and (8) Bn.10/R/PF/1775-76, Dtd. 24.04.2012.

Therefore, you are charged with gross indiscipline and misconduct and conduct unbecoming of a Govt, servant particularly considering the fact that you are serving in a discipline force.

You should submit your written statement in defence within 10(Ten) days from the date of receipt of this communication provided you do not intend to inspect the documents which have relevance with the issue under enquiry. In case you intend to inspect those documents you should write to the undersigned for the same within 7(seven) days from the date of receipt of this communication and submit your explanation thereafter within 10(ten) days from the date of completion of the inspection.

Your written statement in defence stating whether you desire to be

heard in person should be submitted to the undersigned within the period specified above.

If the Disciplinary authority decides to appoint an Enquiry Officer to inquire into the charge you will be allowed to present your case, if you so desire with the assistance of any others Govt. Servant approved by the Disciplinary Authority, but will not be allowed to engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority to present the case in support of the charges before the enquiry authority is a legal practitioner or unless the Disciplinary Authority so permit.

List of documents and witnesses proposed to be relied upon for proving these charges and the allegation are also enclosed.

Commandant

10th Assam Police Battalion

Kahilipara, Guwahati-19

17. Apparent from the above show-cause notice dated 20.01.2014, that the respondent authorities have presumed and determined that the petitioner is guilty of the charges leveled against him and it is with this very pre-determined mind, the said show cause notice dated 20.01.2014 was issued to the petitioner.

18. It further appears that pursuant to the issuance of the show-cause notice, a departmental proceeding was held against the petitioner and the Enquiry Officer after concluding the enquiry into the charge framed against the petitioner submitted his report on 18.05.2015.

19. Thereafter the respondent authorities issued second show-

cause notice on 04.06.2015 informing the petitioner that the Enquiry Officer has submitted his report and that after careful consideration of the report, the respondent authorities have agreed with the findings of the Enquiry Officer and accordingly holds that the charges leveled against the petitioner has been proved beyond reasonable doubt and therefore the petitioner is liable to be awarded with the penalties prescribed in the Rule 7 of Assam Service (Discipline and Appeal) Rules, 1964.

20. Accordingly the petitioner was asked to show-cause within 7 (seven) days as why the proposed action should not be taken against the petitioner.

21. The second show-cause notice dated 18.05.2015 is also reproduced hereunder for ready reference:-

To

Dtd. 18-5-15

Cn.48 Ajit Bezbaruah

10h Assam Police Battalion

Kahilipara, Guwahati-19

S/O-Sri Rajen Bezbaruah

Vill-Barigaon

P.O.-Tamulpur

P.S.-Tamulpur Dist-Baksa (Assam)

Dist-Baksa (Assam)

Sub :- 2nd Show-Cause Notice of D.P. No. 02/2014 of this unit.

You are hereby informed that the officer appointed to enquiry into the charged framed against you has submitted his report. A copy of findings of the enquiry officer is enclosed herewith.

On careful consideration of the report and perusal of the records and having regards to the evidence and circumstance appearing in this case, I agree with the findings of the Enquiry Officer and hold that the charges are proved beyond reasonable doubt. You are therefore, liable to be awarded with any of the penalties prescribed in the Rule -7 of Assam Service (Discipline and Appeal) Rules 1964.

You are hereby required to show cause if any against the action proposed to be taken. You are asked to submit any representation either verbally or in writing to the undersigned within 07 (Seven) days from the date of receipt of this communication failing to which the Departmental proceeding will be Disposed Off in Ex-Parte.

Commandant

10th Assam Police Battalion

Kahilipara, Guwahati-19

22. Reading of the aforesaid second show-cause notice also

abundantly demonstrates that the respondent authorities after the enquiry report was submitted already determined its mind and agreed with the findings of the Enquiry Officer and decided to award penalty in terms of the applicable rules.

23. Apparent further that the departmental authorities have also held the charges to have been proved beyond the reasonable doubt. What is interesting to note is that the aforesaid conclusion drawn by the departmental authorities is before giving any opportunity to the petitioner to show-cause as to why the report submitted by the Enquiry Officer should not be accepted.

24. Between the stages i.e. after submission of enquiry report by the Enquiry Officer and before the Disciplinary Authority considers the said report, it is imperative upon the Disciplinary Authorities to provide an opportunity to the delinquent employee to show-cause as to why the findings of the Enquiry Officer should not be accepted. This is a substantial and a valuable right of the delinquent employee. The show-cause notice is meant to give the delinquent employee a reasonable opportunity of presenting his objection against the findings of the Enquiry Officer.

25. In the present case it appears that though the notice was given to the petitioner, however the same is issued with a pre-determined mind thereby making this notice an empty formality.

26. Such approach of the respondent authorities is wholly against the principles of natural justice and fair play.

27. Reference is made to decision of the Apex Court in the case of **ORYX Fisheries (Supra)** wherein the Apex Court has held that a Disciplinary Authority being a quasi judicial authority must act fairly and must act with a open mind while initiating a show-cause proceedings.

28. Paragraph 24 of the aforesaid judgment is reproduced hereunder for ready reference:-

“24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.”

29. Reference is also made in the decision of the Rajasthan High Court in the case of **Keshri Mal (Supra)** wherein the Rajasthan High Court in paragraph 5 and 6 has held as under:-

“5. In Gouri Pr. Ghosh vs. State of West Bengal (3), the first show cause notice containing charges also stated that the concerned Government servant was prima facie unsuitable to be retained in service of the State Government and the penalty of dismissal was proposed to be imposed upon him. Such a notice was followed by a departmental enquiry and thereafter a second show-cause notice was also given to the concerned Government servant calling upon him to make his representation, if any, as to why he should not be dismissed from service as he was found guilty of the charges levelled against him. In these circumstances, a learned Judge of the Calcutta High Court in the aforesaid case held as under:

"It is true that in the instant case a second show-cause notice was issued calling upon the petitioner to show cause why the penalty of dismissal

should not be imposed upon him. But, in my view, the issue of such a show cause notice after the report of the enquiring officer cannot gave the first show cause notice from being held to be totally invalid. The principle underlying the doctrine is well-established, namely, that an open mind must be kept not only on the question of the guilt of a Government Servant, but also on the question of the punishment to be imposed, if the charges are proved. The doctrine is clearly violated if a show-cause notice, in which not only the charge, but also the punishment proposed is mentioned."

6. I am in complete agreement with the aforesaid observations. The principle of natural justice, on which the giving of a show-cause notice to the delinquent Govt. servant is based, requires that the disciplinary authority should keep an open mind with regard to the charges brought against the Government servant until such charges are proved. If an open mind is not kept, but as an enquiry is held on the assumption that the Government servant is guilty of the charges which have been levelled against him and he is also liable to a specified penalty, then such an enquiry should be considered to have been made in violation of the principles of natural justice. It would be clear in such circumstances that the disciplinary authority had prejudged the matter regarding the guilty of the concerned government servant. At the stage of framing the charges, no question of deciding as to what punishment would possibly be imposed upon the Government servant, in case the charges are proved against him, can arise. The very fact that the proposed punishment is mentioned in the charge-sheet would go to show that even before the charges are enquired in to and a finding is arrived at in respect thereof, on the basis of the enquiry which is yet to be made, the guilt of the delinquent Government servant has been prejudged. It is on this ground that the notice, which includes not only the charges against the delinquent Government servant, but also contains a statement of punishment proposed to be imposed upon him, has been struck down by the courts.

The procedure prescribed in the Rules for holding a disciplinary enquiry, gives some assurance to the Government servant concerned that the disciplinary authority maintains an open mind with regard to the charges framed against him. In case the competent authority were to determine even before the charges are proved as a result of the enquiry to be conducted against the concerned government servant, that particular punishment would be meted out to him, the employee may be justified in feeling that the disciplinary authority had already formed an opinion against him generally on the subject matter of the charge and also with regard to the quantum of punishment to be imposed upon him. In such circumstances, the competent authority would not be able to approach the matter involved in the enquiry with an open mind and would not be able to consider independently the facts which emerge as a result of the disciplinary enquiry.”

30. Reference is also made to the decision of this Court in the case of ***Shri Hiranmohan Doley Vs The State of Assam 4 others***, wherein this Court in paragraph 12 and 13 has held as under:-

“12. In the above context, it would be pertinent to mention here-in that in the show cause notice dated 03-10-2012 the only thing that was mentioned was that the petitioner was willingly absent from duty from 29.08-2012 and therefore, he was asked to show cause as to why disciplinary action should not be taken against him as per Assam Municipal Act, 1956. The contents of the notice dated 03-10-2012 is quoted here-in-below for ready reference-

"OFFICE OF THE PRESIDENT OF DHEMAJI TOWN COMMITTEE, DHEMAJI No DTC/A- 1/2012/528 Dated 03.10.2012 To Sri Hiramohan Doley Electrician Dhemaaji Town Committee. Sub-Seeking explanation for absent in duty. You are willingly absent to your duties from 29.08.2012. As per the decision of the executive committee meeting of Dhemaaji Town

Committee held on 29.09.2012 you are hereby asked to state satisfactory reason why disciplinary action will not be taken against you within three days from today i.e. 03.10.2012. Otherwise appropriate action will be taken as per the Assam Municipality Act, 1960. Sd/-Illegible President Dhemaji Town Committee Dhemaji"

13. From a plain reading of the notice dated 03-10-2012, it appears that even before hearing the version of the petitioner, the respondents were of the opinion that he had remained willingly absent from duty. It appears that the show cause notice was issued with a pre-determined mind set and the notice was a mere formality adopted by the respondents only to terminate the services of the petitioner."

31. Reference is also made to the decision of this Court in the case of ***Machum Ahmed Laskar (Supra)*** wherein this Court in paragraph 13 to 19 is reproduced hereunder for ready reference:-

"13. The grounds of challenge, as indicated above are mainly on two counts, firstly, on the merits of the charges and the procedure adopted in the enquiry. The second ground is the procedure adopted by the disciplinary authority after completion of the enquiry. As regards the 1st ground which involves the merits of the charges, the role to be played by a Court in exercise of powers under Article 226 of the Constitution of India while examining disciplinary proceeding is a secondary role and the duty of this Court is only to oversee whether the proceeding was held in consonance with the principles of natural justice and whether proper safeguard was given to the delinquent to defend himself,.

14. This Court on the second ground of challenge has noticed that while the enquiry report was forwarded vide the second show cause notice dated 06.05.2014, the disciplinary authority had reached a conclusion that he agrees with the findings of the Enquiry Officer and held the charges to

be proved. The response was sought for only on the proposed penalty which was contemplated as removal from service.

15. The requirement of seeking a response on the proposed penalty is not a mandatory requirement after the 42nd amendment of the Constitution of India. However, such requirement is mandatory so far as the aspect of seeking the response of a delinquent on the findings by an Enquiry Officer before the disciplinary authority takes a call on such findings. It is incumbent upon the disciplinary authority that before he comes to a finding, he is required to take into consideration the response, if any, by the delinquent on the findings which are against the delinquent in the enquiry.

16. The safeguards given to a Government Servant facing a Disciplinary Proceeding is given under Article 311 of the Constitution of India. The prime objective of the said Article is to provide adequate and reasonable safeguard to a delinquent facing an enquiry. It may be mentioned that prior to the 42nd amendment of the Constitution of India, there was a requirement to notify the delinquent on the proposed penalty, which however has been done away with. However, what is required is that in the enquiry, all reasonable safeguards are to be afforded to the delinquent officer and on completion of the same, a copy of the said Enquiry Report is required to be forwarded to the delinquent by the Disciplinary Authority before concurring with the findings so that the delinquent is given an opportunity to persuade the disciplinary authority to take a view in favour of the delinquent based on the materials on record and not to concur with the findings of guilt arrived at by the Enquiry Officer. The requirement to give an opportunity to cross examine the witnesses produced by the management and to adduce evidence as defence and also to have the assistance of a defence representative are some of the mandatory inbuilt mechanism to ensure that the process is done fairly and transparently.

*17. The Hon'ble Supreme Court in the case of **Ramzan Khan (supra)** had*

*laid down that furnishing of the Enquiry Report is mandatory so as to give the delinquent an opportunity to persuade the disciplinary authority not to accept the said report. In the subsequent case of **Managing Director, ECIL Ltd. (supra)** it has been clarified that the decision of **Ramzan Khan (supra)** would be prospective in nature. In subsequent cases, it has also been clarified that depending on the particular facts and circumstances, the delinquent would also have to plead suffering of prejudice due to non-supply of the Enquiry Report*

18. With regard to the second show cause notice dated 06.05.2014 by which the disciplinary authority had asked for the views of the petitioner on the Enquiry Report, it appears that the said authority had stated that the findings of the Enquiry Officer were already concurred with. The aforesaid action on the part of the Disciplinary Authority is not in consonance with the requirement of affording a reasonable opportunity to a delinquent to safeguard himself as such opportunity is required to be given at all stages of a Disciplinary Proceeding.

*19. In the cases of **Babulal (supra)** and **Babul Hussain (supra)**, this Court has laid down that if the Disciplinary Authority, before taking the views of the delinquent on the Enquiry Report concurs with such findings, it is apparent that he has acted with a predetermined mind which is not in consonance with the requirement in law.”*

32. Reference is also made to the decision of this Court in the case of **Lachit Borthakur Vs Dibrugarh University** in WP(C) No. 2406/2005 wherein this Court has held that the issuance of the second show-cause notice being preceded with the acceptance of the report of the enquiry committee, the same is contrary to the law laid down in the case of **Managing Director, ECIL Ltd. and Ors. Vs. B. Karunakar and Ors. reported in (1993) 4 SCC 727.**

33. Perusal of the aforesaid decisions abundantly clarifies that furnishing of the enquiry report is a mandatory requirement to be followed by the Disciplinary Authorities before the said report is accepted in order to give the delinquent an opportunity to show-cause as why the Disciplinary Authorities ought not accept the said report. Further it is imperative that the respondent authorities issue such show-cause notice with an open mind.

34. In the present case, not only in the second stage, where the second show-cause was issued but even before holding the enquiry at the very first stage of issuing a show-cause notice calling the petitioner to show-cause as why the enquiry should not be held, the authorities have presumed the petitioner to be guilty of the charges leveled. Thus it is manifestly apparent on the face of the record that the respondent authorities was not acting in open mind from the very beginning of the proceedings, which is the basic concomitant of natural justice and as such the entire proceeding is vitiated.

35. That apart, the second show-cause notice also amply apparent that before the enquiry report was forwarded to the petitioner, the Disciplinary Authorities has already agreed to the findings of the Enquiry Officer and also has held the charges to have been proved beyond reasonable doubt.

36. Therefore it appears that the Disciplinary Authorities have not acted in a reasonable and fair manner and the Disciplinary Authorities have not given reasonable opportunity to the petitioner to submit his reply to the said report which being contrary to the law, the

consequent order dated 03.07.2015, whereby the petitioner was dismissed from service is wholly illegal, arbitrary and is in gross violation of principles of natural justice.

37. Accordingly the impugned disciplinary proceedings including the report of the Enquiry Officer and the consequent order dated 03.07.2015 of dismissal from service are hereby set aside and quashed.

38. Resultantly, the petitioner is directed to be reinstated in service, however taking into consideration the nature of charges, respondent authorities if so advised may proceed from the stage of issuing the first show-cause notice against the petitioner.

39. It further observed that on the reinstatement as directed above, the petitioner would not be entitled to any back wages, but would be entitled only for the notional benefits including seniority and fitment in the appropriate scale of pay.

40. The writ petition accordingly stands allowed in terms of the directions made above.

41. No order to cost.

JUDGE

Comparing Assistant