

GAHC010215902013



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

Case No. : WP(C)/4495/2013

BIKASH BASUMATARY
UBC/336, S/O NIBARAM BASUMATARY, VILL. AFLAGAON, P.O.
SERFANGURI, P.S. SERFANGURI, DIST- KOKRAJHAR, BTAD, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GHY-6

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

3:THE INSPECTOR GENERAL OF POLICE BTAD
KOKRAJHAR
ASSAM
P.O. KOKRAJHAR
DIST- KOKRAJHAR
ASSAM
PIN-783370

4:THE SUPERINTENDENT OF POLICE KOKRAJHAR
P.O. KOKRAJHAR
DIST- KOKRAJHAR
ASSAM
PIN-78337

Advocate for the Petitioner : MR.S NATH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 08.02.2024

Heard Mr. A. K. Purkayastha, learned counsel for the petitioner. Also heard Mr. D. Borah, learned Government Advocate for all the respondents.

2. The challenge in the present proceeding, is to an order, dated 29.08.2007, passed by the Superintendent of Police, Kokrajhar, imposing penalty of removal from service upon the petitioner along with a direction for treating the period of his absence as “dies non” for all purposes pursuant to a disciplinary proceeding initiated against him.

3. The petitioner while working as a UB Constable, was served with a Show Cause Notice, dated 23.05.2006, leveling an allegation of unauthorized absence w.e.f. 15.06.2004. Further allegation was leveled against the petitioner that in spite of issuance of repeated notices requiring him to rejoin his services; the petitioner did not respond to the same. Basing on the said allegation; a charge of misconduct, willful negligence and dereliction of duty as a member of the disciplined force, came to be leveled against the petitioner.

4. The respondent authorities not having received any response from the petitioner with regard to the Show Cause Notices issued to him, proceeded to appoint an Inquiry Officer to inquire into the charges leveled against him vide Show Cause Notice, dated 23.05.2006. The Inquiry Officer on entering into the

matter, noticed that the writ petitioner had received the Show Cause Notice, on 08.05.2006 under his own signature, but failed to respond thereto. The Inquiry Officer, thereafter, issued repeated notices to the petitioner requiring his presence in the inquiry and all the said notices were duly received by the petitioner or his family members. The petitioner not having responded to the said notices for appearing in the inquiry, the inquiry proceeded ex-parte.

On conclusion of the inquiry, the Inquiry Officer submitted his report on 30.06.2007. The Inquiry Officer, in his report, has, in details, set-out the steps taken by him to have the appearance of the petitioner in the inquiry proceeding. The Inquiry Officer, in his report, concluded that the allegations leveled against the petitioner stood established and as such, the charges so leveled against him, must be held to be proved.

On receipt of the said inquiry report, the disciplinary authority proceeded to consider the same and issued a second Show Cause Notice to the petitioner vide communication, dated 05.07.2007. The petitioner in terms of the second Show Cause Notice, submitted his representation on 15.07.2007.

5. The petitioner in response to the said Show Cause Notice, dated 23.05.2006, submitted his written statement on 15.07.2007 and therein, raised a plea that his wife had died due to breast cancer a few months ago and he was required to remain at his residence to look after his infant son and the incident leading to the death of his wife had caused anxiety which made him perplexed and he forgot everything including his services. It was highlighted that his family

members forced him to marry for the second time in order to take care of his son, but his second wife did not take proper care of his son which again forced him to remain at his residence to look after his infant son. The petitioner in his said written statement had contended that the second wife was now taking care of his son and he would be rejoining his services.

6. The disciplinary authority on consideration of the matter, including the said representation submitted by the petitioner on 15.07.2007, proceeded vide order, dated 29.08.2007, to impose the penalty of removal from service upon the petitioner. The period of absence of the petitioner w.e.f. 15.06.2004 was directed to be treated by the disciplinary authority as "dies non" for all purposes.

7. The petitioner after a lapse of 4 years and 7 months from the date of issuance of the order, dated 29.08.2007, submitted an appeal before the Inspector General of Police, BTAD, Kokrajhar. The appellate authority on consideration of the grounds as set-forth in the appeal, proceeded to dismiss the same on 09.05.2012. It is under the said circumstances that the present writ petition was instituted by the petitioner before this Court on 16.05.2013.

8. Mr. Purkayastha, learned counsel for the petitioner, at the outset, has submitted that the petitioner does not dispute the allegation of having remained unauthorized absence from his service w.e.f. 15.06.2004. The learned counsel has further submitted that the petitioner did not submit any application for leave during the period he had remained absent without permission of the authorities.

9. Mr. Purkayastha, learned counsel, has also submitted that the petitioner had not participated in the inquiry although there is no allegation in the writ petition that the petitioner had not received the notices issued by the Inquiry Officer requiring the presence of the petitioner in the inquiry proceeding. The learned counsel has limited his arguments to the question as to whether on account of non-appointment of a Presenting Officer in the inquiry held against the petitioner; the said inquiry and the inquiry report submitted by the Presenting Officer thereon, can be sustained. The learned counsel for the petitioner has further submitted that the penalty as imposed upon the petitioner is disproportionate to the allegations and charge as framed against the petitioner vide the Show Cause Notice, dated 23.05.2006. In this connection, Mr. Purkayastha, learned counsel for the petitioner, relies upon the decision of the Hon'ble Supreme Court rendered in the case of ***B. C. Chaturvedi v. Union of India & ors.***, reported in ***(1995) 6 SCC 749***; ***Director General, RPF & ors. v. Ch. Sai Babu***, reported in ***(2003) 4 SCC 331***; ***Bijoy Rabha v. Union of India & ors.***[judgment dated 29.01.2019 by this Court in WP(c) No. 5043/2012].

10. Per contra, Mr. Borah, learned Government Advocate for the respondents, has disputed the contentions raised by the learned counsel for the petitioner and has submitted that the petitioner having admitted to have remained unauthorizedly absent, given the fact that he is a member of a disciplined force; the allegation leveled against the petitioner in the Show Cause Notice, dated 23.05.2006, stood established. Mr. Borah, learned Government Advocate, by referring to the inquiry report, available on record, submits that the Inquiry Officer had taken all possible steps to have the presence of the petitioner during

the inquiry proceeding. However, the petitioner inspite of receipt of the said notices of the Inquiry Officer, ignored the same. The learned Government Advocate, by taking this Court, through the averments made in the writ petition, has contended that the petitioner has not disputed the findings as recorded by the Inquiry Officer in his inquiry report and has also not disputed the findings recorded therein of the petitioner being served with repeated notices requiring his presence in the inquiry. It is the contention of the learned Government Advocate that given the conduct of the petitioner, the order of removal from service as imposed upon the petitioner, cannot be said to be disproportionate to the allegations leveled against him.

11. I have heard the rival submissions advanced by the learned counsels appearing for the parties and considered the materials made available on record.

12. The allegations against the petitioner in the Show Cause Notice, dated 23.05.2006, is with regard to his unauthorized absence w.e.f. 15.06.2004, it has been fairly submitted by the learned counsel for the petitioner that the petitioner does not dispute that the petitioner was unauthorizedly absent without any intimation to his authorities. The petitioner has also not disputed the allegation of not having responded to the notices issued to him, and set-out in the Show Cause Notice, dated 23.05.2006, requiring him to resume his services. The petitioner, in his pleadings, has not brought on record any material to demonstrate that he had approached the authorities seeking leave by explaining the circumstances which had prevented him from attending his

duties.

13. The Inquiry Officer, upon entering into the matter, had on several occasions, issued notices to the petitioner requiring his participation in the inquiry proceedings. It has been noted in the inquiry report that the notices issued to the petitioner were duly received by the petitioner under his own signature or such notices were received by his family members including his second wife. The petitioner, in his pleadings, has not dealt with such categorical findings recorded in the inquiry report by the Inquiry Officer and as such, the position that emerges is that the petitioner although was intimated about the pendency of the proceedings, he chose not to participate therein at his own peril. The inquiry report was also duly forwarded to the petitioner by the disciplinary authority vide communication, dated 05.07.2007. The petitioner, on receipt of the second Show Cause Notice along with the inquiry report, responded to the same vide his communication, dated 15.07.2007. In the said communication, other than bringing on record, excuses for remaining unauthorizedly absent, the petitioner has not brought on record any material to substantiate his such absence. The petitioner in the said representation, dated 15.07.2007, has also not disputed the findings arrived at by the Inquiry Officer in the inquiry report, including the findings about the repeated notices sent to the petitioner requiring his presence in the inquiry proceedings. The conduct of the petitioner in the matter does not persuade this Court to consider the contention of the petitioner that the absence of a Presenting Officer in the inquiry, had vitiated the inquiry.

14. In the said background of the facts, the penalty as imposed upon the petitioner is now required to be considered by this court. The petitioner was imposed with a penalty of removal from service by his disciplinary authority.

15. A perusal of the order, dated 29.08.2007, issued by the disciplinary authority towards imposing the penalty upon the petitioner would reveal that the disciplinary authority had taken into account all circumstances that had arisen in the matter and had also duly considered the response of the petitioner, dated 15.07.2007, to the second Show Cause Notice. It is only on such detailed consideration of the matter that the penalty of removal from service upon the petitioner has been imposed.

16. The facts as emanating in the matter clearly indicates that the petitioner is guilty of misconduct of having remained unauthorizedly absent and also of insubordination in not responding to the notices issued to him for resuming his services. In this view of the matter, the penalty as imposed upon the petitioner has to be held to be commensurating to the allegation leveled against the petitioner more so when the petitioner is a member of a disciplined force. Accordingly, in view of the conclusions reached by this Court basing on the facts and circumstances as arising in the matter; the decisions as relied upon by the learned counsel for the petitioner of the Hon'ble Supreme Court relating to the disproportionate penalty, is not discussed in this order.

17. The contentions as raised by Mr. Purkayastha, learned counsel for the petitioner, with regard to non-appointment of a Presenting Officer in the said

inquiry in pursuance of the said Show Cause Notice, dated 23.05.2006, also do not deserve consideration on account of the fact that the petitioner did not appear in the said inquiry proceedings even after being issued with repeated notices requiring his such presence.

18. The casualness with which the matter was dealt with by the petitioner is also evident from the fact that he had preferred an appeal against the order of the disciplinary authority only after about a lapse of a period of 4 years from the date of passing of the order by the disciplinary authority and no explanation is forthcoming with regard to such delay.

19. In view of the conclusions as reached hereinabove; the contentions as raised by the petitioner with regard to the penalty as imposed upon him by the disciplinary authority being disproportionate as well as the contentions with regard to the manner in which the inquiry was so held against him, does not merit acceptance.

20. In the said view of the matter; the instant writ petition is held to be devoid of merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant