GAHC010094602024

undefined

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

Case No. : WP(C)/2479/2024

PRITOM BARUA
S/O- LATE ROHINI KUMAR BARUA,
RUPNAGAR, WARD NO- 26, H.NO-13, BYE LANE NO-3, P.S- BHANGAGARH,
GUWAHATI-32, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EXCISE DEPARTMENT, DISPUR, GUWAHATI

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI

3:THE INQUIRY OFFICER
SECRETARY TO THE GOVT. OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI

Advocate for the Petitioner : MR. M SMITH, MS. B BORA,MR. R KAMAN

Advocate for the Respondent : SC, EXCISE DEPTT.,

BEFORE :

HON'BLE MR JUSTICE NCHUMBEMO MOZHUI

Advocates for the Petitioner : Mr. A.C. Borbora, Sr. Adv.

Assisted by Mr. M. Smith.

Advocate for the Respondents : Mr. I. Borthakur, SC, Excise Deptt.

Delivery of Order dated : **13.11.2026**

ORDER

Heard Mr. A.C. Borbora, learned Senior Adv, assisted by Mr. M. Smith, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned counsel for the respondents.

2. The instant petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari and or mandamus and any other appropriate writ order or direction against the impugned disciplinary proceeding initiated by the respondent authority vide Show Cause Notice dated 16.09.2022 bearing No. ECF77933 and impugned inquiry report dated 08.03.2024 prepared unilaterally and without following the due process of law as prescribed under the Assam Services (Discipline & Appeal) Rules 1964 (hereinafter referred to as the Rules of 1964) vide letter No. Ex.07/2023/36 dated 08.03.2024. The grounds of challenge is on the ground of illegal and arbitrary action of the respondents in keeping the petitioner under suspension for a prolonged period of time without

following the due process of law.

3. The Learned Senior Counsel, Mr. A.C. Borbora, for the petitioner submits that the petitioner was appointed as Inspector of Excise in the year 1993 under the Excise Department, Government of Assam and presently posted at Dhemaji as Deputy Superintendent, Excise Department until his suspension on 03.09.2022. On 20.08.2022, an FIR was registered by one Anuj Kr. Goswami before the Crime Branch, Guwahati on the allegation that the petitioner has sexually assaulted his daughter since April, 2022 and thereafter Crime Branch P.S Case No. 08/2022 U/S 354/354A(i) (ii) IPC read with Section 10 of POCSO Act 2012. On registration of the case, the petitioner was arrested on 30.08.2022 and suspended vide Notification No. EX.256/93/27 dated 03.09.2022, as the detention period had exceeded 48 hours.

3.1. Learned Senior Counsel further submits that during his detention he was served with the Show Cause Notice No. ECF77933 dated 16.09.2022 under Rule 9 of the Rules of 1964 R/w Article 311 of the Constitution of India for Penalties prescribed under Rule 7 of the Rules. The petitioner was charged only on one head: -

> "**CHARGE NO. 1**: - That while you are holding the post of Deputy Superintendent of Excise, Lakhimpur & i/c Superintendent of Excise,

Dhemaji, you were arrested by the Crime Branch Police, Guwahati, Assam on 30.08.2022 at 11:30 PM in connection with Crime Branch P.S Case no. 08/2022 U/s 354/354A(i) (ii) IPC read with Section 10 of POCSO Act 2012".

3.2. On receipt of the Show Cause Notice, the charge was framed and the petitioner's wife filed representation dated 07.10.2022 to the respondents seeking time to submit written statement on behalf of the petitioner as he was under judicial custody. After being released from the judicial custody, the petitioner submitted his reply on 30.12.2022 to the Show Cause Notice denying the charges levelled against him and on the ground that he has been falsely implicated in the criminal case without proper evidence. Further, in the reply the petitioner replied that the statement of allegation/charge in the Show Cause is a subject matter of judicial proceeding and the outcome will be decided by the competent court as per rule.

3.3. It is also the contention of the petitioner counsel that the investigating officer in the criminal case had charge sheeted the case against the petitioner under Section 354/354A (i) (ii) IPC r/w Section 10 of the POCSO Act, and subsequently Session Case (Spl) No. 101/2022 was registered at Special POCSO Court, Kamrup(M) Gawahati. The status of the criminal case is at the stage of

evidence presently and witnesses' examination is yet to be completed.

3.4. The respondent authority has appointed an enquiry officer vide Notification dated 18.03.2023, to enquire into the charges framed against the petitioner and a presenting officer under the Rules of 1964. It is also the case of the petitioner that in the Departmental proceeding the Officer-in-Charge and the Investigating Officer who filed the Charge sheet were the only witnesses and under such circumstances the petitioner requested the respondent No. 3 on 08.08.2023 for suspension of the departmental proceeding as the cross examination of the investigating officer is yet to be completed in the criminal case and it would cause great prejudice as the subject matter in both departmental proceeding and criminal case is of same nature. However, the request of the petitioner was declined by the respondent authority by communication dated 10.08.2023.

3.5. The Enquiry Officer submitted its enquiry report in connection with the departmental proceeding against the petitioner on 08.03.2024 and thereafter by communication dated 19.03.2024, the petitioner was asked to make detailed representation against the finding of the enquiry officer and by written representation dated 03.04.2024, the petitioner submitted the written representation against the finding against him before the authority.

3.6. The learned counsel for the petitioner further submits that, besides the officer-in-charge and the investigating officer of the case, no other witnesses were examined by the inquiry officer, as the independent witnesses were required to be examined in case of departmental/disciplinary proceeding and non examination of such independent witness is violative of the principle of natural justice and against the fairness of enquiry proceeding. The manner in which the investigating officer was examined who had registered a criminal case and filed charge sheet against the petitioner vitiates the very purpose of departmental proceeding. It is further submitted that the manner in which the inquiry officer conducted the enquiry and declining the verbal request of the petitioner to have his defense assistant under Rule 9 (5) of the Rules of 1964 is illegal and arbitrary. It is also the contention of the petitioner that none of the reports and the certificates/documents/memos pertaining to the arrest, remand of the petitioner was produce as evidence during the departmental proceeding, which was crucial for conducting the enquiry in question. The contention of the petitioner, that merely because of the arrest of the petitioner in criminal case does not *ipso facto* attracts the ingredients of Rule 3 (i) and (iii) of the Rules of 1964, as such arrest, which is yet to be proved in the competent court of law cannot be terms as "failure to maintain absolute integrity" and "doing anything unbecoming of a government servant".

3.7. The learned Senior Counsel also submits that no grounds of arrest or the facts of arrest alone cannot alternatively act as proof of guilt to sustain a major punishment in disciplinary proceeding.

3.8. The learned Senior Counsel in support of his contention relies on the decision of ***Hardwari Lal Vs. State of U.P and Others*** reported in ***(1999) 8 SCC 582***, wherein the Apex Court has held that non observance of the principle of natural justice in not examining the complainant have brush aside the grievance.

Further, the learned Senior Counsel also relied in the case of ***Roop Singh Negi Vs. Punjab National Bank and Others*** reported in ***(2009) 2 SCC 570***, wherein the Hon'ble Apex Court has held that: -

> "*14. 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.*"

3.9. The learned Senior Counsel for the petitioner therefore submits that the whole process and the manner by which the departmental/disciplinary

proceeding has been conducted/initiated is illegal, arbitrary and malafide and against the provisions of the Rules of 1964 and under such circumstances the entire impugned departmental/disciplinary proceeding dated 16.09.2022 and the impugned inquiry report dated 08.03.2024 is liable to be interfered with by this Hon'ble Court.

4. Per contra, the learned counsel for the State respondent submits that there is no illegality in the departmental/disciplinary proceeding dated 16.09.2022 and the inquiry report dated 08.03.2024, inasmuch as the petitioner was given opportunity to make written statement to the show cause notice dated 16.09.2022, when he was under the judicial custody which was duly replied by the petitioner's wife seeking time to submit the written statement.

4.1. Further the allegation of the petitioner, another show cause notice dated 19.03.2024 was issued is denied for the fact that it was a communication to the petitioner to make representation or submission to the disciplinary authority within 15 (fifteen) days to the inquiry report submitted by the inquiry officer.

4.2. It is also submitted by the counsel for the respondents that the suspension period of the petitioner is being reviewed by the disciplinary authority every 3 (three) months and not as alleged. It is also further the contention of the respondents that the departmental/disciplinary proceeding was conducted

independently and fairly following the due process of law which has not been denied by the petitioner till the submission of the inquiry report on 08.03.2024.

4.3. Further the allegation of the petitioner that in spite of representations by the petitioner requesting for defensive assistance is denied but as per the official record, there is no such representations. The allegations of non furnishing of document is also denied as the records would reveal that at the time of furnishing the show cause notice dated 16.09.2022, all the relevant documents were served upon the petitioner.

4.4. It is also further contented and denied by the learned counsel for the respondent that the petitioner had at no point of time made in the representation for production of reports and the certificates/documents/memos pertaining to the arrest, remand etc as well as the certified copies of the deposition of various witnesses in the examination-in-chief and cross-examination. In spite of availing, such opportunity the petitioner did not make any such representation.

4.5. The counsel for the respondents submits that there is no hard and fast rule under the procedure for departmental/disciplinary proceeding summoning of the victim. However, had the petitioner desired for examination of such witnesses, he ought to have made such representation/request but as per the official

records, there is no such request by the petitioner. The departmental/disciplinary proceedings are always independent of the criminal proceeding.

4.6. It is also further contented that the investigating officer was summoned as a witness in the departmental/disciplinary proceeding as the law does not bar that such witnesses cannot be examined provided the investigating officer acts strictly as a witness and not as an inquiry officer.

4.7. The learned counsel for the respondent has relied on the case of ***Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani,*** reported in ***(2013) 6 SCC 530,*** which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under: -

> *"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."*

The counsel also relies in the case of ***The Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha*** in ***Civil Appeal No. 2333 of 2007***…

"*9. Law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the chargesheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the chargesheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance*"

Further relying on the case of ***Union of India (UOI) and Ors. Vs. Kunisetty Satyanarayana*** in ***Civil Appeal No. 5145 of 2006 (Arising out of SLP (C) No. 16572 of 2006),*** the Hon'ble apex court has held that:

"*9. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or*

charge sheet.

No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

4.8. In view of the settled position of law, the learned counsel for the respondent submits that the petitioner has failed to make out a case calling for the interference of this Hon'ble Court and the petition deserves outright rejection.

5. Heard the counsel for the parties at length.

6. From the perusal of the records, it appears that the show cause notice dated 16.09.2022, under Rule 9 of the Rules of 1964 r/w Article 311 of the Constitution of India was issued on the ground that the petitioner was arrested by the Crime Branch Police, Guwahati in connection with Crime Branch PS Case No. 08/2022 on the basis of the FIR lodged by the victim father. Besides the above ground, no other reasons were assigned while issuing the show cause. This Court has also taken consideration of the case of *Roop Singh Negi (Supra)*, wherein it is a well settled law mere production of document/FIR by the investigating officer in the Crime Branch PS case No. 08/2022 is not enough for the fact that the contents of the documentary evidence has to be proved by examining witnesses. The FIR in itself is not evidence without actual proof of facts stated therein.

7. Every Departmental/Disciplinary Proceeding needs to be done with independent evaluation. An arrest or a criminal charge does not replace at departmental inquiry. The competent authority must independently examine

whether the Government Servant conducts the violates the service rule. Mere arrest is not a substitute for proving misconduct through evidence in a domestic inquiry as was done in the case of the petitioner by the Inquiry Officer in its enquiry report dated 08.03.2024.

8. During the Departmental/Disciplinary Proceeding before the Disciplinary authority, the only witness examined by the enquiry officer was the investigating officer of the criminal case who had conducted investigation and filed the chargesheet. However, the investigating officer of a criminal case can be examined as a witness in Departmental/Disciplinary Proceeding, provided, they act strictly as a witness and not as a inquiry officer/inquiry authority. While an investigating officer in a criminal case can testify to facts discovered, records seized or statement recorded during investigation such witnesses cannot act as an inquiry officer in the Departmental/Disciplinary Proceeding. Be that as it may be, the investigating officer of the criminal case ought not to have been made as a sole witness in the Departmental/Disciplinary Proceeding as such witnesses statement will prejudice the petitioner for the fact that the examination of the investigating officer in the criminal case is yet to be conducted in the criminal trial. In this regard, this Court has taken the consideration of the case of *Hardwari Lal (Supra)* and *Roop Singh Negi (Supra),* wherein the purported evidence collected during investigation by the investigating officer against the accused by itself could not be treated to be evidence in the Departmental/Disciplinary Proceeding. In the present case at hand, no other independent evidence was examined to prove the said evidence. The reliance, inter alia, was relied upon on the FIR by the enquiry officer in the instant case and conclusion thereof by enquiry report dated 08.03.2024 which could not have been treated as evidence.

9. It is a well-settled position of law that criminal proceeding requires proof of guilt beyond a reasonable doubt whereas the Departmental/Disciplinary Proceeding operates on the preponderance of probability. However, in the instant case, the alleged commission of offence of the petitioner in a criminal case has become the basis of the enquiry report dated 08.03.2024 which cannot be accepted by this Court in view of the above observations so made.

10. In view of the above observations, the impugned Departmental/Disciplinary Proceeding dated 16.09.2022 and impugned enquiry report dated 08.03.2024 issued by the respondents are vitiated by law and in view of the settled position of law the same are hereby quashed and set aside.

11. However, this Court keeping in view of the serious allegation set forth against the petitioner, it shall not be a bar for the respondents to initiate disciplinary proceeding from the point that it stood vitiated i.e., the issuance of the Show Cause Notice dated 16.09.2022 and conclude the same in accordance with Rules of 1964 by affording fair opportunity to the petitioner to defend his case within a period of 2 months from the date of receipt of this order.

12. Accordingly the writ petition stands allowed and disposed to the extend stated above.

13. No orders as to cost.

JUDGE

Comparing Assistant