GAHC010098332024

2026:GAU-AS:15081

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

Case No. : WP(C)/2666/2024

BABUL SINHA
SON OF LATE HARIMOHAN SINHA,
RESIDENT OF VILLAGE AND P.O.- MASUGHAT,
P.S.- SILCHAR, DISTRICT- CACHAR, ASSAM,
PIN- 788003.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

3:THE INSPECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

4:THE DEPUTY INSPECTOR GENERAL OF POLICE (SR)
ASSAM
SILCHAR
DISTRICT- CACHAR
ASSAM
PIN-

5:THE SUPERINTENDENT OF POLICE
HAILAKANDI
DISTRICT- HAILAKANDI
ASSAM

PIN

Advocate for the Petitioner : MR. P K ROYCHOUDHURY, MR. S SINHA,MR G DEKA,MR. N G KUNDU

Advocate for the Respondent : GA, ASSAM,

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved	:	07.10.2026
Date of pronouncement of judgment	:	N/A
Whether the pronouncement is of the operative of the judgment?	:	No
Whether the full judgment has been pronounced?	:	Yes

JUDGMENT & ORDER (Oral)

Heard Mr. P. K. Roychoudhury, learned Senior Advocate, assisted by Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned Senior Advocate, assisted by Ms. J. Sharma, learned counsel for the respondents.

2. By filing the present writ petition, the petitioner has challenged the order dated 16.11.2023 issued by the Superintendent of Police, Hailakandi, whereby the petitioner was dismissed from service, and the appellate order dated 28.02.2024 issued by the Deputy Inspector General of Police (SR), Assam, Silchar, whereby the appeal preferred by the petitioner against the order of

dismissal was rejected.

3. The petitioner was appointed as Constable (UB) in Assam Police and joined service on 17.07.1990 at Hailakandi DEF. He was subsequently promoted to the rank of Head Constable (UB). On 07.02.2023, while attached to Bilaipur Police Station, Hailakandi, he was detailed for night-patrolling cum naka-checking duty. The petitioner states that he was suffering from abdominal pain, gastric problems and loose motion and had requested the Officer-in-Charge to exempt him from the night duty. However, owing to shortage of police personnel, he was required to perform the duty.

4. During the course of the night duty, the petitioner claims that his physical condition deteriorated and that, in the absence of any roadside toilet or water facility, he had to attend to his natural call several times under a culvert. He thereafter rejoined the other police personnel on patrol. It was subsequently alleged that during the said duty, vehicles carrying Burmese supari had passed through the naka and that the petitioner had received money from the drivers in return for allowing the vehicles to pass. The petitioner has denied the allegation and has maintained that no money was recovered from his possession.

5. On 11.02.2023, the petitioner was placed under suspension with immediate effect on the allegation of negligence of duty on 07.02.2023. He was subsequently released from suspension by order dated 24.05.2023. In the meantime, a show-cause notice dated 16.05.2023 was issued to him under Section 65 of the Assam Police Act, 2007 read with the Assam Police Manual Part-III, Article 311 of the Constitution of India and Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964, alleging gross negligence of duty. The petitioner submitted his written statement of defence on 01.06.2023

denying the charge.

6. Thereafter, by order dated 03.06.2023, Departmental Proceedings was initiated against the petitioner and an Enquiry Officer and Presenting Officer were appointed. During the proceeding, the petitioner reiterated his case regarding his physical condition on 07.02.2023 and stated that he was unable to produce any defence witness. Upon completion of the enquiry, a second show-cause notice dated 07.11.2023 was issued to him stating that the charge of gross negligence of duty stands proved and calling upon him to submit his statement of defence against the findings.

7. The petitioner, however, contends that the enquiry report itself was not furnished to him along with the second show-cause notice. He submitted his reply dated 15.11.2023 specifically raising this objection and stating that, in the absence of the enquiry report, he could not effectively represent against the findings recorded therein. Notwithstanding the same, the Superintendent of Police, Hailakandi, passed the order dated 16.11.2023 dismissing the petitioner from service. The petitioner thereafter preferred an appeal on 30.11.2023 before the Deputy Inspector General of Police (SR), Assam, Silchar. The appellate authority called for the departmental proceeding file and the relevant records, perused the same and heard the petitioner in person, whereafter, by order dated 28.02.2024, the appeal was rejected and the order of dismissal was upheld. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

8. Mr. P. K. Roychoudhury, learned Senior Advocate appearing for the petitioner submits that the dismissal of the petitioner cannot be sustained primarily because the enquiry report was not furnished to him before the

disciplinary authority proceeded to take the final decision. It is contended that the petitioner had raised this objection in his reply dated 15.11.2023 itself, but the disciplinary authority proceeded to impose the major penalty of dismissal on the very next day without furnishing the report or giving him an effective opportunity to represent against the findings of the Enquiry Officer.

9. Learned Senior Advocate further submits that the charge itself was not established by the materials relied upon in the departmental proceeding. It is contended that although the allegation related to six vehicles carrying Burmese supari and receipt of illegal gratification, no registration number, name of driver or owner was recorded and no supari was seized. No money was recovered from the petitioner either. The submission is that the amount of Rs. 60,000/- deposited at the police station was arranged by the petitioner under compelling circumstances and could not, by itself, establish the charge of gross negligence.

10. It is further contended that the alleged confessional statement was not voluntarily made and that the petitioner had been made to sign documents without being permitted to read their contents. Learned Senior Advocate also submits that no proper field enquiry was conducted and that the Presenting Officer had prepared the report without visiting the place of occurrence. It is contended that the statement of allegation and the charge framed against the petitioner were materially different, as the former related to taking money by illegal means while the charge ultimately framed was one of gross negligence of duty. The petitioner therefore submits that he could not have been punished on the basis of an allegation which did not form part of the charge and that the departmental proceeding was conducted in violation of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964.

11. Mr. T. C. Chutia, learned Senior Advocate, in response, submits that the appellate authority had called for the departmental proceeding file along with the relevant records and documents, perused the same and heard the petitioner in person before passing the appellate order. It is submitted that, upon consideration of the departmental record, the appellate authority was satisfied that the petitioner had committed gross negligence of duty and accordingly upheld the order of dismissal. Learned Senior Government Advocate, however, fairly submits that, as borne out from the records, it appears that the enquiry report was not furnished to the petitioner before the disciplinary authority imposed the penalty of dismissal from service. He, therefore, submits that the matter may be remanded to the disciplinary authority for consideration afresh in accordance with law.

12. I have considered the submissions advanced by learned counsel for the parties and have perused the materials available on record.

13. From the materials on record, it is seen that the petitioner was proceeded against departmentally for gross negligence of duty and, upon completion of the enquiry, was issued the second show-cause notice dated 07.11.2023. The said notice referred to the findings of the Enquiry Officer and called upon the petitioner to submit his defence. The petitioner, by his reply dated 15.11.2023, specifically raised the grievance that the enquiry report had not been furnished to him. The disciplinary authority, however, proceeded to pass the order of dismissal dated 16.11.2023. The petitioner thereafter preferred an appeal on 30.11.2023, which was rejected by the appellate authority by order dated 28.02.2024. Learned Senior Advocate, for the respondents on perusal of the records, fairly submits that the enquiry report appears to have not been

furnished to the petitioner before the order of dismissal was passed.

14. It is trite law that where the Enquiry Officer is different from the disciplinary authority, the delinquent employee is entitled to a copy of the enquiry report before the disciplinary authority takes a final decision on the question of penalty. In **Union of India v. Mohd. Ramzan Khan, reported in (1991) 1 SCC 588**, the Hon'ble Supreme Court held that furnishing of the enquiry report to the delinquent employee is part of the reasonable opportunity of defence. The said principle was subsequently considered by the Constitution Bench in **Managing Director, ECIL, Hyderabad v. B. Karunakar, reported in (1993) 4 SCC 727**, wherein the Hon'ble Supreme Court reiterated that the delinquent employee must have an opportunity to make a representation against the findings recorded by the Enquiry Officer before the disciplinary authority takes the final decision.

15. In the present case, the second show-cause notice dated 07.11.2023 refers to the findings of the Enquiry Officer and though calls upon the petitioner to submit his defence against the said findings, decided to dismiss the petitioner from service. The petitioner, in his reply dated 15.11.2023, specifically stated that the enquiry report had not been furnished to him. Again the order of dismissal, however, came to be passed on 16.11.2023. Thus, evidently the petitioner was not furnished with the enquiry report before the disciplinary authority proceeded to take the final decision.

16. The petitioner had specifically raised the said objection before the disciplinary authority itself. In such circumstances, the petitioner was required to be furnished with the enquiry report and afforded an opportunity to submit his representation thereon before the disciplinary authority proceeded to impose

the penalty of dismissal. The failure to do so has deprived the petitioner of an effective opportunity to deal with the findings recorded by the Enquiry Officer.

17. The subsequent consideration of the departmental records by the appellate authority cannot cure the aforesaid defect. The opportunity to represent against the findings of the Enquiry Officer was required to be afforded to the petitioner before the disciplinary authority took the decision on the penalty. The fact that the appellate authority subsequently called for the departmental file, perused the records and heard the petitioner in person cannot substitute the opportunity which was required to be afforded at the stage of the decision of the disciplinary authority.

18. In view of the aforesaid procedural infirmity, this Court does not deem it necessary to examine the other contentions raised by the petitioner relating to the alleged passage of the vehicles carrying Burmese supari, the alleged receipt and deposit of money, the alleged confessional statement, the manner in which the enquiry was conducted, the distinction between the statement of allegation and the charge framed against the petitioner, or the alleged violation of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964. The merits of the charge are, therefore, left open for consideration by the competent authority in accordance with law.

19. The failure to furnish the enquiry report before the disciplinary authority proceeded to impose the penalty of dismissal has vitiated the decision-making process. The petitioner had raised the said grievance before the disciplinary authority, but the same was not addressed before the final order was passed. In my view, the order of dismissal, therefore, cannot be sustained.

20. Consequently, the order dated 16.11.2023 issued by the Superintendent of

Police, Hailakandi, whereby the petitioner was dismissed from service, is hereby set aside and quashed. The appellate order dated 28.02.2024 issued by the Deputy Inspector General of Police (SR), Assam, Silchar, whereby the appeal preferred by the petitioner was rejected, is also set aside and quashed.

21. As a consequence thereof, the petitioner shall be reinstated in service in the rank of Head Constable (UB), which he was holding prior to the order of dismissal. The respondent authorities shall, however, be at liberty to proceed with the departmental proceeding from the stage of furnishing the enquiry report to the petitioner. Upon furnishing the enquiry report, the petitioner shall be afforded reasonable opportunity to submit his representation thereon, whereafter the competent authority shall proceed to take a fresh decision in accordance with law.

22. It is made clear that this Court has not expressed any opinion on the merits of the charge levelled against the petitioner. The competent authority shall consider the matter afresh and take a decision uninfluenced by any observation made in this judgment touching upon the merits of the allegations.

23. The question of consequential service and monetary benefits arising out of the period during which the petitioner remained out of service shall be considered by the competent authority in accordance with law upon conclusion of the departmental proceeding.

24. With the aforesaid observations and directions, the writ petition stands allowed. There shall be no order as to costs.

JUDGE

Comparing Assistant