GAHC010242172024

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

Case No. : WP(C)/6105/2024

MUNIN DUTTA
S/O- LT. ATUL CHANDRA DUTTA,
R/O- VILL.- GARAKA,
P.O.- RANGIA,
P.S.- RANGIA,
DIST.- KAMRUP(RURAL), ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR GENERAL OF POLICE

ASSAM POLICE HEADQUARTERS

ULUBARI
GUWAHATI- 781007

ASSAM.

3:THE INSPECTOR GENERAL OF ASSAM (ADM)
ASSAM POLICE HEADQUARTERS

ULUBARI
GUWAHATI- 781007.

4:THE INSPECTOR GENERAL OF POLICE
OFFICE OF THE I.G.P. (BTAD)

KOKRAJHAR

ASSAM.

5:THE SUPERINTENDENT OF POLICE
OFFICE OF THE SUPERINTENDENT OF POLICE BAKSA

MUSHALPUR
(BTAD)
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the Appellants : Shri P.K. Das, Advocate.
Advocates for the respondents : Ms. M. Bhattacharjee

Date on which judgment is reserved : **03.11.2026**

Date of pronouncement of judgment : **13.11.2026**

Whether the pronouncement is of the operative part of the judgment? : NA
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The present writ petition has been instituted challenging an order of dismissal from service dated 31.12.2024. The petitioner is also aggrieved by the rejection of the departmental appeal preferred against the dismissal order vide order dated 02.10.2024.

2. Before going into the issue involved and the grounds of challenge, it would be convenient if the facts of the case are narrated in brief.

3. The petitioner was appointed in the Home Department in the year 1982 and has superannuated from service on 28.02.2019. While he was serving as a Sub-Inspector (UB), the in-charge of Kaurbaha Police Outpost under the Tamulpur Police Station had lodged an FIR on 28.06.2018 leading to registration of ACB PS Case No.12/2018 under section 7/8/13 of the Prevention of Corruption Act, 1988. It was alleged that in two assault cases registered against the complainant, the petitioner had demanded bribe. Accordingly, a trap team was constituted in which the petitioner was caught red-handed while accepting the bribe and he was arrested on 28.06.2018. In the said case, the charge-sheet is yet to be filed and prosecution sanction is yet to be obtained. It is also the case of the petitioner that the complainant, who had lodged the *Ejahar* was killed and accordingly, the main witness was not there.

4. Nonetheless, a statement of allegation was served on the petitioner which he had replied and on being unsatisfied, a departmental inquiry was initiated in which the Department had proved the allegations against the petitioner through 4 (four) nos. of witnesses. It is the case of the petitioner that he was not given a reasonable opportunity to defend himself.

5. The Enquiry Report was submitted and on 30.09.2023, the petitioner was served with a copy of the report with a notice to show cause as to why the same should not be accepted. The petitioner had accordingly replied to the second show cause notice. In the meantime, on 25.02.2019, the petitioner had attained the age of superannuation and had retired from service. However, the departmental proceeding culminated in an order of dismissal from service dated 31.12.2023. The petitioner had preferred an appeal which was also dismissed on 02.10.2024 by the appellate authority, namely, the Inspector General of

Police. It is the validity and legality of the aforesaid action which is the subject matter of challenge in the present writ petition.

6. I have heard Shri P.K. Das, learned counsel for the petitioner. I have also heard Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate, Assam.

7. Shri Das, the learned counsel for the petitioner has submitted that the impugned order of dismissal from service is unsustainable in law and liable to be interfered with. He has submitted that the petitioner was deprived of a reasonable and fair opportunity to defend himself. He has also submitted that no opportunity to cross-examine the witnesses of the Department was afforded to the petitioner. It is also submitted that the petitioner was not afforded the assistance of a defence representative and therefore, he had suffered prejudice while defending himself in the departmental proceeding.

8. The learned counsel has also submitted that since the complainant on whose complaint the police case was registered against the petitioner had passed away, there was no witness to prove the allegation against him. He has also submitted that the allegations are baseless and the punishment imposed is untenable in law.

9. In support of his submissions, the learned counsel for the petitioner has relied upon the following case laws:

(i) (2009) 2 SCC 570 (Roop Singh Negi v. Punjab National Bank & Ors.)

(ii) (2006) 4 SCC 713 (Narinder Mohan Arya v. United India

Insurance Co. Ltd. & Ors.)

(iii) AIR 1983 SC 454 (Bhagat Ram v. State of Himachal Pradesh and Ors.)

10. The case of ***Roop Singh Negi* (supra)** has been cited to contend that the charges must be proved in a disciplinary proceeding. It is submitted that in the present case, the charges were not proved and further, reasons were not given for imposing the penalty.

11. In the case of ***Narinder Mohan Arya*** (supra), there is a requirement of a speaking order. It is submitted that the impugned order of dismissal does not assign reasons and is therefore unsustainable in law.

12. The case of ***Bhagat Ram*** (supra) has been cited on the aspect that there is a requirement to furnish defence assistant and in the instant case no such assistance was provided.

13. The learned counsel for the petitioner accordingly submits that the writ petition is liable to be allowed by setting aside the impugned order of dismissal and also the order of the appellate authority rejecting the appeal.

14. *Per contra*, Ms. Bhattacharjee, the learned State Counsel, has submitted that the grounds sought to be urged in the argument are not the grounds in the departmental appeal. She has added that even in the writ petition, no such grounds have been pleaded and only in the oral submission, certain grounds have been made without the support of any pleadings. She has otherwise submitted that all the grounds are factually incorrect. She has submitted that

the charges are grave in nature wherein the petitioner, who was a police personnel, was found to be taking bribe and was caught red-handed. In the departmental proceeding, 6(six) nos. of witnesses were examined and they were cross-examined. By producing the original records, the learned State counsel has submitted that on many occasions, the petitioner himself remained absent and the proceeding had to be adjourned.

15. By drawing the attention of this Court to the grounds taken in the departmental appeal as well as those taken in the present writ petition, the learned State Counsel has submitted that all the grounds are on the merits of the decision and not on any violation of the procedure or the decision-making process. The learned State Counsel has accordingly submitted that the writ petition ought to be dismissed.

16. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

17. The challenge in the writ petition is against the order of dismissal from service dated 31.12.2023 which has been upheld by the appellate authority vide order dated 02.10.2024.

18. At the outset, this Court is reminded of the principles of law that while this Court exercises Certiorari jurisdiction under Article 226 of the Constitution of India, the examination is on the decision-making process and not on the decision itself. In other words, the adjudication is on the lawfulness of the decision and not the soundness thereof. With the said principles in mind, the present case has been examined.

19. This Court has noticed that while in the oral argument certain points have been urged which are factual in nature, those have not been pleaded in the departmental appeal. Even in the present writ petition, no such pleadings are there. To be more specific, the learned counsel for the petitioner has argued that the petitioner was not allowed to cross-examine the witnesses. However, such grounds have not been taken at all either in the departmental appeal or in the writ petition. Secondly, it has been urged in the oral argument that defence assistant was not afforded. However, on a careful perusal of both the memo of appeal filed before the appellate authority as well as the writ petition, no such grounds have been taken. Nonetheless, this Court has looked into the original records and has found that in many occasions, the petitioner himself was absent. The records also reflect that the witnesses were cross-examined by the petitioner.

20. Though the learned State Counsel had urged that all the witnesses were examined, it is seen that out of the 6 (six) nos. of witnesses, one had expired and there are records to show that witnesses Golam Nabi Azad and Lintu Baruah were cross-examined by the petitioner. There is no mention that the petitioner had asked for any defence representative and was denied. In any case, unless any prejudice is pleaded and demonstrated, such grounds cannot be taken at the time of oral arguments.

21. As regards the case laws cited, there is no dispute to the propositions laid down. In the case of ***Roop Singh Negi*** (supra), it has been laid down that the charges must be proved. In the instant case, it is found that the charges were indeed proved which is revealed from the Enquiry Report. This Court is unable to accept the proposition that the impugned order of dismissal is not a speaking

order. A bare perusal of the said order of dismissal would show that the disciplinary authority had applied mind and has passed the order. An order need not be extraordinarily elaborate and what is required is that reasons are to be recorded, which have been done. It appears that the disciplinary authority had applied his mind independently before passing the impugned order. A similar approach is also seen from the side of the appellate authority who had rejected the appeal vide order dated 02.10.2024.

22. As noted above, in the oral arguments, certain new grounds were cited which are factual in nature. In a writ proceeding, the adjudication is mainly based on the pleadings and counter-pleadings. The relevant documents are placed on record which requires a proper verification in the affidavit. Unless there are specific pleadings and the adverse party is given an opportunity to meet the same, those cannot be taken into consideration only on the basis of oral argument, more particularly, when such argument is factual in nature. The aspect would have been different if a point of law is argued. However, that is not the case. In this regard, one may gainfully refer to the judgment of the Hon'ble Supreme Court in the case of ***Bharat Singh and Ors. Vs. State of Haryana*** reported in ***(1988) 4 SCC 534*** wherein the following observations have been made:

> "*13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point,*

if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

23. In the conspectus of the aforesaid discussion, this Court is of the considered opinion that no case for interference is made out.

24. The writ petition accordingly stands dismissed.

25. The records be handed over back to the learned State Counsel.

JUDGE

Comparing Assistant