

GAHC010265052025



2026:GAU-AS:2800

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

Case No. : WP(C)/7063/2025

SRI ATUL DEKA
SON OF LAMBADHAR DEKA, RESIDENT OF PUB- DHARAMTUL, PO-
DHARAMTUL, PS- JAGIROD, DIST.- MORIGAON, ASSAM, PIN- 782421

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, HOME
DEPARTMENT, DISPUR, GUWAHATI-06, KAMRUP (M)

2:DIRECTOR OF FIRE AND EMERGENCY SERVICE
HEAD QUARTER
PANBAZAR
GUWAHATI-01

3:DEPUTY DIRECTOR
FIRE AND EMERGENCY SERVICES
ASSAM
PANBAZAR
GUWAHATI-01

4:IN CHARGE
LAKHRA FIRE AND EMERGENCY SERVICE STATION
GUWAHATI- 781034
ASSA

Advocate for the Petitioner : MS B SHARMA, MR D K NATH,MS M DAS

Advocate for the Respondent : GA, ASSAM,

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

ORDER

Date : 19-02-2026

Heard Mr. D.K. Nath, learned counsel for the petitioner. Also heard Mr. J.K. Goswami, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondents.

2. As agreed to by the learned counsel for the parties, the present writ petition was taken up for final consideration and is being disposed of by this order.

3. The petitioner in the present proceeding has assailed an order dated 27-10-2021, passed by the Disciplinary Authority imposing upon him the penalty of removal from service, as well as treating the period of purported absence w.e.f. 30-05-2020 to 11-11-2020 as "leave without pay" by applying the Principle of "No Work, No Pay".

4. The petitioner while serving as a Driver at the Sonari Fire & Emergency Station, came to be placed under suspension vide order dated 30-05-2020, basing on allegations of misconduct emanating against him. Thereafter, the Disciplinary Authority proceeded to issue a show-cause notice dated 29-10-2020 to the petitioner instituting a Departmental Proceeding against him, invoking the provision of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964. At this stage, it is to be noted that the Disciplinary Authority had vide order dated 10-03-2021, revoked the suspension order of the petitioner and had reinstated him, in his service with retrospective effect, i.e. w.e.f. 12-11-2020. The petitioner in his show-cause reply, did not specially deal with the allegations leveled against him. The said reply not being found to be satisfactory, the Disciplinary Authority proceeded to direct for an enquiry in the matter and for the purpose an Enquiry Officer as

well as a Presenting Officer came to be appointed. The petitioner is found to have participated in the said enquiry. The Enquiry Officer after examining the witnesses produced by the Presenting Officer and also upon recording the statement of the petitioner, proceeded to submit his enquiry report on 21-08-2021, *inter alia*, holding that the charges leveled against the petitioner stood established. A copy of the said enquiry report is found to have been served upon the petitioner and he had also submitted his representation thereto.

The Disciplinary Authority, thereafter, on perusal of the enquiry report in the light of the contention made by the petitioner in the representation submitted by him in the matter, proceeded to agree with the findings so recorded by the Enquiry Officer. Basing on the materials coming on record, the Disciplinary Authority vide order dated 27-10-2021 concluded that the petitioner was found to be unfit for service in the Fire & Emergency department. Accordingly, the petitioner was imposed with penalty of removal from service with immediate effect. The Disciplinary Authority with regard to the purported period of absence of the petitioner w.e.f. 30-05-2020 to 11-11-2020 held that the petitioner for the said period would not be entitled to any monetary benefits and the period would be treated as "leave without pay".

Being aggrieved, the petitioner had preferred an appeal before the appellate authority and therein had taken a plea of suffering from mental ailments. The appellate authority on consideration of the appeal so filed by the petitioner proceeded vide order dated 14-11-2022 to reject the said appeal and thereby, upheld the penalty of removal from service as imposed upon the petitioner by the Disciplinary Authority. The Appellate

Authority with regard to the plea of mental ailments taken by the petitioner had concluded basing on the materials brought on record that the petitioner had received treatment in this connection only w.e.f. 28-12-2020, however, the misconduct alleged against the petitioner had occasioned much prior thereto.

Being aggrieved with the penalty imposed upon him as well as the order of the Appellate Authority, the petitioner has instituted the present proceeding.

5. Mr. D.K. Nath, learned counsel for the petitioner after reiterating the facts noticed, hereinabove, has submitted that the petitioner at the relevant period of time was suffering from mental ailments and accordingly, he was not in a position to take requisite steps for defending himself before the Enquiry Officer. Mr. Nath submits that the petitioner because of his condition was also prevented from cross-examining the witnesses as produced by the Presenting Officer in the enquiry. Mr. Nath by referring to the orders passed by the Disciplinary Authority has submitted that the said order of penalty as imposed upon the petitioner of removal from service is clearly disproportionate to the allegations leveled against the petitioner in the matter and accordingly, this Court would require to interfere with the said penalty and direct the Disciplinary Authority to impose any other penalty which would not have the effect of termination of service of the petitioner. Mr. Nath also by referring to the order passed by the Disciplinary Authority has submitted that the Disciplinary Authority erroneously has construed that the petitioner was unauthorisedly absent during the period w.e.f. 30-05-2020 to 11-11-2020, inasmuch as, the petitioner was during the said period placed under suspension. Accordingly, Mr. Nath submits that for the said period the petitioner would be entitled to his due

remuneration. Mr. Nath has also clarified that the petitioner during the period of suspension was not paid any subsistence allowance.

6. Per contra, Mr. J.K. Goswami, learned Addl. Sr. Govt. Advocate, Assam submits that although an affidavit in the matter has not filed by the respondent authority, he is furnishing the original records of the Departmental Proceeding instituted against the petitioner. Mr. Goswami submits that the petitioner, herein, being a member of a disciplined force and being engaged as a Driver in Fire and Emergency service, his conduct is clearly unbecoming of a member of the disciplined force. Mr. Goswami submits that the allegation leveled against the petitioner vide show-cause notice dated 29-10-2020 was literally admitted to by the petitioner in his show-cause reply as well as in the statement made by him during the enquiry. Mr. Goswami by taking this Court through the records, as produced by him, has submitted that the departmental witnesses who had deposed during the enquiry had established the misconduct committed by the petitioner in the matter and the petitioner although was granted an opportunity to cross-examine such witnesses, the petitioner categorically declined the same. Mr. Goswami further submits that the petitioner has not contended of any prejudice being caused to him in effectively defending the charge framed against him. Mr. Goswami by referring to the enquiry report has submitted that the Enquiry Officer after taking into consideration all relevant factors had proceeded to conclude that the petitioner, herein, was guilty of the charges so framed against him vide the show-cause notice dated 29-10-2020. Mr. Goswami submits that although the petitioner was held to be unauthorisedly absent for the period w.e.f. 30-05-2020 to 11-11-2020, during the said period the petitioner was

under order of suspension.

7. Mr. Goswami in the above premises has submitted that there being no procedural error highlighted in the matter by the petitioner and the conclusions drawn by the Enquiry Officer towards holding the charges leveled against the petitioner to have been established being so based on the materials coming on record during the enquiry, the Disciplinary Authority having concurred with the findings of the Enquiry Officer, the penalty imposed upon the petitioner would not mandate an interference from this Court.

8. I have heard the learned counsel for the parties and have also perused the materials available on record.

9. The petitioner vide a show-cause notice dated 29-10-2020 was charged as follows:-

“While you were posted at Sonari Fire & Emergency Services Station, the In-charge of Sonari Fire & Emergency Services Station reported that you are very Indiscipline and habitual alcoholic. On 27/05/2020 you were creating nuisance under influence of liquor and urinated inside the barrack while all staffs were in the barrack. On 28/05/2020 you were found positive in alcohol test done at Sub Divisional Civil Hospital, Sonari, Charaideo. Accordingly, you were produced in O.R. on 30/05/2020 and heard you in person where you were found guilty. So, you were placed under suspension w.e.f. 30/05/2020 PM for your indiscipline conduct. Secondly, you are remaining unauthorised absence from duty w.e.f. 31/05/2020 to till date.

Earlier, D/P No. 16/2018 was drawn up against you for your gross indiscipline conduct which was disposed off by awarding stoppage of 2 (two) Annual Increment with Cumulative effect. Inspite of that you have not try to reform yourself.”

10. A perusal of the said show-cause notice would reveal that the allegations leveled

against the petitioner was that he was a habitually indisciplined personnel and was addicted to alcohol. It was further alleged that on 27-05-2020, the petitioner had created a nuisance under the influence of liquor and had urinated inside the barrack while all staff were present. It is also alleged that on 28-05-2020, the petitioner being found to be in an intoxicated condition was sent to the Sub-Divisional Civil Hospital, Sonari at Charaideo for examination and the same was confirmed from the result of his blood test. Further allegation levelled against the petitioner is that he had unauthorisedly remained absent from duty w.e.f. 31-05-2020. The show-cause also refers to earlier proceedings drawn against the petitioner in the form of DP No. 16/2018 and award of penalty of stoppage of 02 (two) annual increments with cumulative effect upon him. The allegations reveal that inspite of the earlier proceeding instituted against the petitioner, the petitioner had not reformed himself. The petitioner is found to have submitted his show-cause reply in the matter and therein had contended that he would never cause any negligence and/ or commit any misconduct during his duty hours and if he was found to commit such misconduct he would be liable to be terminated. The Disciplinary Authority had not taken cognizance of the admission made by the petitioner in his show-cause reply and had proceeded to direct for an enquiry in the matter. Accordingly, an Enquiry Officer and a Presenting Officer came to be appointed.

11. This Court has perused the deposition made by the departmental witnesses in the matter and finds that the departmental witnesses had brought on record materials towards establishing the allegations levelled against the petitioner. The petitioner is found to have been given the opportunity to cross-examine the departmental witnesses,

however, the petitioner had declined to do so. Thereafter, the statement of the petitioner was recorded, wherein, he admitted to the allegations levelled against him. Basing on the said materials coming on record, the Enquiry Officer vide the report dated 21-08-2021 proceeded to hold the petitioner guilty of the charges so framed against him. The Enquiry Officer in his findings had contended that the allegations leveled against the petitioner was established by the evidences coming on record. However, the Enquiry Officer had not returned any finding with regard to the allegation of the petitioner remaining unauthorisedly absent. A copy of the said enquiry report was forwarded to the petitioner vide communication dated 07-09-2021 and the petitioner is found to have submitted a representation, thereon.

12. The Disciplinary Authority, thereafter, on consideration of the enquiry report in the light of the contention raised by the petitioner in his representation, had proceeded to consider the matter for determining the penalty that would now be required to be imposed upon the petitioner. It is to be noted that the Disciplinary Authority had on perusal of the findings of the Enquiry Officer concurred with the same. Having concurred with the findings of the Enquiry Officer, the Disciplinary Authority proceeded to draw a conclusion to the effect that the petitioner was found to be unfit for service in Fire & Emergency department where he would be required to be available 24 hours in alert and sound mind to save the property of the public from fire and disaster. Basing on the said conclusion, the Disciplinary Authority proceeded to impose upon the petitioner the penalty of removal from service with immediate effect. Further the period of purported absence of the petitioner w.e.f. 30-05-2020 to 11-11-2020, he was held to be not entitled to any

monetary benefits by invoking the Principle of "No Work No Pay". The petitioner, thereafter, preferred an appeal in the matter before the Appellate Authority and therein had taken a plea of suffering from mental ailments since 2018. The Appellate Authority on consideration of the contemporaneous records as well as the contentions raised by the petitioner in his appeal along with the documents so annexed to the appeal memo, proceeded vide order dated 14-11-2022, to reject the appeal preferred by the petitioner and thereby upheld the order of the Disciplinary Authority.

13. This Court on perusal of the materials on record finds that the petitioner has not highlighted any procedural impropriety committed by the authorities in conduct of the proceeding against him.

14. This Court has perused the findings so recorded by the Enquiry Officer and has found that the findings of the Enquiry Officer is in tune with the evidence adduced in the matter by the departmental witnesses as well as the statement of the petitioner, herein, and no perversity is found with regard to such findings. This Court, thereafter, has perused the order dated 27-10-2021, passed by the Disciplinary Authority and finds that the Disciplinary Authority had concurred with the findings of the Enquiry Officer and there is no perversity found with regard to the conclusion arrived at in the matter by the Disciplinary Authority. The penalty that is to be imposed being one which is in the realm of the Disciplinary Authority, this Court does not find that the penalty of removal from service imposed upon the petitioner to be disproportionate to the allegations established against the petitioner. This Court notices that the petitioner is a member of a disciplined force and the conduct that was alleged and established against the petitioner naturally

renders the petitioner unfit to continue in a disciplined force like Fire & Emergency service. Accordingly, the punishment of removal from service as imposed upon the petitioner is found to be proportionate to the allegation established against the petitioner and the same would not call for any interference.

15. Having drawn the said conclusion, this Court has perused the order dated 14-11-2022 passed by the Appellate Authority. This Court finds that in the appeal, the petitioner has taken a plea of suffering from mental ailments. However, such plea is not found to have been taken by the petitioner during the conduct of the Departmental Enquiry against him. There is no materials brought on record by the petitioner to reveal that he had approached the Enquiry Officer and the Disciplinary Authority raising a plea that he was suffering from mental ailments and was accordingly not in a position to effectively defend the charges levelled against him. This Court finds that the Appellate Authority had rightly appreciated the records in the matter and had come to a conclusion that the petitioner during the time when he had committed the misconduct so alleged against him was not found to be suffering from any mental ailments. This Court from the records produced also finds that subsequently a certificate was issued by the Doctors attending upon the petitioner that the petitioner was fit from all ailments. The above being the position, the petitioner also being found to be an alcohol dependent person, the conduct of the petitioner, accordingly, is not found to be in connosance with that required of a person belonging to a disciplined force. Accordingly, this Court does not find any error with the conclusion drawn by the Appellate Authority in the matter and accordingly, the order dated 14-11-2022 would also not mandate any interference.

16. Having drawn the above conclusions, this Court would now examine the decision of the Disciplinary Authority with regard to the period of purported absence of the petitioner w.e.f. 30-05-2020 to 11-11-2020. This Court finds that the petitioner was placed under suspension vide order dated 30-05-2020 and he continued to remain under suspension. A person under suspension cannot be said to be unauthorizedly absent. The petitioner's suspension was revoked vide an order dated 10-03-2021 with retrospective effect, i.e. w.e.f. 12-11-2020. Accordingly, the petitioner, for the period from 30-05-2020 to 11-11-2020 cannot be held to be unauthorizedly absent. Accordingly, the said period of suspension would now be mandated to be regularized by the Disciplinary Authority by passing a speaking order in the matter.

17. The Disciplinary Authority would now pass a speaking order towards regulating the said period of suspension of the petitioner w.e.f. 30-05-2020 to 11-11-2020 within a period of 03 (three) months from the date of receipt of a certified copy of this order. The Disciplinary Authority while passing the speaking order shall also take note of the submission made by the learned counsel for the petitioner that the petitioner during the period of suspension was not authorized with any subsistence allowance. Subject to the direction with regard to the manner in which the period of absence of the petitioner w.e.f. 30-05-2020 to 11-11-2020 is to be so construed, the penalty as imposed upon the petitioner by the Disciplinary Authority vide the order dated 27-10-2021, as well as the order dated 14-11-2022 passed by the Appellate Authority are not interfered with.

18. In view of the above, the present writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

19. The original records so produced by Mr. J.K. Goswami, learned Addl. Sr. Govt. Advocate, Assam be returned forthwith.

JUDGE

Comparing Assistant