

GAHC010018822016



undefined

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

Case No. : WP(C)/3721/2016

BIJIT BARUAH
S/O BIJAY BARUAH, R/O NAPHUK, P.O. SUFFRY, P.S. SONARI, DIST-
SIBASAGAR, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY. MINISTRY OF HOME, NEW DELHI

2:THE SPECIAL DIRECTOR GENERAL
OF C.R.P.F.
9TH MILE
GROUP CENTRE
ASSAM

3:THE DY. INSPECTOR GENERAL OF POLICE
GROUP CENTRE
CRPF
SALBAGAN
AGARTALA
TRIPURA-799012

4:THE COMMANDANT GROUP CENTRE
CRPF
SALBAGAN
AGARTALA
TRIPURA-79901

Advocate for the Petitioner : MS.S GOHAIN, MR.Y S MANNAN,MS.R AKHTAR

Advocate for the Respondent : ASSTT.S.G.I., C.G.C.,MRM R ADHIKARI

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT & ORDER (ORAL)

Date : 10-12-2024

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. M.R. Adhikari, learned CGC for all the respondents.

2. The challenge made in this writ petition is to the impugned order dated 18.08.2015, passed by the Commandant, Group Centre, CRPF, Agartala, Tripura, whereby the petitioner has been imposed with the penalty of removal from service and the order dated 11.12.2015 passed by the Appellate authority, i.e. DIGP, GC CRPF, Agartala, upholding the penalty imposed as well as order dated 11.03.2016 passed by the Inspector General of Police, Tripura Sector Headquarters (CRPF), Agartala, Tripura, by which the revision petition of the petitioner has been rejected.

3. The brief facts of the case are that the petitioner was appointed as peon in the Central Reserve Police Force (in short 'the CRPF') vide letter dated 12.05.2005, in the office of the Inspector General of Police (Operations), NES, CRPF Jorhat, Assam. Accordingly, the petitioner joined his service. The petitioner was transferred and posted at the Group Centre, CRPF, Salbagan in Agartala, Tripura in the year 2013 and continue to serve at the said place of posting at Agartala. While the petitioner was serving, a memorandum of charges was issued on 10.02.2015, which are as follows:-

“1. With regard to Force No. 056140035 Constable/Peon Bijit Barua, deployed at Group Centre, Central Reserve Police Force, Salbagan, Agartala, a proposal for the undersigned to inquiry into the charges against him under the Rule 27 of the Central Reserve Police Force Rules, 1955. Being a member of the force he disrespected the orders/negligence of his duties/other negligence or indictment of misconducts related to this inquiry was proposed. The detailed list of the charges is attached as Provision-I. Being a member of the force he disrespected certain things/ negligence of duties/ negligence in performance of duty or any other misconduct description of accusation of the charges attached as Provision - II

List of documents and list of witnesses on the basis of charges are proposed to be proved as Provision - III and IV.

2. Force No. 056140035 Constable/Peon Bijit Barua is being directed that when he receives the Letter of Memorandum he should reply within 15 days in his support and present some witness and also reply to the authority as whether to hear him personally or not. After providing of the charges of the deploy as well as a copy of it served to him and after giving a minimum time of 48 hours the inquiry will be start.

3. It has been informed to Constable/Peon Bijit Barua Force No. 056140035, that if he himself is not present before the Investigating Officer or otherwise, Rule 27 of the Central Reserve Police Force Rules, 1955, would proceed in accordance to proper Rules and Regulations. If he refuses to follow obediently the order/orders, then it will be considered that according to the arrangements given under this Rule than it would not be considered as reasonable behaviour for inquiry. And in such a situation, an Ex-parte inquiry will be conducted against Constable/Peon Bijit Barua.

4. Under Rule 20 of the Central Civil Service (Conducts), 1964, it was specified that in accordance to the said Rules no Govt. employee, in support of his service, will influence any senior authorities by political power or by any other untoward means. If it was found that any person submits any representation during the investigation, then it will be assumed that Force No. 056140035 Constable/Peon Bijit Barua is known to this representative and it was done on his request. Further under the Rule 20 of the Central Civil Service (Conducts), 1964 an enquiry will be conducted against him in this regard.

5. Kindly acknowledge the Memorandum."

4. The details of the charge against the petitioner was also annexed, which are quoted here-in-below:

"Details of the charges against the Constable/Peon Sri Bijit Barua Force No. 056140035 of Group Centre, Central Reserve Police Force (CRPF) Salbagan Agartala.

HEADING-1

That Force No.056140035 Constable/Peon Bijit Barua deployed in Group Centre CRPF Salbagan, Agartala being a member of CRPF has been charged under the CRPF Act, 1949 under section 11(1) for disrespecting of orders/negligence of own duties/other negligence or misconduct behaviour, above all he remained absent from duties w.e.f dated 17.12.2014 to 19.12.2014, 02.01.2015, 07.01.2015 to 10.01.2015 and 20.01.2015 without any sanction or permission from the competent authority which is regarded as violation of Rules and Regulations of CRPF Act, 1949. Accordingly, he is punishable for offence under Section 11(1) read with Rule 27 of the Central Reserve Police Force Rules, 1955.

HEADING-2

That Force No. 056140035 constable /peon Bijit Barua of Group Centre, Salbagan, Agartala being a member duly governed under section 11(1) of the CRPF act, 1949 has neglected his own duties /disrespected of orders/ misconduct behaviour shown. Unauthorised absence from duties without proper permission from the competent authority for several times. Even after, offering him several opportunities and imposing the minor penalty to reform him, but he acts against the good arrangements and discipline of the force. These are against of Section 11(1) the CRPF Act, 1949 and the provisions of Rule 27 of the Central Reserve Police Force Rules, 1955.”

5. The description of the charge against the petitioner is also annexed, which are quoted here-in-below:

“Description of the charges against Constable/Peon Bijit Barua, Force No. 056140035 deployed at Group Centre, Central Reserve Police Force, Salbagan, Agartala in support of accusation for disrespect and indiscipline.

HEADING-1

According to the Central Reserve Police Force Act, 1949, the Central Civil Service (Conduct) Act, 1964, Constable/Peon Bijit Barua, Force No. 056140035, being a member of the force is bound by his duties that he must be disciplined, dedicated to truth, and perform proper conduct, present himself as high class which will be an example for others. In fact he was in leave for total 14 days due to some emergency w.e.f. 01.12.2014 to 16.12.2014 and therefore on 17.12.2014 early morning he have to give his attendance. On 17.12.2014 at around 10.30A.M he arrived in the office but again about 11.30 A.M he left without taking permission from the competent authority, above all, he remained absent till 19.12.2014 from the office. Again on 02.01.2015 it has been found that he remained absent in the office and not in the range of any

phone connection because he switched off his mobile phone. And on 03.01.2015 he came to the office, but he was not in his normal condition. Due to this, a medical check-up was done in the hospital by the Group Centre, Central Reserve Police Force, Salbagan, Agartala. After the medical examination it was confirmed that he was an alcoholic. Again, he remained unauthorised absence in the office w.e.f 07.01.2015 to 10.01.2015. Besides these on 20.01.2015 he was present in the office but after some time, he left by his own choice without informing or any permission from the competent authority. He remained absent on 27.01.2015 after holidays on 25.01.2015(Sunday) and 26.01.2015(G.H)which is against the orders of the Police Force and committed misconducts which impacted the good behaviour and discipline of the force.

HEADING-2

Constable/Peon Bijit Barua, Force No. 056140035 of this Group Centre, deployed at Wages Allowance Branch from 07.07.2013. That according to the Central Reserve Police Force Act, 1949, the Central Reserve Police Force Rules, 1955 and the Central Civil Service (Conduct) Act, 1964 being a Force member, he was bound by the duty to maintain discipline, dedicated to truth, and performs proper conduct, present as high class which will be an example for others. But again and again, he remained absent from his duties and was drunk during working hours and was found to be an alcoholic on medical examination. He neglected his duties. These are against the Rules and discipline of the force.

It is a punishable offence under section 11(1) of the Central Reserve Police Force Act, 1949, read with the provisions of Rule 27 of the Central Reserve Police Force Rules, 1955. It has been proved from the Service Records of the employee's punishments that the employee is not only a person of habitual of indiscipline but also disrespect the orders, neglect his own duties and also irresponsible.

Following are the descriptions of the offences committed by Constable/Peon Bijit Barua.

- 1. On 01.08.2013 he was absent from his duty for a day without taking any sanctioned permission from the competent authority and also took a half day leave without being a permanent salary holder,*
- 2. In spite of consumption of 15 days leave, again he remained absent for 2days dated on 27.8.2013 to 28.8.2013 and also took two half day leaves without being a permanent salary holder.*
- 3. Suddenly he was again absent from his duty for 9 days from 04.11.2013 to*

12.11.2013. So that as a result of which he was in detention for 7 days in orderly room.

4. The punishment of detention of 7 days was given in orderly room because of sudden absence from the office on 05.07.2014.

5. The punishment of detention of 7days was given in orderly room because of sudden absence from the office on 26.07.2014.

6. On 11.10.2014 a letter of caveat was served in the orderly room for sudden absence from the office.

7. He was punished by his earlier office i.e., the Vice Inspector General of Police (running), Jorhat for the order No. P.8-2/2011 runner-2 dated on 05.01.2012 according to which a departmental enquiry was done for unauthorised absence from his duty and for the offence of being an alcoholic, after this he was engaged as quarter guard.

8. The Deputy Inspector General of Police, Jorhat ordered No. P.8-4/2013-runner-2 dated on 24/10/2013, according to which a departmental enquiry was done for the offence of unauthorised absence from his duty under it, he was punished by stoppage of increment and stoppage of 165days extra ordinary leave (EOL)."

6. After completion of the disciplinary proceedings, the Commandant, Group Centre, CRPF, Agartala, Tripura passed the impugned order dated 18.08.2015, whereby the petitioner was imposed with the penalty of removal from service. The appeal and the revision filed by the petitioner before the Appellate authority and revision authority , i.e. DIGP, GC CRPF, Agartala, and Inspector General of Police, Tripura Sector Headquarters (CRPF), Agartala, Tripura, stood rejected vide orders dated 11.12.2015 11.03.2016.

7. Mr. Y.S. Mannan, learned counsel for the petitioner, submits that no cross-examination was allowed during the inquiry nor any defence assistant was appointed and after the conclusion of the inquiry, the copy of the inquiry report was not furnished to the petitioner. Therefore, no effective opportunity of hearing has been provided before imposing the impugned penalty of removal from the service to the petitioner and as such, entire departmental proceeding is vitiated. He submits that the allegation is of an unauthorized

absence from duty only for 8 (eight) days and there was no disobedience or negligence on the part of the petitioner, as the petitioner was under medical treatment for depression. Although the petitioner has pleaded guilty by admitting that he was absent for eight (8) days only, same was due to medical treatment for fear of persecution and thereafter sought for forgiveness before the respondent authorities, the imposition of penalty of removal from service is shockingly disproportionate. Therefore, the penalty imposed may be interfered with, as no negligence or disobedience or misconduct can be attributed to the petitioner. He further submits that the entire departmental enquiry does not reveal anything that has been projected by the petitioner, as the petitioner has clearly stated that he was absent from duty for 8 (eight) day, as he was suffering mentally due to personal problems. The problem was so grave that the wife of the petitioner eloped with some other person on account of which the petitioner had suffered mental unsoundness for certain period of time and had to resort to psychiatric treatment. The petitioner in clear terms had given an undertaking that he has now recovered from his psychiatric disease and alcoholism and would discharge his duty sincerely and satisfactorily but the same has not been considered. Therefore, the impugned orders dated 18.08.2015, 11.12.2015 and 11.03.2016 be interfered with and set aside and the petitioner may be allowed to continue in the service as peon.

8. On the other hand, Mr. M.R. Adhikari, learned CGC, by referring to the affidavit-in-opposition, filed by the respondent authorities submits that the petitioner has been habitual of overstaying from leave with his own decision to leave office without prior permission or sanction of leave from the competent authority. During the ten years of his service, the petitioner overstayed almost thirty times on leave, which were later regularized as leave, half pay with no leave salary and confinement to lines with forfeiture of pay and allowances. A departmental enquiry was also initiated against him while he was posted in the office of the Inspector General of Police (Operation), Jorhat, Assam, during 2012. However, taking a lenient view, the disciplinary authority had awarded him a penalty of twenty (20) days quarter guard vide order dated 05.01.2012. Even thereafter, the petitioner has deserted the camp and overstayed without prior permission or sanction for which departmental inquiry was conducted against him during 2013, while he was posted in the office of the Inspector General of Police (Operation), Jorhat in Assam and was awarded penalty of stoppage of

annual increment for three years without cumulative effect vide order dated 24.01.2013. The petitioner has never bothered to amend or reform himself and again in the present case, he has remained unauthorisedly absent without permission or sanction of leave from the competent authority. Thereafter, an inquiry was conducted by providing him ample opportunity of hearing in accordance with law.

9. Mr. Adhikari, the learned CGC submits that during the inquiry, the statement of the prosecution witnesses were recorded by the inquiry officer in the presence of the petitioner and keeping in view of the Principle of Natural Justice, several opportunities were given to the petitioner to cross-examine the prosecution witnesses at every stage of inquiry. But the petitioner neither cross-examined any prosecution witness nor submitted any defence/documents to prove his innocence. The copies of the statement/questionnaires of all the prosecution witnesses were furnished to the petitioner at the time of recording of the statements by the inquiry officer. After the completion of the inquiry by the inquiry officer, a final report was submitted before the competent authority and vide letter dated 06.07.2015, a copy of the inquiry report was handed over to the petitioner which he had duly received, with a direction to submit his reply in writing or orally, within fifteen (15) days. In the reply, the petitioner has stated that his relation with his wife was not good due to which he was mentally upset, took liquor and remained absent from duty, without permission from any officer. The petitioner has admitted his guilt with due commitment that he would not repeat such mistakes in future. Therefore, the departmental proceedings has been properly conducted by providing ample opportunity to the petitioner in accordance with the applicable Rules and law and as such, the grounds of challenge of the departmental inquiry and the consequential impugned orders deserves to be rejected as the grounds put forward by the petitioner are contrary to the records. Therefore, the writ petition is liable to be dismissed.

10. I have considered the submissions of learned counsel for the parties and also perused the records.

11. On perusal of the records, it reveals that the petitioner remained absent from duty w.e.f. 17/12/2014 to 19/12/2014 and thereafter on 02/01/2015, 07/01/2015 to 10/01/2015

and on 20/01/2015 without prior permission/sanction of leave from the competent authority, which is considered against the good order and discipline of the force and also misconduct and punishable offence under the section 11(1) of CRPF Act 1949 and Rule-27 of CRPF Rules, 1955. He appears to be habit of overstaying from leave without prior permission or sanction from competent authority despite of giving him several opportunities to change his habit of said conduct.

12. The petitioner remained unauthorisedly absent from duty. When he reported on 03/01/2015, he was alleged to be found in inebriated condition and was medically examined and found under influence of Alcohol. He was again absent from office w.e.f. 07/01/2015 to 10/01/2015 without prior permission or sanction of leave from the competent authority. Further, on 20/01/2015, he left office without prior permission of competent authority after some time he reported in office. Therefore, the petitioner was found totally indiscipline and irresponsible towards official duties and also habitual of absenting/over staying from leave which is against the good order, discipline of the force. In view of his repeated act of indiscipline a departmental enquiry was initiated against him and disciplinary proceedings conducted.

13. Records reveals that a copy of the Enquiry Report was furnished to the petitioner vide dated 06/07/2015 with a direction to submit his written/oral reply or in person if he has something to state within 15 days from the date of receipt of the letter. It is seen that the petitioner submitted reply on 14/07/2015 stating that his relation with his wife was not good and hence he was mentally depressed and drank liquor and remained absent from duty without prior permission of his officers, which clearly show that he had admitted his guilt and stated that he will not repeat such lapses again.

14. As noted above, a copy of the Inquiry report was furnished to the petitioner on 06.07.2015 with a direction to submits his reply within fifteen days. The record further reveals that the petitioner had submitted an application stating that due to problem created by his

wife, he suffered mentally upset which led to consumption of liquor and resultantly absent from duty without permission from the competent authority. The petitioner accepted his guilt with due commitment that he would not repeat such mistakes in future. In other words, he had tendered apology and sought for forgiveness. Therefore, the ground of non-furnishing of the copy of the inquiry report, as projected by the petitioner falls flat. On further perusal of the record reveals that an opportunity of cross-examination to the prosecution witnesses which were examined in the presence of the petitioner was also provided.

15. Considering the above facts, which reveals from the record, I am of the view that the departmental proceedings cannot be said to have been vitiated. It is noticed that the petitioner has accepted and admitted his guilt of unauthorized absence for eight (8) days which may be due to his mental upset. However, such grounds of having mental upset would not by itself a ground to interfere with the departmental proceedings, which has been conducted fairly by providing an opportunity of hearing to the petitioner.

16. Having viewed above, considering the problems, the petitioner was facing at the relevant point of time and which is of an unauthorized absence from duty for 8 (eight) days and also considering the age of the petitioner at the relevant point of time, the authorities could have imposed lesser penalty. However, this Court while exercising writ jurisdiction does not sit as an Appellate Authority against the disciplinary authority. Therefore, unless the departmental proceedings is shown clearly perverse or contrary to the law and vitiated, the Writ Court would loath to interfere with the department proceedings.

17. From the record, it is found that the petitioner had admitted to his unauthorised absence from duty as well as on his overstay of leave. During the enquiry proceedings, he was given an opportunity to cross-examine the prosecution witnesses and after completion of enquiry, a copy of the inquiry report was furnished to the petitioner. He has also admitted of having unauthorisedly absent for 8 (eight) days with a plea that he had been absent from the duty due to his domestic problems, as the wife of the petitioner had eloped with some other person, which led him to depression for which he was under medical treatment.

18. Notwithstanding the admission made and for the fact that the petitioner belonged to a disciplined force like the CRPF, the charges of unauthorized absence which is stood proved would amount to misconduct on his part. The request made by the petitioner that such mistake would not be repeated, would not be a answer to the breach of discipline on his part. Undoubtedly, discipline is required to be maintained at all costs in a force like the CRPF. Records also suggest that departmental proceedings were also drawn up against the petitioner earlier for having remain unauthorisedly absent from duty and the said proceedings having been concluded by awarding punishment of stoppage of increments for three years without cumulative effect. The conclusion of the Disciplinary Authority and the Appellate Authority as well as the Revisional Authority that the petitioner is guilty of misconduct and indiscipline, cannot be found fault.

19. Having regard to the proven misconduct on the part of the petitioner and the punishment meted out to him, under the provisions of the relevant Act and Rules, the punishment of removal from service, in my view do not suffer from any infirmity or the vice of disproportionality and it does not shock the judicial conscience of the Court. Neither the disciplinary proceeding suffered from any procedural infirmity nor any allegation is made in that regard. Rather, the petitioner has himself admitted to the charges made against him.

20. For the foregoing reasons, in my considered view, no interference is called for to the impugned orders dated 18.08.2015, 11.12.2015 and 11.03.2016, by which a penalty of removal from service of the petitioner has been imposed and appeal and revision of the petitioner have been rejected. I find no merit in the writ petition.

21. Accordingly, the same is dismissed. No order as to cost(s).

JUDGE

Comparing Assistant