

GAHC010017642014



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

Case No. : WP(C)/5744/2014

RANJIT DOLEY
S/O SRI BHUMIDHAR DOLEY, R/O SILAPATHER NATUN MISING GOAN, P.O.
SILAPATHER, P.S. SILAPATHER, DIST- DHEMAJI, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS
NOTICE THROUGH HE SECY. DEPTT. OF HOME AFFAIRS, GOVT. OF INDIA,
NORTH BLOCK, NEW DELHI-01

2:THE DIRECTOR OF INDO TIBETAN BORDER POLICE FORCE
G.G.O. COMPLEX
LODHI ROAD
NEW DELHI
BLOCK NO.-3

3:THE DY. INSPECTOR GENERAL
SHQ
ITBP
P.O. NATIONAL POWER GRID CORPORATION CAMPUS
CHARDUAL
TEZPUR
DIST- TEZPUR
ASSAM

4:THE COMMANDANT
12TH BATTALION
ITBP
P.O. MATLI
DIST- UTTARAKASHI
UTTARAKHAN

Advocate for the Petitioner : K. Gogoi

Advocate for the Respondent : C.G.C.

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

Judgment & Order(Oral)

Date : 11.06.2024

Heard Ms. K. Gogoi, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC representing the respondents.

2. The present proceeding has been instituted by the petitioner, presenting a challenge to an order dated 20.12.2011, by which on the ground of unauthorized absence, he was imposed the penalty of removal from service.

3. As projected in the writ petition, the petitioner contended that he was enrolled as a Constable 12th Batallion, Indo-Tibetan Boarder Police (ITBP), as CT/GD and had served at various locations all over the Country. It is contended that the petitioner was initially enrolled on 03.07.2007. While being posted at Uttarakhand, the petitioner had proceeded on leave for 60(sixty) days w.e.f. 19.07.2011, however, it is contended that during the period of leave, he had developed serious illness and was detected to be a

diabetic for which he could not rejoin his services on completion of the leave. The petitioner contends that he was treated initially at the Silapather, Public Health Centre and thereafter, was referred to the Assam Medical College Hospital, Dibrugarh for further treatment.

It is the categorical contention of the petitioner that he was under continuous treatment since 2011. On receipt of a Fitness Certificate, the petitioner, proceeded to join back at his place of posting in Uttarakhand on 25.09.2013, and preferred a representation praying for allowing him to resume his services. The respondent authorities did not allow him to resume his services and his appeal as preferred in this connection was also rejected vide an order dated 19.10.2013.

It is the contention of the petitioner in the writ petition that he was not served with any show cause notice and also was not served with the order of termination of his services or, any other order in connection with any Disciplinary proceeding initiated against him. It is contended that the petitioner filed an application for his resumption in service along with the medical documents justifying the period of his absence before the Director, ITBP, however, the same not being considered, he has approached this Court by way of instituting the present proceeding assailing the order of termination with a further prayer for allowing him to resume his services.

4. The learned counsel for the petitioner, Ms. K. Gogoi has reiterated the facts as noticed hereinabove and has contended that the order of penalty of

termination had come to the knowledge of the petitioner only on 25.09.2013 and as such the rejection of his appeal on the ground that the same was so instituted with a delay is clearly perverse. It is also contended that the petitioner having been imposed with a penalty of removal from service without a proceeding being so initiated against him, the said order of removal stands vitiated and this Court is now required to interfere with the same with further directions to the respondent authorities to allow him to resume his services with all consequential benefits.

5. Ms. A. Gayan, learned CGC appearing for the respondents has by referring to the affidavit filed in the matter by the respondents has contended that the petitioner was permitted to proceed on 15(fifteen) days Casual leave w.e.f. 19.07.2011 with specific direction to report back to the Battalion Headquarters on expiry of the period of said leave on 05.08.2011 (AN). It is contended that the petitioner did not resume in his service in terms of the orders issued to him while granting Casual leave of 15(fifteen) days. The petitioner not joining his services, it was contended that communications were issued to the petitioner by registered post at his home address with a direction to report back to the battalion HQrs immediately and it was also noted therein that in the event the petitioner did not join back, he would be subjected to Disciplinary action.

6. As the petitioner had not reported back to his duties, it is contended by the learned counsel for the respondents that an Apprehension Roll under the provisions of Section 73 of the Indo-Tibetan Border Police Force Act,

1992, was sent to the Superintendent of Police, Dhemaji, vide registered letter dated 16.09.2011 with a request to apprehend the petitioner and hand him over to the 12th Battalion, ITBP. It is contended that the petitioner was not apprehended by the Civil Police nor the petitioner joined back the 12th Battalion, ITBP.

7. The said conduct of the petitioner led to institution of a Court of enquiry under the provisions of Section 74 of the said Act of 1992 vide an order dated 08.10.2011. Basing on the recommendations of the Court of enquiry, the petitioner was declared as "DESERTER" w.e.f. 06.08.2011 (FN) vide an order dated 31.10.2011. A copy of the said order dated 31.10.2011 was contended by the learned counsel for the respondents to have been sent to the petitioner as well as to his father by registered post, however, in spite of the said developments also, the petitioner did not resume back in his service.

8. Accordingly, a show cause Notice under the provisions of Rule 20 read with Rule 17 of the ITBPF Rules, 1994 was issued vide a notice dated 22.11.2011 through registered post and therein also, it was directed that in the event the petitioner fails to join back, it would be presumed that he is not interested to serve in the ITBP force and he would be removed from his services. It is contended that the petitioner had not responded to the Show cause Notice dated 20.11.2011 and accordingly, the competent authority reached a conclusion that the petitioner herein was deliberately absenting himself from duty without permission from the competent authority and

therefore, was not a fit person to be retained in service. Basing on the said conclusion, vide an order dated 20.12.2011; the petitioner came to be imposed with the penalty of removal from service.

9. It is contended that after the removal of the petitioner from his service on 20.12.2011, he has submitted an application in the matter on 25.09.2013, after a period of around 1(one) years and 9(nine) months, wherein he had contended that he could not rejoin his services due to his ailments and acute mental disorder. The said application of the petitioner, dated 25.09.2013 was considered and vide an OM dated 19.10.2013, the same was rejected holding that there was no provision to the IBBP Rules to consider such application after expiry of 90(ninety) days from the date of issuance of the order dated 20.12.2011. It is contended that the petitioner, thereafter, had preferred an appeal in the matter, which was again rejected vide the OM dated 08.01.2014. Accordingly, on the basis of the conduct as evident from the disclosures as made in the affidavit filed by the respondents, Ms. A. Gayan, learned CGC has submitted that this Court would be pleased to dismiss the writ petition.

10. I have considered the submissions made by the learned counsel appearing for the parties and also perused the materials brought on record.

11. The petitioner has not disputed the allegation leveled against him that he was on unauthorized absence w.e.f. 05.08.2011. The petitioner had also not filed any rejoinder in the matter towards disputing the contentions and

the materials brought on record by the respondents by way of filing an affidavit-in-opposition. The learned counsel for the petitioner has only contended that on account of the fact that the petitioner was unwell and under treatment initially at Silapather PHC and thereafter, at the Assam Medical College Hospital, Dibrugarh, he was not in a position to resume his services. It is further contended by the learned counsel for the petitioner that on regaining fitness, the petitioner had resumed his services at Uttarakhand on 25.09.2013; however, he was not permitted to do so. The learned counsel for the petitioner, in support of the ailments suffered by the petitioner during the period in question has brought on record certain medical documents.

12. A perusal of the medical certificates as well as prescriptions brought on record would show that the petitioner was found to have been suffering from diabetes; however, the said certificates do not disclose that the petitioner was not in a condition to move and/or was required to be hospitalized during the period of his absence. It is to be noted that barring the Blood Biochemistry Report, dated 04.10.2011 and the Medical certificate issued from the authorities of the Silapather PHC and a medical prescription dated 07.10.2011, the other documents that have been brought on record are all post the order of penalty of removal from service imposed upon the petitioner on 20.12.2011.

13. The respondent authorities in their affidavit-in-opposition by relying on the documents so prescribed, having contended that the petitioner was

on repeated occasions issued with communications requiring him to resume his services and he having not resumed his services, the respondent authorities proceeded to take steps in the matter in terms of the Act and the Rules governing the service of the petitioner herein.

14. It is contended that initially an apprehension Rule was issued on 16.09.2011 to the Superintendent of Police, Dhemaji, requiring the apprehension of the petitioner herein, however, the same not having materialized and the petitioner not having joined, the petitioner was after completion of the proceedings involved and on the recommendations of the Court of enquiry ordered in the matter was declared as "DESERTER" w.e.f. 06.08.2011, vide an order dated 31.10.2011. Thereafter, it is seen that the petitioner, who was issued with notices communicating to him the fact that he was declared to be a "DESERTER" and requiring him to rejoin his services within 15(fifteen) days from the date of receipt of the notice, failing which, it was stipulated that it would be presumed that he was not interested to serve in the ITBPF any further and would be imposed with the penalty of dismissal from service. Accordingly, on conclusion of the above processes and also considering the fact that the petitioner had not resumed his services vide the order dated 20.12.2011 after discussing all the circumstances involved, the Commandant, 12th Battalion, ITBPF, proceeded to impose upon the petitioner the penalty of removal from service with w.e.f. 20.12.2011. The period of his absence from 06.08.2011 to 20.12.2011 totaling 137 days was directed to be treated as Dies-non for all purposes and he was struck off from the strength of the 12th Battalion,

ITBPF on 20.12.2011. It is seen that the petitioner thereafter had submitted an application on 25.09.2013, before the Commandant, 12th Battalion, ITBPF for resuming his services, which application was rejected vide an OM dated 18.10.2013. The appeal as filed by the petitioner in the matter was also rejected by the competent authority vide OM dated 18.01.2014 and the same was communicated to the petitioner herein at his residential address.

15. In view of the above admitted position, reflecting the conduct of the petitioner herein and the conclusions reached by the respondent authorities thereon that he is not a fit person to be retained in the services of the ITBPF, this Court would not in absence of materials contrary to what has been projected in the affidavit filed by the respondents being brought on record by the petitioner, demonstrating that he was not in a position to resume his duties and such an eventuality has occasioned for reasons beyond his control be called upon to adjudicate upon the same. It is to be noted that the petitioner is a member of a disciplined force and his such conduct is called for, and admittedly, the petitioner had remained unauthorizedly absent; and there being no justification for his such absence other than the plea of having suffered diabetes during the period, this Court does not find the contentions made by the petitioner in the matter to be acceptable and accordingly, upholds the penalty of removal from service as imposed upon the petitioner vide the order dated 20.12.2011, along with the consequential rejection of his appeals made in the matter.

16. In view of the above, the writ petition is held to be devoid of merit

and the same accordingly, stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant