

GAHC010006712012



Judgment reserved on : 14.12. 2023
Judgment delivered on : 01.03.2024

In the gauhati High court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P.(C) NO. 3277 OF 2012

Ex Constable, Sri Nelson Basumatary,
S/O Sri Birot Chandra Basumatary,
Resident of Vill-Bangaldoba,
P.O-Haloadol,
P.S-Kokrajhar
District-Assam.

.....**Petitioner**

-Versus-

1. The State of Assam, represented by the Secretary, Department of Home, Government of Assam, Dispur, Guwahati-781006, Assam.
2. Director General of Police, assam, Ulubari, Guwahati-781007.
3. The Commandant, 7th Assam Police Battalion, Charaikhola, Kokrajhar, B.T.A.D., Assam.

.....**Respondents**

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. S. S. Barooah, learned counsel.

Advocate for the respondents : Mr. J. K. Goswami, learned Addl. Sr. GA.

JUDGMENT AND ORDER (CAV)

(Soumitra Saikia, J)

Heard Mr. S. S. Barooah, learned counsel appearing for the petitioner. Also heard Mr. J. K. Goswami, learned Additional Senior Government Advocate appearing for the respondents.

2. The petitioner was employed as a Constable of the 7th Assam Police Battalion, Charaikhola, Kokrajhar, B.T.A.D., Assam. The petitioner was served with the major punishment of dismissal from service by order dated 02.02.2010.

3. The facts essential for the purposes of this case are that the petitioner applied for and appeared in the selection process which was initiated for appointment of Constables under the 7th Assam Police Battalion, Charaikhola, Kokrajhar, B.T.A.D., Assam. The petitioner was appointed as a Constable in the year 2006 under the 7th Assam Police Battalion, Charaikhola, Kokrajhar, in the Bongaigaon district and had been serving accordingly pursuant to his

appointment. Petitioner completed the mandatory training in the Battalion Headquarters and served as Constable in various postings that he was given in different locations in Dhubri, Kokrajhar, Bongaigaon Districts.

4. It is the petitioner's case that during his service career he maintained the discipline expected of the Armed Police Force and had abided by all orders of Superior Officers as per the Rules and Regulations. While the petitioner was posted at Chapar Police Station under the Dhubri District of Assam, he was on Guard duty of the Battalion Post at Chapar Police Station. On 05.09.2009 while he was on his Guard duty, there was some commotion caused due to public allegations of illegal collection of money from vehicles plying on the road/highway in front of the Police Station and the public of the locality blamed the police Constables of the local Police Station. Although the petitioner was on Guard duty, the Platoon Commander having not found the petitioner in the evening Roll call, he became enraged and rebuked at the petitioner. Subsequently, departmental proceedings being D.P No. 2/2009 was drawn up against the petitioner bringing in charges *inter-alia* of misbehaviour with Superior Officer, Non attendance in Roll call and collection of money from the vehicles at night and drunkenness. The petitioner was served with a Show-Cause Notice in which several allegations were brought against the petitioner of misbehaviour with Superior Officers, illegal collection of money from vehicle,

unauthorized absence from Battalion Headquarters without permission, gross negligence of duty, indisciplined conduct, alcoholic and unfit to handle firearms. The Show-Cause Notice included the list of witnesses and the documents to be relied upon and as well as the statement of allegations against the petitioner. The petitioner was asked to show cause as to why the penalties prescribed under Rule 7 of the Assam Police Service (Discipline and Appeal) Rules, 1964 should not be inflicted. The petitioner, thereafter, submitted his Show-Cause reply dated 19.09.2009. The departmental proceedings was conducted and thereafter by order dated 02.02.2010, the petitioner was imposed the punishment of dismissal from service by the disciplinary authority, namely the commandant, 7th Assam Police Battalion, Charaikhola, Kokrajhar, B.T.A.D., Assam. Being aggrieved, the present writ petition has been filed.

5. The learned counsel for the petitioner submits that the enquiry was not conducted as per the procedure prescribed. Adequate opportunity of cross examination of the witnesses as well as defense assistance was not provided to the petitioner. There apart, no Enquiry Report was submitted by the respondent authority and consequently the petitioner could not prefer any appeal before the statutory appellate authority.

6. Mr. J. K. Goswami, learned Additional Senior Government Advocate disputed

the contentions of the learned counsel to the petitioner. He submits that the enquiry was conducted in total compliance of the Rules and procedures prescribed. There was clear evidence that the allegations against the petitioner were in favour of the allegations levelled against the petitioner. There were witnesses who had deposed and supported the allegations made in the show-cause Notice.

7. It is further submitted that petitioner was given ample scope and opportunity to defend the charges and therefore, the allegation of violation of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 does not arise.

8. The learned counsel for the petitioner submits that since the enquiry was conducted strictly as per procedure and all opportunities were granted to the petitioner, the non furnishing of the Show-Cause Notice did not cause any prejudice to the petitioner as the same were clearly proved by the evidence adduced during the course of the disciplinary proceedings.

9. The learned counsel for the respondent has also produced the relevant records containing the enquiry proceedings.

10. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The enquiry proceeding records presented before the court have also been examined. At the outset what is seen is that there is a

provision for statutory appeal which has not been preferred by the petitioner. According to the learned counsel for the petitioner, the same could not be preferred as no enquiry report was furnished on the petitioner pursuant to the enquiry conducted and prior to imposition of the order of penalty by the disciplinary authority.

11. A perusal of the Assam Discipline and Appeal Rules, 1964 reveals that Rule 9 (A) of the Assam Discipline and Appeal Rules, 1964 provides for furnishing of an enquiry report on the delinquent officer after completion of the enquiry.

12. Under Rule 9 (A), it is provided that orders made by the Disciplinary Authority shall be communicated to the Government servant, who shall also be supplied with a copy of the report of the inquiry, if any, held by the Disciplinary Authority and a copy its finding on each charge, or where the Disciplinary Authority is not the Inquiry Authority, a copy of the report of the Inquiring Authority and a statement of the findings of the Disciplinary Authority, together with the brief reasons for its disagreements, if any, should be supplied to the Officer concerned. This provision was inserted vide Notification No. ABP/189/77/3, dated 07.10.1977.

13. From the pleadings on record, it is seen that the disciplinary proceedings were initiated against the petitioner on 22.09.2009, as such, when the

disciplinary proceedings were initiated, the said provision was inserted and was clearly a part of the Discipline and Appeal Rules. A perusal of the enquiry proceeding records, which are placed before the court by the learned Government counsel also does not reflect anywhere that a copy of the enquiry report has been furnished to the delinquent officer, namely the writ petitioner herein.

14. The consequences which will entail if the enquiry report is not furnished to the delinquent officer has long been settled by the Apex Court in *Managing Director, ECIL, Hyderabad and Ors Vs B. Karunakar and Ors.* reported in (1993) 4 SCC 727. In this Judgment, the Apex Court laid down the law that non furnishing of enquiry report will cause prejudice to the Delinquent Officer. The Apex Court held that where the enquiry report has not been furnished to the officer concerned, the subsequent proceedings will be vitiated and it will have to be commenced from the stage the enquiry report is furnished to the Government servant/delinquent employee.

15. The Apex Court held that although the Disciplinary Authority is entitled to arrive at its findings on the basis of the evidence recorded in the enquiry, it is equally true that the Disciplinary Authority takes into considerations the findings recorded by the enquiry officer alongwith the evidence on record. In the

circumstances the findings of the Enquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. The Apex Court held that the findings of the Enquiry Officer may or may not be based on evidence on record and such findings will be additional material unknown to the employee but it may still be taken into consideration by the disciplinary authority while passing any order against the delinquent employee. Both the dictates of reasonable opportunity as well as the principles of natural justice therefore require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. Hence where the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of enquiry report before the disciplinary authority arrives at its conclusions. It is the employee's right to defend himself against the changes leveled. A denial of the enquiry officer's report before the disciplinary authority's decision is a denial of reasonable opportunity to the employee to prove his innocence and is therefore a breach of the principles of natural justice.

16. For all of these reasons the delinquent Government servant needs a reasonable opportunity and a fair play in action which cannot be achieved without furnishing of the Enquiry Report. The furnishing of the Enquiry Report cannot be treated to be an empty formality or a ritual but rather it is aimed at

providing an ample opportunity to meet the conclusions arrived at by the Enquiry Officer before the disciplinary authority takes into consideration the reasoning and the conclusions of the Enquiry Officer. The entire process of conducting an enquiry by the Enquiry Officer is upon such orders of the disciplinary authority as the Enquiry Officer acts as a delegate of the disciplinary authority while conducting the enquiry. In these circumstances the Apex Court held that the non furnishing of the Enquiry Report therefore causes grave prejudice and avoidable injustice to the delinquent Officer.

17. In view of the law laid down by the Apex Court in *Managing Director, ECIL, Hyderabad and Ors (supra)*, and the subsequent Judgments where it has been followed, it is clear that the dismissal of the petitioner without compliance of Rule 9 (A) of the Discipline and Appeal Rules, 1964 cannot be sustained.

18. In the absence of any material placed before the Court as to whether the enquiry report has been furnished to the Delinquent Officer or not, this court will have to accept the contentions of the petitioner that the enquiry report of the Enquiry Officer had never been furnished to the petitioner. Consequently, the petitioner was kept in the dark as to the conclusions reached by the Enquiry Officer and the evidence relied upon to arrive at the conclusions, as well as the extent to which the disciplinary authority relied upon the enquiry report while

imposing the penalty of dismissal from service on the petitioner. That apart, non furnishing of the enquiry report to the petitioner also prevented him from taking recourse to the statutory remedy in the forum of an appeal as provided for under the Discipline and Appeal Rules.

19. Considering all these aspects without going into the merits of the case with regard to the correctness of the procedure adopted and/or whether adequate opportunity was granted to the petitioner during the enquiry proceedings, this court proposes to allow the writ petition by interfering with the impugned order of dismissal dated 02.02.2010 and remanding the matter to the authorities to commence the proceedings from the stage after serving a copy of the enquiry report on the petitioner.

20. Upon due service of the enquiry report of the petitioner, it would be open to the petitioner to avail the remedies available to him under law. Upon any such appeal as may be filed by the petitioner, the appellate authority will be entitled to examine the earlier matter including the procedure adopted by the Enquiry Officer and the evidences relied upon. Accordingly, the impugned order dated 02.02.2010 is hereby set aside and the petitioner will be treated to be placed under suspension with effect from 02.02.2010, namely date on which the penalty of dismissal from service was imposed by the disciplinary authority.

- 21.** The respondent authority will forthwith carry out the directions of furnishing a copy of the enquiry report within the outer limit of 30 (thirty) days from the date of receipt of a certified copy of this order.
- 22.** A certified copy of this order be marked to the Office of the Senior Government Advocate, Assam for being transmitted to the office of the respondents to carry out the directions of this Court.
- 23.** Writ petition accordingly stands disposed of in terms of the above. No order as to cost.
- 24.** Interim orders, if any, stands merged with the Final order. Records of the disciplinary proceedings are handed over back to Mr. J. K. Goswami, learned Additional Senior Government Advocate.

JUDGE

Comparing Assistant