

GAHC010010572016



2024:GAU-AS:10591

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

Case No. : WP(C)/1496/2016

EX CT/GD KAMLESH DUBEY
FORCE NO. 060048598, S/O BAIJNATH DUBEY, R/O SHAHODIH, P.O. AARA,
P.S. SHAHPUR, DIST- BHOJPUR, BIHAR, PIN-781317

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, NEW DELHI

2:THE DIRECTOR GENERAL
CRPF
CENTRAL GOVERNMENT OFFICE COMPLEX
NEW DELHI

3:THE INSPECTOR GENERAL OF POLICE
CRPF
POLO GROUND
SHILLONG
MEGHALAYA

4:THE DY. INSPECTOR GENERAL OF POLICE
GROUP CENTRE
CRPF
9 MILES
GUWAHATI
ASSAM

5:THE DY. INSPECTOR GENERAL OF POLICE
CRPF
RANGE OFFICE
GUWAHATI
ASSAM

6:THE COMMANDANT
120 BATTALION
CRPF
DAOKOPGIRI
TURA
MEGHALAY

Advocate for the Petitioner : MR.H BEZBARUAH, MR K K DAS,MR.R MAZUMDAR,MR T K BHATTACHARYYA,MR.G GOSWAMI

Advocate for the Respondent : , C.G.C.,MR.M PHUKAN(R-1 - 6),ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date : 29-10-2024

JUDGMENT & ORDER(ORAL)

Heard Mr. R Mazumdar, learned counsel appearing on behalf of the writ petitioner. Also heard Mr. RKD Choudhury, learned Deputy Solicitor General of India appearing for the respondents.

2. The writ petitioner herein, who was serving as Constable (GD) under the Central Reserve Police Force (for short, the CRPF) was dismissed from service by the order dated 23.01.2015 issued by the Commandant, 120 BN, CRPF, Dawkopgiri, Tura, Meghalaya. The said order is under challenge in the present writ petition.

3. The facts of the case, in a nutshell, are that the petitioner was recruited as Force No-060048598 Constable/GD under the 120 Battalion of the CRPF vide order dated 22.05.2006. However, while in service, the authorities had detected that the petitioner had relied upon false/fake Class-X (Matric) pass certificate so as to secure his appointment in the CRPF. Accordingly, a departmental proceeding was initiated against the petitioner under Section 11(1) of the Central Reserve Police Force Act, 1949 (for short, the Act of 1949). In the Memorandum of Charge dated 07.07.2014 served upon the petitioner, there was one Article of Charge, which is reproduced hereinbelow for ready reference:

Article-I

“That verification of DOB and Matriculation certificate in respect of No. 060048598 CT/GD Kamlesh Dubey was taken up with the Secretary, Bihar School Examination Board Patna (Bihar) by the DIGP, GC, CRPF, Guwahati vide letter No. E.V-1/2013-SRC-III-120 dated 27/11/2013 and the report received by the DIGP, GC, CRPF, Guwahati, on the same letter wherein the Secretary, Bihar School Examination Board, Patna (Bihar) has stated that other person had appeared against Roll code No. 7503 Sl No. 409 Year-1999 (A) instead of Mr. Kamlesh Dubey and there is no record of passing of matriculation examination by No.. 060048598 CT/GD Kamlesh Dubey. Further No. 060048598 CT/GD Kamlesh Dubey has reportedly provided a verification report in 120 Bn in his favour, therefore the DIGP GC, CRPF, Guwahati again taken up the case with the Secretary, Bihar School Examination Board, Patna (Bihar) for its verification through Demi-Officially letter No. E.V-1/2014-SRC-III-120 dated 13.03.2014 (mentioned in letter of Bihar School) and in response the Board has confirmed that the matriculation certificate produced by CT/GD Kamlesh Dubey is fake/bogus vide their letter No. 2299 dated 26.03.2014. Thus he has committed an act of misconduct in his capacity as a member of the force U/S 11(1) of CRPF Act, 1949.”

4. On conclusion of the departmental proceeding, the Disciplinary Authority had found that the charge brought against the writ petitioner was established and accordingly, issued the impugned order dated 23.01.2015 dismissing /removing the petitioner from service.

5. It appears that similar action was initiated by the respondent authorities against another Constable, namely, Chandan Rai, who had also challenged the order of dismissal from service by filing a writ petition before this Court bearing WP(C)No.4245/2012.

6. The writ petition preferred by Chandan Rai was disposed of by the judgment and order dated 12.09.2023, allowing the same, by setting aside the order of dismissal from service, holding that since the alleged misconduct is prior to his entering service, hence, Section 11(1) of the Act of 1949 would not have any application in the facts of the case. Having set aside the order of dismissal from service of Chandan Rai, liberty was granted to the authorities to conduct fresh proceedings under the appropriate Rules after reinstating him in service.

7. Apart from Chandan Rai, similar proceedings were initiated against five other Constables, namely, (i) Force no 041686299 Ct/GD Dhaneswar Ray (c/168 Bn), (ii) Force no 041686869 Ct/GD Joydev Chandra Ray (F/168 Bn), (iii) Force no 041686985 Ct/GD Nabajit Talukdar (A/168 Bn), (iv) Force no 041687389 Ct/GD Bimal Chandra Nath (E/168 Bn), (v) Force no 060067985 Ct/GD Rupam Kumar Das (D/168 Bn), who were also dismissed from service on similar charges of having entered service by furnishing fake passed certificates.

8. The orders of termination from service issued to those Constables were also challenged by the aggrieved persons by filing WP(C)No.1149/2013, WP(C)No.1164/2013, WP(C)No.1105/2013, WP(C)No.1108/2013 and WP(C)No.1163/2013. By relying upon the decision in the case of *Chandan Rai Vs. Union of India & Ors* in WP(C)No.4245/2012 as well as the decision rendered in the case of *Union of India & others Vs. Md. Saraf Khan* in WA No.384/2008 and *Thagen Das Vs. Union of India and others* in WP(C)No.87/2007, the learned Single Judge had disposed of all the five aforementioned writ petitions vide judgment and order dated 18.01.2024 by setting aside the orders of dismissal from service issued to the respective writ petitioners in those writ petitions on the ground of procedural irregularity. Liberty was, however, granted to the respondent authorities to initiate appropriate proceedings against them under the provisions of the *Central Civil Services (Classification, Control & Appeal) Rules, 1965*. The learned Single Judge had, however, declined the prayer of the petitioners to pass an order for reinstatement in service. The operative portion of the judgment and order dated 18.01.2024, as appearing in paragraphs 32 to 37, are reproduced hereinbelow for ready reference:-

"32. *There being a procedural irregularity in conducting the disciplinary proceedings on the part of the respondents, the memorandum of charge, dated 14.03.2012, as issued to the petitioners herein, and the follow-up proceedings thereof, including the Inquiry Report, dated 07.07.2012; the order of penalty, dated 28.07.2012; would not be sustainable and accordingly, would stand interfered with.*

33. *However, the materials as brought on record having disclosed the commission of a misconduct by the petitioners, they cannot be exonerated from the allegations so levelled against them and the present proceedings having been only interfered with by this Court on a procedural irregularity existing in the proceedings; liberty is granted to the respondents to initiate appropriate proceedings under the provisions of the*

CCS(CCA) Rules, 1965, against all the petitioners involved herein for the allegations as contained in the memorandum of charge, dated 14.03.2012.

34. The interference with the penalty as imposed upon the petitioner would have resulted in issuance of an order for reinstatement of the petitioners in their respective services, however, given the nature of the allegations as levelled against them; this Court refrains from issuing any directions to the respondents for reinstatement of the petitioners in their respective services. The petitioners, however, would be deemed to be in service for conduct of the proceedings as now required to be conducted by the respondents under the provisions of the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

35. It is expected that such proceedings would be expeditiously initiated and concluded by the respondents and it is only for the said purpose that the petitioners, herein, are deemed to be in their services. However, in the event, on conclusion of the fresh proceedings as required now to be initiated against the petitioners; the petitioners are exonerated from the allegations as levelled against them, they would be entitled to reinstatement in their services from the date of their dismissal from service that is w.e.f. 28.07.2012 with all consequential benefits as may be ordered in the matter by the respondent authorities on conclusion of such proceedings as initiated against them.

36. In view of the above discussions and conclusions as arrived hereinabove; this Court is of the opinion that the other grounds as raised by the parties to the proceedings as well as to the case laws relied upon by the parties in this connection, need not be alluded to.

37. With the above observations and directions, all these 5(five) writ petitions stand disposed of.”

9. Mr. R Mazumdar, learned counsel for the writ petitioner has submitted that the case of the present writ petitioner is squarely covered by the judgment and order dated 18.01.2024 passed by the learned Single Judge.

10. Responding to the above, Mr. RKD Choudhury, learned Deputy SGI has

submitted that although an appeal was preferred by the Department against the judgment of the learned Single Judge rendered in the case of Chandan Rai (supra) which is pending disposal before the Division Bench, yet, no appeal, to his instruction, had been preferred in respect of the judgment and order dated 18.01.2024. To that extent, Mr. Choudhury, the learned Deputy SGI has submitted in his usual fairness that the petitioner's case would stand covered under the previous judgment and order of this Court rendered on 18.01.2024.

11. In view of the above and having regard to the facts and circumstances of the case, this writ petition also stands disposed of in the light of the judgment and order dated 18.01.2024 passed by the learned Single Judge.

12. Accordingly the order of dismissal from service dated 23.01.2015 issued in respect of the present writ petitioner, Force No.060048598 Ex-Constable/GD Kamlesh Dubey, stands set aside. It is provided that similar action as initiated in the case of the other writ petitioners involved in the five writ proceedings disposed of vide judgment and order dated 18.01.2024, shall also be initiated against the present writ petitioner.

13. With the above observation(s), the writ petition stands disposed of.

JUDGE

Comparing Assistant