

GAHC010007852015



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

Case No. : WP(C)/508/2015

KUSHAL DAS
S/O- SRI KON DAS, VILL.- SAT PAKHATI, P.O. and P.S.- PALASHBARI, DIST.-
KAMRUP R, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY., HOME DEPTT., GOVT. OF ASSAM, DISPUR, GHY- 6.

2:THE DY. INSPECTOR GENERAL OF POLICE
WESTERN RANGE
BONGAIGAON
DIST.- BONGAIGAON
ASSAM.

3:THE SUPERINTENDENT OF POLICE
GOALPARA DIST.
GOALPARA
ASSAM.

4:THE DY. SUPERINTENDENT OF POLICE HQ
GOALPARA
ASSAM

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioner : Ms. P. Chakraborty, Advocate.

Advocates for respondents : Shri D. Bora, G.A., Assam.

Date of hearing : **25.04.2024**

Date of judgment : **25.04.2024**

A penalty of removal from service dated 28.06.2014 which has been upheld by the Appellate Authority by dismissing the appeal of the delinquent petitioner is the subject matter of challenge in this writ petition.

2. The facts projected in the petition are that the petitioner was appointed as a Constable in the Assam Police in the year 1990. On 19.04.2012, an explanation was called for from the petitioner as he was often found to be absent from the duties. The petitioner claims to have responded to the said Notice by stating that he was having health issues. Prior to that, to regularise the leave, the petitioner was issued a communication dated 05.04.2012 to submit leave application. On the aforesaid issue of frequent absence from duties without leave, a Departmental Proceeding was drawn up vide a communication dated 11.04.2012 and accordingly, a Show Cause Notice was issued on 19.04.2012. The principal charge against the petitioner was absence from duties

without permission. The said Notice had also named certain witnesses. The petitioner claims to have submitted a written statement of defence wherein the cause shown was ailment. It however transpires that even during the pendency of the said Departmental Proceeding, the petitioner was again found to be unauthorizedly absent for which a Notice dated 24.12.2013 was issued directing him to join in service. The petitioner accordingly had joined the service on 30.12.2013.

- 3.** After completion of the Departmental Enquiry, the petitioner was issued a second Show Cause Notice on 30.03.2014 by the Disciplinary Authority forwarding a copy of the findings of the Enquiry Officer. It however transpires that the petitioner did not submit any response to the second Show Cause Notice. Accordingly, vide the impugned order dated 28.06.2014 issued by the Disciplinary Authority, i.e., the Superintendent of Police, Goalpara, the penalty of removal from service was imposed upon the petitioner.
- 4.** As indicated above, the petitioner had preferred a Departmental Appeal on 12.08.2014. The Appellate Authority however vide order dated 28.11.2014 had rejected the appeal.
- 5.** It is the legality and validity of the aforesaid action of the respondents which has been questioned by the petitioner in the present petition.
- 6.** I have heard Ms. P. Chakraborty, learned counsel for the petitioner whereas the state respondents are represented by Shri D. Bora, learned State Counsel.

7. Ms. Chakraborty, the learned counsel has summarised her contentions in the following manner:

- (i) The Departmental Proceeding was not fair as the petitioner was not given adequate opportunity to defend himself.
- (ii) The enquiry was held behind the back of the petitioner wherein he could not cross examine the witness.
- (iii) The petitioner was not made aware of his rights that he could cross examine the witnesses.
- (iv) The petitioner was not given an opportunity to take the assistance of a Defence Representative.
- (v) The penalty of removal from service is unduly harsh and a lesser penalty could have been imposed on the petitioner even if the charges are held to be proved.

8. Shri Bora, the learned State Counsel however has refuted the aforesaid submission. It is contended on behalf of the respondents that a fair procedure was maintained throughout the proceedings and more importantly, the petitioner did not even reply to the second Show Cause Notice dated 30.03.2014 with which the report of the Enquiry Officer was enclosed.

9. By drawing the attention of this Court to the said findings of the Enquiry

Officer, he submits that opportunity to cross examine the witnesses was given to the petitioner which he had declined. It is also submitted that the petitioner was in a disciplined force and the misconduct in the nature of unauthorised absence would be a major one which would make an incumbent unfit to be continued in the said force.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. The materials on record would reflect that the petitioner was found to be regularly absent from duties without any permission. The communication dated 19.04.2012 which has been annexed as Annexure-1 by which, explanation was called for from the petitioner with regard to being unauthorizedly absent for the following periods:

- (i) With effect from 07/08/2010 to 20/09/2010
- (ii) With effect from 05/11/2010 to 14/11/2010
- (iii) With effect from 15/11/2010 to 22/11/2010 Am
- (iv) With effect from 22/11/2010 Pm to 28/02/2010

12. The petitioner claims to have given explanation citing ill health. The relevant portion of his explanation is extracted herein below which pertains to the period 15.11.2010 to 26.02.2012.

“That, from 15.11.2010 till 26.02.2012 I had been suffering from various

ailments intermittently like viral Hepatitis jaundice and backache resulting from a sudden fall."

13. Though it was tried to be contended that there was no proper Departmental Proceeding, the documents annexed by the petitioner itself reflects that a Departmental Proceeding was initiated vide communication dated 11.04.2012 which was issued to the petitioner.

In connection thereto, the Show Cause Notice was issued on 19.04.2012 on a specific charge of being unauthorisedly absent from duties. The petitioner claims to have submitted his written statement of defence, whereafter it appears that an enquiry was held. Though it is the contention of the petitioner that no proper enquiry was held, the second Show Cause Notice dated 30.03.2014 with which the enquiry proceedings have been enclosed would reveal otherwise. The same would show that an enquiry was duly held with regard to the charge against the petitioner. A perusal of the Enquiry Report would also reflect that the petitioner was given an opportunity to cross examine the witnesses which he had declined. What is also intriguing is that though the petitioner has admitted the issuance and receipt of the second Show Cause Notice dated 30.03.2014, he did not even care to file his reply to the same. Accordingly, the impugned order has been passed on 28.06.2014 of removal of the petitioner from service. As noted above, the Departmental Appeal was also dismissed on 28.11.2014.

14. This Court has also taken into consideration the 2 (two) numbers of affidavit-in-opposition filed by the respondent nos. 3 and 2. The respondent no.

3 is the Disciplinary Authority whereas the respondent no. 2 is the Appellate Authority. The Appellate Authority in his affidavit has also clearly stated that the petitioner was given a due opportunity of hearing at the appellate stage.

15. This Court has also noticed that even during the pendency of the Departmental Proceeding, the petitioner was found to be again unauthorisedly absent for which a Notice dated 24.12.2013 was issued to him which has also been annexed as Annexure-10 in the writ petition.

16. The submissions of the learned counsel for the petitioner that no opportunity was granted is also not consistent with the pleadings inasmuch as in paragraph 5 of the writ petition, the following has been stated;

“At the closure of the enquiry / departmental proceeding the petitioner was asked to prove his case and cross-examine the prosecution witnesses.”

17. Though certain grounds of affording the petitioner to be assisted by a Defence Assistant have been taken, the conduct of the petitioner which is reflected from the proceedings would not require the Court to examine the said aspect of the matter, more so, when the allegations of unauthorised absence is not as such denied.

18. This Court is also of the opinion that the charge of being absent without permission is a serious charge vis-a-vis the nature of duties and the employment which is in a disciplined force. Accordingly, it cannot be accepted

that the penalty of Removal from service is grossly excessive.

19. In view of the aforesaid facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant