

GAHC010006202014



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

Case No. : WP(C)/878/2014

MUNIN CHANDRA DAS
S/O- LT. GHANA KANTA DAS, VILL.- NAZIRA BORTAL, WARD NO. 3, P.O. and
P.S.- NAZIRA, DIST.- SIVASAGAR, ASSAM, PIN- 785685.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, HOME
DEPTT., DISPUR, GHY- 6.

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY- 6.

3:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUARTERS
ULUBARI
GHY- 7.

4:THE INSPECTOR GENERAL OF POLICE ADMN
ASSAM
ASSAM POLICE HEADQUARTERS
ULUBARI
GHY- 7.

5:THE DY. INSPECTOR GENERAL OF POLICE TRG
ASSAM
DERGAON
ASSAM.

6:THE COMMANDANT

1ST ASSAM POLICE BATTALION
LIGIRIPUKHURI
NAZIRA
ASSAM

Advocate for the Petitioner : MR.R K TALUKDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 12.06.2024

Heard Mr. C. Baruah, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Government Advocate representing all the State respondents.

2. The petitioner, by way of instituting the present proceeding has prayed for the following reliefs:

- (i) for making payment of balance 50% of pay and allowances for the period of suspension from 28.05.2007 to 20.09.2007;
- (ii) for making payment of full pay and allowances benefit for the period of dismissal from 21.09.2007 to 13.09.2010;
- (iii) for making payment of revised pay benefits on ROP Rules, 2010 from 01.01.2006 to 13.09.2010 and;
- (iv) to make regularization of period of absence from 28.05.2007 to 13.09.2010 due to suspension and dismissal by treating as duty for all purposes including pension and gratuity.

3. The petitioner while serving as a Constable in the establishment of the Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, came to be placed under suspension w.e.f. 28.05.2007 on the ground that he had remained unauthorisedly, absent w.e.f. 20.04.2007 to 23.05.2007 i.e. for 33 (thirty three) days. It was further alleged in the said order of suspension that on appearing in the Battalion on 25.05.2007 he had created an uncontrollable scene at his platoon post after consuming alcohol. Accordingly, on 28.05.2007 itself, a Departmental proceeding came to be drawn up against the petitioner for his unauthorized absent as well as for his indisciplined conduct. The petitioner, however, did not respond to the show cause notice as issued to him in the matter and accordingly, an enquiry was ordered. It is seen that the petitioner did not participate in the enquiry proceedings also. Thereafter, enquiry on being concluded, the enquiry officer submitted his report, a copy of which was also forwarded to the petitioner herein. Thereafter, the Disciplinary authority vide an order dated 21.09.2007, by agreeing with the findings as recorded in the enquiry proceedings, proceeded to hold that the petitioner was not fit to be retained in a disciplined force and accordingly, the penalty of dismissal from services came to be imposed upon him w.e.f. 21.09.2007. The period of suspension undergone by the petitioner w.e.f. 28.05.2007 to 20.09.2007, the petitioner was held to be not entitled to receive anything more than the subsistence allowances as authorized to him for the said period.

4. It is seen that the said order of the Disciplinary authority dated 21.09.2007 was received by the petitioner in the month of October, 2007; however, the petitioner did not proceed to prefer an appeal in the matter,

immediately. Subsequently, after a lapse of around two years from the date of receipt of the order passed by the Disciplinary authority in the matter, the petitioner on 14.11.2009 proceeded to prefer an appeal before the Appellate authority. The said appeal was so considered by the Appellate authority and by taking a lenient view in the matter, vide order dated 14.09.2010 proceeded to reduce the penalty as imposed upon the petitioner from that of "dismissal" to "withholding of 4(four) consecutive service increments". Accordingly, in terms of the order passed by the Appellate authority, the petitioner came to be reinstated in his services.

5. The Appellate authority while reinstating the petitioner having not provided for the manner in which the period of his suspension as well as the period between the date of imposing of the penalty of dismissal from service, vide order dated 21.09.2007 till the order of his reinstatement by the Appellate authority with a reduced penalty, issued on 14.09.2010 was to be treated, the petitioner had instituted the present proceeding praying for the reliefs as noticed hereinabove.

6. Mr. C. Baruah, learned counsel for the petitioner by reiterating the facts as noticed hereinabove has placed reliance on the decision of Hon'ble Supreme Court in the case of *State of Rajasthan & Ors. Vs. Mangat Lal Sidana*, reported in *MANU/SC/0384/2022* to contend that the respondent authorities having reduced the penalty as imposed upon him in terms of FR 54 of the Fundamental Rules and Subsidiary Rules, the period for which he had to remain out of service on account of imposition of the order of

dismissal upon him, till his reinstatement in service in terms of the order passed in the matter by the Appellate authority, is required to be so considered and regularized.

7. Per contra, Mr. R. Dhar, learned counsel for the respondents submit that the petitioner would not be entitled to the reliefs as sought by him in the matter, in view of the fact that the penalty of dismissal from services as imposed upon him was so imposed by reckoning the materials as coming on record in the enquiry, pertaining to the unauthorized absence of the petitioner and his indiscipline conduct.

8. Mr. Dhar, learned counsel for the respondents by referring to the order dated 14.09.2010, passed by the Appellate authority had contended that the reduction in penalty as effected thereon in respect of the petitioner was not so done basing on the merits of the matter but, was so done by taking a purely humanitarian view in the matter and also to provide a chance to the petitioner to rectify himself. Accordingly, it is the contention of Mr. Dhar, learned counsel that the petitioner not having been exonerated from the charges leveled against him and his such conduct having also mandated imposition of a penalty, the case of the petitioner cannot be considered to be covered by the provisions of FR 54.

9. Mr. Dhar, learned counsel for the respondents by referring to the provisions of FR 54(4) has submitted that in the event the Court is of the view that the period between the imposition of the order of dismissal of

services upon the petitioner and the date of issuance of reduced penalty by the Appellate authority is being considered by this Court, he has submitted that the matter be remanded back to the respondent authorities for a fresh consideration as to the manner in which the said period would be so considered to determine as to what the petitioner would be entitled to receive for the said period.

10. Mr. Dhar, learned counsel for the respondents, by referring to the provisions of FR 54(5) has further submitted that the period of suspension undergone by the petitioner having been specifically dealt with by the Disciplinary authority and such order not being under challenge, the petitioner would not be entitled to any salaries in the matter for the period of suspension undergone by him.

11. I have heard the learned counsel appearing for the parties and also perused the materials available on record.

12. It is an admitted position that the petitioner, after being imposed with a penalty of dismissal from service vide an order dated 21.09.2007, issued by the Disciplinary authority had belatedly, preferred an appeal in the matter before the Appellate authority on 14.10.2009. The Appellate authority, on consideration of the matter and holding that there was no major flaw in the Departmental proceeding as conducted in the matter, by taking a humanitarian view and for affording an opportunity to the petitioner to rectify himself, reduced the penalty of dismissal from services

as imposed by the Disciplinary authority on the petitioner to that of withholding of four consecutive service increments of the appellant herein and he was reinstated in his services.

13. The above noted situation is covered by the provisions of FR 54 of the Fundamental Rules and Subsidiary Rules applicable in the matter.

14. It is also further required to be noted that the petitioner was not exonerated from the allegations leveled against him and the reduction of his penalty was also not on account of any procedural error occasioning in the conduct of the enquiry against the petitioner but, was an action taken purely on humanitarian ground to provide a chance to the petitioner to rectify himself. Accordingly, it is to be held that the petitioner was not completely blameless and or, he was totally exonerated from the allegations leveled against him. The petitioner, under such circumstances, would not be covered by the provisions of FR 54(3).

15. At this stage, the decision as relied upon by Mr. C. Baruah, learned counsel for the petitioner, in the case of *Mangat Lal Sidhana (supra)* is required to be noticed.

16. In the said case also, issues similar to the one as arising in the present proceeding was under consideration. The Hon'ble Supreme Court, upon considering the provisions of FR 54, which is parametria to the

provisions as contained in the Fundamental Rules & Subsidiary Rules applicable in the State of Assam and concluded that whenever there is a reinstatement in the circumstances attracting FR 54, the authority concerned is to pass a specific order relating to the pay and allowances to be paid and also as to whether the period of such absence is to be treated as period spent on duties. It further proceeded to hold that the provisions of Rule 54(5), contemplates a situation where the employee is not fully exonerated and therefore, is governed by the provisions of FR 54(3) and in such circumstances, the period of absence is not to be treated as on duty, unless, the authority specifically directs that it shall be treated as duty for any specified purpose. The Hon'ble Supreme Court further proceeded to hold that the proviso to Rule 54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted to a leave of any kind, due and admissible to a Government servant involved.

17. By applying the conclusions as available in the case of *Mangat Lal Sidhana (supra)* to the facts of the present case, it is noted that the petitioner herein was not fully exonerated and he was imposed with a penalty of dismissal from services by the Appellate authority while proceeding to reinstate him in his services, and, such penalty was not so imposed basing on any lacune that may have been found to be exist in the departmental proceeding drawn up against the petitioner. Accordingly, considering the fact that the period the petitioner had to remain out of service i.e. from the date of imposition upon him of the penalty of dismissal from services i.e. w.e.f. 21.09.2007; till the date of the imposition of the reduced penalty by the Appellate authority vide order dated 14.09.2010,

the manner in which the said period is to be treated, is now required to be considered.

18. Applying the ratio as available in the decision rendered in the case of *Mangat Lal Sidhana (supra)*, this Court is of the considered view that the manner in which the said period would now be considered is an aspect to which the respondent authorities is to consider at the first instance and not for this Court to prescribe.

19. It is stated in the Bar that the petitioner continues to be in service and accordingly, in view of the above position, the petitioner is hereby directed to submit a representation before the Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, praying for regularization of the period w.e.f. 21.09.2007 till 14.09.2010. The Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, on receipt of such representation from the petitioner shall give it its due consideration and shall dispose of the same keeping in view the observations made herein above in this order by this Court. In the event the petitioner is found entitled to backwages for the said period, the same be so computed and released to the petitioner.

20. Insofar as the prayer of the petitioner for regularization of his period of suspension w.e.f. 28.05.2007 to 20.09.2009 is concerned, this Court is of the view that the same cannot be directed to be so considered inasmuch as the manner in which the said period was already dealt with by the

Disciplinary authority vide order dated 21.09.2007, to the extent that the petitioner would not be entitled to draw anything more than the subsistence allowance already paid to him for the said period, was not disturbed by the Appellate authority vide its order dated 14.09.2010 and accordingly, the petitioner would not be entitled to receive any further benefits other than the subsistence allowance as drawn by him for the period of his suspension.

21. With regard to the prayer of the petitioner for being authorized the revised pay in terms of the Revision of Pay Rules, 2010 w.e.f. 01.01.2006 and or, the date from which such revision was made effective by the Government for its employees in the State, it is directed that the petitioner shall be at liberty to file an appropriate application before the Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, praying for his pay to be so revised in terms of the provisions of the Revision of Pay Rules, 2010. The Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, on receipt of such representation from the petitioner shall forward the same to the competent authority for a decision thereon, and, the decision on being so arrived at shall be communicated to the petitioner without further delay and if the pay of the petitioner is required to be so revised, the same shall be so done; and arrears as working out be released to the petitioner.

22. The above exercise now required to be carried out by the respondent authorities, more particularly, the Commandant, 1st Assam Police Battalion, Ligiripukhuri, Sivasagar, shall be so initiated and concluded within a period of three months from the date of receipt of the representations now

required to be submitted by the petitioner vide this order.

In view of the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant