

GAHC010009032015



2024:GAU-AS:9267

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

Case No. : WP(C)/911/2015

JAYANTA GOGOI
S/O GONESH GOGOI, R/O NAMTI DHEPOR GAON, P.O. NAMTIDOL, P.S.
HALUATING, DIST- SIBASAGAR, ASSAM

VERSUS

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

2:THE DIRECTOR GENERAL OF POLICE ADMINISTRATION
ASSAM POLICE HEADQUARTER
ULUBARI
GHY-7

3:THE DY. INSPECTOR GENERAL OF POLICE A
ASSAM POLICE HEADQUARTER
ULUBARI
GHY-7

4:THE COMMANDANT
3RD ASSAM POLICE BATTALION
TITABAR
JORHAT
ASSA

Advocate for the Petitioner : MR.R PHUKAN,

Advocate for the Respondent : GA, ASSAM1-4,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 17.09.2024

Date of Judgment : 17.09.2024

Judgment & Order(Oral)

Heard Mr. R. Phukan, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned Addl. Senior Government Advocate, Assam, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 31.03.2009, issued by the Commandant, 3rd Assam Police Battalion, Titabor, Jorhat, Assam, imposing upon the petitioner, the penalty of removal from his service pursuant to a Disciplinary Proceeding so initiated against him. The petitioner has also assailed an order, dated 21.03.2014, passed by the appellate authority rejecting his appeal and thereby, upholding the penalty so imposed upon the petitioner, vide the order, dated 31.03.2009.

3. The petitioner, herein, was appointed as a Constable in the 3rd Assam Police Battalion in the year 1997. While posted in such capacity in the 3rd Assam Police Battalion on 14.04.2008; the petitioner had to leave his Unit and proceeded to his hometown on account of certain mental disorders suffered by him during the said period. The petitioner not having resumed his service; the Commandant, 3rd Assam Police Battalion, Titabor, vide order, dated 12.09.2008, proceeded to place the petitioner under suspension w.e.f. 11.09.2008. The said order was followed by the issuance

of a Show Cause Notice, drawing up a Disciplinary Proceeding against the petitioner, vide Show Cause Notice 25.09.2008, on account of his unauthorized absence. The petitioner had not responded to the said Show Cause Notice, dated 25.09.2008, and accordingly, the disciplinary inquiry so instituted in the matter against him, proceeded ex-parte. On conclusion of the said proceeding and submission of the inquiry report thereof; the Commandant, 3rd Assam Police Battalion, Titabor, vide communication, dated 15.12.2008, issued to the petitioner, the second Show Cause Notice. On receipt of a copy of the said Show Cause Notice; the petitioner submitted his response thereto, on 23.03.2009, and therein, had taken a plea that the petitioner during the period of his absence, was suffering from mental illness and accordingly, he was not in a position to resume his duty.

4. The Commandant, 3rd Assam Police Battalion, Titabor, on consideration of the materials coming on record as well as on consideration of the representation submitted by the petitioner, herein, against the second Show Cause Notice; proceeded, vide the order, dated 31.03.2009, to hold that the petitioner, herein, was unfit to continue in his service and accordingly, imposed the penalty of removal from his service with immediate effect.

5. The petitioner, thereafter, submitted an appeal before the appellate authority against the order of imposition of penalty upon him. The appeal is dated 24.06.2009. The appellate authority on consideration of the appeal as well as the verification carried-out with regard to the contentions so made by the appellant in his appeal memorandum with regard to the reasons for his absence; proceeded to reject the said appeal vide order,

dated 21.03.2014.

6. Being aggrieved, the petitioner has instituted the present proceeding before this Court.

7. Mr. Phukan, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove; has submitted that the respondent authorities while proceeding to impose upon the petitioner, the penalty of removal from his service; has not considered the plea raised by the petitioner that he was incapacitated from resuming his service and/or informing his Unit about the reasons of his absence only on account of the mental illness suffered by him for which he was receiving treatment. The learned counsel for the petitioner has further submitted that given the reasons existing which had disabled the petitioner from resuming his service, the penalty of removal from his service as imposed upon the petitioner, does not commensurate to the allegations so levelled against him vide the Show Cause Notice, in question.

8. In the above premises, Mr. Phukan, learned counsel for the petitioner, has submitted that the order of removal of the petitioner from his service, would not call for any interference and the petitioner would be required to be reinstated in his service.

9. Per contra, Mr. Chutia, learned Addl. Senior Government Advocate, Assam, has submitted that the petitioner, herein, was extended with all due opportunity to defend himself with regard to the allegations so levelled

against him. However, the petitioner inspite of being in receipt of the Show Cause Notice, dated 25.09.2008, had not responded thereto.

10. Mr. Chutia, learned Addl. Senior Government Advocate, Assam, has also submitted that following the procedure prescribed; the inquiry was held *ex-parte* against the petitioner, herein. However, the inquiry report was so forwarded to the petitioner by the disciplinary authority vide the second Show Cause Notice, dated 15.12.2008. The learned Addl. Senior Government Advocate, Assam, by referring to the representation as preferred by the petitioner to the second Show Cause Notice, has submitted that the plea as taken therein by the petitioner of being under treatment for mental illness, was also duly inquired into by the respondent authorities and on such inquiry, it was found that the plea so taken by the petitioner was not substantiated by the records of the Assam Medical College & Hospital at Dibrugarh, where he had purportedly taken his treatment.

11. Mr. Chutia, learned Addl. Senior Government Advocate, Assam, has submitted that the said aspect of the matter was also considered by the appellate authority in its order, dated 21.03.2014.

12. Mr. Chutia, learned Addl. Senior Government Advocate, Assam, by referring to the affidavit-in-opposition filed in the matter by the Commandant, 3rd Assam Police Battalion, Titabor, has submitted that the petitioner is a habitual absentee and had also earlier on 14 different occasions overstayed his leave and/or remained unauthorizely absent. However, the petitioner inspite of being cautioned in the matter, had not

reformed and accordingly, he had remained absent in his service without prior permission and/or intimation to the authorities w.e.f. 14.04.2008.

13. In the above premises; Mr. Chutia, learned Addl. Senior Government Advocate, Assam, has contended that the penalty as imposed upon the petitioner by the disciplinary authority, would not call for any interference from this Court.

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

15. It is not in dispute that the petitioner had remained unauthorisedly absent w.e.f. 14.04.2008. The unauthorized absence of the petitioner, led to issuance of an order, dated 12.09.2008, placing him under suspension w.e.f. 11.09.2008. The said order of suspension was followed with the issuance of a Show Cause Notice, dated 25.09.2008, against the petitioner and thereby, drawing-up a Disciplinary Proceeding against him. The allegations levelled against the petitioner is of having unauthorisedly absent w.e.f. 14.04.2008, without any permission and/or taking leave from the competent authority. The petitioner, admittedly, not having responded to the said Show Cause Notice, dated 25.09.2008, and accordingly, vide a communication, dated 15.12.2008; the disciplinary authority had required the petitioner to resume his duties within 10 days and to submit his written statement in response to the said Show Cause Notice so issued to him. It was mentioned in the said communication, dated 15.12.2008, that in the event of no response being received from the petitioner, the Disciplinary Proceeding so initiated, would proceed ex-parte.

16. In continuance of the communication, dated 15.12.2008, and there being no response to the same from the petitioner's side; the disciplinary authority vide communication, dated 10.02.2009, informed the petitioner that the Disciplinary Proceedings so initiated against him, would proceed ex-parte. Accordingly, the departmental inquiry proceeded ex-parte against the petitioner and the Inquiry Officer so appointed, submitted his report holding the charge levelled against the petitioner, to be so established.

17. The disciplinary authority had, thereafter, issued a second Show Cause Notice on 13.03.2009. The petitioner responded to the said Show Cause Notice, vide his representation, dated 23.03.2009, and therein, had taken a plea that he had to leave his duties on 14.04.2008, on account of mental ailments. The petitioner also had contended in his said representation that he was under treatment at Assam Medical College & Hospital, Dibrugarh, w.e.f. 26.04.2008.

18. The disciplinary authority i.e. the Commandant, 3rd Assam Police Battalion, Titabor, on consideration of the Inquiry Report as well as the representation submitted in pursuance thereof by the petitioner on 23.03.2009, proceeded to impose upon him, the penalty of removal from service with immediate effect vide issuance of an order, dated 31.03.2009.

19. The petitioner, had, thereafter, submitted an appeal before the Deputy Inspector General(Admn.), against the order, dated 31.03.2009. In the said appeal, the petitioner had reiterated the fact that he was under treatment at Assam Medical College & Hospital, Dibrugarh, on 26.04.2008, and was

discharged from the said Hospital only on 02.12.2008. The appellate authority, thereafter, proceeded to consider the appeal so submitted by the petitioner and vide order, dated 21.03.2014, proceeded to reject the same upholding the penalty so imposed upon the petitioner by the disciplinary authority.

20. A perusal of the appellate authority's order, dated 21.03.2014, would go to reveal that the contention of the petitioner that he was under treatment at Assam Medical College & Hospital, Dibrugarh, w.e.f. 26.04.2008, was inquired into through the Addl. Superintendent of Police(HQ), Dibrugarh. The report of the Addl. Superintendent of Police(HQ), was considered by the appellate authority while passing the order, dated 21.03.2014. The appellate authority's order further reflect that the records as maintained in the Department of Psychiatry, Assam Medical College & Hospital, Dibrugarh, would reveal that the petitioner had not undergone any treatment w.e.f. 26.04.2008 till 03.12.2008, as well as in the month of March, 2009. The records had revealed that the petitioner was treated on 03.12.2008, in the Emergency Department of the Assam Medical College & Hospital, Dibrugarh, by one Dr. R. U. Zaman. The inquiry into the said aspect of the matter, had also revealed that the medical report issued by Dr. Zaman was not so issued in the name of the petitioner but was so issued in the name of one Smt. Manju Rani Singh. Accordingly, the disciplinary authority had concluded that the petitioner had remained unauthorizedly absent w.e.f. 14.04.2008 and accordingly, had upheld the order of penalty so imposed upon the petitioner.

21. The above narration of facts, would go to reveal that the petitioner had, admittedly, remained unauthorisedly absent w.e.f. 14.04.2008 and he had not intimated the reasons for his such absence till the date, he had submitted his representation i.e. on 23.03.2009.

22. In the present proceeding, the petitioner has not brought on record, any documents to demonstrate, the treatments purportedly received by him at the Assam Medical College & Hospital, Dibrugarh, during the period of his such unauthorized absence. However, perusal of the order of the appellate authority would reveal that the medical documents so produced by the petitioner before the authorities were duly examined and the treatment purportedly undertaken by him during the period of his unauthorized absence, was found to be false.

23. The petitioner, in the present proceeding, has not disputed the contentions so raised by the appellate authority in its order, dated 21.03.2014.

24. Noticing the fact that the petitioner is a member of a disciplined force and also he had not reformed inspite of the fact that he was earlier cautioned on account of having remained unauthorisedly absent; the present absence of the petitioner being established to be an unauthorized one, he would not be entitled to any sympathy in this connection, moreso, when the purported treatment received by him at Assam Medical College & Hospital, Dibrugarh, was also established in an inquiry conducted by the authorities, to be false.

25. In view of the above position, the penalty as imposed upon the petitioner of removal from service, cannot be construed to be one disproportionate to the allegations so levelled against him.

26. In view of the above, the penalty as imposed upon the petitioner by the disciplinary authority vide the order, dated 31.03.2009, would not call for any interference and accordingly, this writ petition is held to be bereft of any merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant