

GAHC010008752013



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

Case No. : WP(C)/3988/2013

RAJIB BORAH
S/O LT. JADAV BORAH
R/O VILL- NO. 1 KAKI P.O. and P.S. KAKI, DIST.NAGAON, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 3 ORS TO BE REP. BY THE PRINCIPAL
SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF HOME, DISUR,
GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM ULUBARI GUWAHATI-7.

3:THE DEPUTY INSPECTOR GENERAL OF POLICE
A.P. ASSAM ULUBARI GUWAHATI.

4:THE COMMANDANT 9TH ASSAM POLICE BATTALION
BARHAMPUR DIST. NAGAON ASSAM

Advocate for the Petitioner : MRH I CHOUDHURY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 30-01-2024

Heard Mr. Dhruba Bora, learned counsel for the petitioner. Also heard Mr. Dipam Borah, learned Junior Government Advocate, Assam, representing all the respondents.

The petitioner, by way of instituting the present proceeding, has assailed an order dated 13.06.2009 issued by the Commandant, 9th Assam Police Battalion, Barhampur, Nagaon, by which the petitioner was discharged from his services with immediate effect.

The petitioner, while functioning as a Constable under 9th Assam Police Battalion, Barhampur, was issued with a show cause notice dated 19.05.2006, wherein it was alleged that he had remained unauthorizedly absent from his duties w.e.f. 31.10.2005 to 22.03.2006, i.e. for a period of total 141 days without leave and/or permission. The petitioner, in response to the said show cause notice, had submitted his written statement of defence and therein had brought on record that the said absence was not deliberate but on account of ailments suffered by him.

Not being satisfied with the written statement as submitted by the petitioner, the Disciplinary Authority instituted an enquiry into the matter.

The Enquiry Officer, after having considered the evidences coming on record and also taking note of the medical certificates as produced by the petitioner, which were verified by the Doctors appearing in the enquiry, proceeded to hold that the charge of unauthorized absence as levelled against the petitioner is not proved.

What is to be noted in the present proceeding is that during the pendency of the enquiry proceeding, the petitioner did not participate therein inspite of repeated notices and accordingly, the petitioner was issued with a further show cause, framing an additional charge against him. Such show cause notice was issued by the Disciplinary Authority on 18.07.2008 and the same was received by the mother of the petitioner on 16.08.2008 in presence of the witnesses. The petitioner not having participated in the enquiry initiated in

pursuance to the additional charge levelled against him, the enquiry proceeded and the Enquiry Officer submitted his report holding that the additional charge levelled against the petitioner for the unauthorized period of absence has been proved beyond doubt.

On receipt of the said enquiry report, the Disciplinary Authority issued to the petitioner a second show cause notice on 05.06.2009 and it has been contended by the respondents in their affidavit that such second show cause notice was received by the petitioner under his own signature. The said contention of the respondents that the additional charge framed vide the show cause notice dated 18.07.2008, as well as the second show cause notice dated 05.06.2009 was served upon the petitioner has not been disputed by the petitioner by bringing on record any pleading to that effect. The petitioner in the present proceeding has not disputed the contention of the respondents that he had not participated in the enquiry held with regard to the additional charge inspite of being issued with the show cause notices for such appearance. The petitioner has not brought on record any explanation as to why he had remained unauthorisedly absent for the periods mentioned in the additional charge framed against him vide the show cause notice dated 18.07.2008. The petitioner has also not raised any grievance with regard to any deprivation meted out to him in defending his case in the said enquiry. It is the case of the respondents that the petitioner had abandoned his services without any information and inspite of the fact that in the earlier proceeding, on account of the medical certificates brought on record and the medical evidences coming on record, the charges levelled against him were held to be not proved but there is no material brought on record by the petitioner to justify the period of absence held to be unauthorized by the respondents in the show cause notice

dated 18.07.2008.

It is to be noted that although the petitioner had received the show cause notice dated 18.07.2008, as well as the second show cause notice issued in pursuance thereof on 05.06.2009, there is no reference to any of them in the writ petition and the petitioner has even not brought on record any pleading in response to the affidavits filed by the respondent authorities denying the said aspect of the matter. In absence of any such categorical denial on the part of the petitioner, the contentions as made in the affidavit-in-opposition filed by the respondents, more particularly, with regard to the proceeding as initiated against him pertaining to an additional charge vide the show cause notice dated 18.07.2008 and the conclusions reached therein by the Enquiry Officer and the penalty so imposed upon the petitioner, has to be accepted.

In the above view of the matter and also considering the fact that the petitioner is a member of a disciplined force, the conduct of the petitioner for which he was proceeded against, is not acceptable.

In view of the said position, this writ petition is held to be without merit and the same accordingly stands dismissed. However, there will be no order as to cost.

J U D G E

Comparing Assistant