

GAHC010016082021



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

**Case No. : WP(C)/677/2021**

SIKANDER ALI AHMED  
S/O ABDUL HOQUE, RESIDENT OF VILLAGE KUMULI PARA, PS HOWLY,  
781316, DIST BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, HOME DEPARTMENT, GUWAHATI 781006, DIST KAMRUP M  
ASSAM

2:THE DIRECTOR GENERAL OF POLICE  
ASSAM  
ULUBARI  
GUWAHATI ASSAM

3:COMMISSIONER OF POLICE  
GUWAHATI  
KAMRUP M ASSAM

4:JOINT COMMISSIONER OF POLICE  
POLICE COMMISSIONERATE  
GUWAHATI  
KAMRUP M ASSAM

5:THE DEPUTY COMMISSIONER OF POLICE (ADMINISTRATION)  
GUWAHATI  
KAMRUP M ASSA

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

Advocate for the petitioner : Shri M.K. Choudhury, Sr. Advocate.

Shri D. Bora, Advocate.

Advocates for the respondents : Shri C.S. Hazarika, Advocate,

**Date of hearing** : **17.07.2024**

**Date of judgment** : **19.07.2024**

The imposition of the penalty of Dismissal from service in a disciplinary proceeding which has also been upheld by the Appellate Authority is the subject matter of challenge in this writ petition. The challenge is based both by assailing the procedure adopted in disciplinary proceeding as well as on the merits of the charges.

**2.** Before going to the issue which has arisen for determination, the basic facts of the case may be narrated in the following manner.

**3.** The petitioner was serving as a Constable (Unarmed Branch) in the Assam Police. While posted with the Police Commissionerate, Guwahati, he was placed under suspension pursuant to his arrest in connection with Panbazar P.S. Case No. 134/2014 under Sections 120B/409/468/471 of the IPC. The petitioner was also shown arrested in another police case namely, Jalukbari P.S. Case No. 759/2014 under Sections 120B/409/418/420/201 of the IPC.

**4.** Subsequently, the petitioner was issued a Show Cause Notice on 13.04.2015 in connection with Departmental Proceeding No. 17/2015. The gist

of the allegation was that while the petitioner was attached with the Inspector Traffic, Pandu Division, Guwahati on 04.04.2014, he had misappropriated public money by forgery and duplicating R.C. Book nos. 36762 and 36763 and had indicated that those were issued by the Inspector Traffic. The petitioner had accordingly collected fines worth Rs.21,700/- and Rs.19,900/- whereas the duplicate R.C. Books collected fines worth Rs.36,300/- and Rs.24,800/- respectively. The Show Cause Notice had contained a list of witnesses of 7 (seven) numbers and a list of documents of 4 (four) numbers. The petitioner had submitted his statement of defence on 27.04.2015 by which he had given certain explanations and had prayed for accepting the same. It was stated that a Constable cannot be the custodian of government money. The use of any fake R.C. Book was denied. In the meantime, the suspension order of the petitioner was revoked on 24.05.2015.

**5.** Not being satisfied with the explanations submitted by the petitioner, an enquiry was initiated by appointment of an Enquiry Officer vide an order dated 24.05.2015. The Reserve Inspector, Police Commissionerate, Guwahati was to be the Presenting Officer. The enquiry was accordingly conducted whereby the witnesses were examined and after such completion, the Enquiry Officer had submitted a report on 18.01.2017 holding that the allegations against the petitioner to be established. Accordingly, a second Show Cause Notice was issued to the petitioner on 06.02.2017. The petitioner had submitted his reply to the second Show Cause Notice which was received on 21.02.2017. The Disciplinary Authority, after consideration of the materials on record and after giving personal hearing to the petitioner had passed the impugned order dated 23.06.2017 by which the petitioner was imposed the penalty of Dismissal from service.

**6.** Against the aforesaid order of penalty, the petitioner had preferred a departmental appeal before the Appellate Authority on 19.07.2017. The Appellate Authority, vide the impugned order dated 11.09.2020 had however dismissed the appeal and had affirmed the imposition of the penalty. It is these actions which are the subject matter of challenge in this petition, as indicated above.

**7.** I have heard Shri M.K. Choudhury, learned Senior Counsel assisted by Shri D. Bora, learned counsel for the petitioner. I have also heard Shri C.S. Hazarika, learned Government Advocate, Assam, who has also produced the original records of the departmental proceeding.

**8.** Shri Choudhury, the learned Senior Counsel has submitted that the charges against the petitioner were not maintainable. It is submitted that as per the existing procedure, a Constable cannot be the custodian of government money and therefore, the entire allegations of misappropriation is not maintainable. It is submitted that the petitioner was merely a Constable who was attached to the Traffic Inspector and therefore, could not have indulged in any forgery of R.C. Books. It is submitted that the petitioner was made a scapegoat for the misdeeds of others as no other persons were proceeded against departmentally.

**9.** On the aspect of the procedure adopted in the enquiry, the learned Senior Counsel has submitted that there were gross procedural lapses by which grave prejudice was caused to the petitioner in defending himself. He has submitted that there was no Presenting Officer and the Enquiry Officer herself had acted as the prosecutor as well as the Judge. It is submitted that though the statements of certain witnesses were recorded, the petitioner was not given any opportunity to cross examine the said witnesses. On the other hand, the petitioner was forced to make a statement which is available on record. It is

submitted that it is wholly against the law that a person be made a witness against himself. It is also submitted that certain materials of the Case Diary in the connected criminal cases were relied upon in the enquiry without such materials being produced in the enquiry.

**10.** By drawing the attention of the Court to the initial Show Cause Notice dated 13.04.2015, the learned Senior Counsel has submitted that in the list of documents, the copies of the R.C. Books in question were not even mentioned and therefore, the charges could not have been proved. On the aspect of the action taken by the Disciplinary Authority in the form of the order of penalty dated 23.06.2017, the learned Senior Counsel has submitted that the petitioner had submitted a detail reply to the second Show Cause Notice and none of the grounds were considered or discussed and by a non-speaking order, the penalty has been imposed. The learned Senior Counsel submits that the Disciplinary Authority in a Departmental Proceeding acts as a *quasi* judicial authority and therefore is bound to follow the basic requirements of law to ensure fairness and transparency. It is also submitted that the departmental appellate authority had failed to appreciate the grounds taken in the appeal and had mechanically dismissed the appeal.

**11.** Shri Choudhury, the learned Senior Counsel has also submitted that the petitioner was not informed of his right to have a defence assistant and the said aspect would vitiate the proceeding. Reference has also been made to the Assam Services (Disciplinary and Appeal) Rules 1964, more particularly, Rules 9 (5) and 9 (6).

**12.** In support of his submission, the learned Senior Counsel has relied upon the following case laws.

- i. **(1994) 1 GLR 364 [Rajen Bhuyan vs. The State of Arunachal Pradesh & Ors.]**
- ii. **(2005) 3 GLR 243 [Mutum Shantikumar Singh vs. Union of India and Ors.]**
- iii. **(1969) 2 SCC 262 [ A.K. Kraipak and Ors. Vs. Union of India and Ors.]**

**13.** The case of **Rajen Bhuyan** (supra) has been cited on the aspect of the right of a delinquent to take a Defence Assistant in a departmental proceeding.

**14.** In the case of **Mutum Shantikumar Singh** (supra), the mandatory requirement of a Presenting Officer has been reiterated.

**15.** The case of **A.K. Kraipak** (supra) has been cited to bring home the contention that there is a thin dividing line between an administrative action and a *quasi* judicial action.

**16.** *Per contra*, Shri Hazarika, the learned State Counsel has submitted that the grounds on which the writ petition is structured are non-existent. It is submitted that there was indeed a Presenting Officer, as would be evident from the materials on record. He has submitted that the statements of the witnesses were recorded in presence of the petitioner and he was given all opportunity to cross-examine the witnesses.

**17.** By referring to the records of the disciplinary proceeding which have been procured by him, the learned State Counsel has submitted that all procedural safeguards were given to the petitioner and the proceeding was conducted in accordance with law. It is submitted that on finding the explanation of the petitioner unsatisfactory, the enquiry was initiated by appointment of the Enquiry Officer and the Presenting Officer. In the enquiry held, the statement of

witnesses were recorded and the petitioner was given opportunity to cross-examine which he had indeed done for few of the witnesses and in case of some other witnesses, he had declined. It is submitted that the petitioner never requested for any defence assistant and therefore, the said issue cannot be taken up as a ground of challenge as no prejudice was caused to him. It is further submitted that the response of the petitioner was duly sought for on the Enquiry Report and after going through the same, the order of Dismissal from service was passed on 23.06.2017. It is also submitted that the Appellate Authority had duly applied its mind and upheld the order of dismissal.

**18.** The learned State Counsel has also highlighted the seriousness and the gravity of the charges against the petitioner which is of duplicating R.C. Books by means of forgery by which there was misappropriation of government money. It is submitted that when the petitioner was himself a custodian of public property and a part of law enforcing agency, indulging in such activity cannot be taken in a trivial manner. He accordingly submits that the penalty of dismissal is fully justified and commensurate.

**19.** Shri Choudhury, the learned Senior Counsel, in his rejoinder has taken up the aspect of proportionality in the punishment imposed. He has submitted that the punishment is shockingly disproportionate *vis-a-vis* the nature of the charges. He has submitted that the charge is of misappropriation of government money of paltry amounts and therefore, the extreme penalty is not justified.

**20.** The rival submissions have been duly considered and the materials placed before this Court, including the records of the departmental proceeding have been carefully perused.

**21.** The charge against the petitioner, who was a Constable with the Unarmed

Branch is a definite one. The same pertains to forging and duplicating R.C. Books for collection of traffic fines and there was a marked difference between the fines recorded. The registration of two police case in this regard in which the petitioner was arrested is also not disputed. Therefore, it cannot be said that the Disciplinary Proceeding was commenced on non existing charges. The defence sought to be taken is that the petitioner as Constable was not the custodian of government money. What, however, is evident from the reading of the charge is that there was marked difference with the amounts actually collected as traffic fines for which duplicate and forged receipts were issued and the amount reflected in the original R.C. Books. Therefore, whether the petitioner as Constable could have been a custodian of government money or not is of no consequence. This Court is of the firm opinion that the allegations against the petitioner were based on definite facts.

**22.** It is now required to examine the aspect of the procedure adopted. At this stage, this Court is reminded itself that in exercise of judicial review over a matter concerning disciplinary proceeding, the role of this Court is a limited one. This Court performs a secondary role to oversee as to whether the procedure adopted in the disciplinary proceeding was in consonance with the principles of natural justice. The strict rules of evidence are not applicable in a disciplinary proceeding and what this Court is required to see is whether the proceeding was held in a transparent manner and as to whether the delinquent was given a fair opportunity to defend himself. Of course, this Court would also look into the aspect as to whether the provisions of the statute holding the field were complied with.

**23.** The thrust of the argument on the procedural aspect made on behalf of the petitioner was that no Presenting Officer was appointed. A bare look at the

order dated 24.05.2015 issued by the Disciplinary Authority would reveal that by the said order, both the Enquiry Officer and the Presenting Officer were appointed. To rule out any confusion on this issue, this Court has examined the original records of the enquiry proceeding. The same reveals that the Presenting Officer was all along present in the enquiry and his signatures appear on each page of the enquiry proceeding. The aspect of not giving opportunity to the petitioner while recording the evidence has also been examined. The record reveals that the statements of the witnesses were recorded in the presence of the petitioner and he had indeed cross-examined some of the witnesses and declined to cross-examine few other witnesses. Though the record reveals that there were no defence assistant, there is nothing to show that the petitioner had made such a request which was declined. The aspect of defence assistant would be relevant only when such request was made and denied and in absence of such request, the petitioner would be precluded from raising the said issue. It has also not been pleaded that the petitioner had suffered any prejudice in that aspect.

**24.** In the case of **Rajen Bhuyan** (supra) which has been cited in this regard, it is seen that while the requirement of informing the delinquent officer of his right to have a defence representative is highlighted, it is also qualified that by such commission, the delinquent officer had suffered. In the instant case, no such prejudice has been seen to have been suffered by the delinquent as he had cross examined the witnesses.

**25.** On the aspect that the petitioner was forced to make a statement against himself, a bare look at the statement made by the petitioner on 21.09.2015 would show that not to talk about any admission, the petitioner had, on the contrary denied all the charges against him. In any case, this Court is of the

opinion that mere giving of a statement by a delinquent would not *per se* vitiate the proceeding and in fact such a disciplinary proceeding envisages adducing of defence witnesses. It is only when a delinquent is forced to make a statement against himself that such a proceeding would stand vitiated. However, that is not the case in hand.

**26.** As indicated above, the records of the enquiry reveal that all the statements of the witnesses bear the signatures of the delinquent and therefore, it cannot be accepted that such statements were recorded behind the back of the petitioner.

**27.** The order of Dismissal dated 23.06.2017 has been assailed that the same does not contain adequate reasons. A perusal of the order would however reveal that the Disciplinary Authority had not only examined the enquiry report but also the materials upon which such report was prepared and the response of the petitioner. The order also reveals that the predecessor of the Disciplinary Authority had given a personal hearing on 22.02.2017 and even the present Disciplinary Authority had given a personal hearing to the petitioner on 17.06.2017. The Disciplinary Authority had also considered the aspect of the nature of penalty to be imposed *vis-a-vis* the seriousness of the charges. It has been observed that the petitioner being a member of the disciplined force is not to be dealt with softly as the same will set a bad precedent.

**28.** This Court has also observed that the Appellate Authority had also examined all the aspects of the matter as reflected by the order dated 11.09.2020. The Appellate Authority had also considered the nature of the allegations and the fact that sufficient opportunity was granted to the petitioner in the disciplinary proceeding including personal hearing.

**29.** The allegations regarding violation of Rules 9 (5) & 9 (6) of the Rules of 1964 do not appear to be substantiated by the facts of the case which have been recorded above. The reference to the case of ***Mutum Shantikumar Singh*** (supra) on the aspect of appointment of Presenting Officer would not come to the aid of the petitioner as a Presenting Officer was indeed appointed, as discussed above.

**30.** This Court is of the opinion that the role discharged by the Disciplinary Authority was in substantial compliance of the principles of natural justice whereby a fair opportunity was given to the petitioner.

**31.** On the aspect of proportionality of the penalty imposed, this Court is of the opinion that the quantum involved would not be of much relevance in a case of misappropriation, that too by a member of a disciplined force and this aspect was duly considered by the Disciplinary Authority while imposing the penalty.

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

**33.** No order as to cost.

**34.** The original records are handed back to the learned State Counsel.

**JUDGE**

**Comparing Assistant**