
(2005) 01 GAU CK 0028
In the Gauhati High Court
Case No : WP (C) No. 8247 of 2002

Anil Saikia

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Police Manual Rules — Rule 104, 105, 66

Citation : (2005) 2 GLR 463

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : M. Bhuyan and P. Hazarika, for the Appellant; R.K. Bora, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Heard Mr. M. Bhuyan, learned counsel appearing for the writ petitioner and Mr. R.K. Bora, learned Government Advocate, Assam appearing for the respondents.

2. An order, dated 30.10.2002 of the Disciplinary Authority discharging the petitioner from service is the subject matter of challenge in the present writ application. To appreciate and understand the challenge made, a brief recital of the core facts will be called for.

At the relevant point of time the petitioner was working as a Havildar in the 13th Assam Police Battalion. The petitioner had remained absent from duty without leave on 12.3.2002 and 13.3.2002 and had reported for duty on 14.3.2002. He was ordered to report to the Commandant of the Battalion and thereafter by order dated 19.3.2002 the petitioner was deputed for duty at the Battalion Headquarters at Lilabari in place of Kokila where he was earlier posted and attached to a platoon of the Battalion. The petitioner, once again, remained unauthorisedly absent from duty at the Battalion Headquarters at Lilabari with effect from 22.3.2002 and though notices dated 1.4.2002 and 16.5.2002 were

served on him requiring him to join service, the petitioner ignored the aforesaid notices and continued to remain absent. Ultimately, a charge-memo dated 7.8.2002 was served on the petitioner asking him to file his reply and participate in the enquiry proceeding that was ordered by the disciplinary authority in respect of the charges levelled. According to the petitioner, he had submitted a reply to the charge-memo on 12.9.2002 but thereafter the authority held an ex-parte enquiry against him and ultimately by the impugned order dated 30.10.2002 discharged the petitioner from service. On the aforesaid facts and primarily contending the impugned order of discharge to be in blatant violation of the principles of natural justice, the instant recourse to the writ remedy has been made. An incidental aspect of the challenge made is violation of Rule 104, of the Police Manual, which, according to the petitioner, contemplates settlement of all outstanding dues of a discharged employee prior to the actual order of discharge.

3. The averments made in the writ petition and the oral submissions advanced by the learned counsel for the writ petitioner would go to show that, admittedly, the writ petitioner was absent from the Battalion Headquarters from 12.3.2002 upto the date of the discharge order, i.e., 30.10.2002. This absence, undisputedly, is without obtaining any leave or sanction of the higher authority. In these circumstances the discharge of the petitioner from service is sought to be assailed by contending that the petitioner was not informed of the enquiry held against him and the justification advanced by the petitioner for his absence in the reply submitted, i.e., that the said absence was on account of his illness was also not taken into account by the disciplinary authority. The learned counsel for the petitioner also contends that the enquiry was held without informing the petitioner, else the petitioner would certainly have been able to justify his absence. Accordingly, interference with the impugned order of discharge and for grant of consequential reliefs has been prayed for.

4. Though no affidavit has been filed on behalf of the respondents, the records in original have been produced. The said records bear ample testimony to the service of the several notices, on the petitioner, as mentioned in the impugned discharge order dated 30.10.2002. No evidence of submission of any reply by the petitioner including the communication, dated 12.9.2002 (Annexure 2 to the writ petition) is available in the records produced. That an enquiry in respect of the charges levelled was proposed is itself indicated in the show cause notice dated 7.8.2002, which the petitioner admittedly received. It is in the said facts that the denial of adequate opportunity, as has now been contended on behalf of the petitioner, has to be examined by the Court.

5. While it is correct that the enquiry against the petitioner was held ex-parte, the question that confronts the Court is whether in the facts of the case as noted above, the discharge of the petitioner must be held to be in violation of the principles of natural justice and on that basis should be interfered with by the Court. Time and again, the judicial verdict has reiterated that the principles of natural justice do not operate in a strait-jacket formula ; such principles are

elastic and must be always understood with reference to the facts that confront the Court in a given case. In the present case, that the petitioner was absent without leave or permission is a fact that has been virtually admitted by him. Receipt of the notices issued by the authority requiring the petitioner to resume duties as well as the show cause notice dated 7.8.2002, whereby he was also asked to participate in the enquiry, were duly received by the petitioner. No attempt on the part of the petitioner to comply with the requirements of any of the aforesaid notices is discernible from the records produced.

6. In the present case, the absence of the writ petitioner without leave being admitted, the alleged denial of opportunity resulting in violation of the principles of natural justice must necessarily be understood in the context of the justification that the petitioner could have advanced for his conduct, in the enquiry held against him. The core of such justification, as has been now contended, is that during the relevant period the petitioner was ill. The Court, to be satisfied that the petitioner is entitled to a reconsideration of the matter, a natural consequence of the plea of violation of the principles of natural justice being accepted by the Court, would be entitled to enter into a consideration of the prima facie case that the petitioner has been able to make out, in this regard, on the pleadings and contentions advanced. If the Court is not so satisfied it would be entitled to hold that no prejudice has been caused and on that basis invoke the "useless formality theory". After all, the test to be applied while considering a plea of violation of the principles of natural justice must always be pragmatic and not academic. Indeed, the law has considerably moved away from what was, at one point of time, considered absolute and inviolable principles of the doctrine and the present position is best described by what the Supreme Court has expressed in *Canara Bank and Others Vs. Shri Debasis Das and Others*,

"13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations, which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form."

7. Adopting the above test, a consideration of the justification of the grounds shown for the petitioners long absence from duty, i.e., illness, in the context of the surrounding facts and circumstances, does not reveal any significantly extenuating fact or circumstance, which could lead this Court to even a prima facie satisfaction that the petitioner's illness, as claimed, could have justified his absence. No specific details of the illness, much less any corroborative medical opinion has been brought on record. Another glaring fact, which the Court must notice is the proximity between the place where the petitioner was staying during

the period of his unauthorised absence and the place where the Battalion Headquarters was located. The aforesaid fact is revealed by the statements of the persons examined in the ex parte enquiry held against the petitioner. In such a situation, as a member of a disciplined force it was incumbent on the petitioner to report to the Battalion Headquarters, if not for the purposes of joining duty, at least for the purposes of reporting his illness and for receiving necessary medical treatment at the hands of the authority. The petitioner not having so acted and the materials adduced being as already noticed, an apparent lack of justification in the causes shown for his unauthorised absence is plainly evident. The same would deter the Court from reaching a conclusion that there has been any violation of the principles of natural justice in the given facts and circumstances of the present case.

8. For all the aforesaid reasons, I do not find any good ground to interfere with the impugned order of discharge, dated 30.10.2002.

9. In so far as the argument advanced on behalf of the petitioner with regard to the infraction of Rule 104, is concerned, I have considered the provisions of Rules 104 and 105, contained in Part III of the Assam Police Manual as well as the certificate of discharge that is required to be issued in the prescribed form, i.e., Form No. 74 of Schedule XI(A)(part 1). On such consideration, I am inclined to hold that discharge under Rule 104, contemplates a situation following cessation of service and the said word, i.e., "discharge" has not been used as specie of punishment to be imposed under Rule 66, of the Rules. As Rule 104 requires the authority to settle the dues of a person leaving the service, I close this writ petition by providing that all benefits to the petitioner, as may be due to him under the provisions of the Rules, shall be paid to him without any delay. As the petitioner has been out of service and this Court has taken the view that he should remain out of service, the settlement of the dues of the petitioner in accordance with the provisions of the Rules shall be expedited by the concerned authority and will be finalised within an outer time-frame of three months from the date of receipt of a certified copy of this order.

10. Consequently, this writ petition is dismissed subject to the observations above.