
(2014) 12 GAU CK 0015
In the Gauhati High Court
Case No : WP(C) No. 1564 of 2012

Janardan Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Assam Police Act, 2007 — Section 65
Constitution of India, 1950 — Article 226, 311

Citation : (2014) 5 GLT 463

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.K. Medhi, Advocates for the Appellant; N. Upadhyay, G.A,
Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—The petitioner is aggrieved by Annexure-V order dated 28.2.2010, by which, pursuant to a departmental proceeding, he has been removed from service. He is also aggrieved by rejection of the departmental appeal that was preferred against the order of removal, vide the Annexure-VII order dated 26.9.2011. The petitioner while was serving as Constable (AB), to which post, he was appointed on 25.2.1995 was served with the show cause notice dated 2.9.2001 in respect of departmental proceeding (DP No. 22/09). The same was under Section 65 of the Assam Police Act read with Rule 66 of the Assam Police Manual, Part-III and Article 311 of the Constitution of India and also Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964. The charges that were leveled against the petitioner is reproduced below:

"While you were posted at platoon No. 17 camp-Rangapara P.S. on 27.05.2009 you are detailed for escort duty with O/C Rangapara P.S. but you did not execute lawful duty. You violated your platoon Commander's order and when you were posted at this unit HQr you were found unauthorized absence for 75 (seventy five) days w.e.f. 10.06.09 p.m. to 25.08.09 a.m. without leave or permission from the competent authority. You also consumed liquor and were found to be

uncontrolled.

Your above act of indiscipline and gross misconduct render you unfit to remain in disciplined Police force."

2. In response to the charge sheet, the petitioner submitted his show cause reply vide the Annexure-II reply dated 2.1.2009. In the written statement, his defence was that as he had sustained injury in his right arm, he could not perform the escort duty. As regards the charge of unauthorized absent from duty, his reply was that he had gone home without taking permission from the competent authority and there he suffered from illness and as such had to remain absent while undergoing traditional treatment practiced in the village. He admitted that for the purpose, he had to stay away from duty for 2 months 15 days.

3. Being not satisfied with the reply furnished by the petitioner, the disciplinary authority vide Annexure-III order dated 23.11.2009 ordered for departmental enquiry appointing Inquiry Officer. Thereafter, the enquiry was conducted and the Inquiry Officer found the petitioner guilty of the charges and accordingly the disciplinary authority vide the impugned Annexure-V order dated 28.2.2010 imposed the penalty of removal from service. Being aggrieved, the petitioner preferred a departmental appeal, which was also rejected by Annexure-VII order dated 26.9.2011. Hence this writ petition.

4. I have heard Mr. S.K. Medhi, learned counsel for the petitioner. Also heard Ms. K.K. Choudhury and Mr. N. Upadhyay, learned State Counsels. I have also perused the entire materials on record.

5. Mr. Medhi, learned counsel for the petitioner submitted that there is good and valid reason as to why the petitioner could not perform his escort duty and also remained absent and accordingly, the same is required to be condoned. He submitted that except the allegation of unauthorized absence for the period mentioned in the charge sheet, the other allegations being vague and indefinite, the petitioner could not have been held guilty of all the charges. He also submitted that in the departmental enquiry, the petitioner was denied defence assistance and the rights to cross examine the witnesses. He also submitted that since the impugned order of removal has referred to earlier purported unauthorized absence of the petitioner on several occasions without giving any opportunity to the petitioner to rebut the same, on that count alone, the impugned order is not sustainable in law. To buttress the said argument, he has placed reliance on three decisions reported in Bhagat Ram Vs. State of Himachal Pradesh and Others, ; Ganesh Santa Ram Sirur Vs. State Bank of India and Another, and Narmada Pd. Yadav Vs. State of M.P. and Others, .

6. On the other hand, the learned State Counsels submitted that the charges having been established in the departmental enquiry and the petitioner himself having admitted the charges, there is nothing to interfere with the impugned orders. As regards the plea of the petitioner that he was not provided with the opportunity to engage defence assistant and also to cross examine the

witnesses, it was submitted that such pleas without any specific pleadings in the writ petition, coupled with the fact that in the departmental proceeding, no such plea was raised, are untenable.

7. As to what were the charges against the petitioner has been noted above. There are altogether three elements in the charge leveled against the petitioner, quoted above. They are:

"(i) The petitioner did not execute lawful duty as was assigned to him on 27.5.2009, when he was detailed for escort duty with the Officer-in-charge, Rangapara Police Station.

(ii) He also violated the commander's order when he was posted at the unit and he remained unauthorizedly absent from duty for 75 days with effect from 10.6.2009 to 25.8.2009 without leave or permission from the competent authority.

(iii) He also consumed liquor, when on duty and was found uncontrollable."

8. The reply to the aforesaid charges furnished by the petitioner on 2.11.2009 has been noted above.

9. As regards the first element of charge, his plea was that he could not accompany the Officer-in-charge of the police station on duty as he had sustained injury in his right arm. As regards the unauthorized absence from duty, he admitted the same in his show cause reply. As regards consumption of liquor, there was no reply from the petitioner.

10. The Inquiry Officer in his report dated 15.12.2009 held the petitioner guilty of the charges. In the enquiry, 4 witnesses were examined and 6 documents were exhibited. All the witnesses in their statement confirmed the allegations made against the petitioner. Apart from confirming non-performing of escort duty, coupled with unauthorized absence from duty for 75 days, they also deposed that when the petitioner deployed for escort duty on 27.5.2009, he did not carry out the same due to consumption of liquor subverting to discipline. PW-3 in his deposition while stating that the petitioner was under the influence of liquor, also stated that he was medically examined by the unit doctor, who opined that the petitioner had consumed liquor heavily, but somehow could take care of himself. The same was also confirmed by the PW-4. As regards the other two elements of charge, admittedly, the petitioner did not perform the escort duty and also remained absent for 75 days unauthorizedly and this aspect of the matter has been elaborately discussed in the enquiry report. Relevant extract of the enquiry report are quoted below:

"ENQUIRY...

.....The delinquent submitted his written reply of the show cause notice on 2.11.2009. But the disciplinary authorities was not satisfied with the reply of the show cause notice and the D.P. was endorsed for enquiry, I have examined the witnesses and recorded their statements in presence of the

delinquent giving him ample opportunities for cross examination.....

PW-1

.....Accordingly, CN/602 Suren Borah reported his duty but the delinquent did not reported his assigned duty willfully and violated the order of his Pln. Commander. I delinquent also consumed liquor and shows indisciplined act. He brought the delinquent to BN Hqr with the influence of liquor and submitted a written complaint against him for taking action. The above act of the delinquent is his gross indiscipline act, misconduct and disobedience of lawful order of his superiors.

PW-2

.....Accordingly, he reported the duty but C/N/162 Janardan Saikia did not reported his assigned duty willfully and violated the order of their Pln. Commander. So, he reported the matter to P/C and the P/C himself execute the duty in place of C.N. Janardan Saikia. In return from duty he found the delinquent has under the influence of liquor. Next day, P/C bring him to Bn Hqr. and submitted a written report for the above incident against him.

PW-3

.....While C.N. Janardan Saikia was posted at Pln No. 17 Rangapara P.S. had remained absent from his duty and consumed liquor on 27.5.2009 and handed over him to Bn Hqr on 28.5.2009 under influence of liquor. The said CN was medically examined by Unit Doctor who opined that CN consumed liquor heavily and could somehow take care of himself. I have submitted a report against the delinquent that he admitted in the Unit Hospital from 30.5.2009, 10.6.2009 due to his illness, but he remained absent from Bn. Hqr. w.e.f. 10.6.2009 without any leave or permission from the authority. Later on, he resumed his duty on 25.8.09 a.m. after 75 (seventy five) days absence. The above act of the delinquent in his gross indisciplined act, misconduct and disobedience of lawful order of his superior authority.

PW-4

CN/162 Janardan Saikia who was detailed for Escort duty with O/C Rangapara P.S. on 27.5.09. But he did not execute the assigned duty and violated his order by consuming liquor. On 28.5.09 the delinquent was produced at BN Hqr under influence of liquor. So he was medically examined by the unit Doctor under requisition. The Doctor opined that the delinquent consumed liquor was put up before the CO and a DP No. 22/09 was drawn up against the CN 162 Janardan Saikia vide Memo No. 12/R/DP/8013-19 dated 25.8.09.....

The delinquent was examined in connection with the D.P. who admitted the above fact and prayed to exonerate for the first time and promised not to repeat such act in future."

11. As noted above, altogether 6 documents were exhibited in the enquiry, which

included the written report against the petitioner; medical report, written report regarding unauthorized absence of the petitioner etc. On the basis of the evidence on record, the Inquiry Officer recorded his finding in the report as follows:

"FINDINGS-

From the above statement of witnesses and the delinquent and also careful examination of relevant documents, it is proved beyond all reasonable doubts that CN/162 Janardan Saikia remained absent from his assigned duty on 27.5.2009 and consumed liquor heavily and remained unauthorized absent w.e.f. 10.6.09 to 25.8.09 a.m. i.e. total 75 (seventy five) days, which act is his gross undisciplined act, misconduct and disobedience of lawful order of his superior authority.

Submitted to the Commandant 12th APBN for favour of kind perusal and necessary order as deemed fit."

12. Although Mr. Medhi, learned counsel for the petitioner, during his forceful argument submitted that the petitioner was deprived of defence assistance and right to cross examine the witnesses, as the records would reveal the petitioner never prayed for engagement of any defence counsel and did not cross examine the witnesses, although he was asked to do so. Thus, the decision in Bhagat Ram (supra) is of no help to the case of the petitioner. The petitioner having himself declining to take assistance of defence counsel and also to cross examine the witnesses cannot later on take the plea of deprivation of the same. The records do not reveal that the petitioner had ever prayed for engagement of defence counsel rather he declined to cross examine the witnesses.

13. The decision in Ganesh Santa Ram Sirur (supra) has been pressed into service so as to contend even if the penalty of removal from service is upheld, but having regard to the charge said to have been established against the petitioner, which according to the learned counsel for the petitioner only relates to the charge of unauthorized absence from duty, the petitioner is entitled to a lesser penalty than the extreme penalty of removal from service. In the said case, the Apex Court was concerned with, sanctioning of loan by appellant to his spouse in contravention of service rules. However, the cheque was not encashed commenting that the decision was not an honest decision. The Apex Court, however, in peculiar facts and circumstances, while not interfering with the order of removal from service, directed to give the benefit of pension and gratuity irrespective of his total service period. The said decision is not at all applicable to the present case and this Court exercising its power of judicial review under Article 226 of the Constitution of India cannot issue any such direction irrespective of the charges established against the petitioner.

14. In Narmada Pd. Yadav (supra), the Apex Court interfering with the penalty of reduction in rank noticing that there was no independent witness was examined to prove the charge coupled with the fact that the delinquent had unblemished

service record of 21 years, held that the punishment of demotion from the post of Head Constable was not justified. In the instant case, the departmental enquiry was conducted in a fair manner giving all the opportunities to the petitioner. As to what are the evidence on record has been noted above.

15. As has been held by the Apex Court in *State Bank of Patiala and others Vs. S.K. Sharma*, , the plea of violation of principles of natural justice in the context of validity of the enquiry will have to be judged in the context of test of prejudice caused to the delinquent. An order passed imposing a punishment on an employee should not be set aside automatically on the basis of the plea of violation of natural justice without judging whether the alleged violation is substantive nature or procedural in character. The Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision. In the instant case, the fact that the petitioner did not perform assigned duty and also that he remained absent from duty unauthorisedly without any leave and/or permission from the superior authority is an admitted fact. The contention raised during the argument was that since the allegation of consumption of liquor is vague and indefinite, the Inquiry Officer could not have held the petitioner guilty of the said element of charge. However, the said plea will have to be understood in the context of the stand of the petitioner in his reply to the show cause notice. He never took any such plea, rather has not even dealt with the said element of allegation. All the witnesses unequivocally deposed that the petitioner did not perform the assigned duty, rather consumed liquor, for which, he was also medically examined. As has been held by the Apex Court in various decisions, admission of fact constituting guilt need not be proved again. The Apex Court in *Channabasappa Basappa Happali Vs. The State of Mysore*, , held that when delinquent admitted the facts, he was guilty. In paragraph-5 of the said judgment, the Apex Court held thus:

"It was contended on the basis of the ruling reported in *Regina v. Durham Quarter Sessions Ex-parte Virgo* (1) that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the court must ask the person and of the plea of guilty is qualified the Court must not enter a plea of guilty but one of not guilty. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between Admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the

learned, Single Judge."

16. In *VC v. KVS* reported in (2004) 6 SCC 325 also, the Apex Court in the context of natural justice held that admission of fact need not be proved. In *Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*, , the Apex Court held that once there is admission of the charge, no detail enquiry is needed. In the said case, penalty was imposed on the respondent's admission that he was unauthorisedly absent was held to be valid. In the said case, the respondent was a repeated absentee, but still appellant employer let him off by taking a lenient view in earlier cases of unauthorized absence. In response to last charge sheet the respondent admitted that he absented himself unauthorisedly. In view of his voluntary admission, enquiry was closed and penalty of removal from service was imposed on him.

17. Although, during the course of hearing, learned counsel for the petitioner strenuously argued that the petitioner was deprived of adequate opportunity in the enquiry, but as noted above, he was provided with all reasonable opportunities of being heard. Witnesses were examined in his presence and he declined to cross examine them. As regards the right to engage defence assistant, he never prayed for the same. The pleas now raised in the writ petition were never raised during the enquiry proceeding. The finding of fact arrived at by the authorities on the basis of the evidence on record, cannot be lightly interfered with by Writ Court. It is only when the findings are totally perverse or based on no evidence, interference is permissible. Even insufficiency of evidence cannot be the ground to interfere with the finding as it is not the function of this Court to re-appreciate the evidence.

18. In *H.V. Nirmala Vs. Karnataka State Financial Corporation and Others*, , the Apex Court held that when objection relating to departmental enquiry was not raised during the enquiry proceeding, chargesheeted employee should be deemed to have waived objection. In the instant case also, the petitioner never raised any objection regarding enquiry proceeding during the enquiry. Much was argued that since the impugned order refers to the earlier purported unauthorized absence of the petitioner from duty without giving an opportunity to explain the same, the order of penalty was liable to be interfered with. The fact of the matter is that all the elements involved in the composite charge have been proved in the enquiry and thus even if the earlier unauthorized absence of the petitioner from duty finds mention in the impugned order, the same cannot cloth the petitioner with any right. As has been held by the Apex Court in *State of Punjab Vs. Darshan Singh*, , mere fact that the employer while communicating the dismissal order indicated the previous punishments inflicted on the delinquent could not vitiate the order of dismissal.

19. In the counter affidavit filed by the respondents, apart from denying the pleas raised by the petitioner in the writ petition, they have also stated about the procedural fairness in conducting the enquiry. While explaining the same, the affidavit states that the petitioner was provided with all the reasonable

opportunities of being heard in the enquiry proceeding. The witnesses were examined in mother tongue with the right of cross examination to the petitioner. The petitioner never raised any objection whatsoever in respect of the procedure adopted in the enquiry. The petitioner admittedly acknowledged the enquiry proceeding by putting his signature and he also declined to cross examine the witnesses. As regards the earlier punishment awarded, the affidavit indicates the following.

"i) 15 days LWP w.e.f. 24.10.2000 pm to 8.11.2000 pm vide B.O. No. 3080 dtd. 5.12.2000.

ii) 3 days LWP w.e.f. 2.6.05 pm to 4.6.05 pm vide B.O. No. 1021 dtd 6.6.2005.

iii) 61 days LWP w.e.f. 13.10.05 pm to 12.12.05 pm vide B.O. No. 2314 dtd 19.12.2005.

iv) 58 days LWP w.e.f. 26.11.07 pm to 22.01.07 pm vide B.O. No. 132 dtd 12.2.2007.

v) 75 days LWP w.e.f. 10.06.09... to 25.08.09.... vide B.O. No. 288 dtd 28.2.2010.

vi) 05 days EOL w.e.f. 22.07.06 pm to 25.07.06 provide B.O. No. 1240 dtd 25.08.2006.

vii) 05 days EOL w.e.f. 31.12.07 pm to 5.01.08 pm vide B.O. No. 46 dtd 17.1.2008.

viii) 46 days EOL w.e.f. 2.2.08 am to 18.3.08 pm vide B.O. No. 453 dtd 2.5.2008.

ix) 02 days EOL w.e.f. 09.07.08 am to 10.07.08 pm vide B.O. No. 736 dtd 16.07.2008.

x) 16 days EOL w.e.f. 20.7.08... to 4.08.08 PM vide B.O. No. 821 dtd 12.08.2008.

xi) 76 days EOL w.e.f. 18.09.08 AM to 02.12.08 PM vide B.O. No. 202 dtd. 16.02.2009.

xii) 05 days P.D. 2 (two) hours daily for his indiscipline conducts vide B.O. No. 6156 dtd 21.07.1997.

xiii) 10 days Q/G for his gross indiscipline conduct vide B.O. No. 593 dtd 17.04.2004.

xiv) Awarded severally reprimanded for indiscipline conduct vide B.O. No. 2709 dtd 21.11.2002.

xv) 07 days P.D. for his indiscipline conduct vide B.O. No. 2709 dtd 21.11.2002.

xvi) Warning vide B.O. No. 6150 dtd. 21.07.1997 (16th A.P.(IR)Bn)."

For all the aforesaid reasons, the pleas raised in the writ petition are not sustainable and accordingly they stand rejected. Consequently, the writ petition

is dismissed, leaving the parties to bear their own costs.