

(2018) 11 GAU CK 0003

In the Gauhati High Court

Case No : Civil Writ Petition No.5993 of 2015

Jatin Ch. Deka @APPELLANT@Hash State Of Assam And 3 Ors

Date of Decision : 01-11-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 11 GAU CK 0003

Hon'ble Judges : Songkhupchung Serto, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. Heard Mr. SB Sarma, learned counsel for the petitioner and Mr. MR Adhikary, learned Additional Govt. Advocate appearing on behalf of the State respondents.

2. This is a petition, under Article 226 of the Constitution of India, challenging the legality and validity of the removal order dated 11.12.2014 issued by the Superintendent of Police, Darrang and the order dated 23.06.2015 issued by the Deputy Inspector General of Police, Tezpur, passed on appeal, filed by the petitioner, against the removal order.

3. The learned counsel for the petitioner has submitted that the enquiry proceeding by which the petitioner was removed from service is vitiated because no Presenting Officer was appointed and the petitioner was not given a chance of cross examining the witnesses, produced by the prosecution. Learned counsel also submitted that the petitioner was not given a copy of the enquiry report which would enable him to make an effective representation, therefore, there has been denial of opportunity of being heard properly. In support of his submissions, learned counsel for the petitioner has referred to paragraphs- 27 & 28 of the judgment and order passed

in the case of Anil Baishya vs. State of Assam and others reported in (2014) 4 GLR 111. The contents of the above two paragraphs are given here-in-below:

27. In W. Birbal Singh v. State of Manipur and others, 2010 (5) GLT 371, a Division Bench of this court held as under:

15) This court in the above cases held that the enquiry officer has assumed the role of the Judge as well as the prosecutor, inasmuch as, in

absence of the presenting officer, the enquiry officer himself examined the witnesses and exhibited documents and it would be violative of the rules

and the fundamental principles of nature justice. Admittedly, in the disciplinary proceeding against the appellant-writ petitioner for the said 2 articles of

charges no presenting officer was appointed and the enquiry officer himself assumed the role of Judge as well as prosecution. Accordingly, we are of

the considered view, that the disciplinary proceeding against the appellant-writ petition is liable to be quashed only on this score.

That was a case of dismissal from service of a police constable following a disciplinary proceeding where no Presenting Officer was appointed.

28. Thus following the above decisions, I am also of the considered view that failure to appoint a Presenting Officer had fundamentally affected the

disciplinary proceeding drawn up against the petitioner was clearly prejudiced by such omission. The same has vitiated the enquiry and the

consequential punishment imposed.

The learned counsel for the petitioner also referred to the judgment of the Single Bench of this High Court in the case of State of Manipur and others

vs. Chongtham Homendro Singh reported in 2005 (3) GLT 154. The relevant paragraph-7 of the judgment is quoted below:

(7) So far as the appoint of presenting officer, the learned Govt. Advocate for the appellants and also the counsels for the respondents stated at

the bar that no such presenting officer was appointed by the authorities in all the departmental proceedings. The records produced by the learned

Govt. Advocate also shows that there was no presenting officer appointed in all the departmental proceedings held against the writ petitioners

respondents. The question then is what will be the consequence of not appointing the presenting officer. It is settled law that the enquiry officer while

sitting as a judge, he cannot be also sitting as the prosecution to examine the

witnesses by himself. The enquiry officer cannot assume the role of a judge and also the prosecutions. Even there is no such provisions under Rule 66 for appointment of the presenting officer, the simple question is that, who is to present the case of the department when there is no presenting officer, therefore, absence of presenting officer will make the inquiry totally vitiated as the inquiry officer cannot assume the role of the judge as well as prosecution.â??

4. Mr. MR Adhikary, learned Govt. Advocate appearing for the respondents candidly admitted that no Presenting Officer was appointed when the enquiry was conducted against the present petitioner. However, learned Govt. Advocate submitted that the submission of the learned counsel for the petitioner that petitioner was not given copy of the enquiry report, is not true as per record. Learned Govt. Advocate further submitted that the petitioner was given ample opportunity of cross examining the witnesses and in fact he even cross examined one of the witnesses, namely, Dhaneswar Nath. Lastly, the learned Govt. Advocate submitted that in his statement recorded before the Enquiry Officer, the petitioner had admitted to his guilt on the charges.

5. The facts leading to filing of this writ petition, briefly stated, are as follows:

In the year 2014, while the petitioner was posted at Kopati Tea Estate in Darrang district as Guard Commander of Homeguard party, he was accused of having kept with himself the salaries of the Homeguards posted under him, amounting to Rs.18,630/- instead of disbursing the same to the persons concerned and was also accused of having taken a loan of Rs.2,000/- from one of the Homeguards. Further, he was also accused of having taken grocery items from the shops nearby the camp without paying the price for the same. Accordingly, charge was framed and show cause notice was issued to him. Thereafter, enquiry was conducted and the Enquiry Officer found the charges framed against the petitioner proved and submitted his report.

Consequent upon the report, submitted by the Enquiry Officer, the petitioner was given show cause notice to submit his representation. After

considering his representation, the first impugned order dated 11.12.2014 was passed by the Superintendent of Police, Darrang, whereby the petitioner was removed from service with immediate effect. After the first impugned order

was issued, the petitioner approached the Deputy Inspector General of Police, Tezpur, on appeal. However, the appeal was rejected and his removal order was upheld by the Deputy Inspector General of Police, Tezpur, vide his order dated 23.06.2015, which is the second impugned order in this writ petition.

6. One of the pertinent questions of law raised by the learned counsel for the petitioner is that no Presenting Officer was appointed when the enquiry was conducted on the charges levelled against the petitioner. It is settled law that an Enquiry Officer sitting as a Judge cannot at the same time assumed the role of a prosecutor. It is only to ensure fairness in the proceeding. In this case, as stated above, admittedly no Presenting Officer was appointed. As has been held by this Court in catena of cases including the cases cited by the learned counsel for the petitioner, in the absence of Presenting Officer, the enquiry proceeding is totally vitiated, since the Enquiry Officer cannot assumed both the role of prosecutor and a judge at the same time. Therefore, I do not find any necessity to go any further. Since the enquiry is vitiated without the appointment of Presenting Officer, the same is quashed and set aside. Accordingly, the consequential orders dated 11.12.2014 and 23.06.2015 are also quashed and set aside. However, if the authorities want to conduct a fresh enquiry against the petitioner, they may do so by following the relevant laws.

7. With the aforesaid observation and direction, this writ petition stands disposed of.