
(2010) 02 GAU CK 0054

In the Gauhati High Court

Case No : Writ Petition (Civil) No, 1670 of 2009

Kandarpa Kumar Deka

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2010) 5 GLR 639

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : M.Hazarika, J.Hazarika, G.Soren, A.Ajitsaria, Advocates appearing for Parties

Judgement

1. The petitioner's salary having been withheld for nonissuance of his last pay certificate following his posting as SubInspector in the Government Railway Police Organisation, Assam, he is before this court for redress his appeal before the Departmental Authorities therefor having failed to evoke any response.

2. I have heard Ms. A. Ajitsaria, learned counsel for the petitioner and Mr. G. Soren, learned State Counsel for the respondents.

3. The petitioners pleaded case in short is that having joined as constable in the Assam Police in the year 1997, he was promoted to the post of Assistant SubInspector of Police and in that capacity in the year 2001 he was posted at Sonitpur DEF. He was thereat entrusted with the duties of the "Sirestha" of the Rangapara Police Station and was detailed to look after the "Malkhana" thereof. On being promoted to the post of SubInspector of Police (U.B.), he was by memo No. RD/Released/ASI/Prom/08/357180 dated 27.2.2008 released from Sonitpur DEF and posted at the Government Railway Police Organisation, Assam, Guwahati. In compliance thereof, the petitioner on being released from the Sonitpur DEF joined the new place of posting on 31.5.2008 and continued to discharge his duties thereat. As his salary from that date was withheld, he made necessary enquiries and was informed that the last pay certificate has not been

issued from the Sonitpur DEF. The petitioner made representations from time to time and though as averred by him was assured of necessary action, the same did not follow. He was eventually served with a copy of the letter dated 25.11.2008 issued by the Superintendent of Police, Tezpur, alleging that he had failed to handover MRs (Malkhana Registers) of Rangapara Police Station as per the list enclosed therewith. Thereby he was asked to handover the said records else face criminal proceeding. According to the petitioner, at the time of his release from the post of Assistant SubInspector, Rangapara Police Station, as Malkhana InCharge, he did handover all the articles mentioned in the MRs to the successor in office who in token of having received the same put his signature on the Register as was the prevalent practice in the department. As in spite of the above, his salary has remained withheld he has approached this court.

4. The Deputy Superintendent of Police (HQ), Sonitpur, Tezpur, in his affidavit on behalf of the respondent No. 3 has stated that the petitioner as the Seristha and incharge of the Malkhana of the Rangapara P.S. held the keys thereof. While admitting his promotion, posting at the GRP Organisation, Assam, Guwahati and his release from the Sonitpur DBF on 29.2.2008, the deponent has averred that as per the prevalent norm, the petitioner was required to obtain a clearance certificate from the concerned authority of the said Police Station as well as of the concerned branches of his office by handing over all relevant records including Malkhana exhibits, arms/ammunitions, etc. It has been clarified that as the clearance certificate had not been issued by the accounts section of the office concerned, he has not been released his salary. It has been alleged that the petitioner as on date has not handed over the MRs of the Malkhana items of the Rangapara P.S. which are still in his custody and that in spite of notice to him, he even did not associate himself with the enquiry ordered in the matter vide memo No. CB/09/203 dated 2.2.2009. The answering respondent has asserted that as the petitioner in spite of repeated directions in this regard failed to comply therewith and handover the missing Malkhana items, meanwhile a criminal case has been registered against him being Rangapara P.S. Case No. 40/2009 under section 409, IPC.

5. In his affidavit in reply, the petitioner while denying the imputations levelled against him reiterated in substance his stand in the writ petition. He has denied of having been served with any notice of the enquiry said to have been conducted by the department and has, therefore, not admitted the findings against him in the enquiry report in connection therewith. According to him, availing casual leave he had meanwhile visited the Rangapara P.S. and in association of the present Malkhana inCharge thereof had rechecked the entries of the Malkhana registers and the items referred to therein. In his reply, the petitioner has also set out the particulars of the items not available in the Malkhana with the corresponding remarks disclosing the reasons therefor.

6. Ms. Ajitsaria has argued that the petitioner having duly handed over the malkhana registers as well as the items in the malkhana as available therein to

his successor in office who in acknowledgment thereof had duly made his endorsement in the relevant records, the impugned action of withholding his (petitioner) pay is wholly arbitrary and unjustified. While contending that it was impermissible on the part of the departmental authorities to act to the prejudice of the petitioner by relying on the findings of the enquiry held ex parte against him, the learned counsel has pleaded that as on the reverification of the items in the malkhana with reference registers in coordination with the present malkhana incharge, it is apparent that most of them have been duly accounted for and that the reasons for nonavailability of the others have been duly recorded, he could not have been held liable there for and, thus, the action of nonissuance of his last pay certificate and withholding of his pay is illegal, unreasonable, unfair and unjust. Without prejudice to the above, the learned counsel has argued that as the petitioner is admittedly rendering his services an appropriate direction in the attendants facts and circumstances of the case ought to be issued by this court for release of his salary subject to the action deemed necessary as a disciplinary measure or on the culmination of the criminal proceeding as the case may be.

7. The learned State Counsel on the other hand has contended that it being obvious from the contemporaneous records that several items though referred to in the malkhana registers maintained during the tenure of the petitioner are physically not available in the malkhana, he cannot be absolved of his responsibility being the incharge thereof and, thus, the impugned action is valid in law. In support of his plea, Mr. Soren has produced the relevant malkhana registers maintained in course of due discharge of daily official duties.

8. The pleadings of the parties and the arguments have been duly noted. That the petitioner had been released from the Sonitpur DEF on promotion as SubInspector of Police and posted at the GRP Organisation, Guwahati, Kamrup, is an admitted fact. His claim that he had since then been rendering his services in his new establishment also stands unrefuted. The respondents have admitted that the petitioner's salary remains withheld for nonissuance of the last pay certificate by the concerned office for his failure to account for or handover all the items referred to in the relevant malkhana registers. This has been consistently and stoutly denied by the petitioner. The parties are also at variance on the aspect of notice to the petitioner visavis the official enquiry said to have been conducted in the matter. The fact that his successor in office relieving him of the responsibility as the incharge of the malkhana of the Rangapara Police Station had duly taken over charge from him after making the necessary endorsements in the relevant records as per the practice has also not been denied by the respondents.

9. The entries of the malkhana registers in original for the years 1994 to 2010 as produced in court on a perusal tally with those set out by the petitioner in his affidavit in reply indicating in particular the items not available in the malkhana. These items noticeably are in the categories of locks, spade, letters, key ring with case, lock and chain, photograph, identity card, plastic cement bag, broken

cycle, etc. The remark column of the malkhana registers though indicate that these items are not traceable in the malkhana, the same disclose relevant orders of the concerned court of law in connection therewith in most of the cases. The period ranges from 1995 to 2007. This is significant as the petitioner had been entrusted with the responsibility of the malkhana after his posting at Sonitpur DEF in the year 2001. In the face of the pendency of a criminal case against him, this court for obvious reasons is disinclined to dilate on this aspect any further. The above observation, it is made clear, are neither intended to exonerate the petitioner from any omission and commission of his as the incharge of the malkhana, if proved in an appropriate proceeding but by way of an appraisal of the backdrop of facts and the attending circumstances in response to his claim for release of his salary pending actions against him departmentally or otherwise if called for.

10. In the contextual facts as noticed hereinabove, in the opinion of this court, in the teeth of clear and categorical denial by the petitioner about his custody and/or knowledge of the location of the missing items in the malkhana, the prospect of retrieving the same appears to be bleak. A realistic and a pragmatic approach to the problem pending conclusion of the criminal trial and any other action contemplated departmentally, thus, ought to be adopted more particularly in view of the admitted fact that the petitioner has been rendering his services as on date without any prior history or record of his culpability of the like nature or otherwise. The petitioner's assertion of having voluntarily associated himself with the present malkhana incharge for a fresh exercise to ascertain the nature and extent of the anomalies as alleged and to prepare an inventory thereof which as alluded hereinabove, is consistent with the disclosures from the original malkhana registers *prima facie* exudes lack of mala fide on his part. An endeavor on his part at least to ferret out the recorded state of affairs visavis the items in the malkhana said to be unaccounted for during his tenure is discernible.

11. On a totality of the considerations as above, this court is of the opinion that pending finalisation of the criminal proceeding against the petitioner or contemplation of any other action against him in law by the departmental authorities, he is for the present ought to be released his salary, arrear as well as current. Ordered accordingly. The respondent authorities would take necessary steps forthwith to ensure the disbursement of the salary to the petitioner as above. This, however, would be subject to the decision in the criminal proceeding presently pending against him and the other actions by way of disciplinary measure or otherwise if decided to be taken on the issue in accordance with law. This direction for payment of salary in addition to the factors indicated above, has also been made as the charge of dereliction of duty visavis the petitioner remains to be proved in the criminal case or in any proceeding envisaged by the Rules governing his conditions of service. It is further made clear that this direction has been issued in the unique facts and circumstances of the case and would not be construed to be a precedent in future.

The petition is, thus, partly allowed in the above terms. No costs.