
(1988) 05 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 1026 of 1982

Lauddin Khan

APPELLANT

Vs

Director General of Police

RESPONDENT

Date of Decision : 11-05-1988

Acts Referred:

Citation : (1988) 2 GLJ 347

Hon'ble Judges : B.L.Hansaria, J and J.Sangma, J

Bench : Division Bench

Advocate : C.Barua, D.P.Chaliha, Advocates appearing for Parties

Judgement

Hansaria, J.—The petitioner is a police constable. He had joined the GRP (Government Railway Police) in 1960. In the month of February, 1979 the petitioner received information that his wife met with an accident at his village residence and knowing about the same he applied for two months leave and it is the case of the petitioner that the application was recommended by the Inspector GRP, Tinsukia and forwarded to GRP Headquarter at Haflong. On 6. 3. 79 the petitioner was deputed to carry some dak to Haflong which he delivered on 7. 3. 79 but due to the absence of the Reserve Officer he could not know whether his leave as prayed for had been allowed or not. While returning from Haflong on 8. 3. 79 he met a covillager at lower Haflong and learnt that for want of proper treatment his wife was becoming invalid and lame. He was also informed that his house at Bihara was completely gutted by fire and the members of the family had become homeless. Receiving these informations he become unnerved and he immediately proceeded to Bihara to see his family and reaching there he found that the entire family was in a very distressed position having no house to reside and his wife had also not been cured. This led the petitioner to stay at home, while he was at his home, he received an information dated 20.4.79 from the Superintendent of Police, Railway Police, Haflong asking him to resume his duties within 7 days from the date of receipt of the notice failing which he was informed that department will take action against him. The

case of the petitioner is that he received this information on 4.5.79 and joined his duties on 8.5.79. After resumption of duty a note was put up to the Superintendent of Railway Police (which is on record produced before us) seeking approval of the Superintendent of Police to grant 60 days EOL (Extra Ordinary Leave) with effect from 9. 3. 79 to 8. 5. 79. The Superintendent of Police ordered to draw a departmental proceeding for negligence of duty which was so done. In the departmental proceeding which followed 2 witnesses were examined on behalf of the department and after the report of the enquiry officer was received the petitioner was discharge! from duty on 19. 5. 89. But on appeal being preferred, the appellate authority altered the sentence to compulsory retirement so that the petitioner may be entitled to get pensionary benefit and the punishment may not be harsh. On revision being preferred before the Director General of Police, the petitioner did not get any relief. He has therefore approached this Court under Article 226 of the Constitution.

2. The first submission of Mr. C. Baruah, learned counsel for the petitioner, is that drawal of the proceeding was not called for inasmuch as pursuant to the notice dated 20.4.79 which asked him to resume duties within 7 days of the receipt of the notice, he had complied with the same notice. The notice was received by him on 4. 5. 79 and he had joined his duties on 8. 5. 79. From the records made available to us, we find that the notice dated 20. 4. 79 which as marked as Ext. 4 during the course of the enquiry bears at its back and office seal of the officer incharge of Katagerah Police Station to whom a copy was sent for causing service on the petitioner, below which the date mentioned is 4.5.79. We are therefore satisfied that the notice was served on the petitioner on 4. 5.79. It is an admitted position that he joined his duties on 8.5.79 and, as such, the same was within a week of the receipt of the notice, and so departmental action was really not required.

3. The second submission of Mr. Barua is that during the departmental enquiry he did not get reasonable opportunity to defend him inasmuch as some documents were relied on copies of which were not made available to the petitioner and some documents which he wanted the enquiry officer to call were not so done. The two documents which were relied on by the enquiry officer of which copies were not given are W. T. messages bearing No, T.S. 39/79 and T. S. 5 "/79. Though the date of these W. Ts. have been given in the enquiry officer's report as 10.9.79 and 8.11.79 respectively, from the records it appears that these are dated 16.3.79 and 8.4.79.

4. The above fact takes care of the submission of Sri Baruah that these documents were prepared afterwards, but then it cannot be said that these; two documents were made available to the petitioner before he was asked to face the departmental enquiry. We are however not taking this lapse seriously as these W. Ts. Only speaks about the absence of the petitioner from his duty from 8. 3. 19 onwards, which is an accepted fact. But then we cannot forget the fact that the petitioner had requested the enquiry officer to call for the leave application which

he had submitted prior to his leaving for his home on 8.3.79. This averment finds place in para 11 of the writ petition whose reply is in para 13 of the counter affidavit filed by the respondents wherein this fact had not been denied. This aspect of the matter has its importance because in the Statement of Allegation it has been stated that the petitioner had absented himself without any leave permission or giving any information. Indeed, from the appellate order of the Additional IGP, CID, as at Annexure 1 we find that he himself was not happy at the action of the Superintendent of Railway Police in not calling the records or documents which the petitioner had requested him to do. Despite this draw back in the enquiry, the Additional IGP did not set aside the finding of the enquiry officer keeping in view the past conduct of the petitioner which was regarded as unsatisfactory. The contention of Sri Baruah is that past conduct could not have been taken note of by the enquiry officer or, for that matter, by the appellate authority inasmuch as the petitioner was not made known about this fact when he was asked to show cause. It is a settled law that past misconduct can be taken note of only after the delinquent is made known about this fact.

5, Because of the above infirmities in the proceeding initiated against the petitioner, we are not in a position to uphold the order of compulsory retirement. We, therefore set aside the same and direct reinstatement of the petitioner. Necessary orders relating to reinstatement of the petitioner would be passed within a period of 2 weeks from the date of receipt of this order by the concerned authorities. Sri Chaliha has brought to our notice that due to the punishment in the present case some other proceeding against the petitioner was dropped. As to this, we state that it would be open to the authority to proceed with the aforesaid enquiry if they feel necessity of the same.

6. With the aforesaid observation, the impugned order is quashed and the petition is allowed. On reinstatement of the petitioner, the authorities would decide the question of quantum of arrear pay which has legally become due to the petitioner.