

(2011) 10 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 11 (K) of 2011

Mr. Prasanta Kumar Mazumdar

APPELLANT

Vs

The State of Nagaland

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Citation : (2011) 10 GAU CK 0017

Hon'ble Judges : P.K. Musahary, J; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : I Longchar, for the Appellant; L S Jamir, Addl. A.G. Nagaland, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. I Longchar, learned counsel for the appellant. Also heard Mr. L S Jamir, learned Addl. Advocate General, Nagaland, appearing for the respondents.

2. This appeal is directed against the judgment and order dated 9.3.2011 passed by the learned Single Bench in W.P. (C)No.74(K)/2008. The appellant as writ petitioner filed the writ petition challenging his dismissal from service. He sought for a direction for reinstatement in service and payment of salaries due from January, 2001.

3. A show cause notice dated 22.8.2000 was served upon the appellant for his alleged absence from duties and misconduct. The appellant submitted reply on 25.8.2000 to the aforesaid show cause notice. No further proceeding was taken up after receipt of the show cause reply but the respondent authorities vide an order dated 28.8.2000 released the appellant from office of the Superintendent of Police, Dimapur with effect from 29.8.2000 with direction to join in his parent Unit i.e. 7th NAP Battalion, Bhandari, Wokha. He could not report at 7th NAP Battalion, Bhandari, Wokha as he was stated to be ill and in the meantime, sometime in the year 2003, the appellant came to know through Signal Message dated 6.8.2003 that he was dismissed from service. He, however, received no

dismissal order. It has been stated that the appellant was dismissed from service with effect from 15.6.2006 without holding any disciplinary proceeding. In the aforesaid premises, the learned Single Bench set aside the dismissal order dated 6.5.2008 directing the disciplinary authority to initiate a disciplinary proceeding on the basis of show cause notice issued and complete the same within a period of four months from the date of order without passing any order in regard to prayer for payment of back wages since there is an allegation of not reporting for duties and left the matter open to the discretion of the disciplinary authority.

4. Mr. Longchar, learned counsel for the appellant submits that the order for conducting disciplinary proceeding at this belated stage is unwarranted. We are not ready to accept this submission inasmuch as the respondent authorities have already issued show cause notice and the authority concerned has the discretion to enquire into the alleged misconduct as per existing provisions under the law. We find no infirmity or illegality in the impugned order of the learned Single Bench and therefore, we refrain from interfering with the same. However, considering the facts and circumstances of the case as disclosed in the writ petition as well as in the Memorandum of Appeal, we would like to modify the impugned order to the extent that the respondent-authorities, particularly the disciplinary authority, shall consider/examine the reply submitted by the appellant to the show cause notice and take a final decision as to whether it should or should not proceed against the appellant by conducting disciplinary proceeding. We make it clear that to proceed or not to proceed against the delinquent on the basis of the reply submitted by the respondents is the discretion of the disciplinary authority.

5. With the aforesaid directions and modification this writ appeal stands disposed of.