
(2013) 11 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 6033 of 2006

Shri Nojendra Barman

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) LabIC 1488

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : A. Dutta, for the Appellant; J. Handique, Govt. Advocate, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. A Dutta, learned counsel appearing for the petitioner. The respondents are represented by the learned Govt. Advocate Mr. J Handique. The petitioner was a constable Havildar Major (CHM) in the 7th Assam Police Battalion and after his allotted carbine and ammunition went missing lost from his room on 8.4.2006, a disciplinary proceeding was drawn up through the show cause notice dated 22.5.2006 (Annexure-B) by the Commandant of the Battalion. For loosing the arms, the petitioner was charged with gross negligence and dereliction of duty and indiscipline conduct on the following statement of allegation:

While CHM Nojendra Barman was posted at platoon No. 15 Nangalbhanga he has lost his allotted carbine No. 16317595 alongwith one loaded Magazine of 12 Rds. live ammunition on 8.4.2006 at about 7:10 P.M., which tantamount to gross negligence of duty, indiscipline conduct and dereliction of duty on his part. All these render him unfit to be retained in a disciplinary force like Assam Police.

Therefore, he is charged with gross negligence of duty, indiscipline conduct and dereliction of duty....

2. In his reply, the petitioner admitted the weapon loss but requested for dropping of charge as he was on the verge of retirement and had an

unblemished career. But the reply was not accepted and a departmental inquiry was ordered. Through the notice dated 21.6.2006 (Annexure-D), the Inquiry Officer notified the delinquent to enable him to produce his evidence if any. On concluding the proceeding, the charges leveled were found to be proved and thereafter accepting the inquiry report, the Commandant ordered for dismissal of the delinquent, through the impugned order dated 7.9.2006 (Annexure-E).

3. Representing the petitioner, Advocate Mr. A Dutta submits that since the evidence and inquiry report was withheld, the petitioner was denied the second opportunity on the proposed penalty. Moreover the punishment is contended to be disproportionate to the charge proved against the petitioner.

4. For the disciplinary authority, the Govt. Advocate Mr. J Handique in turn submits that the petitioner was given all reasonable opportunities by the Inquiry Officer. Referring to the degree of dereliction, Mr. Handique submits that the punishment was proportionate to the misconduct.

5. However from the counter affidavit filed by the Commandant of the 7th Assam Police Battalion on 30.3.2011, it becomes apparent that the copy of the inquiry report was belatedly furnished only on 21.3.2007, during the pendency of this case. Moreover the evidence recorded during the inquiry proceeding is yet to be supplied. On this basis, the petitioner contends that he was denied of an opportunity to make an effective representation against the penalty of dismissal.

6. Without exceptional exigencies, the Writ Court will not disturb the penalty inflicted by the disciplinary authority unless it shocks the conscience of the Court. But what is projected here is that the delinquent was not furnished the inquiry report and the evidence, which could have enabled him to represent for lesser punishment.

7. Therefore having noticed that the Inquiry report sans evidence was furnished only on 21.3.2007, well after the impugned penalty was inflicted belatedly on 7.9.2006 (Annexure-E), I feel that the petitioner should be given an opportunity to give representation against the penalty of dismissal. For this purpose, upon written application of the petitioner, the Commandant should furnish him with the relevant evidence of the Inquiry. If the petitioner appeals thereafter for lesser penalty, the disciplinary authority should consider the same on merit, by taking note of the petitioner's representation. With the aforesaid direction, the case stands allowed with no order on cost.