
(2018) 04 GAU CK 0043
In the Gauhati High Court
Case No : WP(C) No. 5195 of 2010

Shri Sashi Kant Mishra

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0043

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. A.C. Kalita, the learned counsel appearing for the petitioner. The respondent Nos. 1 & 4 are represented by Mr. D. Nath, the

learned Addl. Sr. Govt. Advocate, Assam.

2. The petitioner is a former Un-armed Branch (UB) Constable of the Guwahati City District Enforcement Force (DEF) and he is aggrieved by the

discharge order dated 03.11.2006 (Annexure-8) in pursuant to a disciplinary proceeding and the affirmation of the penalisation order, by the

learned Assam Administrative Tribunal, under its judgment dated 03.04.2010 (Annexure-11) in the Case No. 62 ATA/2007.

RELEVANT FACTS

3. On the intervening night of 20th and 21st January, 2006, the delinquent constable was detailed for sentry duty at the Panbazar Police Station.

While on duty, one under-trial prisoner (Promod Kumar Balkiwala) in the police lockup, was allowed by the delinquent to come out of the lockup

and have tea in the veranda of the police station. The prisoner was not handcuffed and was left unguarded and in the meantime, the sentry

constable attended to other tasks. During this period, the accused managed to escape from the police station. Thus disciplinary proceeding was

drawn up with the show-cause notice of 17.03.2006 (Annexure-1) with the following statement of allegation:-

STATEMENT OF ALLEGATION

While UBC/4156 Sachi Kanta Misra was posted at Panbazar on 21.1.2006 night he was detailed for sentry duty, he took out accused of

Panbazar P.S. Case NO.468/06 U/s 406/381 IPC. Sri Promode Kr. Bakliwala from the lockup without handcuff and allowed him to have tea

outside the veranda and instead of keeping watch he left for other work in morning on 22.1.2006. As a result the U.T.P. Promode Kr. Bakliwala

managed to escape from the custody. In this connection Panbazar P.S. registered case No.17/06 U/S 229/109 IPC, and arrested him and

WP(C) 5195/2010 H.G. Digamber Kalita and forwarded in to custody. During investigation it is found that the accused managed to escape

due to negligence of him. His such act tantamount to his gross misconduct and negligence of duty, which render him unfit to be retained in a

disciplined force. Therefore he was charged with gross misconduct and negligence of duty.

4. In his reply dated 23.03.2006, the delinquent delineated the circumstances under which, the accused fled from custody and stated that he

believed that the prisoner will not escape even if he is left unguarded in the open. But having realised that his belief was belied, the delinquent

admitted that he committed a blunder by not handcuffing the accused and prayed for exoneration. 5. The response of the delinquent was found to

be unsatisfactory and accordingly one Pramothesh Choudhury was appointed to enquire into the charge. For the prosecution, 4 witnesses were

presented and the delinquent, subjected the PW-3 Tiken Das, to cross-examination. When the Enquiry Officer made an offer to the delinquent on

18.08.2006 to produce the defence evidence, the delinquent in his reply dated 22.09.2006 stated that he does not wish to produce any defence

witness. However, the sentry constable gave a statement before the Enquiry Officer explaining the circumstances under which the accused Promod

Kumar Balkiwala, fled from police custody.

6. The evidence adduced in the enquiry were weighed by the Enquiry Officer and

under the enquiry report dated 03.10.2006 (Annexure-6), it was concluded that the charge of gross misconduct and negligence of duty, is established against the delinquent.

7. The copy of the enquiry report was furnished with the 2nd show-cause notice and in his reply dated 30.10.2006 (Annexure-7), the delinquent

admitted that the arrested accused Promod Kumar Balkiwala was allowed to come out of the lockup to freshen up and take tea and the delinquent

permitted him to remain out of the lockup to await the arrival of the sweeper, to clean the lockup room. The constable believed that the accused

shall not flee even if left unguarded but when the prisoner made good his escape, the delinquent admitted that he committed a blunder by permitting

the accused to remain unguarded outside the lockup and getting distracted to attend to other tasks. WP(C) 5195/2010

8. The reply to the 2nd show-cause notice was considered and the disciplinary authority who noted that the primary duty of the delinquent was to

keep the arrested accused in safe custody and he had no business to get distracted from his primary duty. Bearing in mind the gross negligence of

duty, which facilitated the escape of the under-trial prisoner from the police lockup, the discharge of the sentry constable was ordered on

03.11.2006 (Annexure-8), by the Senior S.P., Guwahati.

9. The aggrieved delinquent then approached the Assam Administrative Tribunal (hereinafter referred to as the Tribunal) to challenge the

discharge order, but the learned Tribunal under the impugned judgment dated 03.04.2010 (Annexure-11) in the Case No.62 ATA/2007, noted

that all due opportunities were provided to the delinquent in the disciplinary proceeding and that the departmental enquiry was conducted in a fair

and lawful manner. Moreover, the gravity of the punishment was found to be proportionate with the negligent conduct. With these conclusions, the

appeal was found devoid of merit and accordingly the discharge order was left undisturbed, by the learned Tribunal.

ARGUMENTS OF BOTH SIDES

10. Assailing the legality of the disciplinary action, the petitioner contends that he was denied a fair opportunity to defend the charge and

disproportionate punishment is imposed on him by the disciplinary authority. The learned counsel Mr. A.C. Kalita further submits that the

delinquent was deployed for sentry duty from the evening of 20th January until the morning of 21st January, 2006 but the prolonged sentry duty for

the constable has not been considered, while finalising the discharge punishment.

11. On the other hand, Mr. D. Nath, the learned Addl. Sr. Govt. advocate produces the records of the disciplinary proceeding to contend that

every opportunity including defence assistance was offered to the delinquent, but he choose to conduct his own defence. Referring to the testimony

of the 4 prosecution witnesses, the Govt. advocate submits that the negligent conduct of the sentry constable is clearly established from the

departmental witnesses, one of whom i.e. ASI Tiken Das (PW-3) was also subjected to cross-examination by the delinquent. The refusal by the

delinquent to produce any defence evidence as Â WP(C) 5195/2010 Â conveyed in the letter dated 26.09.2006 is highlighted by Mr. Nath and

he submits that no case is made out for the writ court to interfere with the disciplinary action.

DISCUSSION AND DECISION

12. The petitioner was deployed for sentry duty at the Panbazar Police Station but the prisoner was allowed to come out of the lockup by the

delinquent. The irresponsibility of the constable on sentry duty is apparent from the fact that the prisoner was kept out in the open and left

unguarded and during this time, the delinquent attended to some other task. To allow the under-trial to come out of the lockup and keeping him

unguarded without any handcuff was practically an invitation for the arrested accused to escape from custody. In that context, the plea of being

distracted because of the arrival of the patrolling party at the police station, can hardly be a good reason to exonerate the sentry constable. It was

his responsibility to keep the prisoner inside the lockup but he failed in his primary duty and compounded the matter by leaving the prisoner

unattended. Therefore it is not reasonable to conclude that prolonged duty hours of the delinquent was a factor, for the custodial escape.

13. Any policeman deployed for guard duty should be conscious that the incarcerated person must be kept inside the lockup and if he is to be

brought out, care must be taken to keep him under close observation and also to handcuff him, to prevent his escape. The constable on guard duty

can hardly proceed on the premise that the arrested accused will not escape

from custody even if he is brought out of the lockup and allowed to remain free without handcuff. Such fundamental failure of irresponsibility of the sentry constable cannot be brushed aside as a simple mistake. On the contrary, it appears to be a clear case of gross negligence, which led to escape of an arrested accused.

Â 14. I find from the case papers and the records produced by the Govt. advocate that the disciplinary proceeding was conducted in a fair manner with adequate opportunity to the delinquent to participate in the enquiry and defend the charges. The Enquiry Officer adhered to the norms and it is clear to the Court that the conclusion were drawn upon relevant evidence. It will also bear noting that in his reply to the 2nd show-cause notice, the delinquent admitted that he committed a blunder by not handcuffing the accused when he was allowed to Â WP(C) 5195/2010 Â remain outside the lockup. Since the irresponsible act of the delinquent had facilitated the escape of the prisoner from police custody, a lenient dispensation for the sentry constable in my perception, is not merited in the present case.

15. The learned Tribunal in my assessment had examined all relevant aspects and rendered the correct verdict by dismissing the appeal filed by the discharged constable. Because of the right reasoning and Â onclusion, the impugned decision Â of the Tribunal should be upheld and left undisturbed. It is ordered accordingly.

16. With the above order, the case stands dismissed without any order on cost.