

(2024) 08 GAU CK 1112
In the Gauhati High Court
Case No : WP(C) Of 5416 Of 2015

Sumit Lal Dey

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 20-08-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9

Citation : (2024) 08 GAU CK 1112

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B Malakar, M Bhattacharjee

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. Imposition of a penalty of stoppage of 3 increments with cumulative effect in a disciplinary proceeding which was affirmed in the departmental appeal is the subject matter of challenge in this petition under Article 226 of the Constitution of India.

2. As per the facts projected, the petitioner was working as a Constable (UB) and relating to an incident of theft of a departmental motorcycle which was in his custody, a disciplinary proceeding was initiated. It is the case of the petitioner that relating to the said incident of theft, he had lodged an FIR on 03.01.2015 and thereafter, a show cause notice was issued to him on 25.01.2015. The said notice was replied to by the petitioner on 06.02.2015 and being dissatisfied, an inquiry was initiated. The inquiry culminated in a report in which, the allegations against the petitioner were found to be substantiated. Accordingly, on 06.05.2015, the second show cause notice was issued to the petitioner which he had replied on 15.05.2015. Thereafter, the impugned order dated 22.05.2015 was issued imposing the penalty of stoppage of 3 increments with cumulative

effect. The petitioner had preferred a departmental appeal against the aforesaid order of penalty which, however, was rejected by the Appellate Authority on 07.07.2015. It is the legality and correctness of the aforesaid orders which have been put to challenge.

3. I have heard Shri B Malakar, learned counsel for the petitioner. I have also heard Ms. M Bhattacharjee, learned Addl. Sr. Government Advocate, Assam.

4. Shri Malakar, learned counsel for the petitioner has submitted that there was no negligence at all and since his quarter was located at a distance, he had used the departmental motorcycle. He has also submitted that immediately on detecting the theft, he had lodged an FIR on 03.01.2015. On the issue of the procedure adopted, it is submitted that the show cause notice dated 25.01.2015 cannot be construed to be initiation of a formal disciplinary proceeding as no charge sheet was issued to him. He submits that unless a formal charge sheet is issued, no action can be taken on the basis of a show cause notice. He has also drawn the attention of this Court to the averments made in the writ petition and the reply made by the respondent no. 5 in the affidavit-in-opposition on the aforesaid issue.

5. The learned counsel has relied upon a judgment dated 28.04.2010 passed in WA No. 104 of 2010 (Shri Rallenthang Vankal Vs. The Hindustan Paper Corporation Ltd. & Ors.). By referring to paragraph 7 of the said judgment, he has submitted that a definite charge sheet is required to be submitted before proceeding with the disciplinary action. The learned counsel has also submitted that the penalty imposed is not prescribed either under the Assam Services (Discipline and Appeal) Rules, 1964 (hereafter referred to as the Rules) or the Police Manual. He, accordingly submits that the penalty has been imposed without any jurisdiction and is liable to be interfered with. He has also submitted that the penalty prescribed in the Rules also includes the penalty of recovery to the extent of loss caused and without availing the said option, the present penalty of withholding of increments with cumulative effect has been imposed. The learned counsel accordingly submits that the impugned action be interfered with.

6. Per contra, Ms. Bhattacharjee, learned State Counsel has submitted that the entire action has been taken by following the due process of law. She submits that the petitioner has not expressed any grievance with the procedure adopted in the inquiry and she adds that the delinquent petitioner was given a fair and reasonable opportunity to defend himself. As regards the submission that no formal departmental proceeding was initiated, she contends that the show cause notice dated 25.01.2015, in clear terms reflected that a formal departmental proceeding was, indeed initiated. She has also submitted that the case law cited on behalf of the petitioner is based on certain facts which are distinguishable from the facts of the present case. On the aspect that the penalty imposed is not prescribed by the Rules holding the field, the learned State Counsel submits that there is a clear stipulation of the aforesaid penalty in the Rules as well as in the

Police Manual. The learned State Counsel has also emphasized that the grievance of the petitioner was looked into by the Appellate Authority and by a speaking order, the appeal has been rejected on 07.07.2015. She submits that in a matter concerning a disciplinary proceeding, the Court would only look into the aspect as to whether the procedure was duly followed by giving a fair chance and would not delve into the merits of the allegation.

7. The rival contentions have been considered and the materials placed before this Court have been carefully examined.

8. The first contention raised on behalf of the petitioner is that the issuance of the show cause notice dated 25.01.2015 would not constitute initiation of a formal departmental proceeding. The further submission is that unless a charge sheet is issued, such initiation cannot be deemed. To examine the said submission, this Court has carefully looked into the show cause notice dated 25.01.2015. The said notice, in clear terms has stated that the delinquent was required to show cause under the provisions of the Assam Police Act, Assam Police Manual and the Rules of 1964 as to why penalties prescribed should not be inflicted on the charge framed. Apart from there being a definite charge, the show cause notice was also accompanied by a statement of allegation, list of witnesses and list of documents. Rule 9 of the Rules of 1964 lays down the procedure for imposing penalties. As per Rule 9(2), definite charges are to be framed on the basis of the allegations on which the inquiry is proposed to be held and such charges together with the statement of allegations are to be communicated in writing to the delinquent. The show cause notice dated 25.01.2015 meets all the requirement as per the aforesaid Rules. In any case, the use of the nomenclature "show cause notice" instead of charge sheet will hardly make any difference when the contents are adhering to the requirement of the Rules.

9. Reliance of the petitioner upon the judgment in the case of Shri Rallenthang Vankal (supra) is misplaced as the facts are wholly different and it is not discernible as to whether in that case, the show cause notice was in adherence to the requirement of the Rules holding the field. It may be mentioned that the petitioner in that case was an employee of the Hindustan Paper Corporation Ltd. which has a separate set of Rules. The second leg of argument is that the penalties prescribed in the Rules of 1964 and the Police Manual do not contain the penalty imposed. However, a bare look into the Rules as well as the Manual would show that "Withholding of Increments" is specifically mentioned amongst the penalties. As regards the contention that recourse to the penalty of recovery could have been taken instead of withholding of increments with cumulative effect, this Court is of the opinion that the aspect of imposition of penalty is wholly within the domain and ambit of the disciplinary authority and this Court plays a secondary role only to oversee as to whether the proceeding was carried out by following the due process of law.

10. In a recent case of State of Rajasthan Vs. Bhupendra Singh, reported in 2024

0 INSC 592, it has been reiterated that in a disciplinary proceeding, a High Court in exercise of powers under Article 226 of the Constitution of India should not go for reassessment of the evidence and other matters which are within the domain of the disciplinary authority. There being no challenge to the validity of the proceedings of the inquiry and this Court being prima facie satisfied that the petitioner was given a proper and reasonable opportunity, this Court does not find any merits to interfere with the impugned action.

11. The writ petition accordingly stands dismissed.