

GAHC010161402018



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4972/2018

ANANDA TOKBI
S/O. LT. HAREN TOKBI, VILL. JUNGTHUNG TIMUNG GAON, P.S.
DOKMOKA, P.O. DUARBAMUNI (DENGAON), DIST. KARBI ANGLONG,
ASSAM PRESENTLY POSTED AS SUB-DIVISIONAL POLICE OFFICER,
NAZIRA, SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME AND
POLITICAL DEPTT., DISPUR, GHY.-06.

2:THE ADDL. SECRETARY
TO THE GOVT. OF ASSAM HOME (A) DEPTT.
DISPUR
GHY.
ASSAM.

3:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-07
ASSAM.

4:THE ENQUIRY OFFICER

THE ADDITIONAL DIRECTOR GENERAL OF POLICE
STF
ASSAM
SRIMANTAPUR
GUWAHATI- 32

Advocate for the Petitioner : MR. B C DAS, MR D N BHATTACHARYYA

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 26.02.2026

Heard Mr. D. N. Bhattacharya, learned counsel, appearing for the petitioner. Also heard Mr. J. K. Goswami, learned Additional Senior Government Advocate.

2. The petitioner in the present proceeding has presented a challenge to an order dated 23-03-2018, issued by the Disciplinary authority imposing upon him a penalty of withholding of one increment with cumulative effect in pursuance to a Departmental proceeding instituted against him in the matter. The petitioner has also assailed the enquiry report submitted, which had led to the passing of the impugned order dated 23-03-2018 along with the order passed by the Appellate authority upholding the impugned order dated 23-03-2018.

3. The petitioner, while working as a Sub-Divisional Police Officer (SDPO), Gossaigaon, basing on certain allegations relating to the discharge of duties by the petitioner during the period when communal violence had broken out in Kokrajhar district, he came to be placed under suspension w.e.f 26-07-2012. The petitioner was thereafter reinstated in his service w.e.f. 07-10-2013. Prior to reinstatement of the petitioner in his service, a Departmental proceeding was instituted against the petitioner by way of issuance of a show-cause notice dated 18-05-2013 wherein 5 (five)

allegations came to be leveled against the petitioner which all pertains to the period when the petitioner was functioning as the Sub-Divisional Police Officer, Gossaigaon. The petitioner submitted his show-cause reply to the said show-cause notice dated 18-05-2013, on 29-05-2013 and therein by highlighting the vagueness with regard to the allegations leveled against him, proceeded to submit his clarifications in the matter and also denied the allegations so leveled against him.

Being not satisfied with the show-cause reply so submitted in the matter by the petitioner, the Disciplinary authority of the petitioner proceeded to direct for holding of an enquiry in the matter and for the purpose appointed an Enquiry Officer and a Presenting Officer. The petitioner participated in the enquiry. On conclusion of the enquiry, the Enquiry Officer submitted his report on 11-04-2017.

A copy of the said report was forwarded to the petitioner by his Disciplinary authority vide communication dated 15-04-2017 requiring the petitioner to file his representation thereon. The petitioner thereafter submitted a representation dated 24-07-2017 dealing with the findings recorded by the Enquiry Officer in his enquiry report dated 11-04-2017. Upon submission of the said enquiry report, the Disciplinary authority of the petitioner considered the same in the light of the representation submitted by the petitioner and, vide order dated 23-03-2018, proceeded to impose upon the petitioner penalty of withholding one increment with cumulative effect, w.e.f. the date of the next increment due to the petitioner.

Further, the period of suspension undergone by the petitioner w.e.f. 26-07-2012 to 07-10-2013 was also directed to be regularized as on duty and, accordingly, the Departmental proceeding instituted against the petitioner came to be closed.

The petitioner, being aggrieved by the penalty as imposed upon him, preferred an appeal before the Appellate authority on 18-04-2018. The appeal not being considered and disposed of after a reasonable period of time, the petitioner approached this Court by way of instituting the present

writ petition.

4. During the pendency of the present writ petition, the Appellate authority, vide an order dated 12-08-2025 proceeded to consider the appeal and reject the same and thereby uphold the penalty as imposed upon the petitioner by his Disciplinary authority. The Appellate authority's order, having been furnished to the petitioner, he amended the present writ petition and thereby presented a challenge to the order of the Appellate authority also.

5. Mr. D. N. Bhattacharya, learned counsel for the petitioner, after reiterating the facts as noticed hereinabove, has at the outset, by taking this Court through the allegations leveled against the petitioner in the show-cause notice dated 18-05-2013, has submitted that a perusal of the same would reveal that the Disciplinary authority, while proceeding to level allegations against the petitioner, no concrete particulars were so disclosed and the allegations leveled were vague to the core of it. He submits that the provisions of Rule 9 (2) of the Assam Service (Discipline and Appeal) Rules, 1964, mandates that the Disciplinary authority is required to frame definite charges on the basis of allegations on which the enquiry is proposed to be held. He submits that a perusal of the allegations so leveled would reveal that no definite allegations with requisite particulars came to be leveled against the petitioner and the allegations are vague to the core of it. Accordingly, he submits that an enquiry based on such vague and indefinite allegations would not have been maintainable against the petitioner.

6. Mr. D. N. Bhattacharya, has submitted that after the show-cause notice was received by the petitioner, he, after highlighting the vagueness

with regard to the allegations leveled against him, had dealt with the allegations leveled by basing on the steps taken by him while working as SDPO, Gossaigaon, during the violence that had erupted in the area at that relevant point of time.

Mr. D. N. Bhattacharya, submits that the petitioner had brought on record all requisite materials disclosing the steps taken by him in the matter, which would reveal that the petitioner is not guilty of not having taken any steps for containing the violence that had erupted at that relevant point of time.

7. Mr. D. N. Bhattacharya, submits that an enquiry having been directed, the petitioner had participated in the said enquiry. He submits that the petitioner, while deposing in the enquiry had categorically stated that he desired to adduce defence witness and also wanted to cross-examine, Jitmol Doley, IPS, who had earlier deposed as Prosecution witness, however, the said prayer of the petitioner came to be rejected. Learned counsel submits that on account of such refusal on the part of the Enquiry Officer a prejudice came to be caused to the petitioner and he was prevented from defending the charges framed against him effectively. He further submits that the findings recorded by the Enquiry Officer, under the said circumstances, would not mandate an acceptance from this Court.

8. Mr. D. N. Bhattacharya, by taking this Court to the enquiry report has submitted that the Enquiry Officer, after noticing the deposition of the Departmental witnesses, had proceeded to record his findings basing thereon, while nothing material is contended to have been brought on record against the petitioner, the Enquiry Officer had recorded a finding to the effect that the petitioner could not produce documentary proof of his physical presence in his jurisdiction between 20-07-2012 to 22.07.2012. He submits that the said finding recorded by the Enquiry Officer is to be viewed in the light of the rejection of the prayer of the petitioner to adduce

documents and defence witnesses. He further submits that show-cause notice having not specified the period during which the said allegations were leveled against the petitioner and the same being relatable in the show-cause notice to the entire period when the petitioner was functioning as the SDPO, Gossaigaon, the specification of a period by the enquiry officer in the enquiry report during which the petitioner was alleged to be not present in his jurisdiction is clearly uncalled for and would not mandate an acceptance. He further submits that the enquiry officer had recorded a categorical finding to the effect that the petitioner had remained untraceable w.e.f. 20-07-2012 to 23-07-2012 except the night of 23-07-2012, which is clearly perverse. Mr. D. N. Bhattacharya, again reiterates that the said findings recorded by the Enquiry Officer is also beyond the charges so framed against the petitioner and accordingly the same would not mandate an acceptance.

9. Mr. D. N. Bhattacharya, submits that although the petitioner in his representation referred against the enquiry report had brought on record the inconsistencies so existing in the enquiry report submitted by the Enquiry Officer, the Disciplinary authority while proceeding to pass the order dated 23-03-2018 had not considered the same in its proper perspective and accordingly the charges leveled against the petitioner was held to have been established and a penalty of withholding of one increment with cumulative effect came to be imposed upon the petitioner, which would mandate an interference from this Court.

10. Mr. D. N. Bhattacharya, has also submitted that in terms of the provisions of Rule 7 of the said Rules of 1967, imposition of a penalty of withholding increments with cumulative effect not having been provided for, he submits that the said penalty was not permissible to be so imposed upon the petitioner.

11. Mr. D. N. Bhattacharya, has further submitted that it would be permissible for the Disciplinary authority to only impose a penalty which has been set out in the provisions of the Rules governing such Departmental proceedings. Mr. D. N. Bhattacharya, by referring to the order of the appellate authority, highlighting the delay occasioning in issuing the same, has submitted that the appellate authority had not applied its mind to the contentions raised by the petitioner in his appeal memo and had by only referring to the order of penalty imposed upon the petitioner by the disciplinary authority without further examining the basis for the imposition of such penalty which was highlighted by the petitioner to be perverse in his appeal memo, the appeal came to be dismissed. He submits that the said Appellate order would also mandate an interference from the Court.

12. In the above premises, Mr. D. N. Bhattacharya prays that this Court would be pleased to set aside the orders impugned in the present writ petition.

13. Per contra, Mr. J. K. Goswami, learned Additional Senior Government Advocate, appearing for the State Respondents, submits that the plea taken by the learned counsel for the petitioner that the charge leveled against the petitioner was vague and untenable, would not mandate an acceptance, inasmuch as, a perusal of the charges so framed against the petitioner, it is discernible that the same was so leveled against him with regard to the period when the petitioner was serving as the Sub-Divisional Police Officer, Gossaigaon, and during the period when the communal violence had erupted in the area. He submits that these two parameters having been set out in the allegations so leveled against the petitioner, the plea taken by the

learned counsel for the petitioner that the allegations leveled against the petitioner was vague, would not mandate an acceptance from this Court.

14. Mr. J. K. Goswami, has submitted that what was alleged against the petitioner was the inaction on his part to take appropriate measures at the time when the communal violence had erupted in the area wherein, he was so posted as SDPO. Mr. J. K. Goswami, submits that the same is also evident from the allegations leveled against him.

15. Mr. J. K. Goswami, submits that the charges framed against the petitioner, which relates to commission of serious lapse and willful dereliction of duty by him, as well as negligence of duty, if viewed in the light of materials available in the show cause issued to the petitioner would reveal that the same are not vague as alleged by the learned counsel for the petitioner. Mr. J. K. Goswami, by referring to the findings recorded by the Enquiry Officer, submits that the same is found to have been so recorded, basing on the materials coming on record in the enquiry. He submits that in the enquiry, the deposition of the Departmental witnesses have brought on record the fact that the petitioner, when the said communal violence had erupted, although was posted in the area, had not taken steps for containing such violence which had led to the spreading of the same to the nearby areas.

16. Mr. J. K. Goswami, has submitted that the evidences adduced by the Departmental witnesses have brought on record the fact that the petitioner was not found to be discharging his duties w.e.f. 20-07-2012 for 3 (three) days and accordingly, the same being the period when the said communal violence had so erupted, the dereliction of duty as alleged against the petitioner was established in the enquiry. Mr. J. K. Goswami, has submitted that the Enquiry Officer, for the purpose of arriving at his conclusions with regard to the materials coming on record, had to apply the principle of

preponderance of probability and not the principle of proof beyond reasonable doubt. He submits that the materials coming on record when examined by applying the principles of preponderance of probability, it is seen that the findings recorded by the Enquiry Officer in the matter would not mandate an interference. Accordingly, Mr. J. K. Goswami submits that the findings of the Enquiry Officer having been concurred to by the Disciplinary authority, a lenient penalty came to be imposed upon the petitioner of withholding of one increment with cumulative effect which according to him would not mandate an interference from this Court.

17. In the above background, Mr. J. K. Goswami, has submitted that this Court would be pleased to uphold the penalty as imposed upon the petitioner so as to maintain the discipline of the force and not put a premium upon the dereliction of duty established against a responsible Police Officer in the enquiry, by directing his reinstatement in service.

18. I have heard the learned counsel for the parties and perused the materials available on record.

19. The petitioner in the present proceeding was issued with a show-cause notice dated 18-05-2013, leveling the following allegations and charges against him;

“(1) While you were posted as Sub-Divisional Police Officer, Gossaigaon, under Kokrajhar District, since the breakout of communal violence in Kokrajhar District, you were found evasive and untraceable at the time of need and neglecting your duties as SDPO of the sensitive Gossaigaon Sub-Division.

(2) Your unauthorized absence from duty, and lack of supervision in such a volatile situation caused serious breach of the peace in the Sub-division.

(3) Besides, the fallout of this incidents that led to wide spread communal

conflagration from one village to another in Gossaigaon Sub-division and law and order of the Sub division went beyond control, the people went on a large scale communal rampage by indulging violence, burning, looting and many innocent people get injured due to attacks and counter attacks.

(4) You failed in containing law and order situation and securing the life and property of public of Gossaigaon Sub-Division.

(5) Your cowardliness in blatant violation of the spirit and letter under proviso of Rule-115 of the Assam Police Manual. Part-III and Rule -98(a) of the Assam Police Act. 2007."

Your above action amounts to serious lapse and willful dereliction of duty which tantamount to gross misconduct and negligence of duty on your part as a responsible Senior Police Officer.

Hence, you are, charged with gross misconduct, negligence of duty and dereliction of duty."

20. A perusal of the said allegations leveled against the petitioner would reveal that the petitioner was alleged to have remained evasive and untraceable while there was a breakout of communal violence in Kokrajhar, district. It was further alleged that he had neglected his duties as Sub-Divisional Police Officer, Gossaigaon. The absence of the petitioner was projected as unauthorized absence and the lack of supervision was alleged to have resulted in a volatile situation causing breach of peace in the Sub-Division. The petitioner was alleged to have failed in containing the law and order situation and securing the life and property of the public of Gossaigaon Sub-Division. The petitioner was also alleged of cowardliness in blatant violation of the spirit and letter under Proviso to Rule 115 of the Assam Police Manual, Part III and Rule 98(a) of the Assam Police Act,

2007. The petitioner, on receipt of the said show-cause notice, submitted his show-cause reply on 29-05-2013 thereto, and in his said show-cause reply, the petitioner in details set out the duties performed by him during the period when the communal violence had occasioned in the area under his control. The petitioner denied the allegations leveled against him.

Being not satisfied, a Departmental enquiry was ordered in the matter and the petitioner is also found to have participated in the said enquiry.

On conclusion of the enquiry, the Enquiry Officer submitted his report on 11-04-2017 holding that the charge of being evasive and being untraceable w.e.f, 20-07-2012 to 23-07-2012, except the night of 23-07-2012, was found to be established beyond a reasonable doubt against the petitioner. The said finding was recorded by the Enquiry Officer basing on a conclusion drawn that the petitioner, herein, could not produce any documentary proof of his physical presence in his jurisdiction between 20-07-2012 and 22-07-2012.

The petitioner was found by the Enquiry Officer to only have produced evidence of his presence within his jurisdiction w.e.f. 23-07-2012 and 24-07-2012 through the GD entries and a W.T. message. The conclusion drawn by the Enquiry Officer to the effect that the petitioner had not produced any documentary evidence to establish his presence within his jurisdictional area is to be examined in the light of the statement recorded of the petitioner in the enquiry wherein, the prayer of the petitioner for cross-examination of the prosecution witness Jitmol Doley, IPS, and also to adduce defence witnesses was rejected by the Enquiry Officer. The Enquiry Officer in his report had relied upon the deposition of said Jitmol Doley, IPS, then SP Kokrajhar, for the purpose of drawing conclusions against the petitioner, herein. The Enquiry Officer having placed a reliance upon the deposition of said Jitmol Doley, IPS, the denial of opportunity to the petitioner to cross-examine said prosecution witness Jitmol Doley, IPS, in the considered view of this Court has caused prejudice to the petitioner.

Further, the petitioner had sought for adducing defence witnesses to bring on record materials with regard to his whereabouts, during the period the communal violence had flared up in the area under his jurisdiction. The same was however rejected by the Enquiry Officer. Such rejection of the prayer of the petitioner to adduce defence witnesses has caused prejudice to the petitioner, in effectively defending the charges framed against him.

21. The conclusions drawn by the Enquiry Officer in the enquiry report being found by this Court to have been so drawn without providing reasonable opportunity of hearing to the petitioner, herein, to defend the charges framed against him a prejudice being caused to the petitioner being apparent, such conclusions drawn by the Enquiry Officer in the considered view of this Court stands vitiated.

Further, the Disciplinary authority basing on such vitiated conclusions could not have proceeded to impose any penalty upon the petitioner.

22. Having drawn the said conclusions, this Court would now examine the order dated 23-03-2018 passed by the Disciplinary authority. The Disciplinary authority for the purpose of drawing his conclusions in the matter had agreed with the findings recorded by the Enquiry officer in his enquiry report. However, while drawing such conclusion, the Disciplinary authority had not dealt with the plea raised by the petitioner in his representation of the deprivation caused to him in defending his case in the enquiry.

23. Accordingly, this Court is of the considered view that the conclusions drawn by the Disciplinary authority in the order dated 23-03-2018 stands vitiated.

Accordingly, the penalty of withholding of 1 (one) increment with cumulative effect as imposed upon the petitioner would also stand vitiated.

24. In view of the above position, the order dated 23-03-2018 passed by the Disciplinary authority stands set aside and the period of suspension of the petitioner w.e.f., 26-07-2012 to 07-10-2013 is directed to be regularized as on duty with all consequential benefits. The Appellate authority having only reiterated the conclusions drawn by the Enquiry Officer and the Disciplinary authority, the said order is also found for the reasons assigned, hereinabove, to also be vitiated and accordingly, the Appellate authority's order dated 12-08-2025 also stands set aside. The petitioner be authorized the withheld increment with all consequential benefits.

25. The penalty imposed upon the petitioner having been interfered with, it is provided that in the event the said penalty had caused any deprivation to the petitioner, in his service career, the same be remedied by the respondent authorities, appropriately.

26. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant