GAHC010186422014

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

Case No. : WP(C)/4284/2014

MUKESH SINGH, CT/GD 050403214
AT PRESENT WORKING UNDER 46TH BN, SSB, BATMALLU, SRINAGAR, JAMMU and KASHMIR, S/O SHRI TEZBAHADUR SINGH, R/O VILL. and P.O. BIMOURA, P.S. SARENI, DIST- RAIBERELI, U.P.

VERSUS

UNION OF INDIA and ANR
REP. BY THE SECY. GOVT. OF INDIA, DEFENCE DEPTT., NEW DELHI

2:COMMANDANT

33BN. SSB.
RANGIYA
DIST.-KAMRUP
ASSAM

Advocate for the Petitioner : MR.A K RAY
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Judement & Order (Oral)

Date of hearing and judgment : **20.12.2021**

Heard Shri A.K. Ray, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC.

2. The instant petition has been filed challenging a departmental proceeding and its outcome of imposition of penalty of stoppage of increments for 3(three) years with cumulative effect. It is the case of the petitioner that in May, 2009 he was working at Paharpur Outpost, one Inspector Shri H.P. Upreti was abducted by some villagers. On getting the information, a group of jawans including the petitioner approached on the spot and at first requested the crowd for release of the Inspector. As the jawans attempted to release the Inspector, the crowd became violent and started pelting stones to which the jawans had resorted to lathi charge and opened fire in air to disperse the crowd and to release the Inspector. Later, the Commandant, 33Bn, SSB filed an FIR on 06.05.2009 which was registered as Tamulpur P.S. Case No. 60/2009 under Section 147 / 148 / 149 / 365 / 427 / 325 / 336 of the IPC.

3. The respondent authorities had issued a memorandum of charges to the petitioner and other jawans involved alleging that there was no attempt to release the Inspector in a peaceful manner and thereby they defamed the Department and an Enquiry Officer was also appointed. The said Enquiry Officer issued another memorandum of charges based on the same allegation and vide another order, one D.B. Sonar, Deputy Commandant was appointed as an Inquiry Authority. On receipt of the memorandum, the petitioner had submitted his written statement denying all the charges.

4. It is the case of the petitioner that he was not given a proper opportunity to defend himself, the enquiry proceeding culminated in an order of imposition of penalty of withholding 3(three) increments with cumulative effect as has been indicated above.

5. Assailing the departmental proceeding as well as the penalty order, Shri Ray, the learned counsel for the petitioner submits that the issue has already been looked into by this Court in a bunch of writ petitions as a number of other persons were also involved in the said incident and they were part of the said group of jawans, who had gone to rescue the Inspector. In this connection, the reliance has been placed upon an order dated 21.03.2018 passed in WP(C)/4510/2011, WP(C)/5949/2011, WP(C)/6311/2011, WP(C)/6005/2011, WP(C)/707/2012, WP(C)/993/2012, WP(C)/4324/2012 and WP(C)/3338/2012.

6. In the said bunch of cases, this Court after examining the facts and circumstances and

after hearing the parties had come to a finding that the penalty could be imposed only on the basis of the charges no. 2 and partially to the extent to the charge no. 1. This Court has further held that as the punishment of withholding of 3(three) increments with cumulative effect had been passed by taking into account all the three charges, it was deemed appropriate that as only one of the charges in whole and the other charge in part have been found to have been proved and therefore, it would be appropriate for the disciplinary authority to revisit the quantum of punishment issued upon the petitioners.

7. For ready reference, the operative paragraph 37 of the order dated 21.03.2018 is extracted hereinbelow-

> "*37. What remains for the disciplinary authority is to impose a punishment based only upon the Charge No.2 and partially to the extent of Charge No.1. As the punishment of withholding of three increments with cumulative effect had been passed by taking into account all the three charges, therefore, it is deemed appropriate that as only one of the charges in whole and the other charge in part have been found to have been proved, therefore, it would be appropriate for the disciplinary authority to revisit the quantum of punishment issued upon the petitioners. In doing so, the respondent authorities shall consider as to what proper punishment would now required to be imposed on the petitioners considering the fact that the punishment of withholding of three increments with cumulative effect was passed in respect of all the three charges and now that they are required to pass the punishment only in respect of the second charge in whole and the first charge in part."*

8. Shri A.K. Ray, the learned counsel for the petitioner prays for a similar direction.

9. In this connection it would be suitable to refer to the observations made by the Hon'ble Supreme Court in numerous matters concerning judicial review of disciplinary action including the case of ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,*** reported in ***(2001) 1 SCC 182***, which is as follows:

> "***19.*** *While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot*

be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra."

10. Ms. A. Gayan, learned CGC fairly submits that the earlier order dated 21.03.2018 was passed by this Court after hearing all the parties and therefore she would not object if a similar direction is given. As the incident is the same and the present petitioner was a jawan in the said group.

11. In view of the aforesaid facts and circumstances and the broad consensus arrived at the bar, the present writ petition is disposed of in the light of the Judgment & Order dated 21.03.2018 passed in WP(C)/4510/2011 and other bunch of cases by holding that since only one of the charges in whole and the other charge in part have been found to be proved, it would be appropriate for the disciplinary authority to revisit the quantum of punishment issued upon the petitioners.

12. The writ petition accordingly stands disposed of with the observation as indicated above.

JUDGE

Comparing Assistant