



GAHC010114842021

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

Case No. : WP(C)/3547/2021

MUSADDIQUE HUSSAIN
S/O MD. NOOR HUSSAIN
RESIDENT OF ANANDA NAGAR,BYE LANE NO. 2,NOONMATI
GUWAHATI ,PS NOONMATI,DIST KAMRUP M ASSAM 781020

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT.OF ASSAM. HOME DEPARTMENT, GUWAHATI 78106, DIST KAMRUP
M ASSAM

2:DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI 07

3:ADDITIONAL DIRECTOR GENERAL OF POLICE (ADMINISTRATION)
ASSAM GUWAHATI 7 KAMRUP M ASSAM

4:ADDITIONAL DIRECTOR GENARAL OF POLICE (SB)
KAHILIPARA
GUWAHATI 19.KAMRUP M ASSAM

5:THE DEPUTY INSPECTOR GENERAL OF POLICE (ADMINISTRATION)
ASSAM
GUWAHATI 07. KAMRUP M ASSAM

6:THE SUPERINTEDENT OF POLICE (E)
SPECIAL BRANCH
KAHILIPARA
GUWAHATI 19



KAMRUPM

7:THE DEPARTMENTAL SELECTION BOARD
O/O THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUARTER
ULUBARI
GUWAHATI 78100

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 11-08-2022

Heard Ms. S Kakati, learned counsel for the petitioner. Also heard Mr. D Bora, learned Junior Government Advocate for the respondents.

2. The writ petitioner was temporarily appointed as a Sub-Inspector (Un-Armed Branch) [in short, SI(UB)] in the Assam Police as per the letter of appointment dated 24.03.2008 of the Superintendent of Police, SB(E). The petitioner had also undergone the training at Police Training College, Dergaon for a period of one year. After completion of one year training, the petitioner was posted in the districts of Udalguri, Darrang, DimaHasao and Golaghat respectively. Upon the completion of the probation period, a final merit list of the cadet SI was published and in the said list, the name of the petitioner was at Sl. No. 84. After completion of the period of probation, the petitioner was posted at different places and claimed that he had served his duties with due diligences and sincerity and to the satisfaction of all the higher authorities but while he was serving in the office under the respondent no. 6 i.e. the SP,SB(E),



he was arrested on 11.03.2021 in connection with Basistha PS Case No. 416/2021 under Sections 22(C)/29 of the NDPS Act. It is stated that upon being arrested, the petitioner was released on bail as per the order dated 17.06.2021 in BA No. 876/2021.

3. The petitioner seeks to rely on the order of bail to impress upon that no contraband was seized from his possession and there were no allegations that he had possessed, manufactured, purchased or transported any of the narcotic contrabands. The petitioner also relies upon the statement of the learned Additional Public Prosecutor in the bail proceeding that there was no allegation of any direct involvement of the petitioner in any matter under the NDPS Act.

4. After being released from the custody, the petitioner was issued a show-cause notice dated 12.07.2021 under Section 65 of the Assam Police Act, 2007 read with Rule 66 of the Assam Police Manual Part-III and Article 311 of the Constitution of India and read with Rule 7 of the Assam Services (Discipline and Appeal) Rules 1964 as to why any of the penalties prescribed therein should not be imposed on the petitioner. The statement of allegation provides that when the petitioner SI(UB) Musaddique Hussain of the SB Organization of the Assam was attached to Cyberdome Cell, SB Headquarters, he was found involved in the drugs racket by helping in money transaction, transportation and providing shelter to drug traffickers in greater Guwahati and he also used to provide information about the police movement .

5. The set of allegations do indicate that the nature of allegation may not be covered by the observations made in the order dated 17.06.2021 of this Court in BA No. 876/2021 inasmuch as in the said bail order all that was observed was that no contraband subsistence was found in the possession of the petitioner or that he had not possessed, manufactured, purchased or transported any of the

contraband subsistence and that there was no direct involvement of the petitioner in any offence which attracts the NDPS Act. But in the disciplinary proceeding the allegation against the petitioner is not of possession, transportation, purchasing or manufacturing of any contraband under the NDPS Act, but his involvement in helping money transaction, transportation and providing shelter to drug traffickers in greater Guwahati and further that he provides information to the drug traffickers about the police movement. The allegation itself on its own is serious enough. The petitioner submitted his written statement against the show-cause notice by his reply dated 28.07.2021.

6. In the circumstance, this writ petition is instituted assailing a decision of the departmental selection board in not considering the case of the petitioner for confirmation in the rank of SI (UB) and further for a direction to consider the claim of the petitioner for confirmation in the rank of SI (UB).

7. In course of the hearing, we required the learned counsel for the respondents to submit on the question as to whether the confirmation in service of an employee can be denied as because there is a departmental proceeding pending against him although the charges thereof may be serious in nature. Confirmation in service is governed by a particular set of laws of its own which itself sets the parameters which are to be taken into account for arriving at a decision as to whether an employee is to be confirmed or not. On the other hand, if there are allegations of misconduct against an employee, there is another set of laws providing in what manner the employee is to be dealt with and which law depending on the nature of misconduct would be applicable and the conclusion that may be arrived in the enquiry which may also result in a dismissal of the government employee if the maximum penalty is imposed.

8. But the stand of the respondents that the two situations be taken together

and a pending departmental proceeding on an allegation of misconduct be made a basis to not confirm an employee in service, if otherwise, the employee is entitled to be confirmed as per the set of parameters under the law of confirmation, would have to be concluded to be unacceptable. When the law of confirmation sets for itself certain parameters to be taken into account, the confirmation would have to be based on the said set of parameters alone and extraneous factors over and above the parameters would be unavailable to the authorities to deny a confirmation. The ultimate outcome of the allegation of misconduct, which again may be very serious in nature, would ultimately result in such punishments that may be imposed in the departmental proceeding that has been initiated.

9. In the circumstance, we are of the view that a more appropriate option available to the respondents would be to borrow the principle of *sealed cover method* as provided in paragraph 26 of the pronouncement of the Supreme Court in *Union of India v. K.V. Jankiraman reported in (1991) 4 SCC 109*, wherein, where there are departmental proceedings or criminal proceedings against an employee and the employee otherwise is entitled to be considered for promotion, in such event, the employee would be subjected to the process of promotion but the result thereof would be kept in a sealed cover pending a final decision in the proceeding that may have been initiated.

10. Paragraph 26 of the K.V. Janikraman (supra) is extracted as below:

“26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of

evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

11. Accordingly, we interfere with the decision of the departmental selection board not to consider the case of the petitioner for confirmation and accordingly, direct the departmental selection board to give a due consideration to the claim of the petitioner for confirmation, if otherwise, he is entitled to be so confirmed under the law relating to confirmation, but because of the pendency of the departmental proceeding against him which had been initiated as per the show-cause notice dated 12.07.2021, the result thereof be kept in a sealed cover and to be acted upon as per the law after the completion of the departmental proceeding.

12. As there is a requirement of the departmental promotion board to take a decision on the entitlement of the petitioner for confirmation as per the set parameters related to the law of confirmation, we further provide that such decision taken be kept in a sealed cover and the effects thereof be provided to



the petitioner as per the said decision upon completion of the departmental proceeding.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant