

(2017) 06 GAU CK 0001

GAUHATI HIGH COURT

Case No: 3055 of 2011

Shri Rajib Dewri, S/O
Late Sariful Dewri

APPELLANT

Vs

The State of Assam,
Represented by the
Commissioner &
Secretary to the Govt.
of Assam, Department
of Home, Dispur, & Ors.

RESPONDENT

Date of Decision: June 1, 2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 376](#) - Punishment for rape#[Police Act, 1861](#), [Section 7](#) -
Appointment, dismissal, etc., of inferior officers

Citation: (2017) 06 GAU CK 0001

Hon'ble Judges: Hrishikesh Roy

Bench: SINGLE BENCH

Advocate: B. Ahmed, N. Haque, A. Choudhury, S.K. Deori, N.J. Das, S.R. Baruah

Judgement

1. Heard Mr. N. Haque, the learned counsel for the petitioner. The respondents are represented by Mr. S.R. Baruah, the learned Govt. advocate.

2. The petitioner is a former armed branch constable of the Morigaon DEF. In pursuant to the Disciplinary Proceeding (DP), the punishment of

removal from service was ordered against him on 03.08.2010 (Annexure-G) by the S.P., Morigaon. The resultant appeal filed by the delinquent

constable was dismissed by the Appellate Authority on 19.04.2011 (Annexure-J). The challenge here is to both the order of the Disciplinary

Authority and also of the Appellate Authority.

3. The Disciplinary Proceeding was drawn up against the constable, under Section 7 of the Police Act, 1861 read with Rule 66 of the Assam

Police Manual, with the show-cause notice/charge memo dated 23.11.2009, issued by the S.P., Morigaon. For ready reference, the relevant

portion of the show-cause notice is extracted herein below:-

.....

The O.C. Morigaon P.S. has submitted a report against you that on 29/09/09 at PM an written FIR has received from one Smti

Niyati Medhi of Vill:-Kathguri P.S.: -Morigaon stating that her daughter, namely Miss Dipti Medhi age about 13 years was kept in

your Govt. Quarter at Police Colony as maid servant since 3(three) months ago. On 23/24/25 Sept/09, you forcibly raped the said

girl without her consent for which she had undergone medical treatment at Morigaon Civil Hospital. In this connection a case has

been registered against you vide Morigaon P.S. Case No.169/09 U/S 376 IPC.

On enquiry, it is found that the incident took place due to your gross indisciplined and misconduct as personnel of a disciplined Police

department.

You are therefore charged with gross misconduct and dereliction of duty rendering yourself unfit to continue in service.

.....

4. The delinquent in his reply denied the allegations and being dissatisfied by the response, the disciplinary authority ordered for an enquiry into the

charges.

5. The Enquiry Officer examined 5 witnesses including the minor victim and the delinquent was afforded the opportunity to cross-examine the

witnesses, but he declined to do so. After evaluating the evidence produced before him, the Enquiry Officer concluded in his report of 23.06.2010

(page-32) declared that both charges relating to engaging a minor as a domestic help in violation of the provisions of Child Labour (Prohibition and

Regulation) Act, 1986 as well as the rape of the minor victim, were found to have been proved. This report was then forwarded to the delinquent,

indicating the proposed punishment. The response of the delinquent was then obtained and after due consideration of all circumstances and also the

gravity of the charges, the punishment of removal from service was ordered on 03.08.2010 (Annexure-G), by the S.P., Morigaon.

6. Mr. N. Haque, the learned counsel challenges the validity of the disciplinary action by projecting that in the criminal case registered under

Section 376 of the IPC, the accused constable was acquitted on 29.09.2010 (Annexure-H) in the Sessions Case No.112/2009 (corresponding to

G.R. Case No.1056/2009), by the learned Sessions Judge, Morigaon. Therefore, the counsel argues that since the evidence in the departmental

enquiry and in the criminal case are of the same kind, the finding of the Enquiry Officer would have to be ignored.

7. On the other hand, Mr. S.R. Baruah, the learned Govt. advocate submits that all opportunities were afforded to the delinquent during the

departmental enquiry where the conclusion was supported by relevant evidence and punishment was imposed through a due process. Therefore,

the respondents argue that simply because the delinquent was acquitted by the criminal court, the reconsideration of the disciplinary action, would

not be justified in law.

8. What is of relevance here is that the minor victim had testified both before the Enquiry Officer and also in the Trial Court and her evidence is

consistent in both forums. But only because of the delay on information of the incident, the Trial Judge expressed some reservation about her

testimony. But it is significant that the medical evidence offered through PW-6 in the criminal case, clearly supported the testimony of the victim. Be

that as it may, it was not a case of honourable acquittal but acquittal on the ground that the prosecution had failed to prove the case beyond all

reasonable doubt.

9. In the context of the arguments of the petitioner to the effect that the conclusions in the departmental enquiry, cannot be sustained on account of

the finding of the criminal court, it is necessary to observe that the standard of proof in a departmental proceeding and in the criminal court are

intrinsically different. In a disciplinary proceeding, the charges are required to be proved on the scale of preponderance of probabilities and also

some relevant material to justify the conclusion reached by the Enquiry Officer. But in a criminal case, the charges will have to be proved in the

Court, beyond all reasonable doubt. Therefore, mere acquittal by the criminal court would not warrant a second look at the enquiry finding as the

degree of proof are different in the two forums.

10. That apart, the High Court is not expected to function as an Appellate Authority to judge the merit of the conclusion reached by the Enquiry

Officer. Interference would be justified only when there is procedural error leading to manifest injustice. But in the present case, as noticed earlier,

the charges were adequately proved through the evidence of the minor victim and other witnesses and the conclusion of the Enquiry Officer is

based on cogent material. That apart, the delinquent was afforded a fair opportunity, to defend the charges.

11. Taking all the above circumstances into account, I do not find any infirmity with the disciplinary action and also the conclusion reached against

the petitioner. As it was a case of serious misconduct, the punishment too is considered to be as deserved, for the delinquent.

12. For the foregoing reasoning, this Court does not see any reason to interfere with the disciplinary proceeding and accordingly this case stands

dismissed. No cost.