

WA 100/2004

BEFORE

HON'BLE THE CHIEF JUSTICE MR J CHELAMESWAR

HON'BLE MR JUSTICE BP KATAKEY

Aggrieved by judgment in WP(C) No.7215/2001 dated 6-12-03 the unsuccessful petitioner therein preferred the present appeal.

2. The appellant was enrolled as Constable in the 4th Assam Police Task Force Battalion. Though no formal letter of appointment was issued he was sent for training with effect from 26-3-2001. On 30-8-2001 while he was still undergoing training he was directed to leave. Admittedly, no formal order of discharge was also served on him and, therefore, he filed the above mentioned writ petition.

3. The case of the respondents is that the appellant was never appointed by the State to any post though he was provisionally selected for the post of Constable in the 4th Assam Police Task Force Battalion. According to the requirement of Assam Police Manual any person, who is found otherwise fit for being appointed as a Police Constable, is provisionally selected subject to the verification of the antecedents of such a person. In the case of the appellant also he was provisionally selected and in order to save time before the other formalities for formally appointing him are completed he was provisionally sent for a training programme but in the meanwhile an adverse report of antecedents of the appellant was received by the respondents to the effect that he was involved in a Police Case No.165/99 of Bilasipara Police Station registered under Section 365 read with Sec 34 and Sections 120(B)/364(A) read with Sec 302 IPC etc. In view of such an adverse report it was found that he was not fit to be appointed and, therefore, he was discharged from the training.

4. Admittedly the appellant was arrested by the police in connection with the above mentioned crime and later he was released on bail by the competent court. As it is not very clear from the judgment under appeal whether there was any charge sheet filed against the appellant in connection with the above crime, we called upon the respondents to file an affidavit explaining the status of the above mentioned case.

5. The Superintendent of Police, Dhubri, within whose jurisdiction the above mentioned crime is registered, filed an affidavit dated 18-3-2008. The relevant portion of the affidavit reads as follows :-

3. That the humble deponent begs to state that on receipt of the ejahar a case was registered at Bilashipara P.S. vide Bilashipara P.S. Case No.165/99 U/S 365/34 IPC. Later sections 364(A)/120(B)/302 I.P.C. r/w sec. 10/13 U.A.(P) Act/27(B) Arms Act was added.

4. That your humble deponent begs to state that the case was investigated by the Investigating Officer, namely, Shri Narendra Ch. Das, Inspector of C.I.D. HQrs, Assam who submitted charge sheet vide C.S. No.171 dated 22-12-2005 U/S 365/364(A)/120(B)/302 I.P.C. R/W sec 27(B) Arms Act and 10/13 U.A.(P) Act against the arrested accused persons namely (1) Gopi Nath Nath S/o Late Durlav Nath of village Surjya Khata, P.S. Bilashipara (2) Pradip Nath S/O Kandarpa Nath of village Howdartari, P.S. Bilashipara and were subsequently forwarded to judicial custody.

5. That the humble deponent begs to state that the remaining accused persons, namely (1) Naren Nath S/O Nagen Nath of village Halaguri, P.S. Bilashipara, (2) Bimal Baruah @ Engang S/O Someswar Baruah of village Chunghunikhata, P.S. Bilashipara and (3) Gopinath Roy @ Raju Roy S/O Late Lalit Narayan Roy of village Bahalpur, P.S. Chapor had absconded. However, charge sheet has been submitted against them showing them as absconders.

It can be seen from the above that the appellant's name is not shown as one of the names of the accused in the above mentioned crime. There is nothing on record placed by the respondents to suggest that the appellant is even remotely connected with the above mentioned crime. The mere suspicion of his involvement and the consequential arrest of the appellant, in our view, cannot be a ground for coming to a conclusion that his antecedents are such which make him unfit for employment under the State.

6. We do not propose to examine the question whether the appellant is entitled for the protection of Article 311 in the absence of any formal appointment order. In our view this matter is required to be disposed of on the sole ground that the entire action of the respondents in seeking not to appoint the appellant, though he was otherwise found fit at the selection to be appointed as Constable, is wholly arbitrary and irrational.

7. In the circumstances, we are of the opinion that the judgment under appeal cannot be sustained. The appeal and consequently the writ petition stands allowed, as prayed for by the appellant.