

WP(C) 1200/2009

BEFORE

THE HON'BLE MR. JUSTICE AMITAVA ROY

Heard Mr. P Talukdar, learned counsel for the petitioner, also heard Mr. Ghosh, learned State Counsel.

In brief, the petitioner's pleaded case, is that while he had been serving as a Constable in the 6th Assam Police Battalion, and was on duty in Guwahati being attached to the Project Officer, N.C. Hills Autonomous Council, he fell ill; so much so that he was compelled to take medical treatment at the Central Police Hospital, Panbazar, Guwahati-1. On 20.01.2008, an FIR was lodged with the Officer-in-Charge, Haflong Police Station by one ABI Runu Chokrobarty, Wing 2 i/c 6th A.P. Bn. Camp, Halflong disclosing the factum of theft of an amount of Rs. 7,99,769 /-, on which Halflong Police Case No. 07/2008 (Corresponding to G.R. Case No. 11/2008) U/s. 380 IPC was registered. Apprehending arrest in connection with the above case, the petitioner filed before this Court an application for anticipatory bail, which was granted on 12.03.2008 in B.A. No. 586/2008. According to the petitioner, the investigation in the aforementioned criminal case is still pending.

While the matter rested at that, the petitioner by order dated 07.11.2008 of the Commandant, 6th A.P. Bn. Kathal, Silchar vide Memo No. Bn/6/R 7742 - 46 was placed under suspension with effect from 06.01.2008 for his unauthorised absence while he was deputed for P.S.O. duty with the Project Officer, N.C. Hills Autonomous Council. Being aggrieved by this order, the petitioner is before this Court. No affidavit-in-opposition has been filed by the State respondents.

Mr. Talukdar has argued that the impugned order of suspension is per se untenable in law, the same having been given a retrospective effect which is incomprehensible in law. As the petitioner, in view of the order of the anticipatory bail granted by this Court had not been lodged in detention in connection with the criminal case, the impugned order of suspension by no means could have been given a retrospective effect, he urged. This is more so, as the FIR had been lodged only on 20.01.2008, i.e. subsequent to the date on and from which the impugned order of suspension had been given effect to.

Mr. Ghosh, however has submitted on the basis of the instructions received by him that the impugned order of suspension has been by way of disciplinary measure in view of the petitioner's unauthorised absence from duty.

Upon hearing the learned counsel for the parties, and on a consideration of the pleaded facts and the documents annexed to the petition, this Court is of the view that the impugned order of suspension cannot be sustained in law. It is apparent from the narrated facts that the petitioner had not been kept in detention following his arrest in connection with the police case, which is pending/investigation as on date.

In that view of the matter, his suspension from any date prior to that of issuance of the order to that effect is not contemplated in law. Noticeably, the date of the lodgement of the FIR is 20.01.2008 i.e. much subsequent to the date on and from which the impugned order of suspension has been given effect to. By no means, therefore, this order of suspension can be traced to the police case or his arrest in connection therewith. On the other hand, though the impugned order is conspicuous to suggest that the petitioner had been placed under suspension for his unauthorised absence from duty, there is no material on record to indicate that any departmental proceeding against him is contemplated as on date. reckoned from the date on and from which the petitioner has been placed under suspension, almost one and a half years have passed.

On a totality of the considerations as above, the impugned order of suspension needs to be interfered with. Ordered accordingly. The order of suspension dated 07.11.2008 (Annexure- 7) of the writ petition is hereby quashed. The petitioner would be entitled to all consequential benefits.

It is, however, having regard to the considerations on which the instant determination has been made, it is made clear, that the same would not come in the way of the respondents in taking further appropriate steps as would be deemed fit and proper in the attending facts and circumstances of the case and as permissible.

le in law. The petition stands allowed in the above terms. No costs.