
(1998) 07 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 1051 of 1995

A. Dinamani Sharma

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 15(4), 27(2), 29

Citation : (1999) 1 GLT 327

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : Y. Imo Singh, for the Appellant; A. Jagatchandra Singh, for the Respondent

Judgement

N.S. Singh, J.—In this writ petition, the Petitioner has challenged the validity of the impugned order dated 9.9.1994 issued by the Principal Chief Conservator of Forest, Govt. of Manipur, the 3rd Respondent annexed as in Annexure A/21 to the writ petition awarding major penalty of reducing existing pay of the Petitioner by two stages from Rs. 1440/- to Rs. 1380/- in the scale of pay of Rs. 1200-30-1570 -EB- 40-2040/- for a period of 2 years, with effect from 8.4.93, with further order to repay the extorted/loss amount of Rs. 2,93,500/- only, within a period of 5 years and also, restricting pay of the Petitioner and subsistence allowance for the period under suspension and also the validity of the order of the appellate authority virtually amounting to the rejection or dismissal of the appeal preferred by the writ Petitioner from the impugned order of 9.9.94.

2. A Departmental Inquiry was contemplated/initiated as against the writ Petitioner under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965, hereinafter referred to as CCS Rules, 1965, while the writ Petitioner-a UDC, was functioning as Cashier in the Eastern Forest Division, Ukhrul, on the charge that he had committed lapses for serious negligence and

dereliction of official duty and deliberate failure in carrying out instructions of the Divisional Forest Office, Ukhrul, to maintain secrecy resulting in considerable loss of Govt. money amounting to Rs. 2,93,500/- only, which was extorted from his hand on 1.4.93 vide office memorandum dated 19.6.93 in Annexure 2(1) to the writ petition. An Inquiry Officer had enquired into the charges framed against the said writ Petitioner and the Inquiry officer also had submitted the related report dated 10.12.93 as in Annexure A/18 to the writ petition, and thereafter, the competent authority awarded the aforesaid major penalty under the impugned order of 9.9.94 as in Annexure A/21. The appeal of the writ Petitioner from the impugned order of 9.9.94 was not acceded to by the appellate authority i.e. State Govt. under another impugned order of 14.4.95 issued by the State-Respondents as in Annexure A/33 to the writ petition.

3. Mr. Y. Imo Singh, learned senior counsel for the Petitioner contended, that the Principal Chief Conservator of Forest/the Respondent No. 3 herein, having regard to the findings of the enquiring authority/officer, the Respondent No. 4 herein, on the charges against the Petitioner, quote disregard to the evidence on record proposed to impose major penalty of reduction to a lower stage in the time scale of pay for the period of 2 years from the date of suspension under Rule 11 (v) of the CCS Rules, 1965 as incorporated under Rule 15(4) of the said Rule and also, attributed to loss of Govt. money to the Respondent No. 5 and for recovery of a sum of Rs. 1,46,750/- only being half of the loss amount from Shri A. Kharsing, the Divisional Forest Officer concerned (Respondent No. 5) vide office letter dated 15.6.94. Apart from it, the Govt. of Manipur intentionally usurped the rights of the disciplinary authority/the Respondent No. 3, perversely, discriminately and capriciously, by issuing an order dated 25.7.94 as in Annexure A/20 to the writ petition for recovery of the extorted amount of Rs. 2,93,500/- only, from the Petitioner in immunity of the Respondent No. 5 namely, the Divisional Forest Officer concerned from the liability of recovery of the amount of Rs. 1,46,750/- as proposed by the Chief Conservator of Forest as in Annexure A/19 to the writ petition, Mr. Y. Imo Singh contended.

4. According to Mr. Y. Imo Singh, the Inquiry Officer, in his report made it clear finding to the effect that, in the light of the facts and circumstances, the charges levelled against the writ petition/delinquent official in Article 2 of the memorandum is partially proved, though it was more of the responsibility of the Divisional Forest Officer, Ukhrul, as the Drawing and Disbursing Officer of the Division. The said report finds its place in Annexure A/18 to this writ petition. It is also submitted by Mr. Y. Imo Singh, that the appeal preferred by the writ Petitioner was also rejected without thorough examination conforming the provisions of Rules contained" in Rule 27(2)(c) and Rule 29 of the CCS Rules 1965, under the impugned order of 14.9.95 as in Annexure A/33. Apart from it, the recovery from pay as a punishment for any pecuniary loss caused by a Govt. servant by negligence or breach of orders, should not exceed 1/3rd of basic pay (i.e. Excluded Dearness pay or any other allowances) and should not be spread over a period of more than 3 years. In other words, the recovery should not

exceed 1 years basic pay in any case. (Reference DGP & T's Letter No. 3/312/70-Disc-11 dated 13.2.81) and a Govt. official will be held personally responsible for any loss sustained by Govt. only through fraud or negligence on his part and not otherwise, and there has been no fraud or negligence on the part of the Petitioner for the money extorted by the extremists in view of the Financial Rule No. 21.

5. It is also urged that, if the punishing authority namely the Principal Chief Conservator of Forest, had good and sufficient cause for penalty for the alleged mis-conduct, the competent authority could impose one penalty and not competent to impose two penalties simultaneously or in quick succession. These important points of law and the existing facts and circumstances of the case was not considered at all by the appellate authority while disposing the appeal of the writ Petitioner with a non-speaking order and as such the impugned order dated 14.9.95 passed by the appellate authority is not tenable in the eye of law, Mr. Y. Imo Singh argued. Mr. Y. Imo Singh also argued, that the concerned Divisional Forest Officer, the Range officer (Shri Nimai Singh) and Shri S. Diven Singh, LDC, who are also connected with the incident were not charge-sheeted and no departmental proceedings was initiated against them, but the writ Petitioner has been made as a scapegoat by the competent authority, which is quite illegal and unjust.

6. At the hearing, Mr. A. Jagatchandra Singh, the learned Addl. Govt. Advocate for the Respondents, submitted that in spite of the fact that gross in efficiency on the part of the writ Petitioner which has resulted in the loss of such huge amount to the Govt. money, the writ Petitioner was reinstated on humanitarian ground and considering his long services and he was shown great leniency by allowing him to repay the money loss within a period of 6 years as the aforesaid huge Govt. money was lost because of the negligence and misconduct on the part of the writ Petitioner. The learned Addl. Govt. Advocate further submitted , that there is no evidence that the money was extorted under duress thereof as the money was kept inside high security area, which the Petitioner took out and handed over to the alleged extremists and rather, the writ Petitioner did not inform the police in time when he was asked by the extremists to bring the money in the early morning of the day. There is no infirmity or any other procedural irregularity in the impugned orders as in Annexure A/21 and A/33 to the writ petition, Mr. Jagatchandra Singh Contended.

7. I have perused the report of the Inquiry Officer as in Annexure A/18 to the writ petition as well as the proposal of the Principal Chief Conservator of Forest, Govt. of Manipur, under his office letter dated 19.6.94 (Annexure A/19) for imposing major penalty as mentioned above as against the writ Petitioner and also for imposing a penalty on Shri A. Kharshing, the Divisional Forest Officer concerned for recovery of a sum of Rs. 1,45,750/- from him and the Govt. letter dated 25.7.94 (Annexure A/20), fixing full responsibility for causing loss of Rs. 2,93,500/- upon the writ Petitioner and the recovery of the same from him and

exempting all liabilities as against the said Divisional Forest officer. The operative portion of the report of the Inquiry Officer which is essential for just determination of the real points in controversy is termed as follows:

From the assessment of the prosecution witnesses as mentioned above I do not find any evidence on the record that the Divisional Forest officer, Ukhrul instructed the Delinquent Official to keep the whole amount of money so encashed in the iron chest kept in the strong room of the Treasury Office, Ukhrul, as far as the extortion of Rs. 2,93,500/- (Rupees two lacs ninety three thousand five hundred) under the circumstances as mentioned above it was absolutely beyond the control of the Delinquent Official since he was under strong threat of being killed. Any body any Government employee under the given circumstances would definitely find it difficult to get out of this situation. The extortion would not have taken place if the keys of the iron chest were maintained by two different persons in turn with the provision of the rules as mentioned above. The Delinquent Official failed in maintaining secrecy as much as he admitted the fact that keys of the iron chest lodged in the strong room of the Treasury and therefore, to that extent the keys the situation would have been different. In the light of the above facts and circumstances the charges levelled against the Delinquent official in Article 2 of the Memorandum is partially proved, though it was more of the responsibility of the Divisional Forest Officer, Ukhrul as the Drawing and Disbursing officer of the Division.

Sd/- (Along A.S. Shimray) Assistant Commissioner Departmental Enquiries Govt. of Manipur.

8. It is an admitted position , that the Principal Chief Conservator of Forest, while forwarding the report of the departmental enquiry to the Commissioner of Forest, Govt. of Manipur, he made a proposal to the effect that the Commissioner (DP) may be intimated to impose a penalty on Shri A. Kharshing also, to recover a sum of Rs. 1,46,750/- being half of the loss amount to be recovered from him. It is also not disputed that the Under Secretary, Forest, Govt. of Manipur, under his office letter dated 25.7.94 as in Annexure A/20, informed the Principal Chief Conservator of Forest, Manipur, to the effect that the writ Petitioner is fully responsible for causing loss of Rs. 2,93,500/- to the Govt. by his irresponsible act under his office letter dated 25.7.94 (Annexure A/20). In my considered view, on the basis of this Govt. order/letter dated 25.7.94, the competent authority ordered that the said amount should be repaid by the writ Petitioner to the Govt. within 5 years from the date of issue of the impugned order of 9.9.94 (Annexure A/21).

9. Now, this Court is to examine as to whether the order of appellate authority/ impugned order dated 14.9.95 as in Annexure A/33 is a reasoned order or speaking order or not.

10. On bare perusal of the impugned order of 14.9.95 issued by the appellate authority, the appeal of the writ Petitioner was disposed of by the appellate

authority in consultation with the Finance Department, Govt. of Manipur. But, no reason was recorded by the appellate authority in support of its decision rejecting the appeal of the writ Petitioner as well as the said" request for relaxation of punishment. It is well settled, that it is obligatory on the part of the competent authority upon the appellate authority, which is a quasi judicial authority to record reasons in support of its decision arrived at under the related impugned order of 14.9.95 pertaining to the disposal of an appeal preferred by the writ, Petitioner from the order imposing major penalty under the impugned order of 9.9.94 (Annexure A/21). In this regard, a reference can be made to a decision of the Apex Court rendered in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, where in the Apex Court held thus:

Opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. Recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

11. On perusal of the available materials on record and also upon hearing the learned Counsel on both sides, I am of the view that the decision of the appellate authority under the related impugned order of 14.9.95 (Annexure A/33) was not passed in accordance with law and the same is not a speaking or rather not a reasoned order and, as such, the same is not tenable in the eye of law and it deserves to be quashed and, accordingly, it is quashed.

12. In view of the above position, I direct the appellate authority/State Govt. of Manipur, to consider and hear the appeal of the writ Petitioner (Appeal from the order of punishment passed by the Principal Chief Conservator of Forests, Govt. of Manipur On 9.9.94) de-novo and, dispose of the same with reasons on the basis of the grounds/points raised by the Appellant in the memorandum of appeal, in accordance with law, within a period of 2 months from the date of receipt of this judgment and order and communicate the result of it to the writ Petitioner as early as possible. It is made clear, that the writ Petitioner is at liberty to furnish a fresh memorandum of appeal along-with any material, evidence and documents in support of his case to the appellate authority, if so advised, within a period of 2 weeks from today.

13. For the reasons, observations and directions made above, this writ petition is partly allowed. No cost.