
(1996) 02 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 101 (K) 95

Akangkokba AO

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Nagaland Services (Discipline and Appeal) Rules, 1967 — Rule 7, 9, 9(1), 9(2)

Citation : (1998) 3 GLR 180

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : Chuba Jamir, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

W.A. Shishak, J.—The Petitioner joined service as Constable in April, 1983 in the scale of (sic) pay of Rs. 400 - Rs. 690 P.M. He received necessary training at Chumukedima Police Training Centre. After putting in 8 (eight) years of service, by Memorandum dated 28th November, 1991 issued by the Commandant, 3rd NAP, the Petitioner was dismissed from service with effect from 20th November, 1991. That order of dismissal has been impugned in the present Petition on the grounds, inter alia, that before the order of dismissal was issued no show-cause notice was given to the Petitioner, that no Articles of charges were framed against the Petitioner and that no enquiry whatsoever was conducted against the Petitioner. There was no order of suspension (sic) contemplation of departmental proceedings. The Petitioner's contention (sic) that there is a very serious violation of the principles of natural justice inasmuch as the Petitioner was not given opportunity of being heard before the order of dismissal was issued.

2. An allegation was brought against the Petitioner that on 9.11.91 he was caught red-handed while he was stealing a hen/chicken from the house of one Mrs. Nimo Khemnungan. The aforesaid order of dismissal reads:

MEMORANDUM

Where as a charge report brought to No. 32683 Conct. Akangkokba Ao that while he was stolen hen from the home of Nimo Khmn on 9/11/ 91 at 2030 his and caught red handed by the house owner. He was put unit Quarter Guard.

He was produced to Commandant O. Rs. on 20/11/91. Accordingly to his statement and charge report he is a habitual are in such act. He also admitted several of such act against the discipline force norms He was caught red handed by Nemo Khmn while he was an action by such act. He has finished all total 31 chicken and one dog belong to Unit families.

By deque of his misconduct and action he is dismissed from service with effect from 20/11/91 (AN) without any mercy.

3. Admittedly the Petitioner's case would come within the purview of the Nagaland Services (Discipline and Appeal) Rules, 1967. Rule 7 of the (aforesaid Rules is of two parts. One describes minor penalties and the second part describes major penalties, in terms of this Rule. Rule 7(ix) states:

dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Rule 9 deals with procedure for imposing penalties. Government has (sic)ed counter affidavit. It is not disputed that enquiry was not conducted before the order of dismissal was issued except that the Petitioner was produced before the Commandant who examined him before the impugned order was issued. In this view of the matter, it appears it will not be necessary for me to (sic)tract the entire Rule. However, for the purpose of the present case Rule 9 (1) and (2) may be extracted :

9(1). Without prejudice to the provisions of the Public servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in Rule 7 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defense and also to state whether he desires to be heard in person. Standard Form of Memorandum of Charge-sheet and Memorandum are specified in Schedule IV and V.

4. On careful reading of the above quoted provisions of Rule 9. it is crystal clear that definite charge on the basis of allegations must be framed Such charges together with a statement of allegations on which they are based shall also be communicated in writing to the Government servant and shall be required to

submit within a specified period, a written statement of his defense. The Petitioner had no such opportunity to file written reply inasmuch as no Articles of charges were furnished upon him. The Rule also contemplates that if the charges are denied, an enquiry officer should be appointed to enquire into the allegations and a report should be prepared by such enquiry officer. The Petitioner contends in para 8 of this writ Petition that allegation is totally false and that such allegation has been made out of some ulterior motive. The allegation is that altogether the Petitioner had stolen thirty one chickens and one dog from the unit family line.

5. Although factual statement regarding appointment of the Petitioner as constable is not denied, the Govt. affidavit states in para 5 that the performance of the Petitioner as a constable was not at all satisfactory from the beginning inasmuch as he committed misconduct on several occasions. It is further stated in para 5 of the govt. counter:

(1) He was awarded 5 days R.I. by the then Adjutant on 24.7.87.

(2) He was awarded 5 days R.I. in Quarter Guard with 2 hrs. packed Drill daily on 14.8.88.

Mr. E.Y. Renthungo, learned Jr. Govt. Advocate slates that such punishments have been clearly reflected in his service book. Para 7 of the Govt. counter further slates that the Petitioner himself had confessed that he had committed theft as alleged against him before the competent authority. It is also contended in para 8 of the Govt. counter that although the Petitioner contends that representation was made on 9/10/93 against the order of dismissal, no such representation was received by the competent authority at any time. It is also submitted by learned Jr. Govt. Advocate that the alleged representation was also made only in October, 1993, and that too without any explanation as to why the said representation was made so belatedly.

6. Another submission made by the learned Jr. Govt. Advocate is that there is a provision for appeal before the Govt. against the order of dismissal. The Petitioner has not availed of that forum. Hence it is submitted that this Petition under Article 226 of the Constitution cannot be entertained. It is also further submitted that this Petition cannot be sustained on the ground (sic) the Petitioner has approached this Court at a very late stage and without any explanation as to the cause of delay.

7. As mentioned above, no departmental enquiry was ordered against (sic) Petitioner in terms of allegation of theft of chickens and dog. No charge is framed against the Petitioner. The Petitioner was not called upon to (sic) cause why action should not be taken against him. There was no opportunity given to the Petitioner to defend himself. It appears to me that (sic) Competent authority could not have simply issued order of dismissal without complying with the procedure laid down in this regard. The entire procedure has been done away with in the present case. In other-words no (sic) remedy whatsoever has been made

in the present case. This is simply omissible. In such a situation, it appears this Court would be justified (sic) mine the grievance of the Petitioner that no procedure has been allowed before the order of dismissal was issued.

8. As regards that submission made on behalf of the Government that (sic) the present case should defeat equity, I may state that although (sic) has been delay, since the case involves avoidance of the procedures (sic) down by the government and since the punishment is no less than dismissal of the Petitioner from service, to appears it would be for the ends justice to condone delay in approaching this Court.

9. There is no provision in the relevant rules under which formal try can be avoided. There is no explanation any-where by the competent (sic) rity as to why it was felt necessary not to enquire into the allegations. (sic) view that order of dismissal is quite arbitrary inasmuch as it has been (sic) in contravention to the clear provision laid down in the aforesaid (sic)

10. In the result, this Petition is allowed. The order of dismissal issued (sic) Commandant on 28 November, 1991 is quashed. The Petitioner shall (sic) stated forthwith. However, it is open to the competent authority to necessary enquiry in accordance with the procedure laid down in this (sic) Such enquiry, if instituted shall be completed within a period of months from the date of receipt of this order. The service benefits of Petitioner including back-wages period the period from the date of dismissal (sic) shall depend on the out-come of the enquiry to be made against Petitioner.

This Petition is disposed of.