
(2002) 03 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 65 of 2001

Ch. P. Zokha

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Police Act, 1861 — Section 7

Citation : (2002) 1 GLT 476

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.K. Malhotra, Helen Dawnliani and R. Lalduhawmi, for the Appellant; T. Vaiphei, A.A.G., for the Respondent

Judgement

B. Lamare, J.—Heard Mr. C. Lalramzauva, learned counsel assisted by Mr. A. R. Malhotra for the petitioner and also heard Mr. T. Vaiphei, Addl. Advocate General assisted by Mr. N. Sailo, Govt. Advocate for the State respondents.

2. The case in brief is that the petitioner was appointed as Constable (UB) in the Office of the Superintendent of Police, Chhimtuipui District vide order dated 20.11.1995. His services in the said post was confirmed by order dated 15.1.1999. While the petitioner was serving in the said capacity as Constable (UB), he was placed under suspension.

3. A Departmental Enquiry was initiated against him by Office Memorandum dated 27.10.2000. The Article of charges against the petitioner are as follows :-

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST C/ ZOKHA OF SAIHA DEF

ARTICLE-I

C/Zokha of Saiha DEF posted to Saiha PS was kept inside PS Lock-up on the night of 5-10.2000 for his drunken misbehaviour. Thereafter, he was detailed to perform extra PS duty day and night w.e.f. 6 to 7/10/2k (upto 9. AM). But he

was found absent from his duty without assigning any reason thereof.

That the said act of C/Zokha of Saiha PS is serious disciplinary matter amounting to insubordination, refusal to obey lawful order of his superior officer and unbecoming of a police officer calling for disciplinary action u/s 7 of Indian Police Act (1861) r/w 66 of Assam Police Manual, Part III.

ARTICLE-II

Again, C/Zokha of Saiha DEF while posted at Saiha PS attended PS duty on 7.10.2000 at 9:30 AM under influence of alcohol in full uniform.

That the said act of C/Zokha of Saiha DEF amounted to serious misconduct warranting disciplinary action u/s 7 of Indian Police Act (1861) r/w Rule 66 of Assam Police Manual, Part III,"

4. Alongwith the said article of charges, the statement of imputation in support of the article of charges were also served on the petitioner which are as follows :-

"STATE OF IMPUTATION IN SUPPORT OF THE ARTICLE OF CHARGE FRAME AGAINST C/ZOKMA OF SAIHA DEF.

ARTICLE-I

That the said C/Zokha of Saiha DEF while posted at Saiha PS was found misbehaving in a drunken manner while on duty at Saiha PS on 5.10.2000. Hence, as per Section 3 of the Assam Enhanced Police Disciplinary Power Act 1950, he was awarded minor punishment for confinement in the Quarter Guard for a night and extra duty for 2 (two) days continuously, i.e.. (w.e.f. 6 to 7.10.2000) vide GDE No.99 at 5:00 PM. In spite of obeying lawful order of his superior officer, he intentionally absented from duty w.e.f. 6 to 7.10.2000 (upto 9:00 AM) totally disregarding his superior order. Moreover, the said C/Zokha has awarded 3 (three) times punishment for his unauthorised absent from duty vide No.D/PF/C-ZKA/2K/69 dt.2.2.2k even No. dt. 17.2.2000 and 16.3.2000.

The above act of the said C/Zokha of Saiha DEF amounts to grave misconduct; negligence of duty etc. and unbecoming of a Police Officer calling for disciplinary action u/s 7 Indian Police Act (1861) r/w Rule 66 of Assam Police Manual, Part III.

ARTICLE-II

That the said C/Zokha of Saiha DEF posted at Saiha PS was found under influence of liquor while on duty on 7.10.2000. Accordingly, his explanation was called vide this office letter No.D/PF/C-ZKA/873 dt. 9.10.2k. He had admitted his guilt in his reply on 10.10.2000. In this connection PHQ Aizawl circular No. CB/PHQ/MMS dt. 17.12.1993 and also several instructions have been issued not to indulge Alcohol/Liquor by a Police Officer while on duty vide order No. DGP/PS-MISC/809 dt. 15.7.2000. But, the said C/Zokha will fully disregarded lawful order of his superior and awarded 2 (two) times punishment in this regard vide No. D/PF/C-ZKA/2k/123 dt. 17.02.2000 and even No. 30.02.2000.

The above act of the C/Zokha is serious matter amounts to disobey lawful order of his superior officer, indiscipline and unbecoming of a police officer calling for disciplinary action u/s 7 of India Police Act (1861) r/w Rule 66 of Assam Police Manual, Part III".

5. The Enquiry was conducted against the petitioner u/s 7 of Indian Police Act, i.e., Rule 66 of the Assam Police Manual, Part III. One Pu Speedy Hmangaiha Dy. Supdt. of Police (Hqrs.) Saiha was appointed as Enquiry Officer.

6. The Inquiry against the petitioner was started on 28.11.2000 and the Inquiry report was submitted to the Supdt. of Police, Saiha vide letter dated 29.12.2000 of the Inquiry Officer addressed to the Supdt. of Police, Saiha District. On the basis of the said Inquiry report, the impugned office order dated 17.1.2001 (Annexure-7) to the Writ Petitioner was issued by the Supdt. of Police, Saiha District imposing a major penalty on the petitioner by way of removal from service with immediate effect. Being aggrieved by the said impugned order, the petitioner has approached this Court by way of this petition.

7. Heard the learned counsel for the parties and also perused the records.

8. Mr. C. Lalramzauva, learned counsel for the petitioner submits that from a daily ordersheet prepared by the Inquiry Officer shows that, no witnesses were examined by the Inquiry Officer, no document was also exhibited in course of the Inquiry. It is also submitted that the documents, shows in the list attached to the statement of imputation was not supplied to the petitioner. The Inquiry report was also not furnished to the petitioner. According to the learned counsel, the petitioner was not given a reasonable opportunity to defence himself in the said Departmental Inquiry.

9. Mr. T. Vaiphei, learned Addl. Advocate General contended that the petitioner by his own statement as per Annexure-C/5 "A" to the affidavit in opposition has admitted to the articles of charges made against him. The Admission of the petitioner to the charges against him is sufficient to impose a major punishment on the petitioner. It is also contended by the learned counsel that, in the preliminary Inquiry, 6 (six) witnesses were examined and from their evidence read with the admission made by the petitioner in his statement before the Inquiry Officer clearly shows that the allegations against the petitioner are duly proved beyond reasonable doubt.

10. The article of charges against the petitioner was drawn u/s 7 of Indian Police Act read with Section 66 of the Assam Police Manual, Part III. The punishment imposed on the petitioner is a major punishment as contemplated u/s 66 II (2) of the Assam Police Manual, Part HI. The relevant procedure for imposing such major punishment is set forth in Clause III of Section 66 which reads as follows :

"No order of major punishment shall be passed on a member of the service (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is

proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases for special and sufficient reasons to be recorded in writing be waived where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged."

11. From reading of the above provisions of the rule it shows that the petitioner shall be given a reasonable opportunity to defend himself by cross-examination of the witnesses and also to adduce evidence on his own, if so advised. The rule also provides that the proceedings should contain sufficient evidence against the petitioner.

12. From perusal of the records, it shows that the points to be examined are as to whether the above provisions of rules have been complied with.

13. In the case of the State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., The Apex Court held that the delinquent was denied a reasonable opportunity to defend himself at disciplinary proceedings when the statement of witnesses recorded during the preliminary inquiry were not furnished to him.

14. In the case of Abujam Amuba Singh v. State of Manipur and Ors. Reported in 2000 (1) GLT 227. This Court has held that, it is a requirement of law that when authority wants to take into account the past conduct of the employee, he must be notified for it. This conclusion was made by following the principles of law laid down in the case of State of Mysore v. K. Manchikauda reported in AIR 41964 SC 506.

15. In the case of Ratan Dutta v. State of Tripura and Ors. Reported in 2000 (2) GLT 93, this Court has held that since Show Cause Notice has not been given, the whole proceedings including the punishment awarded to the petitioner stands

vitiated. In the above case, after completion of departmental proceedings, the petitioner was not supplied with the Inquiry report nor any Show Cause Notice was issued to him. Therefore, this Court by following the ease Union of India and others Vs. Mohd. Ramzan Khan, has held that the inquiry is vitiated in absence of the Show Cause Notice before the punishment be imposed on the concerned officer.

16. Coining back to the case in hand, from the records, it shows that the inquiry was held from 1.12.2000 and concluded on 11.12.2000. The daily ordersheet maintained by Inquiry Officer did not indicate that any witnesses were examined nor any documents exhibited. The ordersheet also shows that the Enquiry was conducted without the presenting officer.

17. It also reveal that Medical Certificate issued by one Dr. Rothuama, Medical Officer Civil Hospital, Saiha was taken into consideration without examining him. The past conduct of the petitioner on different dates from 4.1.2000 to 7.10.2000 was taken into consideration by the Inquiry Officer, the documents of which were not furnished to the petitioner nor were reflected in the article of charges against the petitioner.

18. On perusal of the impugned termination order shows that the Disciplinary Authority has considered the evidence of 6 (six) witnesses whereas from the Inquiry report, it shows that no witnesses were examined.

19. It is contended that the said witnesses were examined during the preliminary, enquiry but the documents/statements were not furnished to the petitioner. The consideration of the evidence of witnesses recorded during the preliminary enquiry being not furnished to the petitioner has resulted in the denial of reasonable opportunity to the petitioner to defence himself at Disciplinary Inquiry (State of Uttar Pradesh v. Mohamed, supra).

20. Similarly, consideration of the past allegations against the petitioner without giving him opportunity to be heard is against requirement of law as the petitioner is entitled to the same (Abujhum Singh v. State of Manipur, supra).

21. The contention of the learned Addl. Advocate General that the admission of the petitioner in his Show Cause against the notice when drawing departmental proceedings against him as well as in his statement before the Inquiry Officer is sufficient upon the petitioner, can not be accepted as the bare perusal of the said Show Cause and the statement, there is no specific admission by the petitioner to the charges against him. The case relied by the learned Addl, Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, can not be accepted. In the said case, there was a clear admission by the petitioner that the petitioner in the garb of applying for undergoing a course of M. Phil, but infact applied for Ph.D. Course. Therefore, she violated the condition of her leave which allowed her to go for M.Phil course. There was clear admission of guilt by changing her course of study from M.Phil, to Ph.D. course.

22. The further contention of the learned Addl. Advocate General is that, the petitioner has not exhausted the alternative remedy of filing statutory appeal before the Appellate Authority also can not be accepted. In view of the law laid down by the Apex Court in Whirlpool Corporation v. Register of Trade Marks, Bombay and Ors. reported in (1998) 8 SCC 10 para 14 & 15 of the said judgment. The Apex Court held as follows :-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warrant to and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction! But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a Violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

23. In the instant case, the impugned order has effected the Fundamental Rights of the petitioner to be survived by termination his service and also for reasons as liscussed above, there is violation of the Principles of Natural Justice by not affording the petitioner to defend himself in the Inquiry proceedings as provided under Rule 66 of the Assam Police Manual, Part III as quoted above.

24. From the observations and discussions made above, I'm of the view that the petitioner has been denied a right to defend himself in the proceeding and that the enquiry report was based on no evidence. The matter is further deteriorated by issuing the impugned order by considering the evidence of six witnesses who were examined during the preliminary enquiry without affording opportunity to the petitioner and without furnishing statement of witnesses to him. The consideration of the past conduct and records of the petitioner for eight times and another five times for which he was already awarded a minor punishment is contrary and not borne out by Article of charges levelled against the petitioner.

25. The findings of the Disciplinary Authority that ample opportunity was given to the petitioner to improve his conduct was also not a part of the Article of charges against the petitioner.

26. Considering all aspects of the matter, I am of the view that the petition have merits and accordingly, it is allowed,

27. The respondents are, therefore, directed to re-instate the petitioner within two weeks from the date a copy of this order is served on respondent No. 3. However, it is made clear that the respondents are at liberty to make fresh Inquiry on the articles of charges made against the petitioner by applying the relevant provisions of rules and passed appropriate order in accordance with law. The respondents are also at liberty to place the petitioner under suspension during the period of enquiry. The payment of back wages to the petitioner shall be subjected to the result of such enquiry for which the respondents shall examine the same in accordance with the rules governing the service of the petitioner.

28. With the above directions made above, the petition is disposed of.