
(2001) 07 GAU CK 0030
In the Gauhati High Court
Case No : WP (C) No. 270 (SH) of 1999

Debithson D. Sangma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 2 GLT 461

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

Bench : Single Bench

Advocate : K.S. Kynjing and K. Sunar, for the Appellant; B.K. Deb Roy, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—In this writ petitioner the petitioner has question the validity of the impugned order of discharged dated 7.10.1996 bearing DO No. 12865, issued by the Superintendent of Police, West Garo Hills, Tura, thus discharging the writ petitioner, UBC-454, Shri Bebiths on D. Sangma, from Police service w.e.f. 7.10.1996 as in Annexure IX, and the order of the appellate authority namely the Deputy Inspector General of Police Western Range, Tura, passed on 8.6.1999 dismissing the appeal of the petitioner as in Annexure XI to the writ petition by, contending inter alia, that the petitioner was most dedicated and sincere in his police service during his past 15 years on service career in the Meghalaya Police Department, but he has been discharged from service under the impugned order of discharge dated 7.10.1996 by the authority concerned without any justification on the charge that he had illegally collected money amounting to Rs. 100 to 200 from trucks coming from Mankachar towards Mahendraganj, while he was on duty at Kalaichar PP w.e.f. 4.5.1995 to 23.5.1995 and mis-used the official powers.

2. According to Mr. K. S. Kynjing, learned Senior Advocate, the disciplinary proceedings/inquiry was initiated under DP No. 3/96 on the basis of a report

submitted by the Authority concerned by which the petitioner and four other Police Constables have been charged that they had misused their official powers and performed departmental misconduct as they had collected money amounting to Rs. 100 to Rs. 200 from each vehicles/trucks w.e.f. 4.5.1995 to 23.5.1995 in discharge of their duties and, departmental proceedings were initiated and inquiry was held only against the petitioner, but not against the two retired Police Constables namely : UBC-02 Shri Nilambar Das and UBC-84 Shri Nibaran Paal, and in the said departmental proceedings the petitioner have been found guilty and accordingly, he has been discharged from service under the impugned order which was also confirmed by the Appellate Authority without any justification. According to Mr. K.S. Kynjing, learned senior counsel the impugned order of penalty is disproportionate. Supporting this statement Mr. Kynjing had relied upon a decision of the Apex Court rendered in EX-C Sukhvinder Singh v. Union of India and Ors. reported in (1999) 3 GLR 490 and submitted that punishment imposed must be rational and it has to commensurate with the offence proved and the same must conform to the test of equality enshrined under Article 14 of the Constitution and, the authority should not go away from logic and the accepted legal and moral standards, and, order of punishment should not be extravagant, oppressive and out of tune to the occasion.

3. It is also contended by Mr. K.S. Kynjing, learned senior counsel, that on the clear instructions from his immediate superiors, the petitioner and his other colleagues collected money from each truck operators from the area concerned to the tune of Rs. 26,750 and handed over the same to Sub-Inspector Shri Lipson Sangma and Havidar Shri H C Probinson Maram with proper accounts who both were incharge of ordering instructions of such collection and receiving of such collected amount from the petitioner and his four other colleagues at that point of time. But, those superiors officers were exonerated and the petitioner and the other two constables became scape-goats and similarly situated two constables were not tried. It is also submitted by Mr. Kynjing that the account maintained by the petitioner and his colleagues for such collection of money at the relevant time were submitted to the two superiors, as seen in the document marked Annexure II, but these aspects were ignored by the authority concerned while imposing penalty of discharge upon the writ petitioner.

4. At the hearing Mr. B.K. Deb Roy, learned counsel appearing for the State respondents submitted that there is no infirmity or illegality in the impugned order of discharge and that of the order issued by the appellate authority as the petitioner and his colleagues had illegally collected money by misusing their official powers and committed departmental misconduct and as such the petitioner was rightly discharged from service.

5. Now this Court is to see and examine as to whether, the punishment/penalty imposed upon the petitioner is rational and whether the same is commensurate with the charges proved or levelled against the petitioner and whether it is in conformity to the test of equality enshrined under Articles 14 of the Constitution

of India or not.

6. I have perused the related file pertaining to the said DP No. 3 of 1996 against the petitioner. Though, there are show cause notices issued upon the petitioner by the disciplinary authority before and during the departmental proceeding and the subsequent show cause notice, it appears to me that no copy of the inquiry report of the inquiry officer was furnished to the writ petitioner before passing the impugned order of discharge as the office notice dated 18.1.1996, 25.1.1996, 28.3.1996, 31.5.1996, 4.6.1996, 8.8.1996, 24.4.1996, 30.5.1996, 9.8.1996, 28.8.1996, 27.8.1996, 17.9.1996, 21.9.1996, 23.9.1996, 24.9.1996, 4.10.1996, 8.10.1996, do not speak about the furnishing or supply of the report of the inquiry officer to the delinquent petitioner before the penalty was imposed upon the writ petitioner. Apart from that, there are documents showing the factum of the collection of money from each trucks operators during the relevant period which was signed by the petitioner and his colleagues and maintained by officials of the Police Station/out post concerned and, two constables namely UBC 02 and UBC 84 were not tried, in other words, no inquiry was held as against them as they are retired constables.

7. The most important legal aspect to be looked into in the present case, is that whether the petitioner has been given a chance and an opportunity to take assistance of a government servant of his choice for his defence and, whether he has been asked by the disciplinary authority as to whether the petitioner wanted also to be represented by a government servant of his choice and whether the penalty/ punishment imposed upon the petitioner is proportionate or disproportion. The related file pertaining to the DP No. 3 of 1996 maintained by the authority concerned did not whisper about the fact that the authority had asked the present petitioner as to whether the petitioner wanted also to be represented by a government servant of his own choice for his defence and, as such, this departmental inquiry and proceeding is not a fair inquiry in view of the decision of the Apex Court rendered in Bhagat Ram Vs. State of Himachal Pradesh and Others, as the petitioner has a right to take assistance of a government service of his choice for his defence in a departmental inquiry.

8. A bare perusal of the available materials on record and after proper application of my mind in this matter. I am of the view that it would not be just and proper to send back the matter to the authority concerned for de-novo inquiry in connection with DP No. 3 of 1996 as against the petitioner, but, it would be suffice and proper to impose any minor penalty as required under Rule 66 of the Assam Police Manual Part III applicable in the State of Meghalaya to the writ petitioner and, as such, the matter is left upon the wisdom of the respondents/ authority concerned namely, the Superintendent of Police, West Garo Hills, Tura, Maghalaya to impose any of the minor penalties upon the petitioner for his misconduct which he deems fit and proper.

9. This Court had examined the case of the present writ petitioner and the action taken by the disciplinary authority and the appellate authority while passing the

impugned orders as highlighted above and by judging the legitimacy and reasonableness of the exercise of the disciplinary power by the disciplinary authority in the matter, I am of the view that, the punishment imposed upon the present writ petitioner in the form of order of discharge is disproportionate and in this case, proper penalty or punishment would be minor penalty as highlighted above. The order of punishment should not be extravagant, oppressive and out of tune to the occasion, The authority is duty bound to take into account the relevant factors over looking extraneous considerations and bestow appropriate weight on the pertinent and admissible considerations. (R.V. Barnsaley MBC. Ex P Hook 1976 1 WLR 1052 : Ranjit Thakur Vs. Union of India (UOI) and Others, At this stage, I hereby recall the decision of this Court rendered in Ex-C Sukhvindar Singh v. Union of India, (supra), cited and relied upon by the learned senior counsel for the petitioner.

10. In Ram Kishan Vs. Union of India and others, the Apex Court observed that, it is to be seen whether imposition of punishment of dismissal from service is proportionate to the gravity of the imputation and whether it is harss and disproportionate to the gravity of the charge imputed to the delinquent official.

11. In the instant case, the petitioner had rendered his continuous service of 15 years in the Police Department without any prior adverse remark except the present disciplinary proceeding and the petitioner and his colleagues admitted to the fact that they had collected Rs. 100 to Rs. 200 from the truck operators in discharge of their official duties as per instructions from their superiors and the money collected by them was also handed over to the said Sub-Inspector and Havildar mentioned above though these two immediate superiors denied it during the inquiry. As discussed above, the petitioner has not been afforded the right to have assistance of government servant of his own choice for his defence and no inquiry report was supplied to the petitioner before the impugned order of discharge was issued and that the disciplinary authority, while awarding the extreme punishment overlooked this aspect of the matter while passing the impugned order of discharge.

12. For the reasons, observation and discussion made above, I direct respondents/authority concerned to re-instate the petitioner forthwith with continuity of service and he shall be allowed to work as usual but, it is made clear, that the petitioner shall not be entitled to arrear salary in terms of the "principle of Dies-Non". But, the period from the date of discharge of the petitioner from his service and the date of reinstatement shall be counted for the purpose like continuity of service, seniority, promotion and retiral benefits but not the arrear salary for the said period.

13. The petition is allowed to the extent indicated above but, no order as to costs.