
(2008) 07 GAU CK 0069
In the Gauhati High Court

F. Lalhriata

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 4 GLR 239

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Judgement

H. Baruah, J.—Heard Mr. Vanlalenmawia, learned Counsel for the petitioner as well as Mrs. Helen Dawngliani, learned GA for the State respondents.

2. The petitioner was appointed as Constable in the 3rd Mizoram Armed Police in the scale of pay of Rs. 825 - 1200 p.m. plus other allowances vide appointment letter No. E/PHQ/A/96/20-A dated 31.1.1996 by the Asstt. Inspector General of Police-I, Mizoram, Aizawl. He was, thereafter, confirmed in the post vide Order No. BN/3MAP/RO-38/99/418 dated 12.10.1999 issued by the Commandant 3rd Bn. MAP, Aizawl. Thereafter, the petitioner was transferred to the 2nd IR Battalion.

3. While the petitioner was discharging his duty as such in the 2nd IR Bn., he was offered Pre-Induction Training Course at CIJW School, Vairengte for the purpose of deployment to Chhattisgarh for Anti-Naxalite Operation. After completion of the Pre-Induction training as above, the petitioner joined his colleagues for Chhattisgarh and had been to Guwahati. But, suddenly at Guwahati, he received a telephone call about the illness of his wife, for which, he verbally brought the matter into the notice of his superiors and sought for permission to leave for Aizawl to attend his ailing wife. No permission was granted however, by the superior authority and without giving any notice, the petitioner left for Aizawl deserting the Battalion.

4. There were other Havildars and Constables of 2nd IR Bn. who allegedly

deserted and failed to proceed to Chhattisgarh for Anti-Naxalite Operation as detailed by the respondent authorities for which penalty of removal from service was imposed by the Deputy Commandant, 2nd IR Bn., Khawzawl, Mizoram. This writ petitioner is, one of those Havildars and Constables removed from service for deserting the Battalion. The removal order so passed by the Deputy Commandant, 2nd IR Bn. is the subject-matter of challenge in this writ petition. It is to be noted herein at this stage that some of the Havildars/Constables filed separate writ petitions challenging his/their removal order before this Court. One of such writ petition is WP(C) 50/2007 filed by Hav. Vanlallawma, which was disposed of by this Court vide judgment and order dated 10.4.2008 alongwith WP(C) 61/2007 filed by H. Lalsangzuala, an employee of Grade IV post of 1st IR Bn. By the said judgment, the removal order dated 30.10.2006 in respect of Hav. Vanlallawma was set aside. This Court also dealt with the same subject-matter of removal in the writ petition No. WP(C) 59/2007 filed by Constable Zohmingthanga, which has been disposed of by this Court vide judgment and order dated 17.6.2008. It is to be noticed that WP(C) No. 50/07 and WP(C) No. 59/07 arose out of the removal order dated 30.10.2006 passed by the Deputy Commandant, 2nd IR Bn. Khawzawl, Mizoram.

5. Mr. Vanlalenmawia, learned Counsel for the petitioner while supporting the application submits that the facts and circumstances of the present writ petition are similar to the facts and circumstances of the writ petition No. WP(C) 50/07 and WP(C) 59/07 and the judgment delivered by this Court vide order dated 10.4.2008 and 17.6.2008 respectively squarely cover the present case of the writ petitioner also.

6. The grievance of the writ petitioner is that, the Deputy Commandant of the 2nd IR Bn. Khawzawl, Mizoram is not authorized to order removal of the writ petitioner from service, he being not the appointing authority of the present writ petitioner. It is contended by Mr. Vanlalenmawia, learned Counsel for the petitioner that per Annexure A/I, the writ petitioner was appointed as Constable by the Assistant Inspector General of Police-I Mizoram, Aizawl. Therefore, the removal order was passed without jurisdiction that too in violation of the provisions of Police Manual and Article 311(i) of the Constitution. Learned Counsel for the petitioner, therefore, submits that the Assistant Inspector General of Police can be equated with the rank of Commandant of a Police Battalion, and, therefore, the removal order dated 30.10.2006 passed by the Deputy Commandant, the 2nd IR Bn. is without jurisdiction and ex-facie, illegal, arbitrary and whimsical.

7. It is further argued by Mr. Vanlalenmawia that on account of desertion of the Battalion by the petitioner, the respondent authority without resorting to a disciplinary proceeding, removed the petitioner from service by the impugned order, which, according to Mr. Vanlalenmawia is violative of natural justice. It is argued by Mr. Vanlalenmawia that no opportunity was afforded to the petitioner to project his grievances and without being issued any notice whatsoever, he was

removed from service. The removal order therefore is violative of Article 311 of the Constitution and also the provisions of Police Manual.

8. This Court has given an anxious consideration of the facts and circumstances of the case appearing in the face of record and also the submissions advanced by the learned Counsel of both the party.

9. Mrs. Helen Dawngliani, learned GA appearing for the State respondents also submits that the facts and circumstances of the case appearing in the present writ petition are similar to the facts and circumstances of the case in WP(C) 50/07 and WP(C) 59/07 and therefore, the judgments and orders delivered by this Court in those two writ petitions can also be applicable to this present writ petition and accordingly the matter may be disposed of.

10. This Court, while disposing WP(C) 50/07 and WP(C) 61/07 by a common judgment Discussed the ratio laid down by the Supreme Court in the case between Krishna Kumar Vs. Divisional Assistant Electrical Engineer and Others, and Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, The hon"ble Supreme Court in the judgments (supra) held that any punishment provided by any officer sub-ordinate to the appointing authority would be illegal under Article 311 of the Constitution. Of course, there will be no bar in proceeding with a departmental enquiry by an authority sub-ordinate to the appointing authority.

11. Here, in the present writ petition, the Deputy Commandant of the 2nd IR Bn. was never an appointing authority of the writ petitioner, rather, it was Assistant Inspector General of Police-I, Mizoram, Aizawl who appointed the writ petitioner as Constable. The Commandant of the 3rd Bn. MAP after appointment of the Constable by the Assistant Inspector General of Police-I confirmed in his post (Constable) vide Order No. BN/3MAP/RO-38/99/418 dated 12.10.1999 (Annexure-A/2). Therefore, at no point of time, it is noticed that Deputy Commandant of 2nd ER Bn. was an appointing authority of the writ petitioner. Deputy Commandant is, admittedly, an officer junior to the Commandant of the Battalion. The impugned removal order was not admittedly passed by the Commandant of the Battalion. So, the removal order so passed appears to be violative of Article 311 of the Constitution.

12. While having considered the matter in its entirety, this Court does not see any ground to allow the impugned order passed by the respondent No. 6 to settle. The order is accordingly set aside and quashed, the same being unconstitutional.

13. While ordering so, the writ petitioner accordingly be deemed to continue in the service from the date of his dismissal. The writ petitioner shall also be entitled to all pay benefits. Door is, however, not close to initiate a departmental proceeding to the respondent authorities against the present writ petition, if so advised.

14. This writ petition is accordingly disposed of, however, with no cost.