
(2014) 05 MEG CK 0011
In the Meghalaya High Court
Case No : W.P. (C) No. 309 of 2013

Harding K. Kylliang

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2)
Penal Code, 1860 (IPC) — Section 302, 307, 326
Police Act, 1861 — Section 7

Citation : (2014) LabIC 2804

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—By this writ petition, the petitioner is assailing the impugned dismissal order dated 31.10.2009 (B.O. No. 3280 dated 04.11.2009) issued by the disciplinary authority i.e. Commandant, 1st Battalion Meghalaya Police, Mawiong, Shillong only on the main ground that the impugned order was issued in clear violation of the principles of natural justice and also in clear violation of Rule 66 of the Assam Police Manual Part - III adopted by the Government of Meghalaya. Heard Mr. A.H. Hazarika, learned counsel appearing for the petitioner and also Mr. H. Kharmih, learned G.A. appearing for the respondents. At the very outset of the hearing, learned counsel appearing for the petitioner and the respondents stated that the disciplinary proceedings against the petitioner was held u/s 7 of the Police Act, 1861 (Act No. 5 of 1861) read with Rule 66 of Assam Police Manual Part-III.

2. Factual matrix:--The petitioner was appointed as Constable during the month of April, 1984 under the 1st MLP Battalion Meghalaya Police, Mawiong, Shillong and had rendered continuous 24 years of service. On 21.03.2007, the petitioner after completion of his duty, while returning home from Upper Shillong at about 11:30 p.m. was suddenly attacked from behind by 3 (three) boys; in the process

of scuffle, the revolver issued to the petitioner was snatched away by the said 3 (three) miscreants, but the petitioner managed to snatch back the revolver from the miscreants and escaped from the place of occurrence to save his life and his service revolver. It is also stated that in the scuffle, there was misfiring of his service revolver.

3. For that incident, a criminal case being No. Sadar P.S. Case No. 56(3)/07 u/s 302/307/326, IPC was registered against the petitioner on the inter alia grounds that the petitioner had fired to one of the boys and the said boy succumbed to his injuries at K.J.P. Hospital, Shillong. Thereafter the petitioner was arrested in connection with the said case and placed under suspension vide B.O. No. 1321 dated 04.04.2008.

4. The Commandant, 1st Battalion Meghalaya Police, Mawiong, Shillong issued a show-cause Notice dated 01.05.2007 directing the petitioner to show-cause u/s 7 of the Police Act (Act No. 5 of 1861) read with Rule 66 of the Assam Police Manual, Part - III as adopted by the Government of Meghalaya and Article 311 of the Constitution of India as to why major penalty should not be imposed to him for the Articles of charges mentioned therein. For easy reference the said show-cause Notice dated 01.05.2007 (Annexure A-1 to the writ petition) is quoted hereunder.--

"OFFICE OF THE COMMANDANT 1st BATTALION MEGHALAYA POLICE MAWIONG SHILLONG

Letter No. BN/MLP/R-Proc/07/6511 Dated Shillong, the 1st May 07

To: BNC/1925 Hardin K. Kyllang 1st MLP, Mawiong, Shillong

Sub: SHOW-CAUSE NOTICE

You are hereby directed to show-cause u/s. 7 of the Police Act. (Act V of 1861) read with Rule 66 of Assam Police Manual Part-III as adopted by the Government of Meghalaya and Article 311 of the Constitution of India, as to why any of the penalties prescribed therein should not be inflicted on you under the following charges based on the statement of allegation attached herewith:

1. That BNC/1925 Hardin K. Kyllang was attached as PSO to Shri Friday Lyngdoh, MLA and was issued with arms and ammunitions as per scale for providing security cover to the Minister instead you misused the arms/ammunition by firing upon 2 (two) boys thereby endangering their lives.

Thus BNC/1925 Hardin K. Kyllang failed to maintain full devotion to duty and thereby committed gross misconduct and violated Rule 3(1) of Meghalaya Services (Conduct) Rules, 1990.

2. That BNC/1925 Hardin K. Kyllang failed to deposit his arms/ammunitions in the armoury, magazine of the nearest Police Station.

Thus BNC/31925 Hardin K. Kyllang violate Rule 180 of APM (Part-III)

You should submit your written explanation to the undersigned within 10 (ten) days from the date of receipt of this communication provided you do not want to inspect the documents which have got relevance with the issue under enquiry. In case you intend to inspect the documents, you should write to the undersigned for the same within 7 (seven) days from the date of receipt of this communication and should submit your written explanation within 7 (seven) days from the date of completion of the Inspection. You are also required to furnish the following:--

1. Name and Address of witnesses whom you wish to appoint in support of your defence.
2. List of documents, if any which you wish to produce in support of your defence.
3. State if you want to be heard in person. You are informed that enquiry will be held only in respect of such charges and allegation which are not specifically admitted. You should therefore specifically admit or deny each of the charges and allegation. The charges and allegations which are not specifically denied will be deemed to have been admitted by you.

You are further informed that if your written statement in your defence is not received within the specified time limit given above, the proceeding will be disposed of ex parte.

Commandant, 1st Battalion Meghalaya Police, Mawiong, Shillong."

5. In response to the show-cause notice, the petitioner had filed written statement of defence wherein, the petitioner had categorically denied the said article of charges and the statements of the imputation. The statutory authority was not satisfied with the said show-cause statement of the petitioner and accordingly ordered for initiating a Departmental enquiry being DP No. 15/07 against the petitioner for the said articles of charge and one Shri M.B. Syiem, MPS, Assistant Commandant, 1st MLP was appointed as an Enquiry Officer vide order of the Commandant, 1st Battalion Meghalaya Police, Mawiong, Shillong, dated 09.07.2007.

6. As there was ordinate delay in completing the departmental enquiry against the petitioner by the said enquiry officer Shri. M.B. Syiem, MPS, Assistant Commandant, 1st MLP, the Commandant, 1st MLP issued an order dated 21.04.2008 for revoking the suspension order dated 04.04.2008 w.e.f. 01.04.2008 and appointed another Enquiry Officer Shri. S.C. Najiar, MPS, Asstt. CO, 1st MLP for completion of the enquiry. It is stated that the Enquiry Officer had submitted the enquiry report against the petitioner. On the basis of the said enquiry report, the Commandant, 1st Battalion Meghalaya Police issued an impugned order dated 31.10.2009 (BO No. 3280 dated 04.11.2009) for imposing the major penalty of dismissal from service w.e.f. 31.10.2009. Being aggrieved by the said order dated 31.10.2009, the petitioner had filed this writ petition on the inter alia grounds of (i) in clear violation of Rule 66 of the Assam Police

Manual, Part-III, the petitioner was not allowed to cross-examine the prosecution witnesses during the departmental enquiry against him and (ii) a copy of the enquiry report submitted by the Enquiry Officer was not available to the petitioner and as such the petitioner was not given the chance to submit his objections/comments to the findings of the enquiry report and also to put up his case of defence before passing the final order i.e. impugned order dated 31.10.2009 for dismissing him from service.

7. In para. 5 of the writ petition, the petitioner clearly pleaded that "the Enquiry Officer or competent authority has not supplied the Enquiry Report, as a result of which the Petitioner had no knowledge regarding the contents of the Enquiry Report" and also the petitioner had not been given an opportunity to defend his case by cross-examining the prosecution witnesses, and as such the impugned order dated 31.10.2009 basing on the said enquiry report is liable to be set aside inasmuch as there is a clear violation of principles of natural justice.

8. The respondents had filed joint affidavit-in-opposition wherein, para. 9 of the joint affidavit-in-opposition is the reply to the para. 5 of the writ petition. In para. 9 of the affidavit-in-opposition or in the affidavit-in-opposition, the respondents did not deny that the copy of the enquiry report was not furnished to the writ petitioner and also the petitioner had not been given any opportunity to defend his case by cross-examining the prosecution witnesses. However, the case of the respondents in the joint affidavit-in-opposition is that the impugned dismissal order dated 31.10.2009 is a speaking order passed on the basis of the findings of Enquiry Officer and also the impugned order dated 31.10.2009 had discussed the findings of the enquiry report in details.

9. The Guwahati High Court (Division Bench) in Balabhadra Nath Roy v. Deputy Inspector General of Police, Western Range, Gauhati and others (1987) 2 Gauhati Law Reports 175 had discussed the procedures prescribed under Rule 66 of the Assam Police Manual, Part- III for imposing the major penalty and held that imposition of major penalty without following the prescribed procedures i.e. without giving an opportunity to the delinquent to cross-examine the prosecution witnesses is illegal. Paras 7 & 8 of the G.L.R. in Shri. Balabhadra Nath Roy's case (supra) read as follows:

"7. Admittedly, the Disciplinary proceeding against the petitioner was held u/s 7 of the Police Act, 1861 read with Rule 66 the Assam Police Manual, Part III. In sub-rule (III) of Rule 66, it is clearly stated:

"(III) 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."

8. The above Rule clearly lays down that at the 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. This provision has clearly been violated in the instant inquiry because the petitioner was deprived of the opportunity to have his defence witnesses called and the officer conducting the inquiry did not record in writing any reason for his refusing to call those witnesses."

10. The Apex Court in the Union of India and others Vs. Mohd. Ramzan Khan, held that the delinquent is entitled to the copy of the enquiry report submitted by the Enquiry Officer to the disciplinary authority so as to enable the delinquent to make representation against it and non-furnishing of the report to the delinquent would be violative of the principles of natural justice rendering the final order invalid. In the present case, it is clear that, the copy of the enquiry report was not furnished to the petitioner so as to enable him to make representation against it. Further, in the present case, the petitioner clearly stated in the writ petition that because of non-furnishing of the enquiry report against him, the petitioner was denied to have the opportunity to make representation against the said enquiry report and also the petitioner was not given the opportunity to put up his case of defence to the disciplinary authority before passing the impugned order dated 31.10.2009 for dismissing the petitioner from service basing on the said enquiry report. Paras 13, 15, 16, & 18 of the SCC in Mohd. Ramzan Khan case (supra) read as follows:

"13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty Second amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the State of Gujarat Vs. R.G. Teredesai and Another, , the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of the evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusion. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out: Administrative Law, 6th Edn., p. 10

"The concept of natural justice has existed for many centuries and it has crystallized into two rules: that no man should be judge in his own cause; and no man should suffer without first being given a fair hearing..... They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendation of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure.

While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to the inflicted would be within the rules of natural justice and the delinquent would, therefore be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

16. At the hearing some argument had been advanced on the basis of Article 14 of the Constitution, namely, that in one set of cases arising out of disciplinary proceedings furnishing of the copy of the inquiry report would be insisted upon while in the other it would not be. This argument has no foundation inasmuch as where the disciplinary authority is the Inquiry Officer there is no report. He becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups -- one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution.

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

11. For the foregoing discussions, this court is of the considered view that there was a clear violation of principles of natural justice and also the procedures prescribed under Rule 66 of the Assam Police Manual, Part - III in imposing major penalty of dismissal from service to the petitioner vide impugned order dated 31.10.2009 and accordingly the impugned order dated 31.10.2009 is called for interference. Hence, the impugned order dated 31.10.2009 is hereby quashed and the petitioner should be reinstated in service with a period of 4 weeks from the date of receipt of this judgment and order. However, the respondents may, if necessary, conduct the departmental proceedings de novo against the petitioner from the stage where the procedural irregularities had been cropped in i.e. from the stage of cross-examination of the prosecution witnesses. When the dictation of the judgment is about to complete, Mr. A.H.

Hazarika, learned counsel appearing for the petitioner contended that the petitioner had been acquainted from the said criminal case vide judgment and order of the Sessions Judge dated 05.12.2012 passed in Sessions case No. 5/09. In such case, it is left to the petitioner to bring this subsequent event in the departmental enquiry if started de novo. With the above observations and directions, this writ petition is allowed.