

(2012) 05 GAU CK 0097

In the Gauhati High Court

Case No : Writ Petition (C) No. 109 of 2011

Hav. Zothanzuala Advance Headquarter, 4th IR Battalion
Luangpawl, Mamit District, Mizoram

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 05 GAU CK 0097

Hon'ble Judges : Indira Shah, J

Bench : Single Bench

Advocate : Zochhuana, for the Appellant; Aldrin Lallawmzuala, Addl. A.G., Mizoram for respondent Nos. 1 to 6, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Dr. (Mrs.) Justice Indira Shah

1. This petition under Article 226 of the Constitution of India has been filed against the order dated 24.06.2011 withholding of increment for 2 years with cumulative effect imposed upon the petitioner and against the order passed by the respondent No. 3 upholding the order passed by respondent No. 4. I have heard Mr. Zochhuana, learned counsel appearing for the petitioner and Mr. Aldrin Lallawmzuala, learned Addl. A.G., Mizoram appearing on behalf of the respondents.

2. While the petitioner was serving as Havildar in the 4th Battalion a complaint was lodged by the respondent No. 5 against the petitioner that the petitioner has been keeping a woman in the said Battalion Complex in violation of instruction of the superior Officer. The petitioner upon the allegation was suspended by the order passed by the respondent No. 5. A departmental enquiry was contemplated against the petitioner by serving a Memorandum of Charge with a direction to the petitioner to submit a representation statement of defence within 10 (ten)

days. The petitioner submitted his Written Statement of Defence denying the allegation made against him. However, the respondent authorities were pleased to proceed with the departmental enquiry and respondent No. 6 was appointed as Enquiry Officer to conduct the enquiry. The Enquiry Officer, on completion of enquiry, came to the conclusion that the charge against the petitioner has been proved. On the strength of enquiry report, a punishment of "withholding of increment for two years with cumulative effect" was imposed upon the petitioner. Being aggrieved, the petitioner preferred a statutory appeal before the respondent No. 3 and the respondent No. 3 was pleased to uphold the punishment imposed upon the petitioner.

3. It is submitted by the learned counsel for the petitioner Mr. Zochhuana, that the disciplinary authorities failed to comply with the mandatory provision of law and the principle of natural justice. In fact, no presenting officer was appointed in the impugned departmental enquiry. The Enquiry Officer played a dual role as Enquiry Officer as well as Presenting Officer. Moreover, the provisions of Mizoram Police Manual r/w the Assam Police Manual were not complied with during the enquiry. The petitioner was not given any opportunity to show cause as to why the said punishment should not be imposed upon him nor any Defence Assistance was provided or offered to the petitioner.

4. In the cited case of Salam Kesho Singh Vs. State of Manipur and Others, , it was held as under :

4. In Rajeswari Amma and another Vs. Joseph and another, , the Hon"ble Apex Court held that new plea regarding the question of law could be raised for the first time before the Hon"ble Supreme Court. A division Bench of this Court in W.A. No. 58 of 2007 held on 19.11.2008 to the effect that question of law regarding the legality or otherwise of disciplinary proceeding in the absence of a Presenting Officer and also regarding violation of law of fair play in the absence of Presenting Officer in a Departmental Enquiry could be raised in appeal. In M. Ibohal & Ors. Vs. State of Manipur & Ors. : 2009 (6) GLR 507, this Court held to the effect that there was no acceptable reason as to why the plea of non-appointment of a Presenting Officer in respect of the Departmental Enquiry against the appellant-writ petitioner should not be considered in the appeal.

5. In the present case, there is no dispute that no Presenting Officer was appointed. This fact is confirmed from the relevant record of the disciplinary proceeding produced by the learned senior Govt. Advocate. It is well settled that an Enquiry Officer cannot assume the role of a Judge and also a Prosecutor. Even if the relevant service rules is silent about the appointment of a Presenting Officer, absence of a Presenting Officer will make the enquiry totally vitiated as the Enquiry Officer cannot be allowed to assume the role a Judge as well as a prosecutor. In this connection, we may refer to various decisions of this Court, such as Dr. Rayja Mallu Buzar Barua Vs. Assam Administrative Tribunal & Ors. : 1983 (1) GLR (NOC) 71, Chelfrumog Vs. State of Tripura & Ors. : 2002 (2) GLR 604, Baharul Islam (CT) Vs. Union of India (UOI) and Others, , State of Manipur

and Others Vs. Chongtham Homendro Singh, . In Kumar Madal Vikar Nigam Limited Vs. Guriya Shankar Pant & Ors. (2001) 1 SCC 182, the Apex Court held the same effect. In the State of U.P. and Others Vs. Saroj Kumar Sinha, , the Hon"ble Apex Court held to the effect that an Enquiry Officer acting in a quasi-judicial authority is in a position of an independent adjudicator, and as such, he is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved.

5. Here in this case also, no presenting officer was appointed by the authority in connection with the said enquiry. The petitioner was not given any opportunity to appoint his Defence Assistance. No notice was issued to him before imposition of penalty against him.

6. In view of the above, the impugned orders dated 24.06.2011 passed by the Enquiry Officer and the order dated 14.09.2011 passed by the Appellate Authority are liable to be set aside. Accordingly, the orders are set aside. The concerned authority may, however, initiate a fresh enquiry against the petitioner in respect of relevant charge fairly and in compliance with the principle of natural justice within a reasonable time of 3 (three) months with effect from this order. This writ petition is accordingly allowed with no costs.