

(1999) 06 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 15 of 1996

Lalhmingliana

APPELLANT

Vs

State of Mizoram and Another

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 380

Citation : (1999) 3 GLR 271

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : M.M. Ali, for the Appellant; N. Sailo, G.S., for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The writ Petitioner Shri Lalhmingliana, a Constable working under the Superintendent of Police, Aizawl District was discharged from service with effect from 3.1.1989 on completion of Departmental Proceedings in relation to the charge of theft in the house of one Shri Lalmuana. Being aggrieved with the aforesaid order dated 3.1.1989, the Petitioner has preferred this writ petition for quashing the order of discharge with consequential prayer for reinstatement with effect from 24.8.1987, the date of suspension, with all service benefits.

2. The departmental enquiry initiated against him on the charge that in the night of 31.7.1987. the writ Petitioner took shelter in the house of Shri Lalmuana with permission from his wife and he had left the house in the early morning with out any information to the hosts committing theft of valuable articles belonging to Shri Lalmuana and his wife. A police case was also registered against him and the stolen articles were also recovered from the persons to whom he had sold the same immediate after the theft.

3. On completion of the departmental proceedings and considering the enquiry report and the reply given by the Petitioner to the proposed punishment, the Superintendent of Police passed the impugned order of discharge.

4. The learned Counsel for the writ Petitioner assailed the order on the ground that the writ Petitioner was acquitted in the criminal case on 4.1.1989 and that the departmental proceeding was conducted in a perfunctory manner without giving reasonable opportunity to the writ Petitioner to defend his case.

5. The Respondents, however, in their counter denied the allegations made by the writ Petitioner and pleaded that reasonable and adequate opportunity was given to the writ Petitioner during the enquiry and even the Enquiry Officer informed the writ Petitioner to have defence assistance, but he did not engage or appoint anyone to defend his case. It is further submitted that the departmental proceeding was conducted in Mizo language in presence of the writ Petitioner all-through. The Petitioner, it is averred, did not avail of the alternative remedy by preferring an appeal and filed the writ petition in 1996 to unsettle the order passed in the year 1989.

6. Mr. N. Sailo, learned Government Advocate referring to the counter pointed out that there being no procedural defect in the enquiry conducted against the writ Petitioner, the order of dismissal/discharge cannot be questioned at this belated stage, specially when the writ Petitioner did not avail of the alternative remedy, Mr. M.M. All, learned Counsel for the writ Petitioner, however, submitted that the writ Petitioner is a Class-IV employee and he was undefended by any competent person during the course of enquiry and, as such, the order of dismissal/discharge passed by the authorities cannot be sustained. Shri All also placed reliance on the decision of Supreme Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, wherein the Supreme Court held that when the Department is represented by a Presenting Officer, it is the duty of the Department to see that the Government servant belonging to the Class-IV is properly defended by another Government Servant.

7. It is, therefore, necessary at the first instance to examine whether there is any procedural defect in the enquiry conducted against the writ Petitioner and whether such defect, if any, has resulted into miscarriage of justice. For this purpose, it is necessary to examine the file of departmental proceeding which has been placed before me by the Learned Government Advocate, The concerned file shows that the article of charges were framed on 28th January, 1988 and served upon the writ Petitioner for the offence mentioned hereinbefore. The writ Petitioner submitted his reply denying the charges as baseless. Thereafter, the Enquiry Officer was appointed on 3.10.1988. After examining 6(six) witnesses and recording the statement of the writ Petitioner, the Enquiry Officer submitted his report on 15.11.1988. Penalty proposing dismissal was notified to him on 21.12.1969 for the purpose of showing cause. Thereafter the Superintendent of Police, on consideration of the enquiry report and other materials including the reply to the show cause, passed the order of discharge on 4.1.1989.

8. The order sheet, and the documents in the file including the notice dated 21.12.1989, however, do not show that the copy of the enquiry report was furnished to the writ Petitioner at any time either before the Superintendent of

Police arrived at the conclusion of guilt, or along with the notice dated 21.12.1988 issued proposing the penalty of dismissal. This is, therefore, indeed a significant procedural lapse committed by the disciplinary authority. But these lapses will not be enough for interference with the impugned decision unless it is shown that such lapses have occasioned failure of justice.

9. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, the Supreme Court explained in details the procedure to be followed in a departmental proceeding. The Supreme Court held as follows:

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry, viz, before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-Second Amendment.

26. ...Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

10. The decision of the Supreme Court in paras-25, 26 and 27, as reproduced above, clearly shows that the writ Petitioner has a right to get a copy of the enquiry report before the disciplinary authority comes to a conclusion as to the guilt. Keeping in mind this provision of law laid down by the Supreme Court, this Court vide order dated 30.3.1999 directed the Respondents to furnish a copy of the enquiry report, and the writ Petitioner was directed to file an affidavit with

regard to his plea of prejudice. On receipt of the copy of the enquiry report, the Petitioner filed an additional affidavit wherein it has been pleaded that the enquiry report does not reflect the charge framed against the writ Petitioner and is silent about the criminal case registered against him by the Police (Aizawl Police Station Case No. 386/87 u/s 380 IPC) which was compounded and eventually the Petitioner was acquitted. In addition, it is pleaded that he was not given any opportunity to engage any person to defend him in the departmental proceedings.

11. From the nature of allegation and the evidence available, it would appear that the presence of a defense counsel would have not changed the course of proceedings affecting the ultimate decision to dismiss him from service. Non-furnishing of the copy of the enquiry report from this point of view also makes no difference. The complainant and the witnesses clearly indicted the writ Petitioner. The Petitioner himself made a statement before the Enquiry Officer admitting the charge of theft with an excuse that it was done in a state of intoxication. The preponderance of evidence, specially the admission made by the writ Petitioner himself, in its magnitude do not suggest that the decision of the departmental authority would have altogether been different if a Government Servant was appointed to defend, or a copy of the enquiry report was furnished to him. In my opinion, this is a case where the decision rendered by the authority appears to be irreversible and, as such, the decision calls for the interference for the lapses mentioned above. The argument that the Petitioner was entitled to reinstatement in view of his acquittal in the criminal case holds no good as the order passed by the learned Magistrate and produce at the time of hearing shows that the Petitioner was acquitted on compromise. Therefore, it is not an acquittal on merit and the result of the departmental proceedings cannot be allowed to suffer a change on account of such acquittal on compromise. In fact, nothing impelling could be made available to convince that the said lapses have occasioned failure of Justice to the writ Petitioner who has been discharged from service for committing theft.

12. Lastly, the writ petition is also not maintainable for inordinate delay. The Petitioner was discharged on 3.1.1989 and he had filed this writ petition on 21.8.1996. The explanation given by him in the writ petition for this long delay does not inspire confidence of this Court to accept it as worthy of credence in view of the denial made by the Respondents. The representation alleged to have been submitted by the Petitioner in 1996 has not been received by the Respondents as per statement in affidavit-in-opposition. No document to prove its service has also been produced. Therefore, this belated writ petition filed in 1996 challenging the order passed in the month of January 1989 is not maintainable.

13. I have also given due consideration to the decision in *Ram Raj Singh and Ors. v. State of M.P.*, 1990 (Supp) SCC 61 relied upon by the learned Counsel for the writ Petitioner. The decision of the Supreme Court in that case cannot

determine the course of this case because of the difference in the nature of the offence committed. In the case before Supreme Court, the role played by the accused was a minor one unlike the offence of theft. A Police Constable being a member of the disciplined force indulging in theft is entitled to lenient treatment.

14. In the result the writ petition is dismissed.

No order as to costs.