
(2000) 09 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 15 of 1999

Lalmuankima

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 7
Police Rules — Rule 66

Citation : (2000) 3 GLT 415

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : Michael Zothankhuma, for the Appellant; N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

W.A. Shishak, J.—Heard Mr. Michael Zothankhuma, learned Counsel for the Petitioner and Mr. N. Sailo, learned Govt. Advocate for the Respondents.

2. The writ Petitioner joined the service as constable of 3rd Bn. Mizoram Armed Police, referred to as MAP. The service of the writ Petitioner as constable was confirmed by an order dated 22.12.1993.

3. On 22.10.96 Officer Commanding, Rear 1 Assam Rifles lodged an FIR with police stating that on the said date at about 18.30 hrs. two police personnel of 3rd Bn. MAP namely (1) No. 225 CPP Lalsailova and (2) No. 437 CPP Lalmuankima approached the Guard at Officers Club gate of the said unit to sell 7.62 mm. ammunitions. The matter was reported to the superior officer and the said two personnel were arrested. 6 rounds oil.62 mm. SLR were recovered from the said two persons. It is stated in the said report that these two police constables had voluntarily confessed and revealed that the surplus ammunitions had been with them since 1991 , and 94 respectively. However, they decided to sell them only that day. The local police took custody of the aforesaid two persons. It may be stated at this stage that allegation is that four rounds of

ammunitions were seized from Sri Lalsailova and two from the writ Petitioner.

4. The matter was reported to the Commandant, 3rd Bn. MAP by the O.C. Aizawl Police Station. The same facts as narrated in the FIR have been mentioned in this report also. Seizure memo is at Annexure 4.

5. Inquiry has sought to be initiated. Articles of charges were furnished to the delinquent constables and they were placed under suspension.

6. Article-I states "That the said constables No. 225 Lalsailova and No. 437 lalmuankima both of 3rd Bn. MAP were deployed at PHQ Complex Guard under the command of S.I. Ram Bah. Chhetri of 3rd Bn. MAP. Both Lalsailova and C/437 Lalmuankima were found absent from duty on the night of 22.10.96."

7. Article II states that the aforesaid constables were arrested by 1 Assam Rifles personnel on 22.10.96 at about 18.30 hrs. in connection with selling of 6 rounds of 7.62 mm SLR ammunitions. It further states that these clearly indicate negligence of duty, lack of sense of responsibility and unbecoming of a police officer on their part. Hence it is further stated that conduct of the said constables amounts to misconduct, negligence of duty and exhibits gross violation of the existing norms and rules in the department thereby liable to be punished u/s 7 of Indian Police Act. and Rules 66 of Assam Police Manual Part-III. On report of Articles of charges the writ Petitioner filed his reply. The Petitioner admits his absence from duty on 22.10.96 between 12 noon and 2 p.m. He admits that he went cut with his friend Lalsailova. The version of the writ Petitioner is that his friend had an argument with Assam Rifles personnel. He went to enquire as to what had happened. In the process both of them were detained by the Assam Rifles personnel and later they were sent to the Aizawl Police Station. As regards the actual charge of sale of ammunition, the writ Petitioner's case is that his friend Lalsailova had tried to sell 7.62 mm bullets. He states in his explanation "I did not have any inkling that my friend was trying to sell bullets. Before we were put in the Assam Rifles quarter guard I was checked and two 7.62 mm bullets were recovered from my pocket. I have not taken out these bullets to sell them...."

8. One Saithanga MPS Deputy Commandant of 3rd Bn. MAP made the enquiry. The writ Petitioner was examined by the Enquiry Officer. The version of the story he had mentioned in his explanation to the Articles of charges was repeated in his statement before the enquiry officer and it is also stated "when we reached 1st A.R. Gate near Post Office my friend C/225 Lalsailova entered the 1st A.R. gate and I waited for his return outside. After some time my friend C/225 Lalsailova shouted to me saying that he is arrested by Assam Rifles personnel and I also entered in order to ascertain what is happening to my friend and I was also arrested and 2 live RDS of SLR, ammunitions were recovered from my pocket."

9. Though as many as seven persons were listed as witnesses, at the time of enquiry three persons of Assam Rifles personnel were not examined. The reason

for non examination of these three Assam Rifles personnel is stated to be that they were on important duty at Jiribum. In this regard some documents relating to the correspondence are available. Mr. Michael, learned Counsel for the Petitioner submits that non recording of statements of these three witnesses is fatal in the present case inasmuch as they were supposed to be eye witnesses. In other words, it may be stated that these three Assam Rifles personnel are those who are stated to have encountered with the writ Petitioner and his friend Lalsailova.

10. Enquiry report was submitted to the Commandant on 1.4.1997. The Enquiry Officer found the said two constables guilty of charges. On receipt of the report the Commandant accepted the report and accordingly the two constables were removed from service with effect from 21.4.1997 and the period of suspension with effect from 24.10.1996 to 21.4.1997 was treated as not on duty, thereby disentitling the writ Petitioner to any benefit for the aforesaid period.

11. It may be stated that Sri Lalsailova has not taken any further proceedings against the order of the authority. Though no appeal as such has been filed by the present writ Petitioner in terms of the relevant provisions of Assam Police Manual, he submitted a revision petition under the Rule 66(XII) of the Assam Police Manual Part III to the Governor of Mizoram on 11.12.98. The writ Petitioner has been informed by the Secretary to the Governor that the matter has been referred to the State Government for an appropriate action. No action has been taken by the State Government. Hence this petition.

12. I have perused the statements recorded by the Enquiry Officer. It is clear that the writ Petitioner was in possession of 2 rounds of ammunition out of 50 rounds of ammunition issued to him. This fact is supported by one Sub Inspector Sri Ram Bahadur Chhetri who stated before the Enquiry Officer that "we found 48(forty eight) live ammunitions and 2(two) live ammunitions of 7.62 SLR is missing since 50(fifty) Nos. of 7.62 SLR ammunitions was issued to him."

13. Learned Counsel for the Petitioner submits that the fact that the writ Petitioner was trying to sell 2 rounds of ammunitions is not established. It is submitted by Mr. Michael that the mere possession of ammunition would not amount to sale though it is not proper on the part of the writ Petitioner to keep them in his pocket. It has been explained by the writ Petitioner in his reply to the articles of charges that unintentionally the said ammunitions were put in his pocket. In the present case the most unfortunate thing is that all the three eye witnesses did not depose before the Enquiry Officer regarding the occurrence at the Assam Rifles Camp. The said three witnesses who were actually summoned by the Enquiry Officer should have been directed to appear before the Enquiry Officer to give their statements for the ends of justice. Their statements are extremely relevant and vital in the present case. Without any statement from any of the eye witnesses it cannot be said that the case has been established in respect of the writ Petitioner inasmuch as he has consistently denied the fact that he tried to sell the ammunition. In this view of the matter I hold that non

examination of the three Assam Rifles personnel is an infirmity.

14. Mr. N. Sailo, learned Govt. Advocate submits that in terms of a decision reported in (1997) 1 SCC 72 and also 667 as respects finding of departmental enquiry this Court should not reappreciate the evidence inasmuch as this Court is not an appellate Court as such, while exercising extra ordinary jurisdiction under Article 226 of the Constitution. While the submission is correct, I am unable to accept the finding of the Enquiry Officer and also subsequent order of dismissal inasmuch as there is no evidence establishing the guilt of the writ Petitioner. In other words in the absence of statements recorded from the eye witnesses there is no solid material in which the Enquiry report finding the writ Petitioner guilty can be based. If that be so, the finding is perverse.

15. Mr. Michael, learned Counsel for the Petitioner states that the writ Petitioner is repentant of his casualness as a uniform personal, and yet he still maintains that he had absolutely no intention to do anything with the 2 rounds of ammunition. No doubt he is a young man. There is always room for a man to become good.

16. In the entire facts and circumstances of the case, in my view, even assuming that it was highly improper and unbelievable that he should be carrying ammunition in his pocket while not in duty, since the real allegation that he was selling is not established, the order of dismissal/removal could not have been issued.

17. In the premises aforesaid petition is allowed. The order dated 21.4.1997 is set aside. The writ Petitioner shall be re-instated in service with effect from 1.10.2000 or from the date he reports with a copy of this order. The period from the date of suspension till 30.9.2000 shall be counted for length of service and for fixation of pay and pensionary benefits.