
(2005) 03 GAU CK 0068
In the Gauhati High Court

Lalpu Vaiphei

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 08-03-2005

Acts Referred:

Citation : (2005) 03 GAU CK 0068

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Jalal Uddin, G.Khupchinpao, Advocates appearing for Parties

Judgement

1. Heard Mr. G. Khupchinpao, learned counsel for the petitioner as well as Md. Jalal Uddin, learned G.A. appearing on behalf of the state respondents.

2. The case of the petitioner is that the petitioner was regularly appointed as a Rifleman on temporary basis vide order No.B1/1/98/12MR (2IRB) dated 28.5.1999 issued by the Commandant, 12Bn. Manipur Rifles, (2IRB), i.e. the respondent no.3 in the present writ petition. A copy of the said order dated 28.5.1999 is available at AnnexureA/1 to the writ petition. In that order, the name of the petitioner appears at sl.no.561. But to the utter surprise of the petitioner, the respondent no.3, i.e. the Commandant, 12Bn. M.R. (2IRB) issued orders being No.B2/3/9812MR (2IRB) dated 6th April, 2000 for terminating the services of the petitioner in exercise of the powers under sub rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The said termination order dated 6.4.2000 (AnnexureA/2 to the writ petition) speaks very clearly that the petitioner's service was terminated by the Commandant, 12Bn, MR (2IRB), the respondent no.3 in the present writ petition, in exercise of his powers under sub rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965. Against the said termination order issued by the respondent no.3, the petitioner preferred an appeal before the Dy. Inspector General of Police (OpsII): Manipur and the Dy. Inspector General of Police (OpsII), Manipur also passed an order being No.W4/41/99DIG (OpsII)/923 dated 21.3.2001 (AnnexureA/3 to the writ petition) for terminating the services of the petitioner for his unauthorized

absence of 143 days. The writ petitioner filed this writ petition only on the, inter alia, reasons that (1) the CCS (Temporary Service) Rules, 1965 is not applicable to the Riflemen of the Manipur Police; (2) according to the amended special rules, i.e. the Assam Police Manual, even for termination of temporary employees procedures prescribed in Rule 66 of A.P. Manual III shall be followed, and (3) the said termination order was issued in violation of the rights of the petitioners under Article 311(2) of the Constitution of India.

3. It is an admitted fact of both the parties that the Govt. of Manipur issued order being No.7/41/73Pol. Imphal dated 6th September, 1974 to the effect that in exercise of the powers conferred by section 7 read with section 46 of the Police Act, 1861 (V of 1861), the Govt. of Manipur is pleased to order that the rules laid down in the Assam Police Manual parts I to V shall be deemed to be the rules framed by the State Government of Manipur for application to the Manipur Police Force, with such alterations and modifications, not affecting the substances, as may be necessary having regard to the existing Administrative Setup in the State. Therefore, the Assam Police Manual is the special Act which governs the Riflemen of the Manipur Police.

4. The major penalty is defined in sub rule (a) of Rule 66(2) of the Assam Police Manual Part III. By a subsequent amendment under the orders of the Govt. of Manipur being No.13 (1)79/89 Imphal the 21st September, 1983 a new clause i.e. (d) had been added to the major penalty, had already been mentioned in sub rule (a) of 1966. Under the said newly added subrule, sub clause (d), the termination of service in respect of the temporary hand is also a major penalty. Therefore, the case of the learned counsel for the petitioner is that even for termination of the temporary employees, like the present writ petitioner, the procedure prescribed in Rule 66 of the Assam Police Manual Part III for imposing major penalty should also be followed. In this regard in order to impress his submissions, the learned counsel for the petitioner has drawn the attention of this court to a decision of this court in Sangamsel Maring Vs. State of Manipur and others reported in 2003(3) GLT 258. In para no.10 of Sangamsel Maring(Supra), the said order of the Govt. of Manipur dated 21.9.83 for inserting the new subclause (d), i.e. termination of service in respect of the major penalty, have been quoted in entirety. The learned counsel also, further, submits that as there is special act, i.e. Assam Police Manual for the Rifleman of MR, the CCS (Temporary Services) Rules shall not be applicable and this matter had already been discussed by this court in Sangamsel Maring (supra).

5. The Director General of Police, Govt. of Manipur had issued an instruction/circular, dated 12.9.1995(Annexure A/4 to the rejoinder affidavit of the petitioner) to the effect that "It is an admitted fact that appointment, dismissal, etc. of subordinate Police Officer (from Constable up to Inspector) is governed by Sec 7 of the Police Act and for its operation A.P. Manual has been framed and hence provisions of C.C.S.(C.C. and A) Rules will not be applicable. Henceforth all Disciplinary Authority should exercise their powers under appropriate Rules of

Assam Police Manual Part III. Any deviation from the above instruction will be viewed seriously.? Even after the said circular/instructions of the Director General of Police, the respondent No.3, i.e. the Commandant, 12th Battalion, Manipur Rifle (2IRB) issued the termination order dated 6.4.2000(AnnexureA/2 to the writ petition) by exercising the powers under CCS (Temporary Services) Rules, 1965 without following the procedures prescribed for imposing major penalty mentioned in Rule 66 of the A.P. Manual PartIII. It is also the mandate of the amended rules 66 of the A.P. Manual that even for termination of temporary hand the procedures prescribed for imposing major penalty in Rule 66 should be followed. In the instant case, admittedly, the procedures prescribed in Rule 66 of A.P. Manual PartIII have not been followed in issuing the impugned termination order dated 6.4.2000(AnnexureA/2 to the writ petition) and 21.3.2001 (AnexureA/3 to the writ petition). For this the learned G.A. appearing for the govt. respondents submits that even if the impugned orders are set aside, it should be open to the Disciplinary Authority to hold enquiry in respect of the charges leveled against the petitioner. In this regard, the learned G.A. has referred to the decision of the Division Bench of this court dated 27.4.2003 passed in W.A. No.113 of 1998.

6. For the reasons mentioned above, I am of the considered view that this writ petition has merit and accordingly the impugned termination order dated 6.4.2004(AnnexureA/2 to the writ petition) and 21.3.2001(AnnexureA/3 to the writ petition) are hereby set aside and quashed. It is made clear that the petitioner should not be entitled to any back wages and the reinstatement order shall be issued within a period of 3(three) months from the date of receipt of this judgment and order. It is left open to the Disciplinary Authority to hold an enquiry, if necessary, afresh against the writ petitioner.

7. With the above observation and direction, this writ petition is allowed. No costs.