
(1994) 08 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 758 of 1994

Mahendra Singh Yadav

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 08-08-1994

Acts Referred:

Constitution of India, 1950 — Article 1

Citation : (1994) 2 GLR 453

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami and M.P. Bora, for the Appellant; N. Saikia, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—The Petitioner was a Sub-Inspector of Police in the State of Arunachal Pradesh. On 4.3.92 the following charges were drawn against the Petitioner.

Article-1. - That on 12.2.92 at about 2130 hrs, SI. MS Yadav while posted at Police Station Ziro went to the para line, Ziro in uniform carrying his service revolver without any official purpose and fired two rounds from his revolver in air without any valid reason. This act on the part of the SI, MS Yadav amounts to gross misconduct and unbecoming of a police officer.

Annexure-II. - Statement of imputation of gross misconduct in respect of Article of charge framed against SI, MS Yadav of AAP Bn. Daporijo.

The Petitioner submitted written statement denying the entire charge. The Disciplinary authority appointed one N.S. Radhawa as Enquiry Officer even before filing of the Written statement. Along with the Written statement, the Petitioner submitted a loiter with a prayer to allow him to take help of one Yadav as Defence Assistant. The Petitioner made another prayer subsequently for defence assistant, but the same was rejected. on 27.6.92. During enquiry the Petitioner

prayed for examining P.R. Gyana and T. Tangha as defence witnesses and messages were sent calling them but their presence could not be procured. It is alleged that the Enquiry Officer himself acted as Presiding Officer and no opportunity was given to the Petitioner to examine witness and the enquiry was closed. The Petitioner submitted a statement of defence pointing out serious contradictions in the statement of the witnesses. On 24.11.93 the Disciplinary authority agreed with the report of Enquiry Officer and imposed penalty of removal. Enquiry report was enclosed with the order. There was a Civil Rule No. 3763/93 before this Court and this Court by order dated 17.12.93 directed the Petitioner to file an appeal within 7 days and stayed the order. The appeal was preferred. On 24.12.93 an application was filed for personal hearing, On 9.2.94 the appellate authority dismissed the appeal without giving personal hearing, The appellate authority regarding the defence witnesses rejected the plea on the ground that the Petitioner should have produced them although senior police officials failed to produce them.

2. I have heard Sri A. Goswami, learned Counsel for the Petitioner and Smti. N. Saikia, learned Govt. Advocate for the State of Arunachal Pradesh. An affidavit-in-opposition has been filed on behalf of the Respondents and also the record has been produced before me.

3. Sri Goswami has drawn my attention to the order of the appellate authority at page 47 where it has been found as follows:

The service revolver alongwith ammns, issued to the delinquent was seized at 0700 hrs on 13.12.92 and the time of seizure no shortage of ammns, had been found and no mark of the burn was found on the great coat of the delinquent when the service revolver was seized.

The second contention of Sri Goswami is that in this case the enquiry report was not given before the punishment was imposed on the Officer.

4. The law on this point is settled by a catena of decisions and the latest case is (1993) 3 SCC 727 Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors. where the Supreme Court has pointed out as follows:

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

On the basis of the finding in the Enquiry report and finding of appellate authority quoted above, it is crystal clear that the charge as against the

Petitioner was not established and as the charge as against the Petitioner was not established, the question of punishing the Petitioner does not arise. The removal from the service of the Petitioner is also be quashed on the ground that the Enquiry report was not given to him before the Disciplinary authority took the decision on the charge and decided to remove which amounts to denial of reasonable opportunity to the employee to prove his innocence and is violative of principle of natural justice.

5. For all these reasons, the impugned orders of removal dated 24.11.93 (Annexure-VIII) and 9.2.94 (Annexure-IX) shall stand Quashed. The authority shall take back the Petitioner in his service immediately on receipt of the order. The Petitioner may obtain a certified copy of the order and may produce the same before the authority to do the needful in terms of the order, The writ application is accordingly allowed, I leave the parties to bear their own costs.