
(2005) 02 GAU CK 0056
In the Gauhati High Court

Manikumar Sinha

APPELLANT

Vs

State of Manipur and Anr.

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 02 GAU CK 0056

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

Bench : Single Bench

Advocate : Th.Ibohal Singh, Kh.Tarun kumar Singh, Advocates appearing for Parties

Judgement

By this writ petition, the petitioner is challenging the order of the Governor of Manipur being No.9/1(7)98 H, Imphal 23.11.2000 (AnnexureA/1 to the writ petition) for holding denovo inquiry of the departmental proceeding drawn up against the writ petitioner from the stage of furnishing documents to the writ petitioner. The petitioner was appointed as Rifleman in the Manipur Police and during his long service, he got promotions to different stages and ultimately he was promoted to the post of Subedar in the year 1985. While the petitioner was serving in the said capacity the respondent No.2, i.e. Director General of Police, Manipur issued order being No.E/43/04/98PHQ (Adm), Imphal the 7.5.1998 for placing him under suspension in contemplation of a departmental proceeding for his alleged grave misconduct and dereliction of duty. As the petitioner was placed under suspension for a number of months without framing article of charges for the said alleged grave misconduct and dereliction of duty for holding disciplinary inquiry, the writ petitioner approached this Court by filing a writ petition being WP(c) No.1131/99 against the present respondents. The said writ petition i.e. WP(c) No.1131/99 was disposed of finally by an order dated 3.3.2000 with the observation that:

? Upon hearing the learned counsel for the parties, I am of the view that the petitioner has been placed under hardship because of the delay caused by the authority concerned in the matter of disciplinary enquiry/proceeding as against

the present writ petitioner. After proper application of my mind in this matter. It would be just and proper to pass an appropriate order and direction to the respondents and, accordingly, I direct the respondents to complete the disciplinary enquiry/proceedings as against the Writ petitioner within a period of 3 (three) months from today by giving reasonable opportunity of being heard to the writ petitioner, failing which, it shall be deemed that the petitioner has been reinstated in service forthwith for which, the competent authority/respondents shall pass necessary order of reinstatement of the petitioner in service immediately. It is further made clear that the petitioner shall cooperate the disciplinary enquiry/authority during the course of the enquiry and related proceedings of it.?

As the departmental proceeding could not be completed within a period of three months in compliance with the direction of this Court dated 3.3.2000 passed in WP(c) No.1131/1999, the Govt. of Manipur issued order being No.9/1(7)/90H Imphal the 5th July, 2000 for reinstating the petitioner in service and paragraph 4 of the said order of Govt. of Manipur is quoted hereunder:

¶4. Now, therefore, the Governor of Manipur in compliance of the Hon"ble High Court's order dated 3.3.2000 is pleased to revoke without any prejudice to the departmental enquiry pending against him. The suspension order in respect of Shri Manikumar Sinha, Subedar, 9 Bn. M.R. issued by the Director General of Police, Manipur vide order No.E/43/84/98PHQ (Adm) dated 7.5.1998 which was subsequently confirmed by the Home Department vide order of even number dated 25.5.1998 is revoked with immediate effect.?

Further case of the petitioner is that the respondent initiated disciplinary enquiry being No.W10/10/2000(OpsII) Pt dated 28.4.2000 against the petitioner after the lapse of more than three months stipulated by the High Court vide order dated 3.3.2000 for completion of the inquiry without furnishing documents demanded by the writ petitioner for his proper defence in the said departmental enquiry and the said departmental enquiry was concluded on 19.6.2000 by submitting inquiry report. The Inquiry Officer of the disciplinary enquiry against the petitioner had submitted the said report on 19.6.2000 stating that the charges against the petitioner are proved and also that the writ petitioner himself admits to be guilty of not implementing the standing order and accepting the responsibility of loss of weapon being the supervisory officer, Lance Naik No.7443, Netra Bahadur who was found guilty of stealing away the weapon. The charged officer after admitting the charges prayed for bestowal of mercy for all his commissions and omissions thereby further confirming the admission of the charges leveled against him. The petitioner was called upon to submit representation against the said inquiry report dated 19.6.2000 and accordingly the writ petitioner submitted representation dated 31.7.2000 taking specific plea that:

?(a) The enquiry arising from alleged theft of some weapons from the armoury of the batallion by Netra Bahadur, Dhananjoy and Paokhothang Kipgen and

subsequent suspension of the Commandant and Deputy Commandant of the Battalion i.e. 9th Manipur Rifles and the humble self i.e., Subedar Manikumar Sinha, was a complete chain of section. The enquiry cannot be made separately for different persons allegedly involved. The authority, made separate enquiry in respect of Netra Bahadur, Dhananjay and Paokhothang Kipgen, and it is learnt that the aforesaid persons, have since been dismissed from service. Secondly, separate enquiry have been initiated against me, in the present case. Thirdly, in respect of the Commandant and the Deputy Commandant, no enquiry has been initiated. It is submitted that piece meal enquiry was bad in law occasioning serious miscarriage of justice, besides being ultravires of established procedure.

(b) At the time of enquiry against Netra Bahadur, Dhananjay and Paokhothang Kipgen, I was not a party. The whole enquiry was made against my back. The alleged conclusion and finding made in the alleged enquiry, have been used against me, causing serious miscarriage of justice.

(c) That the humble self was not given any opportunity to give a free and frank statement to support his case by enquiry officer. This is basis and fundamental requirement, for any fair departmental proceeding. In the instant case, without following the aforesaid fundamental requirement, the Ld. Enquiry Officer himself started cross examining the humble self (sic) occasioning miscarriage of justice, without the assistance of presenting officer.

(d) That, the state did not furnish the documents i.e., Annexure III consisting of 8 documents, mentioned in the memorandum bearing No.9/1/(7)/98H dt.13.5.99 directing for enquiry against me in spite of repeated request made by the humble self and the Govt. also directed by an order bearing No.9/1/(7)/98H/1649 dt.8.6.99 addressed to the D.G.P. for supply of the documents mentioned in the articles of charges.?

Thereafter the Govt. of Manipur issued impugned order dated 23.11.2000 for holding de novo inquiry. In this writ petition the petitioner challenged the impugned order dated 23.11.2000 only on two grounds that 1) the said impugned order dated 23.11.2000 was issued in violation of the direction of this Court made in the judgment & order dated 3.3.2000 in WP(c) No.1131.1999, 2) the impugned order was issued without following the mandatory procedures prescribed in Rule 15 and 17 of the Central Civil Services (Classification, control & appeal) Rules, 1965. The respondents also filed their affidavit in opposition stating that the impugned order dated 23.11.2000 was issued after due consideration of the representation filed by the petitioner dated 31.7.2000 for holding de novo inquiry from the stage of furnishing documents inasmuch as the petitioner took serious plea that the Disciplinary Authority did not furnish the documents mentioned in his representation dated 31.7.2000. It is admitted case of both the parties that in exercise of power conferred by S.7 read with S.46 of the Police Act, 1861 (V of 1861) the Governor of Manipur was pleased to order that the rules laid down in the Assam Police Manual Part I to V shall be deemed to be the Rules framed by the State Government of Manipur for application to Manipur

Police with such alteration and modification not affecting the substance as may be necessary having regard to the existing administrative set up in the State, and further the Governor of Manipur was pleased to order that for the aforesaid purpose, the Manipur Rifles shall be deemed to be a part of the Manipur Police Force vide order of the Governor of Manipur being No.7/41/73POL Imphal, the 6.9.74. It is also an admitted question of law that the Assam Police Manual is a special law/rules for the members of police force of the State of Manipur below the rank of Deputy Superintendent/Assistant Commandant. Rule 3 of CCS (CCA) Rules, 1965 speaks about the Government servant to which CCS (CCA) Rules are applicable. Sub.Rule (i) of Rule 3 is quoted hereunder:

?(i) These rules shall apply to every government servant including every civilian government servant in defence service, but shall not apply to (a) in Railway Service, as defined in Rule 102 of Vol.I of the Indian Railways Establishment Code, (b) any member of the All India Service, (c) any person in casual employment, (d) any person subject to discharge from service not less than 1 month's notice and (e) any person for whom special provision is made, in respect of the matters covered by these Rules, by or any law for the time being in force or by/or under any agreement entered into by or with the previous approval of the President before or after the commencement of these Rules or any matter covered by such special provision?.

Such being the accepted position, the CCS (CCA) Rules shall not be applicable to the subordinate members of the Maniur Police having its own special rules, i.e. AP Manual. In this regard, this Court in a number of cases had already held that CCS (CCA) Rules, 1965 is not applicable to the subordinate members of the Manipur Police. Therefore, the submission of learned counsel for the petitioner about the procedural requirement under Rule 15 and 17 of CCS(CCA) Rules, 1965 was not followed in passing the impugned order dated 23.11.2000 is not tenable.

Regarding second submission, it is required to read the judgment & order of this Court dated 3.3.2000 passed in WP(c) No.1131/99 carefully without borrowing the words, which are not mentioned in the judgment & order itself. From bare perusal of the said judgment & order of this Court dated 3.3.2000 it is clear that there is no clearcut prohibition to the respondents not to continue the disciplinary proceeding against the petitioner after three months. The only condition imposed by this Court in the judgment & order dated 3.3.2000 was that disciplinary enquiry against the petitioner should be completed within a period of three months from the date of passing of the said order and if not the petitioner shall be reinstated in service forthwith. Accordingly in compliance of the direction of this Court made in the above said judgment and order dated 3.3.2000, the petitioner had been reinstated in service vide order of the Govt.of Manipur dated 5.7.2000 without any prejudice to the departmental enquiry pending against him. If the petitioner is really aggrieved by the said conditional order of the Govt. of Manipur dated 5.7.2000 for reinstating him in service, he should have

challenged the said order of Govt. of Manipur by filing writ petition or otherwise. But in the present writ petition, the petitioner is not challenging the said order of Govt. of Manipur dated 5.7.2000. As stated above, the impugned order dated 23.11.2000 was passed after favourably considering his representation dated 31.7.2000 wherein the petitioner seriously objected to the said disciplinary proceeding against him.

For the reasons mentioned, the petitioner could not make out any substantial reasons and law for interfering with the impugned order dated 23.11.2000, and as such, this writ petition has no merit.

Further, it is made clear to the respondents that they should consider the feasibility of holding the denovo inquiry after the lapse of many years from the date of alleged incident which was happened in the year, 1998 in pursuance of the above said order dated 23.11.2000 and further the respondents should also consider and take up necessary action for correcting the objections made by the writ petitioner in his representation dated 31.7.2000 while taking up steps for holding de novo inquiry.

For the aforesaid reasons, this writ petition is dismissed. No order as to costs.