

(2000) 03 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) 14 of 1998

Manliana

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 226, 309

Citation : (2000) 3 GLT 202

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Mr. H. Lalrinthanga, for the Appellant; Mr. N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application under Article 226 of the Constitution of India. The petitioner prays for a writ for setting aside the impugned order dated 5.3.1997 removing him from service as well as the order dated 23.6.1997 dismissing his appeal and also for reinstating him in service.

2. The petitioner was appointed as Constable of Mizoram Police on 11.4.1978 and was confirmed as such with effect from 12.4.1982 (Annexure-1). He was detailed as PSO (Personal Security Officer) to Mr. Rokamlova, the then Speaker of Mizoram Legislative Assembly. Shri Rokamlova for his private work sent the petitioner to Mamit area. At the residence of Pu Thimga at Mamit, the petitioner lost his service Revolver with 6 rounds of ammunition on 17.5.1996. According to the petitioner he proceeded to Zawlnuam and there he could realise that this Revolver was missing. He then rushed back to Mamit and made all effort to trace out the lost Revolver but when it proved futile he lodged a complaint and FIR in the Mamit Police Station on 22.5.1996 (Annexure-II and III respectively).

3. By an order dated 22.5.1996 (Annexure - IV) the Superintendent of Police, Security, Mizoram in exercise of his powers u/s 7 of the IPA, 1961 read with

Rule-66 of APM Part-III, placed the petitioner under suspension. Departmental proceedings were initiated against him. He was furnished with the memorandum of charge sheet dated 17.7.1996 (Annexure-V) enclosing therewith the statement of Articles of charges, the statement of imputation of misconduct in support of the Articles framed against the petitioner, the list of documents and the list of witnesses. He was directed to submit written statement of his defence within 10 days and also to state whether he desires to be heard in person. He was also informed that an enquiry will be held only in respect of those articles of charge as are not admitted.

4. Articles of charge read as follows :

"That Const. Manliana of CID (SB) attached to V.I. P. Security Unit was detailed to work as PSO to Pu Rokamlova, Ex. Speaker, Mizoram Legislative Assembly, Departmental Service, 38 Revolver No. 161-33471 with 6 rds of Ammunition were issued by the R.O. (CID)(SB) and duly received by Const. Manliana for his personal defence as well as security duty of the protected person Pu Rokamlova, Const. Manliana lost his service Revolver 38 No. 161-33471 during May, 96 when he was at Mamit area for private works of Pu Rokamlova. Const. Manliana being member of discipline force should have promptly reported about the lost of the service Weapon to S.P. Security but Const. Manliana failed to do so. This Act of Const. Manliana amounted to serious undisciplined misconduct and rendered him unfit to be detained in public service.

2. That Const. Manliana when deployed for PSO duty to Pu Rokamlova, Ex Speaker was clearly instructed to discharge PSO duty effectively to ensure that no harm is caused to the protected person and adequate care should be taken for safe custody of the Arms & Ammns issued to him. Const. Manliana illegally withdrawn himself from the assigned duties of PSO duty and went to Mamit Area for attending the private works of Pu Rokamlova, Ex Speaker Mizoram Legislative Assembly. When Const. Manliana remained engaged in the private works of Pu Rokamlova, Ex. Speaker Mamit area, he lost his Service, 38 Revolver No. 161-33471 with 6rds of Ammunitions sometimes In May, 96. Const. Manliana was deployed for discharging PSO duty for the protected person and he was no business to withdraw himself from his assigned duties and attend to private works without security and consequently losing the Service Weapon.

This act of Const. Manliana amounted to grave indisciplined misconduct on his part and rendered him unfit to retain In the public service."

5. By an order dated 17.9.1996 (Annexure-VI) Inspector D. N. Paudyal of security Unit was appointed as Inquiry Officer. By another order dated 13.11.1996 (Annexure-VII) Inspector D.K. Chakraborty of VIP Security was appointed as Inquiry Officer in place of Mr. Paudyal who had to be engaged in security duty in Tuirial Airport. By an order dated 16.12.1996 Sub. Inspector V.L. Lura of VIP Security Unit was appointed as presenting Officer. On conclusion of the inquiry, the Inquiry Officer found the petitioner guilty of all the articles of

charges and submitted his report to the Superintendent of Police, Security, Aizawl on 13.2.1997. A copy of the report was furnished to the petitioner vide letter dated 21.2.1997 (Annexure-IX). Accepting the findings of the Inquiry Officer, the disciplinary authority Superintendent of Police CID (SB) Mizoram, imposed on him the penalty of removal from service vide his order dated 5.3.1997 (Annexure-X).

6. The petitioner filed an appeal petition dated 22.4.1997 (Annexure-XI) before the Deputy Inspector General of Police CID(SB) praying for setting aside the penalty of removal from service, and alternatively to convert such penalty into one of compulsory retirement. The appellate authority rejected the appeal vide order dated 23.6.1997 (Annexure-XII) hence this petition.

7. The Under Secretary to the Govt. of Mizoram, Department of Home submitted affidavit-in-opposition on behalf of the State respondents. It is stated therein that the weight of a service Revolver is one Kilogram and it is unbelievable that the petitioner proceeded to Zawlunam without knowing that this Revolver was missing although the Revolver was missing on 17.5.1996, he made a complaint only on 22.5.1996 showing total negligence of duties. It is also stated that changing of Inquiry Officer is not violation of Rules and Procedure as alleged by the petitioner. The Inspector D.K. Chakroborty replaced Inspector D. N. Paudyal who had to be engaged in security duty at Tuirial Airport. It is further stated that the action of the petitioner in leaving his duty post without authority of the Superintendent of Police, Security, failure to deposit his service Revolver before proceeding on unofficial works and finally loss of his service Revolver are all proved. It has been denied that the petitioner was not given a chance to submit his written brief and defence assistant. It is stated that the petitioner left the protected person for his private work without depositing the service Revolver and that the appellate authority confirmed the penalty of removal of service after due consideration of the merits of the case.

8. Mr. H. Lalrinthanga, learned counsel for the petitioner, submits that the entire disciplinary proceeding was vitiated as the petitioner was not given a chance to submit his written brief and was not allowed to have his defence assistant and that charges were not proved. Under Article 226 of the Constitution, the High Court does not act as a Court of appeal and does not re-appreciate evidence. Since this is not a case of no evidence nor a case of perverse findings, there is no question of the High Court interfering with the decisions of the authorities holding the departmental inquiry. In State of Andhra Pradesh Vs. Sree Rama Rao, it has been held that :

"In proceeding under Article 226 the High Court is concerned only with the question whether the enquiry was held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the principles of natural justice have been violated."

9. Mr. N. Sailo, learned Government Advocate, has produced the original records

of the departmental proceedings before this Court and on perusal of the same I have found that principles of natural justice have not been violated in this case and this Court cannot interfere merely on the basis of the technicalities which did not cause serious prejudice to the petitioner. Mr. H. Lalrinthanga, learned counsel for the petitioner, referred to Bhagat Ram Vs. State of Himachal Pradesh and Others, wherein it has been held :

"Where the department is represented by a presenting officer, it would be the duty of the delinquent officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the joint inquiry of the delinquent and his Superior Officer shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a superior officer, co delinquent, is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the inquiry."

In the instant case in Para-2 of the Inquiry Report it has been stated that in order to shown fairness to the charged Officer an ample chances were given to inspect documents and to propose name of Defence Assistant if he is willing to engage to represent his case during inquiry. But he did not like to engage his defence assistant to represent his case, he represented himself. Eventhough this is not reflected in daily Order Sheet, I find no reason to disbelieve the above statement made in Para-2 of the Inquiry Report.

10. Now, the allegations of fact constituting the petitioner's misconduct is that he at the instance of the protected person, the then Speaker, went to Mamit for the latter's private work, which was outside the purview of his assigned duty, leaving his assigned duty of giving security of the protected person; secondly, he did not deposit the service Revolver in proper custody before proceeding to Mamit for private work; and lastly, he did not immediately inform about the loss of his Revolver to his superior. He filed a complaint and lodged an FIR only after five days. His plea that he only carried out the orders of the then Speaker and that as he was busy infrantic search of the lost Revolver he could not report the matter to his superior immediately is not defence. After careful consideration of the entire matter, I am not inclined to interfere with the finding of guilty by the Inquiry officer.

11. This brings me to the question whether penalty of removal from service in the facts and circumstances of this case is grossly excessive or out of all proportion. Mr. Sailo, learned Government Advocate, submits that the question of assessing quantum of penalty is beyond the discretion of the High Court. In this

regard, State of Karnataka and Others Vs. H. Nagaraj, wherein the Apex Court quoted from an earlier judgment (SCC p 189, para 27) as under :

"It is appropriate to remember that the power to impose penalty on a delinquent officer is concerned on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority".

In the same judgment the Apex Court quoted from another earlier judgment Union of India and another Vs. G. Ganayutham (Dead) by LR., as under :

"This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defence of logic or normal standards."

In this regard, Mr. H. L Lalrinthanga, learned counsel for the petitioner has referred to a decision of this court reported in 1998 (4) GLT 472 wherein it has been held :

"Proportionality of the punishment can also be looked into while exercising the power under Article 226 of the Constitution since in the instant case, the Tribunal failed to judge the situation in the light of the above, more particularly so, when the petitioner was serving under the Management from 1976. Taking into consideration all these aspects, instead of sending the matter back to the Tribunal for adjudication u/s 11-A of the Act. 1947, in order to avoid lingering of the case, this Court in exercise of the power under Article 226 of the Constitution considered that point, and on consideration of the materials on record, persual of the Award and in fact situation of the case, I am of the opinion that the order of dismissal is disproportionate to the Nature of misconduct and hence, the same is set aside.

In the fact situation of the case, the petitioner shall be re-instated in his service and the workman be let-off with a warning".

12. Mr. H Lalrinthanga, learned counsel for the petitioner, submits that the penalty imposed upon the petitioner is too severe in view of the alleged misconduct. He further submits that the requirement of CCS (CCA) Rules, 1965 is that the quantum of punishment should be imposed only where the Government servant has been convicted on ground of moral turpitude. He further submits that Rule 57 of the Assam Police Manual Part III provides that offence connoting moral turpitude must be carefully discriminated from other wrong doings and that there should not be undue harshness in the imposition of punishment and in inflicting punishment the general character of the officer affected and his past service must be taken into consideration. Mr. H. Lalrinthanga further submits that loss of the Revolver was unintentional and without any bad motive and in his 18 years of service in Police force, there was

no adverse remark against the petitioner. It is not disputed that the misconduct in the instant case does not involve moral turpitude nor it was intentional. In view of this and having regard to the petitioner's unblemished career in Police service, I am of the considered opinion that the penalty of removal from service is grossly excessive. I, however, fully agree with Mr. Sailo, learned Government Advocate, that the petitioner found guilty of the articles of charges framed against him should not be retained in the Police service, for his continuance may have demoralising affect and may encourage indiscipline in the disciplined force. I would have thought that if the penalty of removal from service is modified to one of compulsory retirement, the petitioner will not continue in service but will be entitled to gratuity and some other service benefits. Compulsory retirement is one of the major penalties as per Rule 11 (vii) of CCS (CCA) Rules, 1965.

13. In view of the above, the penalty of removal from service imposed on the petitioner is modified to one of compulsory retirement with effect from 5.3.1997 (on which date the impugned order removing the petitioner from service was issued).

14. This writ petition is allowed to the extent as indicated above. In the facts and circumstances of the case, parties are left to bear their own costs.