
(1996) 05 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 596 of 1995

N. Lamkholian Vaiphei

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 08-05-1996

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1997) 1 GLR 337

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Kh. Binoykumar, for the Appellant; Government Advocate, for the Respondent

Judgement

H.K. Sema, J.—Heard Mr. Binoykumar, learned Counsel for the Petitioner as well as Mrs. A. Notonueswari Devi, learned Government Advocate.

2. In this writ petition, the Petitioner has assailed the impugned order dated 12.1.95 dismissing the service of the Petitioner dispensing with the enquiry under Article 311(2)(b).

3. Petitioner Shri N. Lamkholian was a Riflemen in the 5th BN. of Manipur Rifles. It was alleged that in between 11 PM of 10.1.95 to 1 AM of 11.1.95 Petitioner along with others were detailed for Sentry duty at No. 1 Sentry post (LMG Post). During that time some unknown Armd extremists numbering about 20 (twenty) entered into the post safely and took away some Arms and ammunitions including one LMG-3 with 7 magazines, 249 rounds of CIN ammunitions, one LMG spare barred, Sten-gun 2 Nos. with 4 magazines and seventy two rounds of 9 mm ammunitions, G.F. Rifles-1,303 Rifles-18 Nos. (Mark-III-16 Nos. and Mark-IV-2 Nos.) with 1304 BDR rounds, 2" mortar-2 Nos., H.E. Bomb-12 Nos. without resorting to any resistance/firing against the extremists.

4. On the basis of alleged offence, the Petitioner along with others have been dismissed from service exercising the power under Article 311(2)(b) of the

{Constitution dispensing with the enquiry.

5. Article 311(2) mandated that no person shall be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Further Article 311(2)(b) empowers the authority to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonably practicable to hold such inquiry. (Under line is mine).

6. A fascicule reading of the Article 311(2) and (b) would clearly show that an enquiry in which a reasonable opportunity to be given to the delinquent Officer is a law and dispensing with the enquiry as provided under Article 311(2)(b) is an exception.

7. A reasonable opportunity enshrined in Article 311 (2) would include:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.

8. The aforesaid opportunities can be availed by the delinquent Government servant only when a regular enquiry is held against him. Therefore, dispensing with the enquiry would deprive the reasonable opportunity to the delinquent Government servant as mandated by Article 311(2). Passing an order dispensing with the enquiry, therefore must be supported with strong reasons recorded by the authority in writing that it is not reasonably practicable to hold such enquiry.

9. From the impugned order dated 12.1.95, it clearly appeared that no reasons in writing have been recorded as to why it is not reasonably practicable to hold an enquiry. In fact, the impugned order is absolutely devoid of reasons. The impugned order therefore is a fraud upon the mandate of Article 311(2)(b). On the other hand, a perusal of the impugned order itself shows that the charges are very grave and also there will be no difficulties whatsoever on the part of the Respondent Government to proceed with a regular enquiry inasmuch as the offence alleged to have been committed are no other than the personnel of the 5th BN. Manipur Rifles, and it would clearly appear that the offence if proved would be a serious dereliction of duties by a uniform personnel. In such a situation there will be no difficulties in collecting the evidence against the delinquent Officer if a regular enquiry is held. Therefore, apart from not disclosing any reasons as to why it is not reasonably practicable to hold an enquiry, in my view, there will be no difficulties in holding an enquiry against the delinquent Officer considering the facts and circumstances of the case as recited in the impugned order itself.

10. For the reasons aforestated the impugned order dated 12.1.95 is not sustainable in law, and the same is hereby quashed and set aside. However, considering the gravity of the offence the competent authority is directed to proceed with the regular enquiry in accordance with law. It is open to the competent authority to place the Petitioner under suspension during the enquiry if so advised.

11. Mr. Binoykumar has brought to my notice the judgment and order passed by the Single Judge in Civil Rule 291/96 disposed on 28.3.96. According to Mr. Binoykumar, the case in hand is squarely covered by the judgment and order dated 28.3.96 passed by this Court in Civil Rule No. 291/96. While quashing of the impugned order dismissing the service of the Petitioner dispassing (sic) with enquiry in the same charge with the present Petitioner, the learned Single Judge ordered re-instatement without ordering fresh enquiry. In view of the order passed by this Court, the judgment and order dated 28.3.96 passed in Civil Rule No. 291/96 is differed.

With the aforesaid observation and direction, this petition is disposed. No costs.