

(1988) 05 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 80 of 1972

Nagendra Sen Chakma

APPELLANT

Vs

State of Tripura And 3 Others

RESPONDENT

Date of Decision : 09-05-1988

Acts Referred:

Citation : (1988) 2 GLR 50

Hon'ble Judges : A.I.Sangma, J and S.N.Phukan, J

Bench : Division Bench

Advocate : M.Mazumdar, K.N.Bhattacharjee, A.N.Lodh, Advocates appearing for Parties

Judgement

Phnkan, J.—Disciplinary proceeding was started in August, 1977 against the petitioner who was an Assistant Sub Inspector of Police. He was charged by the Superintendent of Police North Tripura District, Kailashahar in respect of three alleged offences which were of serious nature. One Assistant Commandant was appointed as an Enquiry Officer to enquire into the charges and by the report dated 10.3.78 all the charge were found to have been proved against the petitioner vide report at AnnexureIV to the petition. A provisional order was passed by the disciplinary authority, namely, the Superintendent of Police, North Tripura, asking the petitioner to show cause why he should not be dismissed from service vide AnnexureV to the petition. The said order was passed on 14. 5. 78. Cause was shown by the petitioner and thereafter by the final order dated 21. 6. 78, the petitioner was dismissed from service vide AnnexureVIII to the petition. The appeal was also dismissed by the Inspector General of Police, Tripura by the order dated 27. 11. 78 vide AnnexureX to the petition and hence the present petition.

2. Two contentions have been raised before us on behalf of the petitioner by Mr. Lodh, learned counsel for the petitioner, viz., under the relevant rule the Superintendent of Police was not the competent authority to initiate the departmental proceeding and to dismiss the petitioner from service and,

secondly, there was violation of principle of natural justice as the petitioner who is a member of the Scheduled Tribe was deprived of the opportunity of getting the help of defence assistance.

3. There is no dispute that the disciplinary proceeding was initiated by the Superintendent of Police and he was also removed by the said authority on the dates stated above. Mr. Lodh, in support of his contention, has placed reliance on a decision of Division Bench of this Court dated 10. 12. 82 passed in Civil Rule No. 195/82. The said decision was rendered relying on a decision of the Division Bench of this Court dated 27. 5. 81 passed in Civil Rule No. 89 of 1982.

4. On perusal of the order passed in Civil Rule 195/82, it appears that by a notification dated 17.2.68 issued in exercise of powers conferred by Section 7 of the Police Act, 1861 (Act V of 1861) read with the Government of India, Ministry of State's Notification No. 104J dated 24th August, 1950, the then Chief Commissioner, Tripura was pleased to make the Disciplinary Regulation for police officers of subordinate rank of Tripura Police adapting certain regulation of the Police Regulation of Bengal of 1943 in a modified form as notified. In paragraph 3 of the said notification dated 17. 2. 68 for the existing regulation No. 858 of the Police Regulations of Bengal, the modified Regulation was adapted and provisions of subregulation (2) under which a Superintendent of Police had disciplinary/punishment powers against subordinate police personnel was totally omitted. In other words, by the above adaptation and modification of the Police Regulation of Bengal the Superintendent of Police had no disciplinary power of punishment with effect from 17. 2. 68. However, subsequently by notification dated 10. 3. 82 the power of punishment by the Superintendent in respect of subordinate police personnel has been restored. It is, therefore, clear that from 17. 2. 68 to 10. 3. 82, the Superintendent of Police had no power to impose any punishment on the subordinate police officer. This view was expressed in both the above Civil Rules by this Court and the above law still holds the field.

5. In the case in hand, as stated earlier, the departmental proceeding was initiated by the Superintendent of Police in August, 1977 and the final order of dismissal of the petitioner was passed by the said authority on 21. 6. 78. Thus it is clear to us that though the Superintendent of Police had no power, in view of the law laid down by this Court, the said authority not only initiated the present departmental proceeding but also dismissed the petitioner and on this ground alone the present petition is liable to be allowed by setting aside the dismissal order.

6. There is no dispute that no defence assistance was given to the petitioner during the course of the enquiry. Mr. Lodh has drawn our attention to the decision of the Apex Court in Bhagat Ram vs. State of Himachal Pradesh, AIR 1983 S. C. 454 wherein the Apex Court held that justice and fair play demand that where in a disciplinary proceeding the department is represented by a presenting officer, it would be incumbent upon the disciplinary authority while making appointment of the presenting officer to appear on his behalf

simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another government servant before the commencement of the enquiry. Though in the case in hand, no presenting officer was appointed and the enquiry was conducted without such officer, we are of the opinion that the minimum requirement in a departmental proceeding is that the delinquent officer must be informed that he is entitled to get the help of defence assistance and if this is not observed the enquiry would be bad as violative of principle of natural justice unless it can be shown that the delinquent officer had not suffered any prejudice, vitiate the enquiry. On this ground also the present petition is liable to be allowed. We have come to the above views keeping in view the serious consequences that may follow from the departmental proceeding, namely, removal or dismissal of a delinquent officer. In the event of such removal or dismissal the delinquent officer will be deprived of his livelihood and as such we have held that the minimum requirement under a departmental proceeding is that the delinquent officer must be informed of his right of getting the defence assistance. We have also taken note of the fact that nothing has been placed before us to show that in the case in hand, no prejudice was caused to the delinquent officer by not getting the help of Defence Assistant.

7. From what has been stated above, we are of the opinion that the impugned order of dismissal was passed by the Superintendent of Police who had no power to do so and that the said order was passed in violation of the principle of natural justice, and as such, the order is liable to be quashed which we hereby do.

In the result, the present petition is allowed and we direct the respondent to reinstate the petitioner forthwith. Rule is made absolute. Considering the facts and circumstances of the case we leave the parties to bear their own costs.