
(2014) 07 MAN CK 0004
In the Manipur High Court
Case No : W.P.(C) No. 646 of 2009

P. Andrew

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 MAN CK 0004

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Khagemba, Advocate for the Appellant; R.S. Reisang, Senior G.A, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Laxmi Kanta Mohapatra, C.J.—Heard Mr. Khagemba, learned counsel on behalf of the petitioner as well as Mr. R.S. Reisang, learned senior G.A. appearing on behalf of the State respondents.

2. This writ application has been filed challenging the order dated 15.01.2001 passed by the Commandant, 9th Battalion, Manipur Rifles removing the petitioner from service and also directing the period of suspension to be treated as such. The order passed by the Deputy Inspector General of Police (AP-II), Govt. of Manipur rejecting the appeal preferred by the petitioner is also challenged in the writ petition.

3. The petitioner was serving as a Rifleman of the erstwhile 9th Battalion, Manipur Rifles (now emerged to the 7th Battalion) and had been detailed with some other security personnel for election duty in the 13th Lok-Sabha for the Outer Manipur Parliamentary Constituency at Lamkhai area, District of Senapati. After completion of the election on 04.10.1999, the petitioner along with other security personnel as well as polling personnel with polling materials returned to Senapati District Head Quarter. When the group reached Veisiichu village at about 6:30 p.m., they were ambushed by a number of under ground elements

from both sides. The petitioner and other security personnel could not see the location of the persons who were firing and jumped down from the vehicle and started firing towards the sides from where the firing sounds came. By taking undue advantage of the darkness, the petitioner and other security personnel were overpowered by the underground elements and their arms were snatched away. In relation to the above incident departmental proceeding was initiated against all the security personnel including the petitioner and they were found guilty of the charge. All the 16(sixteen) security personnel in a common order dated 15.01.2001 including the petitioner were removed from service by the disciplinary authority. The appeal preferred by the petitioner was dismissed by the appellate authority.

4. A counter affidavit has been filed on behalf of the respondent Nos. 1-4. It is stated in the counter affidavit that the security personnel including the petitioner surrendered before the members of the outlaw organisation and they have been found guilty of charge and accordingly, they were removed from service by the disciplinary authority. According to the respondent Nos. 1 to 4 considering the conduct of the petitioner and other security personnel appropriate punishment had been imposed.

5. Learned counsel appearing for the petitioner has referred to one of the judgments passed by the Gauhati High Court (Imphal Bench) in respect of one of the escort party members who was also dismissed from service for the above incident. Referring to the said judgment, it is contended by the learned counsel for the petitioner that the order of dismissal from service having been set aside and reinstatement in service having been directed, in the said case under similar facts and circumstances, same relief be extended to the petitioner.

6. Shri R.S. Reisang, learned senior G.A. agrees to the submission of the learned counsel for the petitioner that in some of the cases relating to the same incident lenient view has been taken by the Court by setting aside the order of dismissal from service. In this connection, we refer to the judgment of Gauhati High Court (Imphal Bench), in the case of Shri Leishangthem Biren Singh in W.P(C) No. 1471. The petitioner in the said case was on duty being one of the members of the escort party and after enquiry dismissal order had been passed. The learned Single Judge after consideration of the materials passed the following order.

4. In the present case also, on careful perusal of the relevant file of the departmental enquiry, it is ascertained that the Enquiry Officer did not proceed duly in accordance with procedure laid down under Rule 66 of the Assam Police Manual Pt. III. The proceedings are found to have been conducted by the Enquiry Officer himself alone without Presenting Officer without a defence assistance and there is also no sufficient basis for thinking that the petitioner was allowed to cross examine the witnesses examined during the enquiry. In the light of the earlier decision of the Single Bench and the Division Bench noted above, the above procedural lapses are of vital nature affecting the validity of the proceedings of the departmental enquiry. Since the proceeding of the

departmental enquiry is found illegal and invalid, the impugned dismissal order based on the finding of the enquiry is not sustainable in the eye of law. The impugned dismissal order dated 28.7.2002 is hereby quashed. The writ petitioner shall be entitled to 50% of the back wages/salary from the date of his dismissal till his re-instatement in service. The concerned respondents are directed to take writ petitioner back into service within a period of one month from the date of receipt of a certified copy of this judgment by issuing necessary order in that regard. Nor order as to costs.

7. Challenging the said order of the learned Single Judge, a writ appeal was filed by the State of Manipur vide W.A. No. 72 of 2008. The Division Bench of Gauhati High Court (Imphal Bench) modified the order of the learned Single Judge and passed the following order. The relevant portion of the judgment is quoted below.

For the reasons discussed above, this appeal is disposed of in the light of the judgment and order of this Court dated 23.11.2006 passed in WA No. 48 of 2006. Corollary of this order are that the impugned judgment and order of the learned Single Judge is set aside and the liberty is granted to the appellants to draw up a fresh inquiry against the respondent/writ petitioner within a period of four months from today failing which they would be debarred from doing so and if a fresh proceeding is commenced, the respondent/writ petitioner would be treated to be under suspension from the date of his first suspension and the respondent/writ petitioner would be entitled to get subsistence allowance for the relevant period and the appellants shall continue to pay the subsistence allowance to the respondent/writ petitioner till the departmental inquiry is completed.

It is made clear that in case a fresh inquiry is not initiated against the respondent/writ petitioner within the above stipulated period of four months from today, the direction contained in the impugned judgment and order passed by the learned Single Judge would stand restored.

8. In view of the above judgment and submissions of the learned counsel appearing for the parties, we do not find any reason to differ with the order passed in the above writ appeal and accordingly, dispose of this writ application in the same terms and conditions. Consequently, we set aside the order of removal of the petitioner from service dated 15.01.2001 in Annexure-A/4 as well as the order of the appellate authority at Annexure-A/6 dated 12th August, 2009 and grant liberty to the State respondents to draw up a fresh inquiry against the petitioner within a period of four months from the date of communication of this order failing which they would be debarred from doing so and if a fresh proceeding is commenced, the petitioner would be treated to be under suspension from the date of his first suspension and the petitioner would be entitled to get subsistence allowance. The petitioner will be paid subsistence allowance till the departmental proceeding is completed.

9. It is made clear that in case a fresh inquiry is not initiated against the

petitioner within the above stipulated period of 4(four) months, the petitioner shall be reinstated in service with 50% of arrear salary due to him.

10. This writ petition is accordingly, disposed of with the above direction.