
(2000) 09 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 735 and 792 of 1997

P. Pamlei and Another	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2000) 3 GLT 451

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

Bench : Single Bench

Advocate : R. Daniel and Duidang, for the Appellant; A. Mohendro Singh, for the Respondent

Judgement

H.K. Sema, J.—I have heard Mr. Duidang, learned Counsel for the Petitioners as well as Mr A. Mohendro Singh, learned Counsel for the Respondents.

2. These two civil rules arise out of the same questions of fact and law and therefore they are being disposed of by this common judgment and order.

3. Petitioner in C.R. No. 735 of 1997 was appointed as Rifleman on 15.9.84 and posted at 6th Bn. Manipur Rifles. He was dismissed from service on 22.6.95 without holding enquiry by invoking the provisions of Article 311(2)(b) of the Constitution.

4. Petitioner in C.R. No. 792 of 1997 was appointed as Rifleman on 31.8.82 and he was also posted at 6th Bn. Manipur Rifles. He was also dismissed from service on 22.6.95 by invoking the provisions of Article 311(2)(b) of the Constitution.

5. Their appeal before the authority also has been disposed by an order dated 7th February, 1997. Being aggrieved the aforesaid Civil Rules have been filed.

6. The main thrust of the argument of the Petitioners is that the services of the Petitioners have been dismissed without holding any enquiry. It is further contended that the dismissal authority resorted to the provisions of Article 311(2)

(b) without recording any reasons in writing and therefore the order being violative of Article 311(b) is bad in law.

7. The learned Counsel for the Petitioners has taken me to the entire impugned order dated 22.6.95. It would appear from the impugned order of dismissal itself that the Petitioners said to have been committed an offence on 20.6.95 and their services were terminated on 22.6.95. It is a naked invasion of the provision of Article 311 of the Constitution. Who would believe in such a situation that a reasonable opportunity mandated by the Article 311 have been afforded to the Petitioners before they are being dismissed from service? To me it appears that the service of the Petitioners has been done away with by applying a slip shot method, instead of resorting to the proceeding established by law.

8. Article 311 of the Constitution mandated that no person who is a member of Civil Service of the Union or the State or holds a civil post under the Union or the State shall be dismissed or removed or reduced in rank except after an 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.

9. A reasonable opportunity as enshrined in Article 311(2)(b) would mean an opportunity to defend himself by cross examining the prosecuting witnesses if any put up against him and also an opportunity to establish his innocence by examining himself or by producing any defence witness on his behalf. This opportunity can only be made available to him if he is told as to what are the charges levelled against him. In the instant case, not to speak of reasonable opportunity but no enquiry whatsoever has been held as would appear from the fact that the service of the Petitioners has been dismissed on 22.6.95 for the alleged offence said to have been committed on 20.6.95.

10. The next important question is that Article 311(2)(b) has been invoking and the services of the Petitioners have been dismissed without holding an enquiry. Article 311(2)(b) reads:

(b) where the authority empowered 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.

(underline is mine)

11. A cursory reading of the Article shows that the authority is empowered to dismiss or remove a person by dispensing an enquiry is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry. A bare perusal of the impugned order, no reasons whatsoever has been recorded as to why it is not reasonably practicable to holds such an enquiry. Therefore, invoking Article 311(2)(b) is devoid of reasons. Even otherwise, in the ordinary circumstances an enquiry against an individual officer cannot be held to be not reasonably practicable. More so, in the instant case the Petitioners are said to have been caught by the C.R.P.F. personnel while they were demanding extortion

from some Nepali residents. If that is so, there will be no difficulties in holding an enquiry. This Court emphasised and re-emphasised the necessity of holding an enquiry before the Government servants are dismissed or removed. Unfortunately, this direction has not been percolated down to the various authorities exercising the power under the Statutes.

12. For the reasons aforestated, there is no alternative but the Court is compelled to quash the order of dismissal dated 22.6.95. This order shall not, however, debar the appropriate authority to initiate a fresh departmental enquiry against the Petitioners in which reasonable opportunity shall be afforded to the Petitioners as observed above. Consequently, the appropriate authority's order dated 7th February, 1997 also stands quashed.