
(2001) 08 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 63 of 2000

P.C. Lalthanliana	Vs	APPELLANT
State of Mizoram and Others		RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2001) 08 GAU CK 0035

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra and Helen Dawngliant, for the Appellant; N. Sailo, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—This writ application seeks to challenge an order dated 31st March, 1999 passed by the Commandant, 3rd Battalion, Mizoram Armed Force, Aizawl terminating the services of the petitioner. The appellate order dated 16th July, 1999 dismissing the appeal filed by the writ petitioner against the aforesaid termination order has also been challenged in the present writ application.

2. The petitioner who was appointed as a Constable in Mizoram Armed Force in the year 1988, was placed under suspension by order dated 5.1.1999. Thereafter, a Memorandum of Charge dated 28.1.1999 was served on the petitioner. The charge against the petitioner was one relating to absence from duty for 3 (three) periods, namely, from 21.10.1998 to 5.11.1998, 13.11.1998 to 12.12.1998, 31.12.1998 to 4.1.1999 without obtaining prior permission or leave from the competent authority. The petitioner submitted his reply and the matter was enquired into whereafter on the basis of the report of the Enquiry Officer, the impugned order of termination dated 31st March, 1999 was passed. It may be mentioned herein that in the course of the enquiry against the petitioner, the petitioner admitted the charges brought against him. However, while admitting the said charge, the petitioner pointed out certain circumstances which had

compelled him to remain absent without leave or permission. It may also be noticed at this stage that notwithstanding the aforesaid admission on the part of the writ petitioner, the Enquiry Officer examined three other witnesses conversant with the facts of the case who were produced in support of the charges. At the conclusion of the enquiry taking into account the admissions made as well as the other materials and evidence on record, the Enquiry Officer came to the conclusion that the charges brought against the petitioner stand proved. The legality and validity of the aforesaid conclusion and the consequential order of termination dated 31st March, 1999 as well as the appellate order dated 16th July, 1999 are the subject matters of challenge in the present proceeding.

3. Mr. A.H. Malhotra, learned counsel for the petitioner, in support of the challenge made in the present petition has urged that the statements construed by the authorities below to be an admission on the part of the petitioner really do not amount to any, such admission. In the instant case, the learned counsel submits that the charges have been enquired into and a report of enquiry having been submitted, it was incumbent on the authority to furnish a copy of the enquiry report to the writ petitioner prior to the decision of the disciplinary authority as regards the guilt or otherwise of the delinquent employee. The learned counsel submits that it is evident from the appellate order dated 16th July, 1999 that no such copy of the enquiry report was furnished to the writ petitioner. Consequently the learned counsel relying on the ratio of law laid down by the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has urged that the punishment imposed is ex facie not tenable and calls for appropriate Intervention of this Court. Alternatively, the learned counsel for the petitioner argues that having regard to the charges brought and the circumstances under which the petitioner was compelled to remain absent from duty without leave, the punishment of removal from service is grossly disproportionate and, therefore, this Court even on a finding that the charges against the petitioner stand proved, ought to Interfere with the punishment imposed.

4. Mr. N. Sailo, learned State counsel contests the proposition advanced by the learned counsel for the petitioner. Mr. Sailo submits that the statements of the writ petitioner in the course of enquiry proceeding which has been annexed to the writ application amount to an admission on the part of the writ petitioner as regards the charges brought against him and in view of the said admission of guilt, the non-furnishing of a copy of the enquiry report has not caused any prejudice to the writ petitioner. Mr. Sailo contends that in the aforesaid facts when no prejudice has been caused to the writ petitioner, this Court ought not to interfere with the punishment imposed. Learned State counsel, Mr. Sailo, contends that on the ratio of law laid down by the Apex Court in the case of State of U.P. and others Vs. Ashok Kumar Singh and another, the punishment imposed on the petitioner, who was a member of a disciplined force, cannot be construed to be excessive or disproportionate warranting any reduction in

exercise of the power under Article 226 of the Constitution.

5. I have considered the rival submissions advanced by the learned counsel for the parties. The Apex Court in the case of Managing Director, ECIL (*supra*) has laid down the law that the requirement of furnishing a copy of the enquiry report to the delinquent employee before the disciplinary authority comes to any conclusion as regards the culpability of such delinquent employee, is an essential part of the reasonable opportunity that has to be afforded to the delinquent employee in consonance with the mandate of Article 311(2) of the Constitution as also the requirements of the principles of natural justice. The Apex Court has laid down that the enquiry report has to be furnished to the delinquent employee at a stage prior to when the disciplinary authority forms any conclusion regarding the guilt of the employee. The rationale behind the aforesaid law laid down by the Apex Court is that the disciplinary authority is required to form its opinion as regards the culpability of the delinquent employee on the report of the enquiry officer and other materials on record. Therefore, in compliance with the requirement of affording a reasonable opportunity to the delinquent employee such employee must have an opportunity to represent his case before the disciplinary authority forms any opinion in the matter. While laying down the aforesaid law, the Apex Court has also dealt with the consequences that would follow in a case where the report of the enquiry is not furnished. In that context, the Apex Court has held that merely because of the enquiry report has not been furnished, it would not be correct to mechanically set aside the order of punishment. The non-furnishing of a copy of the enquiry report has to be examined in the context of prejudice that is caused and only in the event the Court is satisfied that prejudice in fact has been caused. It will be open for the Court to interfere with the order of punishment imposed. In view of the aforesaid law as laid down by the Apex Court in the case of Managing Director, ECIL (*supra*), this Court is of the view that in the instant case, the delinquent employee namely, the writ petitioner having admitted the charges brought against him, the non-furnishing of a copy of the enquiry report has not caused any prejudice to him and, therefore, notwithstanding the aforesaid lacuna on the part of the disciplinary authority the punishment Imposed in the instant case would not be liable to be interfered with on the above-stated ground.

6. Having negatived the claim of the writ petitioner on the first count, this Court has next to consider the question as to whether the punishment imposed on the petitioner in the instant case is so grossly disproportionate and so shockingly excessive that the conscience of the Court is disturbed. The yardstick as mentioned above can safely be accepted as one undisputed situation where the writ power can be exercised to interfere with the punishment imposed. The petitioner had been absent without permission or leave in a quick succession on as many as three different occasions. He was a member of an Armed Police Battalion which undoubtedly is a highly disciplined force. The petitioner may have good reasons for his absence but such absence ought to have been preceded by taking requisite permission or leave from the competent authority. In fact, it has

been recorded in the course of the enquiry in the statements of the other witnesses that if the petitioner had genuine difficulties which compelled him to remain absent, he should have taken permission from the authority. Condonation of such acts of Indiscipline by a member of disciplined force may amount to causing serious Imbalance in the administrative system. In view of the aforesaid facts, this Court is of the considered view that the punishment Imposed on the petitioner cannot be termed to be grossly disproportionate or shockingly excessive. The Court is fortified in its above conclusion by the decision of the Apex Court in the case of U.P. v. Ashok Kumar Singh (supra) as relied on by Mr. Sailo, learned State counsel. In the aforesaid decision, the Apex Court did not approve the views of the Allahabad High Court in imposing a lessor punishment on the delinquent employee on facts somewhat similar to the facts of the present case. In view of the foregoing discussion and for the aforesaid reasons, there is no merit in this writ petition and the same shall stand dismissed but without any costs.