
(2005) 03 GAU CK 0060
In the Gauhati High Court

Phaningsang

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Citation : (2005) 03 GAU CK 0060

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : S.Risom, Md.Jalaluddin, Advocates appearing for Parties

Judgement

1. This is the second time, petitioner approached this Court against the action taken up by the respondents for unauthorized absence of 29 hours from duty between 9.8.87 to 10.8.87.

2. Heard Mr. S.Risom, learned counsel for the petitioner and Mr. Jalaluddin, learned GA for the respondents.

3. The petitioner was dismissed from service on 4.9.87 after serving more than 20 years on the ground that he was absent from duty for 29 hours between 9.8.87 to 10.8.87. Against the said dismissal order, the petitioner approached this Court by filing writ petition being CR No. 874 of 1993. This Court disposed of the said CR No. 874/93 by passing judgment & order dated 17.12.98 to the effect that

?.. .. it appears that the petitioner who had been working for more than 20(twenty) years uniform service as Lance Naik in Manipur Rifles was dismissed after Department enquiry. The only article of charge is that he was unauthorisely absent for one or two days (29 hours). Without going into further details, it is an instance which shocks the judicial conscience. The punishment awarded is therefore, quashed. The matter is remitted to the authority concerned to pass an appropriate minor penalty which may be nominal considering the nature of the case.

This may be done within a period of 2 (two) months and the authority concerned is directed to reinstate the petitioner forthwith. Regarding back wages it is left to the wisdom of the Departmental authority.?

4. In pursuance of the order of this Court dated 17.12.1998 passed in CR No. 874/1993, the Commandant 7 Bn.M.R., Khabeisoi, Manipur issued order being No. A1/4/987MR, Khabeisoi 3.2.99 for reinstating the petitioner to his former post of L/Naik with immediate effect from the date of his joining duty on 3.2.99 and intervening period from the date of his dismissal to the date of joining service on reinstatement i.e. 4.9.87 to 2.2.99 is declared as Dies non (EOL). The petitioner being aggrieved by the portion of the said order of the Commandant dated 3.2.99; the intervening period from the date of his dismissal to the date of joining service on reinstatement i.e. 04.05.1987 to 03.02.1999 is declared as DIESNON (E.O.L)? filed representation dated 31.3.99 to the DIG (OPSI) Police Headquarters, Imphal (Annexure A./4 to the writ petition) to reconsider his case for payment of some backwages for the said period between 4.9.1987 to 2.2.99. The petitioner again filed another representation dated 10.1.2000 to the D.G.P., Manipur requesting for a direction to the concerned authority to release backwages from 4.9.87 to 3.2.99. The petitioner again approached the D.G.P., Manipur vide representation dated 23.5.2000 to consider his case for payment of backwages for the period between 4.9.87 to 2.2.99.

5. It is settled law that not only Supreme Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty shocks the conscience of the Court and if, the punishment imposed is shockingly disproportionate to the charge held prove against the employee, it will open to the Court to interfere. In this regard we may refer to the decision of the Apex Court in (1) UP State Transport Corpn & Anr Vs. Mahesh Kumar Mishra reported in 2000 (3) SCC 450, (2) Dev Singh Vs Punjab Tourism Dev Corpn Ltd & Ors reported in (2003) 8 SCC 9, (3) Om Kumar & Anr Vs. Union of India reported in (201) 2 SCC 386 and (4) Sayeed Zaheer Hussain Vs Union of India & Ors reported in (1999) 9 SCC 86. In this case, this Court considering that the extreme punishment of removal from service imposed to the petitioner for the said unauthorized absence of 29 hours, is shockingly disproportionate to the charge held prove had allowed CR No. 874/93 by passing judgment & order dated 17.12.1988 by quashing the dismissal order and also directing the respondents to reinstate the petitioner forthwith but regarding backwages it is left to the wisdom of the Departmental authority. It is well settled principles of law that even for taking decision regarding payment of backwages of the employee at the wisdom of the concerned authority, the concerned authority has to exercise its wisdom on the sound principles of law, reasonably and fairly which are the requirements of Article 14 of the Constitution of India. In this case, it is a clear fact that the petitioner did not work and/or discharge his duty for the period between 4.9.87 to 2.2.99 because of the contributory actions of both the petitioner and respondents. In a case where the employee, for unauthorized absence of 7 days, the disciplinary authority had issued extreme penalty of

removal from his service, the Apex Court passed the order for setting aside of the dismissal order and also observed that: "punishment which would involve a substantial loss to the employee will meet the ends of justice and will be a sufficient correction measure for the employee. Monetary loss to the extent of 50 % of backwages will meet the ends of justice. (emphasis supplied) Reference: Sayeed Zaheer Hussain (supra).

6. The Apex Court in *Pyare Lal Sharma Vs Managing Director and Ors* reported in (1989) 3 SCC 448 had discussed about the quantum of backwages to be paid to the employee on his reinstatement and held that:

"when the termination order is set aside by the Court normally the servant becomes entitled to backwages and other consequential benefits. This case has a chequered history. From 1976 onwards there has been continuous litigations and mistrust between the parties. The facts which we have narrated above go to show that Sharma has equally contributed to this unfortunate situation. In view of the fact and circumstances of this case we ordered that 60% of the backwages be paid to Sharma. Money already received by Sharma under order of this Court or the High Court shall be adjusted and balance money paid to him. If the money already paid to Sharma is more than what we have ordered then there shall be no recovery from him." (emphasis supplied)

7. As stated above, nondischarge of duties by the petitioner for the period between 4.9.87 to 2.2.99 was not the only for fault of the petitioner but also for the punishment imposed by the respondents from removal of service which was found to be shockingly disproportionate to the Article of charge for unauthorized absence of 29 hours to the conscience of this Court. But while reinstating the petitioner to his service under the said order of Commandant, 7 Bn.Manipur Rifles, Khabeisoi dated 3.2.99 the period between 4.9.87 to 3.2.99 had been declared as diesnon. After careful discussion of the decision of the Apex Court in *Pyare Lal Sharma* (supra) and *Sayeed Zaheer Hussain* (supra) this Court is of the considered opinion that the petitioner should be entitled to get at least some percentage of backwages i.e. between 20% and 50% of the backwages for the period from 4.9.87 to 2.2.99.

8. Accordingly, the respondents are directed to pay 20% of the backwages to the petitioner for the period between 4.9.87 to 2.2.99 within a period of 4 (four) months from the date of receipt of this order. Writ petition is disposed of accordingly. No order as to costs.