
(2008) 08 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition No. 60 of 2007

R. Kapzauva

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (2009) 4 GLT 109

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : S.N. Meitei, for the Appellant; Helen Dawngliani, for the Respondent

Final Decision : Dismissed

Judgement

H. Baruah, J.—The order dated 16.01.2006 bearing Memo No. C.18011/14/2003 - EDN, Part-I issued by the Principal Secretary, Government of Mizoram, School Education imposing minor penalty to the Petitioner with holding his promotion for a period of 5 (five) years with immediate effect and dismissal of the statutory appeal filed by the Petitioner on 01.02.2006 before the Chief Secretary to the Government of Mizoram, Aizawl vide order dated 24.05.2007 under Memo No. C.18011/14/2003-EDN, Part-I under the hand and seal of the Principal Secretary to the Government of Mizoram, School Education are the subject matters of challenge in this present petition.

2. The Petitioner was appointed as Circle Education Officer (for short CEO) on 10.03.1981 and since then he had been discharging his duties dedicatedly and with strong devotion. Vide order dated 24.09.1990 the Petitioner was confirmed to the post of CEO in SDEO West. Vide notification dated 23.12.1996 the Petitioner was promoted to the post of ADEO, Aizawl West and thereafter transferred to the SDEO, Aizawl East-I and while discharging his duties as such he was served with a Memorandum of Charges dated 03.12.2003 proposing to

hold an inquiry against him and two other persons by a common proceedings under Rule 14 of the CCS (CCA) Rules, 1965. The said Memorandum was accompanied by article of charges, which are reproduced as under:

ARTICLE-I

That the aforesaid Shri R. Kapzauva, Shri A. Rothanga and Smt. Evelyn Lalnipuii, while functioning as SDEO and LDC East-II Sub Division during the period from 12.09.98 to 31.12.2002 in Aizawl incurred an expenditure in excess of allotment of fund by Rs. 59,898.8 teachers were paid condonation arrear whose educational qualification were not yet condoned by the Government. By their above act, they have violated financial norms and exhibited gross negligence of duty thereby contravened the provisions of Rule 3 of CCS (Contract) Rules, 1964.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the aforesaid persons incurred and excess drawal of Rs. 98,532/ -. The excess expenditure was booked for the salary head. This diversion of fund from one head of account to another is highly irregular. By their above act, they have exhibited gross negligence of duty thereby violating the provisions of Rule 3 of CCS (conduct) Rules. 1964.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the aforementioned persons prepared and drawn condonation arrear and selection grade arrear of 3 teachers of the same basic pay resulting in double/excess payments. By their above act, they have exhibited gross negligence of duty thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

3. Having been received the Article of Charges along with the Memorandum, the writ Petitioner submitted his written statement of defence on 22.12.2003 wherein he denied all the charges. An Inquiry Officer was appointed to hold an inquiry to the article of charges brought against this writ Petitioner and two others. The Inquiry Officer during the course of inquiry had given reasonable opportunity to the writ Petitioner as well as others two to project their cases in other words defend them as against the article of charges. The Inquiry Officer after due submitted the inquiry report holding that Charge No. 1 and Charge No. 3 have been proved against the writ Petitioner and two others, while Charge No. 2 is stated to have been partially proved. The disciplinary authority after receipt of the inquiry report issued a second show cause to the writ Petitioner and two others as to why punishment should not be awarded against them. The delinquent officers including the writ Petitioner submitted their respective explanation wherein the writ Petitioner admitted that he put his signature in two bills on two different occasions. The disciplinary authority after due consideration of the explanation so submitted by the delinquent officer including the findings of the Inquiry Officer, awarded punishment as herein before stated with-holding

their promotion for five years.

4. Being aggrieved thereby, the writ Petitioner and Smt. Evelyn Lalnipuii filed statutory appeal before the Chief Secretary, Government of Mizoram, who after due consideration of the entire materials on record maintained the punishment awarded to the writ Petitioner by the disciplinary authority. However, after personal hearing of Smt. Evelyn Lalnipuii, she was exonerated by the appellate authority. The punishment abated on account of death of the other delinquent officer namely Sri Audie Rothanga.

5. The Article of Charges formulated against delinquent officer including the writ Petitioner were that the writ Petitioner, Sri Audie Rothanga (since deceased) and Smt. Evelyn Lalnipuii were discharging their functions as SDEO and LDC in Aizawl East-II sub-division during the period from 120901998 to 31.12.2002, the department incurred an expenditure in excess to the tune of Rs. 59,898/- for payment of condonation arrear to eight teachers whose educational qualification were yet to be condoned by the Government; during the said period while discharging as such incurred an excess drawal for Rs. 98,532/- made through diversion of the fund from one head to another which is highly irregular and also prepared and drawn condonation arrear and selection grade arrear of three teachers resulting excess payment. By their acts, it was alleged that they violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

6. In this present writ petition we are not concerned with the cases of other two delinquent officers who were equally punished by the disciplinary authority on the basis of the inquiry report submitted by the Inquiry Officer. One of the two, Smt. Evelyn Lalnipuii was exonerated, however, by the appellate authority after due hearing and consideration of the facts, show cause, Memorandum of Appeal etc. Hereinbefore, it is stated that the punishment awarded against the other delinquent officer namely Audie Rothanga abated on account of his death. The 3rd delinquent, the present Petitioner is now before us seeking setting aside of the order awarding punishment with holding his promotion for five years with immediate effect approved by the statutory authority.

7. In support of this writ petition Mr. S.N. Meitei, learned Counsel submitted that this writ Petitioner is discriminated since he was not equally treated along with other delinquent officers, although all were held guilty under the charge and similarly situated. The manner in which the appeal proceeding was disposed of filed by the writ Petitioner and other delinquent namely Smt. Evelyn Lalnipuii is not at all appreciable which apparently gives an inference of biasness. The appellate authority on having been filed statutory appeal by the writ Petitioner and Smt. Evelyn Lalnipuii, LDC-cum-Cashier were not given equal treatment in the matter of personnel hearing. The appellate authority audienced her and after taking all matters in its entirety exonerated her holding that cashier had nothing to do in the preparation of the bills through which arrear amount was withdrawn from the bank. When Smt. Evelyn Lalnipuii was given a personnel audience, the writ Petitioner also ought to have been heard in person. Had he been heard

personally unlike Smt. Evelyn Lalnippii he could perhaps have been exonerated from the punishment awarded by the disciplinary authority. The step motherly treatment on the part of the appellate authority according to Mr. S.N. Meitei, learned Counsel for the writ Petitioner is not appreciable and acceptable.

8. There is no denial from the side of the Respondents that while disposing the statutory appeal filed by writ Petitioner and Smt. Evelyn Lalnippii no personnel hearing was given to the lady delinquent officer. This aspect of the matter is also apparent from the order passed by the appellate authority. When both the delinquent officer including the other (since deceased) were equally situated and in the same campus, the Appellant authority ought to have given equal treatment to each them. When one was allowed to give a personnel audience, the same treatment ought to have been offered to the other delinquent officer equally situated. This goes to infer according to Mr. Meitei bias on the part of the appellate authority.

9. It was also argued by Mr. Meitei that during the relevant period from 30.4.2002 to 30.6.2002, the writ Petitioner was on leave. He was also on leave from 23.2.2002 to 12.4.2002 due to his kidney trouble. He was bed ridden at that time. During his absence another officer was holding the charge of the writ Petitioner and during his tenure bills were prepared and amount had been withdrawn. Mr. Meitei, in support of this contention, has led us though Medical Certificate (Annexure-17) series. The Inquiry Officer while analyzing the evidence of the witnesses recorded during the departmental proceeding held against this writ Petitioner and others rejected the claim of leave of the writ Petitioner from 23.2.2002 to 12.4.2002 on the ground that no supporting documents have been proved by the writ Petitioner to substantiate that he was on leave during the period. During the period of alleged leave, the writ Petitioner signed Bill No. 149 Viz Bill No. 136 of 6.3.2002 for Rs. 18,309/- and Bill No. 143 of 19.3.2002 for Rs. 30,362/- and all other bills were signed by Pu Robert Romawia Royte, CEO, who took over the charge during his absence. This admission is very apparent from his reply to the second show cause in respect of Article No. 1. As against the charge under Article No. 2, the writ Petitioner also admitted to have signed Bill Nos. 148, 149 and 150 dated 20.3.2002 while under the Charge No. 3 he admitted to have put his signature in Bill No. 149 on 20.3.2002. The Medical Certificate (Annexure-17) also speaks for that from 22.2.2002 he was receiving treatment as an out patient in Greenwood Hospital, Bawngkawn, Aizawl and per this certificate it is noticed that he was advised periodical check up between 22.2.2002 to 1.7.2002. He was referred to CMC, Vellore, for further investigation and treatment for Nephrectomy (L). This Medical Certificate (Annexure-17) also lends support to the findings of the Inquiry Officer that the writ Petitioner was not bed ridden or under going treatment as an indoor patient from 23.2.2002 to 12.4.2002 and during this period he admittedly signed the bills numbering two. The disciplinary authority while considering the report submitted by the Inquiry Officer and the statutory appeal together with the explanation submitted by the writ Petitioner considered the fact of admission and recorded a finding of guilt of

the charge. The appellate authority also rejected his appeal considering all the facts and circumstances and admission of the writ Petitioner.

10. Mrs. Helen Dawngliani, learned Govt. Advocate for the State Respondents submitted that the writ Petitioner being the DDO was negligent in discharge of his duties entrusted to him. Admittedly bills were prepared by concerned LDC and signatures were obtained from the DDO for presentation of the bills to the treasury. Being a DDO it was his bounded duty to look into the correctness of the bills so prepared by his subordinates and any dereliction of such duties so attached to would made him responsible for drawl of the money from the bank through treasury. The DDO must be very vigilant in every respect while dealing with bills, putting his signatures thereon for the purpose of presentation of the same to the treasury. The allegation that arrear bills were prepared in excess and those bills were signed by the writ Petitioner, apparently go to show that the writ Petitioner did not apply his mind to the correctness of the bills prepared by his subordinates. This attributed negligence and dereliction in duty as a drawing and disbursing officer. It is evident from the records that for a certain period, some one else, was discharging the duties as DDO while the writ Petitioner was on medical leave. The appellate authority while disposing the appeal preferred by this writ Petitioner and Smt. Evelyn Lalnipuui, directed the appropriate authority to draw up a disciplinary proceeding as against the officer who was in charge of DDO during the absence of this writ Petitioner.

11. Now the question is whether the writ Court has got the authority to act as an appellate Court in respect of findings and punishment awarded in a disciplinary proceeding. A judicial review by a writ Court under Article 226 of the Constitution of India is permissible when the findings of the Inquiry Officer are perverted, affected with patent error on the face of the record and not in accordance with law. The issue before us whether the findings of the Inquiry Officer appointed for inquiry of the charges levelled against the delinquent officers including the writ Petitioner are perverted and not in accordance with law. It is an admitted fact that the writ Petitioner took part in the disciplinary proceeding and he was given reasonable opportunity to defend him in respect of the charges levelled against him. But despite such opportunity, the writ Petitioner shyed away from adducing any evidence in support of his case or cross examining the witnesses produced by the disciplinary authority, which goes to show that the writ Petitioner was reluctant to proceed with the disciplinary proceeding in the manner in which he ought to have proceeded with. All reasonable opportunity was given to him and in such situation it would be wrong to say that findings of the Inquiry Officer are perverted and patently erroneous. Therefore, the scope of judicial review by writ Court of the findings of the Inquiry Officer in a Departmental proceeding have been narrowed down when findings are not perverted, affected with patent error or based on no evidence and against the laws and the rules. Disciplinary proceeding against the writ Petitioner and other delinquent officers started/proceeded following the rules and there is no challenge to that effect from the Petitioner said.

12. In paragraph 20 of the case in between Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, the Hon"ble Apex Court held as under:

20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. State of A.P. v. S. Sree Rama Rao, State of A.P. v. Chitra Venkata Rao, Corpn. of the City of Nagpur v. Ramchandra and Nelson Motis v. Union of India.

13. In para 7 of the judgment in the case between the State of U.P. and others Vs. Nand Kishore Shukla and another, the Hon"ble Apex Court held as under:

7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the Respondent to disable him from seeking any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.

14. All the facts and circumstances appearing in the face of record it palpably makes it clear that the findings of the Inquiry Officer are not perverted and against the law, therefore, the scope of this writ Court has been limited. A writ Court cannot sit as an appellate Court and it has no authority to scrutinize all the facts and circumstances and evidence on record unless the same is found to be perverted and against the law. The perversity in the findings of the Inquiry Officer has not crept in and, therefore, this writ Court cannot pursue the entire matter including the scrutiny of the evidence on record. The findings of the Inquiry Officer are based on facts and evidence and, therefore, this Court is unable to accept the submission of Mr. S.N. Meitei, learned Counsel for the writ Petitioner.

15. The next issue is whether the punishment awarded by the disciplinary authority to the writ Petitioner is commensurate with the charges alleged and proved against him/them. In this context it was submitted by Mr. S.N. Meitei, learned Counsel for the Petitioner that the punishment awarded to the writ

Petitioner appears to be not proportionate to the charges proved against him. That apart the punishment awarded to one of the delinquent officers (Smt. Evelyn Lalnpuui) including this present writ Petitioner was exonerated by the appellate authority after personal hearing. It was also argued by Mr. S.N. Meitei that when the Petitioner as well as Smt. Evelyn Lalnpuui stood at the same footing and when she was exonerated from the punishment at least the appellate authority could have maintained an equilibrium by reducing the punishment to some extent in respect of the present writ Petitioner. All the delinquent officers when faced the same article of charges for their acts and omissions, were required to be treated equally and there should not be any discrimination. According to Mr. S.N. Meitei, the punishment awarded to the writ Petitioner is disproportionate to the charges levelled and proved against him. Awrit Court while making a judicial review of penalty/punishment awarded in a departmental inquiry, principle of proportionality when can be invoked has been discussed in the case between State of Karnataka and Others Vs. H. Nagaraj,

16. In paras 2 and 3 of the judgment the Hon''ble Supreme Court held as under:

2. We fail to see how the Tribunal, when it upheld the enquiry could have interfered with the quantum of punishment in this fashion. As far back as in 1989, this Court in the case of Union of India v. Parma Nanda (SCR at p. 30) held that the jurisdiction of the Tribunal to interfere with disciplinary matters and punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or the Competent Authority where the findings of the Enquiry Officer or the competent authority where they are not arbitrary or utterly perverse. The Court said: (SCC p. 189, para 27).

It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

3. The same view has been reiterated in a more recent decision of this Court in Union of India v. G. Ganayutham. This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. Such is not in the present case. Hence, the order of the Tribunal which is impugned before us is set aside and the order of the appellate authority is restored. The appeal is accordingly allowed. No costs.

17. The principle of proportionality can only be invoked in cases where punishment is totally irrational, outrageous defiance of logic or moral standards. Unless all these things come in together, the principle of proportionality, can not be introduced by a writ Court while exercising power under Article 226 of the Constitution. In this present case, the writ Petitioner was awarded punishment of five years with holdment of promotion with immediate effect on proof of Article

of Charges as contained in the inquiry report. The charges alleged and proved as well as punishment awarded thereby cannot be apparently said to be disproportionate. This Court, therefore, does not see any reasonable ground to apply the principle of proportionality.

18. This writ petition is devoid of merit and it is dismissed accordingly. No cost.

19. However, the writ Petitioner will be at liberty to make a representation before the appropriate authority, for reduction/ exoneration of penalty awarded to him by the Disciplinary Authority, if so advised.