

(1999) 12 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 42 of 1998

R.C. Lalrinthanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)
Constitution of India, 1950 — Article 311(2)
Penal Code, 1860 (IPC) — Section 34, 381, 409, 411

Citation : (2000) 1 GLT 274

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : H. Lalringthanga, for the Appellant; N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—In this writ petition the Petitioner has challenged the order of dismissal passed by the Principal of Police Training Centre, the Disciplinary Authority, under Article 311(2)(b) of the Constitution of India dispensing with regular enquiry as contemplated under Article 311(2).

2. I have heard Mr. H. Lalringthanga, learned Counsel for the Petitioner and also Mr. N. Sailo, learned Government Advocate, Mizoram.

3. It would appear that the Petitioner was indicted in a criminal case i.e. G.R. 744/98 u/s 381/411/34 I.P.C. read with Section 25 of the Arms Act. During the course of the trial, the Petitioner was dismissed from service as aforesaid. Subsequent to his dismissal, the Petitioner was also acquitted of the charge levelled against him in the said criminal case vide order dated 18.8.1999. According to Shri Lalrinthanga, learned Counsel for the Petitioner the approach of the Respondent State in dismissing the writ Petitioner after dispensing with the requirement of regular enquiry is void as no order proceeding the order of dismissal was passed in order to justify the dispensation of the enquiry. Shri Lalringthanga also pointed out that the Petitioner was a Havildar in the Police

Department and he was also facing trial in a criminal case of certain charges which are not so grave in nature and this alone cannot form the basis for dispensing with the requirement of regular enquiry.

4. In support of his contention the learned Counsel for the Petitioner has referred to a decision in *Union of India and Another Vs. Tulsiram Patel and Others*, wherein the Supreme Court dealt with the scope and limit of powers under Article 311(2)(b) of the Constitution.

5. It is considered necessary to quote herein below the observation made by the Supreme Court for better appreciation of the case at hand:

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply Clause (b) of the second proviso because the word "inquiry" in that clause includes part of any inquiry. It would also not be reasonably practicable to afford to the Government servant an opportunity of hearing or further hearing as the case may be, when at the commencement of the inquiry or pending it the Government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex-parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under Clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the Government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of Clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final

order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of Clause (b) of the second proviso. For instance, it would be no compliance with the requirement of Clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

6. It would appear from the observation in para-133 quoted above that the disciplinary authority must record in writing its reason for drawing the satisfaction that it was nor reasonably practicable to hold the inquiry contemplated in Article 311(2). According to the Supreme Court, this is a constitutional obligation and in the event where no such reason is recorded in writing, the order dispensing with the inquiry and the penalty imposed will both be void and unconstitutional. In para-134 the Supreme Court also made it clear that the reason for dispensing with the inquiry need not be in details, but it must not be vague or just a repetition of the language of Clause (b) of the second proviso. It is, therefore, considered necessary to refer to the order passed by the Disciplinary Authority dispensing with the inquiry before the impugned order of dismissal was passed. A copy of this order was produced by the learned Government Advocate during the course of argument. The reason recorded in writing reads as follows:

A case No. BKN P.S. C/No. 249/98 Dt. 21.4.98 u/s 409/411/34 IPC R/W 25(1)(a) Arms Act has been registered at Bawngkawi P.S. Aizawl Dist. against Hav. R.C. Lalringthanga Armourer of P.T.C. unit Lungverh for theft misappropriation of 1300 rds. of live ammunition of 303 Rifles by him from the quarter guard of PTC, Mizoram Police.

On receipt of source information and secret report of SP CID (SB) it was found that the defaulter Hav. R.C. Laringthanga was indulging in activities prejudicial to the interest of the State.

On careful and deliberate perusal of the records, the undersigned has come to the conclusion that the defaulter is not a fit person to be retained in service due to his activities and his further retention for even a short duration will lead to further damage to the interest of the state. Thus it is not reasonably practicable to hold a formal Departmental enquiry against him without further damaging the interest of the state and may also lead to the disclosure of State Secrets and the identity of the sources.

Hence, it is hereby ordered by the undersigned that under Article 311(2)(b) of the Constitution of India, the defaulter Hav. R.C. Lalringthanga of P.T.C. is "Dismissed" from service with immediate effect.

Put up dismissal order as directed.

7. From the order quoted above, it would appear that the Disciplinary Authority has mentioned of theft and mis-appropriation of 1300 rounds of live ammunition by the Petitioner, but this observation is with reference to the criminal case where the Petitioner was indicted and subsequently acquitted by the learned Magistrate for want of prima-facie case. That apart, the Disciplinary Authority has relied upon source information and secret report that the Petitioner was indulging in activities prejudicial to the interest of the State. But the nature of activities indulged in by the Petitioner and considered to be prejudicial to the interest of the State have not been reflected in the order. It appears that the Disciplinary Authority did not apply mind in its proper prospective while passing the order dispensing with the requirement of inquiry under Article 311(2)(b). Therefore, the order passed by the Disciplinary Authority appears to be vague and without sufficient reason. The apprehension that State secrets will be disclosed if the departmental inquiry is held on the charge of theft of ammunition does not sound reason for dispensing with the departmental enquiry. This Court is not in a position to appreciate as to why a regular disciplinary proceeding was not possible and reasonably practicable to be held in this case. Therefore, the order of dismissal dated 6.5.1998 cannot be sustained in law.

8. In the result, this petition is allowed and the impugned order, referred to above, is hereby set aside. The Respondents are directed to reinstate the Petitioner in service immediately. So far back wages and other allowances are concerned, the matter is left to the disciplinary authority/appointing authority for taking a decision. It is further made clear that the disciplinary authority is not stopped from proceeding afresh by initiating Departmental Proceeding in compliance with the requirement of Article 311(2) of the Constitution.

No order as to costs.