
(2010) 04 GAU CK 0067
In the Gauhati High Court
Case No : Writ Appeal No. 35 of 2009

Salam Kesho Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 384, 511
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (2011) 1 GLT 287

Hon'ble Judges : Mutum B.K. Singh, J; Mabam B.K. Singh, J

Bench : Division Bench

Advocate : A. Romenkumar, for the Appellant; Th. Ibohal, Sr. G.A., for the Respondent

Final Decision : Allowed

Judgement

Maibam B.K. Singh, J.—Heard Mr. A. Romenkumar, learned Counsel appearing on behalf of the Appellant and Mr. Th. Ibohal, learned senior Government Advocate appearing on behalf of the State Respondents.

2. There is no dispute in respect of the following essential facts:

The Appellant, who was serving as a Rifleman of C-Coy, 7 Battalion Manipur Rifles was placed under suspension vide order dated 25.03.2002 passed by the Commandant, 7th Battalion Manipur Rifles, purportedly on receipt of a report from the Superintendent/ Imphal West on 24.03.2002 about the Appellant-writ Petitioner having been asserted in connection FIR Case No. 104 (3) 2002 IPS u/s 384/511/34 IPC and 10/13 UA (P) Act and remanded to police custody from 24.03.2002 to 30.03.2002. However, he was reinstated to his service with immediate effect vide order dated 29.8.2002 passed by the Commandant without prejudice to the Departmental Enquiry proposed to be proceeded against him. On 10.06.2002, a memorandum was issued by the Commandant regarding the said departmental inquiry by enclosing the substance of the imputation of misconduct

or misbehaviour, statement of articles of charges and other necessary information. The enquiry was made by the Dy. Commandant, 7th Battalion Manipur Rifles and basing on the findings of the Enquiry Officer dated 11.12.2003, the Appellant-writ Petitioner was terminated from service vide order dated 04.10.2004 passed by the Commandant, 7th Battalion, Manipur Rifles. An appeal filed as against the said order of the Commandant, 7th Battalion Manipur Rifles was dismissed on 23.09.2005. Thereafter, the Appellant-writ Petitioner filed WP (C) No. 236 of 2006 praying for quashing the findings of the Enquiry Officer dated 11.12.2003, the order of the Commandant, 7th Battalion Manipur Rifles dated 04.10.2004 and the order of the appellate authority dated 23.09.2005. In effect, the case of the Appellant-writ Petitioner was that the said Departmental Enquiry was not proceeded fairly, in accordance with the relevant rules and in compliance with the principles of natural justice. The Learned Single Judge rejected the said writ petition, vide the impugned judgment and Order dated 16.04.2009, holding that the enquiry had been conducted fairly, without bias and with due compliance with the relevant rules, and as such, no interference was warranted in respect of the impugned orders by invoking the provisions of Article 226 of the Constitution.

3. This appeal has been filed challenging the legality of the judgment and Order of the Learned Single Judge dated 16.04.2009, on various grounds. Mr. A. Romenkumar, learned Counsel appearing on behalf of the Appellant-writ Petitioner submits that though the Appellant-writ Petitioner raised the issues of non-appointment of any presenting officer in the enquiry and as such of vitiating the said inquiry, the Learned Single Judge did not consider the issues. On the other hand, Mr. Th. Ibohal, learned senior Govt. Advocate submits that the said issues have been raised for the first time in this appeal. On perusal of the pleadings of the writ Petitioner-Appellant, we have ascertained that there was an allegation about "the Enquiry Officer taking the role of the Presenting Officer, i.e. the role of a Judge as well as a Prosecutor". Though the said wordings are not happy, we are of the opinion that the said pleadings of the writ Petitioner-Appellant are to the effect that no Presenting Officer was appointed in the said enquiry. Even assuming that the said issue of non-appointment of Presenting Officer in the enquiry has been raised for the first time, for the said issue of law, examination of evidence or investigation of the facts is not required.

4. In *Rajeswari Amma and another Vs. Joseph and another*, the Hon''ble Apex Court held that new plea regarding the question of law could be raised for the first time before the Hon''ble Supreme Court. A division Bench of this Court in *W.A. No. 58 of 2007* held on 19.11.2008 to the effect that question of law regarding the legality or otherwise of disciplinary proceeding in the absence of a Presenting Officer and also regarding violation of law of fair play in the absence of Presenting Officer in a Departmental Enquiry could be raised in appeal. In *M. Ibohal and Ors.. v. State of Manipur and Ors..*: 2009 (6) GLR 507, this Court held to the effect that there was no acceptable reason as to why the plea of non-appointment of a Presenting Officer in respect of the Departmental Enquiry

against the Appellant-writ Petitioner should not be considered in the appeal.

5. In the present case, there is no dispute that no Presenting Officer was appointed. This fact is confirmed from the relevant record of the disciplinary proceeding produced by the learned senior Govt. Advocate. It is well settled that an Enquiry Officer cannot assume the role of a Judge and also a Prosecutor. Even if the relevant service rules is silent about the appointment of a Presenting Officer, absence of a Presenting Officer will make the enquiry totally vitiated as the Enquiry Officer cannot be allowed to assume the role a Judge as well as a prosecutor. In this connection, we may refer to various decisions of this Court, such as *Dr. Rayja Mallu Buzar Barua v. Assam Administrative Tribunal and Ors.*: 1983 (1) GLR (NOC) 71, *Chelfrumog v. State of Tripura and Ors.*: 2002 (2) GLR 604, *Baharul Islam (CT) v. Union of India and Ors.*: 2001 (1) GLT 621, *State of Manipur and Ors. v. Chongtham Homendro Singh*: 2005 (3) GLT 154. In *Kumar Madal Vikar Nigam Limited v. Giriya Shankar Pant and Ors.* (2001) 1 SCC 182, the Apex Court held the same effect. In the *State of U.P. and Others Vs. Saroj Kumar Sinha*, the Hon"ble Apex Court held to the effect that an Enquiry Officer acting in a quasi-judicial authority is in a position of an independent adjudicator, and as such, he is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved.

6. We have also ascertained that the findings in the Departmental Enquiry were based on the basis of the statements of witnesses, who were never cross-examined. No doubt the Appellant-writ Petitioner was given an opportunity to appoint his defence assistant but no Presenting Officer was appointed by the authority in connection with the said enquiry. In our opinion, the proceeding of the said enquiry as against the Appellant-writ Petitioner was not proceeded fairly inasmuch as the said was made in violation of the principles of natural justice. The impugned dismissal order passed on the basis of the findings in the enquiry is not sustainable in the eye of law. The impugned order of the appellate authority was not also passed after due consideration of any of the points required to be considered under Rule 66 (vi) of the Assam Police Manual Part III, and as such, it was passed without due application of mind. The learned Single Judge also ignored the vital issue of non-appointment of Presenting Officer in the said enquiry.

7. In the result, the impugned findings of the Enquiry Officer, the dismissal order and the impugned order of the appellate authority are not sustainable in the eye of law. The impugned judgment Order dated 16.04.2009 of the Learned Single Judge which has not interfered with the said findings of the Enquiry Officer, the impugned termination order and the impugned order of the appellate authority, is liable to interfered with and it is hereby set aside. The concerned authority may initiate a fresh enquiry against the Appellant-writ Petitioner in respect of the

relevant charges fairly and in compliance with the principles of natural justice within a reasonable time which is not to be more than 5(five) months from today. If a fresh departmental enquiry is held against the Appellant-writ Petitioner, he shall be treated as under suspension from the date of passing of the impugned termination order. If no such enquiry is initiated within the period prescribed above, the Appellant-writ Petitioner is to be reinstate to his service with all the consequential benefits permissible in law.

8. This writ appeal is allowed. No order as to costs.