
(2016) 06 GAU CK 0023
In the Gauhati High Court
Case No : W.P. (C) No. 154 (K) of 2015

Sezoto Chakhesang

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Nagaland Civil Service (Discipline and Appeal) Rules, 1967 — Rule 9

Citation : (2016) 4 GauLT 256

Hon'ble Judges : Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : Mr. A. Zho, Ms. Jullian Sithou and Mr. Taka Kichu, Advocates, for the Appellant; Mr. K. Angami, G.A, for the Respondent

Final Decision : Allowed

Judgement

Paran Kumar Phukan, J.(Oral)—Heard Mr. A. Zho, learned counsel for the petitioner and also heard Mr. K. Angami, learned Government Advocate for the state respondents.

2. The expose of facts leading to the filing of this writ application are that the petitioner was appointed to the post of Constable (GD.) on temporary" basis by the Superintendent of Police, the respondent No.3 by an order dated 16.05.2007. In the year 2009, he completed basic training in Nagaland Police Training College, Dimapur (hereinafter called "NAPTC") and to that effect Commandant, NAPTC had issued completion certificate to the petitioner. Thereafter, he was posted under the respondent no. 3, Kohima for regular duty. He was again deputed for commando training at NAPTC, Dimapur with effect from 03.01.2010 to 03.03.2010 and accordingly, he reported for duty at NAPTC on 03.01.10 but due to health complications, he, with the permission from the Officer-in-Charge of the Training went to Dimapur for consultation in the Government District Hospital, Dimapur where his diagnosis was prolapsed inter vertebral disc (severe lower back pain) and his treatment continued till 30.01.10 and on the very next day he proceeded to NAPTC. But he was not allowed to join the training course

stating that he along with some other constables were declared absent from the commando training

3. However no official communication was made to him in this regard by the Commandant, NAPTC, Dimapur and he was informed that he would get order from his parent unit i.e. office of the Superintendent of Police, Kohima, Nagaland and accordingly on being approached, the Record Officer of the office of the Superintendent of Police, Kohima, handed over the photocopy on the order passed by the Commandant, NAPTC, Dimapur. After obtaining the order dated 20.1.2010 issued by the Commandant, NAPTC, he, approached the respondent No.3, Superintendent of Police, Kohima requesting him to allow him to perform his duty but his request was turned down and was verbally informed that the matter had already been processed and forwarded to the Director General of Police, Nagaland for necessary action.

4. The petitioner, thereafter, waited for a long time expecting some official communication and no such communication or order was received and later on he came to know that the Inspector General of Police (Hqr.). Nagaland, by his letter dated 20.04.2011 had written to the respondent No.3. Superintendent of Police, Kohima to convey the decision of the authority to issue one month's notice and terminate the services of the petitioner and other constables from different units as they were expelled from NAPTC" on disciplinary grounds while undergoing commando training course during the year 2010. Thereafter, also no official communication was made to him and he was running from pillar to post expecting some communication and during this period he was shunting between the office of the Director General of Police, Nagaland and the Superintendent of Police, Kohima but without any results. Having no other alternative, in the early part of 2015 he filed an application under the RTI seeking information regarding his service and in response to that application he was furnished the termination order dated 06.11.10 passed by the respondent No.3 and to his utter surprise, he found that the termination order was issued prior to the decision taken by the Inspector General of Police which was conveyed to the respondent No.3 instructing to issue one month's notice before termination.

5. Mr. Zho, learned counsel for the petitioner submits that the termination order dated 06.11.2010 was issued without service of notice and without holding any inquiry and without affording any opportunity of being heard to the petitioner and as such, the same is in violation of the principles of natural justice and the respondent No. 3 has totally disregarded the procedural safeguards as contemplated under Article 311 of the Constitution of India.

6. Mr. Zho, learned counsel further submits that the respondent No. 3 has committed manifest illegality by issuing the termination order dated 06.11.2010 even before the decision in this regard was taken by the competent authority which was communicated to the respondent No.3 only on 20.04.2011.

7. Mr. Zho inviting my attention to the order dated 20.04.2011 passed by Deputy

Inspector General of Police (Hqrs.), Nagaland has submitted that the said letter contemplated issuance of one month's notice prior to the termination but that has not been complied with by the respondent No.3.

8. Mr. Zho further contends that as per Rule 66 of the Assam Police Manual which is adopted by the Nagaland Police, major punishment cannot be passed on a member of the service without informing him in writing the grounds on which it is proposed to take action and affording adequate opportunity of defending himself. By referring to Rule 9 of the Nagaland Service (Discipline and Appeal) Rules 1967, Mr. Zho canvassed that no inquiry as envisaged under the said Rules were conducted before terminating the services of the petitioner.

9. Mr. Zho also submits that out of the nine constables who were expelled from training on disciplinary grounds, three had been taken back by their respective units and the authority concerned has shown discriminatory attitude towards the petitioner who was expelled on the same grounds from the training course.

10. Lastly, regarding the delay in filing the writ petition before this Court. Mr. Zho has submitted that the petitioner who is under matriculate was running from pillar to post and to ascertain the status of his service and he was frequenting the offices of the Superintendent of Police, Kohima, Inspector General of Police, Nagaland and the Director General of Police expecting some communication regarding his service and having failed to do so, he filed the RTI application and then only the termination order dated 06.11.2010 was furnished to him which has resulted the delay in approaching this Court.

11. To buttress his submissions, he has relied on the decisions of Apex Court and the Gauhati High Court in the following cases:

- (i) State of U.P. v. Md. Nooh (AIR 1958 SC 86),
- (ii) K.L. Shepherd v. Union of India. 1987 (4) SCC 431,
- (iii) Vallah Glass Works Ltd. v. Union of India, 1984 (3) SCC 362.,
- (iv) Lokhomao v. State of Nagaland & Ors., 2011 (2) GLT 131,
- (iv) Manju Mazumdar v. Union of India & Ors., 2008 (2) GL T 394,
- (v) Tahong Pasar v. State of Arunachal Pradesh, 1999 (3) GL T 90.

12. In the State of Uttar Pradesh (Supra), the Apex Court has held that an order passed contrary to the rules of natural justice and all accepted rules and procedure is ex-facie a nullity.

13. In K.L. Shepherd (Supra), it has been held that termination cannot be done without giving a reasonable opportunity of being heard inasmuch as, the same would be an administrative act, on the part of the State Government.

14. In Manju Mazumdar (Supra), a rifle-man overstayed leave due to illness for more than 5 years, died without reporting for duty, declared deserted and

terminated. Claim for pensionary benefits was rejected. It has been held that denial of opportunity" of being heard before termination was illegal and pensionary benefits was extended.

15. Mr. Zho by referring to the judgments of the Apex Court and the Gauhati High Court in the above cases, has strenuously submitted that the termination order was passed contrary to the rules of natural justice and all accepted rules and procedure and in violation of the provisions as contemplated under the Nagaland Services (Discipline and Appeal) Rules 1967 which cannot stand the test of law and is liable to be quashed and set aside.

16. In controversion, Mr. K. Angami learned Government Advocate submits that the petitioner without obtaining any permission from the authority concerned remained absent from the training course in NAPTC and as such, no illegality has been committed by the respondent No. 3 by terminating the services of the petitioner and also the services of the other constables who were also expelled from the institute for the same reasons.

17. The next contends that if the petitioner had any medical complication as claimed by him, he should have undergone medical treatment in the hospital attached to the training institute but that has not been done which falsifies his story of undergoing treatment in the Government District Hospital, Dimapur. He also submits that the petitioner was terminated as per Rule 7(iv) of the Nagaland Services (Discipline and Appeal) Rules 1967 which contemplates termination from service of temporary employee without assigning any reasons. While admitting that one month's notice ought to have been served, he has submitted that he has not received any instruction as to whether the notice was issued before such termination by the respondent No. 3.

18. Before adverting to the submission advanced by the learned counsel appearing for both the parties, it would be apposite to refer to the relevant Rules of the Nagaland Service (Discipline and Appeal) Rules 1967. Rule 7 is about imposing of penalties on Government servant and Rule 7 (iv) contemplates termination from service of temporary employees with one month's notice. In the instant case, admittedly no notice was issued to the petitioner before termination from service and no opportunity of hearing was given to him. Rule 9 which lays down the procedure for imposing penalties is reproduced below:

"(1) Without prejudice to the provisions of the Public Servant (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in Rule 7 shall be passed except after an inquiry, held as far as may be, in the manner herein after provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a

written statement of his defence and also to state whether he desires to be heard in person. Standard Form of Memorandum of Charge-Sheet and Memorandum are specified in Schedule IV and V."

19. In the present case, even though the petitioner was appointed temporarily but it seems that the post was not temporary. Even assuming that he was purely appointed on temporary basis then also Rule 7(iv) of Nagaland Services (Discipline and Appeal) Rules 1967 contemplates one month's notice before termination but that has not been done by the respondent No. 3. From the letter of appointment annexed with the petition also it is apparent that one month's notice was required to be served. The impugned termination order dated 06.11.2010 passed by the respondent No.3 goes to show that the petitioner was terminated from service for unauthorized absence from the training course and there is no scintilla of doubt that his expulsion from NAPTC was the reason and it has not termination simpliciter but on disciplinary ground which is obviously a stigmatic one. Although it was purportedly passed in exercise of power conferred under Rule 7(iv) of the Nagaland Services (Discipline and Appeal) Rules 1967, the said order assigned reasons for termination which is not envisaged under Rule 7(iv) of the Rules. The order clearly reveals that it was passed on disciplinary grounds without drawing any disciplinary proceeding. This order was passed by the respondent No. 3 even before the higher authority recommended termination of the services of the constables due to their expulsion from the NAPTC. Under Rule 9 of the Rules also no Government servant can be penalised until and unless the disciplinary authority held inquiry against the delinquent officer.

20. In the instant case, neither the respondent No.3, Superintendent of Police, Kohima nor the Director General of Police, Nagaland constituted any disciplinary authority to inquire into the allegations brought against the petitioner. He has pleaded that due to ailment, after obtaining permission from the In-Charge of the training institute he went to Dimapur for medical treatment and he annexed the medical certificate to show that he was undergoing treatment in Government hospital at Dimapur. Since no notice was issued and no opportunity was given and no enquiry was conducted, the petitioner never got any scope to place his grievances before the authorities. The respondent No.3 appears to have acted mechanically without applying his own mind and in my considered view, no fairness has been shown to the petitioner by terminating his service in such a casual manner in total disregard to the principles of natural justice and without following the Rules under the Nagaland Services (Discipline and Appeal) Rules. 1967.

21. Regarding the delay in filing the petition before this Court Mr. Zho relying on the decision in Vallab Glass Works Ltd. (Supra), submits that no limitation has been prescribed by law" in respect of petition filed under Article 226 of the Constitution. The relevant observation of the Apex Court is as follows:

"while there are different periods of limitation prescribed for the institution of

different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc."

22. The Supreme Court in the said case has also held that each case has to be judged on its facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite parties or to the general public etc. In the instant case it was only after filing of the RTI application the petitioner was furnished the copy of the termination order in the year 2015 and soon thereafter, he approached this court. He was a constable and he was expecting orders to be communicated to him and to obtain orders he was running from pillar to post but he failed to get any response. Under the facts and circumstances, it cannot be said that there was any laches or negligence on his part in pursuing his remedies before this Court.

23. Having regard to the facts and circumstances and having heard the learned counsels for the parties and from all my discussions above, I am of the view that the petitioner has been able to make out a case for interference by this Court. Accordingly, the impugned order dated 06.11.2010 passed by respondent No.3 is hereby set aside and quashed as illegal and not sustainable in law.

24. The respondents are directed to reinstate the petitioner in his service with immediate effect. Regarding the back wages the petitioner may approach the authorities concerned and the matter is left to the authorities for a final call.

25. With the above direction, the writ petition stands allowed.