

(2000) 02 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition No. 52 of 1999

Sh. C. Sangkhuma

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Central Civil Services (Pension) Rules, 1972 — Rule 69, 9, 9(1), 9(2)

Citation : (2000) 2 GLT 21

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra and Helen Dawngliani, for the Appellant; T. Vaiphei, Asstt. A.G., Mizoram and G. Raju, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—I have heard Mr. C. Lalramzauva, assisted by Mr. A.R. Malhotra, learned Counsel for the Petitioner. Also heard Mr. T. Vaiphei, learned Assistant Advocate General for the Respondents.

2. The Petitioner Sh. C. Sangkhuma was initially appointed as Administrative Officer (N.G. under the Government of Mizoram in the year 1974 and subsequently he was promoted in Sub Civil Service Group "B" in the year 1987. While the Petitioner was working as Administrative Officer (G) at Khawhai and in the same capacity at Lunglei, there were allegations of misappropriation of supply sale proceeds against him and as such by Office Memorandum dated 4th June, 1990 (Annexure-II) he was served with the charge sheet. The Petitioner submitted reply denying the charges. On completion of the inquiry, the Inquiry Officer submitted his report on 25th Sept. 1992. Against the report of the Inquiry Officer, the Petitioner submitted his representation on 26th April, 1993. No final order was passed on the Inquiry report and on the Petitioner's representation thereto, leading the Petitioner to presume that the disciplinary authority had

dropped the proceedings against him. The Petitioner attained the age of superannuation on 31st December, 1996 and retired from his service. In purported exercise of power under Rule 9 of CCS(Pension) Rules, 1972, the Respondent No. 2. Secretary of the Department issued a Show Cause Notice dated 31st July, 1997 to the Petitioner as to why the full pension of the Petitioner be not permanently withdrawn. The Respondents referred the matter to Mizoram Public Service Commission (M.P.S.C) as required under CCS(Pension) Rules, 1972 and on receipt of the recommendations of the Mizoram Public Service Commission, imposed penalty of permanent withdrawal of 1/3 of Petitioner's pension. The Petitioner by way of this writ petition has assailed the penalty of permanent withdrawal of his 1/3 pension.

3. The learned Counsel for the Petitioner has argued that under Rule 9 of CCS(Pension) Rules, 1972, deduction in pension of an employee can be ordered only when he is found guilty of grave misconduct or negligence during the period of service. In the instant case, the Inquiry Officer has not found the charges levelled against the Petitioner proved nor has found the Petitioner guilty of grave misconduct or negligence. Vide O.M. No. 39/43/70 Ests (A) dt. 8.1.71 issued by the Govt. of India under Rule 15 of CCS (CCA) Rules 1965, the Disciplinary Authority ought to have taken the decision on the inquiry report within a period of three (3) months. The inquiry report was submitted in September, 1972, the Petitioner submitted his representation in April 1993. The Disciplinary Authority did not take any decision in the matter, kept the matter pending and after lapse of a period of four years after the Petitioner has retired, has converted the Departmental Proceedings into proceedings under Rule 9 of CCS(Pension) Rules, 1972. By the delayed action, the Respondent have dropped the proceeding against the Petitioner and the Petitioner entertained such presumption, until he received Show Cause Notice.

4. It is relevant to reproduced Rule 9 of CCS(Pension) Rules, for the disposal of the present petition. Rule 9 is extracted here under:

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and or ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon-re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted

while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the president

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President.

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the president may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in(Rule 69) shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,:

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceeding shall be deemed to be instituted:

(1) in the case of criminal proceedings, on the date on which the complaint or report of the police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date plaint is presented in the court.

5. The two charges which the Petitioner faced in the Departmental proceedings are as under:

Article-I

Pu.C. Sangkhuma while functioning as A.O. (G) Lungdai with effect from 5.6.1987 to Sept 1989 did not deposit supply sale proceeds into Government account amounting to Rs. 90,417.00 and 2,49,793.24 being value of 1179.27 qtls of rice. He was asked to clarify the same, but he failed to submit his clarification till date. He is not at all interested in making good his outstanding liabilities.

Article-II

Pu. C. Sangkhuma while functioning as A.O. (NG) N. Vanlaiphai with effect from 18. 4.1974 to 10.2.1977 there was cash discrepancies of Rs. 1,37,200/- and the said Pu.C. Sangkhuma was responsible for this cash discrepancies. He was asked to recover the said amount, but he did not recover till date.

That the said Pu.C. Sangkhuma by his above act exhibited lack of integrity, lack of devotion to duties and conduct unbecoming of a Government servant and thereby contravening Sub-rule (i), (ii) & (iii) of Rule 3 of C.C.S. (Conduct) Rules, 1964.

In the inquiry Report dated 25th Sept, 1992, the Inquiry Authority found both the charges against the Petitioner partly proved.

6. Pension is a statutory right. An employee after having served the employer for a period of 30/35 years normally, has legitimate right to pension. Having spent his active life for such a long period, every employee aspires for social/financial security for this retired life. He can not be deprived of his pension except in accordance with the provisions of law. In the instant case, the Petitioner can be deprived of his pension wholly or in part only when in departmental proceeding or judicial proceeding, he is found guilty of grave misconduct or negligence during the period of his service. The learned Counsel for the Petitioner relied upon decision of the Supreme Court in D.V. Kapoor Vs. Union of India and others, On the other hand, the learned Assistant AG. referred to the decision of the Supreme Court in Union of India and Others Vs. Shri B. Dev, and State Bank of India and others Vs. T.J. Paul,

7. As regard charges No. n, the inquiry Officer in his finding observed that it was not possible to fix any responsibility on the Charged Officer for the alleged discrepancy disclosed in the charge. To elicit truth he suggested a joint Inquiry in the light of the sufficient material against the Charged Officer (Petitioner) and the Store-Keeper. Thereupon, as disclosed in the Counter Affidavit, a joint inquiry against the Petitioner and the Store Keeper Lalthanmawia was instituted. Subsequently the Inquiry Officer found the futility of the fresh common disciplinary proceedings against the Petitioner and the Store Keeper as such the fresh inquiry in respect of charge No. II was not held against the Petitioner. The

learned Asstt Advocate General fairly conceded mat by ordering fresh inquiry in respect of the charge No. II, the Disciplinary Authority did not accept the findings of the Inquiry Officer in the first disciplinary proceedings. On the institution of the fresh inquiry, the findings with regard to charge No. II against the Petitioner become non-est. So, at present, there is no finding against the Petitioner about his guilty of charge No. II.

8. Coming to the charge No 1. the learned Counsel for both the parties referred to the findings of the inquiry Officer, as such it is relevant to produce extracts of the report of the inquiry Officer. The findings of the inquiry Officer with regard to charge No. 1 are as under:

On the other hand, from Ext. S-I it is not at all clear as to what was the basis of calculation that the amount of unaccounted supply-sale-proceeds pertaining to Lungdai G.C. during the tenure of Pu. C. Sangkhuma turned upto Rs 3,40,210.24. Nor the audit-report of the said period along with the up-to-date-position could be made available to me. Therefore, it may not be proper on the basis of insufficient documentary evidence to hold that the charged officer along was responsible for the discrepancy. There is no iota of evidence to show mat the charged officer along used to collect sale-proceeds and was alone entrusted to deposit the same. There is every likelihood that the Store-keeper also used to do the same as per the prevailing practice. From the Ext D-I, n, in and IV, it reveals that the retailers used to deposit the sale-proceeds in advance by Treasury-Challan and then only the Delivery Orders were issued in their favour, where the A.O.'s job was simply to issue the rice as per the D.O. Considering all these aspects. it is held that neither the total amount of outstanding liability to the tune of Rs 3.40.210.24 can be accepted as correct nor the charged officer alone can be found liable. Every time such types of discrepancies crop up more in respect of Lungdai mainly because it is not the last destination centre but a transit-centre where the dispatches do not end but continue to be re-despatched to other centres-for which in no point of time perhaps, correct accounts and records of all dispatches and redispaches are kept with desirable accuracy. Neither the Directorate keeps proper accounts, nor the DCSO's Office. One may not be surprised to find doubling of figures at those different levels. The amount of adjustments of deposits to the tune of Rs. 1,37,040/- plus the value of 20 qutls of S.F. rice by the charged officer in respect of Lungdai A/C during 1987-89 need to be cross checked/verified by the concerned DCSO's office and after that only, it can, be finally accepted. No decision can be rendered on the remaining liability in view of insufficient evidence. However, it is observed" that by defying the directions of DC, Aizawl to clarify the position about the outstanding liability pertaining to Lungdai G.C. as mentioned by the DC, Aizawl in Ext S-I, the charged officer has clearly committed misconduct and has exhibited lack of devotion to duty and conduct unbecoming of a govt. servant. This particular allegation has not been denied by the charged officer. Nor he could tender satisfactory explanation as to why he had failed to respond to the DC, Aizawl's direction to clarify the position regarding his outstanding liability pertaining to

Lungdai,

9. According to the Inquiry Officer, the Petitioner showed deposit/accounting of Rs. 1,37,040/- (Rupees one lakhs thirty seven thousand fourty). However, the inquiry Officer suggested that the amount of deposit to the tune of Rs 1,37,040/- shown by the Charged Officer need to be cross-checked/verified by the concerned D.C.O's Office and after that only it could be finally accepted. About the balance amount of the charge, the Inquiry Officer stated that no decision can be rendered on the remaining liability in view of insufficient evidence. It was not clear, observed the Inquiry Officer, as to what was the basis of calculation the amount of unaccounted as supply sale proceeds tuned upto Rs. 3,40,210.24/-. No audit report of the relevant period alongwith the up-to-date position was made available therefore, it was not proper on the basis of insufficient documentary evidence to hold that the Charged Officer alone was responsible for the discrepancy. There was no eye witness to show that the Petitioner alone used to collect sale proceeds and was also one entrusted to deposit the same. There was every likelihood that the Store Keeper also used to do the same as per the prevailing practice. The retailer used to deposit the sale proceeds in advance by Treasury Challan and then only the delivery orders were issued in their favour, the Administrative Officer's job was simply to issue the rice as per the delivery order. In view of this evidence, the conclusion arrived at the Inquiry Officer the charge No. 1 cannot be said to be proved against the Petitioner.

However, the Inquiry Officer has found that, by defying direction of D.C. Aizawl to clarify the position about the outstanding liability pertaining to Lunglei D.C. the Petitioner has clearly committed misconduct and has exhibited lack of devotion to duty and conduct which is unbecoming of a Government Servant. As indicated above, the Petitioner could be deprived of pension under Rule 9 of CCS (Pension) Rules, 1972, where in any departmental or judicial proceedings, the Petitioner is found guilty of grave misconduct or negligence, the lapse found by the inquiry officer on the part of the Petitioner cannot be said to be so grave misconduct or negligence so as to deprive him of his pension or any part thereof. In the result, impugned order dated 26.8.99 deducting 1/3 of pension is not justified.

10. It is a matter of real concern that in the instant case, the inquiry report was submitted in September, 1992, the Petitioner submitted representation thereto in the month of March, 1993, but the Disciplinary Authority did not take any decision in the matter and only after the Petitioner had retired, i.e. after about four years, issued Show Cause Notice and thereafter in the year 1998, took final decision in the matter. The Govt. of India, Vide G.O. No. G.I.C.S. (Deptt of per) O.M. No. 39/43/70-Ests(A) dated 8.1.1971 desires that the final decision by the Disciplinary Authority should be taken within a period of three months at the most from the receipt of inquiry report. Keeping the matters pending for orders for long as in the instant case and taking final decisions after the superannuation of a Government Servant in nothing but a mental torture and

harassment to an employee. In fact, by not taking decision for such a long period amounts to dropping of Disciplinary Proceedings and charges against an employee. The Mizoram Public Service Commission (MPSC) in its recommendation dated 26.8.98 (Annexure-VII) also observed that the decision on the Inquiry report had inordinately been delayed due to which the Charged Officer had been put in mental restraint for a long period. The Petitioner had attained the age of Superannuation and now does not have any alternative sources of income for his family except his monthly pension. Considering the above points the Commission recommended that the mental, psychological strain and injury inflicted upon the Petitioner for a long period of eight years amounted to no less than mental imprisonment and appear to be adequate penalty in the instant case, in alternative impugned pension deduction for a period of two years only.

11. In the result, the Writ Petition succeeds and is hereby allowed. The impugned order dated 16.12.98(Annexure-VIII) is hereby set aside. The Petitioner is declared entitled to full pension. He shall also be paid arrear of pension etc. within a period of three months from the passing of this order.