
(2012) 11 GAU CK 0045
In the Gauhati High Court
Case No : WP (C) No. 13 of 2012

Sh. L. Th. Buangpui

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2013) 2 GLT 199

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Nelson Sailo and Mrs. Dinari T. Azyu, for the Appellant; M. Zothankhuma and Mr. Lalsawirema, GA, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan J.

1. Heard Mr. N. Sailo, learned senior counsel assisted by Miss Vanhmingliani, learned counsel for the petitioner and Mr. Lalsawirema, learned Govt. Advocate, Mizoram for the state respondents. By way of this writ petition under Article 226 of the Constitution of India, petitioner has challenged the legality and validity of the order dated 25.5.2011 passed by the Disciplinary Authority whereby the punishment of compulsory retirement was imposed on the petitioner. Petitioner further challenges order dated 2.1.2012 passed by the Chief Secretary, Govt. of Mizoram holding that appeal filed by the petitioner is not maintainable.

2. The relevant facts may be briefly noted.

3. Petitioner was a member of the Mizoram Civil Service and at the relevant point of time was serving as Assistant Settlement Officer-II, Kolasib. By order dated 9.7.2009 issued by the Commissioner and Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms, petitioner was placed under the suspension pending drawal of departmental proceeding. Thereafter, show cause notice containing three charges was issued to the

petitioner on 14.9.2009. The sum and substance of the charges framed against the petitioner is that he had converted a number of house passes into Land Settlement Certificates (LSC) without obtaining approval of the Director of Land Revenue & Settlement, Govt. of Mizoram. Other charges were similar in nature pertaining to partition, extension and redemarcation of LSCs and issuance of Garden LSCs without prior approval of Director. Petitioner was, therefore, charged with acting in a manner unbecoming of a Government servant, thereby violating various provisions of the Central Civil Services (Conduct) Rules, 1964. It may be mentioned that the show cause notice was issued to the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which is applicable to Government servants serving under the Govt. of Mizoram.

4. Petitioner submitted his written statement of defence on 5.3.2010. He contended that the conversion, partition and issuance of LSCs was done in a bonafide manner and that there was no objection or complaint from the affected parties. When it was brought to his notice that permission of higher authority was required, he immediately cancelled the LSCs and other documents issued by him.

5. The Disciplinary Authority did not find the reply of the petitioner to be satisfactory and accordingly directed holding of departmental enquiry against the petitioner. The enquiry was conducted by the Commissioner of Enquiry, Govt. of Mizoram as the Inquiry Officer. After conclusion of the enquiry, the Inquiry Officer submitted his report to the Disciplinary Authority on 30.7.2010. The charges framed against the petitioner were stated have been proved in the enquiry and finding recorded that the petitioner had failed to discharge his duties in an appropriate manner and acted in a manner unbecoming of a Government servant.

6. A copy of the enquiry report was furnished to the petitioner by the Disciplinary Authority vide letter dated 10.8.2010. By the said letter, petitioner was informed that if he wished to make any representation in respect of the enquiry report, he could do so within the period specified. Petitioner submitted representation before the Disciplinary Authority on 6.9.2010 reiterating his stand taken in his written statement and the written brief submitted before the Enquiry Officer. He submitted that he had acted in good faith and after the irregularities were pointed out, the mistakes were immediately rectified and that there was no financial loss to the Government.

7. The Addl. Secretary to the Govt. of Mizoram, Department of Personnel and Administrative Reforms, as the Disciplinary Authority, thereafter passed order dated 25.5.2011. It was held that the charges against the petitioner stood proved and the misconduct committed by him being very serious, a major penalty was called for. It was stated that the Mizoram Public Service Commission was consulted in the matter. By the said order, the major penalty of compulsory retirement from service was imposed on the petitioner with immediate effect. The period of suspension was directed not to be treated as on duty for all

purposes.

8. Petitioner submitted an appeal before the Chief Secretary to the Govt. of Mizoram on 15.7.2011. As no decision was taken on his appeal, petitioner filed a writ petition before this Court, which was registered as W.P. (C) No. 111 of 2011. This Court by order dated 9.1.2012 disposed of the writ petition by directing the Chief Secretary to the Govt. of Mizoram to dispose of the appeal preferred by the petitioner by a speaking order.

9. The Chief Secretary passed an order dated 2.1.2012 issued vide memo dated 2.2.2012 disposing of the appeal filed by the petitioner as not maintainable.

10. Aggrieved, petitioner is again before this Court by filing the present writ petition.

11. The State respondents i.e., respondent Nos. 1 to 4 have filed counter affidavit. Stand taken in the counter affidavit is that since the order of compulsory retirement was issued in the name of Governor, no appeal would lie under Rule 22 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Therefore, the Chief Secretary could not have entertained the appeal of the petitioner. It is contended that the charges against the petitioner were serious, which were proved in a departmental proceeding conducted in accordance with law giving reasonable opportunity of hearing to the petitioner. Punishment imposed is commensurate with the gravity of the offence.

12. Mr. N. Sailo, learned senior counsel for the petitioner submits that the order of the Chief Secretary does not reflect the correct legal position. According to him, under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (1965 Rules), appeal would lie against order imposing penalty under Rule 11, which includes the major penalty of compulsory retirement. He further submits that even if the view expressed by the Chief Secretary is taken to be correct, he ought to have treated the appeal filed by the petitioner as a petition for revision under Rule 29 or as a petition for review under Rule 29A. On merit, he submits that under the Mizoram District (Land and Revenue) Act, 1956 and the rules framed thereunder, a Settlement Officer or Assistant Settlement Officer is competent to issue LSC. However, in deference to the views expressed by the higher authorities, petitioner cancelled the orders issued by him. He also submits that the Office Memorandum dated 12.3.1991 which provides that Assistant Settlement Officers should obtain prior approval of the Director, Land Revenue and Settlement before issuing LSC was never brought to the notice of the petitioner. His further contention is that charges were framed against the petitioner on the basis of spot inspection report dated 9.2.2009 which was not furnished to the petitioner thereby causing serious prejudice to him. Therefore, the proceeding was in violation of the principles of natural justice.

13. Learned Government Advocate on the other hand submits that the petitioner was provided all reasonable opportunities in the inquiry conducted against him and before the punishment was imposed, the Disciplinary Authority had followed

all procedural safeguards. Regarding non-furnishing of the spot inspection report, he submits that the contents of the said report is reflected in the statement of allegation itself annexed to the charge memorandum and, therefore, no prejudice was caused to the petitioner by non-furnishing of such report. He further submits that the petitioner never raised any grievance at the time of submitting his written statement or before the Inquiry Officer about non-furnishing of spot inspection report. Therefore, it is not open to the petitioner to raise this issue at this belated stage, which is in any case, lacks merit. Moreover, the petitioner by his conduct in cancelling the LSCs issued by him has admitted his guilt. Considering the misconduct committed by the petitioner, who was holding a responsible position in the administration, the penalty imposed is commensurate with the gravity of the offence and, therefore, this Court in its jurisdiction under Article 226 of the Constitution of India may not interfere with the penalty imposed. He also submits that the view expressed by the Chief Secretary appears to be the correct view and since appeal is not maintainable, the Chief Secretary had given liberty to the petitioner to file necessary application for review. He, therefore, prays for dismissal of the writ petition.

14. The submissions made have been considered.

15. At the very outset, this Court would like to say that it is not happy with the way the Chief Secretary has addressed the issue. This Court had passed the order on 9.1.2012 directing consideration of the petitioner's appeal dated 15.7.2011. The date of the Chief Secretary's order is shown as 2.1.2012 whereas it is shown as issued by memo dated 2.2.2012. If the order was indeed passed on 2.1.2012, there was no reason to issue it after one month on 2.2.2012. The reason is however not difficult to understand. A perusal of the order would show that there is no reference at all to the order of this Court, the endeavour being to show that the order was passed before this Court passed the order on 9.1.2012. Further, the tone and tenor of the order of the Chief Secretary reflects an attempt to show the order of this Court in poor light. If the Chief Secretary was of the view that appeal is not maintainable, he could have treated it as a petition for revision or review. This is not expected of an officer of the rank of Chief Secretary. Beyond this, the Court would not like to make any further comment.

16. However, the above issue need not detain us any further as the Court's attention has been drawn to a more fundamental issue which needs to be attended to.

17. Though a number of grounds have been urged by the petitioner, in the course of deliberation, it has come to the notice of the Court that the impugned order of penalty was passed by the Disciplinary Authority after it was sent to the Chief Minister's Secretariat and after receiving his approval.

18. Paragraph 13 of the counter affidavit filed by the respondents states that approval of the Chief Minister was taken on 16.2.2011 and thereafter, the

impugned order was passed by the Disciplinary Authority. A copy of page 48/N of the note sheet of the relevant file has been annexed to the counter affidavit as Annexure-IV. A perusal of the said note sheet would show that the file was put up before the Chief Minister with the proposal that a deterrent penalty should be imposed, suggesting imposition of the penalty of compulsory retirement on the petitioner. It is submitted at the bar that the signature below the proposal appears to be that of the Chief Secretary and the date given is 11.2.2011. There is also an endorsement of the Parliamentary Secretary of the concerned department dated 11.2.2011. On 16.2.2011, the proposal is approved by the Chief Minister, who puts up the following note:

Approved. I am also victim of such malpractices. The surveyors commit malpractices to the maximum purposely/intentionally for their own benefit, causing immense trouble to land owners and sowing seeds of hatred between landowners and neighbours for no fault of theirs. I propose to call a meeting of such people sometime soon.

There is further endorsement of the Chief Secretary dated 18.2.2011 as well as of the Addl. Secretary of the Department also of the same date.

19. The above note indicates two things. Firstly, it was the order of Chief Minister which was carried out by the Addl. Secretary as the Disciplinary Authority. Secondly, the approval note speaks of Surveyors committing malpractice. Petitioner was not a Surveyor but was serving as Assistant Settlement Officer. The note also does not indicate any reference to the enquiry report and other relevant documents.

20. Question for consideration is whether in a disciplinary proceeding, the order of penalty is required to be that of the Disciplinary Authority himself or like an administrative matter, it has to follow the administrative hierarchy.

21. A Constitution Bench of the Hon''ble Supreme Court way back in 1963 in the case of Bachhittar Singh Vs. The State of Punjab, held the departmental proceedings taken against a Government servant are not divisible. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. While the Punjab and Haryana High Court had held the first stage to be a judicial proceeding and second stage an administrative one, the Hon''ble Supreme Court while accepting the views of the High Court that the first stage is judicial proceeding, went further to hold that even the second stage involving imposition of penalty is no less judicial than the earlier one. Consequently, it was held that any action decided to be taken against a Government servant found guilty of misconduct is a judicial order. The Apex Court held that it would be wholly erroneous to characterize the taking of action against a person found guilty of any charge at a departmental enquiry as an

administrative order.

22. In a later decision in *Union of India and others Vs. Mohd. Ramzan Khan*, , while examining the alteration in the provisions of Article 311(2) under the Forty-second Amendment of the Constitution, after expressing doubt about the correctness of the proposition that the two phases of a departmental inquiry were judicial, the Apex Court was, however, categorical in holding that:

Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one.

23. Therefore, departmental proceeding drawn up against a Government servant being a judicial proceeding (or a quasi-judicial one) and the order of penalty being a part of that proceeding, there can be no doubt that the order of penalty has to be that of the Disciplinary Authority himself and of no one else. He must apply his own mind to the various materials before him and, thereafter, arrive at a conscious decision as to whether any penalty is to be imposed on the delinquent and if so, in what manner. Failure to do so will vitiate the order of penalty.

24. Thus, viewed in the above context, the procedure adopted by the respondents in the present case, in the opinion of this Court, is unauthorized in law. The order of penalty, therefore, cannot be sustained. Accordingly, the impugned order of penalty dated 25.5.2011 is hereby set aside and quashed.

25. At this stage, Mr. N. Sailo, learned senior counsel for the petitioner submits that the petitioner had already attained the age of superannuation on 31.3.2011, on which date he would have retired from service.

26. In view of above, petitioner would be deemed to have been in service till his date of superannuation and the period from his suspension till his superannuation would be treated to be on duty for all purposes. However, looking to the nature of the charge against the petitioner, this Court would not like to pass any order for payment of back wages to the petitioner for the said period. Petitioner's retirement dues shall now be worked out by the authorities by treating him to be in service till the date of superannuation.

27. Writ petition accordingly stands allowed. There will however be no order as to cost.