
(2016) 05 GAU CK 0101
In the Gauhati High Court
Case No : Writ Petition (C) No. 69 of 2014

Sh. N. Chakhai

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 17-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 320 : (2016) 6 GauLR 37

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mrs. Linda L. Pachuau, G.A., Mizoram, for the Respondent; Mr. C. Lalramzauva, Senior Advocate, Mr. A.R. Malhotra, Mr. K. Laldinliana, Mr. Zoramchhana, Ms. Lalramsangzuali, Ms. Ruth Lalrinliani Mr. Johny L. Tochhawng and Mr. Lalruatsanga Sailo, Advocates,

Final Decision : Disposed Off

Judgement

Michael Zothankhuma, J.(Oral) - Heard Mr. A.R. Malhotra, counsel for the petitioner. Also heard Mrs. Linda L. Fambawl, Govt. Advocate for the respondents.

The petitioner has challenged in the present writ petition the impugned order dated 22.07.2013, by which he has been inflicted a minor penalty of "with holding of increment of pay for a period of three years without cumulative effect w.e.f. 01.07.2013".

2. The petitioner has also challenged the rejection of his appeal dated 05.09.2013 vide order dated 13.05.2014 issued by the Governor, Secretary to the Government of Mizoram, DP & AR (CSW).

3. The petitioner's counsel submits that the petitioner was working as Project Director, DRDA, Saiha when he was issued a memorandum of charge dated 02.11.2011. Article 1 and Article 2 of the memorandum of charge dated 02.11.2011 is reproduced below:-

"Statement of Articles of charge framed against Pu N. Chakhai, MCS, Project

Director, DRDA, Saiha.

Article-I

While Pu N. Chakhai was functioning as Project Director, DRDA, Saiha during May 2009 - July 2009 a total amount of Rs. 6,08,000/- (Rupees six lakhs eight thousand) was passed under Administrative cost for purchase of a) LBD Centre Control Unit amounting to Rs. 2,87,900/- (Rupees two lakhs eighty seven thousand nine hundred) and b) Senate Conference Table, Conference Chair amounting to Rs. 3,20,100/- (Rupees three lakhs twenty thousand one hundred). Rs. 8,000/- (Rupees eight thousand) was paid in advance to the supplier. Rs. 6,00,000/- (Rupees six lakhs) was deposited in the personal saving account of Lalthankima, Junior Engineer cum Cashier with the approval of Project Director, DRDA which is against the Financial Rules.

By the above at Pu N. Chakhai, MCS, Project Director, DRDA Saiha violated Rule 22 of the GFR, 2005 and Sub-rule (1)(i)(ii) of Rule 3 of the CCS (Conduct) Rules, 1964.

Article-II

Pu N. Chakhai while functioning as Project Director, DRDA, Saiha, had issued approval for a huge amount of Govt. money amounting to a total of Rs. 4,60,00,000/- (Rupees four crores sixty lakhs) to be deposited in the personal account of Pu Lalthankima, JE cum Cashier, DRDA, Saiha for which he has no authority and is against the rules.

By the above act Pu N. Chakhai, MCS, Project Director, DRDA, Saiha violated Rule 22 of GFR, 2005 and sub-rule (1)(i)(ii) of Rule 3 of the CCS (Conduct) Rules, 1964."

4. The petitioner's counsel submits that the Deputy Commissioner, Saiha, who was the Chariman of the DRDA and the petitioner had allowed the cashier Mr. Lalthankima JE to deposit the unused withdrawn amount of money in his personal Bank Account as there was no place in the main safe located in the Office. The petitioner's counsel submits that this permission given to the cashier to deposit the money in his own account was due to the fact that the Chairman DRDA and the petitioner were out on election duty at the time the cashier wanted to deposit the unused amount of withdrawn money. The petitioner's counsel submits that there was no question of mis-appropriation of any of the amount nor was there any case of mis-appropriation of the interest of the deposited amount.

5. The petitioner's counsel thus submits that in view of the circumstances prevailing at the relevant time, the cashier had deposited the unused withdrawn money in his own account after obtaining the permission of the Chariman DRDA and the petitioner. He submits that there was no mis-conduct committed by the petitioner.

6. The petitioner's counsel submits that he was not allowed to cross examine the witness Rodney Lalrinawma and Inspector B. Lalnghakliana. The petitioner's counsel also submits that even though he was allowed to make a representation against the inquiry report, the petitioner was not given any notice prior to the imposition of the minor penalty. The petitioner's counsel submits that the impugned order dated 22.07.2013 shows that the Vigilance Department and the Mizoram Public Service Commission had been consulted on the quantum of punishment to be imposed upon the petitioner. However, without issuing any notice with regard to the advice/opinion given by the Vigilance Department and the MPSC on the penalty to be imposed upon the petitioner, the respondents have imposed the penalty in violation of the law laid down by the Apex Court in the case of Union of India and Others v. R.P. Singh reported in 2014 (7) SCC 340 and in the case of Oriental Bank of Commerce and Others v. S.S. Sheokand and Another reported in 2014 (5) SCC 172.

7. The petitioner's counsel also submits that the disciplinary proceeding was also initiated against the Chairman, DRDA with regard to the same set of facts. However, no punishment has been inflicted upon the Chairman DRDA while the petitioner has been inflicted with a minor penalty. He submits that the same is discriminatory and in violation of the Article 14 of the Constitution of India, inasmuch as, the inquiry Officer in his inquiry report has held that there was a joint responsibility on the lapse that had occurred.

8. The petitioner's counsel also submits that as per Notification dated 27.5.2013 issued by the Chief Secretary to the Govt. of Mizoram, the Governor is the disciplinary authority for all kinds of penalties specified in Rule 11 in respect of Group "A" Officer (Gazette), while the Chief Secretary is the disciplinary authority for minor penalties specified in Rule 11 (i to iv). He also submits that as the minor penalty imposed upon the petitioner has been made by the Governor, the impugned Order dated 22.7.2013 has to be set aside.

9. Mrs. Linda L. Fambawl, Govt. Advocate submits that the facts of the case clearly show that the deposit of Government money in the private account of an individual has been made on the permission given by the present petitioner and the then Deputy Commissioner/Chairman, DRDA. The Govt. Advocate submits that the illegality committed by the petitioner being an admitted fact, there is no infirmity in the respondents issuing the impugned Order of punishment against the petitioner.

10. Mrs. Linda L.Fambawl, Govt. Advocate also submits that State Government cannot impose penalty upon the then Deputy Commissioner/Chairman, DRDA, Mr. Rodney Lalrinawma, in view of the fact that he has been conferred IAS. However, steps have been taken by the State Government with the Union Ministry of Home Affairs for taking to a logical end the disciplinary proceeding initiated against the then Deputy Commissioner, Saiha/Chairman, DRDA.

11. I have heard the learned counsel for the parties and on perusal of the

impugned Order dated 22.7.2013, I find that the Vigilance Department as well as the Mizoram Public Service Commission have been consulted on the quantum of punishment proposed to be imposed upon the petitioner. The impugned Order dated 22.7.2013 also states that the Vigilance Department and the MPSC had given its an advice and conveyed their opinion regarding the punishment proposed to be imposed upon the petitioner.

12. In the case of Union of India and Others v. R.P. Singh (supra), the Apex Court had held that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment. In the said case, the petitioner had been imposed penalty of reduction of pay by 2 (two) stages after the advice of the UPSC had been taken.

In the case of Oriental Bank of Commerce and Others v. S.S. Sheokand and Another (supra), the Apex Court has held that when the Bank had sought the advice of the CVC and thereafter punishment had been imposed, the additional material became a part /of decision making process and as such, the advice of the CVC, should have been made known to the officer prior to imposition of penalty.

13. In view of the decisions of the Apex Court referred to above, the petitioner should have been given a chance to make a representation on the advice/opinion given by the Vigilance Department and the MPSC prior to the imposition of penalty vide Order dated 22.7.2013. The Order dated 22.7.2013 being in violation of the principles of natural justice, the same is set aside.

14. However, the respondent Nos. 1 & 2 are at liberty to proceed with the disciplinary proceeding from the stage of issuing a notice along with the advice/opinion of the Vigilance Department and the MPSC with regard to the quantum of punishment proposed to be imposed upon the petitioner and thereafter pass consequential Orders. The State respondents should keep in mind, that in a case of a collective decision, a particular officer alone cannot be picked up for the misconduct. In the present case, the collective decision to deposit Government money in a private individual's account was made by the petitioner and the then Chairman, DRDA, Saiha.

15. With the above observation and reasons, the present writ petition is allowed. Writ petition is accordingly disposed of.