
(1993) 08 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 1462 of 1992

Sorokhaibam Biren Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Manipur Home Guards Act, 1966 — Section 10, 10(3), 3, 4, 4(4)
Manipur Home Guards Rules, 1981 — Rule 12(4), 12(5), 7

Citation : (1994) 1 GLR 279

Hon'ble Judges : U.L. Bhatt, C.J

Bench : Single Bench

Advocate : T. Nandakumar Singh, for the Appellant; Sr. Govt. Advocate (HC), for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.—Petitioner, a member of the Manipur Home Guards, has been served Annexure-A order dated 31.10.1991. The order deals also with two other members of the Home Guards. It states that on account of absenteeism from place of duty without leave or permission which implies breach of discipline, he has been found unfit for disciplined force and is discharged from "called out". The order also indicates that the Petitioner will be kept in the reserve list for calling out for duty.

2. Home Guards Organisation is governed by the provisions of the Manipur Home Guards Act, 1966 (for short, the Act) and the Manipur Home Guards Rules, 1981 (for short, the Rules). The preamble to the Act states that the Act is to provide for constitution of a volunteer organisation known as Home Guards for service in emergencies and for certain other purposes so as to inculcate habits of self-reliance and discipline among the people and to develop in them sense of civic responsibility. Section 3 empowers the Government to constitute a volunteer body called the Home Guards. Appointment to Home Guards is dealt with in Section 4. The Commandant General may appoint as Home Guards any such

persons who are fit and willing to serve as such. Sub-section (4) of Section 4 indicates that a Home Guard shall be required to serve the Home Guards Organisation for a period of three years (including the period spent in training) which period may be extended by the Government to such further period as may be considered necessary and a Home Guard shall thereafter serve in the Reserve Force of the Home Guards for a period of three years and be liable to be "called out for duty at any time. Section 5 enables the government to constitute a reserve force consisting of persons discharged from the regular service u/s 4(4) of the Act. Sub-section (2) of Section 6 of the Act empowers the Commandant at any time to call out a Home Guard for training or to discharge such functions or duties as required under the Act, Power of a Home Guard, when called out, are similar to that of a Police Officer.

3. Section 10 of the Act deals with punishment. The Commandant has authority to suspend, or dismiss or fine not exceeding fifty rupees any Home Guard, if Such Home Guard on being called out u/s 6, without reasonable cause neglects or refuses to obey such order or refuses to discharge his functions and duties as Home Guard, or refuses to obey any other lawful order or direction given to him for the performance of his functions and duties or is found guilty of any misconduct or breach of discipline. Sub-section (2) empowers the Commandant, General to dismiss any Home Guard on the ground of conduct which has led to his conviction on a Criminal charge. According to Sub-section (3) an order suspending, reducing, dismissing or fining any Home Guard can be passed after inquiry and recording an order with reasons and a note of the inquiry made in writing and the order cannot be passed unless the Home Guard has been given an opportunity to be heard in his defence. Sub-section (4) confers on the aggrieved Home Guard right of appeal to the Commandant General and right of further appeal against the order of the Commandant General to the Government. The Commandant General and the Government under Sub-section (5) can exercise power of revision.

4. Rule 7 of the Rules stipulates the term of Office of a member of the Home Guards to be three, years, with the eligibility for reappointment and subject to termination at any time by the Commandant if in his opinion the services of such Home Guards are no longer required Rule 12(5) empowers the Commandant at any time to "call out" a Home Guard for training or to discharge duty in accordance with the Act and the Rules. Rules 9 and 12(4) deal with discharge and Rule 12(4) deals with removal of a member of the Home Guards and the grounds to be stated in writing of which a copy is to be furnished to the person concerned.

5. The impugned order in effect removes the Petitioner from "called out" and puts him in "reserve list for calling out for duty". Such action is within the jurisdiction of the Commandant and must necessarily be in his discretion exercised in the exigencies of the situation. Of course, the discretion can only be exercised for relevant and proper reasons. The action is not one of suspension,

removal, discharge or dismissal. It is one of removal from "called out." He is retained in the reserve list. The reserve list is maintained only for the purpose of being called out for duty. Learned Counsel for the Petitioner did not refer to any requirement of an opportunity to show cause before a Home Guard is removed from "called out" and put in the reserve list. If the Petitioner is aggrieved by the action, I see no reason why he cannot approach the Commandant General for relief.

6. Learned Counsel for the Petitioner has placed reliance on two Judgments of this Court in Civil Rule No. 91/90 Md. Ahmadali v. The State of Manipur and two Ors. d/d 5.6.1990 and Civil Rule No. 92/90 Md. Najiruddin v. The State of Manipur and Ors. d/d 5.6.1990. Both these cases were filed against orders of suspension. The court set aside the orders on the ground of failure to provide reasonable opportunity to show cause in terms of Section 10(3) of the Act. The order impugned in this case is not an order of suspension and therefore the two Judgments cannot be of assistance to the Petitioner.

7. I decline to interfere and dismiss the writ petition giving liberty to the Petitioner to approach the Commandant General or the Government, as the case may be, for relief, if he so desires. There will be no order as to costs.