

(2005) 04 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1194, 1234, and 1236 of 2000, 387, 517 (D/C) , 935, 1629 of 2001 and 36, 1065, 1482 of 2002

State of Manipur and Others

APPELLANT

Vs

Chongtham Homendro Singh

RESPONDENT

Date of Decision : 18-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2005) 3 GLT 154

Hon'ble Judges : M. Binoy Kumar Singh, J;B. Lamare, J

Bench : Division Bench

Advocate : Jallaluddin and Th. Ibobal Singh, for the Appellant; A. Nilamani Singh, Bimol Singh, Kh. Binoy Kumar Singh, N. Koteswar Singh, M. Kumarjit Singh, B.P. Sahu, M. Hemchandra, Y. Nirmolchand, A. Mohendro and M. Gourahari Singh, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. Jallaluddin, the learned Addl. G.A. and Mr. Th. Ibobal Singh, Addl. Govt. Advocate. Also heard Mr. A. Nilamani Singh, learned Sr. Advocate, Mr. Bimol Singh, Advocate, Mr. Kh. Binoy Kumar Singh, Adv., Mr. N. Koteswar Singh, Adv., Mr. M. Kumarjit Singh, Adv., Mr. B.P. Sahu, Advocate, Mr. M. Hemchandra, Advocate, Mr. Y. Nirmolchand, Advocate, Mr. A. Mohendro, Advocate, and Mr. M. Gourahari Singh, Advocate for the Respondents.

2. These writ appeals are taken up together as all the appeals arose out the common judgment dated 25.09.2002 passed by the learned Single Judge in 102 writ petitions. The same questions of law and facts are involved, hence, the appeals are also taken up together and disposed of by this common judgment.

3. In the said writ petitions, all the writ Petitioners who were dismissed from the service under different orders issued by the Respondents authorities, had assailed those orders, however, by the said judgment and order dated 25.09.2002, the learned Single Judge has set aside and quashed all the

impugned termination orders of the writ Petitioners and directed that the writ Petitioners would be taken back in the service within a period of one month from the date of receipt of a certified copy of the judgment and order by issuing necessary orders for reinstatement of the writ Petitioners. The learned Single Judge has also directed the concerned authorities to pay 50% of the back wages to the writ Petitioners. The grounds on which the learned Single Judge has quashed all the dismissal orders are as follows:

- (i) The Petitioners were not afforded opportunity of appointing defence assistance to represent their cases;
- (ii) No presenting officer was appointed by the authorities during the inquiry.
- (iii) The witnesses produced before the inquiry officer were not allowed to be cross examined by the Petitioners. The inquiry reports were not furnished to the delinquent before issuing all the dismissal orders;
- (iv) That there were procedural lapses on the part of the inquiry officer while conducting the inquiry against the delinquent.

3A. The proceeding against the Petitioners' Respondents is guided by the Assam Police Manual. The proceeding to be drawn up in case of major penalty is prescribed under Rule 66 of part-III of the Assam Police Manual. Clause III of Rule, 66 reads as follows:

No order of major punishment shall be passed on a member of the service (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the persons charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases for special and sufficient reasons to be recorded in writing, be waived where there is a difficulty in observing

exactly the requirements of the rule and those requirements can be waived without injustice to the person charged.

4. Perusal of the above provisions of rule will show that a definite charge has to be framed and the same has to be communicated to the person charged. The charge officer shall be required to put in his written statement of his defence and also express his desire to be heard in person if he requires. The person charged is entitled to cross-examine the witnesses given against him and also to give his evidence in person and to call for his witnesses in his defence. The proceedings shall also contain sufficient record of the evidence and statement of the findings and the grounds thereof.

5. Before proceeding further into the merit of the case, it would be appropriate to refer to the decision of this Court in a case of Tractor and Farm Equipment Ltd. Appellant v. Secretary to the Govt. of Assam, Department of Agriculture and Ors. Respondents reported in 2004 (1) GLT 117 whereby this Court has held that a writ appeal is really not a statutory appeal preferred against the judgment and order of an inferior court to the superior court but the appeal inter-se in a High Court from one Court to Anr. is really an appeal from one coordinate bench to Anr. coordinate Bench and it is for this reason that a writ cannot be issued by one Bench of the High Court to Anr. Bench of the High Court nor can even the Supreme Court issue writ to a High Court. Thus, unlike an appeal, in general, a writ appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, suggests criminal appeal whether all facts of record is examined by the Appellate Court, what is really examined, in a writ appeal, is the legality and validity of the judgment and/ or the order of the learned Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record of the judgment or is against the established or settled principle of law.

6. We will now proceed to examine the merits of the appeal in the light of the backgrounds on which the learned Single Judge has set aside and quashed the impugned dismissal orders of the Petitioners/Respondents herein.

7. So far as the appointment of presenting officer, the learned Govt. Advocate for the Appellants and also the counsels for the Respondents stated at the bar that no such presenting officer was appointed by the authorities in all the departmental proceedings. The records produced by the learned Govt. Advocate also shows that there was no presenting officer appointed in all the departmental proceedings held against the writ Petitioners Respondents. The question then is what will be the consequence of not appointing the presenting officer. It is settled law that the inquiry officer while sitting as a Judge, he cannot be also sitting as the prosecution to examine the witnesses by himself. The inquiry officer cannot assume the role of a judge and also the prosecutions. Even there is no such provisions under Rule 66 for appointment of the presenting officer, the simple question is that, who is to present the case of the department when there is no presenting officer, therefore, absence of presenting officer will make the inquiry

totally vitiated as the inquiry officer cannot assume the role of the judge as well as prosecution.

8. In the case of *Dr. Rajyamalla Buzarbarua v. The Assam Administrative Tribunal and Ors.* reported in 1983 Lab I.C. 1839, the Apex Court held that, it appears that the Enquiry Officer himself questioned the delinquent officer before he inspected the documents. On the day of inquiry also the Enquiry Officer who put all the questions to the Petitioner. The delinquent officer was not asked to whether he liked to examine the witnesses in defence. No witnesses having been examined. When an oral hearing is given in a disciplinary proceeding the authorities must be careful to give the delinquent officer opportunity to comment on any adverse statement. The right to call and examine witnesses is, therefore, as a general rule, of the procedure required by natural justice. In view of the settled position of law, in this regard no appointment of the presenting officer is therefore fatal to the departmental proceeding against the Petitioners Respondents.

9. With regard to the question of providing, the defence assistant to the Petitioners Respondents during the enquiry, the records produced by the learned G.A. for the Appellants show that in the inquiry proceeding, the writ Petitioners were not afforded an opportunity of appointing their defence assistant. Although Rule 66 is silent about the appointment of the defence assistant, but the rule of natural justice requires that the writ Petitioners cannot be allowed to be left undefended before the Inquiry Officer. In the case in hand, all the writ Petitioners are Havildars, Constables, Riflemen etc. they are the lowest rank of the Manipur Rifles. The Petitioners are not supposed to know about the provisions of the rules. It is incumbent on the part of the Inquiry Officer to afford minimum justice to inform them that they are entitled to appoint a defence assistant to defend their case. No such record is also available in the departmental enquiries that the Inquiry Officer has informed the Petitioners of their right to appoint the defence assistant to represent their cases in the departmental inquiry. The Petitioners Respondents were not represented by defence assistant this has caused prejudice to them resulting in miscarriage of justice.

10. With regard to the opportunity of cross examining the witnesses, the records produced show that the evidence of witnesses were recorded in a typed format without any cross examination. The same was also recorded in absence of the Petitioners. There is no indication that the Petitioners were asked to cross examine, the witnesses who were examined by the Inquiry Officer. Records also show that the statement of all the Petitioners were recorded before the evidence of other witnesses were taken. The records also show that there were no orders maintained by the Inquiry Officer for recording the evidence of the witnesses on each date on which the evidence were recorded. No order sheet was maintained by the inquiry officer to record the progress of the inquiry. The inquiry was made in haphazard manner and the statement of the witnesses were recorded by the inquiry officer himself. Records also show that the statement of the writ

Petitioners were taken by the inquiry officer and questions were put by the inquiry officer to the writ Petitioners and made the Petitioners to answer the questions which were put to them by the inquiry officer. The records therefore, clearly show that no opportunity was given to the Petitioners to appoint the defence assistant and also no opportunity was given to the Petitioners to cross examine the witnesses examined by the inquiry officer during the inquiry.

11. Further perusal of the records also show that the inquiry officer did not inform the Petitioners that they have a right to examine themselves and to produce their witnesses if they so wish. There is nothing in the records to show that the inquiry officer has informed the Petitioners that the Petitioners may examine themselves and also produce their witnesses if they desire. Therefore, all these rights to defend themselves have been denied to the Petitioners. The inquiry is therefore, vitiated for non affording of reasonable opportunity and for non following of the principle of natural justice.

12. It is a settled position of law that in the departmental inquiry, the minimum requirements of principle of natural justice has to be followed. In the case of Khem Chand Vs. The Union of India (UOI)and Others, the Apex Court have summarized the reasonable opportunity to be given to the delinquent as follows:

(19) To summaries: the reasonable opportunity envisaged by the provision under consideration includes;

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) An opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

13. In the light of the above position, we will now examine the principle of law under which the findings of the disciplinary authorities can be interfered with under Article 226 of the Constitution. In the case of Syed Rahimuddin, Appellant v. Director General, C.S.I.R. and Ors. Respondents reported in AIR 2001 SC 2418, the Apex Court in paragraph 5 of the judgment reads as follows:

The further grievance that the findings of the Enquiring Officer are findings on no evidence is belted by the very report of the Enquiring Officer. The Enquiring Officer has dealt with the Articles of charge chronologically and the relevant materials on the basis of which the ultimate conclusion is arrived at. It is well

settled that a conclusion or a finding of fact arrived at in a disciplinary inquiry can be interfered with by the Court only when there is no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the Enquiry Officer, we are unable to accept the contention of the learned Counsel for the Appellant that the findings of the Enquiring Officer cannot be held to be findings based on no evidence.

14. In the case of Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, the Apex Court in paragraph 18 of the judgment held as follows:

At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is catena of judgments of this Court which had settled the law on this topics and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this topic viz., State of Andhra Pradesh Vs. Sree Rama Rao, , State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, and Nelson Motis Vs. Union of India and another,

15. In the case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, in paragraph 11 of the judgment the Apex Court held as follows:

The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

16. Taking the above principles of law laid down by the Apex Court with regard to the interference by this Court on the findings of the inquiry officer we are of the opinion that since this Court has referred that the requirements affording reasonable opportunity and the principles of natural justice have not been complied with this Court is bound to interfere. In the case in hand, it is clear that the Petitioners were not afforded opportunity to appoint the defence assistant nor to cross examine the witnesses. The Petitioners were also not informed that they are entitled to appointment of the defence assistant to defend their case.

There is also no presenting officer to present the case on behalf of the prosecution. The Petitioners were not represented by the defence assistant but the statements were recorded by the inquiry officer himself acting as prosecution. The Petitioners were also not afforded a chance to produce their witnesses. Therefore, in view of those lapses in the inquiry proceeding, this Court is bound to interfere in the matter.

17. The Apex Court in the case of Sher Bahadur Vs. Union of India (UOI) and Others, in paragraph 7 of the judgment held as under:

It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry" would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the Appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the Appellant recorded by the enquiry officer shows no more than his working earlier to his reengagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer was that in view of the oral, documentary and circumstantial evidence, the charge against the Appellant for securing the fraudulent appointment letter duly signed by the said APO (Const) was proved, is, in the light of the above discussion, erroneous. In our view this is clearly a case of finding the Appellant guilty of charge without having any evidence to link the Appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.

18. In the case of Yoginath D. Bagde, Appellant v. State of Maharashtra and Anr. Respondents reported in (1997) 7 SCC 739, in paragraph 51 of the judgment the Apex Court held as follows:

It was lastly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinized by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution, act as the Appellant authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is

well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the high court as also to this Court to interfere in the matter. In *Kuldeep Singh v. Commr. of Police* this Court, relying upon the earlier decisions in *Nand Kishore Prasad v. State of Bihar*, *State of Andhra Pradesh v. Rama Rao*, *Central Bank of India Ltd. v. Prakash Chand Jain*, *Bharat Iron Works v. Bhagubhai Balubhai Patel* as also *Rajinder Kumar Kindra v. Delhi Admn.* Laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

19. In the case of *High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another*, the Apex Court in paragraph 16 of the judgment held as follows:

The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

20. In the case of *Mangilal Vs. State of Madhya Pradesh*, in paragraph 10 of the judgment the Apex Court held as follows:

Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the order that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to

exclude the presentation of a liigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

21. Coming to the case in hand, it is noticed that inquiry officer has not followed the procedure as laid down under Rule 66 to afford the reasonable opportunity to the Petitioners to defend their case as provided under the Rules. On the other hand, proceedings were conducted by the inquiry officer himself alone without the presenting officer, without the defence assistant and in absence of the Petitioners, when the proceedings were conducted in the manner as discussed above, the evidence on which the inquiry officer relied on cannot be said to be sufficient evidence to warrant dismissal of the Petitioners Respondents. The inquiry proceedings therefore, cannot stand in eye of law, and in such situation, the Court is bound to step in and quash the proceedings.

22. We have also perused the judgment and order passed by the learned Single Judge and we have noticed that the learned single Judge has dealt all the issues raised before him and came to the conclusion that the provisions of Rule 66-Assam Police Manual, Part-III have not been followed.

23. From the discussions and observations made by us hereinabove it indicates that there are many legal defects while conducting the departmental enquiries. We, therefore, find that there is no infirmity in the judgment and order dated 25.09.2000 passed by the learned Single Judge in the said series of writ petitions. Consequently, we find that there is no merits in these appeals and the same are hereby dismissed.

24. However, considering the facts and circumstances of the cases, there will be no order as to costs.