

(2002) 05 GAU CK 0063

In the Gauhati High Court

Case No : Writ Petition (C) No. 153 (K) of 2000

Sukheto Chishi

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Nagaland Servants Conduct Rules, 1968 — Rule 4

Nagaland Services (Discipline and Appeal) Rules, 1967 — Rule 6, 7, 9(12)

Citation : (2002) 2 GLT 216

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

**Advocate : A. Zhimomi, Yangerwati, Zhimomi and H. Jakhalu, for the Appellant;
L.S. Jamir, Addl. Sr. G.A., for the Respondent**

Final Decision : Allowed

Judgement

B. Lamare, J.—Heard Mr. A. Zhimomi, assisted by Ms. H. Jakhalu, learned Counsel for the Petitioner and Mr. L.S. Jamir, learned Addl. Sr. Government Advocate for the Respondents.

2. The case in brief is that, while the Petitioner was functioning as Sr. Treasury Officer at Dimapur, he was placed under suspension by order No. FIN/TA/4-4/98/A dated 17.8.98. Following the suspension, a disciplinary proceeding was drawn against the Petitioner vide memorandum dated 13.8.98 enclosing herewith the Article of charges framed against the Petitioner. The statement of Article of charges against the Petitioner are as follows:

Statement of Article of charge framed against Shri Sukheto Chishi, Sr. Treasury Officer, Dimapur.

Article-I : That the said Shri Sukheto Chishi, while functioning as Sr. Treasury Officer, Dimapur during the period from 17.5.98 to 16.7.98 unauthorisedly passed several bills relating to GPF withdrawal amounting to Rs. 53,58,739/-

which was in clear violation and in defiance of the Government's instructions issued in this regard vide memorandum No. FIN/GEN-22/97-98 dated 10th July, 1997.

Article-II : That the said Shri Sukheto Chishi, while functioning as Sr. Treasury Officer, Dimapur on 6.11.97, passed fraudulent gratuity and commutation pension bills amounting to Rs. 10,29,364, knowing fully well that they were fake and fraudulent bills, on the plea that some miscreants forced him to do so at the point of gun.

Therefore, Shri Sukheto Chishi had failed to maintain absolute integrity and devotion to duty and had also acted in a manner unbecoming of a Government servant. Therefore, he is charged with violation of Rule 4 of the Nagaland Servants Conduct Rules, 1968.

Sd/- 13.8.98 (Lalthara) Finance Commissioner Govt. of Nagaland.

3. Subsequently by Anr. Office Memorandum No. FIN/TA/4-4/98 dated 18.8.98 the Article of Charge No. 2 against the Petitioner was dropped. The remaining Article of Charge against the Petitioner is only charge No. 1.

4. The Petitioner by his letter dated 21.4.99 addressed to the Tribunal for Disciplinary Proceedings, vigilance Commission prayed for supply of the related documents to enable him to defend in the inquiry, but without supplying the documents the Inquiry was conducted. On completion of the Inquiry, the Inquiry Officer submitted his report dated 14.9.99. According to the basis of the said inquiry report, the Respondent No. 2 has issued the impugned order dated 14.6.2000 revoking the suspension order of the Petitioner and imposed certain penalties on the Petitioner. To make the matter clear, the said order dated 14.6.2000 is reproduced below:

Government of Nagaland Finance Department (Treasuries & Accounts Branch)
Order Dated Kohima the 14th June, 2000.

No. FIN/TA/4-4/98 : Whereas an order placing Shri Sukheto Chishi, Sr. Treasury Officer under suspension was made by the Governor vide order of even number dated 17.8.98;

And whereas a disciplinary proceedings against Shri Sukheto Chishi was ordered and charges framed vide office memorandum of even number dated 13.8.98;

And whereas the Inquiry Officer appointed to inquire into the article of charges against Shri Sukheto Chishi have found that the article of charges against Shri Sukheto Chishi have been partially proved;

And whereas on a careful consideration of the inquiry report, the Governor has agreed the findings of the Inquiry Officer, and has come to the conclusion that Shri Sukheto Chishi has committed misconduct as defined under Rule 4 of the Nagaland Government Servants Conduct Rules, 1968;

Now, therefore, the Governor in exercise of the power conferred by Rule 6&7 of the Nagaland Services (Discipline and Appeal) Rules, 1967 hereby:

(a) revokes the order of suspension of Shri Sukheto Chishi and reinstate him in Service with effect from the date of his assuming charge of his new assignment as Sr. Treasury Officer, Tuensang.

(b) orders that the period of suspension shall not be treated as duty except for pension purposes, (that means the period of suspension shall not be treated as duty for the purpose of E/L and pay increments, and excepting the substance allowances already drawn, no further salary shall be paid for the suspension period).

(c) orders that a minor penalty of withholding increments of pay be imposed for two years w.e.f. his date of reinstatement.

(d) orders that this order shall form a part of his ACR record.

By order and in the name of the Governor.

Sd/-

(Lalthara) IAS Principal Secretary & Financial Commissioner

5. The case of the Petitioner is that inquiry report has not been furnished to him, but the same was furnished to the Petitioner only after impugned order dated 14.6.2000 was issued by the responden No. 2 by his letter dated 17.7.2000 (Annexure-H to the writ petition). The contention of the Petitioner therefore is that, the entire inquiry was not done in accordance with the provisions of the rules and that the impugned order was issued without furnishing the inquiry report to the Petitioner.

6. The Respondents contested the case by filing affidavit-in-opposition. In para 3 of the affidavit-in-opposition, the Respondents contended that the petitioner never ask for documents and even the letter alleged to have been written by the Petitioner on 21.4.99 was not received by the Vigilance Commission/Inquiry Officer. In para 6 of the affidavit-in-opposition, the Respondents further contended as follows:

In regard to the statement at para 11, it is denied that the Treasury Officer is not the Drawing and Disbursing Officer. He is the DDO for his own office establishment. However, the Treasury Officer has the additional responsibility to see that all Govt. bills presented to him by other DDOs, which do not fulfill the conditions prescribed by the Govt. from time to time, are not passed for payment. Since the Treasury Officer is neither an autonomous Constitutional authority, nor even a quasi-judicial authority, he cannot wilfully and deliberately disregard the instructions issued to him by his controlling authority; because such a conduct would certainly amount to a misconduct under the Govt. Servants Conduct Rules. Even if the office feels that certain instructions issued to him by his controlling authority are against the rules, or contrary to existing Court's

rulings etc., it is his duty to point out first such defects in the instructions of his superior officer and to seek clarifications accordingly. Without doing that, if he quietly and wilfully disregards the instructions and order of his controlling authority, he will be committing a misconduct under the Govt. Servants' Conduct Rules, thereby making himself liable to disciplinary action. This was what had actually happened to the Petitioner in this particular case.

7. Mr. Zhimomi, learned Counsel for the Petitioner submitted that, although penalty of withholding increments for two years is a minor penalty, but the order that the impugned order shall form part of the ACR amounts to punishment of "Censure" which penalty cannot be imposed without giving the Petitioner the opportunity of making representation before imposing the penalty. According to the counsel, the provision of the rules has not been followed in the case of the Petitioner.

8. It is also contended that since the impugned order was issued without supplying the related documents to the Petitioner to enable him to defend himself in the inquiry, the entire case against the Petitioner is Void abinitio, and as such, the impugned order passed, based on the said inquiry report is also not tenable in law.

9. Mr. L.S. Jamir, learned Addl. Sr. Government Advocate at the Very outset contended that there is a provision for appeal under Part-V of the rules; The Nagaland Services (Discipline and Appeal) Rules, 1967 (in short the rules), and therefore, without availing the alternative remedy, the Petitioner cannot approach this Court by way of the writ petition. Learned Counsel further contended that the report of inquiry is not impugned in this writ petition, and accordingly on failure of the Petitioner to impugn the inquiry report the same remains unassailed.

10. As regards the contention that when there is alternative remedy, the petition is not maintainable, it may be stated that the power of the High Court under Article 226 of the Constitution is very wide and that any restrictions imposed on this power is a self imposed restriction. This Court can always exercise its power to meet the ends of justice wherever there is a failure of justice. However, this Court therefore can always interfere whenever there is mala fide, arbitrary and capricious action resulting in miscarriage of justice and violation of natural justice. Keeping the above principles in mind, I am of the view that the instant case can be examined as to whether the above principles are violated.

11. Coming to the case in hand, it is noticed that although the penalties imposed as per the impugned order is a minor penalty, but the order for making the impugned order as part of the ACR of the Petitioner amounts to censure to the Petitioner. Therefore, in terms of Rule 9(12)(b) of the rules, the Government servant is required to be informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make, and such

representation, if any, is taken into consideration by the disciplinary authority.

12. The impugned order does not indicate that the Petitioner was informed of the proposed action to be taken against him nor he was given an opportunity to make his representation. The impugned order itself is silent as to the compliance of the above provision of Rule 9(12)(b) of the rules.

13. From the order dated 17.7.2000 (Annexure-H to the writ petition) issued by Respondent No. 2 rejecting the reView petition of the Petitioner, it shows that a copy of the inquiry report was furnished to the Petitioner only on that day which is much after the issue of the impugned order.

14. The Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has laid down as follows:

Whenever, therefore, the Service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

15. Therefore, in view of the above law laid down by the Apex Court it is incumbent on the part of the Respondent to furnish the inquiry report to the Petitioner before any punishment is made.

16. The impugned order was passed on the basis of the inquiry report which is not supplied to the Petitioner. The Petitioner was not afforded an opportunity to file representation. He was also not furnished with the related documents which he has requested from the Tribunal/Vigilance Commission for Disciplinary Proceedings. Therefore, the impugned order imposing punishment on the Petitioner was passed without compliance of the provisions of the rules. The action therefore is arbitrary, capricious resulting in miscarriage of justice, for which this Court is called upon to interfere which I accordingly do.

17. For the reasons aforesaid, I am of the considered view that the impugned order dated 14.6.2000 (Annexure-F to the writ petition) save and except Clause (a) relating to reinstatement of the Petitioner cannot stand the test of law, and accordingly it is hereby set aside and quashed. Consequently, the order dated 17.7.2000 rejecting the reView application of the Petitioner is also set aside and quashed. In other words, the order at Clauses (b), (c) and (d) imposing punishment on the Petitioner are set aside and quashed.

The petition is allowed and disposed of. No costs.