
(2001) 10 GAU CK 0032
In the Gauhati High Court
Case No : WP (C) No. 1466 of 2000

Th Dinesh Singh	Vs	APPELLANT
Suprintendent of Police and Others		RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

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

Citation : (2001) 3 GLT 172

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A. Nilmani and A. Bimol, for the Appellant; Jagat Chandra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The petitioner while working as Sub-Inspector of Reserve Police, Sekmai Police Station, was detailed for election duty in connection with the 13th Lok Sabha in the Outer Parliamentary Constituency of Manipur by order dated 26.9.1999 of the Superintendent of Police, Imphal West. By the said order, the petitioner was to be Commander of the Striking Reserve No. 6 consisting of 20 armed personnel of the 9th Bn. Manipur Rifles to be stationed at Sekmai Police Station which was re-deployed at Tungam village in Senapati District. In course of discharge of such duties, some armed men suspected to NSCN (IM) militants over-powered the party under the petitioner's command and took away the automatic weapons and ammunitions issued to the police personnel under his command on 4.10.1999. Disciplinary proceedings were initiated against the petitioner on the charges that he failed to discharge the duty expected from a trained Police Officer, and more so as Commander of the Striking Reserve Force he did not put up the slightest resistance when NSCN (IM) took away the arms and ammunitions issued to the 9 MR personnel under his command and that he had wilfully donated the arms and ammunitions to the extremists. The petitioner in his written statement of defence did not admit the said charges. The Additional

Superintendent of Police (MT) Imphal West District was appointed as Enquiry Officer to enquire into the charges and the Enquiry Officer submitted his inquiry report on 20.7.2000 to the effect that the charges levelled against the petitioner have not been proved in toto. The Disciplinary Authority, namely, the Superintendent of Police, Imphal West District, Manipur, issued a show cause notice dated 11.1.2000 to the petitioner stating therein that he did not agree with the findings of the Enquiry Officer that the charges levelled against the petitioner were held not proved in toto. In the said show cause notice, the Disciplinary Authority observed that the petitioner was the Commander of the Striking Reserve Force No. VI and that it was his responsibility to brief his men properly, motivated them while on duty and to fight against the militants and that there were 4 (four) sentries on duty and it was surprising to note that they did not notice the intruding militants who over-powered them and for these acts of the sentries by and large the Commander of the Striking Reserve Force was responsible. In the said show cause notice, it was further stated that the petitioner had not briefed the sentries and not taken due care for the protection of the Government properties and this resulted in loss of arms and ammunitions of the Striking Reserve Force, and hence the Disciplinary Authority had decided to impose major penalty of removal from service. By the said show cause, the petitioner was given an opportunity of making representation on the penalty proposed. The petitioner submitted a representation in reply to the said show cause notice, but by order dated 7.9.2000, the petitioner was dismissed from service. Aggrieved by the said order dated 7.9.2000 of the Disciplinary Authority, the petitioner filed an appeal, but the Appellate Authority, namely, Deputy Inspector General of Police (R-I), Manipur, rejected the said appeal by order dated 20.10.2000. Aggrieved by the show cause notice dated 11.1.2000, order of dismissal dated 7.9.2000 and the order rejecting the appeal dated 20.10.2000, the petitioner has filed this writ petition under Article 226 of the Constitution.

2. Mr. A. Nilmani, learned senior counsel appearing for the petitioner, submitted that the findings recorded by the Disciplinary Authority in the impugned order of dismissal were based on no evidence whatsoever and that the Disciplinary Authority held the petitioner guilty of various misconducts described in the order of dismissal on the basis of conjectures and surmises. He further submitted that the principles of natural justice as well as the provision of reasonable opportunity as provided in Article 311(2) of the Constitution made it incumbent upon the Disciplinary Authority to indicate his reasons as to why he intended to differ from the findings of the Enquiry Officer, and such opportunity had to be given before he took final view in the matter. On a plain reading of the impugned show cause notice dated 11.1.2000 it would be clear that the Disciplinary Authority had taken the final view that he did not agree with the findings of the Enquiry Officer and decided to impose major penalty of removal from service against the petitioner even before the petitioner was given an opportunity to make a representation against the reason indicated by the Disciplinary Authority for

differing with the findings of the Enquiry Officer. Finally, Mr. Nilmani submitted that a comparison of the impugned show cause notice dated 11.1.2000 and the impugned order of dismissal dated 7.9.2000 would show that some fresh reasons have been given in the impugned order of dismissal dated 7.9.2000 which were not indicated in the impugned show cause notice dated 11.1.2000 for differing with the findings of the Enquiry Officer and for imposing penalty of dismissal from service. In support of his submissions, Mr. Nilmani cited the decision of the Supreme Court in *Yoginath D. Bagde v. State of Maharashtra* (1989) 7 SCC 739.

3. In reply, Mr Jagat Chandra, learned State counsel, submitted that the procedure as laid down in Rule 66 of the Assam Police Manual has been followed for imposing the major penalty of dismissal from service. He further submitted that all due opportunities were given to the petitioner before the order of dismissal was passed against him. He cited the decision of the Supreme Court in *State of Rajasthan v. MC Saxena* (1998) 3 SC 385, in support of his contention that the Disciplinary Authority can disagree with the findings arrived at by the Enquiry Officer and act upon his own conclusion, but the only requirement is that the Disciplinary Authority must record reasons for his disagreement with the findings of the Enquiry Officer, and if the Disciplinary Authority gives reasons for disagreement with the findings of the Enquiry Officer then the court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said findings.

4. There cannot be any doubt over the well-settled proposition that the findings of the Enquiry Officer are not binding on the Disciplinary Authority and that the Disciplinary Authority after taking into consideration the enquiry report of the Enquiry Officer and the evidence on record before the Enquiry Officer and representation, if any, made by the delinquent officer can record his own findings on the charge(s) against the delinquent officer. Thus, the Disciplinary Authority can while recording his own finding on the charge(s) against the delinquent officer also differ from the findings of the Enquiry Officer. But, it is equally settled that the findings of the Disciplinary Authority has to be based on some materials or evidence and cannot be based on conjectures and surmises. In *Yoginath D. Bagde v. State of Maharashtra* (supra), cited by Mr. Nilmani, the Supreme Court did not appreciate the approach of the disciplinary committee in that case which had gone by conjectures and surmises rather than by evidence on record. Further, the Disciplinary Authority while recording his own findings on the charge(s) against the delinquent officer cannot record a finding which no reasonable man would arrive on the evidence or materials on record in the departmental proceedings. This proposition has been indicated in the decision of the Supreme Court in *State of Rajasthan v. MC Saxena* (supra) cited by Mr Jagat Chandra. Moreover, where the Disciplinary Authority intends to differ from the findings of the Enquiry Officer, he has to indicate his tentative view that he intends to differ from the findings of the Enquiry Officer as well as reasons for his difference with the findings of the Enquiry Officer to the delinquent officer so as to enable him to make a representation against such tentative view and the

reasons, and after considering such representation of the delinquent officer record his findings on the charge(s) against the delinquent officer either differing from the findings of the Enquiry Officer or agreeing with the Enquiry Officer.

5. Coming now to the facts of the present case, the Enquiry Officer recorded the following findings in his enquiry report with regard to allegations and charges against the petitioner that he failed to perform his duty as Commander of Striking Reserve Force :

"(iv) The defence waves to show that the charged officer had tirelessly made all out efforts to safeguard the men and arms under his command. The defence submits that the charged officer had tried to locate the Striking Reserve in the SSB campus and had also went out to find a more suitable place. The charge officer goes on to press his point have of the care and precaution by exhibiting the sentry roster of 2.10.1999 and 3.10.1999 inter alia that 4(four) sentries have been detailed in each shift and he had given checks. He also submits that the men under him have been instructed to be alert in the evening the L/Naik Nabachandra Singh. There is nothing to prove otherwise by the prosecution. In spite of his due care, the unthinkable had happened. But, the omission committed by the in-efficient sentries and personnel of 9 MR who failed to take care of their own weapons should not go so adversely as to call it a donation of a responsible officer. The E.O. held that the imputation is not proved.

(v) The defence submits that the charged officer had opened the window and after assessment had braved his way to Paomata in the middle of the night to inform the higher authorities. The charged officer submitted that he had made to Paomata Micro Wave centre at about 3.30 A.M. and passed the message to SP/ Imphal West Control Room had requested to send in re-enforcement. He further submitted that he had gone to report to Tadubi PS and reported the incident to OC Tadubi PS at 5 A.M. of 4.10.1999 to Register the FIR No. 6(10) 99 TBI PS. The prosecution has no evidence to prove otherwise except the incapacitated moment when the NSCN (IM) had made their entry into the Community Hall after over-powering the 4(four) sentries located outside. The actions of the charged officer, to my opinion, would not amount to cowardice. Hence the imputation is held not proved."

6. From the aforesaid findings of the Enquiry Officer, it is clear that due care and pre-caution had been taken by the petitioner by posting four sentries in each shift and he had given checks and there was nothing to prove otherwise by the prosecution. The aforesaid findings of the Enquiry Officer would further indicate that the petitioner had braved his way to Paomata in the middle of the night to inform the higher authorities and had gone to Tadubi PS to report about the incident at 5.00 A.M. of 4.10.1999 and the prosecution had no evidence to prove otherwise except the incapacitated movement when the NSCN (IM) had made their entry into the Community Hall after over-powering the 4 sentries located outside. The Enquiry Officer therefore held that there was no evidence or material to prove the charges against the petitioner. But in the impugned order

of dismissal, the Disciplinary Authority held that the findings of the Enquiry Officer did not speak anything as to how such a trained police officer and armed MR personnel could be taken by surprise by the undergrounds, and did not bring out clearly the tactics and skill adopted by the delinquent officer at the spur of the moment of the incident to avoid taking away of the arms and ammunitions from the MR Jawans. The Disciplinary Authority further held that the delinquent officer was acting as a silent spectator when the arms and ammunitions were taken away by the undergrounds, and he took care more of his life than to save the prestige of the Department, and he failed to give proper briefing and motivation to the Jawans and the sentries because of which the NSCN (IM) cadres could over-power them and take away the arms and ammunitions issued to them. The records of the enquiry have been produced before the court, and from the said record it appears that there were no materials or evidence, whatsoever for the aforesaid findings recorded by the Disciplinary Authority in the impugned order of dismissal. The findings of the Disciplinary Authority in the impugned order of dismissal therefore were based on conjectures and surmises, and the impugned order was such which no reasonable person properly instructed in law would pass on the materials or evidence that were on record in the enquiry. If there were materials or evidence on record, the court would have only quashed the orders of penalty dated 7.9.2000 and the order rejecting the appeal dated 20.10.2000 and remitted the matter to the Disciplinary Authority for passing fresh orders on the basis of materials or evidence in the enquiry. But since the Enquiry Officer has held on the basis of the materials and evidence on record that the imputations against the petitioner have not been proved, and in fact there were no materials or evidence on record to prove the said imputations, the Departmental Proceedings will have to be dropped and the show cause notice dated 11.1.2000 will have to be quashed.

7. For the foregoing reasons, I quash the impugned show cause notice dated 11.1.2000, the impugned order of dismissal dated 7.9.2000 and the impugned order rejecting the appeal dated 20.10.2000, and direct that the petitioner be reinstated in service forthwith. Regarding salary of the petitioner for the period from the date of suspension till date of his dismissal from service, the Disciplinary Authority will pass orders in accordance with the relevant Rules, but for the period from the date of dismissal till reinstatement, the petitioner will be paid his full wages/salary as the order of dismissal has been quashed by this Court.

8. The writ petition stands allowed. However, I make no order as to costs.