
(2014) 02 MAN CK 0009
In the Manipur High Court
Case No : Writ Appeal No. 52 of 2013

The State of Manipur

APPELLANT

Vs

Md. Junab Ali

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Citation : (2014) 02 MAN CK 0009

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : S. Nepolean, Addl. GA, for the Appellant; Kh. Tarunkumar, for the Respondent

Final Decision : Dismissed

Judgement

L.K. Mahapatra, Actg. C.J.

1. This writ appeal has been filed challenging the judgment and order of the learned Single Judge dated 25.9.2012 in W.P(C) No. 452 of 2009. The respondent was the petitioner in the writ application and the present appellants were the respondents therein. The writ application was filed by the respondent challenging the order dated 25.7.2007 issued by the Commandant, Home Guards(VA), Manipur releasing him from call out duty with immediate effect as his services with the Manipur Home Guard were no longer required. The respondent was appointed as a Home Guard u/s 4(1) of the Manipur Home Guards Act, 1966 and accordingly it was contended by the learned counsel for both the parties that his case is to be considered in terms of aforesaid Act of 1996 and Manipur Home Guards Rules, 1996 made thereunder. The brief facts leading to filing of the writ application by the respondent are as follows: The respondent was initially appointed as Home Guard on 7.3.1980. His case is that he was promoted to the rank of Battalion Commander by an order of the Joint Secretary (Home), Govt. of Manipur on 31.8.1983. The Commandant, Home Guards wrote a letter on 17.7.2007 to the Inspector General of Police (Ops/HG), Govt. of Manipur wherein it was informed that for appointment of Battalion

Commander in the Home Guard Department, the orders are to be issued by the State Home Department. Soon after the above, the Commandant issued an order on 25.7.2007 releasing the respondent from his call out duty. Aggrieved by such order, the respondent submitted a Memorandum to the Chief Minister praying for setting aside the order dated 25.7.2007. He also filed W.P(C) No. 579 before this Court challenging the legality of the said order dt. 25.7.2007. The writ application was disposed of with a direction to the present appellants to consider the representation of the respondent and liberty was also granted to the respondent to file fresh writ application in case further cause of action arises.

2. In compliance of the said order passed in the above writ petition, the Director of State Vigilance Commission conducted verification and submitted a report. However, the report submitted to the Home Department of the State Govt. was not accepted on the ground that it had not been done properly. Challenging rejection of the report the respondent again filed writ petition before this Court and ultimately the said writ application was withdrawn with liberty to approach competent authority. The respondent, thereafter, submitted another representation on 20.12.2008 before the Principal Secretary (Home), Govt. of Manipur challenging the order of discharge dt. 25.7.2007, but the said representation was rejected on 1.7.2009. The above rejection order gave rise to the writ petition out of which this appeal arises.

3. Undisputedly, the case of the petitioner is covered by the Manipur Home Guards Act, 1966 and Manipur Home Guards Rules, 1996 made thereunder. The learned Single Judge, referring to Section 4(4) of Manipur Home Guards Act, 1996 and Rule 7 of the Manipur Home Guards Rules, 1996, came to the conclusion that before any order of discharge is passed the competent authority is required to record his reason and also communicate the same to the respondent. The competent authority, while passing the discharge order having not assigned any reason as provided in Rule 7 of the aforesaid Rule, allowed the writ application but observed that it will be open for the present appellant to take a fresh decision with regard to further continuance of the respondent in service.

4. Mr. S. Nepolean, learned Addl. GA appearing on behalf of the appellants submitted that the order of discharge is not in terms of Section 4(5) of the Home Guards Act and it is an order of discharge u/s 4(4) of the Act. Therefore, even if Rule 7 of the 1996 Rules is made applicable, no reason is required to be assigned for the purpose of passing of such order of discharge. Referring to the order of discharge, it was contended by the learned Addl. GA that had the order been passed in terms of Section 4(5) of the 1996 Act read with Rule 7 of the 1996 Rules, the name of the respondent could not have been kept in the reserve strength of the Manipur Home Guard and he would have been simply discharged from service in terms of the aforesaid provision. The very fact that he was kept in the reserve strength of Manipur Home Guard, the impugned order of competent authority cannot be treated as an order of discharge in terms of Section 4(5) of the 1996 Act or under Rule 7 of the 1996 Rules.

5. Mr Kh. Tarunkumar, learned counsel appearing for the respondent submitted that the language used in the order of discharge clearly shows that the respondent had been discharged from service as his services were no longer required and therefore it is an order u/s 4(5) of the 1996 Act. Therefore, non compliance of Rule 7 of the 1996 Rules makes the order of discharge unsustainable and accordingly the learned single Judge had rightly set aside the said order of discharge and allowed the writ petition.

6. In order to appreciate rival contentions of the learned counsel appearing for the parties, it is necessary to quote the impugned order of discharge dated 25.7.2007 passed by the Commandant, Home Guards(VA) Imphal, and accordingly the said order is quoted below:

O.B. NO. 2572007/ GOVERNMENT OF MANIPUR OFFICE OF THE COMMANDANT:
HOME GUARDS(VA):IMPHAL

ORDERS BY THE COMMANDANT: HOME GUARDS(VA):IMPHAL Imphal, the 25th July, 2007

No. E/26/20/HG/2003: In pursuance of the judgment dated 26/2/2007 of the Supreme Court of India in connection with Civil Appeal Nos. 1897-1901 of 2000 read with DCG(HG) letter no.1/13(24)98-DCG(HG)/10925 dated 25/7/2007 and Section 4(4) of the Manipur Guards Act, 1966 Home Guard No. 313 Md. Junab Ali Bn. I Commander of Manipur Home Guards is hereby released from his call up duty with immediate effect as his service with the Manipur Home Guards is no longer requires, however he is kept in the reserve strength of the Manipur Home Guards.

Sd/- Commandant Home Guards(VA), Imphal.

7. The language used in the order of discharge shows that on one hand the Commandant released the respondent from his call out duty as his service in the Manipur Home Guard organization was no longer required and at the same time he also directed that his name should be kept in the reserve strength of the Manipur Home Guard organization. For convenience, sub section (4) and sub section (5) of Section 4 of the Manipur Home Guards Act, 1996 are quoted below:

(4) Subject to any rules made in this behalf, a Home Guard shall be required to serve the Home Guards organisation for a period of three years (including the periods spent in training) which period may be extended by the Govt. to such further period as it may consider necessary, and a Home Guard shall thereafter serve in the reserve force of Home guards constituted as hereinafter provided for a period of three years and shall, while serving in such reserve force, be liable to be called out for duty at any time.

(5) Notwithstanding anything contained in sub. S.(4), the Commandant General or the Commandant shall have authority to discharge any Home Guard at any time subject to such conditions as may be prescribed, if in his opinion the services of such Home Guard are no longer required.

8. As is evident from the above provisions a Member of Home Guard shall be required to serve the Home Guard Organization for a period of 3(three) years which may be extended and thereafter he shall serve in the reserve force in the Home Guard and while serving in such reserved force, he is liable to be called out for duty at any time. This provision, therefore, contemplates that a Home Guard, who is appointed to serve the Home Guard organization, can continue for a period of three years and his service can also be extended. After completion of three years as Home Guard or the extended period as the case may be, he is to be kept in the reserve force of the Home Guard for the purpose of utilizing his service in future as and when required.

9. Sub Section (5) only deals with discharge of a Home Guard and it provides that the Commandant General or the Commandant shall have the authority to discharge any Home Guard at any stage subject to such condition as may be prescribed if in his opinion the services of such Home Guard are no longer required.

10. Rule 7 of the Manipur Home Guards Rule, 1996 runs as follows:

7. Term of Office- The term of Office of a member of the Home Guards shall be 3 years. Provided that a person once appointed shall be eligible for re-appointment. Provided further that the services of a member of Home Guards may be discharged at any time by the commandant or the Commandant General as the case may be, if in his opinion the services of such Home Guards are no longer required. The opinion or reasons of such authority shall be recorded in writing and a copy of which is to be furnished to the member whose services have been discharged.

11. On reading of the said Rule, it appears that it covers sub section (4) and (5) of Section 4 of the Home Guards Act, 1996 which provides the term of office of a Member of the Home Guard to be for a period of 3(three) years and once appointed, he shall be liable for re-appointment. This provision is in consonance with Sub Section 4 of Section 4 of the 1996 Act. Second para of Rule 7 of the 1996 Rules deals with discharge of a Home Guard. It specifically provides that if in the opinion of the Commandant, the services of a Home Guard is no longer required, an order of discharge can be passed, but such authority has to record his opinion and reasons in writing while passing an order of discharge and copy of the same has to be furnished to the concerned Home Guard.

On perusal of the impugned order of discharge dated 25.7.2007 as quoted earlier, it is clear that the said order has neither been passed under sub section (4) alone nor under sub section (5) of Section 4 of the 1996 Act. On one hand the Commandant, in the impugned order dated 25.7.2007, observed that the services of the respondent are no more required in terms of sub section (5) and again directed that his name is to be kept in the reserve strength in terms of sub section (4) of Section 4 of the 1996 Act. The Commandant is only required to pass an order either in terms of sub section (4) of Section 4 of the 1996 Act read

with Rule 7 of the 1996 Rules or under sub section (5) of Section 4 of the 1996 Act read with Rule 7 of the 1996 Rules, but a composite order is not permissible to be passed. Therefore, on this ground alone the said order dated 25.2.2007 passed by the Commandant is liable to be set aside. Though the learned Single Judge had set aside the very same order on different ground, we find that the order is also liable to be set aside on the above ground and accordingly we do not find any justification to interfere with the impugned judgment. The writ appeal, being devoid of merit, is dismissed.