
(2014) 09 MAN CK 0023
In the Manipur High Court
Case No : Writ Petition (C) No. 696 of 2008

Thongsi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2015) LabIC 1145

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

Bench : Division Bench

Advocate : P. Tomcha, Advocates for the Appellant; Amarjit Naorem, C.G.S.C, Advocates for the Respondent

Judgement

Laxmi Kanta Mohapatra, C.J.—The petitioner, while working as Constable in 52 Bn. CRPF was proceeded against departmentally and having been found guilty of the charge, was removed from service by the disciplinary authority in Annexure-A/2 on 11.6.2002. His appeal against the order of punishment was dismissed by the appellate authority on 26.9.2006 in Annexure-A/4. The revision filed by him against the order of the appellate authority as well as the disciplinary authority was also rejected by the Inspector General of Police, Eastern Sector, CRPF Kolkata in Annexure-A/6. Challenging the above three orders, this writ petition has been filed. The brief facts of the case are that the petitioner joined as Constable in 52 Bn. CRPF in the year, 1990. In the year 2001-02 the Bn. was stationed at Smailpur, in the State of Jammu & Kashmir and he was also posted there in the Battalion. During the said period, he took casual leave for 15 days i.e. from 3.9.2001 to 19.9.2001 as his wife was seriously ill. During his stay at home his son also suffered from some ailments and accordingly he sent a telegram for extension of his leave. During that period also, there was factional killing between two tribes and he had to run away with his family members from his village for a safe shelter at Kangpokpi. Since the trouble continued for a long time, he could not join the post for about 6(six) months. After the trouble subsided and his family was settled in the village, he returned and reported for

duty on 14.4.2002. Then only he came to know that during his absence a departmental enquiry had been conducted ex parte. After reporting for duty he was handed over with the copy of the enquiry report with instruction to make representation in writing. Thereafter, he was assigned normal duty for a period of two months. Though the petitioner had submitted reply, suddenly the order of punishment was passed on 11.6.2002 removing him from service. Thereafter, his appeal and revision preferred against the punishment were rejected. The grievance of the petitioner is that he had every justification to overstay and had he been given an opportunity to defend himself in the departmental proceeding, he could have proved the justification of his overstay.

2. A counter-affidavit has been filed by the respondents 1 to 4 wherein it is stated that after initiation of departmental proceeding, the petitioner had been given ample opportunity to appear before the Enquiry Officer to contest the proceeding. He did not choose to do so and accordingly departmental proceeding was completed ex parte. Since the petitioner was found guilty of the charge, the disciplinary authority, considering the fact that CRPF is an disciplined organization and such conduct of the petitioner was not expected of an employee of the organization, decided to remove him from service. The appellate authority as well as revisional authority also agreed with the view of the disciplinary authority and dismissed the appeal and revision respectively.

3. Mr. Amarjit Naorem, learned CGSC, in course of hearing, also raised the question of maintainability of the writ petition on the ground that the unauthorized absence took place in the State of Jammu & Kashmir; the departmental proceeding was drawn up in Jammu & Kashmir. Apart from the above, the office of the Inspector General of Police, Eastern Sector is located in Kolkata. Therefore, no part of the cause of action arose in the State of Manipur and hence writ application is not maintainable.

4. In reply to such submission, it was conducted by the learned counsel for the petitioner that the petitioner had submitted appeal and revision from the State of Manipur after being removed from service and order of rejection were also received by him in the State of Manipur. Therefore, part of cause of action arose within the State of Manipur.

So far this preliminary objection is concerned, we find from the Annexure-A/3 that the petitioner had preferred the appeal on 9.9.2005 from his village in the district of Senapati after he was removed from service. The order of rejection by the appellate authority was communicated to him in his village address in the district of Senapati. This fact is evident from the order of rejection of appeal in Annexure-A/4. Similarly, in Annexure-A/5 the petitioner has submitted the revision before the I.G.P. CRPF on 23.11.2007 from his village and order of rejection was also served on him in his village. Therefore, part of cause of action arose within the State of Manipur as the petitioner received the orders of rejection of his appeal and revision in his home district, i.e. the district of Senapati. Accordingly the writ can be maintained in this Court.

5. The only ground taken by the petitioner in the writ petition is that he had not been given any opportunity to defend himself in course of the departmental proceeding and an ex parte report was submitted by the Enquiry Officer. The stand taken in the counter-affidavit is that the petitioner had been served with notice to appear before the Enquiry officer, but he failed to appear. Therefore, the Enquiry officer had no other option except to proceed ex parte.

6. From the impugned order of removal from service under Annexure-A/2 we find that the disciplinary authority has recorded non appearance of the petitioner even after service of notice before the Enquiry officer. The relevant part of the said order dated 11.6.2002 is quoted below:

".....Since the delinquent did not report to take part in D.E. within the date given by the E.O., he had no option but to held enquiry ex parte as per Rules. Accordingly, the E.O. has recorded statement of all the 3 P.Ws. and sent copy of recorded statement to the delinquent vide letter No. G. II-1/02-MPS dated 6.3.2002 through Regd. Post No. 4263 dated 7.3.2002 at his home address. Through this letter, the E.O. informed the delinquent that since he did not report before him, he has recorded statement of RWs in his absence. The delinquent was further informed/directed by the E.O. to report before him for his defence within 15 days. But he did not turn up. Hence, the E.O. recorded his report on 23.3.2002 mentioning that the charge framed against No. 903057246 Ct/GD Thongsi Tubai is fully proved without any shadow of doubt. Thereafter, the E.O. has submitted the D.E. proceedings to the disciplinary authority for further action."

7. We, therefore, called upon the learned CGSC to produce the departmental proceeding records for our perusal. On perusal of the order sheet prepared by the E.O. we find that in Order No. (2), the Memorandum of charges along with the annexure had been sent to the petitioner by registered post. From Order No. (4), it appears that the petitioner had not reported from leave and he was accordingly directed by the Enquiry Officer to appear before him for the departmental proceeding on or before 6.3.2002. The first Column against order No. (4) also shows that the said notice was sent by registered post in home address of the petitioner. Thereafter, it appears from order Nos. (5) & (6) that statement of witnesses were recorded and documentary evidence was accepted by the Enquiry officer. Again from Order No. (13) it appears that since the petitioner did not appear, the recorded statements were sent to him in his home address by registered post on 7.3.2002. Though it appears from the order sheet that on two occasions notices had been sent to the petitioner by registered post and same has been taken note of by the disciplinary authority while passing the order of punishment, there is nothing in the record to show that the two letters had, in fact, been sent by registered post or served on the petitioner.

8. Mr. Amarjit Naorem, learned CGSC also after verification of the records fairly submitted that there is nothing on record to show that the said two letters/notices had been issued to the petitioner by registered post or that the said

notices had been served on him in his village address. In absence of any evidence to show that the notices issued by the Enquiry officer had in fact been served on the petitioner, the Court can only hold that the departmental enquiry was conducted ex parte without affording any opportunity to the petitioner. The disciplinary authority, the appellate authority as well as the revisional authority have not taken care to even look into the records of the departmental proceeding before coming to the conclusion that the petitioner did not appear before the Enquiry Officer even after service of notice. Had they seen the records, they could have found that no notice had been served on the petitioner though from the order sheets it appears that notices were directed to be issued by registered post. We are, therefore, of the view that the petitioner having not been given any opportunity to defend himself in the departmental proceeding, the order of punishment as well as orders passed by the appellate authority, revisional authority have to be set aside. We accordingly allow the writ petition, quash the orders passed by the three authorities in Annexures-A/2, A/4 and A/6 respectively and direct that the petitioner be re-instated in service. If the authority decides to initiate proceeding again from the stage of issuance of notice, they shall be at liberty to do so and in that case the petitioner shall be deemed to be placed under suspension for the entire period till such departmental proceeding is completed. If the disciplinary authority decides not to proceed any further and drop the proceeding, the petitioner on re-instatement shall be entitled to fifty percent of the salaries for the period he was kept out of service in view of the order of removal from service.