

(1996) 05 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 183 of 1996

Thoudam Kumar Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

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

Citation : (1996) 2 GLJ 59

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : Kh.Binoy Kumar Singh, A.Jagat Chandra Singh, Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed by petitioner viz ExRifleman No.9747 Thoudam Kumar Singh for quashing for order of dismissal from service dated 5th August, 1995 contained in Annexure A/1.

2. I have heard Mr. Kh Binoy Kumar, the learned counsel appearing on behalf of the petitioner and Mr. A. Jagatchandra Singh, the learned Government Advocate appearing on behalf of the respondents.

3. For the disposal of the point in controversy the facts material may be stated as under:

The petitioner was appointed a Rifleman in the 9th Bn Manipur Rifles in 1989 and thereafter he was posted at various places. His last posting was at Kangchup Repeater. Out Post where he was detailed to perform the duty of Sentry from 2400 hours on 30.7.95 to 0130 hours on 31.7.95. While the petitioner was discharging his duty as Sentry between the aforesaid hours a gang of extremists entered into the Post and had taken away all the arms and ammunitions from the petitioner and others who were in the camp. A police case was registered being FIRNo.42 (7)95 under sections 121/121A/422/395/397IPC, 25 1 Arms Act and 13 (UPA) Act. Thereafter the petitioner and some of his associates were

dismissed from service by the order dated 5th of August, 1995 contained in Annexure A/1 passed by the Commandant, 9th Bn Manipur Rifles, Taphou. The petitioner has challenged this order on the ground that this order does not contain any reason and hence it should be quashed. The order of dismissal may, therefore, be quoted as under : (not quoted : Editor)

4. It would this be clear from the order of dismissal that this order was passed under Article 311 (2) (b) of the Constitution of India which reads :

"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry."

5. A perusal of this provision clearly shows that the authority empowered can pass such an order of dismissal when it is not reasonably practicable to hold inquiry but in that case also reasons are to be recorded. But in the instant case a perusal of the order as quoted above will clearly show that no reason whatsoever has been recorded for the dismissal of the petitioner. The Supreme Court in catena of decisions held that not only the reasons are to be recorded in such order of dismissal but when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent upon the authority to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice.

6. In the instant case a perusal of the order of dismissal as quoted above will show that the order of dismissal is based on the allegation that the petitioner did not give any resistance when the extremists were taking away the arms and ammunitions. But the respondents have neither filed any counter affidavit nor produced the relevant records to show that it was not reasonably practicable to hold departmental inquiry against the petitioner. In the case of Jaswant Singh vs. State of Punjab & others reported in AIR 1991 SC 385 the Supreme Court held that so far as Article 311 (2) (b) is concerned two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable", and (ii) the disciplinary authority must record in writing its reason in support of its satisfaction. In the same decision it has also been held by the Supreme Court that when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

7. In the instant case the respondents neither filed any counter affidavit nor produced the relevant files to show that the concerned authority took the

decision for dismissal on certain objective facts. I am, therefore, left with no choice other than to quash the impugned order of dismissal dated 5th of August, 1995 contained in Annexure A/1 so far as the petitioner is concerned and accordingly I do quash the aforesaid order so far as it relates to the petitioner.

8. The result is that the impugned order dated 5th of August, 1995 contained in Annexure A71 is quashed in respect of the petitioner and it is directed that the petitioner be reinstated forthwith with liberty to the authority to proceed with the inquiry and if necessary, by placing the petitioner under suspension. The question whether the petitioner would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement is left be decided by the authority according to law, after the culmination of the proceedings and depending on the final outcome. If the petitioner succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. It is made clear that this reinstatement will be for the purpose of fresh inquiry.

9. With the above order and direction this writ petition is disposed of with no costs.