
(1994) 03 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 87 (k) of 1993

Throngokiu and Others

APPELLANT

Vs

State of Nagaland and Another

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Nagaland Services (Discipline and Appeal) Rules, 1967 — Rule 11

Citation : (1995) 1 GLR 250

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : K. Meruno and Taka Masa, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—The three Petitioners are members of Nagaland Armed Police Force. They belong to 1st Battalion of Nagaland Armed Police. At the relevant time they were posted at Chalkot village. Petitioner No. 1 was L/Naik. Petitioner No. 2 was Havilder and Petitioner No. 3 was ABSI at the relevant time. They were dismissed from service by an order dated 23rd July, 1993 passed by the 2nd Respondent under Rule 11(ii) of the Nagaland Service (Discipline and Appeal) Rules, 1967 dispensing enquiry. The impugned order runs as under:

ORDER

In the wake of an attack on the Jaluke Sub-Division, ABSI Satkolam Kuki and 20 Ors were sent to Chalkot village by giving a specific task of protecting the life and properties of the villagers from the depredation and attack of the armed unlawful elements. It was on the part of ABSI Satkolam Kuki and his men to ensure relentless Vigilance and alertness to perform the specific task given to them. On 14-6-93 at about 1715 hr. an armed gang of anti-social elements came to Chalkot village and attacked the civilians of the village. The armed gang also had set fire on dwelling houses and granary of the villagers. On being warned by

the said gang of anti social elements to run away from the area, the N.A.P. personal run away and descried the post. ABSI Satkolam Kuki along with his men under his command deserted the post leaving behind 5 rifles, 1 Bayonet, 1 Stengun, 2 Sten magazines, 35 rds. of 9 mm balls 60 rd. of 303 BDN and 1 WI set (Passaphane) instead of making an attempt to counter the attack of the armed gang and in the process the armed gang look away the arms and ammunition and other Government properties which were on their charge. This act on the part of ABSI Salkolam Kuki and the men under his command exhibit cowardice and negligence to duties as a member of the Police force.

Thus because of their cowardice and negligence to duties 32 houses and 8 granary houses were set on fire by the anti-social elements and killed 5 persons including one Policeman who was caught by UGs in the incident. The misconduct stated above on the part of ABSI Satkolam Kuki and all his men under his command call for a very serious disciplinary action. For the purpose of collecting evidence in a departmental enquiry that may be held, it is not possible to secure the presence of the members of the armed gang involved in the murder and arson in Chalkot village and no eye witnesses from the said Chalkot village could be obtained as they had deserted the village after seeing the killing of their village folk and even those eye witnesses remaining in the village are in a state of shock and are unable to tender evidence.

In the light of the above circumstances I came to the conclusion that it is considered not practicable to hold an enquiry against ABSI Satkolam Kuki and his men under his command. The place was also visited by IGP (R) and myself. The platoon was at a height and the UGs had collected villagers in the open ground thereby giving a tactical advice to the post but no member of the force reacted. Platoon Commander, ABSI Satkolam Kuki did not display the qualities of leadership and displayed cowardice in so much that he even did not protect the wireless set which was given to him. Similarly, Havildar Hotrengba Yimchunger and L/Naik Throngji Yimchunger also displayed lack of leadership and cowardice. Thus the whole platoon of NAP ran in utter confusion. The party thus failed to protect the village and have brought a bad name to the department by conduct unbecoming of Police officers.

Thus keeping above things in mind and the fact that no enquiry is possible, I hereby order under Rule-11 of Nagaland Civil Service (Conduct & Appeal) Rules that:

1. ABSI Satkolam Kuki of 1st NAP
2. Havilder Hetrongba Yimchunger of 1st NAP.
3. L/Naik Throngji Yimchunger of 1st NAP of (sic, are) dismissed from service from the date of receipt of this letter/order.

Sd/ S.C. Tripathi Director General of Police Nagaland, Kohima.

2. The aforesaid impugned order has been challenged on the ground firstly, that

in fact if the enquiry is held it would reveal the actual facts as under what circumstance the members of the force could not repulse the attack by the undergrounds. Secondly, the order of dismissal is discriminatory as only the services of the Petitioners have been dismissed, whereas other members of the force who were similarly situated with the Petitioners have been let off. Thirdly, the order of dismissal was passed on the whims and caprice of the disciplinary authority thereby abusing the process of the power.

3. Mr. K. Meruno, learned Counsel for the Petitioners vehemently submits that, from Annexure-1 to Annexure 20 of the counter it reveals that some preliminary enquiry has been conducted which would show that if a regular departmental proceeding is conducted, they could have collected more evidence so as to enlighten the factual position of the incident in which Petitioners could have participated by" defending themselves. However this has not been done, and instead the disciplinary authority adopted a short cut method to punish the Petitioners.

The disciplinary authority was of the opinion that under the circumstances mentioned in the impugned order, it would not be possible to collect evidence if a regular departmental enquiry is held. Even if assuming the statements recorded in a preliminary enquiry is taken into consideration, it speaks volume against the Petitioners. This apart, the Petitioners could not have improved their case with regard to the factual position as mentioned in the impugned order even if the regular departmental proceeding is held. In the instant case the facts speaks for itself (*resipso laquitor*). I am afraid, under the present facts and circumstances of the case the Petitioners could have improved their Case if the regular departmental enquiry was held.

4. Next it is contended by Mr. Meruno that the disciplinary authority must before resorting to Article 311(2) Clause (b) have an objective satisfaction of the facts. In this connection he has referred to a decision of the Apex Court in *Jaswani Singh Appellant v. State of Punjab and Ors. Respondents* 1991 4 SCC 362 wherein the Apex Court had held in paragraph 5 as follows:

Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the *ipsa dixit* of the concerned authority. 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.

5. The Ruling cited by the counsel is of no assistance to the Petitioners case, because the disciplinary authority has recorded its objective satisfaction as under:

For the purpose of collecting evidence in a departmental enquiry that may be held, it is not possible to secure the presence of the members of the armed gang

involved in the murder and arson in Chalkot village and no eye witnesses from the said Chalkot village could be obtained as they had deserted the village after seeing the killing of their village folk and even those eye witnesses remaining in the village are in a state of shock and are unable to tender evidence.

The aforesaid reasons recorded by the disciplinary authority for dispensing with the departmental enquiry, in my view, clearly established the objective satisfaction of the disciplinary authority and it is not warranted for interference.

6. Further it is revealed from the impugned order that the place of incident was visited by the disciplinary authority himself and the disciplinary authority has held, that the platoon, was located at the height and the under grounds had collected villagers in the open ground thereby giving actual advice to post but no member of the force reacted. This objective satisfaction of the disciplinary authority recorded on the inspection of the place of occurrence cannot be interfered with lightly. Therefore, in my view the dismissal of the Petitioners services by disciplinary authority dispensing with the enquiry is passed on the objective satisfaction of facts and after recording proper reasons.

7. Mr. E.Y. Renthungo, learned Jr. Govt. Advocate submits that the disciplinary authorities satisfaction regarding non-availability of witness on account of fear cannot be said to be vitiated by abuse of power by the disciplinary authority. In this connection, the learned Counsel has referred to a decision of the Apex Court rendered in Ikramuddin Ahmed Borah Vs. Superintendent of Police, Darrang and Others, In the said case it has been held by the Apex Court in paragraph 133 of the judgment as under:

One of the illustrations justifying Clause (b) of the second proviso to Article 311(2) being invoked, as indicated above, is the non-availability of the witnesses on account of fear of the officer concerned. In the instant case as is apparent from the impugned order of dismissal this, was the main ground for invoking the said Clause (b). On the material on record, it is not possible for us to take the view that there was an abuse of power by the disciplinary authority in invoking Clause (b). The Superintendent of Police who passed the order of dismissal was the best authority on the spot to assess the situation in. the circumstances prevailing at the relevant lime and we do not find any good ground to interfere with the view taken by the Superintendent of Police in this behalf. As pointed out in the case of Tulsiram patel 1, in such matters, the court will not sit in judgment over the relevancy of the reasons given by the disciplinary authority for invoking Clause (b) like a court of; first appeal and that even in those cases where two views are possible, the court will decline to interfere. In this view of the matter, we do not find any substance in the second submission either.

8. Another contention of Mr. K. Meruno that the Petitioners are discriminated inasmuch as the other members of the force who were equally situated with the Petitioners have been let off without any punishment has also no merit, because the Petitioners are not equally situated with other members of the force

inasmuch as the Petitioners are in the rank of ABSI, Havilder and L/Naik respectively and manning the post. They were the commanders of the post whereas the other members of the camp are constables. In a disciplined force, it is the commanders who are the moral boosters of the force and the other members of the force act under the commands and orders of the commanders. In this situation it Cannot be said that the Petitioners are equally circumstanced with the other members of the force.

In view of what has been staged above there is no merit in this writ petition and the same is accordingly dismissed Parties are asked to bear their own costs.