
(2013) 08 MAN CK 0002
In the Manipur High Court
Case No : Writ Appeal No. 39 of 2011

Union of India and Another	Vs	APPELLANT
B.S. Yambem		RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 MAN CK 0002

Hon'ble Judges : A.M. Sapre, C.J.;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : C. Kamal, C.G.S.C, for the Appellant; N. Kumarjit Singh, for the Respondent

Judgement

A.M. Sapre, C.J.—The decision rendered in this appeal shall also govern the disposal of W.A. No. 40/2011 because both these appeals arise out of common order passed in one writ petition being W.R. (C) No. 904 of 2008. This writ appeal has been filed by the respondent-Union of India of WP(C) No. 904 of 2008 under Chapter-V-A of Rules 2 of the Gauhati High Court against the judgment and order dated 01 -09-2010 passed by the learned single Judge in W.P. (C) No. 904 of 2008 (reported in 2011 Lab IC 702).

2. By impugned order, the learned single Judge allowed the writ petition filed by the petitioner (respondent herein) and while quashing one memorandum dated 22.8.2008/16.10.2009 also quashed the charge-sheet issued to the petitioner followed by the decision taken by the appellant to hold the departmental inquiry into the said charges framed in the impugned charge-sheet against the petitioner.

3. So the question which arises for consideration in this intra court appeal filed by the Union of India (Defence Ministry) is whether learned single Judge was justified in allowing the petition and in consequence was justified in quashing the memorandum, the charge-sheet and the decision taken to hold the departmental inquiry into the charges contained in the said charge-sheet against the petitioner?

4. In order to appreciate the issue involved in the appeal, it is necessary to state

the facts in detail.

5. The respondent (writ petitioner) was working in 61. Bn of Central Reserve Police Force (for short hereinafter called "CRPF") on the post of commandant and at the relevant time was posted at Imphal. In between 3.6.95 to 5.7.95, one AK-47 Rifle along with some ammunitions which was in control/possession of the writ petitioner being the commandant of the said battalion and which was issued to one lance naik was found missing from the said Battalion. The DIG (Ops) CRPF Imphal therefore by his letter dated 28.5.97, asked the writ petitioner to submit his written explanation about the loss of the said AK 47 Rifle and ammunitions. The writ petitioner submitted his reply dated 7.4.98 explaining therein the reasons which led to its loss. He also stated as to how and under which circumstances he utilized the service of civilian informers including surrendered/bailed out members of various underground organizations which resulted in loss of rifle and ammunition. By letter dated 24.6.98, the petitioner was warned to be more careful and a sum of Rs. 3750 was also ordered to be recovered from the petitioner. This was done on the basis of some internal court of inquiry.

6. On 15.3.1999 the IGP (NS-CRPF) sent a letter to the writ petitioner intimating him that the warning earlier given to him by letter dated 24.06.1998 is being withdrawn because it was considered that the same was not commensurate with the gravity of the offence committed by him in discharge of his duties. The petitioner was informed vide memorandum dated 23.06.1999 that regular departmental inquiry as per Rule 14 of CCS (CCA) Rules 1965 is ordered in connection with the said incident of loss of AK 47-Rifle with its ammunition by framing articles of charges.

7. The petitioner felt aggrieved of withdrawal of imposition of minor penalty and the decision for holding departmental inquiry vide letter dated 15.3.1999 filed the writ petition being W.P. (C) No. 20 of 2002. The learned single Judge by order dated 18.5.2006 allowed the petition and quashed the letter dated 15.3.1999 holding that since it was issued without giving any prior show cause notice to the petitioner and hence it was bad in law. The Union of India felt aggrieved of the order of the writ court Filed intra court appeal being W.A. No. 45 of 2006 before the Division Bench.

8. The appellate court by order dated 7.11.2006, though dismissed the appeal with liberty granted to the Union of India to proceed against the petitioner in accordance with law by following principles of natural justice. It would be clear from the observations made in its concluding para which reads as under:--

8. There is yet another aspect of the matter which must be noticed by us. The order dated 15th March, 1999 has been interfered with by the learned single Judge on the ground that it violates the principles of natural justice. After an order is interfered with the Court on the ground that the same violates the principles of natural justice, it is always open for the authority to initiate fresh action in the matter, if so desired and advised and by complying with the

principles of natural justice. In the present case, though not expressly permitted by the learned single Judge, such a course of action was always open for the appellants to adopt and follow. In view of the aforesaid facts, we fail to see how any prejudice has been caused to the appellants so as to enable us to understand that the present appeal needs to be entertained. The learned counsel for the appellants, Shri N. Ibotombi, has submitted that it should be clarified by the Bench that the above course of action would be open for the appellant to adopt and follow. In view of the settled law on this score, we make the above position clear.

9. Writ appeal, consequently, stands disposed of in the terms of the above directions.

9. As a consequence to passing of the aforementioned order by the Division Bench, the Director General (CRPF) vide his letter/order dated 27.6.2008 in the first instance withdrew the earlier letter dated 24.6.98 by which minor penalty of warning with fine was given to petitioner.

10. The DG then obtained necessary sanction from the President under Rule 9 of CCS (Pension) Rules, 1972 for holding regular departmental inquiry in to the charges because it was noticed that during this interregnum period, the petitioner had retired from the services. The President gave necessary sanction for holding departmental inquiry against the petitioner and accordingly the impugned charge-sheet/memorandum was issued on 22.8.2008 to the petitioner for holding of the regular departmental inquiry as per Rules. The following 4 charges were framed:

ARTICLE-I

That the said Shri B.S. Yambem, Commandant (under suspension) while posted and functioning as commandant 61 Bn CRPF at Mantripukhri, Imphal (Manipur) during the period from 1.5.95 to 31.8.95 committed an act of misconduct in that he allowed kote UC to issue arms and ammunitions more than authorisation. Thus the said B.S. Yambem, Commandant (u/s) failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri B.S. Yambem, Commandant (u/s) while posted and functioning in the aforesaid capacity and during the aforesaid period committed an act of misconduct in that he passed verbal orders to issue service arms and ammunitions to ex-undergrounds through kote UCs without keeping/maintaining proper records violating the instructions on the subject. Thus the said Shri B.S. Yambem, Comdt. (u/s) failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Shri B.S. Yambem, Comdt. (u/s) while posted and functioning as Commandant 61 Bn CRPF, Mantripukhri, Imphal (Manipur) during the period from 1.5.95 to 31.8.95 committed an act, of misconduct in that he got issued service weapons to ex-undergrounds through No. 793020336 LNK Man Bahadur in violation of orders which resulted in missing of one AK-47 Body No. 313422 Butt No. 77, 3 Magazine and 90 rounds. That the said Shri B.S. Yambem, Commandant (u/s) failed to maintain absolute integrity and devotion to the duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(i)(ii) and (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

That the said Shri B.S. Yambem, Comdt. (u/s) while posted and functioning in the aforesaid capacity during the aforesaid period committed an act of misconduct in that he passed verbal orders to issue service arms and ammunitions to ex-undergrounds resulting missing of one AK Body No. 313422 Butt No. 77, 3 Magazines and 90 Rounds. He had hidden the above fact and failed to take appropriate action after missing the service weapon. Thus the said Shri B.S. Yambem, Comdt. (u/s) failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

11. It is with these undisputed factual background, the petitioner felt aggrieved of the impugned charge-sheet and the decision taken for holding departmental inquiry into the charges and filed the writ petition out of which this appeal arises.

12. The challenge to the impugned charge-sheet on behalf of the petitioner was essentially on one ground namely it was contended that the impugned charge-sheet was issued beyond the time limit prescribed in Rule 9(2)(b)(ii) of the CCA Rules and hence, the same was liable to be quashed. It was contested by the Union of India (Defence Ministry) on several grounds but the ground raised by the petitioner found favour to the learned single Judge (writ court) and hence the impugned (memorandum/charge-sheet) was quashed by the impugned order on the ground that it did not satisfy the requirements of Rule 9(2)(b)(ii) *ibid*. In other words, it was held that the impugned charge-sheet was issued beyond the period of four years from the date of accrual of original cause of action as prescribed in Rule 9(2)(b)(ii) and hence it was liable to be quashed.

13. The operative part of the impugned order reads as under:

[9] It is so well settled construction of statute that the whole provision of statute should be read for the purpose of construction and there cannot be construction or interpretation by isolating a part of it without considering the other parts or provisions of the statute. At the last Mr. Komol, learned CGSC made a faint attempt to support the case of the respondents by reading only Rule 9(2)(b)(i)

that since sanction of the President had been obtained, departmental proceedings could be initiated against the petitioner for the incident which took place more than 10 years ago from the date of issuing the impugned Memorandums for initiating the disciplinary proceedings, such attempt made by Mr. Komol is not sustainable in the eye of law inasmuch as he could not read Rule 9(2)(b)(i) in isolation of other parts of the Rule, i.e. Rule 9 more particularly Rule 9(2)(b)(i).

[10] For the foregoing reasons, the impugned Memorandums dated 16.10.2009 and 22.08.2008 are hereby quashed. Parties are to bear their own costs.

14. It is against this order of the writ court; the Union of India (Defence Ministry) has felt aggrieved) and filed this intra court appeal.

15. Heard Mr. C. Komol, learned CGSC appearing for the appellants and Mr. N. Kumarjit, Sr. Advocate appearing for the respondents.

16. Learned counsel for the appellant (Union of India) while assailing the impugned order contended that the learned single Judge erred in not properly appreciating the controversy in the context of requirement of Rule 9 *ibid*. It was his submission that the case in hand would squarely fall under Rule 9(2)(a) read with Rule 9(2)(b)(i) and hence it is saved for being probed on merits even after the petitioner's retirement from the service. He urged that the period of four years prescribed in Rule 9(2)(b)(ii) is not applicable to the petitioner's case for the simple reason that the departmental proceedings against the petitioner were already initiated while he was in service and since the issue was sub-judice in the writ petition/appeal, and hence it was not concluded finally. Learned counsel pointed out that the action impugned is in continuation to the original proceedings initiated keeping in view the liberty granted to appellant by order dated 7.11.2006. Learned counsel contended that to quash such proceedings treating them to be the "fresh one" was therefore not proper. Learned counsel also contended that since the appellant had obtained due sanction from the President as provided in Rule 9(2)(b)(i) before proceeding to hold the departmental inquiry against the petitioner for the same charges and hence the limitation of 4(four) years provided in Rule 9(2)(b)(ii) would not apply. Learned counsel therefore submitted that impugned order of the writ court deserves to be set aside and the petition out of which this appeal arises is liable to be dismissed by permitting the appellant to continue with the departmental inquiry against the petitioner as per rules.

17. In reply, learned counsel for the respondent (petitioner) supported the impugned order. According to him, the petitioner's case fall under Rule 9(2)(b) (ii) and hence no charge-sheet could be issued after expiry of four years from the date of accrual of cause of action which in this case arose in 1995 when the alleged rifle/ammunition was found missing. Learned counsel pointed out that since the charge-sheet was served on the petitioner on 16.10.2009 in relation to the event occurred in 1995 and during this interregnum period, the petitioner

had retired, his case would be governed by Rule 9(2)(b)(ii) *ibid*.

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal finding force in the submission urged by the learned counsel for the appellant.

19. Rule 9 which, has a bearing over the issue reads as under:

9. Right of President to withhold or withdraw pension

1 [(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,--

(i) shall not be instituted save with the sanction of the President, [ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

20. In our considered view, the case in hand would squarely fall within the four corners of Rule 9(2)(a) as rightly contended by the appellant. It is for the reason that firstly the departmental inquiry had already been initiated against the

petitioner in relation to the charges while he was in service. In this view of the matter, the case of petitioner would fall under Rule 9(2)(a); secondly, the issue in question was sub-judice in writ proceedings at the instance of the petitioner and hence during this period, no proceedings could have been concluded and brought to its logical end; thirdly the charge-sheet was issued in relation to the same charges for which the earlier proceedings had been initiated against the petitioner and hence it cannot be said that there was no identity between the two. In other words, the charge-sheet issued was in relation to the same event for which the earlier proceedings in 1995 had been initiated against the petitioner and hence it was not correct on the part of the petitioner to contend that the present proceedings were "fresh one" and had nothing to do with the earlier proceedings: fourthly since the present proceedings were initiated as a sequel to the liberty given by the Division Bench, it cannot be said that they were barred by period provided in Rule 9(2)(b)(ii).

21. In our opinion, the, issuance of charge-sheet is also saved under Rule 9(2)(b) (i). It is for the reason that since the petitioner had retired from the services, and hence the due sanction as required under Rule 9(2)(b)(i) was obtained from the President before serving a charge-sheet to him. Once the sanction was obtained from the President then the bar of 4 years as contained in Rule 9(2)(b) (ii) will not apply to his case. In other words, grant of sanction by the President would save the proceedings from the applicability of bar of period provided in Rule 9(2)(b)(ii). It is for this reason, we are of the view that then proceedings of serving the charge-sheet to the petitioner after his retirement falls in Rule 9(2) (a) read with Rule 9(2)(b)(i) *ibid* and are thus saved from being probed on merits as per CCA Rules.

22. We cannot therefore with respect agree to the view taken by the learned single Judge when he held that since the charge-sheet in question was hit by Rule 9(2)(b)(ii) *ibid* and was thus illegal.

23. In the light of foregoing discussion, the appeal deserves to be allowed. It is accordingly allowed. Impugned order is set aside. As a consequence, the writ petition out of which this appeal arises is dismissed, resulting in upholding of service of charge-sheet on the petitioner and the decision taken for holding departmental inquiry as per CCS (CCA) Rules against the petitioner.

24. Before parting with the case, we consider it apposite to state that we have not applied our mind to the merits of the case and hence it is for the Inquiry Officer to hold proper departmental inquiry in relation to charges framed strictly in accordance with law without being influenced by any observations made in this order.

25. The appellant is directed to proceed with the departmental inquiry and conclude the same after affording full opportunity to the petitioner in the inquiry proceedings.

26. Let the proceedings be started within one month from the date of this order

and it be completed within six months. No costs.