
(2002) 02 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 95 of 2000

Upendra Nath Iangrai

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 395
Police Act, 1861 — Section 7

Citation : (2002) 1 GLT 644

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N.K. Deb, S.K. Deb Parkayastha and D.S. Rathor, for the Appellant;
C.P. Upadhayaya, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The Petitioner was working as an Assistant Sub-Inspector of police, (SB), under the Government of Meghalaya. On 18.8.1994, when he was working as personal Security officer to the Finance Minister, Government of Meghalaya, he was sent by the Finance Minister to Jaiaw Langsning along with the driver Sri Bikram Giri in an Ambassador car to fetch the family members of the Finance Minister from a religious function. On reaching Jaiaw Langsning, they were waiting on the road side in front of the residence of Sri Jormanik Syiem for the family members of the Finance Minister, and at about 6.45 pm, 5 persons approached the car and took away the service revolver with 6 rounds of ammunitions from the possession of the Petitioner. A preliminary enquiry was conducted by the Deputy Superintendent of Police, (Crimes), East Khasi Hills, Shillong, into the said loss of service revolver and 6 rounds of ammunitions and pursuant to the report of the said preliminary enquiry, the Petitioner was placed under suspension by order dated 29.8.1994 passed by the Special Superintendent of Police, (SB) , Meghalaya. Thereafter, the Special Superintendent of Police, (SB), Meghalaya, by his order dated 16.9.1994 directed

the Petitioner to show cause u/s 7 of the Police Act read with Rule 66 of the Assam Police Manual, part-III, and Article 311 of the Constitution of India, as to why any of the penalties prescribed should not be inflicted on him for the charges mentioned therein. The charges mentioned in the said order dated 16.9.1994 were as follows:

That you were detailed for security duty to Hon"ble Finance Minister and you were issued with the Service Revolver. That on 18.8.1994 you along with the Driver of the Hon"ble Minister was sent to Jaiaw where you failed to save the Government property.

You are therefore charged with remissness and cowardice act due to which you have caused a loss to the Government and failed to save the Government property in your possession.

Along with the said order, a statement of allegation was also served on the Petitioner, which was to the following effect:

Statement of Allegation

That on 18.8.1994 you failed to protect and save the Government property (Service Revolver) due to your remissness and cowardice act, causing a loss of the Government property.

By the said order dated 16.9.1994, the Petitioner was required to submit his written statement in his defence within 7 days. The Petitioner submitted his written statement stating therein that the charges were vague and that even in the statement of allegation annexed to the order dated 16.9.1994, the allegations relating to remissness and cowardice on the part of the Petitioner had not been mentioned. The Special Superintendent of Police. (SB), Meghalaya, in his order dated 29.9.1994 observed that the explanation submitted by the Petitioner was not satisfactory, and appointed Sri GC Chhetri, Duputy Superintendent of Police (Bomb Disposal) as Enquiry officer for conducting the departmental proceedings. The Deputy Superintendent of Police (Bomb Disposal), Meghalaya, thereafter conducted the enquiry and submitted his findings holding that the charge levelled against the Petitioner was proved beyond all reasonable doubt. The Special Superintendent of Police (SB), Meghalaya along with his communication dated 12.6.1995 to the Petitioner sent a copy of the findings of the Enquiry Officer, and asked the Petitioner to show cause as to why the penalty of dismissal from service should not be inflicted on him. The Petitioner then submitted his explanation and he also appeared before the Special Superintendent of Police (SB) , Meghalaya , but in his order dated 29.6. 1995, the Special Superintendent of Police, (SB), Meghalaya, observed that he agreed with the findings of the Enquiry officer to the effect that the Petitioner was guilty of the charge and that despite ample chances given to the Petitioner to prove his innocence, he had not been able to do so and in the interest of police department it was detrimental to retain the Petitioner in service. By the said order dated 29.6.1995 of the Special Superintendent of

Police, (SB), Meghalaya, the Petitioner was discharged from service with immediate effect. The Petitioner then filed a writ petition; Civil Rule No, 65/(SH)/1997, before this Court against the order of discharge, but by order dated 19.5.1997, this Court disposed of the said writ petition with the direction that the Petitioner may file a regular appeal within a period of two weeks before the Deputy Inspector General of Police, and in case such an appeal is filed, the same would be disposed of in accordance with law within a period of one month. Thereafter the Petitioner filed an appeal before the Deputy Inspector General of Police (SB), Meghalaya on 28.5.1997, but by order dated 3.7.1997., the Deputy Inspector General of Police disposed of the appeal holding that the Petitioner deserved to be discharged from Police force in the interest of justice and discipline. Aggrieved, the Petitioner has filed this writ petition for quashing the order of discharge passed by the Disciplinary Authority as well as the order of the Appellate Authority upholding the said order of discharge.

2. At the hearing, Mr. NK Deb, learned Counsel for the Petitioner, submitted that the charges of remissness and cowardice against the Petitioner without any allegation of supporting facts to show such remissness and cowardice on the part of the Petitioner were vague and not definite. According to Mr. Deb, on this count alone the disciplinary proceedings as well as the impugned order of discharge are liable to be quashed. In support of this contention, Mr. Deb relied on the decision of the Supreme Court in *Sawai Singh Vs. State of Rajasthan*, as well as the decision of this Court in *Brendra Kumar Hazarika v. State of Assam* 1989 (1) GLJ 454 . Mr. Deb next submitted that no proper enquiry was held in this case, and it has been held by the Supreme Court in *Hardwari Lal Vs. State of U.P. and Others*, that where there is no proper enquiry held by the authorities, the order of dismissal passed against a delinquent employee is liable to be set aside. He further contended that copy of the enquiry report has not been furnished to the Petitioner. He cited the decision of the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, for the proposition that where copy of the enquiry report is not furnished to delinquent employee before the order of penalty is passed, requirement of providing reasonable opportunity to the delinquent employee in Article 311 of the Constitution and the principle of natural justice are violated. Finally, Mr. Deb submitted that punishment of discharge from service imposed on the Petitioner is not only disproportionate, but also discriminatory inasmuch as two other Assistant Sub-Inspectors of Police, namely, Sri Rabindra Rabha and Sri Sengrang T. Sangma, charged for similar misconduct have been reinstated in service whereas the Petitioner has been discharged from service.

3. Mr. CP Upadhyaya, learned State counsel, Meghalaya, on the other hand submitted that there was no defect in the charges framed against the Petitioner, and that due reasonable opportunity was given to the Petitioner to defend himself against the charges and the provisions of Article 311 of the Constitution as well as Rule 66 of the Assam Police Manual were duly complied with. He further submitted that the record would show that the Petitioner, fully

participated in the enquiry before the Enquiring officer, and declined to cross - examine any of the witnesses. He further submitted that copy of the findings of the Enquiry officer was furnished to the Petitioner along with the second show-cause notice, and only thereafter the impugned order of discharge was passed after considering the representation of the Petitioner pursuant to the second show -cause notice. Regarding orders passed in the disciplinary proceedings against Sri Rabindra Rabha and Sri Sengrang T. Sangma, he submitted that the record of disciplinary proceedings against the said" two officers would be produced before the court for perusal.

4. The charge against the Petitioner as mentioned in the order dated 16.9.1994 of the Special Superintendent of Police, (SB), Meghalaya, quoted above, was that he was issued with a service revolver, and on 18.8.1994, he along with the Driver of the Finance Minister was sent to Jaiaw Langsning where he failed to save the Government property and, therefore, he was guilty of remissness and cowardice act due to which he had caused loss to Government and had failed to save the Government property in his possession. Along with the order dated 16.9.1994, no list of documents or no list of witnesses which supported the said charge had been furnished to the Petitioner. But the order dated 29.8.1994 of the Special Superintendent of Police, (SB), Meghalaya, placing the Petitioner under , suspension pending drawal of departmental proceedings was based on the enquiry report of the Deputy Superintendent of Police (Crimes), East Khasi Hills, Shillong submitted in his letter dated 23.8.1994. Copy of the letter dated 23.8.1994 of the Deputy Superintendent of Police (Crimes), East Khasi Hills, Shillong, to the Special Superintendent of Police, (SB), Meghalaya, has been annexed to the writ petition as Annexure-II, and is quoted hereinbelow:

To

The Special Superintendent of
Police, SB, Meghalaya,
Shillong.

Subject:- Detailed report of Lumdiengjri

PS Case No. 79 (8) 94 u/s 395 IPC

Sir,

With reference to the subject cited above, I have the honour to State that on 18th August, 1994. evening ASI- Upendra Nath Iangrai of S.B/CID, PSO to Finance Minister along with the driver Sri Bikrom Giri was sent by the Finance Minister to Jaiaw Langsning by a Government vehicle (Ambassador car) registration No ML-01/0090 to fetch the family members of the Finance Minister who had gone there for some religious function. On reaching Jaiaw Langsning they parked the car on the roadside in front of the residence of Sri Jormanik Syiem while they waiting for the family members inside the car at about 6.45

pm, suddenly five unknown Khasi boys approached the car and directly abused the ASI-Upendra Nath Iangrai stating that he should not be roaming there as CII personnel; In the meantime, one of them caught hold of the both the hands of ASI and one pointed his pistol at his neck and searched his body. In the process, they snatched away the allotted Government Revolver loaded with 6 (Six) rounds of ammunitions as well as the Service Identity Card from the possession of ASI- UN Iangrai. At the same time, Anr. entered inside the car from the rear door and pointed his pistol at the said ASI from the back side. After that they pulled him out of the car and warned him with dire consequences and told him that he should not shout or inform the matter to the police or otherwise they will kill him. While they were holding him outside one gentleman came over and asked the boys as to why they had stopped the Car, but one of the miscreants who held the ASI from the shoulder threatened the ASI not to respond to the gentleman while the other one told the gentleman that they were doing nothing but simply having a talk with the ASI who they claimed as their friend. After the gentleman left, they told the ASI to go straight to the Car without making any noise and also told him that he should not worry for the revolver as they will return it back soon.

The ASI- UN Iangrai stated that he can be able to identify the miscreants if seen and one from amongst them appears to be Bobby Reagan Marwein an HALC activist.

As directed, submitted for favour of Your kind information and necessary action.

Yours faithfully, Sd/- Deputy Superintendent of Police, (Crimes), East Khasi Hills, Shillong.

The aforesaid report of the Deputy Superintendent of Police, (Crimes), East Khasi Hills, Shillong, submitted after the preliminary enquiry does not indicate remissness and cowardice on the part of the Petitioner duetto which loss of service revolver and 6 rounds of ammunitions from the possession of the Petitioner is alleged to have taken place. In the said report of preliminary enquiry, on the other hand , it has been mentioned that one of the 5 unknown Khasi boys caught hold of both the hands of the Petitioner and on pointing his pistol at his neck searched his body and snatched away the allotted Government Revolver loaded with six rounds of ammunitions as well as the Service Identity Card from the possession of the Petitioner, and at the same time Anr. entered inside the car from the rear door and pointed his pistol at the Petitioner from the back side and after that he Pulled him out of the car and warned him with dire consequences, and told him that he should not shout or inform the matter to the police, otherwise they would kill him. Thus, it appears that there was no material before the Special Superintendent of Police, (SB), Meghalaya, for framing the charge of remissness or cowardice act against the Petitioner, and the said charges of remissness and cowardice acts on the part of the Petitioner were based of surmises and conjectures.

5. The word "remissness" has been defined in the Black's Law Dictionary , (Revised fourth Edition), as the doing of the act in question in a tardy, negligent, or careless manner. The report of the Deputy Superintendent of Police, (Crimes), quoted above, does not indicate that the Petitioner acted in a tardy, negligent or careless manner, but indicates that he was over-powered by the unknown Khasi boys and the Service Revolver, the ammunitions, and his Identity Card were taken away. The word "cowardice" has been defined in the said Black's Law Dictionary, (Revised Fourth Edition) to mean misbehaviour through fear in relation to some duty to be performed before an enemy. The report of the Deputy Superintendent of Police , (Crimes), quoted above, indicates that before the Petitioner could use his Service Revolver against the five unknown Khasi boys, his Service Revolver with ammunitions were taken away by them by holding his hands together. Once the Service Revolver and the ammunitions were taken away by the unknown Khasi boys at the point of pistol on the head of the Petitioner, any resistance by the Petitioner could have led to violence and might have caused the death of the Petitioner and the driver, and the Service Revolver could not have been possibly recovered from the said Khasi boys. Thus, on the basis of the report submitted by the Deputy Superintendent of Police, (Crimes), pursuant to the preliminary enquiry , no charge of remissness or cowardice could be framed against the Petitioner, and yet the charges of remissness and cowardice were framed against the Petitioner without any supporting material.

6. In the enquiry into the charges conducted by the Enquiry officer, although several witnesses were examined, only one witness, namely , the driver was the eye witness to the circumstances in which the Service Revolver and ammunitions were taken away by the unknown Khasi boys. The statement of the said driver, Sri Bikram Giri, in the enquiry is quoted hereinbelow:

On 18.5.1994 at evening I was driving car (Ambassador) bearing Registration No. ML-01-0090. I being the driver along with PSO-ASI Upendra Nath langrai by the Finance Minister Sri JD Forehmen ordered to proceed to Jaiaw Langsning to fetch daughters of him, who had gone there for some religious service to their relative house. On reaching Jaiaw Langsning, they parked the car on the road side and they were waiting for the family members inside the car. It was probably 6.30.PM, suddenly, five unknown miscreants (presume to be Khasi boys) approached very slowly near the car and politely told to the ASI Upendra Nath langrai stating that he should not be roaming there. In the meantime one of them caught hold of the both hands of ASI (PSO) and Anr. one just pointed the neck and searched his body. In the process, they snatched away the Revolver and also took away his Indentity Card from his possession. At the same time, Anr. entered inside the car from the rear door and pointed on the ASI from the backside. I was given an order to keep straight and should not be moved.

The ASI Upendra Nath langrai pulled out from the car and warned him with dire consequences and also told him that he should not shout or inform the matter to police, which I understood as they were talking very near to me. I was very

frightened so I could not recognise them. At the same time, the two daughters of Minister also came at the site of occurrence. One of them (Khasi boys) was very much inside the car, but managed to escape from the car. The ASI was at a loss as what to do. All the miscreants disappeared from the site of occurrence. They also boarded into the car and proceeded via Mawkhar to Bishop's house (Laitumkhrah) where the Minister was awaiting. Only after reaching Mawkhar the ASI could be able to talk the incident to these girls.

In the aforesaid statement, the driver Bikram Giri has stated that at about 6.30 pm on 18.8.1994 suddenly five miscreants approached very slowly near the car and politely told the Petitioner that he should not be roaming there and in the meantime one of them caught hold of both the hands of the Petitioner and Anr. one just pointed at the neck and searched his body and in the process they snatched the Revolver and also took away his Identity Card from his possession, and at the same time Anr. entered inside the car from the rear door and pointed at the Petitioner from back side and he (driver) was given an order to keep himself straight and not to move. The aforesaid statement of the driver Bikram Giri also shows that the Petitioner did not have any opportunity to use the Revolver against the five Khasi boys before the same was snatched away by the said unknown Khasi boys. After the Revolver and ammunitions were snatched away, any attempt on the part of the Petitioner to resist the five Khasi boys without any arm would have been disastrous both for the Petitioner and the driver of the vehicle and would have also not served the purpose of recovering the Revolver from the Khasi boys.

7. The aforesaid statement of the driver Bikram Giri does not disclose any remissness or cowardice on the part of the Petitioner. As discussed above, none of the other witnesses examined before the Enquiry officer witnessed the circumstances in which the Service Revolver was taken away from the possession of the Petitioner. There was therefore no evidence whatsoever before the Enquiry officer to prove the charges of remissness and cowardice on the part of the Petitioner due to which the Service Revolver and ammunitions were alleged to have been taken away by the unknown Khasi boys.

8. Yet, the Enquiry officer in his findings has held that the Petitioner did not show any sign of resistance against the miscreants and he did not even raise hue and cry asking for help from the residence of the vicinity very soon after the incident and that he was not alert on his duty inspite of the fact that Jaiaw was HALC infested place, and he should have taken care of his Revolver to be in readiness in case the situation arose and even he should have resorted to firing, and has held that the Petitioner has silently surrendered to the miscreants allowing them to snatch his Service Revolver and Identity Card, and that the charge levelled against the Petitioner was proved beyond all reasonable doubt. The aforesaid findings of the Enquiry officer are not supported by the evidence of the driver Bikram Giri. Rather, the said findings are contrary to the evidence of the driver Bikram Giri. No reasonable man on the evidence of Bikram Giri would come to

the conclusion that the Petitioner was guilty of the charges of remissness and cowardice. No other witness has given evidence before the Enquiry officer on the circumstances in which the Service Revolver and the ammunitions were taken away from the possession of the Petitioner. The findings of the Enquiry officer holding the Petitioner guilty of the charges of remissness and cowardice are based on no evidence and therefore are unreasonable. The Disciplinary Authority has only agreed with the said findings of the Enquiry officer and has not recorded his independent findings, and has held the Petitioner guilty of the charges and has discharged the Petitioner from service. The findings of the Disciplinary Authority consequently are also without any evidence and unreasonable in the sense that no reasonable person properly instructed in law would arrive at the finding that the Petitioner was guilty of the charges of remissness and cowardice.

9. In *State of Andhra Pradesh Vs. Sree Rama Rao*, The Supreme Court laid down the law relating to function of the High Court in a petition for writ under Article 226 of the Constitution against an order passed by the Disciplinary Authority holding a public officer guilty of the charges against him, and the Supreme Court has held in para-7 of the judgment as reported in the AIR that where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence, but where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds, the High Court may undoubtedly interfere in the matter. In the said decision, the Supreme Court clarified that the High Court in a petition under Article 226 of the Constitution does not sit as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, and the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution. In the present case, as discussed above, there is no legal evidence whatsoever in support of the findings of the Enquiry officer and the Disciplinary Authority that the Petitioner is guilty of the charge of remissness and cowardice, and the conclusion of the Enquiry officer and Disciplinary Authority that the Petitioner is guilty of the charge of remissness and cowardice is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion on the basis of the evidence adduced during the enquiry and in particular the evidence of the driver Bikram Giri who was the sole eye witness to the circumstances leading to loss of Service Revolver and the ammunitions from

the possession of the Petitioner.

10. For the aforesaid reasons, the findings of the Enquiry officer in the departmental proceedings, the impugned order dated 29.6.1995 of the Disciplinary Authority holding the Petitioner guilty of the charge of remissness and cowardice, and the impugned order of the Appellate Authority rejecting the appeal of the Petitioner are liable to be quashed, and it is not necessary for the court to deal with other contentions raised by Mr. NK. Deb, learned Counsel for the Petitioner.

11. In the result, the writ petition is allowed, the findings of the Enquiry officer holding the Petitioner guilty of the charge, the impugned order dated 29.6.1995 of the Special Superintendent of Police, (SB), Meghalaya, Shillong, agreeing with the findings of the Enquiry officer and discharging the Petitioner from service, and the impugned order dated 3.7.1997 of the Deputy Inspector General of Police, (SB), Meghalaya, Shillong, upholding the said order of discharge are quashed, and the Respondents are directed to reinstate the Petitioner in service forthwith. On such reinstatement, the Petitioner will be paid his current salary and allowance forthwith, and the entire arrear salary and allowances from the date of discharge till the date of reinstatement will be paid within a period of six month from today. The Disciplinary Authority will pass orders in accordance with the relevant Rules for treating the period of suspension as on duty and for payment of his arrear salary, if any, for the period of suspension. Considering however the entire facts and circumstances of the case, the parties shall bear their respective costs.