
(1994) 05 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule Nos 106 (K) of 1993 and 42 (K) of 1994

Vimedo Angami

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Citation : (1994) 2 GLJ 273

Hon'ble Judges : W.A.Shishak, J

Bench : Single Bench

Advocate : Imti Longchar, B.N.Sharma, Advocates appearing for Parties

Judgement

1. In Civil Rule No. 106 (K) 93 the petitioner impugns an order contained in Memorandum No. SAB8/3/73 dated 6389 (Annexure 2) by which the petitioner is denied to cross Efficiency Bar at the stage of Rs.1070 wef 28 5.89. The ground given in the said order for denial of Efficiency Bar is "In view of a vigilance case pending against him."

2. The petitioner joined Home Department as Grade III Stenographer in 1971. He was promoted to the post of Grade II Stenographer in 1974. He was sent on deputation to Civil Defence Organization in 1987. By order dated 30 11 87 issued by the Home Commissioner, deputation of the petitioner to Civil Defence Organisation was terminated with immediate effect as his service was required in the Secretariat due to acute shortage of Stenographers. Upon his reversion to his parent department, the Commissioner issued an order 29 July, 1989 by which Selection Grade Scale of pay of Rs. 1030301450 PM was released wef 25.8.89. The said order is at Annexure 3 and it is reproduced:

"No. SAB8/3/73 : In pursuance to Government Memo No. FIN/ROP/13/ 83 dated 10.8.83 read with SI. No. 12 of Annexure J of RQP 1984, the Selection Grade Scale of pay of Rs. 103 301450 PM with usual allowances etc. as admissible is hereby released to Shri Vimedo Angami, Stenographer Grade II (Jr) with effect from 28.5.89."

3. The petitioner's one grievance is that in spite of issuance of the said order, Selection Grade Scale has not been released to him till today. Government stand in this regard is that order dated 29 July, 1989 aforesaid has not been implemented in view of pendency of a vigilance case against the petitioner as stated above. It is contended on behalf of the petitioner that since order for releasing Selection Grade Scale was issued despite the existence of the earlier order dated 6 March, 1989 regarding a vigilance case pending against him, there is no reasonable ground to withhold payment of Selection Grade Scale to the petitioner.

4. The petitioner contends that charge sheet was served on him on 26.3.90. Altogether twelve (12) charges were levelled against him. A reply was filed by the petitioner on 27.3.90. The petitioner denied all the charges in toto. It is contended now at the time of hearing on behalf of the petitioner that after the petitioner gave a reply to the charges served on him, no further notice has been received by him from the Enquiry Authority. In this view, the petitioner contends that on examination of the reply filed by him the authority concerned was satisfied and no further enquiry has been made or else further notice ought to have been served on the petitioner as regards the proceeding of the enquiry. No such thing has taken place for the last four (4) years. It appears, the contention of the petitioner in this regard is correct inasmuch as Government affidavit has not refuted this statement. In para 9 of the Government affidavit it is stated that "And in regard to the Departmental proceedings, it was initiated by the Police Department and as such the answering deponent has got nothing to say. The deponent most respectfully states herein that the petitioner could not be allowed to cross Efficiency Bar in view of the Govt. Memorandum vide No. PAR/VIG/1/5/80 dated 17.11.81 with the result that the pay of the petitioner in the Selection Grade Scale also could not be fixed.""

5. The point for consideration is whether the petitioner can be denied crossing for Efficiency Bar on the ground of pendency of a vigilance case against him. Government affidavit justifies denial of crossing Efficiency Bar of the petitioner solely on the basis of Government Memorandum dated 17th November 1981 which among other things, states that henceforth no crossing of Efficiency Bar will be considered by the D PC/appointing authorities without integrity clearance certificate by the Administrative Departments Commission. It is submitted on behalf of the Government that in view of this order, the case of the petitioner cannot be considered.

6. Civil Rule No. 42 (K) 94 has been filed by the petitioner challenging the aforesaid Government Memorandum dated 17th November, 1981. It is stated that on going through the affidavit in opposition filed by the Government, the petitioner came to know of the existence of the Government order dated 17 November, 1981 regarding the bar imposed as regards confirmation/crossing of Efficiency Bar etc. It is contended on behalf of the petitioner that the aforesaid office memorandum dated 17.11.81 is illegal and void inasmuch as it could not

have been issued by the Government in the face of statutory Rules viz., Rules 24 and 25 of the Fundamental Rules which hold the field as regards crossing of Efficiency Bar. It is submitted by Mr. BN Sarma, learned counsel for the petitioner that when there exists statutory rules/laws in a particular field no administrative instruction issued in respect of the same point can override the statutory provision. In this view, it is submitted by Mr. Sarma that the office memorandum in question is in violation of Rules 24 and 25 of the Fundamental Rules which provide for a particular procedure for imposing Efficiency Bar as well as the conditions precedent for imposing the same as the only circumstance in which Efficiency Bar can be imposed, is the satisfaction of the competent authority that the conduct of the Government servant has not been satisfactory. In other words, it is the contention on behalf of the petitioner that crossing of Efficiency Bar can be denied only on two (2) conditions viz, (1) that the conduct of the Government servant has not been good, (2) or his work has not been satisfactory. It is submitted on behalf of the petitioner that no such condition has been incorporated in the office memorandum aforesaid. It is, therefore, submitted that the said office memo is liable to be quashed on the ground that it violates the statutory Rules which would hold the field of the law in question.

7. In order to deal with the question that has been raised in this petition, Rules 24 and 25 of the Fundamental Rules are reproduced :

"FR 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

FR 25. Where an efficiency bar is prescribed in a timescale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may by general or special order authorise in his behalf."

Mr. Sarma refers me to 1989 GHC 259 [1989 (2) GLJ 358] which was decided by a Division Bench of this Court and submits that in terms of the finding given in this case regarding the interpretation and application of Rules 24 and 25 of the Fundamental Rules, the office memo dated 17.11.81 should be held to be bad. Relevant for the purpose of this case is subpara 4 of para 2 of the judgment referred to above which is in the following manner :

"Under Rule 24, ordinarily, a Government servant is entitled to draw his increment as a matter of course unless it is withheld. The increment can be withheld by any authority specified thereunder if the conduct of Government

servant has not been good or his work has not been satisfactory. We are of the opinion that the same consideration must apply to a case where the efficiency bar is imposed under Rule 25 for the reason that, if the efficiency bar is enforced, the Government servant is denied further increment, which amounts to withholding the increment. In other words, the efficiency bar can be imposed when the appropriate authority is satisfied that the conduct of the Government servant has not been good or his work has not been satisfactory. Therefore, where the cases of (he Government servants for crossing the efficiency bar in the timescale of pay is considered at an appropriate time, and in a case, where a decision is taken to enforce the bar against a Government servant, he should be informed of the decision. The object and the purpose underlying the communication is to afford an opportunity to the Government servant to improve his work and conduct, and to remove the defects for which he was stopped at the bar to an extent sufficient to warrant removal of the bar. The cases of all the officers held up at efficiency bar should be reviewed from time to time with a view to determine whether their quality of work and conduct have been improved and whether the defects for which they were stopped at the bar have been remedied. The result of the enforcement of his efficiency bar is that the Government servants is denied further increments which may affect his service career. Under these circumstances, if passing of the efficiency bar is allowed, or if the efficiency bar is enforced, as a routine manner, it is bound to affect administrative efficiency or there will be denial of further increment of the Government servant as the case may be. Therefore, the appropriate authority has to apply its mind to the relevant and admissible facts and circumstances suggesting the inference to the effect that the conduct of the Government servant has not been good or his work has not been satisfactory while coming to the decision for enforcement of the efficiency bar."

8. In support of the Government affidavit filed in the present case, Mr. EY Renthungo, learned Junior Government Advocate submits that in view of office memo dated 17.11.81, petitioners case was not considered. He submits that unless the said office memo is held to be invalid and it is quashed, the crossing of Efficiency Bar of the petitioner cannot be considered and consequently Selection Grade Scale of pay cannot be released. Mr. Sarma on the other hand submits that in view of the finding given by a Division Bench of this Court in 1989 GHC 259 [1989 (2) GLJ 358] as stated above, pendency of a case can be no ground to withhold or deny crossing of Efficiency Bar. At the same time it is further submitted that after the petitioner filed his reply, no further proceeding has taken place. As mentioned above Government is not able to say as to what has happened to the vigilance case in question. It is also further submitted that there is no scope in the office memo dated 17.11.81 for review or for making any application for review for any aggrieved persons. In this view it is submitted that the office memo in question is unreasonable and is liable to be quashed. Learned Junior Govt. Advocate submits that office memo dated 17.11.81 was issued by competent authority to supplement the General Rules i.e. Fundamental Rules 24

and 25. According to him the said office memo was issued to make up deficiencies in the Fundamental Rules 24 and 20. It appears this submission cannot be accepted inasmuch as the office memo in question does not even contemplate review or for that matter room for making application for review, in this regard it may be stated that 1982 SLJ (2) 447 which is relied upon by learned Junior Govt. Advocate is not of assistance to him inasmuch as there is nothing to show that the office memo in question would apply to "reasons not covered by the Rules." Learned Junior Govt. Advocate also relies on (1987) 4 SCC 328 especially para 10 of the judgment. The facts of this case appear to be different from the case in hand. In this case clearly there was a departmental enquiry. It was held that during the pendency of a departmental enquiry, increments above the Efficiency Bar could be withheld. In that case, it was further stated that once the departmental enquiry had been quashed by the High Court, the question as to whether one could be deprived of his increment under FR 25 would become alive till the controversy is settled by the Government. It appears a difference has been made between departmental enquiry and a vigilance case. Obviously in the present case no departmental enquiry as such is going on against the petitioner as on today or at least from 1990, March till today after a reply had been filed in response to the 12 charges served on him. It is the case of the Government that there was a vigilance case as is clearly spelt out in Government order dated 6th March, 1989.

9. Another question that may be considered is whether an enquiry initiated against the petitioner can go on indefinitely. As stated earlier, after written statement was filed by the petitioner nothing has been heard regarding vigilance case and this statement made by the petitioner has not been denied by the Government. The Government cannot plead ignorance at the cost of the service career of the petitioner. Learned Junior Govt. Advocate submits that the petitioner could also approach the competent authority to speed up the enquiry initiated against him. It appears this submission cannot be accepted inasmuch as it is the case of the petitioner that after he submitted written statement, no further proceeding has taken place against him. It is, therefore, for the Government to say as to what has happened to the vigilance case. It is stated on behalf of the petitioner that charge sheet was issued by Home Department, whereas impugned order indicates that it was a vigilance case. It appears normally any enquiry initiated against a Government employee should be completed within six (6) months. If there are difficulties, such difficulties in completing the enquiry should be known to the Government. No such difficulty has been placed before this Court nor has any further steps were taken after the petitioner submitted his reply on 27.3.90. It is further contended on behalf of the petitioner that after written statement was submitted by the petitioner, no Enquiry Officer as such was appointed. If that is so, it appears there was no enquiry and therefore it cannot be said that some enquiry is pending. Even otherwise as mentioned above, in spite of the pendency of vigilance case vide order dated 6th March, 1989, order dated 29 July, 1989 came to be issued by

which the Selection Grade of Scale of pay was released.

10. In the result these (2) two petitions are allowed. Order dated 6.3.89 vide Annexure 2 is set aside and the respondents are directed to give effect to the order dated 29.7.89 and release the Selection Grade Scale of pay to the petitioner wef 28.5.89. This shall be done within two (2) months from the date of receipt of this order. Further in the light of the discussions made above and in terms of a finding of a Division Bench of this Court in 1989 case as stated above, office memorandum No. PAR/VIG/1/5/80 dated 17.11.81 issued by the Chief Secretary to the Government of Nagaland is quashed to the extent it applies to crossing of Efficiency Bar. No costs.