

(2014) 03 GAU CK 0076
In the Gauhati High Court
Case No : W.P. (C) No. 11 of 2012

Z.R. Remtluanga

APPELLANT

Vs

The State of Mizoram

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2014) LabIC 3143

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : P.C. Prusty, Advocate for the Appellant; A.K. Rokhum, Addl. A.G, Advocate for the Respondent

Judgement

Lanusungkum Jamir, J.—Heard Mr. P.C. Prusty, learned counsel appearing for the petitioner as well as Mr. A.K. Rokhum, learned Addl. A.G., Mizoram for the State respondents. The petitioner was appointed as Constable by order dated 14.11.2000 and was confirmed in the said post by order dated 24.4.2003 w.e.f. 1.12.2002. While the petitioner was serving as Constable, he started suffering from pain and had to undergo treatment in the month of July, 2006. As there was aggravation with his pain despite taking treatment, he proceeded for further treatment by a doctor at Aizawl. The doctor treating the petitioner suspected Sciatica (early stage) and was advised for a revisit again on 4.8.2006. The petitioner, therefore, verbally applied for leave to visit his physician at Aizawl but the same was not granted and petitioner was instead directed to proceed to Vairengte to join training at CIJW and he accordingly moved on 4.8.2006. During the training petitioner's health deteriorated and he was unable to attend further training. He was bedridden and had to stay in the barrack by taking treatment from the M.O., 2nd IR Battalion. By a letter dated 6th September, 2006, the Commandant 1st IR Battalion addressed to the petitioner along with 9 (nine) others directed them that as they have reported that they were unfit at the training school at Vairengte, CIJW they were directed to submit as to whether they are really unfit or not within 2 (two) days from the date of receipt of the

letter. The petitioner was still sick and his condition worsened and therefore, he could not join his colleagues when they made their way for Chhattisgarh from Mualvum. The petitioner received a calling notice dated 10.10.2006 asking him to resume his duties within 3 (three) days from the date of receipt of the calling letter. The petitioner tried to submit joining report on 30.10.2006 but he was not allowed to submit joining report and instead an order dated 30.10.2006 was served upon the petitioner whereby the petitioner was imposed a penalty of removal from service.

2. Being aggrieved by his removal from service by the order dated 30.10.2006, he had approached this Court by way of W.P. (C) No. 40 of 2008. This Court, by judgment and order dated 21.7.2008 passed in the W.P. (C) No. 40 of 2008 had set aside the order dated 30.10.2006 but the door was kept open to the respondents to initiate departmental proceeding against the writ petitioner, if so advised.

3. In compliance of the judgment and order of this Court dated 21.7.2008, the petitioner was reinstated back into the service with immediate effect by order dated 12th September, 2008. By an office order dated 1.11.2008, the petitioner was again placed under suspension w.e.f. 1.11.2008 in contemplation of a disciplinary proceeding to be initiated against the petitioner. The petitioner was issued memorandum dated 3.11.2008 along with articles of charges, statement of misconduct or misbehavior in support of the articles of charges and list of documents and witnesses by which the article of charges was proposed to be sustained. In the memorandum dated 3.11.2008, the petitioner was directed to submit within 10 (ten) days of the receipt of the memorandum a written statement of defence and also state whether he desires to be heard in person. The petitioner submitted his written statement on 28.11.2008 and by order dated 4.2.2009 an Enquiry Officer was appointed to enquire into the charges framed against the petitioner. Thereafter, departmental proceeding proceeded against the petitioner. On conclusion of the said departmental proceeding, the Enquiry Officer submitted his report on 6.5.2009. The petitioner was also given a copy of the enquiry report and thereafter the proposed penalty was given to the petitioner on 14.7.2009. By order dated 7.8.2009, the petitioner was imposed a penalty of removal from service with immediate effect and his suspension period with effect from 1.11.2008 till the date of issue of the order was treated as "Not on Duty".

4. Being aggrieved by the order dated 7.8.2009, the petitioner preferred an appeal before the appellate authority but the same was rejected by order dated 5.5.2010 on the ground of limitation of time. Hence, the instant writ petition.

5. Mr. P.C. Prusty, the learned counsel appearing for the petitioner submits that while conducting the disciplinary proceeding, no Presenting Officer was appointed and therefore, the whole disciplinary proceeding stands vitiated and the impugned order of removal dated 7.8.2009 and the subsequent order of rejection by the appellate authority should be set aside and quashed.

6. Mr. A.K. Rokhum, the learned Addl. A.G., Mizoram submits that as the petitioner had failed to resume his duty within the period prescribed by the authorities, the impugned order dated 30.10.2006 was passed against him. He also disputed the fact that the respondents did not allow the petitioner to submit his joining report. As the petitioner had willfully absented himself from duty, the order of removal requires no interference inasmuch as the petitioner being in the uniform service is expected to maintain strict diligence and discipline. He also submits that under the Mizoram Police Manual as well as the CCS(CCA) Rules, the appointment of Presenting Officer in a disciplinary proceeding is not mandatory and that it is up to the respondents to decide whether to appoint Presenting Officer or not. There being no violation of any Rules, he submits that the order of removal should not be interfered with. However, while considering the settled position of law as regards appointment of Presenting Officer, Mr. A.K. Rokhum, the learned Addl. A.G., Mizoram in his usual fairness admits that the Enquiry Officer cannot play the role of a judge as well as that of a prosecutor.

7. I have considered the submissions forwarded by the learned counsel for the rival parties.

8. Rule 14(5)(c) of the CCS(CCA) Rules, 1956 reads as under:--

"(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

9. Rule 1037 of the Mizoram Police Manual reads as under:-

"1037. Show-Cause

In every case where it is contemplated to impose on a member of any of the State Police the major punishments he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the punishment is passed:

Provided that the requirements of this rule shall not apply where it is proposed to impose on a member of the service any of the punishment aforesaid on the basis of facts which have led to his conviction by a Court or where the officer concerned has absconded or where it is for other reasons impracticable to communicate with him."

10. Rule 1038(4) of the Mizoram Police Manual reads as under:

"(4) An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned and the disciplinary authority may, by an order; appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the

articles of charges."

11. It is well settled principle of law by a catena of judgment passed by this Court as well as the Hon"ble Supreme Court that in the absence of Presenting Officer, the departmental inquiry stands vitiated. In the case of Salam Kesho Singh Vs. State of Manipur and Others, , the Division Bench of this Court at paragraph 5 has held as under:--

"5. In the present case, there is no dispute that no Presenting Officer was appointed. This fact is confirmed from the relevant record of the disciplinary proceeding produced by the learned senior Govt. Advocate. It is well settled that an Enquiry Officer cannot assume the role of a Judge and also a Prosecutor. Even if the relevant service rules is silent about the appointment of a Presenting Officer, absence of a Presenting Officer will make the enquiry totally vitiated as the Enquiry Officer cannot be allowed to assume the role of a Judge as well as a prosecutor."

12. Further, the Hon"ble Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, has held as under:--

"28. An Enquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

13. From the decisions of the Division Bench of this Court as well as of the Hon"ble Supreme Court, it is well settled that in the absence of a Presenting Officer, the whole disciplinary enquiry stands vitiated inasmuch as the Enquiry

Officer cannot assume the role of a judge and also that of a prosecutor.

14. In the present case, the State respondents in their counter-affidavit at paragraph 14 has admitted that no Presenting Officer was appointed. As no Presenting Officer was appointed, this Court has no hesitation to declare that the disciplinary proceeding initiated against the petitioner stands vitiated. Accordingly, the impugned order dated 7.8.2009 passed by the Commandant 2nd IR Battalion, Khawzawl imposing a penalty of removal from service and treating his suspension period w.e.f. 1.11.2008 till the date of the order being treated as "Not on duty" is quashed and set aside. Consequently, the rejection order dated 5.5.2010 passed by the appellate authority i.e., Deputy Inspector General of Police (NR), Mizoram, Aizawl is also set aside and quashed. The respondents are directed to reinstate the petitioner back into service forthwith from the date of removal from service i.e. 7.8.2009 along with all other consequential service benefits.

15. Though the petitioner is approaching this Court for the second time, in the interest of justice, the respondents are again given another chance to initiate departmental inquiry against the petitioner, if so advised. It is, however, provided that if the departmental inquiry is initiated the same should be completed within a period of 3 (three) months from the date of receipt of a judgment and order of this Court. With the above observations and directions, this writ petition is disposed of.