

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram
and Arunachal Pradesh)

AIZAWL BENCH

W.P.(C) No. 17 of 2011

Shri F. Lalhriata
S/o Lianzara (L)
R/o Serchhip Zozam veng,
P/o Serchhip District, Mizoram

.....Writ Petitioner

-VS-

1. The State of Mizoram
(Represented by the Chief Secretary to
the Govt.of Mizoram)
2. The Secretary to the Govt. of Mizoram,
Home Department, Aizawl.
3. The Director General of Police,
Mizoram, Aizawl.
4. The Deputy Inspector General of Police,
(Northern Range), Mizoram, Aizawl.
5. The Commandant,
2nd IR Battalion,
Khawzawl, Mizoram.

..... Respondents.

**BEFORE
HON'BLE MR. JUSTICE T. VAIPHEI**

For the petitioner : Mr. Vanlalenmawia, Advocate.
For the respondents : Mr. A.K. Rokhum, Addl. A.G., Mizoram
Date of hearing : **24.11.2011.**
Date of delivery of
judgment & order : **24.11.2011**

JUDGMENT & ORDER (ORAL)

Heard Mr. Vanlalenmawia, the learned counsel for the petitioner and also heard Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram for the State respondents.

2. This is the second round of litigation initiated by the petitioner to challenge the disciplinary proceeding against him. He was appointed as Constable in the 3rd Battalion of Mizoram Police of the Assistant Inspector General of Police-I, Mizoram on 31.1.1996 and was confirmed to that post on 12.10.1999. In the year 2006, he had been removed from service whereafter this court by the order dated 21.7.2008 in W.P.(C) No. 56 of 2008 quashed the impugned removal order and declared the petitioner to be deemed in service from the date of his removal with entitlement to all benefits. Liberty, however, was granted to the State to initiate a fresh departmental enquiry against him in accordance with law. In purported compliance with the order of this Court, he was reinstated to his former post and was allowed to join the 2nd IR Battalion Rear Headquarters, Khawzawl on 23.9.2008. He was again placed under suspension pending departmental enquiry on the same day on which he was allowed to resume his service. The allegations made against him is for wilful absence from duties and responsibilities assigned to Mizoram Police, 2nd IR Battalion without informing his superior authority about his inability to perform his duty and his failure to join his colleagues when he made his move for Chhattisgarh on 29.9.2006 from Guwahati. The petitioner was also placed under suspension pending completion of the departmental enquiry initiated against him. The memorandum of charge was furnished to the petitioner on 21.8.2008. The departmental enquiry got commenced and

completed in course of time and by impugned order, having him found guilty of the charges, he was once again removed from service. The principal contention advanced by the learned counsel for the petitioner is that the State respondents did not appoint a presenting officer to prosecute the case of the department and that the enquiry officer virtually acted as the judge and the prosecutor, which is against the principles of natural justice. The learned counsel for the petitioner draws support from the decision of the Division Bench of this court in ***Salam Kesho Singh –vs- State of Manipur & Ors.*** reported in ***2011 (1) GLT 287***. He, therefore, strenuously urges this court to quash the impugned order of removal and direct the respondent authorities to reinstate him to this post with all service benefits including pay. Mr. A.K. Rokhum, learned Addl. Advocate General, however, supports the impugned order and vehemently contends that the consent of the petitioner was taken when the enquiry officer proceeded to conduct the enquiry without presenting officer. According to the learned Addl. Advocate General, no infirmity of gross nature can be pointed out by the petitioner calling for the interference of this court.

3. The law is now settled in a catena of decisions that when a departmental 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. The Apex Court has an occasion to deal with a

case of this nature in the *State of Uttar Pradesh –Vs- Saroj Kumar Sinha* reported in *(2010) 2 SCC 772* and has observed as follows :-

“28. An inquiry 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 enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee. ”

4. The legality of the non-appointment of the presenting officer in a departmental enquiry had come up for consideration before the Division Bench

of this court in ***Salam Kesho Singh*** (*supra*) wherein it was held that even if the relevant servant 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. The importance of appointment of a presenting officer is also recognized by Clause 1038 (4) of the Mizoram Police Manual, 2006 which lays down that *"an enquiry shall be held if such an enquiry 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."* In other words, a combined reading of the decision of the Apex Court, ***Salam Kesho Singh*** (*supra*) and Clause 1038(4) makes it clear that *sine qua non* for proper conduct of departmental enquiry is the appointment of the presenting officer as the prosecutor: the enquiry officer cannot both act as a judge and the prosecutor all rolled into one. The enquiry officer taking the role of a presenting officer cannot be expected to be unbiased or free from partiality. In the view that I have taken, the impugned order of removal is not sustainable in law and is liable to be set aside on this ground alone. I am constrained to observe that the respondent authorities took the proceeding in a departmental enquiry in a very casual manner and without proper application of mind.

5. In the result, this writ petition succeeds. The order of removal dated 7.08.2009 (Annexure-10 to the writ petition) and the order dated 10.03.2010 (Annexure-21 to the writ petition) rejecting the appeal preferred by the appellate authority are, therefore, quashed. As directed in the judgment and order dated 26.08.2011 in the connected W.P.(C) No. 16 of

2011, the respondents are directed to reinstate the petitioner to his service and pay all service benefits including back wages w.e.f. 8.08.2009 within a period of 45 (forty-five) days from the date of receipt of this judgment. The respondent authorities shall not be handicapped to proceed with a fresh departmental proceeding against the petitioner, if so advised.

JUDGE

Sushil