

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

AIZAWL BENCH: AIZAWL.

W.P.(C) No. 44 of 2012

Sh. R. Lalchhuanawma
S/o Sh. R. Lalhmingmawia (L)
R/o Venghlui Chhim Veng,
Aizawl, Mizoram.

... Petitioner

-Versus-

1. The State of Mizoram
represented by the Chief
Secretary to the Government of
Mizoram, Aizawl.
2. The Commissioner/
Secretary to the Government of
Mizoram, Home Department.
3. The Director General of
Police, Mizoram, Aizawl.
4. The Deputy Inspector
General of Police (Administration),
Police Headquarters, Mizoram,
Aizawl.
5. The Commandant, 2nd
Indian Reserve Battalion
Khawzawl, Mizoram.

..... Respondents

BEFORE

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JUDGMENT AND ORDER (ORAL)

Heard Mr. N. Sailo, learned senior counsel, assisted by Mrs. Dinari T.

2. By this writ petition, filed under Article 226 of the Constitution of India, the petitioner, who was a Constable under 1st BN MAP, has challenged the Enquiry Report dated 1.3.2010 and the order of removal dated 9.3.2010 issued vide Memo No.21R/RPF/C-466/10/3155.

3. The petitioner, on being appointed as Constable under 1st Battalion, Mizoram Armed Police, Aizawl, Mizoram, joined the service on 3.4.1992 and worked till his suspension. He absented from duty, without any authority w.e.f. 28.11.2008 to 14.6.2009 (i.e. for 199 days). Despite issuance of several call letters, the petitioner failed to report for duty. Therefore, the disciplinary authority decided to draw a Departmental Proceeding against the petitioner.

Accordingly, memorandum and articles of charge were framed and issued to the petitioner on 18.3.09 and 23.6.09. He was also placed under suspension by order dated 18.6.2009. On receipt of the said memorandums and the articles of charges, the petitioner submitted a letter on 17.8.2009 to the respondent No. 5, admitting the charges, brought against him and prayed for pardon.

After receipt of the said letter from the petitioner, the disciplinary authority decided to proceed with a formal departmental enquiry and accordingly, the disciplinary authority, vide order dated 20.11.2009, appointed Pu Saidingliana, Dy. Commandant, 2nd IR Bn as Enquiry Officer to enquire into the charges, framed against the petitioner. S.I. Zangura Khiangte, Reserve Officer, 2nd IR Bn was appointed as the Presenting Officer.

4. The said Enquiry Officer issued two summons asking the petitioner to appear before the Enquiry Officer in connection with the departmental proceeding. The first summons, being returned un-served, a second summons was issued to the petitioner, which was received by him. By the said second summons, dated 19.2.2010, the petitioner was directed to appear before the Enquiry Officer, on 24.2.2010 at 10 a.m. in his office, in connection with the enquiry proceeding. According to Enquiry Officer the petitioner failed to appear before him, on the appointed date and accordingly the proceeding was conducted ex-parte.

5. During the course of the said proceeding, held on 26.2.2010, the Enquiry Officer examined 2 (two) witnesses. After concluding the enquiry, the Enquiry Officer submitted the enquiry report by forwarding letter dated 1st March, 2010. In the said enquiry report, the enquiry officer held that the charges, brought against the petitioner, regarding his unauthorised absence w.e.f. 28.11.2008 to 14.6.2009, stood proved.

6. On receipt of the said enquiry report, the disciplinary authority i.e. respondent No. 5, by his order, dated 9.3.2010, awarded penalty by passing the impugned order of removal from service. By the said order, it was also made clear that the period of suspension of the petitioner with effect from 18.6.2009 till the date of issue of the order aforesaid would be treated as unauthorized absence and not on duty.

7. Aggrieved by the said disciplinary proceedings and the order of removal, the petitioner has come up with this writ petition.

According to the petitioner, after receipt of the second summons, though, on 24.02.2010, he had appeared in the office of the Enquiry Officer, the enquiry proceeding was not held, on that day, due to absence of the Enquiry Officer, but the enquiry officer submitted the enquiry report by holding the enquiry, subsequently, in his absence. It has also been contended that the punishment imposed on the petitioner is highly disproportionate. The petitioner has specifically contended, that he was not furnished with a copy of the enquiry report inviting his response, that he was not given notice

intimating the proposed penalty and that no opportunity was given to him to submit his explanation in respect of the findings of the Enquiry Officer and the penalty.

8. The claim of the petitioner has been contested by the respondents, by filing affidavit-in-opposition. In their affidavit-in-opposition, it has been stated that the petitioner absented from duty w.e.f. 28.11.2008 to 14.6.2009 without any authority and that, despite issuance of repeated call letters, he refused to report for duty. It has also been stated, in the affidavit-in-opposition, that the petitioner failed to respond to the summons, issued by the enquiry officer and declined to appear before the enquiry officer at the time of holding the departmental proceeding, for which the proceeding was conducted ex-parte.

9. Mr. N. Sailo, learned Senior Counsel appearing for the petitioner has strenuously argued that in the present case the petitioner has been denied the right of being heard, by holding the enquiry in the absence of the petitioner and thus the principles of natural justice has been violated. The learned Senior Counsel has submitted that though 24.02.2010 was fixed for hearing of the said proceeding , in fact, no hearing took place on the said date, and the witnesses were examined on another date i.e. on 26.02.2010, without informing the petitioner about the said date. In view of above, it is submitted that due procedure has not been followed and principles of

natural justice and fair trial have been violated, for which no penalty could have been imposed, on the basis of such unlawful proceeding.

The learned Senior counsel has also submitted that the penalty imposed was disproportionate and that no opportunity was given to the petitioner to explain his stand with regard to the enquiry report and the proposed penalty.

Mr. A.K. Rokhum, learned Addl. Advocate General, supporting the proceeding and the order of penalty has submitted that the petitioner, apart from admitting the charges, failed to participate in the proceeding and as such no interference is warranted in respect of the said proceeding and the penalty.

10. Having heard the learned counsel, appearing for both the parties, I have carefully perused the materials on record. The record has been produced by the learned Addl. Advocate General.

11. The first contention raised, on behalf of the petitioner, is that after receipt of the second summons, from the enquiry officer, the petitioner had appeared in the office of the enquiry officer on 24.2.2010 i.e. the date fixed for hearing, but due to absence of the enquiry officer, the enquiry was not held on that date and as such, he had to go back. At paragraph 11 of the writ petition, the petitioner has made specific averments in this regard. But, in respect of the said statement, made in paragraph 11 of the writ petition, the

contesting respondents did not specifically deny the said contention made by the petitioner.

12. Carefully perusing the records maintained by the Enquiring authority, I find that summons was issued to the petitioner on 22.2.2010 fixing 24.2.2010 as the date for holding the enquiry. The order sheet reveals that no order was passed on 24.2.2010. However, on 23.2.2010 the enquiry officer had issued summons to the witnesses fixing 26.2.2010 and, on 26.2.2010, the enquiry officer had recorded the statement of two witnesses. There is nothing, on record, to show that summons was issued to the petitioner informing him that the enquiry would be held on 26.2.2010. Therefore, it is clearly found that the enquiry was held, on 26.2.2010, keeping the petitioner in dark. It is settled law that acts by public authority should be done as per the prescribed procedure. As the disciplinary authority had decided to hold a formal departmental proceeding, despite the admission made by the petitioner, it was the lawful duty of the Enquiry Officer to hold enquiry as per the prescribed procedure, i.e. by giving the petitioner i.e. the delinquent employee sufficient intimation regarding the date of hearing. Examination of the witnesses, on behalf of the disciplinary authority, on 26.2.2010, without informing the petitioner amounted to violation of principle of natural justice. Fair opportunity should have been given to the petitioner to appear on 26.2.2010 i.e. the date on which the witnesses were examined and also to

cross-examine the prosecution witnesses. But this opportunity was denied to the petitioner.

12A. In view of above, I find sufficient force in the contention of the petitioner that no hearing took place on 24.2.2010, on which date he had appeared, as required by the summons issued to him. From the order sheet of the proceeding it is found that no order was passed on 24.2.2010. Hence, the petitioner's plea that the Enquiry officer was not available on 24.2.2010 is believable. As the witnesses were examined in the absence of the petitioner and without informing him about the date of hearing, there was violation of the principles of natural justice and the petitioner was deprived from fair trial. Hence, the enquiry report, submitted by the Enquiry Officer, cannot stand the scrutiny of law. Therefore, the final order, regarding penalty, passed by the disciplinary authority on the basis of the said report cannot be maintained.

13. Further, from the record, it appears that, after receipt of the enquiry report the disciplinary authority did not furnish a copy of the enquiry report to the petitioner, inviting his response. It is also found that the disciplinary authority did not issue second show cause notice to the petitioner intimating the proposed penalty and seeking explanation, if any, from the petitioner. In a disciplinary proceeding, the disciplinary authority, before accepting the report and imposing penalty is required to furnish a copy of the enquiry report seeking response from the delinquent employee with regard to the

enquiry report and the proposed penalty. In the case at hand the said procedure was not complied with.

14. In view of above, considering the entire aspect of the matter, I have no hesitation in holding that the entire proceeding was bad for violation of the principles of natural justice and fair trial, and as such, the report and the order of penalty are liable to set aside.

Accordingly, the impugned enquiry report dated 1.3.2010 and the order of penalty dated 9.3.2010 are set aside. The disciplinary authority is directed to take steps to proceed with a fresh proceeding, against the petitioner, from the stage of examination of witnesses, after giving opportunity of being heard to the petitioner.

15. The proceeding be completed within a period of 6 (six) months from the date of receipt of a copy of this order. The petitioner shall be at liberty to adduce evidence, if so advised.

Copy of this judgment and order be furnished to the learned Addl. Advocate General, Mizoram for doing the needful.

Return the records.

JUDGE

Sushil