

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 1066 of 2022

Md. Firoj Khan

.....*Petitioner/s*

- Versus -

State of Manipur & 2 Ors.

.... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order

04.12.2023

[1] Heard Mr. N. Bipin, learned counsel for the petitioner and Mr. H. Samarjit, learned G.A. for the State respondent.

[2] The petitioner, who was Rifleman in 5th IRB was suspended vide order dated 21.01.2020 issued by the Commandant, 5th IRB (respondent No. 3) in contemplation of a departmental enquiry for his involvement in FIR No. 7(1)2020 TBL-PS U/S 21/29/60(3) ND & PS Act. Vide enquiry report dated 30.12.2022, it was held that charges framed against the petitioner could not be proved and he was not found guilty and enquiry report has been pending before the disciplinary authority for taking appropriate action. Vide order dated 03.11.2022, the respondent No. 3 reinstated the service of the petitioner without prejudice to the DE contemplated against him.

[3] Mr. N. Bipin, learned counsel for the petitioner, submits that the petitioner is in service and he has not been paid his salary for the period of suspension i.e. from 21.01.2020 to 03.11.2022 without any valid reason.

[4] The petitioner also submitted a representation dated 05.09.2022 to the Director General of Police, Manipur for revocation of his suspension. The suspension of the petitioner was revoked, but the salary and allowances for the period of suspension i.e. from 21.01.2020 to 03.11.2022 was not released. The petitioner approaches this Court by way of the present petition directing the respondents to release the pending amount.

[5] The prayer is reproduced as:

- (i) *issue rule nisi and call for the records;*
- (ii) *issue a writ of mandamus or any other appropriate writ or direction directing the respondents concerned to release the withholding salary alongwith the arrears of the present petitioner w.e.f. 21.01.2020 for the ends of justice;*
- (iii) *in the interim, direct the respondents to make payment of his entitlement regular pay and allowances pending disposal of the present case; and*
- (iv) *pass any further order(s) direction(s) which this Hon'ble Court may seem fit and proper to secure the ends of justice."*

[6] During the course of hearing, Mr. H. Samarjit, learned G.A., handovers a copy of the counter affidavit on behalf of the respondents and the same is taken on record. In para 10 of the counter affidavit, it is stated that regular pay has been disbursed to the petitioner after revocation of the suspension and arrear will be released after finalization of the outcome of the DE initiated against the petitioner

which is pending against him. Para 10 of the counter affidavit is reproduced as:

“10. That, with reference to para Nos. 17, 18, 19 & 20 of the Writ petition, the answering deponent begs to submit that regular pay has been disbursed to the personal account of the petitioner after revocation from suspension and releasing of arrears of the present petitioner will be finalized after the outcome of the DE No. 117/2020-5th IRB which is still pending against him.”

[7] From the documents on record, it is seen that enquiry report was submitted on 30.12.2020 by the Enquiry Officer to the disciplinary authority absolving the petitioner from all charges framed against him and in para 10 of the counter affidavit filed by the respondents, the disciplinary authority is yet to pass a final order. No provisions of CCS (CCA) Rules provides for withholding salary and allowance of an employee who has been absolved in enquiry and awaiting final decision of the disciplinary authority. So in the present case, in spite of absolving the petitioner from the charge framed against him by enquiry report dated 30.12.2020, the disciplinary authority is yet to pass a speaking order even after 3 (three) years from the date of submission of enquiry report.

[8] This Court is of the view that withholding arrear of the salary and other allowances of the petitioner for the period of suspension i.e. from 21.01.2020 to 03.11.2022 is not justified for the simple reason that enquiry report has absolved the petitioner from the charges framed against him. Failure on the part of the disciplinary authority to pass a speaking order will not be a valid reason for withholding the same as no rule is pleaded for the same.

[9] Accordingly writ petition is allowed by directing the respondents to release the arrear of the salary and other allowances of the petitioner for the period of suspension i.e. from 21.01.2020 to 03.11.2022 within a period of 8 (eight) weeks from the date of receipt of a copy of this order. Failing which, the same will carry an interest at the rate of 6% per annum from the date of filing of this writ petition i.e. 07.12.2022, the day writ petition was filed before this Court.

[10] With this observation, writ petition is disposed of.

[11] Send a copy of this order to respondent No. 3 for information and necessary compliance as well as to the learned counsel appearing for the parties.

JUDGE

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