

Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 127 of 2021

Date of Decision: 13.04.2023

Shri. Amzad Khan

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. R. Colney, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The writ petitioner being aggrieved with his removal from service on account of unauthorized absence, which he claims is not willful, but due to compelling circumstances is before this Court,

assailing the order of removal dated 17.06.2020, passed by the respondent No. 4, and the appellate order dated 15.02.2021, passed by the respondent No. 3, whereby the order of removal has been upheld.

2. The petitioner who was serving in the Meghalaya Police, due to his unauthorized absence for the period from 14.12.2019 to 18.03.2020, without any information to his superiors was subjected to departmental proceedings. The said proceedings culminated in the orders of removal from service, which the petitioner alleges is arbitrary, and the punishment awarded disproportionate to the alleged misconduct. It has also been contended that, adequate opportunity was not afforded to the writ petitioner and that there was no willful absence from duty as the petitioner was hospitalized and suffering from psychiatric issues, brought upon by alcohol dependency.

3. Mr. S. Deb, learned counsel for the petitioner submits that, the petitioner was unable to attend his duties, as he was undergoing treatment for his physical and psychiatric ailments, and in the departmental proceedings, while admitting to the unauthorized absence before the Enquiry Officer, however did not file any show-cause, but had produced medical certificates indicating his medical condition. He submits that, the petitioner could not attend to his duties or inform his superiors, is due to these compelling circumstances and his absence can in no manner, be

considered as willful. Learned counsel has further submitted that, on the earlier occasions, when he was absent without leave or information, the respondents had condoned the same, as they were aware about his medical condition, but for the last period of his unauthorized absence, he has been harshly dealt with, which is disproportionate to the act of misconduct. At the most he submits, an order of compulsory retirement could have been passed in the facts and circumstances of the case.

4. The learned counsel however, in the course of hearing, did not press the aspect of not being afforded adequate opportunity to defend his case, but has limited his challenge to whether the absence can be considered willful, and whether the petitioner has been awarded punishment, which is not commensurate with the infraction. Reliance has been placed on the following judgments, on the point of willful absence and extent of penalty.

- i) ***Krushnakant B. Parmar vs. Union of India & Anr. (2012) 3 SCC 178***
- ii) ***State of Punjab vs. Dr. P.L. Singla (2008) 8 SCC 469***
- iii) ***Chairman-Cum-Managing Director, Coal India Limited & Anr. vs. Mukul Kumar Choudhuri & Ors. (2009) 15 SCC 620***
- iv) ***Order dated 15.03.2023, passed in Civil Appeal No. 10604/2010 (Eastern Coal Fields Limited & Ors. vs. Ajit Mondal & Ors.)***

5. Mr. B. Bhattacharjee, learned AAG assisted by Ms. R. Colney, learned GA on behalf of the respondents submits that, adequate opportunity had been afforded to the writ petitioner, and when notice to resume duty dated 09.01.2020, which was published in The Shillong Times, did not evoke any response from the petitioner, a show-cause notice was issued on 04.03.2020, which was duly received by the writ petitioner. However, he submits as reflected from the impugned order, the petitioner did not submit any written explanation to the show-cause notice, and inspite of all opportunities being provided in the course of inquiry to the petitioner, to examine the prosecution witnesses, at the time of recording statements, the petitioner declined the same. The learned AAG then submits that, the petitioner did not offer any explanation as to his absence, to show that the same was not willful, and in this regard, has referred to a Fitness Certificate issued by the Shillong Hospital, which shows that, he was fit to join service as on 15.02.2020, but still remained absent.

6. The punishment inflicted, he argues is just and proper, inasmuch as, the petitioner habitually remained absent from duty without information. To illustrate this point, the learned AAG has referred to the affidavit filed by the respondents, wherein at Para – 14, twelve instances

of absenteeism have been shown. He submits that, inspite of the leniency shown by the respondents all along, the petitioner has continued with dereliction of his duties by remaining absent without information. He further submits that, the petitioner being a member of a disciplined force, such behaviour and conduct is impermissible. The learned AAG while concluding his submissions, has also placed reliance on the same judgments, placed by the petitioner to show, as to how the said judgments infact, work against the petitioner's case, and submits that, there being no illegality or irregularity in the disciplinary proceedings, and adequate opportunity having been given, no case for interference has been made out.

7. Having heard the learned counsels for the parties, it is first to be noted that, the impugned removal order has not been assailed on the ground that, the proceedings held, were not as per the set procedure, or that, they were vitiated by non-adherence to the Principles of Natural Justice, but the challenge is on the findings arrived at, and the quantum of punishment. On the question of findings, as is well settled, this Court is not sitting as a Court of appeal and judicial review is not of the decision arrived at, but is confined to the decision making process. In the instant case, where the petitioner has not denied the charges and in fact, has not even bothered to file a show-cause, there is no scope for any further

examination of the case on this aspect, and the charges stand proved. The compelling circumstances, which have been urged by the petitioner to show that, the unauthorized absence was not willful is belied by the Fitness Certificate annexed by the petitioner himself as Annexure – 10 to the writ petition, wherein he has been shown fit to join service w.e.f., 15.02.2020, but as per the charge, had remained absent till 18.03.2020.

8. On the issue of the proportionality of the punishment awarded, it would be expedient to reproduce the extract of Para – 14 of the affidavit of the respondents, wherein the periods that the petitioner was unauthorisedly absent have been detailed to show the antecedents of the petitioner in his service record, which are as follows.

- 1) 82 (eight-two) days Leave Without Pay for unauthorized absence from duty w.e.f. 27.11.2011 AM to 16.02.2012 PM vide B.O. No. 1068 Dated 19.03.2012.***
- 2) Awarded 5 (five) days P.D. for two hours daily for consuming alcohol while on duty at the residence of Ex-CM Bungalow Shri D.D. Lapang vide B.O. No. 4016 Dated 06.12.2013.***
- 3) 40 (forty) days Leave Without Pay for his unauthorized absence from duty w.e.f. 30.04.2014 PM to 09.06.2014 PM vide B.O No. 2023 Dated 18.06.2014.***

- 4) *10 (ten) days Leave Without Pay for his unauthorized absence from BN/HQ w.e.f. 02.06.2015 AM to 12.06.2015 AM vide B.O. No. 2218 Dated 18.06.2015.*
- 5) *61 (sixty-one) days Leave Without Pay for his unauthorized absence from duty w.e.f. 15.12.2015 AM to 13.02.2016 PM vide B.O. No. 690, Dated 01.03.2016.*
- 6) *Departmental Proceeding No. 2/17 was drawn up against him for his gross misconduct and dereliction of duty vide B.O. No. 2773 Dated 14.09.2017*
- 7) *343 (three hundred forty-three) days Leave Without Pay for remaining unauthorized absence from duty w.e.f. 13.05.2016 AM to 21.04.2017 AM vide B.O. No. 3098 Dated 16.10.2017.*
- 8) *15 (fifteen) days Leave Without Pay for his unauthorized absence from duty w.e.f. 26.01.2018 AM to 09.02.2018 PM vide B.O. No. 600 Dated 20.02.2018.*
- 9) *10 (ten) days Leave Without Pay for his unauthorized absence from duty w.e.f. 28.06.2018 PM to 08.07.2018 PM vide B.O. No. 3663 Dated 05.11.2018.*

10) 189 (one hundred eighty-nine) days Leave Without Pay for his unauthorized absence from duty w.e.f. 23.10.2018 to 29.04.2019 PM vide B.O. No. 1497 Dated 02.05.2019.

11) Departmental Proceeding No. 2/20 was drawn up against him for his gross misconduct and dereliction of duty vide B.O. No. 3005 Dated 12.05.2020.

12) 96 (ninety-six) days Leave Without Pay for his unauthorized absence from duty w.e.f. 14.12.2019 AM to 18.03.2020 PM vide B.O. No. 2970 Dated 07.05.2020.

9. The petitioner being a member of the disciplined force, is infact, required to maintain higher standards of conduct. In this context, the decision of the Hon'ble Supreme Court, in the case of **Union of India & Ors. vs. Datta Linga Toshatwad** reported in (2005) 13 SCC 709 at Para-6, which is reproduced below, applies to the case of the petitioner.

“6. One cannot ignore the large number of cases which come to this Court of members of uniformed forces remaining absent from duty without any reasonable explanation. Whenever action is taken, the usual plea taken is of having been ill or some such false pretext, and even fake

or false medical certificates are produced in support of such a plea. We would not have taken a serious view of the matter had it not been a case of a constable belonging to CRPF remaining absent for an indefinite period. Even if we assume that the respondent was suffering from depression and was being treated as an outdoor patient, the medical certificates produced by him show that he was restored to normalcy on 4-4-1998 yet the respondent did not choose to report for duty. The order of dismissal was passed seven months later i.e. on 2-11-1998. This itself discloses the hollowness of the claim of the respondent regarding mental depression and imbalance which he claims to have suffered.”

10. The decisions as placed by the petitioner, being of no assistance, as the facts of the instant case stand on a different footing, are not discussed.
11. For the foregoing reasons and circumstances, no case is made out for any interference and the writ petition accordingly is dismissed.
12. No order as to costs.

Judge

Meghalaya
13.04.2023
“D.Thabah-PS”