

Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 259 of 2017

Date of Decision: 11.10.2023

Smti. Maya Devi

Vs.

Union of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. L. Khyriem Adv. with
Mr. W. Jyrwa, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT

1. The case of the parties in brief is that the petitioner was initially appointed as Female Attendant on 11.07.2002 in the Assam Rifles on compassionate ground in place of her husband (L) Nirmal Kumar Singh, who had predeceased her and who, during his lifetime was a personnel of the Assam Rifles and lost his life in the line of duty in an avalanche in the

year 1992.

2. In course of her work, the petitioner took leave for 26(twenty-six) days including 2 days of earned leave and 6 days of transit leave from 01.10.2010 to 26.10.2010. On prayer made, the petitioner was allowed extension of leave till 15.11.2010 for a further period of 20 days. Admittedly, the petitioner could not resume her duties on expiry of the said leave for which she received a letter No. 14043/A/2010/473 dated 23.12.2010 issued by the respondent authority requesting her to resume duty immediately.

3. Eventually, for various reasons cited by the petitioner, such as being involved in a criminal case filed against her son and herself for which she has to attend to and also for settling of family affairs, resulting in her not being able to resume duty in time, the petitioner appeared on 16.10.2012 at the Transit Camp at Dimapur, Nagaland with the Assam Rifles Unit there to rejoin her duty. She joined for duty at 44 Assam Rifles on 21.10.2012.

4. Vide communication dated 06.12.2012, a Show Cause notice was issued upon the petitioner being No. 44AR/A/A3/2339(CIVIL) directing her to show cause as to why she had overstayed her leave without any reason and satisfactory intimation and was found to be absent from duty till 15.10.2012, thereby being absent for more than 700(seven hundred) days.

5. The petitioner then filed her reply to the said show cause notice on 07.12.2012 explaining the reason for her absence and also pointing out

that she had earlier sent a number of letters whereby she had informed the authorities concerned about her absence. However, the respondent authority proceeded to conduct an inquiry into the matter and set out statement of imputations of charge in support of the articles of charges framed against the petitioner to alleged absence from duty without prior permission. The petitioner was served with a Memorandum to this effect being Memo No. I.12015/A(Discp)/DI-Maya Devi/2014 dated 29.01.2014.

6. Maj Girish Awasthy was appointed as the Inquiry Officer who held the preliminary hearing in the matter and had requested the petitioner to attend the same vide his communication No. 5360091/FA/44 AR/Discp/2014/026 dated 28.03.2014. The petitioner attended the inquiry proceedings in person.

7. The petitioner was then served with a copy of the Order bearing No. I.12015/A(Discp)/DI-Maya Devi/2014 dated 23.05.2014 wherein the proceedings against her was concluded with the major penalty of “Compulsory Retirement from Service” imposed.

8. Being aggrieved by the order dated 23.05.2014, the petitioner approached the Hon’ble Gauhati High Court by way of a writ petition being WP(C) No. 517 of 2015 and the same was disposed of on 04.02.2015 with a direction to the authorities concerned to accept the appeal to be filed by the petitioner in this regard.

9. The petitioner then filed an appeal before the competent authority against the impugned order dated 23.05.2014 which was rejected vide

order No. I.12015/A(Discp)/ DI-Maya Devi/2015/841 dated 04.06.2015 and the penalty of compulsory retirement from service was upheld.

10. Again, the petitioner preferred an application dated 30.07.2016 before the concerned authority seeking reinstatement of her service but she was informed vide letter No. I.14015/Rec/Adm-IV(Civ)/Pension/2016/111 dated 08.09.2016 that she cannot be reinstated and that she is also not entitled to any pension as she is 22 days short for being eligible for pension as far as qualifying service under the Central Civil Service (Pension) Rules 1972 is concerned. Again, vide letter No. I.14015/Rec/Adm-IV(Civ)/ Pension/2017/148 dated 16.01.2017, she was directed to sign the final settlement of her accounts and payments pertaining to her entitlements.

11. Not satisfied with the whole proceeding, including the passing of the impugned order dated 23.05.2014 and the appellate order dated 04.06.2015 and also the order dated 08.09.2016 refusing reinstatement as well as the order dated 16.01.2017 whereby she was directed to sign the necessary documents and papers for payment of her entitlement, the petitioner has hereby preferred this instant writ petition.

12. Heard Mr. L. Khyriem, learned counsel for the petitioner who has submitted that admittedly, that the petitioner has overstayed her leave for about 700 is not denied. However, it is reiterated that the circumstances surrounding the same have been duly communicated to the respondent authority vide letters dated 25.12.2010, 22.02.2011, 11.05.2011, 26.07.2011 respectively. The petitioner has not retained any copy of the

said letters but has annexed (Annexure 4 Series) copies of the postal receipts to prove the same.

13. The first limb of argument raised by the learned counsel for the petitioner is that in course of the inquiry proceedings, she was asked to take assistance of any person of her choice for her defence, but actually, she was never allowed to be represented by any of her friends or colleagues who are familiar with the procedure and formalities of the inquiry. Secondly, she was never supplied with the documents relied upon by the Inquiry Officer nor was she ever allowed to inspect such documents, even though she was given only a list of the documents relied upon by the authorities in the said inquiry. This is accordingly a clear violation of her right to be heard and a breach of the principles of natural justice which has rendered the whole inquiry or disciplinary proceedings vitiated.

14. The learned counsel has also submitted that the petitioner was never given the opportunity to cross-examine the prosecution's witnesses which is also a clear violation of the principles of natural justice.

15. Another limb of argument advanced by the learned counsel is that on the alleged conclusion of the inquiry, the respondent authority has not handed over a copy of the Inquiry Report, dated 23.05.2014 to the petitioner thus preventing her from knowing the reasons for the Inquiry Officer to come to the findings and conclusion whereby recommendation for compulsory retirement from service has been made. This has also caused prejudice to the petitioner as she could not file any show cause

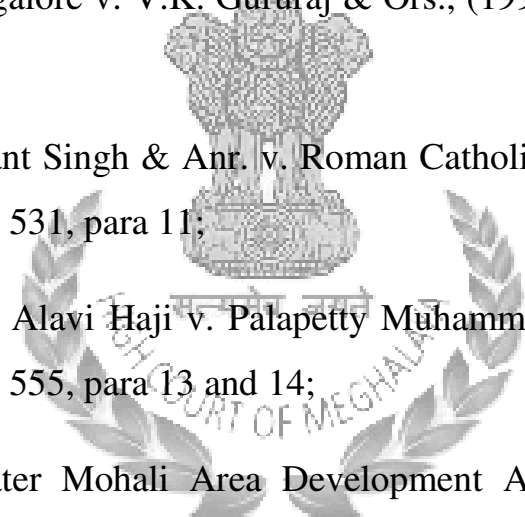
before the major penalty was imposed upon her.

16. The learned counsel has also submitted that the impugned order dated 23.05.2014 is a cryptic and non-speaking order inasmuch as the same has been passed without any application of mind, bereft of any discussion and appreciation of the evidence and the materials on record especially in view of the fact that the petitioner was not given the opportunity to cross-examine the witnesses. The contentions raised by the petitioner in her show cause letter dated 07.12.2012 has also not been considered by the said authority. Similarly, the order dated 04.06.2015 passed by the appellate authority also suffers from the same vice as there is no evident of any application of mind resulting in the failure to address the contentions raised by the petitioner in her relevant appeal.

17. For violation of the fundamental and legal rights of the petitioner as guaranteed under Articles 14, 19 and 21 of the Constitution of India as far as the disciplinary proceedings against her is concerned, the learned counsel has submitted that the relevant impugned orders of 23.05.2014 and the appellate order dated 04.06.2015 are liable to be set aside and quashed and the petitioner be directed to be reinstated in service with all consequential benefits.

18. In support of his contention the learned counsel for the petitioner has cited the following authorities:

- i. Harihar Banerji & Ors. v. Ramshashi Roy & 7 Ors., AIR 1918 PC 102, para 2;

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- ii. Ms. L.M.S. Ummu Saleema v. B.B. Gujaral & Anr., (1981) 3 SC 317, para 6;
 - iii. M/s Madan & Co. v. Wazir Jaivir Chand, (1989) 1 SCC 264, para 6 and 7;
 - iv. Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani, AIR (1989) 2 SCC 602;
 - v. Chief Commissioner of Income Tax (Administration) Bangalore v. V.K. Gururaj & Ors., (1996) 7 SCC 275, para 1;
 - vi. Basant Singh & Anr. v. Roman Catholic Mission, (2002) 7 SCC 531, para 11;
 - vii. C.C. Alavi Haji v. Palapetty Muhammed & Anr., (2007) 6 SCC 555, para 13 and 14;
 - viii. Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., (2010) 9 SCC 157, para 16, 17, 18 and 19;
 - ix. Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, (2010) 13 SCC 657, para 53, 54, 55 and 56;
 - x. Parimal v. Veena @ Bharti, (2011) 3 SCC 545, para 17, 18 and 19.

19. Per contra, Mr. R. Debnath, learned CGC has submitted that the

fact that the petitioner had overstayed her leave to the extent of 700 days is not denied and that she has failed to furnish adequate reasons for such absence is a matter of records.

20. It is also submitted that several correspondences were issued upon the petitioner directing her to rejoin her duty after the expiry of her sanctioned leave but the petitioner did not respond to any of these correspondences and instead, has physically reported before the Transit Camp at Dimapur on 16.10.2012 and has joined her duty on 21.10.2012. Mention is made to the dates on which the correspondences were sent to the petitioner being 23.12.2010, 30.01.2011, 27.04.2011 and 28.09.2011 [Annexure-1 (series) of the counter affidavit].

21. Again, the learned CGC has submitted that the petitioner was issued with a notice to show cause being No. 44AR/A/A3/2339/(CIVIL) dated 06.12.2012 to which she has accordingly replied vide her reply dated 07.12.2012 wherein she has stated that during the period of her absence her son Chandan Singh was an accused in a criminal case under the Dowry Act and she was also implicated in the said case and was arrested by the police but was eventually granted bail on 16.09.2011. Her son was also granted bail only on 16.01.2011 (sic 2012).

22. The learned CGC went on to submit that the respondent authority had initiated the disciplinary proceeding against the petitioner by following the relevant rules under the Central Civil Service (Classification Control and Appeal) Rules, 1972, firstly by initiating the preliminary inquiry and on the basis of the said preliminary inquiry, a

memorandum No. I.12015/A(Discp)/DI-Maya Devi/2014 dated 29.01.2014 was issued to the petitioner and handed over to her.

23. It is also submitted that the petitioner in her statement before the Inquiry Officer had categorically admitted that she did not inform the unit about her absence from duty since 16.11.2010 to 15.10.2012 that is, for 700 days and has also admitted to the charges framed against her.

24. The learned CGC while contradicting the claim of the petitioner, has submitted that as per provision of law all the relevant copies of the documents including the Memorandum of Charges dated 29.01.2014, the statement of Article of Charges, Statement of Imputation of overstaying on leave as well as the list of documents and the list of witnesses have all been handed over to the petitioner. Again, in accordance with rules, the petitioner was given an opportunity to nominate a serving government employee or a retired government employee to assist her in her defence but she declined to do so.

25. The allegation that the petitioner was not given adequate opportunity to defend her case is also refuted by the respondent authority and as submitted by the learned CGC, the entire enquiry was conducted in utmost transparency with the petitioner being made to understand the conduct of the same wherein she had also verified such proceeding by putting her signature wherever necessary. The petitioner was also handed over relevant documents for her defence in course of the said inquiry and the statement of the witnesses were also read over to the petitioner in presence of all the witnesses.

26. The learned CGC has also submitted that the contention of the petitioner that the imposition of the major penalty of 'compulsory retirement from service' is excessive and disproportionate to the alleged offence, cannot be accepted as the petitioner has failed to suitably answer to as to why she has overstayed her leave for about 700 days and in view of the provision of Rule 25 of the CCS (Leave) Rules, 1972, such absence from duty without permission is an act of misconduct and the penalty imposed is therefore, just and proper.

27. This Court having heard the submission and contention of the learned counsels for the respective parties would proceed to discuss the same on the basis of the materials on record, that is, the writ petition, the affidavit-in-opposition, the rejoinder to the same and also from whatever is found relevant from the records produced by the respondent/Assam Rifles before this Court.

28. At the outset, what could be ascertained from the proceedings before the respondent authority/Assam Rifles is that the petitioner has admitted to have gone on leave and overstayed the sanction accorded. Steps have also been taken by the authority concerned to compel her to rejoin her duties. Correspondences in this regard have been duly acknowledged by the petitioner. That she finally rejoined her Unit at 44 Assam Rifles on 21.10.2012 is not denied by either parties.

29. The dispute arose when the petitioner was served with the show cause notice dated 06.12.2012 to explain as to why she had absented herself without any reason and satisfactory intimation, effectively from

16.12.2010 to 15.10.2012, about 700 days or so.

30. The petitioner in her reply to the said show cause on 07.12.2012 has generally stated the reasons why she was absent and has particularly stated that she has also intimated the concerned authority on about four occasions, that is, on 25.12.2010, 22.02.2011, 11.05.2011 and 26.07.2011 about her inability to join duty.

31. The respondent/Assam Rifles has acknowledged the receipt of the letters dated 22.02.2011 and 26.07.2011 and reply was accordingly sent to the petitioner on 27.04.2011 and 28.09.2011 respectively with a reminder to her to join her duty. In fact, in the reply dated 27.04.2011, it was clearly mentioned that the content of the letter of the petitioner shows that she could not rejoin duty on account of her ill health, to which a query was made as to when she will be fit to join since she has continuously been absent since 15.11.2010. Therefore, on this front the respondent authority cannot be faulted to say that no intimation was sent to the petitioner asking her to join her duties.

32. The authorities cited by the petitioner as listed at paragraph 18 hereinabove all speaks of one thing, that is, the principle or rather the consequence of what could be presumed as communication in the form of registered letter issued by post to have been duly affected even if the receiver is not found at the given address or may have caused circumstances to give a picture that he was not at home or in station at the relevant point of time. This situation is, however, not present in these proceedings as has been pointed out above. Therefore, there is no

question to be answered as to whether the said letters of the petitioner were ever received by the respondent authority.

33. The next objection raised by the petitioner is that due to the fact that the copy of the inquiry report not being given to the petitioner, she is prejudiced by the same to the extent that she was not able to file any response to such report and to the proposed penalty to be imposed on her, and as such, without such opportunity being given, the principle of natural justice was violated.

34. In response to this, the respondent authority in its affidavit-in-opposition has denied the averment made in this regard and has stated that all possible opportunity was afforded to the petitioner to defend herself right from the time she was informed of the initiation of the disciplinary proceedings against her. She was allowed to file her show cause, to nominate a serving or retired government employee to assist her in the proceedings, but she chose not to nominate anyone in this respect but has personally participated in the whole proceedings, her signature being attested to the relevant papers throughout the whole process. However, the respondent authority has not made any categorical statement that after the conclusion of the inquiry, upon the Inquiry Officer having prepared and filing his report to the authority concerned, copy of such report was given to the petitioner.

35. This Court on perusal of the records of the proceedings available with the department has noticed that the recording of the proceedings is present in the file. Even the final report filed by the said Inquiry Officer

with the recommendation that stringent disciplinary action be taken against the delinquent/petitioner which has probably influenced the disciplinary authority to passed the impugned dismissal order is also found in such records. There is, however, no indication that a copy of such report was ever handed over to the petitioner before the impugned order was passed.

36. In the case of *Union of India & Ors. v. Mohd. Ramzan Khan*, (1991) 1 SCC 588, a three Judge bench of the Hon'ble Supreme Court dealing with the issue arising out of the amendment of Article 311(2) by the forty-second Amendment of the Constitution vis-à-vis furnishing of the report of the Inquiry Officer in an inquiry proceeding to the delinquent officer and the consequence thereof, the Court has at many places in the judgment, made relevant observations. In the context of the case herein, paras 10, 13, 14 and 18 of the judgment would be relevant. The same are reproduced herein as under:

“10. A three Judge bench of this Court in State of Gujarat v. R.G. Teredesai [(1969) 2 SCC 128] has indicated that the Inquiry Officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the government servant against whom the departmental inquiry is held and his function merely is to conduct the inquiry in accordance with law and to submit the record along with the findings or conclusions on the delinquent servant. But if the Inquiry Officer has also made recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed on such officer which must be disclosed to the delinquent officer. Since such recommendation forms part of the record and constitutes appropriate material for consideration of the

government, it would be essential that that material should not be withheld from him so that he could while showing cause against the proposed punishment make a proper representation. The entire object of supplying a copy of the report of the Inquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. At p. 254 of the reports Grover, J. speaking for this Court stated: (SCC p.131, para 5)

“The requirement of a reasonable opportunity, therefore, would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant.”

Another three Judge bench decision of this Court is that of Uttar Pradesh Government v. Sabir Hussain [(1975) 4 SCC 703] where this Court held: (SCC p. 708, para 16)

“In view of these stark facts the High Court was right in holding that the plaintiff (respondent) was not given a reasonable opportunity to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation.”

13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. The facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case [(1969) 2 SCC 128], the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be

inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out (Administrative Law, 6th Edn., p. 10)

“The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing.... They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly.”

14. This Court in *Mazharul Islam Hashmi v. State of U.P.* [(1979) 4 SCC 537] pointed out:

“Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved.”

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment

or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

37. The proposition of law as found in the case of Mohd. Ramzan Khan(supra) has also found place in a number of subsequent judgments passed by the Hon’ble Supreme Court relating to the subject matter of the importance of the copy of the inquiry report to be handed over to the charged officer, one of such instance is found in the case of *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.*, (1993) 4 SCC 727 relevant paras being 25, 27 and 29 which are reproduced as under:

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to

impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

38. In the light of the above observations, this Court is convinced that the petitioner/delinquent has not been furnished with a copy of the said inquiry report and therefore, was prevented from filing a response to the same. Violation of natural justice has occurred. The subsequent action taken by the concerned authority including imposition of the penalty of “Compulsory Retirement from Service” as is found in the impugned order dated 23.05.2014, cannot stand the test of judicial scrutiny. The same is accordingly hereby set aside and quashed.

39. This Court need not dwell on the corresponding fate of the decision made in the appeal filed by the petitioner which has upheld the order dated 23.05.2014 since it will no longer be of any consequential value in view of the fact that the initial impugned order has been set aside

and quashed.

40. Consequently, the authority concerned is hereby directed to reinstate the petitioner in service with all due benefits including back wages to which she is entitled to in accordance with law, had she not been issued with the said impugned order for which she was compulsorily retired from service.

41. Registry is to send back the records of the respondent authority/Assam Rifles.

42. Petition disposed of. No costs.



Judge

Meghalaya
11.10.2023
"Tipilynti-PS"