

GAHC030000642022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/20/2022

Zohmangaiha (C/465)
S/o Ramngaihzualla
R/o Arro Veng, Khawzawl,
Mizoram

VERSUS

State of Mizoram and 3 Ors.
Aizawl, Mizoram 2:The Secretary to the GOM
Home Department

3:The Deputy Inspector General of Police (Armed)

4:The Commandant 2nd I.R. Bn.
Khawzaw

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

Advocate for the Respondent : Mr. C. Zoramchhana (Addl.AG/GA, Mizoram)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
JUDGEMENT

Date : 21-02-2023

Heard Mr. Lalpianfela Chawngthu, learned counsel for the petitioner and Mrs. Linda L. Fambawl, learned Government Advocate appearing for the State respondents.

2. This is the second time the petitioner is before this Court. The first writ petition being WP(C) No. 118/2020 was dismissed as withdrawn, by granting the petitioner liberty to approach the appellate authority against the order of removal imposed upon him. The petitioner preferred an appeal accordingly, but the appeal was rejected vide Order dated 03.05.2021. Aggrieved, the petitioner is again before this Court.

3. Brief facts of the case essential for disposal of the writ petition is that the petitioner, who was working as a Constable in 2nd Indian Reserve Battalion was issued a Memorandum of Charges on 22.03.2017, by which 2 (two) Article of Charges were framed against him. The Charge Memorandum was thereafter amended vide Order dated 29.01.2018 and by the said amendment, 3 (three) Article of Charges were framed. The first Article of Charge is in respect of the petitioner's unauthorized absence from duty for 5 days, i. e., 07.12.2016 to 13.12.2016. The second Article of Charge is with regard to his unauthorized absence from duty for 79 days, i.e., 13.12.2016 to 01.03.2017. The third Article of Charge is with regard to his unauthorized absence from duty for 179 days, i.e., 05.06.2017 to 30.11.2017.

4. According to the Charge Memorandum, the petitioner was given 10 days time from the date of receipt of the Memorandum to submit his written statement of defense and also to state whether he desired to be heard in person. The petitioner submitted his written statement of defense, but the Departmental Proceeding proceeded against him. Consequently, the Enquiry Officer, upon conclusion of the enquiry submitted the Enquiry Report on 16.05.2018 with a finding that all the 3 (three) charges drawn against the petitioner were proved. The petitioner was given a copy of the Enquiry Report and was asked to submit his representation, if any, against the Enquiry Report within 10 days from the date of receipt of the same without fail vide letter dated 21.06.2018. The petitioner thereafter submitted his representation to the Commandant 2nd I.R. Battalion, Khawzawl (Disciplinary Authority) on 28.06.2018 acknowledging the receipt of the Enquiry Report and admitting to the charge and findings of the Enquiry Officer. Thereafter, the petitioner was given a copy of the letter dated 24.08.2018, by which the Disciplinary Authority proposed to impose a penalty of removal from service upon the petitioner. The petitioner was asked to submit his representation, if any, on the proposed penalty within 15 days from the date of issuance of the letter. The petitioner submitted his representation on 31.08.2018 stating that he has nothing to say in his defense and that he expressed his regret and asked for forgiveness and for a chance to rectify himself. However, vide the impugned Order dated 11.09.2018, the petitioner was imposed with a penalty of removal from service with immediate effect and further, the period of his unauthorized absence from duty was directed to be treated as not on duty. The petitioner preferred an appeal before the appellate authority concerned, but the same was rejected as already stated herein above.

5. Mr. Lalpianfela Chawngthu, learned counsel submits that his submission on behalf of the petitioner is threefold. Firstly, the respondent authority concerned only gave 10 days time to the petitioner to submit his representation against the Enquiry Report, whereas Rule 1039 of the Mizoram Police Manual, 2005 prescribes 15 days time to be given for submitting a reply to an Enquiry Report. Therefore, the petitioner had been deprived of adequate opportunity to submit meaningful representation. He submits that when the statute provides for a thing to be done in a particular manner, the same should be done in that manner alone and not in any other way. In support of his submission, the learned counsel has relied upon the case of *Kulwant Singh Gill Vs. State of Punjab*, reported in *1991 Supp (1) SCC 504* and *Judgment & Order dated 24.04.2017* of this Court in *W.A. No. 2/2016 (C. Malsawmzuala Vs. State of Mizoram & 3 Others)*. The learned counsel secondly submits that the petitioner was deprived of the opportunity to be defended by a Defense Assistant. Although the petitioner had informed the authorities about the details of the Defense Assistant chosen by him, but he could not avail of his service at the time of the preliminary hearing, which was held on 24.04.2017 and also, during the regular hearing which was conducted on 19.04.2018 in the Office Chamber of the Enquiry Officer. The petitioner was not informed of his right to have a Defense Assistant. Being a Class-IV Government servant, the learned counsel submits that the petitioner is unaware about the intricacies of law. Therefore, the impugned order of removal from service without affording an opportunity to the petitioner to be defended by the Defense Assistant is only vitiated. Thirdly, the learned counsel submits that the absence of the petitioner from duty was not willful and deliberate and therefore, the penalty imposed upon him, being too harsh a punishment, the same should be interfered with by this Court.

6. Mrs. Linda L. Fambawl, learned Government Advocate on the other hand submits that the petitioner may have been given only 10 days time to submit his representation against the Enquiry Report, but the fact remains that the petitioner could submit his representation much before the expiry of the given 10 days time. Therefore, the case of the petitioner is clearly distinguishable from the case cited by the learned counsel for the petitioner, i.e, *C. Malsawmzuala (Supra)*.

7. The learned Government Advocate further submits that the petitioner was indeed given an opportunity to avail for Defense Assistant. In fact, he had nominated one Mr. Lalthanliana, Village Council Secretary of Khawzawl Lungvar as the Defense Assistant. However, the Defense Assistant failed to appear on the date of preliminary hearing purportedly on account of his official engagement. When hearing was conducted the second time on 19.04.2018, the petitioner was again informed about his right to have a Defense Assistant, but the petitioner stated that he will not have a Defense Assistant or witness/evidence to disprove the charge. This fact can be seen from the daily order sheet which is maintained by the Enquiry Officer, wherein the petitioner had also subscribed his signature. The learned Government Advocate further submits that when the petitioner absented himself unauthorizedly w.e.f. 07.12.2016, a Calling Notice dated 13.12.2016 was issued to him to resume his duty. The petitioner received the Calling Notice on 17.12.2016 by giving his signature on the body of the Calling Notice as a token notice, but he continued to remain absent and reported back to the Battalion Headquarters only on 01.03.2017. The petitioner thereafter remained absent from 05.06.2017 to 30.11.2017 and for which, a notice was issued to him on 07.06.2017 which was received by him on 08.06.2017. However, the petitioner failed to report back for

duty. She therefore submits that the contention of the learned counsel for the petitioner that the petitioner did not absent himself willful or deliberately cannot be accepted. She submits that against the Charge Memorandum, the Enquiry Report and the order by which penalty of removal from service was proposed, the petitioner submitted his reply admitting to the charge framed. As such, besides the Department having followed all the procedural formalities, the petitioner himself has admitted to the charge and therefore, the impugned order of removal from service as well as the rejection of the appeal may not be interfered with by this Court.

8. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

9. Since the learned counsel for the petitioner has restricted his arguments on three main points, we shall proceed to examine the same.

10. Rule 1039 of the Mizoram Police Manual, 2005 indeed provides that 15 days time is to be given for making a representation against the Enquiry Report. The petitioner in the instant case admittedly was given only 10 days time. However, the fact remains that the petitioner submitted his written representation against the Enquiry Report within a period of 7 days from the date of issuance of the Enquiry Report to him. In other words, the Enquiry Report was furnished to him on 21.06.2018 and the petitioner could submit his reply on 28.06.2018 to the Disciplinary Authority. The learned counsel for the petitioner has placed reliance upon the case of *C. Malsawmzuala (Supra)* wherein, the Division Bench of this Court had in the facts of that case held that failure of the Disciplinary Authority to grant adequate time to the appellant as

per law to respond to the Enquiry Report had caused serious prejudice to the appellant. The fact in that case was that the appellant was given only 2 days time to submit his written representation, if any and before the appellant could submit his representation, the Disciplinary Authority passed the impugned order imposing a penalty of removal from service upon him. However, in the instant case, the petitioner could submit his representation within 7 days from the date of issuance of the Enquiry Report to him. Therefore, in the absence of any prejudice caused to the petitioner, not granting 15 days time to reply to the Enquiry Report by itself will not vitiate the imposition of the impugned penalty. Consequently, the said judgment, in my considered view would not render any assistance to the petitioner in the present case.

11. The second argument advanced by the learned counsel for the petitioner is that the petitioner was not given an opportunity to be defended by a Defense Assistant. The daily order sheet dated 22.04.2017 maintained by the Enquiry Officer and which is annexed as Annexure-XV to the affidavit-in-opposition of the State respondents would go to show that a letter was received from the petitioner nominating Mr. Lalthanliana, Village Council Secretary, Lungvar, Khawzawl as his Defense Assistant. Accordingly, the Enquiry Officer asked the Defense Assistant to be present on 24.04.2017 at 1:00 P.M for preliminary hearing of the case. On 24.04.2017, on which date preliminary hearing was fixed, the petitioner was present but the Defense Assistant nominated by the petitioner was not present. The petitioner stated that the Defense Assistant will not be able to attend the proceeding due to his official engagement. As such, he will not have any Defense Assistant. The petitioner was also asked to submit list of documents which he wished to rely upon as evidence to disprove the charge framed against him, but the petitioner stated that he did not have any witness

or evidence to disprove the charge framed against him. The next proceeding relevant is the proceeding which was held on 19.04.2018, on which date the main/regular hearing of the case was conducted. The same has been annexed by the State respondents as Annexure-XVII in their counter affidavit.

12. A perusal of the daily order sheet reveals that the petitioner, the presenting Officer and Departmental witnesses were present on that day. The witnesses were examined and their statements were recorded in the presence of the petitioner. The petitioner was also given chance to cross examine the witnesses, but he did not have any question to ask. The petitioner was asked whether he preferred to make his defense orally or in writing and to which, he replied that he would make his defense orally. The statement of the petitioner was recorded in a separate sheet. As per the statement, the petitioner stated that the charges in Article 1, 2 & 3 framed against him were correct and true and that he had no defense to disprove the case made out against him. While admitting to the charges, he prayed that he may be forgiven for his action.

13. Be it stated herein that the purpose of having the services of a Defense Assistant is for defending the delinquent Government servant against the charges framed against him or her. But, when the delinquent Government servant admits to the charges framed, the very purpose of having a Defense Assistant is redundant. In other words, no purpose would be served in having a Defense Assistant when one admits to the charge without any explanation. Therefore, the question of causing prejudice for not being given an opportunity of defense will not arise. In the present case as well, the petitioner undisputedly admitted to the charge and while doing so, he has prayed for leniency and forgiveness. Although the petitioner has not annexed a copy of the written

statement of defense submitted by him pursuant to the issuance of Memorandum of Charge, a perusal of the impugned Order dated 11.09.2018 at the third paragraph goes to show that the petitioner submitted his reply to the Charge Memorandum on 10.04.2017 and he admitted all the charges framed against him. Therefore, upon due consideration of the case projected by the petitioner, this Court finds no ground to interfere with the orders impugned and accordingly, the writ petition stands dismissed.

14. In view of the findings and conclusion arrived at, the other authority relied upon by the learned counsel for the petitioner is found unnecessary and inapplicable.

JUDGE

Comparing Assistant