

GAHC030000722020



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

Case No. : WP(C)/27/2020

P Hranghluna
F. Rakzuala Building, Falkland, World Bank Road, Aizawl, Mizoram-796001

VERSUS

State of Mizoram and 3 Ors
Aizawl, Mizoram 2:The Secretary to the Government of MIZORAM

3:The Director General of Police

4:The Inspector General of Police (HQRS)

Advocate for the Petitioner : Mr Anil Rinliana Malhotra

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

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

JUDGEMENT

Date : 30-05-2023

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mr. P.C. Lalthangmawia, learned Government Advocate appearing for the State respondents.

2. By filing this writ petition, the petitioner has challenged the Order dated 26.09.2019 (Annexure-9), by which a major penalty of withholding 1 (one) year service increment with cumulative effect has been awarded to the petitioner. The petitioner has also challenged the Order dated 16.12.2019 (Annexure-11), by which the appeal preferred by him has been rejected by the appellate authority.

3. Brief facts of the case as projected by the petitioner is that he was issued with a Memorandum of Charge dated 22.01.2019 (Annexure-1) wherein, 3 (three) Article of Charges were framed against him. The 1st Article of Charge is that while being posted as O.C. Mamit Police Station, the petitioner received a written FIR submitted by Mr. B. Lalpuia, Head Faculty of DPRC, SIRD, Mamit about the burglary and theft of Government property, i.e., One set of water pump from the office of District Panchayati Raj Resource Centre, SIRD, Mamit on 04.05.2018 and that he did not take prompt action till 08.05.2018 on the cognizable offence and he failed to register a criminal case against the accused person. The 2nd Article of Charge was that while being posted as O.C. Mamit Police Station, the petitioner due to his lackadaisical approach towards Mamit

Police Station Case No. 14/2017 under Section 302 IPC failed to visit Rengte Tlang, Kolasib District where source information confirmed twice the presence of the accused and he failed to arrest the accused person. The 3rd Article of Charge was that while being posted as O.C. Mamit Police Station, the petitioner failed to perform VIP duty at the Chief Minister's programme during the inaugural function of 3 Departmental buildings on 04.06.2018 and 05.06.2018 despite being instructed to be present for duty. The petitioner was therefore asked to submit his written statement of defence within a period of 10 days from the date of receipt of Memorandum of Charge.

4. Although the petitioner submitted his written statement of defence, the Disciplinary Authority decided to proceed with the Departmental Proceedings by appointing an Enquiry Officer and a Presenting Officer. Upon conclusion of the Departmental Enquiry, the Enquiry Officer submitted the Enquiry Report on 13.05.2018 with a finding that the Article of Charge Nos. 1 & 2 were proved and Article of Charge No. 3 was not proved. The petitioner was furnished with the Enquiry Report and asked to submit his representation. Accordingly, the petitioner submitted his representation against the Enquiry Report but by the impugned Order dated 26.09.2019, a major penalty as already stated herein above was imposed upon the petitioner. The appeal preferred by him being rejected, the petitioner is before this Court.

5. Mr. A.R. Malhotra, learned counsel for the petitioner submits that the petitioner, in response to the Article of Charge had clearly stated that against the FIR submitted by Mr. B. Lalpuia, he had instructed and deputed S.I. C. Vanlalnghaka to make an enquiry into the matter and to submit a report. The reason for taking such a step was that in the FIR submitted by the complainant,

specific information regarding the material that was stolen and name of accused was not stated. Therefore, without submission of the Enquiry Report as directed by the petitioner, he was not in a position to register a case. As regards, the allegation that the petitioner failed to take appropriate steps to apprehend the accused person in connection with Mamit Police Station Case No. 14/2017, the learned counsel submits that the petitioner clearly stated that he had visited Pangbalkawn and Meidum and the information received from his source regarding the whereabouts of the accused person being belated, he could not apprehend the accused person. However, he also clearly explained in his reply against the Enquiry Report that he had visited Rengte Tlang twice but did not enter the same in the Case Diary. Such being the position, the learned counsel submits that the respondent authorities could not have imposed the impugned penalty upon the petitioner.

6. The learned counsel further submits that during the Departmental Proceeding, 3 Departmental witnesses were examined but no opportunity was given to the petitioner to cross examine the Departmental witnesses. Instead of giving him such opportunity, the Enquiry Officer examined the petitioner on the statements given by the Departmental witnesses. The learned counsel therefore submits that the same is only in gross violation of Rule 1038 (6) of the Mizoram Police Manual, 2006. He submits that in a case of similar nature, i.e, WP(C) No. 191/2016 (*Sh. Zonunmawia Vs. State of Mizoram & 4 Others*), a Co-ordinate Bench of this Court vide Judgment & Order dated 20.10.2017, upon coming to a finding that no opportunity of cross examination was given to the petitioner, set aside the impugned Orders and remanded the matter back for decision by the authority concerned afresh. He therefore submits that non-affording of an opportunity to the petitioner to cross examine the Departmental witnesses has

only vitiated the impugned Orders and therefore, the impugned Orders imposing the major penalty upon the petitioner and the rejection of his appeal may be set aside.

7. The learned counsel further submits that during the Departmental Proceedings, the statement of the petitioner was recorded and the same has been used against him. He submits that the same is not permissible in law. He also submits that in a Departmental Enquiry, a person charged with certain things cannot be compelled to be a witness against himself. Therefore, even on this count, the impugned Orders are liable to be interfered with. In support of his submission, the learned counsel has relied upon the case of *Tapan Kr. Roy Vs. Oriental Insurance Company Limited & Others*, reported in 1999 (2) GLT 316.

8. Mr. P.C. Lalthangmawia, learned Government Advocate on the other hand submits that the petitioner being an Officer-in-Charge of the Police Station clearly failed to carry out his duty in not registering a case pursuant to the filing of the FIR by Mr. B. Lalpuia on 04.05.2018. Referring to Section 154 of the Cr.PC, the learned Government Advocate submits that every information relating to the commission of a cognizable offence, if given orally to an Officer-in-Charge of a Police Station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such Officer in such form as the State Government may prescribed in this behalf. He submits that the petitioner in the instant case has clearly failed to abide by the said provision and in fact, in his recorded statements, he himself clearly admitted of

having not registered a case pursuant to the filing of the FIR. As regards, the 2nd Article of Charge, the learned Government Advocate submits that it has been clearly admitted by the petitioner that he did not enter in the Case Diary the details or otherwise of his visit to Rengte Tlang and therefore, in absence of any such evidence about his visit, there is nothing wrong with the conclusion drawn by the Enquiry Officer. He thus submits that the writ petition is without merit and the same should be dismissed.

9. I have considered the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. What is noticed at the outset is that although 3 Departmental witnesses were examined on behalf of the State but the petitioner admittedly was not given a chance to cross examine the witnesses. Although the Enquiry Officer in the recorded statements of the Departmental witnesses have stated that a chance for cross examination was given to the Officer-in-Charge but from a perusal of the same, there is no reflection as to how the Departmental witnesses were cross examined by the petitioner.

10. Rule 1038 (6) of the Mizoram Police Manual, 2006 provides as follows:-

“(6). In the inquiry, oral evidence shall be learned as to such of the allegations as are not admitted, the person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to produce any material evidence of his innocence, and to have such witnesses called as he may wish, provided that special and sufficient reason to be recorded in writing, refuse to call a witness. After completion of the production of evidence, the Inquiring Authority may hear the Presenting Officer, if any, appointed and the person charged or permit them to file written briefs of their respective cases, if they so

desire. After the enquiry has been completed, the person charged shall be entitled to copy of the report of the inquiry and to put in, if he so desires, his written representation or submission to the disciplinary authority within fifteen days."

11. From the above abstract, it may be seen that during the enquiry, the person charged on certain allegations and which are not admitted by him shall be entitled to cross examine the witnesses and to give evidence in person and also to produce any material evidence of his innocence and to have such witnesses called as he may wish. A bare perusal of the recorded statements by the Enquiry Officer after the examination of the 3 Departmental witnesses clearly shows that no such opportunity for cross examination was given to the petitioner. This Court in the case of *Sh. Zonunmawia (Supra)*, in the given facts of that case had also noticed that Rule 1038 (6) of the Mizoram Police Manual, 2006 was violated, in view of the fact that the petitioner therein was not given any opportunity of cross examining the State witnesses. Accordingly, the matter was remanded back for reconsideration from the stage of cross examination after setting aside the impugned Orders.

12. In the present case as well, this Court has noticed that the petitioner was denied the benefit of cross examining the State witnesses and for that reason, the impugned Order dated 26.09.2019 and the Order dated 16.12.2019 are found to be not sustainable. Accordingly, they are set aside. The matter is now remanded back to the State respondents for fresh consideration and decision from the stage of cross examination of the 3 Departmental witnesses. It is made clear that the petitioner be given due opportunity to cross examine them, where-after, the respondent authority concerned shall finalize the proceeding in accordance with law. It is also provided herein that if the petitioner wishes to

produce any evidence in his defence, he shall be permitted to do so. The entire exercise as directed herein above be carried out and completed as expeditiously as possible and preferably within a period of 3 (three) months from the date of receipt of a certified copy of this order.

13. Writ petition is accordingly disposed of. No cost.

JUDGE

Comparing Assistant