

GAHC030005472023



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

Case No. : WP(C)/129/2023

Robin Thangbawiha
S/o Zoliana
R/o Falkland
Aizawl, Mizoram

VERSUS

State of Mizoram and 5 Ors.
R/b the Chief Secretary to the Govt. of Mizoram, Aizawl, Mizoram 2:The
Secretary to the Govt. of Mizoram
Home Dept.

3:The Director General of Police

4:The Deputy Inspector General of Police (Hqrs)

5:The Commandant
1st Battallion MAP

6:The Asst. Commandant
1st Battallion MA

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 6

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

10.11.2023

Heard Mr. Jonathan Lalrintluanga, learned counsel for the petitioner and Mrs. H. Lalmalsawma, learned Government Advocate appearing for the State respondents.

2. The facts of the case is that the petitioner who was a Constable under the 1st IR Battalion MAP was removed from service vide the impugned Order dated 16.09.2015, on having been found guilty in a departmental proceeding, for shooting his Post-Commander with his 7.62 mm SLR, intending to kill the Post Commander on 01.04.2015 at 9.00 pm. The Post Commander sustained injuries due to the shooting.

3. The petitioner filed an appeal against the impugned Order dated 16.09.2015 and the same was rejected vide Order dated 18.01.2016 by the authority.

4. The learned counsel for the petitioner submits that besides the departmental proceedings that had been initiated against the petitioner, an FIR was lodged against the petitioner as Sakawrdai Police Station, wherein Sakawrdai Police Station Case No. 7/2015 under Section 307(1) IPC read with Section 27(2) of Arms Act was registered.

5. The said Sakawrdai PS Case No. 7/2015 was registered as Criminal Trial No. 163/2016 in the Court of the Addl. District & Sessions Judge, Aizawl. The petitioner was acquitted of the charge under Section 307 IPC and under Section 27(2) of the Arms Act by the Court of the Addl. District & Session Judge, Aizawl in Criminal Trial No. 163/2016, vide Judgment and Order dated 16.07.2019.

6. The petitioner's counsel submits that as the petitioner was acquitted of the charge under Section 307(1) IPC read with Section 27(2) Arms Act in Criminal Trial No. 163/2016, the penalty of removal from service imposed on the petitioner, vide the impugned Order dated 16.09.2015, has to be set aside. He also submits that as a criminal case was pending against the petitioner, the State respondents should have stopped the departmental

proceedings initiated against the petitioners. He submits, in the alternative, that the penalty imposed upon the petitioner being disproportionate to the offence, a lesser penalty should be imposed upon the petitioner.

7. Mrs. H. Lalmalsawmi, learned Government Advocate submits that she has no instructions at this stage.

8. I have heard the learned counsels for the parties.

9. The issues raised by the petitioner have been decided by the Supreme Court in a number of decisions and as such, this Court is not going to keep this case pending before this Court any longer.

10. In the case of *Samar Bahadur Singh Vs. State of Uttar Pradesh & Others, (2011) 9 SCC 94*, the Apex Court has held that acquittal in a criminal case shall have no bearing or relevance to the facts in a departmental proceedings, as the standard of proof required in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt, whereas in a departmental proceeding, the department has to prove the case on the basis of preponderance of probability.

11. In the case of *Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya & Others, (1997) 2 SCC 699*, the Supreme Court has held that criminal proceedings and departmental proceedings can go on simultaneously.

12. In view of the judgments of the Supreme Court referred to above, acquittal of the petitioner in Criminal Trial No. 163/2016 cannot be a ground for setting aside the impugned order of removal of service dated 16.09.2015. Also, in view of the judgment of the Supreme Court in *Depot Manager, A.P. State Road Transport Corporation (Supra)*, there is no bar or infirmity with the proceedings of the departmental proceedings going on simultaneously with the criminal case initiated against the petitioner.

13. In the case of *State of U.P Vs. J.P Saraswat, (2011) 4 SCC 545*, the Supreme Court has held that unless the punishment/penalty imposed upon a delinquent Officer shocks the conscience of the Court, the same should not be interfered with. It has held that Judicial review is permissible in very rare cases, where punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice.

14. In this case, the petitioner being a member of the police force, it is expected that a member of the police force would have to adhere a high level of discipline.

15. On considering the fact that he has been found guilty of shooting his Post Commander, this Court does not find any ground to hold that the penalty imposed upon the petitioner is disproportionate to the offence, as the penalty imposed does not appear to be unconscionable or actuated by malice.

16. In view of the reasons stated above, this Court does not find any merit in the writ petition.

The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant