



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 309 of 2021

Date of Decision: 24.07.2024

Shri. Lalrinmawia Ralte

Son of (L) Zaisoma Ralte,
 Resident of Madanrting, Mawblei, Block-B,
 East Khasi Hills District, Meghalaya

.....Petitioner

1. The State of Meghalaya, represented by the Chief Secretary,
 Government of Meghalaya, Shillong
2. The under Secretary to the Government of Meghalaya, Home
 (Police) Department, Meghalaya, Shillong
3. The Commandant,
 1st Battalion, Meghalaya Police, Mawiong, Shillong

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

For the Respondent(s) : Mr. N.D. Chullai, AAG with
 Mr. E.R. Chyne, GA

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



J U D G M E N T

1. It is the case of the petitioner that he was appointed in the police force of the Meghalaya Police as a BN Constable on 14.03.1996 and is continuing his service since then.

2. The petitioner while posted at the 1st Battalion of the Meghalaya Police at Mawiong, Shillong in the East Khasi Hills was issued a notice dated 02.02.2021 by the Commandant, 1st Battalion, Meghalaya Police for reportedly being found absent from General Roll Call w.e.f. 15.12.2020 and was directed to report to the office of the Commandant. The petitioner was also made known that earlier, two notices, dated 17.12.2020 and 08.01.2021, respectively were also issued upon him, but he had no knowledge of such notices.

3. The petitioner in response to the notice dated 02.02.2021 then reported to the office of the Commandant, 1st MLP, Bn. and resumed duty on 08.02.2021 where he was assigned guard duty at Covid-19 Centre, Mawiong, Shillong.

4. The petitioner was then served with a show cause notice dated 10.02.2021 under Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules, 2011 read with Rule 66 of the Assam Police Manual Part-III as adopted by the Government of Meghalaya and Article 311 of the Constitution of India. He was called upon to response to the show cause notice wherein charges against him were indicated therein, including the charge that he was found absent from General Roll Call w.e.f. 15.12.2020 (AM) without any leave or permission from the competent



authority.

5. In response to the said show cause notice dated 10.02.2021, the petitioner filed his written statement dated 17.02.2021 wherein he had explained the reasons of his absence from duty for the said period indicated.

6. However, the relevant authority, not being satisfied by his reply and explanation, then proceeded to draw up disciplinary proceedings against the petitioner and Shri. E.B. Kyndiah, MPS, Assistant Commandant, 1st MLP Bn. was appointed as the Enquiry Officer to enquire into the allegations made against the petitioner.

7. The Enquiry Officer then proceeded to conduct the enquiry and on completion of the same, the findings were returned to conclude that the charges against the petitioner stands “Proved beyond reasonable doubt”. Consequently, the competent authority then awarded the major punishment of “dismissal from service”, conveyed to the petitioner vide Notification B.O. No. 2770, dated 19.05.2021 issued by the Commandant, 1st Battalion Meghalaya Police, Mawiong, Shillong.

8. The petitioner, not being satisfied with the said order of dismissal dated 19.05.2021, preferred the statutory appeal before the Director General of Police, Meghalaya Police on 05.08.2021 with a prayer for reconsideration of the dismissal order. However, the appellate authority rejected his appeal vide order dated 11.08.2021.

9. Being highly aggrieved with the said order of dismissal from service dated 19.05.2021 and the dismissal of the appeal vide order dated 11.08.2021, the petitioner has accordingly preferred this instant writ



petition with a prayer to set aside and quash the aforesaid impugned orders.

10. Heard Mr. S.A. Sheikh, learned counsel for the petitioner who has submitted that the proceedings against the petitioner is vitiated inasmuch as the proper procedure in accordance with the relevant rules has not been followed by the relevant respondents when the disciplinary proceeding was initiated against him.

11. The learned counsel has submitted that Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules, 2011 provides for procedure to imposed penalties. Under sub-Rule 2 of Rule 9 of the same it is provided that whenever a disciplinary authority delivers the charges to a delinquent, a list of witnesses and documents is also required to be attached to the same to prove the charges so made. This provision is mandatory and any deviation from it would vitiate the entire proceedings.

12. It is the contention of the petitioner that the show cause notice/charge memo contains only the statement of allegations (article of charge) but did not contain the list of documents and witnesses. This is a violation of the said provision of sub-Rule 2 of Rule 9 of the said 2011 Rules for which the petitioner ought not to have been proceeded against.

13. In support of this contention, the learned counsel for the petitioner has cited the following cases:-

- i. Madhab Chandra Das v. The State of Assam & Ors., 1987
SCC Online Gau 84, para 11, 13 & 16;



- ii. Nazrul Islam v. State of Assam & Ors., 2013 SCC Online Gau 745, para 12, 13, 14, 15 &16;
- iii. Indrajit Sen v. State of Assam & Ors., 2015 SCC Online Gau 579, para 23 & 24; and
- iv. Shahjahan Ali v. State of Assam & Ors., 2018 SCC Online Gau 2115, para 7, 10 & 11.

14. Yet another contention raised by the petitioner is that in the disciplinary proceedings, no Presenting Officer was appointed to present the case on behalf of the Department, however, only the Enquiry Officer was appointed who had himself put questions to the petitioner to elicit the response from him. The Enquiry Officer had also himself examined the witnesses and proved the documents relied upon by the Department and thus the Enquiry Officer had acted as both the prosecutor and judge which is a clear violation of the relevant rules, regulations and norms. In fact, the petitioner was not even afforded the opportunity to appoint a defense assistant on his behalf which is again a clear violation of the accepted norms.

15. It is the allegation of the petitioner that the witnesses on behalf of the Department, being four of them, were never examined by the Enquiry Officer in the presence of the petitioner who was asked by the Enquiry Officer to simply sign on the body of the pre-recorded statement of the said witnesses. Even the right to cross-examine such witnesses has also been denied to the petitioner, submits the learned counsel. The case of Md. Fakhru Islam v. State of Assam & Ors., 2017 SCC Online Gau 983, para 11 was referred to by the petitioner to support the contention in



this regard.

16. The learned counsel for the petitioner has also submitted that the rule of natural justice postulates the entitlement of the delinquent employee to receive the copy of the enquiry report prepared by the Enquiry Officer who had submitted the same to the concerned authorities. However, in this case, the petitioner was not supplied copy of the enquiry report to enable him to prepare his defense before any penalty is imposed on him or to allow him to prefer an appeal before the appellate authority. It was only on his own effort by way of an RTI enquiry that the petitioner was able to obtain the relevant enquiry report. This has caused prejudice to the petitioner inasmuch as from the enquiry report it is seen that the Enquiry Officer has relied upon several documents to prove the charges against the petitioner, such documents which includes the alleged 1st notice (Exhibit-II) dated 17.12.2020 as well as the 2nd notice (Exhibit-III) dated 08.01.2021, which according to the petitioner have not been received by him and therefore the charge No. 2 “That inspite of issuing several notice in his address available in the Service Sheet record, he failed to neither report nor resume his duties” could not have been proved in the positive against the petitioner. The case Managing Director, ECIL, Hyderabad & Ors v. B. Karunakar & Ors., (1993) 4 SCC 727 para 26, 27, 28, 29, 30(i), 30(ii), 30(iii), 30(iv), 57 & 61 has been cited in this regard.

17. The learned counsel has submitted that it is a well settled principle of law that the Enquiry Officer is not permitted to rely or collect evidence or materials beyond the parameters of the articles of charge framed to come to a finding in the enquiry. However, in the



impugned order of dismissal, the competent authority, that is, the Commandant 1st Bn, MLP has referred to the past records of the petitioner to come to the conclusion that such records only confirmed the fact that the charges against him stands proved beyond reasonable doubt and thereby it is a fit case for imposition of a major punishment, which is, dismissal from service. In making such observations and findings, the disciplinary authority had gone beyond the findings of the Enquiry Officer, which is not the proper approach.

18. The last contention of the petitioner is that the punishment of dismissal from service is too harsh and disproportionate to the alleged offence, the same being imposed without taking into account the length of service of the petitioner which is 24 years at the relevant time, and for the alleged misconduct, even if major penalty is to be imposed, it could well be a direction for compulsory retirement. The case of Kumud Choudhury v. State of Assam & Ors., reported in (2020) 3 GLR 244, para 10 & 11 has been cited in this regard.

19. Per contra, Mr. N.D. Chullai, learned AAG appearing for the State respondent has submitted that the fact that the petitioner was dismissed from service was due to his unauthorised absence from duty from 15.12.2020 to 07.02.2021 wherein in spite of three notices issued to him, the first notice dated 17.12.2020 directing him to report for duty went unheeded. It was only after the third notice which was issued on 02.02.2021 did the petitioner resumed his duty on 08.02.2021.

20. The learned AAG has also submitted that this is not the first occasion where the petitioner was found to have been missing from active duty without any cause or intimation to the authorities concerned,



but in fact, he is a habitual absentee who have been found absent from duty without obtaining prior permission or approval from the competent authority on several occasions. For this, he has been punished with his pay being held up and leave without pay being awarded. The petitioner has also committed indiscipline of various types for which four disciplinary proceedings were initiated against him. This would show that he is a person unbecoming of serving in a police force. Therefore, the punishment that was meted out to him, that is dismissal from service is just and proper under the circumstances. The case of Maan Singh v. Union of India reported in (2003) 3 SCC 464, at para 11 was relied upon by the learned AAG to lay stress on this point.

21. The next contention raised by the learned AAG is that the petitioner on receipt of the show cause notice consisting of the charges along with the statement of allegations framed against him, in his written statement filed on 17.02.2021, the petitioner had categorically admitted that he was absent without proper leave or permission from the competent authority. Even in his statement before the Enquiry Officer made on 22.03.2021, the petitioner had reiterated his admission that he was absent from duty since 15.12.2020. Therefore, in view of such admission and in terms of the provision of Section 58 of the Evidence Act, charges having been admitted were not required to be proved and as such, it was not even necessary for the Enquiry Officer to go through the motion of the enquiry proceedings in the light of such admission of guilt. To support this point, the case of Chairman & Managing Director, V.S.P. & Ors. v. Goparaju Sri Prabhakara Hari Babu, (2008) 5 SCC 569, para 16, 18 and 19, the case of Chairman-cum-Managing Director, Coal India Limited & Anr. v. Mukul Kumar Choudhuri & Ors., (2009) 15 SCC 620,



para 13 and 14 and the case of Channabasappa Basappa Happali v. State of Mysore, (1971) 1 SCC 1, para 5 have been cited.

22. In response to the contention of the petitioner that he was not supplied with a copy of the enquiry report, the learned AAG has submitted that this is not a fact since the said enquiry report along with all relevant documents have been forwarded to the petitioner. In this regard, the petitioner had himself admitted at para 9 of his petition that he was in possession of the said enquiry report, copy of which has been annexed as Annexure-9 to the petition. Even if the contention of the petitioner that the enquiry report has not been received by him, the learned AAG has submitted that there are no pleadings that he is prejudiced by non-receipt of such enquiry report. Non furnishing of enquiry report would not be fatal to the order of punishment, reiterates the learned AAG while citing the following cases in this regard:

- i. State of U.P. v. Harendra Arora & Anr., (2001) 6 SCC 392, para 12;
- ii. Haryana Financial Corporation & Anr. v. Kailash Chandra Ahuja, (2008) 9 SCC 31, para 17, 20 and 21;
- iii. U.P. State Spinning Co. Ltd. v. R.S. Pandey & Anr. (2005) 8 SCC 264, para 25; and
- iv. Union Bank of India v. Vishwa Mohan, (1998) 4 SCC 310, para 12.

23. Similarly, as regard the contention of the petitioner that he was not supplied with the list of documents at the initiation of the enquiry



proceedings which has caused prejudiced to him, the learned AAG has submitted that as in the case of the earlier contention as regard the alleged non-supply of the enquiry report, here too, the contention of the State respondent is that the petitioner was duly supplied with all the documents relied upon by the respondent authority for conducting the disciplinary proceedings against him. Even assuming that the said documents have not been supplied, the petitioner has not pleaded any prejudice in this regard as to how he was handicapped without the said list of documents. To answer this contention, the following cases have been cited:

- i. Md. Rajab Uddin Ahmed v. Numaligarh Refinery Limited & Ors., (2005) 2 GLR 418, para 14;
- ii. Motilal Cheran v. State of Meghalaya & Ors., (2006) 3 GRL 17, para 11 and 12;
- iii. State Bank of India & Ors. v. Bidyut Kumar Mitra & Ors., (2011) 2 SCC 316, para 32; and
- iv. Syndicate Bank & Ors. v. Venkatesh Gururao Kurati, (2006) 3 SCC 150, para 18.

24. The last contention of the learned AAG in reply to the plea of the petitioner that he was not able to defend his case in a proper manner since he is an illiterate person and was not aware of the procedure followed in the disciplinary proceedings and also that he was not allowed to be provided with the assistance of any Government servant or legal practitioner is that the same is not a fact since the proper procedure was followed by the Enquiry Officer and every possible opportunity was



given to the petitioner to defend himself. Nothing in the service rules applicable to the petitioner provides for the assistance of a legal practitioner to the charged officer in disciplinary proceedings, further submits the learned AAG. In this respect, reliance is placed in the case of *Tage Habung v. State of Arunachal Pradesh & Ors.*, (2003) 3 GLR 657, para 20 and 21 and also the case of *D.G. Railway Protection Force & Ors. v. K. Raghuram Babu* (2008) 4 SCC 406, para 9, 10 and 11.

25. This Court has taken note of the narration of facts and circumstances of the case between the parties and the contention made by the respective counsels in support of their case. Facts as stated above need not be reiterated, except if required for the purpose of reference.

26. The petitioner in defence of his contention would seek to impress upon this Court that the entire disciplinary proceedings proceeded against him is vitiated inasmuch as proper procedure has not been followed as mandated by rules of law and procedure in this regard.

27. Certain instances in this regard have been cited, one being that the petitioner was not afforded opportunity to know the list of documents and witnesses relied upon by the Department to prove the article of charges against him, such charges being mentioned in the show cause notice/charge memo which was issued upon him. The learned counsel for the petitioner would submit that Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules, 2011 provides for such procedure and violation of the same has rendered the entire proceedings against the petitioner vitiated.

28. Another instance cited by the learned counsel for the petitioner



is that the disciplinary authority pressing the charges against the petitioner has appointed an Enquiry Officer and in order to prove such charges, has also brought in four prosecution witnesses who have been examined and have also proved certain documents exhibited during such proceedings. However, it is the contention of the petitioner that as is mandatory in such disciplinary proceedings that apart from the Enquiry Officer, a Presenting Officer should also be appointed, no such Presenting Officer was appointed and it was the Enquiry Officer himself who has put questions to the prosecution witnesses. No opportunity was given to the delinquent officer to cross-examine the witnesses and the petitioner was made to sign on the deposition without his consent.

29. Yet another anomaly in the whole process which is pointed out by the petitioner is that after the examination of the prosecution witnesses the Enquiry Officer had prepared the enquiry report but a copy of such enquiry report was not furnished to the petitioner before the passing of the impugned dismissal order and as such, he did not get any opportunity to controvert the findings of the Enquiry Officer.

30. The State respondent on the other hand, had countered the above contention of the petitioner to say that it is on record that the petitioner on receipt of the third notice dated 02.02.2021 that he rejoined duty on 08.02.2021. Thereafter, he was issued with the show cause notice along with the statement of allegation on 10.02.2021. In reply to such show cause notice, the petitioner had filed his written statement dated 17.02.2021 on 19.02.2021 wherein in reply to the article of charge No. 1, that is as regard his absence from General Roll Call w.e.f. 15.12.2020 without any leave or permission from the competent



authority, he had admitted to the same though his explanation would be that he was suffering from illness during the relevant period.

31. This Court has also perused the relevant record produced by the Department wherein is found the details of the disciplinary proceedings against the petitioner. It is evident that the petitioner in his written statement had indeed admitted to being absent from duty w.e.f. 15.12.2020 and even in his statement before the Enquiry Officer recorded on 22.03.2021 the same admission was reiterated. Nothing on record would show that the petitioner was coerced to make such admission, more so since as indicated, the admission is found in two places, one in his written statement and the other in his statement before the Enquiry Officer. Of the cases cited by the respondent in this regard, the case of Chairman & Managing Director, V.S.P. (supra) at para 16 and 18 reproduced herein below is found to be relevant as far as this point is concerned:

“16. Indisputably, the respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of Section 58 of the Indian Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.

18. It was observed that judicial admissions can be made the foundation of the rights of the parties.”

32. Again, the case of Chairman-cum-Managing Director, Coal India Limited (supra) at para 13 and 14 speaks of the same principle as far as the issue of admission of charge is concerned. The said paras are



also reproduced herein below as:

“13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusion arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.

14. The Single Judge of the High Court in paras 43 and 44 of the judgment observed thus:

“43. This Court is of the view that the so-called order dated 29-11-2000 is a mere communication WITHOUT ACTUALLY serving the original order of the disciplinary authority. Merely transmitting the decision of the disciplinary authority was not sufficient since this was a matter involving the punishment of removal from service entailing civil consequences.” ”

33. As to the contention that the enquiry report was never furnished to the petitioner, the State respondent has countered this argument by citing the case of State of U.P. v. Harendra Arora (supra) and also the case of Haryana Financial Corporation (supra) wherein the Hon’ble Supreme Court at para 12 of the former and at para 17 of the latter has held that non-supply of enquiry report would not be fatal to the order of punishment unless prejudice is shown. The facts of the case as admitted by the petitioner is that he had come in possession of the enquiry report by way of an RTI enquiry and has therefore been able to file his appeal against the impugned dismissal order dated 19.05.2021 issued on the basis of the said enquiry report before the competent authority and as such, the order of dismissal having been confirmed in appeal vide order



dated 11.08.2021 (Annexure-11 to this petition), it is apparent that no prejudice has been caused to the petitioner as far as opportunity to defend his case is concerned.

34. On this one point, that is, the admission of the petitioner as to his misdemeanor, the other issues and contention raised herein are not required to be discussed in detail. Consequently, the authorities cited and duly noted hereinabove, if not referred to by this Court, though relevant to the proposition of law indicated thereto, may not be required or applicable to the facts and circumstances of this instant case.

35. In any case, in view of the categorical admission of the relevant charges against him by the petitioner, this Court being in agreement with the relevant authorities cited in this regard as applicable to the case herein, is of the opinion that the petitioner has therefore not been able to make out a case in his favour. Accordingly, this petition is hereby dismissed as devoid of merits.

36. Registry is directed to send back the case record.

37. Petition disposed of. No costs.

Judge