

GAHC030001042019



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

Case No. : WA/3/2019

Ex C/467 Lalfela substituted by His wife
Smt.H.Lalnuntluangi
Ramhlun Vengthar, Aizawl

VERSUS

State of Mizoram and 5 Ors.
Aizawl

2:The Secretary to the Govt. of Mizoram

3:DGP
Govt. of Mizoram

4:Asst Inspector general of Police

5:Dy Inspector General of Police

6:The Commandant 3 bn
MA

Advocate for the Petitioner : Mr A.R. Malhotra

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

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

01.05.2024

(Nelson Sailo, J)

Heard Mr. A R Malhotra, learned counsel for the appellant/writ petitioner and Mr. Samuel Vanlalhriata Chhange, learned Addl. Advocate General appearing for the State.

[2.] Being aggrieved with the Judgment & Order dated 24.10.2018 passed by the learned Single Judge in WP(C) No. 8/2018 dismissing the writ petition, the writ petitioner/appellant has filed the instant writ appeal. Be it stated herein that during the pendency of the writ appeal, the writ petitioner/writ appellant expired and he has been substituted by his wife. Nevertheless for the purpose of this order "the petitioner" as will be referred to hereafter shall mean the original writ petitioner.

[3.] The writ petitioner being aggrieved with the Office Order dated 18.10.2016 by which, he was imposed with a penalty of compulsory retirement approached this Court through his writ petition. He was serving as a Constable under the 3rd Bn. MAP and was detailed as one of the guards to guard the Aizawl District Court. On 29.06.2016, a memorandum was issued informing him that an enquiry was proposed to be held in respect of the three articles of charge

that was framed against him. In reply to the memorandum, the petitioner filed his representation dated 12.07.2016 denying all the charges framed. Following the same, an enquiry was held and the enquiry officer submitted his report on 22.09.2016. The Disciplinary Authority, thereafter, furnished a copy of the enquiry report to the petitioner vide letter dated 27.09.2016 and also informed him that a major punishment of removal from service was being proposed to be imposed against him and that he was asked to submit the representation with regard to the findings made in the enquiry report and the proposed penalty.

[4.] The petitioner then submitted his Representation dated 06.10.2016 accepting the findings of the enquiry officer and asked for forgiveness. Thereafter, the Order dated 18.10.2016 was passed by the Disciplinary Authority by imposing a penalty of compulsory retirement with immediate effect. The appeal preferred by the petitioner against the penalty imposed upon him was also rejected by the appellate authority and that is how WP(C) No. 8/2018 was filed by the petitioner.

[5.] The learned Single Judge, upon considering the writ petition and after hearing the parties, declined to interfere with the penalty imposed upon the petitioner and dismissed the writ petition vide the Judgment & Order dated 24.10.2018, which is now impugned in the present writ appeal.

[6.] Mr. A R Malhotara, learned counsel submits that

although the learned Single Judge observed that an opportunity of submitting the representation against the enquiry report ought to have been given to the petitioner prior to forming an opinion to impose a major penalty by the Disciplinary Authority, considering the judgment rendered by a Division Bench of this Court in *Foyez Uddin Ahmed Laskar vs. Gauhati High Court & Ors.*, reported in 2017 (4) GLT 969, but however, as the petitioner admitted the findings and conclusions made by the enquiry officer in his Representation dated 06.10.2016, no prejudice was caused to the petitioner and therefore, the impugned order to compulsory retirement did not require interference. The learned counsel submits that the petitioner had clearly stated in paragraph No. 8 of his writ petition which was also recorded in the impugned Judgment & Order that he had submitted his representation dated 06.10.2016 due to the wrong advice given by his colleagues and therefore, the same can safely be considered as denial on the part of the petitioner to the findings of the enquiry officer. Therefore, the impugned Judgment & Order should be set aside. The learned counsel submits that the writ appellant otherwise does not wish to press the matter on merit.

[7.] Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General, on the other hand, submits that the petitioner is a habitual offender and he was warned and punished several times earlier for his misconduct and indiscipline. In respect of the proceedings in issue, all the three articles of charges leveled against the petitioner were

duly proved in the enquiry. The petitioner was also given adequate opportunity to present his case during the enquiry proceeding. He submits that after the enquiry officer submitted the enquiry report, the same was furnished to the petitioner vide letter dated 27.09.2016 in terms of Rule 1039 of the Mizoram Police Manual, 2005 (Police Manual) as well as in terms of Rule 1037 of the same Manual. He submits that although the Disciplinary Authority proposed the penalty of removal from service but the fact remains that no order of penalty was passed as per the said letter dated 27.09.2016. He submits that in other words, the petitioner was put to notice as to why the proposed penalty should not be imposed upon him. Against the said notice and the enquiry report, the petitioner submitted his representation admitting the findings of the enquiry officer while asking for forgiveness. Under the circumstance, as no prejudice has been caused to the petitioner and the writ petition was rightly dismissed by the learned Single Judge and that no interference is called for on the same.

[8.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record.

[9.] As may be noted, the learned counsel for the appellant has confined his argument only on the fact that no opportunity was granted to the petitioner for submitting his representation against the enquiry report before the

Disciplinary Authority accepted the finding of the enquiry officer and proposed to impose a penalty upon the petitioner. The learned counsel for the appellant has stressed the stand taken by the petitioner in paragraph No. 8 of the writ petition that it was due to the wrong advice of his colleagues that the petitioner admitted to the findings of the enquiry officer and submitted his representation on 06.10.2016 asking for forgiveness. The same, according to him, can be only considered as denial on the part of the petitioner on the findings of the enquiry officer. It may however be seen that the Disciplinary Authority in furnishing the petitioner a copy of the enquiry report vide his letter dated 27.09.2016 clearly indicated that the petitioner should file a representation against the finding of the enquiry report as well as the proposed penalty in writing within a time frame of 10 (ten) days from the date of receipt of the same. Against the same, the petitioner submitted his representation on 06.10.2016 admitting to the findings of the enquiry officer. While doing so, he also prayed for forgiveness and requested that he may not be removed from service since he was the sole earning member of the family. The said representation, according to the petitioner, was due to the wrong advice given by his colleagues. Besides stating wrong advice, there is no whisper about the denial on the part of the petitioner against the articles of charge, findings of the enquiry officer and the enquiry report in the pleadings in the writ petition. Therefore, even if the representation is to be considered an outcome of

wrong advice, the same in our considered view cannot be construed as denial of charge.

[10.] The learned counsel for the petitioner also submits that after the representation submitted is not accepted by the Disciplinary Authority and the authority decides to impose a penalty, a notice on the proposed penalty has to be issued to the person concerned in terms of Rule 1037 of the Police Manual. The learned counsel submits that the same has not been done in the instant case and therefore, the impugned order imposing the penalty on the petitioner is vitiated. This argument, in our considered view, cannot be accepted for the reason that the Communication dated 27.09.2016 furnishing a copy of the enquiry report to the petitioner under Rule 1039 of the Police Manual was also a show-cause under Rule 1037 of the Police Manual. Ideally, a separate notice ought to have been issued to the petitioner under the two Rules. However, the petitioner in his Representation dated 06.10.2016 clearly admitted the findings arrived at by the enquiry officer while asking for forgiveness. It is for this reason that the learned Single Judge was of the opinion that no prejudice was caused to the petitioner and therefore, issuance of a notice to him while furnishing a copy of the enquiry report did not vitiate the penalty imposed. We are in agreement to the finding arrived at by the learned Single Judge. This apart, the issue raised by the learned counsel for the petitioner is not one of the grounds raised in this writ appeal and therefore, we are not inclined to exercise our discretion and/or enlarge the scope of

this appeal. Reliance has also been placed upon the judgment rendered by a Single Bench in *Ngurthansanga Sailo vs. State of Mizoram & Ors.*, reported in 2014 (5) GLT 424. However, as already stated herein above, the Communication dated 27.09.2016 was both a show-cause under Rule 1037 of the Police Manual and also furnishing the enquiry report under Rule 1039 of the Police Manual to the petitioner and therefore, under the given facts and circumstances of the case, the authority cited is found to be not applicable to the instant case.

[11.] Thus, upon due consideration, we find no reason to interfere with the impugned Judgment & Order and accordingly, the Writ Appeal is dismissed.

JUDGE

JUDGE

Comparing Assistant