



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.A. No.70 of 2024

Date of Hearing: 10.03.2025

Date of Decision:27.03.2025

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

Vs.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.

..... Appellant.

.....Respondents.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge.

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

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

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. S. Laloo, GA.



(JUDGMENT)

Per. B. Bhattacharjee, Judge:

This intra-Court appeal is preferred by the appellant against the Judgment dated 24-07-2024 of the learned Single Judge passed in WP(C) No.309 of 2024 whereby the writ petition filed by the appellant against his dismissal from service was dismissed.

1. The appellant, while serving as a BN Constable in the First Battalion of the Meghalaya Police, was found absent from duty w.e.f. 15-12-2020 and was issued with three notices for resumption of duty. After receiving the 3rd notice dated 02-02-2021, the appellant resumed his duty as a guard at the Covid-19 Centre, Mawiong, Shillong on 08-02-2021. Thereafter, the appellant was served with a show-cause notice dated 10-02-2021 to answer the charges based on the statement of allegation which read as follows: -

“1. That while you were posted at BN/HQ, you were found absent from General Roll Call w.e.f. 15.12.2020 (AM) without any leave or permission from the competent authority.

2. That inspite of issuing several notice in your address available in the Service Sheet record, you failed to neither report nor resume your duties.

3. It was only after issuing 3rd Notice to resume duty, you reported for duty on 08.02.2021 (PM) without any supporting documents after remaining absent for a period of 56 (fifty six) days. Thus you have failed to maintain full devotion to duty and thereby committed gross misconduct and dereliction of duty and violated Rule 3 (1), 3 (A) and 3 B of Meghalaya Services Conduct Rules, 2019.”

2. In response to the show-cause notice, the appellant filed his written statement dated 17-02-2021. As the written statement was found not



satisfactory, a departmental proceeding was taken up against the appellant and an enquiry officer was appointed to conduct the enquiry into the allegations made against the appellant. The enquiry officer, after holding the enquiry, came to a finding that the allegations against the appellant were proved beyond reasonable doubt. Consequently, the appellant was dismissed from service vide B.O. No. 2770 dated 19-05-2021 issued by the Commandant, First Battalion Meghalaya Police, Mawiong, Shillong. The appellant preferred a statutory appeal against his dismissal before the Director General of Police, which was disposed of by order dated 11-08-2021 without any interference with the order of dismissal. Being aggrieved, the appellant filed the writ petition challenging his dismissal from service. The learned Single Judge by the impugned Judgment dated 24-07-2024 dismissed the writ petition by holding that in view of the categorical admission of the relevant charges by the appellant, no case has been made out.

3. Assailing the decision of the learned Single Judge, Mr. S. A. Sheikh learned Counsel for the appellant, submits that the appellant had never admitted to any of the charges and the alleged unauthorized absence was not willful but because of sickness of the appellant. He contends that since the appellant was dismissed after holding a full-fledged departmental proceeding and not on the basis of the alleged admission in his written statement, the department was duty bound to follow all the procedures laid down by law. He submits that the allegation of failure on the part of the appellant to report or resume his duty inspite of issuance of several notices has not been proved by any of the witnesses in the departmental enquiry. He further submits that no presenting officer was appointed in the enquiry and no defence assistance was provided to the appellant and he was also



not supplied with a copy of the enquiry report. He also submits that the appellant was not provided with a list of witness at any point of time hampering appellant's defence at the enquiry. In addition, the learned Counsel strongly argues that the punishment of dismissal from service of the appellant is grossly disproportionate and in total violation of doctrine of proportionality. He submits that the length of service of the appellant in the department should have been taken into consideration before passing the extremely harsh order of dismissal and the punishment of compulsory retirement would have been proper. He, therefore, prays that the impugned Judgment dated 24-07-2024 may be set aside and the punishment awarded may be modified allowing the appellant to go on compulsory retirement. In support of his contentions, the learned Counsel has placed reliance on the decisions reported in *(1987) SCC Online Gau 84*, *(2005) SCC Online Gau 120*, *(2007) SCC Online Gau 551*, *(2010) 2 Gauhati Law Reports 811*, *(2008) 8 SCC 236*, *(1993) 4 SCC 727*, *(2024) SCC Online SC 3325*, *(2012) 3 SCC 178*, *(2016) 15 SCC 693*, *(2018) 18 SCC 341* and *(2020) 3 GLR 244*.

4. Mr. N. D. Chullai, learned AAG assisted by Ms. S. Laloo, learned GA for the State-respondents, on the other hand, submits that the appellant in his written statement as well as in the enquiry has admitted all the allegations made against him. He submits that the appellant failed to resume his duty inspite of having received number of notices and joined his duty only after receiving the 3rd notice, clearly projecting the act of gross misconduct and lack of discipline. He submits that the appellant, being a member of the disciplined force, should have strictly adhered to the rules and procedure more than the members of any other department, but was a habitual absentee instead. He contends that in view of the



appellant's admission to the allegations made, no scope is left for differing with the finding and conclusion arrived at the departmental proceeding. He further submits that there is no illegality or irregularity in the conduct of the departmental proceeding and the appellant was provided with all the opportunities required by law. The learned AAG further submits that the copy of the enquiry report as well as all the relevant documents were supplied to the appellant which, in fact, were placed on record by the appellant in his writ petition. He submits that nowhere in the pleading, the appellant has pleaded any prejudice due to non-supply of the enquiry report or document, and in absence of any such specific plea, the order of dismissal from service cannot be rendered illegal. He submits that the entire service career of the appellant was marked by numerous instances of unauthorized absence and indiscipline exemplifying the incorrigible misconduct of the appellant, and the punishment awarded, as such, cannot be termed as excessive or disproportionate. He submits that the learned Single Judge was right in dismissing the writ petition of the appellant and the said decision requires no interference in this writ appeal. To buttress his argument, the learned AAG has referred to the decisions reported in *(1996) 1 SCC 302*, *(2003) 3 SCC 464*, *(2011) 14 SCC 682*, *(1996) 10 SCC 409*, *(2008) 5 SCC 569*, *(2009) 15 SCC 620*, *(1971) 1 SCC 1*, *(2001) 6 SCC 392*, *(2008) 9 SCC 31*, *(2005) 8 SCC 264*, *(1998) 4 SCC 310*, *(2005) 2 Gau LR 418*, *(2006) 3 Gau LR 17*, *(2011) 2 SCC 316*, *(2006) 3 SCC 150*, *(2003) 3 Gau LR 657*, *(2008) 4 SCC 406* and *in WP(C) No. 127 of 2021, Amzad Khan v. State of Meghalaya & Ors.*

5. From the submissions made by the rival parties and perusal of the materials on record, it transpires that the appellant was found absent from duty w.e.f. 15-12-2020 without any leave or permission from the



competent authority. He resumed his duty only after receiving the 3rd notice after remaining absent for a period of 56 (fifty six) days. Upon issuance of show-cause notice along with the statement of allegation vide Letter No. BN/MLP/R-BNC-2452(LR)21/08 dated 10-02-2021, the appellant submitted his written explanation on 17-02-2021. For the sake of facility, the written explanation is reproduced below: -

*“To
The Commandant
1st MLP BN Mawiong
Shillong-16 (Through Proper Channel)
Subject: WRITTEN STATEMENT*

Ref:- Your letter Memo No. BN/MLP/R-BNC-2452(LR)21/08,Dt: 10 Feb,2021.

Madam,

With reference to the subject cited above and with reference to your letter so called cited above I have the honour to lay before you some few lines for favour of your kind consideration and sympathetic order please:-

- 1. That Madam as per the Article of Charge No 1, I was found absent from General Roll Call w.e.f. 15.12.2020 (AM) without any leave or permission from the competent authority is true and admitted but the reason behind was that I was suffering from illness and the same could not be reported before the competent authority.*
- 2. That Madam, I also do not possess any medical certificate for my sickness as I was under Ayurvedic treatment and that apart I did not opted for allopathic treatment due to several protocol to be followed/observed during this Covid pandemic.*
- 3. That Madam, as per the Article of Charge No 2 several notices were issued to the address available in the Service Sheet/record but I was not available at that address as was residing at my rented house at Mawiong, Shillong.*
- 4. That Madam, as per the Article of Charge No 3, I reported for duty on 08.02.2021 (PM) without any supporting documents after remaining absent for a period of 56 days is true but the facts is that*



I was under Ayurvedic treatment and so I do not possessed any documents for my sickness.

In the premises and circumstances stated above I therefore pray before you to kindly admit my Written Explanation and I promise/ assures you not to repeat the same in the near future if I am found guilty, and further prays to kindly grant apology.

And for which act of kindness I shall ever remain grateful and oblige.

Thanking you,

Yours faithfully,

Dated 17th Feb,2021

Sd/-

(BNC/2452 Lalrinmawia Relte)

1st MLP BN Mawiong Shillong.”

6. From the above, it is clear that the appellant did not deny the allegation of unauthorized absence from duty. The reason for absence was stated to be his suffering from illnesses for which he had to take Ayurvedic treatment. However, no supporting document was enclosed by the appellant. With regard to the issuance of several notices, the appellant stated that he was not available at the address provided in his service record as he was residing at his rented house at a different place. Additionally, the appellant tendered his apology and assured not to repeat the same in the near future.

7. In the course of the enquiry, the statement of 4(four) departmental witnesses were recorded by the enquiry officer. The appellant did not produce any witness from his side. Out of the 4(four) departmental witnesses, the Reserve Officer of 1st MLP BN, stated that 3 (three) notices, dated 17-12-2020, 08-01-2021 and 02-02-2021 respectively, were issued to the appellant and the appellant resumed his duty only on 08-02-2021. The appellant declined to cross-examine any of the departmental witnesses



inspite of the opportunities provided to him. The statement of the appellant was also recorded by the enquiry officer wherein he admitted that he was absent from duty since 15-12-2020. He stated that he did not remember whether he had received all the notices or not, but joined his duty on 08-02-2021 after receiving the 3rd notice and also did not produce any supporting document with regard to his absence from duty. It is, thus, apparent that the appellant did not deny or contest any of the allegations made by the department against him in the enquiry.

8. There is no dispute to the fact that the appellant had resumed his duty on 08-02-2021, only after receiving the 3rd notice dated 02-02-2021. The learned Counsel for the appellant contended that the factum of service of the 1st and the 2nd notices have not been proved in the enquiry. The contention of the learned Counsel for the appellant appears to be totally contrary to the materials on record as the 1st notice issued vide letter No.BN/MLP/R-430/20/65 dated 17-12-2020 has a signature of the appellant appearing on it signed on 17-12-2020 as a mark of acknowledgement. The contention, as such, is not worth acceptance by this Court.

9. As to the contention of the appellant that no presenting officer was appointed in the enquiry, no rule has been placed before this Court to show that such appointment was mandated by law. Moreover, there is nothing on record to show that the non-appointment of a presenting officer has resulted in denial of a fair hearing or reasonable opportunity to the appellant. Further, the argument of the appellant that the admission made by the appellant in his written statement lost its significance because of the holding of the full-fledged departmental proceeding, has no merit as there is no legal bar for the department to proceed with the enquiry to confirm



the admission of the allegation by the delinquent officer. The decision to proceed with the enquiry, inspite of the admission of the allegation by the delinquent official, does not make such admission insignificant or inadmissible in a departmental proceeding.

10. Apart from the above, it is seen from the documents appended with the writ petition that the enquiry report and the statement of witnesses recorded in the enquiry have been annexed thereto by the appellant. There is also no indication in the averments made in the writ petition that the appellant was seriously prejudiced because of non-supply of the enquiry report to him. Even if it is assumed that the appellant was not supplied with the copy of the enquiry report, that *per se* would not invalidate the punishment awarded to the appellant in absence of any specific plea of prejudice.

11. The order of appellant's dismissal vide B.O. No. 2770 dated 19-05-2021 contains the details of previous misconduct and misdemeanour including the suspension of the appellant from service and the punishments awarded to him which are not challenged by the appellant. The details reflected therein show that the appellant was awarded Leave Without Pay (LWP) on 28 different occasions for his unauthorized absence from duty. In addition, 'Punishment Drill' was awarded to the appellant on 6 occasions for his misbehaviour, indiscipline conducts and absence from duty. The appellant was also suspended from service on 4 occasions and departmental proceedings were drawn up against him wherein orders of punishment including stoppage of increment were passed against him. Hence, the argument of the appellant that the order of dismissal from service is violative of the doctrine of proportionality does not hold water.



12. There is no quarrel with the proposition of law relied on by the learned Counsel for the appellant in the various case laws cited by him. However, in the facts and circumstances of the case in hand, the propositions laid therein do not lend any help to the appellant's case. Hence, detailed discussion is deemed not necessary.

13. In view of the discussions made above, no case is made out by the appellant warranting interference with the Judgment dated 24-07-2024 passed by the learned Single Judge.

14. Resultantly, the writ appeal stands dismissed.

(B. Bhattacharjee)
JUDGE

(H.S.Thangkhiew)
JUDGE

Meghalaya
27.03.2025
"Biswarup PS"