

Lalramdinthara Vs State of Mizoram & Ors.

Court: Gauhati High Court (Aizawl Bench)

Date of Decision: Nov. 17, 2011

Acts Referred: Central Civil Services (Classification, Control and Appeal) Rules, 1965 " Rule 14, 14

Citation: (2011) 5 GLT 792

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: Advocate appeared for the Petitioner: Mr. Vanlalenmawia, Advocate appeared for the Respondents: Mr. Lalsawirema, GA., Advocates appearing for Parties

Judgement

Ujjal Bhuyan, J.

The petitioner was appointed as a Constable in the Indian Reserve Battalion (IR Bn.), Mizoram on 18.08.1984. His

service was thereafter confirmed on 13.09.1996. According to the petitioner, he suffered from spinal cord injury since May 2002 while he was

posted in the 1st IRB, Mizoram. He consulted the Medical and Health officer of the battalion on 23.05.2002, who advised him for light duty for 2

(two) weeks. Thereafter the petitioner consulted a medical specialist, who diagnosed the petitioner as suffering from PIVDLSD with lumbar canal

stenosis syndrome. He was advised light work as per medical certificate dated 05.06.2002. In 2006 when the 2nd IR Battalion, Khawzawl was

deployed in Chhattisgarh for conducting antinaxalite operation, the petitioner was selected from the 1st IR Bn. for induction training course in the

Counter Insurgency and Jungle Welfare School, Vairengte and for development in Chhattisgarh. The petitioner has stated that while undergoing

preinduction training, his back ache again surfaced for which he reported to the Medical Officer of the said battalion on 28.08.2006. He had also

consulted a medical specialist at the Civil Hospital, Aizawl. The petitioner claims that he had submitted an application to the Commandant, 1st IR

Bn. through his Personnel Assistant for excluding him from deployment to Chhattisgarh, but it appears for aforesaid application was not forwarded

to the Commandant. Be that as it may, on conclusion of the training, the petitioner left for Barsoor, Chhattisgarh on 27.09.2006 with the rest of the

2nd IR Bn.

2. While discharging his duties in Chhattisgarh, the petitioner's back problem aggravated and he reported to the Medical Officer attached to the

2nd IR Bn. on 27.10.2006, who advised him to avoid lifting heavy objects and bending forward. His health condition having not improved, the

petitioner submitted an application for Earned Leave for 30 (thirty) days to the Commandant, 2nd IR Bn on 07.11.2006 through the Havildar H.

Lalchhuanawma, which was forwarded by the Platoon Commander. When the petitioner was informed by his superiors that his leave application

would not be granted and since he was unable to withstand his back problem, he had to leave Barsoor on 09.11.2006 for Aizawl for continuing his

medical treatment at Aizawl. On 16.11.2006, the petitioner reached Khawzawl and went to the hospital, where he was referred to an Orthopedic

Surgeon. The petitioner reported back to the battalion headquarters at Khawzawl on 22.11.2006 and submitted his joining report. The joining

report was forwarded by the administrative Inspector to the Commandant vide the forwarding letter dated 22.11.2006 wherein it was stated that

the petitioner who had absented from Chhattisgarh with effect from 09.11.2006, had reported himself at the Bn. Headquarter on 22.11.2006 and

that he absented for a period of 13 days with effect from 09.11.2006 to 21.11.2006. After he had joined, he was served with a calling notice

dated 14.11.2006 issued by the Deputy Commandant, 2nd IR Bn. stating that he was found absent from duty without permission with effect from

09.11.2006. He was asked to resume his duty within 2 (two) days, failing which it was stated that departmental action would be taken against him.

He consulted an Orthopaedic Specialist on 06.12.2006, who advised him to do a MRI and was referred to the medical board for medical

examination. The petitioner appeared before the Board of Medical Examination, Government of Mizoram, Aizawl on 13.12.2006. After

examining him, the medical board diagnosed the illness of the petitioner as PIVD, observing that the illness of the petitioner is beyond the limit that

can be investigated/managed in the Civil Hospital, Aizawl. The medical board, therefore, recommended that the petitioner may be allowed to go

outside Mizoram for necessary investigation and treatment at GNRC Hospital, Guwahati with one attendant. While the petitioner was making

necessary arrangement for his treatment at GNRC, Guwahati, the Deputy Commandant, 2nd IR Bn. issued an order dated 21.12.2006 removing

the petitioner from service.

3. The petitioner challenged the said removal order before this Court in WP (C) No. 5 of 2009. This Court found that the removal order was

passed by the Deputy Commandant who had no authority to pass such an order being not the disciplinary authority under the Mizoram Police

Manual, 2005. As such, by the order dated 27.02.2009, this Court set aside the order of removal dated 21.12.2006 directing the respondents to

take back the petitioner in service with effect from the date of termination. However, this Court observed that the respondents would be at liberty

to proceed against the petitioner and to take disciplinary action is so advised. By order dated 17.03.2009 issued by the Commandant, 2nd IR Ba,

the petitioner was reinstated in service with immediate effect. The petitioner joined on 18.03.2009. Interestingly, on that day itself, the Commandant

passed an order suspending the petitioner from service on the ground that a disciplinary proceeding is contemplated against him for his

unauthorized absence in Chhattisgarh for the period from 09.11.2006 to 21.11.2006. A charge memo dated 23.03.2009 was thereafter issued to

the petitioner enclosing therewith the article of charge framed against him, the statement of allegation, list of documents and the list of witnesses.

The charge framed against the petitioner may be quoted hereunder:

That, C/15 Lalramdinthara of 2nd IR Bn who was deployed for AntiNaxal Operations in Chhattisgarh and while stationed at Barsoor,

Chhattisgarh, he had deserted his place of duty w.e.f 09.11.2006. Calling notice was issued to him at his home address but to no avail. He

reported himself at 2nd IR Bn. Hqrs., Khawzawl on 22.11.2006 after absenting for 13 (thirteen) days.

The above act of C/15 Lalramdinthara of 2nd IR Bn amounts to gross indiscipline and is a serious misconduct which is highly unbecoming of a

member of disciplined force like Police thereby rendering himself liable to severe punishment under Section 7 of the Police Act (Act V of 1861)

r/w Rule No. 1029/1038 of Mizoram Police Manual 2005.

4. In response thereto, the petitioner submitted his written statement of defence. A notice of preliminary hearing dated 30.04.2009 was issued to

the petitioner by one Lalrinawma, MPS. By that notice, the said Lalrinawma stated that he was appointed as the Inquiry Officer to conduct the

departmental inquiry against the petitioner and that preliminary hearing of the case would be held on 08.05.2009 at 11.30 am. in his office. The

petitioner was asked to attend the said hearing along with his Defence Assistant, if any. It was specifically mentioned in the said notice that no

witness would be examined on that day and the purpose of the preliminary hearing was only to sort out the preliminaries and to lay down the time

schedule for inspection of the listed documents and submission of the lists of additional documents and defence witnesses. The relevant portion of

the said notice is quoted hereunder:

It may be noted that no witnesses will be examined on the said date. The purpose of the preliminaries hearing is to sort out of the preliminaries and

to lay down a time schedule for inspection of the listed documents and submission of the lists of additional documents and defence witnesses.

Surprisingly, on 08.05.2009 when the petitioner appeared for the preliminary hearing, his statement was recorded and questions were put to him.

In his statement, he stated that he had submitted the leave application to Halvildar H. Lalhuanawma, which was forwarded by the Platoon

Commander S.I. R. Lalrinawma and Inspector Lalmuaka Company 2nd in charge. He further stated that his superiors knew of his medical

problem and they did not ask him to do anything requiring physical exertion.

5. Thereafter vide letter dated 24.06.2009 the petitioner was served with a report of the Inquiry Officer. In his letter to the Commandant, 2nd 1R

Bn., which formed part of the inquiry report, the Inquiry Officer stated that the inquiry was completed and on the basis of the documentary and

oral evidences adduced during the hearing, the inquiry report was prepared and that according to the findings recorded, the charge against the

petitioner stood proved as admitted by the petitioner during the preliminary hearing, his analysis and assessment of the documentary and oral

evidences considered by him during the inquiry proceeding, the Inquiry Officer noted as follows:

The Charge Officer, C/15 Lalramdinthara admitted the article of charge in the preliminary hearing stating that he left the Battalion Camp, his place

of duty, without permission from the concerned authority.

Though already admitted by the Charge Officer, the case is considered to be discussed further on the basis of the examination of the documentary

evidences and the recorded statement of the charge official as follows:

The Charge Official, C/15 Lalramdinthara was detailed to go to Chhattisgarh as a result of the deployment of 2 IR Bn to the state. He completed

the training at C1JW Vairengte. He started having chronic lower backache during this training. He then went along with the rest of the Battalion to

Chhattisgarh and while stationed at Barsoor for the induction training his back problem still persisted and so without taking permission or informing

the concerned authority he left the Battalion Camp and headed home for Mizoram. This amounts to desertion by the charge officer. He stated that

he had submitted leave application for 30 days EL before he left the Battalion Camp at Basoor which was forwarded by his Platoon commander

SI Lalrinawma and his Company 21C Inspr. Lalmuaka. But this forwarding he mentioned is not found on the copy of the leave application he

enclosed to his reply to the charge memorandum that he submitted. Had it been forwarded, the signature of both the above mentioned officer will

feature on the copy of the leave application. Hence the copy of the leave application submitted by the charge official for his defence is considered

fake. No record of the receipt of the leave application was found in the office record (note sheet etc.), not to say the original leave application. It

is, therefore, decided that the charge officer C/15 Lalramdinhara, whatever his problem may have been, deserted his place of duty as a personnel

of the 2 IR Bn while stationed at Barsoor Chhattisgarh.

The petitioner submitted his reply, viz. his representation on 25.08.2009 against the inquiry report. Thereafter on 10.08.2009 the Commandant, 2nd

IR Bn. passed an order proposing to impose the penalty of removal from service on the petitioner. The petitioner was directed to submit his written

statement, if he had any, against the proposed penalty. In response thereto, the petitioner submitted his reply wherein he stated that because of his

severe health problem he had to leave Barsoor, Chhattisgarh for Mizoram on 09.11.2006. After taking some treatment, he reported back to the

headquarter at Khawzawal on 22.11.2006. He stated that he could not be charged as deserter and requested the authority not to remove him from

service. Notwithstanding the same, the disciplinary authority passed the order dated 27.08.2009 imposing the penalty of removal from service on

the petitioner with immediate effect. His unauthorized absence of 13 days and his period of suspension w.e.f. 18.03.2009 till date of issue to the

order was treated as "not on duty". The petitioner thereafter submitted an appeal before the Deputy Inspector General of Police, Northern Range,

Mizoram against the said order of removal from service. By order dated 01.09.2010 the appellate authority rejected the appeal preferred by the

petitioner and up held the order of removal passed by the disciplinary authority.

6. The petitioner has challenged the removal order as well as the appellate order by filing this writ petition. The respondents have filed their counter

affidavit. In their counter affidavit, the respondents have stated that petitioner had left his place of duty without obtaining permission from the

competent authority. The respondents have stated that the inquiry proceeding was conducted in accordance with law wherein the petitioner

admitted the charge against him. Stating that the punishment imposed on the petitioner is commensurate with the offence committed by him, the

respondents have contended that there is no infirmity either in the order of penalty or in the appellate order affirming the order of penalty. In his

rejoinder affidavit, the petitioner stated that the call notice dated 14.11.2006 was served on him after he had joined his duty at the Bn. headquarter

on 22.11.2006. He further stated that fair procedure was not adopted by the Inquiry Officer. Para 7 of the said rejoinder affidavit may be quoted

hereunder:

7. That with reference to the statements made in paragraph Nos. 10 and 11 of the Affidavit in Opposition, I deny that the Enquiry Officer had

asked me on the day fixed for preliminary hearing i.e. 08.05.2009 as to whether I was guilty or have any defence to make to the Articles of

Charge. I further deny that I admitted the Articles of Charge framed against me. It is stated that the Ld. Enquiry Officer did not record any plea of

guilt and also that nothing is elicited to connect me with the charge. It is also denied that fair procedure of enquiry was applied by the Ld. Enquiry

Officer in the departmental enquiry. It is pertinent to mention here that the principle of natural justice was ignored by the Ld. Enquiry Officer. The

clear violation of Rule 14 of the CCS (CCA) Rules read with Sub Rule 7 of Rules 1038 of the Mizoram Police Manual, 2005 and Article 311 of

the Constitution of India has vitiated the entire disciplinary proceeding conducted against me," In para 11 of the rejoinder affidavit, the petitioner

contended that the penalty imposed upon him is too severe and disproportionate and requires interference by his Court.

7. I have heard Mr. Vanlalenmawia, learned counsel appearing for the petitioner. Also heard Mr. Lalsawirema learned State counsel, Mizoram for

the respondents.

8. The learned counsel for the petitioner referring to the various averments made in the writ petition and the documents annexed thereto forcefully

submits that the petitioner cannot be termed as a deserter as he had no intention to desert. He submits that all that the petitioner wanted to have

was proper medical treatment In this connection, he refers to the meaning of the word "deserter" as appearing in the Black's Law Dictionary, 7

Edition. Referring to the provisions of Rules 872 of the Mizoram Police Manual, he submits that application for leave should be submitted, to the

competent authority through proper channel. If the authorities forming part of the proper channel does not submit the leave application no fault can

be found with the petitioner. He further submits that as per Sub Rule (4) of Rule 872 of the Police Manual, in the case of Constables, Head

Constables etc., the medical certificate given by the attending Registered Medical practitioner need not be countersigned by the authorized Medical

Officer Referring to Rules 1038 of the Police Manual and Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965,

he submits that there had been gross procedural irregularities in conducting the inquiry proceeding. In fact, no inquiry was held. Though in the

notice for preliminary hearing the petitioner was informed that no witnesses would be examined on the day fixed for preliminary hearing and that the

purpose of the preliminary hearing was only to lay down the schedule of the proceeding, when the petitioner appeared in the preliminary hearing,

his statement was suddenly taken and he was put to cross-examination on that day. Learned counsel submits that there was gross procedural

impropriety and also violation of the principles of natural justice. He further submits that the Bn. doctor, who could have been a vital witness, was

not examined. Asserting that it is a genuine case where there was an error of judgment on the part of the petitioner, the learned counsel submits that

the punishment imposed is extremely harsh and grossly disproportionate. In support of his submissions, Mr. Vanlalenmawia relies on the following

decisions:

(1) (1995) 3 SCC 42: Consumer Education & Research Centre & Ors. Vs. Union of India & Ors.

(2) (1999) 8 SCC 582: Hardwarital Vs. State of U.P. & Ors. and

(3) (2002) 7 SCC 142: Sher Bahadur Vs. Union of India & Ors.

9. Resisting the submissions advanced by the learned counsel for the petitioner, Mr. Lalsawirema, learned State counsel submits that it is a clear

cut case where facts speak for itself. He submits that the petitioner had suddenly disappeared from the battalion barracks on 09.11.2006 for which

the entire Unit had to make a search operation. When they did not find him, the call notice was issued to the petitioner, which he did not respond

to. Expressing grave doubt about the veracity of the leave application, learned State counsel submits that leave cannot be claimed as a matter of

right and till such time the leave was granted, the petitioner could not have left his duty. The learned State counsel further submits that no medical

certificate was annexed with the said leave application and the leave application also did not indicate or refer to any medical certificate. The

petitioner belongs to a uniformed force where high standards of discipline are required to be maintained. He, therefore, submits that the authorities

rightly treated the petitioner to be a deserter. Regarding some of the medical certificates including the certificate of the medical board, he submits

that these certificates are after the period of absence i.e. after 21.11.2006. He contends that there is no merit in the petition and prays for dismissal

of the same.

10. The rival submissions advanced have received the due and anxious consideration of the Court. I have perused the materials on record and I

have also carefully examined the decision cited at the Bar.

11. No doubt the petitioner was a member of a disciplined force and as a member of a disciplined force, he was required to maintain the highest

standards of discipline. But at the same time it does not mean that the petitioner was denuded of all his rights. The petitioner is also entitled to a fair

consideration of his case. Let us first examine the procedure adopted by the Inquiry Officer. From the notice of preliminary hearing dated

30.04.2009, it is clearly evident that the Inquiry Officer had informed the petitioner that a preliminary hearing would be held on 08.05.2009 and

that no witnesses would be examined on that day. The purpose for holding the preliminary hearing was clearly mentioned as for laying down a time

schedule for proceeding with the inquiry. Instead of doing what was so stated, when the petitioner appeared with the defence counsel for the

preliminary hearing on 08.05.2009, the Inquiry Officer recorded the statement of the petitioner and subjected him to cross examination by the

Presenting Officer. Naturally the petitioner was not prepared for that. Faced with such a situation, the Defence Assistant accompanying the

petitioner also put questions to him. No other witnesses were examined by the Inquiry Officer on that day and on the basis of the statement given

by the petitioner he submitted his inquiry report as has been alluded to herein above holding that the charge against the petitioner stood proved.

The question, therefore, arises as to whether the inquiry was conducted as per the laid down procedure, as to whether such an inquiry can be said

to be a fair inquiry. Rule 1029 of the Mizoram Police Manual provides for 2(two) types of penalties, namely, major penalties and minor penalties.

Out of the five major penalties, removal from service is one of them. Rules 1038 deals with inquiry to be conducted by the disciplinary authority.

Sub Rule (6) of Rule 1038 is quoted hereunder:

(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.

As per sub Rule (7), notwithstanding anything contained in any other rules, the provisions for the procedure of imposing major or penalty and action

on the inquiry report as provided under Rules 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall be

followed in conducting departmental inquiry. Rules 14 of the Central Rules prescribes the procedure for imposing major penalties. Sub Rule (9) of

Rule 14 is quoted hereunder:

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any

written statement of defence, appears before the Inquiring Authority, such authority shall ask him whether he is guilty or has any defence to make

and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the

Government servant thereon.

The petitioner was entitled to produce material evidence in the inquiry to prove his innocence and to have such witnesses called as he wished.

However, the petitioner was denied that opportunity by the Inquiry Officer. The petitioner was also denied the opportunity to submit his written

brief. Further, going by the consistent stand of the petitioner, it cannot be said that he had admitted to the charge framed against him. Even if he had

admitted, in that case the Inquiry Officer was bound to follow the procedure as prescribed under Sub Rule (9) of Rule 14 of the Central Rules. It is

further seen that the Inquiry Officer is the Assistant Commandant of the 2nd IR Bn., who is an officer subordinate to the disciplinary authority, i.e.,

the Commandant, which may explain the way in which the inquiry was conducted. I am of the view that the conduct of the Inquiry Officer in

completing the inquiry proceeding on the date fixed for preliminary hearing was not proper and cannot be said to be a fair procedure. He had

himself made it clear that no witness would be examined on the day of the preliminary inquiry yet he proceeded to hold the inquiry on that day and

also considered the list of documents relied upon by the disciplinary authority. Regarding the list of defence documents, the Inquiry Officer simply

submitted the written statement of the petitioner and his statement that was recorded with the inquiry report only to show that he had also

considered the defence documents. Therefore, in my opinion, the inquiry was vitiated by gross procedural impropriety and violation of the

principles of natural justice. Another aspect which the Court has noticed is that the disciplinary authority appeared to be predetermined and in

extreme hurry to punish the petitioner. Following the order of this Court in the earlier round of litigation, the petitioner was reinstated by the order

dated 17.03.2009 pursuant to which he joined on 18.03.2009. On the day of joining itself, the suspension order was passed by the Commandant.

From the tone and tenor of the orders passed by the disciplinary authority it appears that the disciplinary authority was predetermined to impose

the same penalty, which was earlier interfered with by this Court, of course for a different reason. The appellate authority while disposing of the

appeal had called for the comments in writing from the disciplinary authority on the appeal petition filed by the petitioner which was considered

while passing the appellate order. While there is no such requirement under the rules, it is my considered opinion that consistent with the principles

of fair play and natural justice and in the particular facts of this case, the petitioner ought to have been given an opportunity to controvert the

submissions made by the Commandant. In such a case, giving an opportunity of personal hearing would have enabled the petitioner to have

effectively put up his case before the appellate authority.

12. Coming to the conduct of the petitioner, this Court cannot be oblivious to the fact that in connection with his illness the petitioner had consulted

various doctors from time to time and had also presented himself before the medical board constituted by the State Government, which had

medically examined the petitioner. Therefore, the genuineness of the medical problem of the petitioner, in my opinion, cannot be doubted. Going by

the sequence of events and the intention of the petitioner which manifested in his reporting for duty before the battalion headquarters on

22.11.2006, the petitioner cannot be termed as a deserter for his absence for the period from 09.11.2006 to 21.11.2006. But at the same time, it

cannot also be overlooked that there was a grave error of judgment on the part of the petitioner in leaving his place of duty in such a manner.

13. Considering the totality of the facts and circumstances of the case, in my considered opinion, the inquiry conducted against the petitioner was

grossly vitiated and the penalty imposed on the petitioner is also quite harsh and disproportionate. There are other major penalties prescribed in the

Rules. In such a situation, I remit the matter back to the appellate authority to take a fresh decision on the appeal petition submitted by the

petitioner. The appellate authority would give a personnel hearing to the petitioner, who would also be at liberty to submit all such documents and

witnesses as may be relevant to support his case. The appellate authority shall consider the matter with an open mind and may impose such

punishment on the petitioner as he deems fit other than the punishment of dismissal, removal and compulsory retirement from service. The entire

exercise will be carried out by the appellate authority within a period of 6(six) weeks from today and the petitioner's entitlements would be subject

to the outcome of the appellate decision.

14. Writ petition stands allowed to the extent indicated above. No costs.