

(2002) 09 GAU CK 0029

Gauhati High Court (Kohima Bench)

Case No: WP (C) No. 17 (K) of 2002

Tsukjemwati Aier

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision: Sept. 30, 2002**Acts Referred:**

- Nagaland Services (Discipline and Appeal) Rules, 1967 - Rule 24(1), 24(2)

Citation: (2003) 2 GLR 26**Hon'ble Judges:** B. Lamare, J**Bench:** Single Bench**Advocate:** C.T. Jamir, for the Appellant; I. Jamir, A.A.G., for the Respondent

Judgement

B. Lamare, J.

Heard Mr. C.T. Jamir, learned counsel for the petitioner and Mr. I. Jamir, learned Addl. Advocate General for the respondents.

2. In the instant case a peculiar situation has arisen with the order No. Fin/TA/7-1/99, dated 20.3.2001 (Annexure-X to the writ petition) passed by the Disciplinary Authority, Finance Commissioner & Principal Secretary whereby a penalty has been imposed for removal of the petitioner from service. Thereafter, the petitioner preferred an appeal before the Appellate authority. The Appellate Authority disposed of the appeal by an order dated 27.11.2001 affirming the penalty imposed by the Disciplinary Authority. Incidentally, the authority who made the suggestions and recommendations on the appeal petition to the Appellate Authority happened to be the same person, the Principal Secretary & Finance Commissioner, Nagaland.

3. The records of the appeal has been produced by the learned Addl. Advocate General. On perusal of the records, it shows that the appeal was sent to the Appellate Authority and the Appellate Authority by order dated 20.10.2001 has returned the file of the appeal to consider the appeal under Rule 24 of the Nagaland Services (Discipline and Appeal) Rules, 1967 with a direction to re-submit the same

to the Appellate Authority. The appeal was again re-submitted on 23.11.2001. When the appeal was submitted on both the occasions, the suggestions and recommendations to the Appellate Authority were made by the same person, i.e., the principal Secretary and Finance Commissioner, Nagaland. On the second time, when the appeal was sent, the Appellate Authority had simply endorsed the suggestions and recommendations made by the Principal Secretary & Finance Commissioner without any observation. A perusal of the records therefore shows that the entire appeal was disposed of on the basis of the suggestions and recommendations made by the Principal Secretary & Finance Commissioner which was endorsed by the Appellate Authority. The question therefore is whether the same officer who was the Disciplinary Authority can also make a suggestion to the Appellate Authority with regard to the merits of the appeal. The answer is definitely no.

4. To make the matter clear, the provisions of Rule 24 of the Nagaland services (Discipline and Appeal) Rules, 1967 may be extracted. Rule 24(1) and (2) reads as follows :-

"24. Consideration of appeal. - (1) In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 6 and having regard to the circumstances and gravity of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 7 the Appellate Authority shall consider -

(a) whether the procedure prescribed in these rules has been complied with, and if not whether such non compliance has resulted in violation of any provisions of the Constitution or in failure of justice ;

(b) whether the findings are justified ; and

(c) whether the penalty imposed is excessive, adequate or inadequate ;

and, after consultation with the Commission if such consultation is necessary in the case, pass orders -

(i) setting aside, reducing, confirming or enhancing the penalty ; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;"

5. Rule 24(2) of the Rules requires the Appellate Authority to consider as to whether the requirements of the rules are met or has caused any violation of the provisions of the Constitution and whether the penalty imposed is excessive, adequate or inadequate. From the records produced it shows that the above provisions were not complied with by the Appellate Authority and that the appeal

was disposed of on the basis of the suggestion and recommendations made by the principal Secretary & Finance Commissioner, Nagaland.

6. For the reasons aforesaid, I am of the view that the recommendations and suggestions made by the Principal Secretary & Finance Commissioner to the Appellate Authority are not tenable in law. The matter needs re-consideration by the Appellate.

7. Accordingly, the impugned memorandum dated 27.11.2001 (Annexure-XIII to the writ petition) passed in the appeal is get aside and quashed. The Appellate Authority shall re-consider the appeal in its entirety and on merits and thereafter pass an appropriate order in accordance with the provision of Rule 24 of the Rules. Needless to say that the Disciplinary Authority who pass the order shall not be made to make a suggestion/recommendation to the Appellate Authority when the appeal is sent to the Appellate Authority. The earlier suggestions and recommendation by the Principal Secretary & Finance Commissioner in the appeal shall not influence the Authority who will make suggestion and recommendation to the Appellate Authority. The appeal shall be disposed of within a period of 2 (two) months from today.

Let a copy of this order be furnished to Mr. I. Jamir, learned Addl. Advocate General to enable him to highlight the matter to the concerned authority.

This writ petition is disposed of.