
(1999) 01 GAU CK 0016

Gauhati High Court

Case No: Civil Rule No. 6406 of 1996

Taba Taze

APPELLANT

Vs

State of Arunachal
Pradesh and Others

RESPONDENT

Date of Decision: Jan. 21, 1999

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14, 20
- Constitution of India, 1950 - Article 14, 226

Citation: (1999) 1 GLT 347

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: A.S. Choudhury and I. Hussain, for the Appellant; N. Saikia, G.A. A.P., for the Respondent

Judgement

D.N. Chowdhury, J.

This is an application under Article 226 of the Constitution of India, directed against and arises out of an order dated 9.3.95 passed by the Deputy Inspector General of Police (W), Arunachal Pradesh imposing the penalty of removal from service of the Petitioner which was finally upheld by an order in appeal dated 15.1.96 passed by the Inspector General of Police, Arunachal Pradesh. The Petitioner was initially appointed as Assistant Sub-Inspector of Police in the State of Arunachal Pradesh on 13.3.78. By order dated 19.8.83 Petitioner was promoted to the rank of Sub-Inspector of Police Arunachal Pradesh. While Petitioner was working as such in the Sangram Police Station vide order dated 20.8.92 Petitioner was transferred to Ziro, Reserve along with others. SIT Lailang was posted in his place. The order mentioned that SIT Lailang was to hand over his MTO charge to RI Ziro and to move to Sangram immediately. The transfer and posting of the above persons was communicated by a telegraphic message directing the Officer -in -Charge of the Police Station to proceed to his new place of posting after handing over the charges to the concerned officers. There was one more W.T. message by which the

Officer -in -Charge was reminded vide order dated 1.9.92. They were instructed to release the concerned officer before the Panchayat Election. The Officer -in -Charge of the Police Station were ordered to confirm action. According to the Petitioner in the absence of reliever he could not hand over the charge. At last he handed over the charge to the Head Constable of the Sangram Police Station, Sri J.C. Gogoi since no reliever was sent to abide the order of superior authority to join in the new place of posting. The Petitioner reaching on 13.9.92 at Ziro submitted his joining report at the Police Reserve and took over the charges of the Reserve Inspector in the afternoon. Superintendent of Police, Ziro on receipt of the joining report of the Petitioner refused to accept the same and directed the former Reserve Inspector not to hand over the Charges until and unless the Petitioner goes back to Sangram Police Station to hand over formal charges of the Police Station to his reliever. By order dated 12.10.92 the Superintendent of Police, Ziro directed the Officer concerned not to release his pay and allowances of the Petitioner with immediate effect. According to the Petitioner since then his pay and allowances were held up. Petitioner thereafter applied for earned leave and left for home. During the period of earned leave, Petitioner received W.T. message from S.P, Ziro on 7.1.93 directing to report at Headquarter within 7(seven) days. Petitioner thereafter was served with a notice dated 11.6.93 under Rule 14 of CCS (CCA) Rules, 1965 read with Section 7 of the Act. The memorandum was accompanied by the statement of Articles of charges, statement of imputation of alleged gross misconduct and list of documents and list of witnesses. The article of charge as well as statement of imputation is cited below:

ARTICLE-I

That SI, Taba Taz of Ziro Police reserve, while functioning as a O.C Police Station Sangram was transferred to Ziro but the delinquent S1 without permission handed over the charge of the Police Station to a Constable unauthorisedly and reported at Ziro. This act on the part of SI Taba Taz amounts to gross misconduct and dereliction of duty.

ARTICLE-II

That SI, Taba Taz who unauthorisedly reported at Ziro, was ordered by District Supdt. of Police, Ziro to proceed back to Sangram Police Station for proper handing over of the charges of Police Station on arrival of his reliever and to stay back for completing certain enquiry/investigation endorsed to him. But instead of complying with the order the delinquent SI, Taba Taz wilfully absented himself from his duty w.e.f 29.9.92. This act on the part of the SI Taba Taz amounts to gross misconduct and dereliction of duty.

ANNEXURE-II

Statement of imputation of misconduct in support of the article of charges against SI, Taba Taz of Ziro Police Reserve.

ARTICLE-I & II That SI, Taba Taz of Ziro Police Reserve, while functioning as O.C. Police Station Sangram was transferred from Sangram Police Station to APP Reserve Ziro, vide

order No. SPZ/ESTT/TR-92, dated 20.8.92. But SI, Taba Taz left the Police Station Sangram on 12.9.92 without prior permission/intimation and handed on over the P.S. charge of Sangram to a Constable. Again on 26.9.92 an order was issued by the then SP Ziro vide No. SPZ/ESTT/TR-1/92, dated 26.9.92, directing SI Taba Taz to go back to Sangram Police Station for proper handing over of the charge on arrival of his reliever and to stay back for completing certain enquiry/investigation endorsed to him. But instead of complying with the superiors order he wilfully absented from his duty w.e.f. 29.9.92.

Petitioner submitted his reply and the authority appointed an enquiry officer to enquire into the matter. After conclusion Inquiry the Inquiry Officer submitted his report holding that Petitioner was guilty of the charges and accordingly ordered to impose penalty of removal from service. Petitioner preferred an appeal before the appellate authority which was also rejected. Hence the writ petition.

2. In the writ Petition, the Petitioner contended mainly the issue of violation of the principles of natural justice. Petitioner contended that the Enquiry Officer and for that matter the Disciplinary Authority also reached its finding on materials without indicating the same and thereby denying the Petitioner an opportunity to defend the case. According to the Petitioner, no oral evidence was recorded in the presence of the Petitioner, nor examined any witnesses or proved/cited any document as such. The enquiry officer acted on materials behind his back without enabling the charged officer to question the veracity and authenticity of the materials those were relied. Petitioner also questioned the quantum of punishment as disproportionate and arbitrary.

3. The Respondents seriously contested the case and submitted its affidavit denying and disputing the allegation made by the Petitioner. According to the Respondents the Petitioner, belonging to a disciplinary force remained away from his duties without proper intimation to the authority and thereby transgressed the rule of discipline. Petitioner was given an opportunity to defend himself and it was for him to await the opportunity that was afforded to him. Petitioner finally appeared and examined himself as witnesses on his behalf and the materials those were relied by the authority were of admitted documents, therefore question of giving him further opportunity to question the veracity does not arise.

4. Mr. A.S. Choudhury, the learned Counsel appearing on behalf of the Petitioner referring to the transfer order by which he was asked to join immediately to his new place of posting submitted that there was nothing wrong in the part of the Petitioner in handing over the charge to the concerned person and accordingly he left the Station for joining in his new place of posting. Handing over the charge to a Head Constables was permissible under the Rule and therefore S.P., Ziro was not justified under the Rule to refuse him to hand over the charge. Mr. Choudhury, the learned Counsel for the Petitioner further submitted that in the purported departmental enquiry no witnesses were examined. It was the Department, which brought the allegation against the charged officer and therefore it was for them to prove and establish the charge and it was not for the Petitioner to

disprove the allegation. The Respondents relied the documents without giving him any opportunity to question the contents and correctness of the same, more so when the same were seriously disputed by the Petitioner. At any rate, those documents were not proved as evidence by the Respondents contended Mr. A.S. Choudhury, the learned Advocate for the Petitioner. The basic principle of fairness in action was given go-bye by the Respondents, submitted the learned counsel, Mr. Choudhury, lastly submitted that even otherwise the allegation of charges on the facts situation did not call for removal of service of the Petitioner, and contended that the impugned removal order passed by the authority was irrational and disproportionate on the facts situation.

5. Ms. N. Saikia, the learned Government Advocate, Arunachal Pradesh strenuously supported the action of the authority. Ms. Saikia, pointed out that, out and out Petitioner was member of Police Force. He was transferred to Ziro Police Reserve from Sangram. Petitioner refused to join in his new place of posting and hand over the charge to a Head Constable. In the absence of specified person he could have asked for appropriate instruction from the authority. Ms. Saikia also submitted that even after submitting his joining report at Ziro on 26.9.92 he ought not to remain absent without any authority or leave. Ms. Saikia, the learned Govt. Advocate pointing to the CCS Rules submitted that the authority under the Rule the authority was to offer opportunity to defend the charges of the Petitioner and it was equally incumbent on the charged officer to await the opportunity. Ms. Saikia further submitted that Petitioner for a long time remained absent and that he volunteered to examine himself in the enquiry and the Enquiry Officer his in turn sought clarification from the charged officer on some of those statement of the charged officer. The Respondents at all relevant time acted justly, reasonably and fairly and thereafter came to its own decision in conformity with law on the evaluation of facts and same is not liable to be disturbed in a proceeding for judicial review under Article 226 of the Constitution of India, submitted Ms. Saikia, the learned Govt. Advocate.

6. On the facts and circumstances of the case it appears that the Delinquent Officer was served with the Notice to show cause wherein the allegations in the form of charge were endorsed. In the instant case the Petitioner submitted his written statement and nowhere he admitted his guilt. Petitioner after explaining his stand as to the charges referred to in Article-1 denied the charge. As regards the Article-II regarding the order dated 26.9.92 to go back to Sangram Police Station for proper handing over of the charge on arrival of the reliever and to stay back for completing certain enquiry/investigation Petitioner referred some of the action of the S.P.Ziro. Petitioner narrated about the situation that was prevailing at the relevant time leading to his joining at Ziro. Petitioner in his written statement stated about his personal problem due to the order of transfer. Petitioner also stated that the fact situation disappointed him which contributed in his submission of the absence report.

7. From the written statement it appears that the Petitioner did not admit any of the guilt and on this situation it was incumbent on part of the authority to hold the enquiry by taking oral and documentary evidence. Sub-rule 14 of the Rule 14 of the CCS, CCA Rules, 1965

envisages such an enquiry. The oral or documentary evidence by which the articles of charge or proposed to be proved is required to be produced. The witnesses are to be examined in presence of the charged officer, who are to cross examined by the charged officer. The Inquiry Officer is allowed to question the witnesses. Admittedly, no witnesses were examined in the instant case. Statement of the Petitioner was recorded by the enquiry officer. The enquiry officer after close of the Inquiry put the following questions to the Delinquent Officer.

Q. No. 3- As you have mentioned in your statement that S.P. has done injustices to you by re-posting as O.C. at Sangram within 13 days of your joining the District Reserve. Did you appeal Higher authority in this regard?

Ans.- No, I did not appeal any higher authority in this regard, as I have high regard for District Authority. Even rule does not permit me to do so to go against my district discipline authority. I was expecting that my minute problem would be solved by District Authority only. Therefore, I decided not to appeal against his decision.

Q. No. 4.- As I have gone through the official records that you have been given notice to resume your duty. But you fail to comply with, what do you say in this regard?

Ans.- In this question, I am surprised, I did not receive any notice/summon from the District Authority even for once.

Q. No. 5-I have gone through the E.E. file against you that you did not co-operate with the Enquiry Officer. Even Ex-parte has also been appointed. What do you say in this regard?

Ans.- I did not agree with you about this question. Prior to your notice of 18th July, 1994 I did not receive any correspondent from any body regarding the D.E.

8. After consideration of materials on record and conclusion of the enquiry, the enquiry officer held Petitioner guilty.

9. The procedure adopted by the enquiry officer was not in consonance with the Rules. The enquiry officer referred to the materials including the documents without giving the Petitioner opportunity to cross-examine or impeach. The evidence Act is not applicable in such a proceeding, but one cannot disregard the principles of natural justice and fair play in actions. The object of examining and recording oral and documentary evidence is to lay bare the materials against the charged officer is to make known to the officer the evidence/facts those are likely to be reckoned against the officer. The officer is given the opportunity to impeach the testing or materials by way of cross-examination. Charges are only allegations which are to be established in the prescribed procedure, which should be lawful reasonable and fair. Nothing can be fair without making aware the adverse materials to the charged officer. Here neither any oral evidence was recorded in presence of the officer nor any of the documents were produced in his presence. The communication No. SPZ/ESTT/TR-1/92 dated 26.9.92 referred in the article by those

which way relied in the proceeding was not furnished to the officer. Enquiry Officer in his report relied on those documents without giving opportunity to the Petitioner, therefore finding of the Enquiry Officer can not be sustained. The principles of natural justice forms the core of Article -14 of the Constitution. In the instant case, the Petitioner was deprived of a fair opportunity to defend his case. Even otherwise, the order of removal of the Petitioner on the materials on record, is seemingly disproportionate. The past service of the offer who was working since 1978 was not taken note of. The appellate authority in the instant case was charged with duty to consider the appeal under Rule 20 but failed here to consider the same in the light of the statute.

10. In view of the facts set out above , the impugned order bearing No. PHQ(R) DP-7/93 dated 9.3.95 passed by the Deputy Inspector General of Police(W) Arunachal Pradesh removing the Petitioner from service affirmed the Appeal by the order of the Inspector General of Police, Arunachal Pradesh in his order dated 15.1.96 are liable to be set aside and accordingly those are quashed and set aside.

11. In ordinary course the matter ought to be left to the discretion of the Disciplinary Authority to proceed with the enquiry as per law. I have given my anxious consideration on the issue. I have also deliberated on the setting which took the road of disciplinary proceeding, the essential features of the alleged misconduct, the sensitive character of a local tribe, the social conditions of the area. As a matter of fact the emotive situation, exacerbated by the random handling of the situation by the official at Ziro embroiled the State of affairs. On overall consideration of all these aspects of the matter and "for interest republic oral sit finis litium" I order the Respondents to reinstate the Petitioner forthwith. He shall be paid 50% of the back wages accordingly. The Respondents shall also administer a warning, on the Petitioner, which however, shall not form the part of the Confidential Report. The Petitioner shall be entitled for all the service benefits as admissible under the rules including the seniority. The petition is allowed. There shall, however, be no order as to costs. Rule is made absolute.