

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM & ARUNACHAL PRADESH)

AIZAWL BENCH

WP(C) No. 99 of 2020

Sh. M.S Dawngliana C/147,
S/o P. Vala,
R/o Keifang, Aizawl District, Mizoram.

..... *Appellant.*

-Versus-

1. The State of Mizoram represented by the Chief Secretary to the Govt. of Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram, Home Department, Aizawl.
3. The Director General of Police, Govt. of Mizoram.
4. The Dy. Inspector General of Police (HQrs), Mizoram, Aizawl.
5. The Commandant, 3rd IR Mizoram Battalion, Mangaldai, Assam.

..... *Respondents.*

Advocate for appellant - Mr. A.R. Malhotra
Mr. C. Tlangthianglima
Mrs. Mary Lalawmpuii
Mrs. Juliana Lalhmangaihi

Advocate for respondents - Mrs. Linda L. Fambawl, GA.

B E F O R E
THE HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of Hearing : 10th November, 2020.

Date of Judgment : 10th November, 2020.

J U D G M E N T & O R D E R (Oral)

Heard Mr. A.R. Malhotra, learned counsel for the petitioner, who submits that the impugned Office Order dated 08.09.2020, passed by the respondent No. 4 imposing the penalty of removal from service upon the petitioner should be set aside.

2. The case in brief is that the petitioner was appointed as Constable in the 3rd I.R. Battalion on 04.08.2009. While the petitioner was posted at Mangaldai, Assam, a report dated 27.03.2014 was submitted by S.I. K. Vanlalsanga, J.A., 3rd I.R. Battalion Headquarter to the Commandant stating that the petitioner had been detailed to go on C.I. Ops. duty at 11:00 PM on 26.03.2014. However, as he entered the Church with his rifle and behaved improperly, he was sent for medical examination. After it was proved that he was drunk, he was detained in the quarter guard. Accordingly, the Commandant was requested to take necessary action in this regard.

3. Subsequent to the above, the Commandant of 3rd I.R. Battalion (respondent No. 5) issued a letter dated 28.03.2014 to the petitioner, calling for an explanation as to why he had entered the Church with a service rifle, while under the influence of alcohol and as his behavior was not expected from a member of the force. Accordingly, explanation was called from him as to why action should not be initiated against him.

In reply to the above letter dated 28.03.2014, the petitioner submitted an Explanation dated 31.03.2014, stating that he had no excuse to give in respect of his wrong doing. He however requested that he should be forgiven and no action should be taken against him.

4. Subsequent to the above events, the petitioner was placed under suspension on 01.04.2014 and he was served a memorandum of charge dated 02.05.2014, wherein there was 1 (one) Article of charge framed against the petitioner, which is as follows:-

ARTICLE – I : C/147 MS. Dawngliana, (u/s) of 3^d IR Bn was detailed for C.I. Ops duty on the night of 26.3.2014 @ 11:00 PM. In spite of being detailed for duty, he went to the Church of 3^d IR Bn, Christian Fellowship at Bn Hqrs, Mangaldai, Assam with his service Rifle under the influence of alcohol.

The above acts and behaviour of C/147 MS. Dawngliana, (u/s) of 3^d IR Bn amounts to grave misconduct, undisciplined act and unbecoming of a police officer subjecting him liable for punishment under section 92, Chapter-XI of Mizoram Police Act 2011 (Act No. 3 of 2012) r/w Rule No. 1029(1) & (2) of Mizoram Police Manual, 2005."

5. Subsequent to the above, the petitioner was issued another memorandum of charge dated 09.05.2014, in place of the earlier memorandum of charge dated 02.05.2014, wherein 3 (three) Articles of charge were framed against the petitioner, which are as follows:-

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST C/147 M.S. DAWNGLIANA (U/S) OF 3^d IR BN.

ANNEXURE-I

ARTICLE – I : C/147 MS. Dawngliana, (u/s) of 3^d IR Bn while being detailed for an important C.I Ops duty at Udmari, Mangaldai on 25.3.2014 was unable to perform his duty as he was found intoxicated with alcohol. Moreover, he disobeys the order of his superior.

ARTICLE – II : C/147 M.S. Dawngliana, (u/s) of 3^d IR Bn was again detailed for C.I Ops duty on the night of 26.3.2014. However, instead of performing his duty, he under the influence of alcohol went inside the Church of 3^d IR Bn, Christian Fellowship at the Bn Hqrs with his service weapon while the Church service was in full swing creating panic among the members of the Church.

ARTICLE – III : C/147 MS. Dawngliana, (u/s) of 3^d IR Bn was also found in an intoxicated state of several occasions and often went outside the Bn Hqrs without obtaining prior permission from the authority.

The above acts and behaviour of C/147 MS. Dawngliana, (u/s) of 3^d IR Bn amounts to grave misconduct, indisciplined act and unbecoming of a police officer

subjecting him liable for punishment under section 92, Chapter–XI of Mizoram Police Act 2011 (Act No. 3 of 2012) r/w Rule No. 1029 (1) & (2) of Mizoram Police Manual, 2005.

ANNEXURE – II

STATEMENT OF IMPUTATION OF MISCONDUCTS OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAME AGAINST C/147 MS. DAWNGLIANA (U/S) OF 3^d IR BN.

ARTICLE I : *C/147 MS. Dawngliana (u/s) of 3^d IR Bn was detailed for an important C.I Ops duty at Udmari, Mangaldai on 25.3.2014. However, he was found under the influence of liquor and could not perform his duty. The Commander also instructed him several times to pay attention to his duty but in vain. He disobeys his superior orders and did not try to rectify himself. He was sent back to the Bn Hqrs.*

ARTICLE – II : *C/147 M.S. Dawngliana, (u/s) of 3^d IR Bn was again detailed for C.I Ops duty on the night of 26.3.2014. However, instead of sincerely performing his duty, he went inside the Church of 3^d IR Bn Christian Fellowship with his service weapon under the influence of alcohol and in full uniform while the Church service was going on. This creates panic among the Church members. He was produced before the Medical Officer of this Unit for medical examination and the report confirmed that he consumed alcohol and was drunk.*

ARTICLE – III : *C/147 M.S. Dawngliana, (u/s) of 3^d IR Bn. was found in an intoxicated state on several occasions. He used to create nuisance and disturb his colleagues at Jawan Barrack. He often went outside the Bn. Hqrs. without obtaining prior permission from the authority. He also used to threaten his colleagues and is a nuisance for the Battalion.*

His act and behaviour indicated that he was not trying to improve himself inspite of being given several chances to rectify himself by the authority.

The above acts and behavior of C/147 MS. Dawngliana, (u/s) of 3^d IR Bn amounts to grave misconduct, indisciplined act and unbecoming of a police officer subjecting him liable for punishment under section 92, Chapter-XI of Mizoram Police Act 2011 (Act No. 3 of 2012) r/w Rule No. 1029 (1) & (2) of Mizoram Police Manual, 2005.”

6. The petitioner submitted his written statement of defence dated 15.05.2014 against the memorandum of charge dated 09.05.2014, wherein he states that he had received the Memorandum No. 31R/R-PF(ASM)/C-147/14/1062 dated 9th May, 2014. He submits in his written

statement of defence dated 15.05.2014 that he admits that the wrong he has committed, which is beyond the boundaries of discipline, was solely his fault. He also states that he has no excuse or justification for committing the said wrongful acts. He however makes a request to allow him to continue in service by forgiving him, as he has no other means for earning a livelihood. He also promises to be good in future and that if he ever commits a wrong act again, he would gladly accept any action taken against him.

7. Subsequent to the above, the Enquiry and Presenting Officer were appointed to enquire into the charges leveled against the petitioner.

8. The Enquiry Officer in the Enquiry Report states that notwithstanding the fact that the petitioner had fully admitted to the charges framed against him earlier by way of his written statement of defence, the petitioner retracted his statement during the preliminary hearing, denying some portion of the charges of Article III of Annexure-2. Therefore, in the interest of justice, the departmental proceeding had to be proceeded with. The Enquiry Report also states that 4 (four) prosecution witnesses and 1 (one) defence witness were examined. The Enquiry Report also states that the petitioner, during the recording of his statement in the Final Hearing held on 12.06.2014, fully admitted to all the charges imputed against him in Article I, II & III of both Annexure 1 & 2 of the Charge Memorandum. The Enquiry Officer in his Enquiry Report dated 17.06.2014 came to a finding that the charges framed against the petitioner in Article I, II & III were found to be proved.

9. The Enquiry Report was subsequently furnished to the petitioner on 18.06.2014, directing him to submit his representation against the Enquiry Report. Consequently, the petitioner submitted his reply dated 25.06.2014 in which he fully admitted the charges against him, while begging for exoneration from the case and to reinstate him into service.

10. The petitioner's reply dated 25.06.2014 to the Enquiry Report was examined by the Disciplinary Authority, who thereafter proposed imposing the penalty of dismissal from service upon the petitioner. The proposed penalty was conveyed to the petitioner vide letter dated

26.06.2014, instructing him to submit his representation against the proposed penalty, within 10 days from the date of receipt of the letter. The petitioner did not submit any representation against the proposed penalty. Subsequently, the respondent No. 5 issued Order dated 07.07.2014, imposing upon the petitioner the penalty of dismissal from service with immediate effect.

11. The petitioner thereafter submitted an appeal vide letter dated 24.09.2014, which is reproduced below:-

"Subj : Appeal Letter.

Sir,

I beseech you to kindly consider my application and I would be eternally grateful if you grant me my prayers.

The reason why I was dismissed from my service was that on 26.03.2014, I was detailed for night duty due to commence at 11 PM. As I wanted to offer a prayer in the Church before my duty and since I had already taken out my service weapon, I entered the church with my service weapon for fear of losing it. As soon as I finished my prayers, I was dragged out from the back door of the Church by two police personnel and thereafter I was placed under suspension. I had begged for forgiveness in this respect but I was anyway suspended.

I sincerely want to join my service again and I have totally amended myself and have turned new leaf and I am fit to join my service again.

I beg you to excuse the delay in filing my appeal at the earliest as I was sick.

My Service No. is C/147 M.S. DAWNGLIANA (u/s) of 3^d IR Battalion."

12. As the petitioner's appeal dated 24.09.2014 had not been disposed of by the respondents, the petitioner filed WP(C) No. 128/2015 in this Court. WP(C) No. 128/2015 was disposed of vide Order dated 09.09.2015, by directing the respondents to decide the petitioner's appeal by a speaking order.

13. Subsequent to the Order dated 09.09.2015 passed by this Court in WP(C) No. 128/2015, the petitioner was served with a copy of the Order dated 07.01.2015 dismissing the petitioner's

appeal, which meant that the appeal had been disposed of, prior to the Order dated 09.09.2015 passed in WP(C) No. 128/2015.

14. Being aggrieved by the fact that the petitioner's appeal had not been disposed of in terms of the Order dated 09.09.2015 passed in WP(C) No. 128/2015, wherein a direction for disposing of the appeal by way of a speaking order had been made, the petitioner filed WP(C) No. 17/2017.

15. WP(C) No. 17/2017 was disposed of by this Court vide Judgment & Order dated 11.06.2020, with a direction to the respondents that the petitioner's appeal dated 24.09.2014 should be disposed of by way of a speaking order and after affording an opportunity of personal hearing to the petitioner.

16. Consequent to the Judgment & Order dated 11.06.2020 passed in WP(C) No. 17/2017, the respondent No. 4 has issued the impugned Office Order dated 08.09.2020, by which the penalty of "dismissal from service" has been altered to "removal from service". The Appellate Authority, in the impugned Office Order dated 08.09.2020 held that he did not find any material to exonerate the petitioner and re-instate him into service. However, the Appellate Authority also held that the penalty of dismissal from service was most severe as it barred the petitioner from any future employment. As the penalty imposed was not commensurate with the misconduct committed, the penalty of "dismissal from service" was altered to "removal from service".

17. The petitioner's counsel submits that the impugned Office Order dated 08.09.2020, issued by the respondent No. 4 modifying the penalty imposed upon the petitioner from 'dismissal from service' to 'removal from service' should be set aside, inasmuch as, no cross examination of the 4 (four) Prosecution witnesses had been done and the accused could not have been allowed to be a witness against himself. He also submits that the evidence given by the prosecution witnesses that the petitioner was under the influence of liquor was not proved. The petitioner's counsel also submits that the prosecution witness have not given any details of the dates and number of times when the petitioner was found to be in an intoxicated state, when he was allegedly found loitering outside the Battalion Headquarters. He also submits that as the Appellate Authority had

found that the petitioner's dismissal from service was not commensurate with the misconduct committed by the petitioner, the respondent No. 4 should not have imposed the penalty of removal from service. He also submits that though the petitioner had consumed liquor, the petitioner was in his senses and the misconduct committed was not of any serious criminal nature or which involved moral turpitude. He also submits that though the petitioner had initially admitted to the charges in the charge memorandum, he had made a retraction of a portion of the same during the Departmental Enquiry.

18. The facts, of the case as shown above, show that the petitioner had admitted to the misconduct at the time when he was asked to give an explanation and also in his written statement of defence dated 15.05.2014. The Enquiry Report shows that during preliminary hearing of the departmental enquiry, the petitioner had retracted his admission with regard to some portion of the charges of Article III of Annexure-2, which states that the petitioner was found in an intoxicated state on several occasions and that he used to create nuisance and disturbed his colleagues at the Jawan Barrack. Also, he often went outside the Battalion Headquarters without obtaining prior permission from the authority and threatened his colleagues.

There is nothing to show in the pleadings or in the Enquiry Report that the petitioner had retracted his admission with regard to Article of charge Nos. 1 & 2 framed against him. In any event, the Enquiry Report further states that at the time of final hearing, the petitioner fully admitted to all the charges framed against him imputed in Article Nos. I, II & III of both Annexure 1 & 2 of the Charge Memorandum. There is no denial of the same in the petitioner's pleadings. The Enquiry Officer thereafter submitted his Enquiry Report, wherein all the charges framed against the petitioner were found to be proved. Thereafter the petitioner was asked to submit his representation against the Enquiry Report, wherein the petitioner admitted the findings of the Enquiry Officer made in the Enquiry Report dated 17.06.2014. Due to the above reasons and the fact that the Apex Court in various decisions has held that the High Court does not act as an Appellate Authority, while exercising jurisdiction under Article 226 of the Constitution, the

Disciplinary Authority and the Appellate Authority will have to be considered to be the sole Judge of facts, except when the findings are perverse.

19. In the case of ***B.C. Chaturvedi Vs. Union of India & Ors.***, reported in **(1995) 6 SCC 749**, the Apex Court has held at paragraph No. 18 as follows:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

20. In the case of ***Lalit Popli Vs. Canara Bank & Ors.***, reported in **(2003) 3 SCC 583**, the Apex Court has held at paragraph Nos. 16, 17 & 18 as follows:-

"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application.

Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. *While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.*

18. *In B.C. Chaturvedi v. Union of India the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding."*

21. In view of the fact that the petitioner had accepted the findings made by the Enquiry Officer in the Enquiry Report, the finality of the Enquiry Report cannot be gone into at this stage, as it is a closed chapter. Further, the petitioner cannot be allowed to blow hot and cold at the same time. A perusal of the petitioner's appeal dated 24.09.2014 shows that he has not disputed the findings of the Enquiry Officer made in the Enquiry Report and his only prayer is to allow him to rejoin his service, as he has turned over a new leaf. In view of the above, the petitioner cannot be now allowed to enlarge the scope of the appeal dated 24.09.2014, by challenging the findings in the departmental enquiry, in the absence of any specific pleadings in the appeal dated 24.09.2014. Further, this Court vide Order dated 09.09.2015 passed in WP(C) No. 128/2015 and the Judgment & Order dated 11.06.2020 passed in WP(C) No. 17/2017, had directed that the petitioner's appeal dated 24.09.2014 should be disposed of by a speaking order, by giving an opportunity of hearing to the petitioner. Consequent to the compliance of the above orders passed by this Court, the petitioner was given a personal hearing, as is reflected in the impugned Office Order dated 08.09.2020, wherein the same had been recorded as follows:-

"PERSONAL HEARING OF PETITIONER

Further, as per direction of the Hon'ble High Court, the petitioner was summoned to appear personally before the undersigned (Appellate Authority) on 29/7/2020 in order to give him an opportunity to say whatever he has to mention in his defense or otherwise. Accordingly, the petitioner, appeared in person and ample opportunity was given as stated.

He (the petitioner) stated that he could not recall of himself being unable to discharge his official duty due to his drunkenness on the night of 25/03/2014 when he was detailed for C.I. Operation duty as mentioned in Article-1 of charge memorandum. However, the charge could not be denied by looking at the statement of prosecution witness which was duly accepted by himself while being given chance of cross-examination. Also he himself clearly stated during regular hearing that he was unable to perform duty and returned to the camp from being detailed for duty at Udmari, Mangaldai, Assam on 25.03.2014 in which his Commander was Hav. Depin Bordoloi.

He (the petitioner) stated that he did enter the church with service weapon before going out for duty on the night of 26.03.2014. He was then taken out by two persons after his prayer. He also faced medical examination before a doctor. In fact, the circumstance of entering into the church with arm while the church service was in full swing is a rare occurrence. He himself admitted his consumption of some liquor before the dinner on that day as per his statement before medical officer examining him which corroborate his unbecoming act which was likely causing panic to church attendants.

He (the petitioner) stated that the allegation as per Article-III of charge memorandum that he was found under intoxication on several occasions, creating nuisance and disturbing his colleagues in Jawan barrack, often went outside Bn Hqrs without permission from authority and used to threaten his colleagues was more or less true and it was due to his easy-mindedness.

He also stated that he had nothing reasonable to say in his defense in all the allegation/charges but he had already reformed himself. He is facing family hardship as his parents are in poor health and he is having no regular employment and he prayed for pardon with a request for re-instatement into service."

22. On considering the fact that while the petitioner had been detailed to go on operational duty and he had instead entered a place of worship with his rifle while being under the influence of liquor, clearly shows the irresponsible behavior of the petitioner. The petitioner being from a disciplined force, he should have known better than to enter a place of worship with a rifle, while

being under the influence of alcohol, as the said act endangers the lives of the people inside the place of worship.

23. On consideration of the case in its totality, this Court finds that the petitioner has not made out a case of there being any illegality in the Departmental Proceedings or the procedure adopted by the respondents. Further, the petitioner has admitted to all the charges framed against him at the time of submission of his explanation, during the departmental proceedings and in his representation submitted by him in respect of the Enquiry Report. The petitioner's appeal dated 24.09.2014 has also not disputed the Enquiry Report made by the Enquiry Officer. As such, the petitioner cannot be allowed to challenge the Enquiry Report at this stage. Also, the altered penalty of "removal from service" imposed upon the petitioner by the Appellate Authority, does not shock the conscience of this Court. Thus, this Court is of the view that there is no ground for interfering with the impugned Office Order dated 08.09.2020 passed by the respondent No. 4.

24. The Writ Petition is accordingly dismissed.

JUDGE

Annette