

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) NO.(SH)344/2012

Shri Sanju Singh,
S/o Late Gulab Singh,
R/o Nongpoh, Ri-Bhoi District,
Meghalaya.

...Petitioner

-VERSUS-

1. The State of Meghalaya,
represented by the Chief Secretary
to the Government of Meghalaya,
Shillong – 1.
2. The Under Secretary,
Home & Police Affairs Department,
Government of Meghalaya, Shillong.
3. The Director General of Police,
Govt. of Meghalaya, Shillong.
4. The Inspector General of Police,
(Administration). Government of
Meghalaya, Shillong.
5. Deputy Inspector General of Police,
Western Range, Meghalaya, Tura.
6. The Superintendent of Police,
West Garo Hills, Tura.
7. Shri R.Muthu, IPS(P),
Assistant Superintendent of Police,
Enquiry Officer, West Garo Hills, Tura.

...Respondents

**BEFORE
THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the petitioner

- Mr. B.K Deb Roy, Adv
- Mrs.J.B Kharbhih Adv.
- Mr. S.D. Upadhaya, Adv
- Mr. S. Dekka, Adv
- Ms. M. Buragohain, Adv
- Ms. P.Bhattacharjee, Adv

For the respondents	-	Mr. ND Chullai, Sr. GA
	-	Mrs. S.Bhattacharjee, GA
Date of hearing	-	29-7-2013
Date of Judgment	-	29-7-2013

JUDGMENT AND ORDER (ORAL)

On hearing the submissions of the learned counsel appearing for the parties and also on perusal of the records, it appears that the petitioner is approaching this Court for sympathetic consideration of his case. Major punishment such as dismissal from service imposed to the petitioner under the impugned order dated 14-5-2009 is too harsh.

2. Heard Mr. S.D. Upadhaya, learned counsel appearing for the petitioner and also Mr. ND Chullai, learned Sr. counsel assisted by Mrs. S.Bhattacharjee, learned counsel appearing for the respondents.

3. Mr. S.D. Upadhaya, learned counsel appearing for the petitioner has forcefully put up the case of the petitioner, but on further perusal of the records, it appears that there are no materials for interfering with the impugned order dated 14-5-2009 for the reasons discussed in this judgment and order. The petitioner was appointed as Armed Branch Constable bearing No. 643 in the month of June 2002, and posted as Armed Constable in different places under the Inspector of Police Reserve, Tura in the District Emergency Force (DEM) and his last posting as Armed Branch Constable was at Ampati Sub-Treasury on Guard Duty.

4. While the petitioner was posted as Armed Branch Constable on Guard Duty at Ampati Sub-Treasury, he got information that his mother who was alone was seriously ill and had suffered from broken leg and required immediate medical treatment. On getting such information, the petitioner rushed to his

native village Cachar in Assam where his mother was residing. It is stated that the petitioner had informed his Seniors who were on duty alongwith him that he had to leave to attend to his sick mother who would have died if the petitioner would not have immediately taken her to the hospital. Therefore, on 18-1-2008 the petitioner left without formal leave from the Superior Authority, to attend to his sick mother and returned on 9-4-2008. The petitioner joined his posting after 83(eighty-three) days of un-authorized absence from duty on 9-4-2008.

5. The Superintendent of Police, i.e. respondent No.6 issued notice dated 9.6.2008 for drawing of departmental proceedings for 2(two) charges which read as follows:-

1. *"On 18-1-2008, while you were posted at Ampati Sub-Treasury, you remained unauthorized absent from duty at the Sub-Treasury, w.e.f., 18-01-2008, without any leave or prior permission from the competent authority. You have reported your joining on dt. 09-04-2008 PM, after 83 (eighty three) days of unauthorized absence from duty.*
2. *From the record of your services it is found that you are a habitual absentee. Your aforesaid action is unbecoming of a member of the discipline (sic) Police force."*

6. Under the said notice Memo.No. RO(G)/VIII-7/2008/3864 dated 9th June 2008, the petitioner was asked to file the written statement of defence/ show cause statement within 10(ten) days from the date of receipt of the said notice. In response to the said notice, the petitioner filed the written statement of defence or show cause statement admitting that the petitioner had absented unauthorizedly from duty for a period of 83(eighty-three) days and also all the charges leveled against him. But in his show-cause statement, the petitioner only prayed for sympathetic consideration. For easy reference, the said show-cause statement of the petitioner is quoted hereunder:-

*"To: The Superintendent of Police,,
West Garo Hills, Tura,
Through Proper Channel.*

Dated Tura the 12th June/2008.

*Sub: Reply to 1st Show Cause Notice.
Ref: Memo.No.RO(G)/VIII-7/2008/3864
Dated Tura the 9th June'2008.*

Sir,

With due respect and humble submission I beg to state the following lines for favour of your kind consideration and sympathetic orders.

That Sir, on 18.1.2008 A.M. I had received a telephonic (sic) from my native village that my mother is seriously ill and admitted at the hospital at Silchar due to flood situation and she has got injured due to fracture in her legs.

That Sir, I proceed to Silchar on 18.1.2008 evening for my ailing mother who is alone and there is no one to look after her except my minors brother and sister.

That Sir, I was shocked and I proceed without informing the higher authority and I had done a great mistake so, I request to excuse me for this time and I will not repeat this mistake in future.

That Sir, after my mother is cured I returned back and resumed my duty on 9.4.2008 after a gap of 83 (eighty three) days w.e.f 18.1.2008 to 9.4.2008.

Therefore I kindly request to consider my prayer as mentioned above and for which act of your kind consideration I shall remain grateful to you and obliged.

Yours faithfully

(ABC/643 SANJU Singh)."

7. For the said 2(two) articles of charges, there was regular departmental proceeding. The petitioner had been given sufficient opportunities to defend and cross-examine the prosecution witnesses as well as to produce his witnesses and documentary evidence.

8. As stated above, the petitioner had admitted all the charges leveled against him. After completing the departmental enquiry, the Enquiry Officer submitted the report dated 2-8-2008 that the charges leveled against the

petitioner had been proved. The findings of the Enquiry Officer in the said report dated 2-8-2008 read as follows:-

“17. Findings of the enquiry :

In the course enquiry I enquired with delinquent, ABC /643, Sanju Singh and the section commander of the Ampathi sub treasury Hav Prakash Ch Rabha. Also collected some documentary evidence showing the unauthorized absence of the delinquent in the earlier occasions. All natural justice is given to the delinquent, opportunity is given to defend and chance of cross-examination is given during taking statement with the Hav Prakash Ch Rabha.

The charges can be split into two question, they are

a. Whether the delinquent was absent unauthorized from 18.1.08 to 9.4.08 ?

b. Whether the delinquent was absent unauthorized in the earlier occasions so as to prove him as a habitual absentee ?

On analysis I found the following,

Findings for the first charge :

*The delinquent was absent unauthorised from 18.1.08 to 9.4.08 from Ampathi sub treasury duty. The fact is true. The delinquent himself is accepting the fact and his mistake (**Ex no 12,20 and 36**). The evidences **Ex no 1,2,3,21,22,23,24,25 and 26** are supporting the fact.*

*a. The delinquent explains that his absence was due to the illness of his mother at Silchar. The delinquent also produced a medical certificate showing that his mother was getting treatment. (**ex no 19**).*

b. Even though the reason may be true but his way of leaving the camp unauthorized without informing his senior officers for such a long period of 83 days is not expected from disciplined policemen.

Findings of the second charge :

*This is to analysis whether the delinquent ABC /643, Sanju Singh was absent unauthorized in the earlier occasions. The documents collected **Ex no 22,23,24 and 25** proves the fact that the delinquent is absent unauthorized in the earlier occasions also. All together in 2007 alone the delinquent is absent unauthorized for 156 (one hundred and fifty six days). The break up is*

7.01.07 to 2.2.07	:	27 days
27.2.07 to 5.4.07	:	38 days
14.9.07 to 14.12.07	:	91 days
Total	:	156 days

*For all the absence the delinquent ABC /643. Sanju Singh quotes his unwell ness as the reason. He submitted medical certificate copy to reason his absence from **14.9.07 to 14.12.07 (Ex no 32 and 33)**. There is no proof for the delinquent to show why he is absent from **7.1.07 to 2.2.07 and 27.2.07 to 5.4.07**. He accepts the fact that he was absent unauthorized during this period (**Ex no 36**).*

Thus both the charges that the delinquent ABC/643, Sanju Singh is absent unauthorized from 18.1.08 to 9.4.08 and also he is absent unauthorized in the earlier occasions. This proves that he is a habitual absentee. Thus the charges are proved beyond reasonable doubt."

9. A copy of the said enquiry report is available at annexure A (10) to the affidavit-in-opposition filed by the respondents. On a plain perusal of the enquiry report regarding the second charge is concerned, there is a clear finding that there were as many as 156 (one hundred and fifty-six) days of un-authorized absence in the year 2007 alone. The break-up read as follows:

"7.01.07 to 2.2.07	:	27 days.
27.2.07 to 5.4.07	:	38 days.
14.9.07 to 14.12.07	:	91 days.
Total	:	156 days"

10. The Disciplinary Authority after consideration of the enquiry report had accepted the findings of the enquiry officer. The Disciplinary Authority, after accepting of the enquiry report, passed the impugned order D.O.No. 2830, dated 14-5-2009 dismissing the petitioner from service. For easy reference, the impugned order dated 14-5-2009 is quoted hereunder:-

“GOVERNMENT OF MEGHALAYA
OFFICE OF THE SUPERINTENDENT OF
POLICE :::WEST GARO HILLS:::TURA.

ORDER

D.O. No. 2 8 3 0

Date 14. 05. 2009

Perused the findings of D.P. No.3/2008 submitted by Shri R.Muthu, IPS(P), Enquiry Officer of the said D.P. along with other relevant records. The E.O. has submitted that all the charges against the delinquent ABC/643 Sanju Singh has been proved beyond reasonable doubt during the enquiry. I agree with the findings of the E.O. The D.P. has been conducted in a proper manner and every opportunity was given to the delinquent to defend himself in cross examination keeping in view the natural justice.

The charges against the delinquent ABC/643 Sanju Singh are that on 18.1.2008 while he was posted to Ampati Sub-Treasury, he remained absent unauthorizedly from duty for a period of 83 (eighty three) days and that from the record of his service it is found that he is a habitual absentee. His aforesaid action is unbecoming of a member of the disciplined Police force.

During the proceedings the delinquent ABC/643 Sanju Singh has admitted all the charges before the E.O. There is also amply documentary evidence which proves all the charges mentioned above against the delinquent. On careful analysis of the findings and after applying my mind on the matter, I came to the conclusion that the ultimate punishment has to be given to the delinquent ABC/643 Sanju Singh. From the records it is evident that the delinquent is incorrigible in nature. He has remained absent from duty on many occasions for which he was awarded punishments. But still he keeps on repeating the same mistake again and again. Such indisciplined behaviour can neither be tolerated nor condoned and therefore an exemplary

punishment has to be given so that it will send the right signal to the rank and file. I therefore order that the delinquent ABC/643 Sanju Singh be dismissed from service with immediate effect. He should deposit all the Govt. Kits, Items issued to him at Police Reserce Tura. The entire period of absence is treated as not on duty. He is allowed to draw all the emoluments that are entitled to him.

This disposed off D.P. No.3/2008. R.I. for D.O.

*Sd/-Shri J.F.K. Marak, MPS,
Superintendent of Police,
West Garo Hills, Tura.”*

11. The petitioner being aggrieved by the impugned order dated 14-5-2009, filed a number of appeals to the Director General of Police, Meghalaya, Shillong, the Additional Director General of Police (R/PR), East Khasi Hills, Shillong and the Inspector General of Police, Western Range, Tura, West Garo Hills, Meghalaya. Copies of the appeals are available at annexure IX, X, XI and XII respectively to the present writ petition. In none of the memorandum of appeals, the petitioner had never taken plea that because of non furnishing of the enquiry report, a prejudice is caused to the petitioner in filing the appeals against the impugned order dated 14-5-2009. But his prayer in the appeals is only for sympathetic consideration from the side of the higher authorities.

12. The respondents filed the affidavit-in-opposition wherein the respondents had taken a specific plea that the major punishment of dismissal from service imposed upon the petitioner vide impugned order dated 14-5-2009 is not arbitrary but reasonable.

13. Mr. S.D. Upadhaya, learned counsel appearing for the petitioner by referring to Section 7 of the Police Act 1861 contended that lesser punishment is also provided therein. For easy reference, Section 7 of the Police Act 1861 is quoted hereunder :-

“Section 7 of the Police Act of 1861.

“Appointment, dismissal, etc., of inferior officers”

[Subject to the provisions of Article 311 of the Constitution, and to such rules] as the [State Government] may from time to time make under this Act, the Inspector - General, Deputy Inspectors - General, Assistant Inspectors General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate rank] whom they shall think, remiss or negligent in the discharge of his duty or until for the same;

[or may award any one or more of the following punishments to any police officer [of the subordinate ranks] who shall discharge his duty in a careless or negligent manner, or who by any act of his won shall render himself unfit for the discharge thereof, namely :-

- (a) fine to any amount not exceeding one month's pay ;*
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment – drill, extra guard, fatigue or other duty ;*
- (c) deprivation of good conduct pay ;*
- (d) removal from any office of distinction or special emolument]”*

14. It is trite that it is the disciplinary authority who is to take the decision regarding the quantum of punishment to be imposed to the delinquents. Normally, this Court is not interfering with the quantum of punishment imposed by the disciplinary authority, but only in extraordinary circumstances where the quantum of punishment imposed on the delinquents is shockingly disproportionate to the charge leveled against the delinquents, this Court invokes the power for judicial review. In the given case, the question is the petitioner who had un-authorizedly absented for (83 + 156 = 239) days, in a disciplined force like Armed Police, call for punishment lesser than the dismissal from services?

15. This Court has given anxious consideration to the case of the petitioner, findings of the Enquiry Officer and charges leveled against the petitioner to see as to whether the major punishment for dismissal from services is shockingly disproportionate to the charges of un-authorized absence from duty admitted by the petitioner, in view of the nature of services rendered by the petitioner. This Court cannot persuade itself to come to the finding that the major punishment for dismissal from services is shockingly disproportionate to the said charge of un-authorized absence from duty mentioned above in the given case.

16. Accordingly, this writ petition is dismissed.

JUDGE

S. Rynjah