STATE OF MEGHALAYA & ORS. A

*v.*

MECKEN SINGH N.MARAK

(Civil Appeal No. 3471 Of 2008)

MAY 9, 2008 B

**[ALTAMAS KABIR AND J.M. PANCHAL,JJ.]**

*Service Law – Punishment – Interference with – Scope of – Misconduct by police officer – Instructions flouted and loss caused to exchequer as also loss of service revolver with ammunition – Removal from service by Competent Authority – Upheld by Single Judge of High Court – However, Division Bench set aside order of removal and remitted the matter to appellate authority, to impose punishment short of removal – Held: Not justified – Jurisdiction of High Court to interfere with quantum of punishment is limited – Punishment by Authorities unless shocking to conscience of court, cannot be subject to judicial review – High Court did not give reasons as to why punishment was disproportionate – It not only interfered with the punishment in a casual manner but overstepped its jurisdiction – Thus, order as also direction by High Court set aside – Order of removal from service by competent authority upheld.* C D E

**Respondent-Sub Inspector of Police was instructed by his Commandant to go to Shillong to disburse the pay in a vehicle belonging to the department. Another police officer was also deputed for safe carriage of pay to be disbursed. Respondent was issued 0.38 bore revolver with 12 rounds of ammunition. Respondent disobeyed the instructions and conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition. Case was registered against the respondent. Departmental Enquiry was conducted. The Competent Authority removed the respondent from service. Appellate Authority upheld the order. The Single Judge of High Court upheld** F G H

A the order. In appeal, the Division Bench of the High Court set aside the order of removal of the respondent from service and remitted the matter to the appellate authority-Inspector General of Police to consider the question of imposition of appropriate punishment, short of removal from
B service, commensurate with the gravity of the proven misconduct of the respondent. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The competent authority as well as the first
C appellate authority concluded that grave misconduct committed by the respondent is satisfactorily proved. The said finding was upheld by the Single Judge of the High Court. On re-appreciation of evidence adduced, during the course of the departmental inquiry initiated against the respondent,
D the Division Bench of High Court also recorded a finding of fact that the respondent had committed serious misconduct. The said finding is a finding of fact which is not liable to be interfered with in the instant appeal. (Para 8) [96-C,D]

1.2. A court or a tribunal while dealing with the quan-
E tum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to in-
F terfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. The High Courts,
G in exercise of powers under Article 226 does not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. (Para 9) [97-B,C,D,E]
H

1.3 In the impugned order of the High Court no reasons whatsoever were indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands. The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only he flouted the instructions but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. (Para 9) [97-E-H, 98-A]

1.4. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. The proved charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court not only interfered with the punishment imposed by the disciplinary authority in a routine and casual manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other pun-

**ishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, High Court totally misdirected itself while exercising jurisdiction under Article 226. Thus, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The judgment rendered by the Division Bench of High Court setting aside the order removing the respondent from service is quashed and that of the competent authority removing him from service is restored. The direction given by the Division Bench to the appellate authority-Inspector General of Police to consider and inflict punishment, short of removal from service is set aside. (Paras 9 and 10) [98-A-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3471 of 2008

From the final Judgment and Order dated 7.3.2006 of the Gauhati High Court in Writ Appeal No. 282 of 2002

Ranjan Mukherjee and R.C. Ghosh for the Appellants.

Parthis Goswami, Rajiv Mehta and Biswanath Aggarwal for the Respondents.

The Judgment of the Court was delivered by

**J.M. PANCHAL, J.** 1. Leave granted.

2. The instant appeal is directed against the Judgment dated March 7, 2006, rendered by the Division Bench of the Gauhati High Court in Writ Appeal No.282 of 2002 whereby the decision of the learned Single Judge dated October 5, 2002 passed in Civil Rule No.4048 of 1996, upholding the order of the Competent Authority, removing the respondent from service, is set aside and the matter is remanded to the appellate authority, namely, the Inspector General of Police to consider and inflict appropriate punishment, short of removal from service, commensurate with the gravity of the proven misconduct.

3. The relevant facts emerging from the record of the case are as under. In the year 1967 the respondent was appointed as police constable by the Home Department, Government of Meghalaya. During the course of time he was promoted to the post of Sub-Inspector of police and posted as Armed Branch Sub-Inspector, 2nd Meghalaya Police Battalion at Goeragre. On May 5, 1995 he was directed to go to Shillong along with BNC Clyforth Sangma to disburse the pay for the month of April 1995 to the Bn personnel posted at Shillong. One 0.38 bore revolver bearing Number 787735 and 12 rounds of 0.38 ammunition were also issued to him for the purpose. He was specifically instructed to proceed to Shillong in a vehicle belonging to the department with other police personnel who were going to Shillong on platoon transfer with their arms and ammunition. The respondent was further instructed to come back to Goeragre from Shillong in the same vehicle after the disbursement of pay etc. with other personnel who were to come back to Goeragre with their arms and ammunition. The respondent, in the company of Clyforth Sangma left Bn Headquarters in the morning of May 5, 1995 by Unit's vehicle No.ML-02 1038 at about 8.30 AM and arrived at Shillong at about 8.00 PM. On arrival at Shillong, the respondent began to disburse the pay. He also spent the whole next day in disbursing the rest of the pay. An amount of Rs.17,314/- could not be disbursed by him and he was supposed to deposit the same with the competent authority at the Headquarters. The respondent permitted Clyforth Sangma to visit his wife who was not feeling well and, therefore, in the morning of May 7, 1995 Clyforth Sangma left for his village Rajasimla and returned back to Bn Headquarters on May 9, 1995.

4. The respondent disobeyed the instructions given to him to come back to Bn Headquarters in the vehicle in which he had gone to Shillong. Instead he met and instructed BNC 737 Emmanual Jalong to prepare to leave for Bn Headquarters by night bus. On May 7, 1995 in the evening at about 4.30 p.m. he left the camp for the M.T.C. Bus Station. At the bus station he did not see the constables who were supposed to travel with him. Presuming that they must have proceeded in another bus, the respondent boarded the MTC bus No.ML-03-0099 bound for Tura. He was seated in Seat

A No.22. There was a passenger in the seat next to him on Seat No.21. At Jorabat the bus stopped where the respondent took dinner. After the bus resumed its onward journey for Tura, his co-passenger in Seat No.21 started chatting with him. The co-passenger took out a packet of biscuit and offered biscuits to the respondent. B The respondent accepted the biscuits and after eating the biscuit he dosed off. When he woke up, the bus had reached somewhere near Anogri. He made enquiry about his belongings and found that his revolver with ammunition and pouch containing an amount of Rs.17,314/-, which was undisbursed pay were missing. He also C realized that his co-passenger in seat No.21 was not around.

5. When he reached Goeragre he looked for his belongings again but could not find them. He then left for his residence. After sleeping for some time he woke up and went to Tura with the intention of searching the bus once again. He met the Depot D Manager who informed that the bus had left for Nanggalbibra and would return only in the evening. Therefore, he came back to his residence and went to the Commandant's office at 10.00 P.M. to inform him about the loss of his revolver and money. When he reached the office of the Commandant, too many people were E present in the office and, therefore, he could inform the Commandant about the incident in question at about 12.00 P.M.

6. On receipt of the information from the appellant, Respondent No.3 who is the Commandant of the Battalion forwarded his report on May 8, 1995 to Tura Police Station for registering a F case and accordingly a case was registered at Tura Police Station under the provisions of the Indian Penal Code. On May 12, 1995, the respondent was suspended from service pending enquiry for loss of Rs.17,314/- and service revolver with ammunition. A preliminary enquiry was held with regard to the matter and G thereafter the competent authority decided to take steps to initiate a regular departmental enquiry against the respondent. Accordingly, the respondent was served with statement of charges and called upon to offer his explanation. He offered his explanation which was not found to be satisfactory by the competent au- H thority. The competent authority thereafter appointed Inquiry Of-

ficer to conduct departmental inquiry against the appellant. A

7. During the course of departmental enquiry several witnesses were examined in respect of the charges leveled against the respondent. The respondent had also examined his witnesses. At the conclusion of the departmental enquiry the enquiry officer submitted report to the competent authority stating B that the charges framed against the respondent were duly proved. On careful consideration of the report as well as records, the competent authority tentatively agreed with the findings of the enquiry officer. The competent authority forwarded a copy of the report of the enquiry officer to the respondent along with C letter dated September 18, 1995, and called upon him to show cause as to why he should not be discharged from serviced. On receipt of the show cause notice, the respondent submitted his explanation. The competent authority by an order dated January 1, 1996, removed the respondent from service. Feeling D aggrieved, the respondent preferred an appeal before the Deputy Inspector General of Police, Western Range, Tura as provided by Rule 66 of the Assam Police Manual – Part III. The Inspector General of Police (Training) dismissed the appeal by an order dated May 13, 1996. Thereupon the respondent in- E voked extra ordinary jurisdiction of the High court under Article 226 of the Constitution by filing Civil Rule No.4048 of 1996. The learned Single Judge of the Gauhati High Court dismissed the petition by order dated October 5, 2002. Aggrieved by the judgment delivered by the learned Single Judge, the respon- F dent preferred an appeal before the Division Bench of the Gauhati High Court. The Division Bench upheld the finding recorded by the learned Single Judge that misconduct by the respondent was satisfactorily proved. However, the Division Bench was of the view that the version of the respondent that he had to G travel by Meghalaya State Road Transport Corporation night bus and lost his consciousness after taking sweets offered by co-passenger was a mitigating circumstance and, therefore, the punishment of removal from service imposed on him was not commensurate with the gravity of the proven misconduct. In H

A view of the said conclusion the Division Bench has set aside the order removing the respondent from service and remitted the matter to the appellate authority, namely, the Inspector General of Police to consider and inflict appropriate punishment, short of removal from service, commensurate with the gravity of
B the proven misconduct of the respondent, by the impugned judgment, giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the instant appeal. The competent authority
C as well as the first appellate authority have concluded that grave misconduct committed by the respondent is satisfactorily proved. The said finding is upheld by the learned Single Judge of the Gauhati High Court while deciding the petition filed by the respondent under Article 226 of the Constitution. On re-appreciation of evidence
D adduced, during the course of the departmental inquiry initiated against the respondent, the Division Bench has also recorded a finding of fact that the respondent had committed serious misconduct. The said finding is a finding of fact which is not liable to be interfered with in the instant appeal.

E 9. The next question which falls for consideration is whether the competent authority was justified in removing the respondent from service and whether the Division Bench of the High Court was right in remitting the matter to the Appellate Authority for passing appropriate order of punishment short of removal.
F The record would indicate that the respondent was a senior police officer. He was instructed by his Commandant to go to Shillong to disburse the pay in a vehicle belonging to the department and along with him another police officer was also deputed for safe carriage of pay to be disbursed to the Bn per-
G sonal posted at Shillong. Further, the respondent was issued 0.38 bore revolver with 12 rounds. It is an admitted position that the respondent was instructed to come back to Bn headquarters by the vehicle of the department along with other police personnel but the respondent disobeyed the instructions and trav-
H eled to Bn headquarters in a bus wherein not only he lost cash of

Rs.17,314/- but also his service revolver with 12 rounds of ammunition. Under the circumstances the question arises whether the Division Bench of the High Court was justified in setting aside the order of removal of the respondent from service and remitting the matter to the appellate authority, namely, the Inspector General of Police to consider the question of imposition of appropriate punishment, short of removal from service, commensurate with the gravity of the proven misconduct of the respondent. A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands. The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only he flouted

A the instructions but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. The proved B charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the con- C science of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of D removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be E regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.

10. For the foregoing reasons the appeal succeeds. The F Judgment rendered by the Division Bench of the Gauhati High Court dated March 7, 2006 delivered in Writ appeal No.282 of 2006 setting aside the order removing the respondent from service is quashed. The direction given by the Division Bench to the appellate authority, namely, the Inspector General of Police to G consider and inflict punishment, short of removal from service, commensurate with the gravity of the proven misconduct of the respondent is set aside. The order passed by the competent authority removing the respondent from service is restored. The appeal is accordingly allowed. There shall be no order as to costs.

H N.J. Appeal allowed