

No.C.19018/2/95-VIG
GOVERNMENT OF MIZORAM
VIGILANCE DEPARTMENT
NEW SECRETARIAT BUILDING
KHATLA, AIZAWL

....
Dated Aizawl, the 24th May 2013

OFFICE MEMORANDUM

Subj : Instructions to the Disciplinary Authorities regarding Disciplinary Case Disposal.

Attention of all the Disciplinary Authorities is hereby drawn to the Judgement and Order passed by the Hon'ble Gauhati High Court, in W.P(C) No. 13 of 2012 (Sh.L.Th.Buangpui – vrs – the State of Mizoram), the operative portion of which is reproduced below :-

{“Question for consideration is whether in a disciplinary proceeding, the order of penalty is required to be that of the Disciplinary Authority himself or like an administrative manner, it has to follow the administrative hierarchy.

*A Constitution Bench of the Hon'ble Supreme Court way back in 1963 in the case of **Bachhitar Sing vs. State of Punjab** reported in **AIR 1963 Supreme Court 395** held in the departmental proceedings taken against a Government Servant are not divisible. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not, and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. While the Punjab and Haryana High Court had held the first stage to be a judicial proceeding and second stage an administrative one, the Hon'ble Supreme Court while accepting the views of the High Court that the first stage is judicial proceeding, went further to hold that even the second stage involving imposition of penalty is no less judicial than the earlier one. Consequently, it was held that any action decided to be taken against a Government servant found guilty of misconduct is a judicial order. The Apex Court held that it would be wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order.*

Contd/-

In a later decision in (1991) 1 SCC 588 (Union of India and Others – vs – Md. Ramzan Khan), while examining the alteration in the provision of Article 311(2) under the forty-second Amendment of the Constitution, after expressing doubt about the correctness of the position that the two phases of a departmental inquiry were judicial, the Apex Court was, however, categorical in holding that “Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one.”

Therefore, departmental proceeding drawn against a Government servant being a judicial proceeding (or a quasi-judicial one) and the order of penalty being a part of that proceeding, there can be no doubt that the order of the penalty has to be that of the Disciplinary Authority himself and of no one else. He must apply his own mind to the various materials before him and, thereafter arrive at a conscious decision as to whether any penalty is to be imposed on the delinquent and if so, in what manner. Failure to do so will vitiate the order of penalty.

Thus viewed in the above context, the procedure adopted by the respondents in the present case, in the opinion of this Court, is unauthorized in law. The order of penalty, therefore, cannot be sustained. Accordingly, the impugned order of penalty dated 25.5.2011 is hereby set aside and quashed.”}

In this connection, it is to state that the stand taken by the Hon'ble Gauhati High Court for quashing the impugned order of imposition of penalty against the petitioner pertains only on the ground of procedural lapse and deficiency in the course of disposal of the disciplinary proceedings by the Disciplinary Authority, that his decisions in the form of speaking order for imposition of penalty had not been recorded by the Disciplinary Authority himself.

It is well understood, that any disciplinary case has gone through the collective wisdom of the Inquiry Officer, the Presenting Officer as well as the other Officers subordinate to the Disciplinary Authority and the Public Service Commission where necessary in the course of the proceeding before a final decision has been taken by the Disciplinary Authority and appropriate order has been issued. But, the appropriate Disciplinary Authority only is having power to decide whether the delinquent official is actually guilty of misconduct and what kind of the penalty specified in Rule 11 of the CCS(CCA) Rules, 1965 shall commensurate with the offence committed, if any, by such delinquent Government servant and to dispose of the case at his own discretion with due application of mind. As such, the Disciplinary Authority himself is obliged to write and record his findings and decision taken thereon.

Further, the order to be issued should be a self-contained and reasoned order conforming to the legal requirement that the decision arrived at is not a result of caprice, whim or fancy or reached on ground of policy or expediency. It is also essential that a decision is taken by the appropriate authority and that the same is also communicated by that authority or by his successor without any modification or alteration in any manner and not delegated to any subordinate authority.

All concerned Disciplinary Authorities are hereby informed to strictly adhere to the above mentioned procedure in the discharge of their obligatory fundamental duties and responsibilities, so that none of the delinquent Government servant, found guilty of the charge against him and penalized may not be set scot-free in future on the ground of procedural lapses on the part of the Disciplinary Authority.

Sd/- L.TOCHHONG, IAS
Chief Secretary to the Govt. of Mizoram

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: Dated Aizawl, the 24th May 2013

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 24/5/2013

(B.ZAHMUAKA)

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