
(2014) 06 TP CK 0004
In the Tripura High Court
Case No : W.P.(C) No. 279 of 2008

Benoy Ch. Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 5 GLT 532

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : S. Kar Bhowmik, Advocates for the Appellant; S. Chakraborty, Addl. G.A, Advocates for the Respondent

Judgement

S. Talapatra, J.—The petitioner while working as the Rifleman in the 6th Battalion of the Tripura State Rifles (TSR) had been charged of misconduct alongwith others by the Memorandum dated 01.05.2002, Annexure-A to the writ petition. For purpose of reference, the Articles of charge are reproduced hereunder:

"ARTICLE-I

Rfn. No. 98060137 Benoy Sarkar, Rfn. No. 98060139 Uday Singh Dukpa and E/F No. 98060583 Juthan Chakraborty of A. Coy, 6th Bn. Tripura State Rifles, while deployed at Panchabati Posts, on 18-3-2002 at around 1830 hrs. without any provocation, jointly committed physical assault upon their Superior Officer Hav. Hari Ranjan Ghosh causing grievous hurt to the NCO.

ARTICLE-II

Rfn. No. 98060137 Benoy Sarkar, Rfn. No. 98060139 Uday Singh Dukpa and E/F No. 98060583 Juthan Chakraborty of A. Coy, 6th Bn. Tripura State Rifles, physically assaulted to Hav. Hari Ranjan Ghosh, acting CHM of A. Coy in which obstructed in performance of Govt. duty which is serious breach of discipline of the Police Force."

It may be noted that the Departmental Proceeding against the petitioner

alongwith others had commenced on a written complaint filed by one Hari Ranjan Ghosh, Havilder of the said battalion. The petitioner disputed the allegations of assaulting said Hari Ranjan Ghosh or causing any grievous hurt, but he had admitted that he asked Hari Ranjan Ghosh as to why he had been maligning the petitioner to the female employees working in the office of the said battalion. In support of his contention, the petitioner had also appended the statements of two female employees with his written statement of defence. The petitioner had also supplied a list of the persons, conversant with the incident for their examination. In response to the letter dated 30.05.2002 from the Enquiry Officer, M. Deb Barma, Annexure-D to the writ petition, the petitioner had submitted a detailed statement of defence to the Enquiry Officer on 03.06.2002, Annexure-E to the writ petition. In the said detailed statement of defence, the petitioner has depicted how the said Havilder, Hari Ranjan Ghosh provoked him by making objectionable comments against the petitioner's mother and sister.

2. The Enquiry Officer had examined the witnesses and admitted in the record some documents. The Enquiry Officer had submitted the Inquiry Report on 24.05.2002, part of Annexure-J to the writ petition, to the Disciplinary Authority, the Commandant, 6th Bn. TSR, holding that the charge levelled against the petitioner and others were established and proved. Thereafter, the petitioner was asked to file further statement of defence, analysing the evidence as recorded in the inquiry. Based on the said Inquiry Report, the Disciplinary Authority, the Commandant, 6th Bn. TSR (IR-II), had passed the provisional order dated 10.07.2002, part of Annexure-J to the writ petition, asking the petitioner and others, as to why they shall not be dismissed from service on payment of one month salary in lieu of notice and they were directed to show cause within fifteen days. The petitioner, alongwith two others were also directed to appear before the Disciplinary Authority for personal hearing on any working day, if they desired, before expiry of the period stipulated in the notice.

3. In response to the said provisional order, the petitioner had submitted an elaborate representation on 22.07.2002, Annexure-K to the writ petition, highlighting the irregularities and on the aspects of denial of principal of natural justice. In the said representation, the petitioner has submitted that he never admitted any of the Articles of charge. He has further contended in the said representation that he was not allowed to adduce the witnesses who were relevant for his defence. The Enquiry Officer had restricted the selection of the witnesses to the category of eye witnesses, which according to the petitioner, is violation of the principles of natural justice. The petitioner has submitted further that the charges were vaguely framed. He has submitted that the copies of the statements were not supplied to him, neither was he permitted to inspect the same. That apart, he has submitted succinctly that since 20.05.2002, the petitioner was kept in confinement as Quarters Guard for seven days at the 6th Bn. TSR Headquarters at Chakmaghat, Teliamura and after expiry of those seven days, he had been kept in confinement in the camp till the date of his representation and no duty whatsoever had been entrusted to him. The

petitioner has further submitted that the proposed penalty was beyond the scope of the relevant law. The petitioner had filed an additional representation on 26.07.2002, Annexure-L to the writ petition, bringing the fact that he was supplied with the copies of the depositions only after he made his representation against the provisional order, proposing the penalty.

4. It appears from the minutes of the hearing afforded to the petitioner and others on 07.01.2003, Annexure-M to the writ petition, that the petitioner had pleaded guilty and prayed for compassionate consideration on assurance that they will not indulge in such indiscipline in future. Thereafter, the final order dated 07.01.2003, Annexure-N to the writ petition had been passed, imposing the penalty. For purpose of further reference, the operative part of the final order is reproduced hereunder:

"8. Considering the fact and circumstances, young age and about duration of 04 years service a lenient view is taken and passed the following order of the punishment giving them a fair chance of rectification of misconduct:--

(a)(i) The pay of No. 98060137 Rfn.(GD) Binoy Sarkar and No. 98060139 Rfn(GD)Udai Singh Dukpa be reduced by 04 stages from Rs. 3560/- to Rs. 3200/- in the time scale of pay of Rs. 3200-90-4280-100- 5480-110-6030 for a period of 03 years w.e.f. 01.02.2003. It is further directed that they will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing their future increment of pay.

(ii) The pay of No. 98060583 EF(WM) Juthan Chakraborty be reduced to 04 stages from Rs. 2820/- to 2600/- in the time scale of pay of Rs. 2600-55-2985-60- 3285-65-3548 for a period of 03 years w.e.f. 01.02.2003. It is further ordered that EF(WM) Juthan Chakraborty will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increment of pay.

(b) All the 03(three) delinquents have been awarded-

(i) Confinement in QG for 28 days with punishment drill,

(ii) Confinement in camp for 14 days."

5. The pay of the petitioner was reduced by four steps from Rs. 3560 to 3200 in the time scale of pay of Rs. 3200-6030 for a period of three years w.e.f. 01.02.2003 with direction that the petitioner will not earn increments of pay during the period of reduction and on expiry of that period, the reduction will have the effect of postponing the future increment of pay. With that penalty, the petitioner had been awarded confinement in Quarter Guard (QG) for twenty eight days with punishment drill and confinement in the camp for fourteen days.

6. After expiry of three years, the petitioner had expressed his grievance in respect of release, of his yearly increment in the interview held on 10.04.2006.

In response to his grievance, the Commandant, 6th Bn. TSR (IR-II) had communicated the petitioner on 18.04.2006, Annexure-O to the writ petition, that as a result of the punishment imposed on the petitioner, his basic pay was reduced to the minimum in the time scale of pay and the increments were also held up for a period of three years w.e.f. 01.02.2003, with further direction that he would not earn the increments of pay during the period of reduction and on expiry of that period, the reduction will have the effect of postponing the future increments of pay. In the said communication dated 18.04.2006, the petitioner had apprised that against the order of penalty, he might file an appeal within a period of thirty days from the date of receipt of the copy of the said order. If the appeal was not filed within the period of limitation as prescribed, the petitioner may file the appeal assigning sufficient cause for condonation of delay. Thereafter, the petitioner had preferred an appeal to the Appellate Authority, the Deputy Inspector General of Police (A/P), Annexure-P to the writ petition, where he had prayed leniency and no specific ground against the order of punishment has been assigned in the appeal. The appellate authority, the Deputy Inspector General of Police AP (Adm. & Trg.), Govt. of Tripura, by the order dated 29.10.2007, Annexure-Q to the writ petition, has observed that the punishment awarded by the Disciplinary Authority to the petitioner is commensurate with the nature of his misconduct and, as such, the appeal was dismissed.

7. The petitioner has challenged the order dated 07.01.2003, Annexure-N to the writ petition, passed by the Disciplinary Authority, imposing the penalty and the order dated 29.10.2007, Annexure-Q to the writ petition, passed by the appellate authority, affirming the order dated 07.01.2003, by filing this petition.

8. Mr. S. Kar Bhowmik, learned counsel appearing for the petitioner has submitted that the penalty that has been imposed on the petitioner is not in terms of Section 12 of the Tripura State Rifles Act, 1983, hereinafter the "TSR Act". He has referred to a Circular issued from the office of the Director General of Police on 04.12.2011, Annexure-R to the writ petition, whereby it has been communicated that:

"All Commandants of TSR Battalions have already been directed by the Additional Director General of Police (TSR) in the year 2012 that,

"Punishment should be awarded under the applicable Rules only. Stoppage of increments has not been included in the penalties provided under Minor & Major heads under TSR Act, 1983",

"As regards decision on appeal, the Appellate Authority can impose a penalty which it finds suitable/commensurate with the misconduct and modify the order of Disciplinary Authority".

All commandants are further advised to strictly adhere to TSR Act & Rules, while awarding punishments, major or minor to the jawans of TSR Battalions."

Mr. Kar Bhowmik, learned counsel appearing for the petitioner, has further

submitted that the petitioner had suffered seven days Quarter Guard and confinement in the camp for fourteen days and, thereafter, punishing him with the reduction of pay down to 4th stage-in the time scale with stoppage of increments for the period of reduction and the consequential effects in the release of the yearly increments are entirely uncalled for. Such punishments are beyond the scope of Section 12 of the Tripura State Rifles Act, 1983. Mr. Kar Bhowmik, learned counsel, for purpose of taking this court to locate breach and violations of the principles of natural justice and the procedural safeguards, has strongly contended that the petitioner has never committed any act of alleged assault and, as such, impugned orders have been passed capriciously on denying the principles of natural justice. For the purpose of reference, Mr. Kar Bhowmik has referred a decision of the apex court in Vijay Singh Vs. State of U.P. and Others, , where the apex court has held that the punishment not prescribed in the Rules cannot be forwarded.

9. In Vijay Singh, the following punishment was prescribed by the Rule:

"4. Punishment-

(1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

(a) Major Penalties-

(i) dismissal from service;

(ii) removal from service;

(iii) reduction in rank including reduction to a lower scale or to a lower stage in a time scale.

(b) Minor Penalties-

(i) withholding of promotion;

(ii) fine not exceeding one month's pay;

(iii) withholding of increment, including stop page at an efficiency bar;

(iv) censure.

(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments-

(i) confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) punishment drill not exceeding fifteen days;

(iii) extra guard duty not exceeding seven days;

(iv) deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks-

- (i) tent pitching;
- (ii) drain digging;
- (iii) cutting grass, cleaning jungle and picking stones from parade grounds;
- (iv) repairing huts and butts and similar work in the lines;
- (v) cleaning arms."

10. In Vijay Singh, the penalty that has been imposed is for withholding of Integrity Certificate as the punishment for delinquency. The apex court while upholding that such punishment is without jurisdiction having not been provided in the Rule, held that:

"The Rules do not empower the disciplinary authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules as a result of disciplinary proceedings cannot be awarded."

It has been further held in Vijay Singh that:

"Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

11. From the other side, Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents has submitted that by the statement dated 17.06.2002, Annexure-R/1 to the counter 12 affidavit filed by the respondents, the petitioner had admitted his delinquency in the following words:

"Sir, on 18.05.2002 at about 0630 hrs in the evening we called Hav. Hari Ranjan Ghosh and ask him why he was given unwanted advise to the civil girls. Today we will report the matter to 2 I/C Sahab. Whenever we told it Hav. Hari Ranjan Ghosh started to beat us by using abusive language for which I also push him in self defence. If the act committed by me is any offence, I beg to my authority to excuse me."

Mr. Chakraborty, learned Addl. Govt. Advocate has continued to submit that even though the petitioner has filed the rejoinder to the said counter-affidavit, but in response to paragraph 18 of the said counter-affidavit, where it has been stated that the petitioner in his last defence statement dated 17.06.2002 has admitted the fact of physical assault upon his superior officer, Hav. Hari Ranjan Ghosh. In

para 12 of the rejoinder, what the petitioner has stated is that:

"regarding the statements made in para 18 of the Counter I deny the contentions therein since in my last defence statement I never admitted the alleged fact of assault, further for the sake of brevity I refer and rely upon the statements made in paragraph 12 and 13 of the writ petition wherein I have stated how prejudice has been caused to me as the respondents denied the basic principles of natural justice. Further the two vital witnesses namely Smt. Rina Sarkar and Smt. Smriti Sarkar were never examined in my presence thereby causing serious prejudice and violation of natural justice as narrated in detail in para 25 of the writ petition."

12. Mr. Chakraborty, learned Addl. Govt. Advocate, having further referred to the counter-affidavit, has submitted that the witnesses were examined in presence of the petitioner and he was allowed to cross-examine them and at no point of time, the petitioner insisted for any defence assistant. When the witnesses are examined in presence of the petitioner and the petitioner has cross-examined them, the petitioner cannot take a plea that by not allowing the defence assistant, he has been substantially prejudiced. Mr. Chakraborty has further submitted that even the minutes of the personal hearing dated 07.01.2003, Annexure-M to the writ petition, has not been disputed by the petitioner when dealing with the same para 14 of the writ petition. As such, the petitioner cannot be allowed to take plea that he did not admit his delinquency as reflected in the Articles of charge.

13. On a close scrutiny of the records so produced with the writ petition and the counter-affidavit, this Court is of the considered view that the petitioner has admitted his involvement in the assault of Hav. Hari Ranjan Ghosh. True it is, except in his last defence statement, Annexure-R/1 to the counter-affidavit and in the minutes of the personal hearing, record of which is available at Annexure-M to the writ petition, the petitioner did not admit his direct participation, rather he had laid the description of grave provocation given by the said Havildar who had been allegedly assaulted by the petitioner and others. The admission of charge looms large of the records. Therefore, this court cannot, by way of interference, arrive at a finding opposite to that. It is further observed that despite some discrepancies, the charge as brought against the petitioner has been proved by evidence. However, the Disciplinary Authority or the Enquiry Officer are required to be reminded that the delinquent is entitled to get defence assistant and for that purpose, he is required to be asked whether he would engage any defence assistant or not. In this case, what this court has witnessed is, no such effort was made by the Enquiry Officer. Even, the petitioner did not raise any objection as well. Rather he himself had cross-examined the witnesses as produced by the Presenting Officer. Moreover, the Enquiry Officer has no business to select the nature of the witnesses whom might be produced in support of the case of the delinquent officer. But, those discrepancies have not substantially prejudiced the petitioner. More so, in view of the admission by the

petitioner, the impact has become inconsequential. Now, the pertinent question which remains to be dealt with is whether the petitioner has been awarded the penalty without jurisdiction on traversing beyond what has been provided in Section 12 of the Tripura State Rifles Act, 1983 or not. For purpose of reference, Section 12 of the said Act is reproduced hereunder:

"12. Departmental Punishments.

(1) The Commandant or any other authority as may be prescribed, may, subject to any rules made under this Act, impose on a member of the rifles one or more of the following punishments for disobedience, negligence in duty, remissness in the discharge of any duty or other misconduct which is prejudicial to good order and discipline of the Rifles, that is to say:--

Minor Punishments:

- (a) deprivation of acting or officiating rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters or camp for a term not exceeding twenty eight days;
- (d) confinement in quarters guard for not more than twenty eight days with or without punishment drill or extra guard or fatigue or other duty;
- (e) removal from any office of distinction or special emolument in the Rifles;
- (f) censure or severe censure;

Major Punishments:

- (g) reduction in substantive rank;
- (h) compulsory retirement;
- (i) removal from service which shall not be a disqualification for future employment under the Government;
- (j) dismissal

Provided that punishment specified in clause (d) shall not be imposed on any member of the Rifles who is of or above the rank of a Lance Naik;

(2) When in command of any detachment away from the Head Quarters, any officer, specifically authorised by the Commandant in this behalf, may award any punishment specified in clause (c) or Clause (d) of sub-section (1) to a Rifleman or an Enrolled Follower.

(3) The Deputy Commandant, an Assistant Commandant or a subordinate officer not being below the rank of Subedar, commanding a separate detachment pr an outpost or in temporary command at the headquarters of a Battalion of the Rifles, may, without a formal trial, award to any Rifleman or Enrolled Follower, who is for the time being subject to his authority, any one or more of the

following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require trial or prosecution before a criminal court, that is to say,-

(a) confinement for not more than seven days in the quarter guard or such other place as may be considered suitable with forfeiture of all pay and allowances during its continuance;

(b) punishment drill, extra-guard, fatigue or other duty, for not more than fourteen days, with or without confinement to quarters, lines or camp;

(c) censure or server censure; Provided that the punishments specified in clause (a) and (b) shall not be awarded to a Havildar, Naik or Lance Naik.

(4) A Naik Subedar who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any Rifleman below the rank of Lance Naik or any Enrolled Follower, for the time being subject to his authority, any of the punishments specified in clause (b) of Sub-section (3) for not more than seven days.

(5) When two or more punishments amounting to confinement in lines and confinement in quarter guard are awarded to a person conjointly, whether or not he is a ready undergoing one or more of the said punishments, the total period of such confinement shall not exceed forty two days at a time.

(6) No order imposing any of the punishments specified in clauses (g) to (j) of sub-section (1) shall be made except after an inquiry held in the manner as may be prescribed."

14. In exercise of power provided under Section 12(5) of the TSR Act, the petitioner has been awarded the penalty of confinement as Quarters Guard for twenty eight days and confinement to camp for fourteen days. The said punishment has been done in conformity to the provisions of Section 12(1)(c)(d) of the TSR Act. But, the punishment of reduction of pay by four stages from 3560 to 3200 in the time scale of pay of Rs. 3200-6030 for a period of three years w.e.f. 01.02.2003 with stoppage of increments during the period of reduction and having its postponement effect even after expiry of the said period, has been awarded without jurisdiction inasmuch as no such punishment has been prescribed by Section 12 of the Tripura State Rifles Act, 1983. In view of what the apex court has decided in Vijay Singh, the said punishment is liable to declared illegal and required to be quashed.

15. Accordingly, that part of the punishment at para 8(a) of the impugned order dated 07.01.2003, Annexure-N to the writ petition, is interfered with and set aside. It is clarified that the penalty as awarded at para 8(b) of the impugned order dated 07.01.2003, Annexure-N to the writ petition, is maintained.

16. Having held so, the respondents are directed to release the pecuniary

benefits which are withheld by the impugned order dated 07.01.2003, within a period of 3(three) months from the date of furnishing a copy of this order by the writ petitioner. In the result, the writ petition is partly allowed to the extent as indicated above. There shall be no order as to costs.