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(2008) 09 GAU CK 0052

In the Gauhati High Court

Case No : Writ Petition (C) No. 12 of 2004

Jaspal Singh Bisht — APPELLANT

Vs

State of Tripura and Others — RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986 — Rule 40
Tripura State Rifles Act, 1983 — Section 10

Citation : (2009) 1 GLR 203 : (2009) 1 GLT 287 : (2009) 2 SLR 737

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; D.C. Nath, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. Somik Deb, learned Counsel for the Petitioner and Mr. D.C. Nath, learned Govt. Advocate for the Respondents.

2. Writ Petitioner entered into Tripura State Rifles in the year 1985 as Rifleman (GD) and joined in the 1st Bn. TSR at Gakulnagar under West Tripura District. In the month of August, 1997 Petitioner was promoted to the post of L/NK nnd Naik in 2000 May and posted at 4th Bn. TSR Saidabari, Kumarghat, North Tripura and while he was serving as Naik in 4th Bn. TSR, an order bearing No. TSR/4/56/ Estt./10200-04 dated 21.9.20C2 (Annexure-I) was issued by the Respondent No. 4, the Commandant, 4th Bn. TSR placing him under suspension with effect from 21.9.2002 contemplating a disciplinary proceeding against him in respect of the charge drawn against him which is reproduced as under:

In that he, while posted to Adm. Coy at Bn. HQ Saidabari on 19.9.2002 at about 2030 hrs, assaulted his superior officer No. 85011033 Nb/Sub Diwani Lal near Ors mess under the influence of liquor, resulting the officer sustain injury on his face and tooth. He also used unparliamentary language like ''low caste'' against the said officer, which is pre-judicial to good order and discipline of the Rifles.

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3. Mr. Jayanta Chakraborty, Assistant Commandant, 4th Bn. TSR was appointed as an Inquiry Officer who conducted the inquiry after giving reasonable opportunity to the delinquent, the writ Petitioner to project his case and adduce evidence and submitted report after completion of the inquiry to the disciplinary authority, the Commandant, 4th Bn. TSR. The Inquiry Officer after due inquiry did find the delinquent guilty of the charge levelled against him. The relevant portion of the report can be reproduced as under:

But it is also fact that all the witnesses (PW-II to VI) come to know later on that, NK. Jalpal Singh had applied force to Nb/Sub Diwani Lal resulting sustaining of injury on face and lip. The second charge of causing physical assault of superior officer under influence of liquor, resulting sustaining of injury on face and tooth against NK Jaspal Singh Bisht is also established beyond all doubt.

4. The Commandant, having been filed inquiry report before him, passed the final order reducing in the rank of Jaspal Singh Bisht, the writ Petitioner vide order dated 10.12.2002 (Annexure-9), The final order reads as under:

Office of the Commandant 4th Bn. Tripura State Rifles, Saidabari, Kumarghat: Tripura, North. No. TSR-IWDP-8/Estt/2002/14409-13 Dated, the 10th December, 2002.

FINAL ORDER FOR REDUCTION TO THE RANK OF RIFLEMAN IN RESPECT OF No. 85011024 NK JASPAL SINGH BIST OF 41st BN. T.S.R.

The undersigned initiated departmental proceeding against No. 85011024 NK Jaspal Singh Bist under Rule 14 of CCS (CCA) Rules 1965 read with Rule 40 of TSR (DCSC, etc.) Rules 1986 vide letter No. TSR-4/DP/8/Estt/JSB/02/10807 dated 7th October, 2002. The Article of charge so initiated against No. 85011024 NK Jaspal Singh Bist of 4th BN TSR are as under:

TSR Act, 1983 Section 10(b)

ARTICLE-I

In that he, while posted to Adm. Coy at Bn. HQ Saidabari on 19.9.2002 at about 2030 hrs, assaulted his superior officer No. 85011033 Nb/Sub Diwani Lal near Ors mess under the influence of liquor, resulting the officer sustain injury on his face and tooth. He also used un-parliamentary language like ''low caste'' against the said officer, which is prejudicial to good order and discipline of the Rifles.

2. I have carefully gone through the report of the Enquiry Officer Shir Jayanta Chakraborty, Asstt. Comdt. The charge stated above has been conclusively proved against No. 85011024 NK Jaspal Singh Bist, 4th Bn. TSR for offence of indiscipline of the Rifles u/s 10(b) of TSR Act, 1983 in regard to assaulted his superior officer. The accused was given ample time to put up his defence which he availed of and expressed his defence both in writing and in verbal to the undersigned.

3. In the light of circumstances and evidence narrated above and brought out in

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the inquiry, the charge mentioned above is conclusively proved, I award him punishment of reduction of rank from Naik to Rifleman with immediate effect for his gross misconduct and indiscipline activities.

P.L. Bindu. Commandant 4th Bn. Tripura State Rifles.

5. The writ Petitioner being aggrieved thereby preferred an appeal before the appellate authority, the Director General of Police, Tripura against the order passed by the Commandant dated 10.12.2002, communicated, vide No. TSR-IV/ DP-8/Estt/2002/14409-13 which was disposed of vide order dated 27.1.2003 (Annexure-XI) passed by Deputy Inspector General of Police, Tripura, Agartala. By this order, the appeal so preferred was rejected and the punishment awarded by the disciplinary authority was upheld.

6. By this writ petition, the writ Petitioner, now, has challenged the legality and correctness of the departmental proceeding conducted against the writ Petitioner in reference to Memorandum No. TSR-4/DP/Estt/JSB/02/10807 dated 7.10.2002, the Provisional Order No. TSR-4/DP-8/02/Estt/2002/13891-93 dated 30.11.2002 as well as the final order No. TSR-IV/DP-8/Estt/2002/14409-13 dated 10.12.2002.

7. Mr. Somik Deb, learned Counsel for the Petitioner at the very out set of his argument criticizes the final order (Annexure-IX) passed by the disciplinary authority as well as the appellate order contending inter alia that the orders passed by the disciplinary authority and appellate authority cannot stand in the eye of law since the orders were passed without assigning any reason whatsoever and application of mind. Referring to the final order passed by the disciplinary authority by which punishment of reduction in rank was awarded to the writ Petitioner submits that the disciplinary authority in order to substantiate his decision/finding ought to have offered some sufficient and cogent reasons for accepting the findings of the Inquiry Officer as against the charge brought in against the Petitioner. The order so passed apparently does not contain any ground of satisfaction of the findings rendered by the Inquiry Officer, did record the charges as proved against the writ Petitioner. The way in which the final order was passed by the disciplinary authority is a reflection of the findings of the Inquiry Officer. No independent findings are offered by the disciplinary authority from his own substantiating his action against the writ Petitioner. It is argued by Mr. Somik Deb that by mere perusal of the findings of the Inquiry Officer, a concrete finding cannot be passed/made without giving any adequate reasons for acceptance of the findings of the Inquiry Officer. It is also argued that the final order passed by the disciplinary authority also speaks of consideration of circumstances and evidence appearing in the face of the inquiry report, which necessarily does not mean that the disciplinary authority did apply his mind to the facts and circumstances of the case, evidence appearing in the face of the record and other allied matters and accordingly recorded a punishment of reduction in rank of the writ Petitioner, Mr. Somik Deb, therefore, argues that final order passed by the disciplinary, authority cannot sustain in law since the

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findings are not supported by any cogent and sufficient reason.

8. Th findings of the appellate authority is also criticized by Mr. Somik Deb, learned Counsel for the writ Petitioner on the same ground that it is devoid of reasonable grounds by which the appellate authority accepted the findings of the disciplinary authority. The appellate authority while passing the order failed to apply his mind too to the facts and circumstances of the case, evidence on record and the report prepared by the Inquiry Officer, although all were placed before him for his consideration and scrutiny, A mere consistent finding of the appellate authority, according to Mr. Somik Deb, cannot Verve the purpose for which the appeal was intended to. The appellate authority ought to have scrutinized all available records including the evidence on record and the statement of defence, etc., while recording the appellate order dated 27.1.2003. That apart, it is argued that the appellate authority consulted Sri Jayanta Chakraborty, Assistant Commandant, the Inquiry Officer and thereafter after deliberation agreed to the findings of the disciplinary authority which according to Mr. Somik Deb infers that the appellate authority too did not apply its mind to the facts of the case, the charge, the inquiry report, evidence, etc., etc. The Deputy Inspector General of police, being the appellate authority, was to act independently without selling any assistance/suggestion from any corner; his discussion with Jayanta Chakraborty, Assistant Commandant, the Inquiry Officer infers that there was no application of mind in respect of the facts and circumstances of the case and findings on record. That apart no independent reasonings are placed/recorded to justify the findings of the Inquiry Officer and the disciplinary authority. Mr. S. Deb, therefore, argues that neither of the orders (of disciplinary authority and the appellate authority) should stand in the eye of law.

9. In support of his contention as above, Mr. Sonik Deb, learned Counsel for the writ Petitioner relies on the following decisions in between Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, Basudeo Vishwanath Saraf v. New Education Institute and Ors. (1986) 4 SCC 32 , Reliance Industries Ltd. Vs. Designated Authority and Others, and The State of Manipur and Another Vs. Smt. Chabungbam Thoibisana Devi and Others, .

10. The Supreme Court while deciding the case between Mahabir Prasad Santosh Kumar (supra) in para 7 of the judgment held as under:

7. Opportunity to a party interested in the dispute to present this case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental

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process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

11. In the case between Basudeo Vishwanath Saraf (supra) the Apex Court in para 14 and 18 of the judgment held as under:

14. It is a cardinal principle of rule of law which governs our policy that the court including writ court is required to record reasons while disposing of a writ petition in order to enable the litigants more particularly the aggrieved party to know the reasons which weighed with the mind of the court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative for the fair and equitable administration of justice. More so when there is a statutory provision for appeal to the higher court in the hierarchy of courts in order to enable the superior court or the appellate court to know or to be apprised of the reasons which impelled the court to pass the order in question. This recording of reasons in deciding cases or applications affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like ''dismissed'' or ''rejected'' will be made without passing a reasoned order or a speaking order. It is not, however, necessary that the order disposing of a writ petition or of a cause must be a lengthy one recording in detail all the reasons that played in the mind of the court in coming to the decision. What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the court in coming to its final conclusions and in disposing of the petition or the cause by making the order, thereby enabling both the party seeking justice as well as the superior court where an appeal lies to know the mind of the court as well as the reasons for its finding on questions of law and facts in deciding the said petition or cause. In other words fair play and justice demands that justice must not only be done but must seem to have been done.

18. In the premises aforesaid the appeal is allowed and the judgment and order passed on 8th October, 1984 in Writ Petition No. 4063 of 1984 is hereby set aside. The court below is directed to dispose of the said writ petition is accordance with law after giving hearing to the parties and by passing a speaking order as expeditiously as possible preferably within a period of four months from the date of receipt of the records by the court below. Let the records be sent to

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the court below forthwith. There will, however, be no order as to costs.

12. In the case between Reliance Industries Ltd. (supra) the hon''ble Supreme Court in para 38 of the judgment held as under:

38. We are of the opinion that the nature of the proceedings before the DA are quasi-judicial, and it is well settled that a quasi-judicial decision, or even an administrative decision which has civil consequences, must be in accordance with the principles of natural justice, and, hence, reasons have to be disclosed by the Authority in that decision vide S.N. Mukherjee v. Union of India.

13. In the case between Chabuhgbam Thoibisana Devi (supra) the Supreme Court in para 9 of the judgment held as under:

9. The Division Bench of the High Court upheld the order of the learned Single Judge, without referring to any of the facts and by simply observing that it did not find any illegality or perversity in the order passed by the learned Single Judge. It was further held that subsequent developments brought on record were not sufficient to interfere with the impugned judgment. The orders passed by the learned Single Judge as well as the Division Bench, to say the least, are cryptic and bereft of any reasons. The Division Bench should have recorded that the learned Single Judge did not permit the Respondents to file their response to the averments made in the writ petition. Since the Single Bench did not permit the Respondents to file the response, the Division Bench, before which the facts had been brought by way of additional affidavit, should have taken the additional facts into consideration and it was up to the Division Bench to either accept them or reject them. The Division Bench has not assigned any reason for upholding the order of the learned Single Judge except to say that they are not inclined to interfere with the order of the learned Single Judge.

14. Mr. D.C. Nath, learned Govt. advocate supporting the case reflected in the counter, submitted that nothing illegality had been committed neither by the Inquiry Officer nor by the disciplinary authority and nor by the appellate authority while rendering the inquiry report, the order reducing in rank and the appellate order. All the orders were passed after careful scrutiny of the findings of the Inquiry Officer and also after careful marshalling of the evidence on record together with other materials on record. According to Mr. D.C. Nath since no illegality has been committed by the Inquiry Officer, disciplinary authority and the appellate authority, the orders do not call for any interference from this end. The inquiry was conducted on the basis of the article of charges leveled against him (the writ Petitioner) wherein it was alleged that he (the writ Petitioner) assaulted his superior officer and also used un-parliamentary words which can be branded as misconduct as well as insubordination and unbecoming of a member of a rifle. Further it is also argued by learned Govt. Advocate that the disciplinary authority passed the impugned order after scrutiny of all the matters placed before him including the inquiry report submitted by the inquiry officer, Jayanta Chakraborty, Assistant Commandant of the 4th Bn. and while passing such order

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the disciplinary authority had also gone into the evidence available on records carefully, therefore, the order passed by the disciplinary authority does not suffer from any error, illegality or disqualification, which can render the order defective, erroneous, illegal and not sustainable in law. The order passed by the appellate authority, according to Mr. D.C. Nath, was also passed after scrutiny of the materials placed before him. The order passed by the appellate authority is beyond the scope of any interference from this Court.

15. I have given my anxious consideration of the orders passed by the disciplinary authority as well as the appellate authority. Neither of the orders is found to have been passed by the respective authority giving reasons for accepting the finding of the Inquiry Officer as well as the disciplinary authority. The law laid down by the Supreme Court in the cases Mahabir Prasad Santosh Kumar (supra), Basudeo Vishwanath Saraf (supra), Reliance Industries Ltd. (supra) and Chabungbam Thoibisana Devi (supra) is very in terms that while passing an order by quasi-judicial authority, reasons must be assigned for doing so. Unless adequate reasons are given/offered, the orders so passed by the quasi-judicial authority would be rendered unacceptable in the eye of law. Since the orders of the disciplinary authority and the appellate authority, to my humble opinion, do not contain adequate reasons, the same cannot stand. This Court, therefore, thinks it appropriate to remand the matter to the disciplinary authority to pass an appropriate order on the basis of the inquiry report submitted by the Inquiry Officer and other allied matters giving adequate reasons therefor.

16. Both the orders passed by the disciplinary authority and the appellate authority stand set aside and quashed.

This writ petition is partly allowed. No cost.

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