

(2015) 12 TP CK 0027
In the Tripura High Court
Case No : W.P.(C) No. 43 of 2012

Pratap Sinha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 290, 510

Citation : (2015) 12 TP CK 0027

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : Sekhar Datta, Advocate, for the Appellant; S. Chakraborty, Addl. GA, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner who has been working as the Havildar, GD in the 13th Bn., TSR (IR-IX) has challenged the memorandum dated 21.04.2011, Annexure-1 to the writ petition, the order dated 12.08.2011, Annexure-6 to the writ petition, the order dated 30.08.2011, Annexure-8 to the writ petition and the order dated 31.10.2011, Annexure-10 to the writ petition.

2. There is no dispute that the petitioner was proceeded under a departmental proceeding for committing the purported misconduct by the memorandum dated 21.04.2011, Annexure-1 to the writ petition. The petitioner was charged for creating public nuisance under influence of liquor while he was in the Masli Bazar for mess marketing. According to the disciplinary authority such act is prejudicial to the good order and discipline of the rifles under Section 11(a) and Section 11(2) of the TSR Act, 1983. Section 11(a) of the TSR Act provides as under:

"Every member of the Rifles who - is in a state of intoxication when on or after having been warned for, any duty or on parade or on the line or march;"

Similarly, Section 12(1) of the said Act provides that:

"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."

3. After the purported inquiry, the Inquiry Officer submitted his report holding that the petitioner has committed gross misconduct by creating a public nuisance under influence of liquor at Masli Bazar. It has been also noted that the doctor's report has observed that the petitioner was in control of his movement. Based on the said report dated 04.08.2011, Annexure-5 to the writ petition, a provisional proposing punishment order dated 12.08.2011, Annexure-6 to the writ petition, was issued in the said departmental proceeding being DP No. 03 of 2011. The provisional punishment imposed on the petitioner withholding of one increment for a period of one year without cumulative effect. The petitioner was given opportunity by the said order dated 12.08.2011, Annexure-6 to the writ petition, to make representation in his defence, if any, or for appearing to the disciplinary authority within the time stipulated.

4. The petitioner submitted a representation on 21.08.2011 raising various grounds of objections, such as, denial of natural justice, no evidence as to the public nuisance, not providing with the defence assistant etc. The disciplinary authority did not favourably consider the said representation and pass the final order dated 30.08.2011, Annexure-8 to the writ petition by confirming the provisional order dated 12.08.2011 providing reasons for discarding the grounds of challenge. It has been observed in the said final order dated 30.08.2011 that one increment which fell due on 01.07.2012, shall be withheld for a period of one year without cumulative effect.

5. The petitioner filed an appeal under Rule 46 of the Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986 to the Deputy Inspector General of Police (OPS), the appellate authority. By the order dated 31.10.2011, the appellate authority did not find any infirmity in the order passed by the Disciplinary Authority. As corollary, the appeal has been dismissed.

6. Mr. Sekhar Datta, learned counsel appearing for the petitioner has submitted that there is gross violation of the principles of natural justice as despite being asked by the petitioner for allowing him engage the defence assistant, no such leave was granted. Even the petitioner was not asked to cross-examine the witnesses or adduce witnesses in his defence. That apart, Mr. Datta, learned counsel has submitted that there has been flagrant violation of Rule 36 of the Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986, which provides that:

"If an offence falling under section 10 or 11A of the Act has been committed, all facts of the case shall be placed before an Appellate Authority as soon as possible for taking a decision whether the delinquent member of the Rifle is to be

tried by a Rifles Court or is to be dealt with departmentally."

7. Mr. Datta, learned counsel has emphatically submitted that no records had been presented for appreciation by the appellate authority, as stated. He has further submitted that for the same set of allegations, a police challan was submitted for creating public nuisance by the petitioner which is punishable under Section 290 /510 of the IPC. The said case ended in acquittal by the judgment and order dated 18.11.2011 in CR No. 239(0) of 2013 passed by the Chief Judicial Magistrate, North Tripura, Kailashahar. From the said judgment and order, Mr. Datta, learned counsel has referred the observation made by the Chief Judicial Magistrate which runs as under:

"It is evident that ASI Ram Sundar Debbarma submitted the PR and he is also the source of information of both the witnesses, but the prosecution failed to adduce him before this Court. More so, the witnesses deposed that accused was in a drunken condition but the prosecution again failed as the Medical Officer who examined the accused was not adduced. Above all these, the incident took place in the market. But no public has been cited as witness to corroborate the incident.

Thus, in consequence, I am unable to conclude that accused created nuisance in public in a drunken condition."

8. Mr. Datta, learned counsel in order to show the imperfections in the proceeding has submitted that the commotion was created not for any act of the petitioner but for the alleged rumour of kidnapping on the claim of one woman that her child had been taken away by one rifleman, Upendra Bhatta. Both of them, the petitioner and one Upendra Bhatta were taken to Manu PS. Even, he has submitted that a resolution dated 02.08.2011 adopted by the West Karamchhara Village Committee would stand to show that they had resolved that the petitioner did not commit any public nuisance in Masli Bazar on 29.03.2011, neither was he involved directly or indirectly in kidnapping any child. Even though the said resolution dated 02.08.2011 was produced in the departmental inquiry, the same was not considered by the Inquiry Officer. Hence, according to Mr. Datta, learned counsel, the entire proceeding has been vitiated and more so, when a criminal court has given a categorical finding as to the drunkenness of the petitioner, the departmental proceeding should not have given primacy of its finding over the judicial finding.

9. From the other side, Mr. S. Chakraborty, learned Addl. GA has categorically submitted that since no general rifle court or the battalion rifle under Section 18(a) of the Tripura State Rifles Act, 1983 has been constituted such consultation as to whether the matter has to be referred to the rifle court or not is not warranted in the said context. As such, there is no violation in terms of Rule 36 of the Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986. He has further submitted that the medical report has categorically observed that the petitioner did consume the liquor on the relevant day and time. Moreover, the petitioner was arrested by the police of Manu PS on that day

i.e. 29.03.2011 for creating public nuisance. Mr. Chakraborty, learned Addl. GA has contended that even though the petitioner filed representation but he did not indicate the name of the defence assistant. But he was given the reasonable opportunity to defend himself. Therefore, the allegation of violating the natural justice is not tenable. Finally, Mr. Chakraborty, learned Addl. GA has contended that there is no infirmity in the impugned orders and as such this writ petition merits no further consideration and is liable to be dismissed.

10. Mr. Datta, learned counsel for the petitioner has relied on few decisions of the apex court namely Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and Another, . This decision has enunciated the law as to the payment of back wage for the period when the petitioner was terminated for having been convicted in a criminal case. Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, equally has no relevance in the present context. The same observation is liable to be made in respect of Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, which again deals with regularization of the suspension period. It has been observed there that on acquittal based on insufficient evidence in a criminal case the delinquent is not automatically entitled to back wages, pensionary benefits and other consequential benefits on his reinstatement where the suspension was ordered pending criminal case. The competent authority is empowered to treat suspension period as not spent on duty after following the principles of natural justice.

11. In this case by the final order dated 30.08.2011, the suspension period has been treated as on duty. The punishment is confined to withholding of one increment fell due on 01.07.2012 without any cumulative effect. After appreciating the rival contentions raised at the time of hearing, the two questions those fall for consideration of this Court are (1) whether there was any violation of principles of natural justice as structured in Rule 14 of the CCS (CCA) Rules, 1965 read with Rule 40 of the Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986 and (2) whether there is any evidence of creating public nuisance in the drunken condition by the petitioner vis-?-vis the order of the acquittal, as stated.

12. It is apparent on the record that in the course of the inquiry the delinquent was given opportunity to take his defence assistant and to submit the defence statement with sufficient time. He was given opportunities to engage his defence assistant, if any. In terms of Rule 14 of the CCS (CCA) Rules, 1965, it is the right of the delinquent officer to cross-examine the witnesses as produced by the presenting officer. Even he may not cross-examine such witnesses either as a strategy or on consideration that such cross-examination is not required. But in the record, nowhere it has been placed that he raised any objection for not allowing him the opportunity to cross-examine the witnesses despite his presence in the departmental proceeding.

13. The other question that has emerged is that there is no evidence as to the

drunkenness or creating the nuisance and this Court has been urged to re-appreciate the evidence. The acquittal from the criminal prosecution is no doubt of some relevance inasmuch as the apex court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, has observed as under:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles there from." The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

14. The said rule is subject to various distinguishing factors. In this case the witnesses as examined in the criminal case, namely Madhu Kr. Debbarma (PW-1) and Kanchan Debbarma (PW-2) were not the witnesses cited or examined in the departmental proceeding. Ram Sundar Debbarma, Kajari Mog, Murari Mohan Debbarma and Amitabha Choudhury were examined in the departmental proceeding but those witnesses were not the witnesses in the criminal trial. Therefore, the decision of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another cannot be squarely applied in this case.

15. Having regard to this aspect of the matter and in absence of any statement in the writ petition how the petitioner has been prejudiced by not cross-examining the witnesses, this Court is not inclined to accept the objection that there was denial of principles of natural justice. What is conducted in the submission of Mr. Datta, learned counsel is that this Court should re-appreciate the evidence. Law is well settled in this regard. In that garb of the judicial review, re-appreciation of evidence is not permissible. That apart, this court is not oblivious that in a departmental proceeding the standard of proof is the

preponderance of the probabilities meaning the presenting officer is saddled with the duty to probablise by evidence the charge as brought against the delinquent officer. When the document mainly the medical examination report has not been challenge on the ground of its genuineness, the inquiry officer has not committed any irregularity in appreciating the said document. Moreover, the fact and the circumstances as disclosed by the witnesses in the inquiry, sufficiently probablise a case of creating nuisance in a drunken state. When the appellate authority has appreciated the evidence in threadbare and there is no apparent perversity in that exercise, interference in the findings as returned both by the inquiry officer and the disciplinary authority are entirely uncalled for and hence the objection as stated is not tenable.

Having held so, the writ petition is dismissed. There shall be no order as to costs.