

(2015) 08 TP CK 0003
In the Tripura High Court
Case No : Writ Petition (C) No. 13 of 2011

Sanjit Choudhury

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 08 TP CK 0003

Hon'ble Judges : Deepak Gupta, C.J.; S.C. Das, J

Bench : Division Bench

Advocate : S. Deb, Senior Advocate and S. Datta, for the Appellant; G.S. Bhattacharji, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition is directed against the order dated 29th December, 2009 dismissing the petitioner from service and the order rejecting his appeal filed on 2nd November, 2010.

2. The undisputed facts are that the petitioner was appointed as "Constable" in the Tripura State Rifles (TSR). Disciplinary Proceedings were initiated against him on the charge that he absented himself from duty w.e.f. 2nd April, 2008 to 29th August, 2008 and again from 3rd September, 2008 till date of initiation of the disciplinary proceedings without any permission of the authority. After the petitioner appeared in the inquiry proceedings, he submitted a reply to the Inquiry Officer translation of which reads as follows:

"To

The Enquiry Officer, 11th BN T.S.R. (IR-VII) V.B. Gram, Gokul Nagar, Tripura (W)

Sub: Prayer for exemption from the Departmental Proceedings.

Sir,

I Sri Sanjit Choudhury, No. 02050460, Rifleman of the 11th Bn. TSR(IR-VII) D-

Coy, beg to submit that due to some family problems remained absent from duties since 02/4/2008 to 29/8/2008. Thereafter, I joined my duties on 30/8/2008 and again remained absent from 03/9/2008 to 02/6/2009. On 02/6/2009 I resumed my duties in the Head Quarter of 11th Bn. T.S.R. for which Departmental Proceedings have been initiated against me. I undertake that I will not remain absent in future. Kindly forgive me for this time and exempt me from the Departmental Proceedings.

Therefore, it is my humble prayer before your honour to issue an order of exemption from the Departmental Proceedings in my favour.

Yours faithfully,

Dated 06/07/09

No. 02050460 Rfn. -- Sanjit Choudhury Coy-D 11th BN T.S.R. (IR-VII)"

3. The petitioner did not deny the fact that he had remained absent without permission during this entire period. He begged mercy and prayed for leniency. Despite the petitioner having admitted his guilt the Inquiry Officer proceeded with the inquiry proceedings to record the statement of the witnesses. The petitioner appeared before the Inquiry Officer on a few occasions. Even though the inquiry proceedings had been initiated the petitioner was permitted to rejoin duties. The petitioner thereafter availed Casual Leave from 9th August, 2009 to 16th August, 2009. He was to report back on 17th August 2009. He did not report back and, therefore, further inquiry proceedings were held in his absence and the Inquiry Officer passed the order in his absence but the gist of the order is that the petitioner remained absent for the period mentioned aforesaid. The petitioner's services were thereafter terminated and he filed an appeal which was also dismissed.

4. In the writ petition it was alleged that neither the memorandum of charges nor any papers along with the memorandum of charges were ever supplied to him. Therefore, on the last date i.e. on 29.7.2015 we had passed the following order:

"Heard in part.

Main ground raised by the petitioner is that the show cause notice and other document relating to the inquiry were never served upon him.

The respondents are directed to produce the original record of the inquiry on 12.08.2015"

Today the record has been produced before us and we find that the averments made in the petition are totally false. The petitioner was not only aware about the inquiry proceedings, he appeared in the inquiry proceedings and admitted that he was absent. He begged for leniency. Thereafter, he absented again and did not turn up for the inquiry proceedings.

5. It is apparent that after the inquiry report was proposed a show cause notice was issued to the petitioner but along with the show cause notice the copy of the inquiry report was not supplied. It is urged by Mr. S. Deb, learned senior counsel for the petitioner that since the copy of the inquiry report was not supplied the petitioner has been prejudiced. Reliance has been placed on the judgment of the Apex Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, AIR 1994 SC 1074 : (1993) 6 JT 1 : (1994) 1 LLJ 162 : (1993) 3 SCALE 952 : (1993) 4 SCC 727 : (1993) 2 SCR 576 Supp : (1993) 3 SLJ 193 . Para 31 of the judgment reads as follows:

"31. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment. Where after following the above procedure, the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

A perusal of this paragraph also shows that the Apex Court has clearly held that the Court or the Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts.

6. We are clearly of the view that in this case no purpose would be served of remanding the case back to hear the petitioner because the petitioner has in categorical terms admitted that he was absent for the period and has not given any explanation worth the name to show why any lenient action should be taken. Not only that, in writ jurisdiction we must look at the conduct of the petitioner. The petitioner has made false averments in the writ petition and we are also noting the further fact that even during inquiry proceedings after he was permitted to rejoin he went on Casual Leave for 8 (eight) days but did not join back for more than a year till the order of dismissal was passed and then made an attempt to rejoin after the order of dismissal was passed. We are dealing with a uniformed police force. If we permit such undisciplined persons to remain in the police force then we cannot expect any discipline in the police force. Therefore, we find no merit in the petition. As such the writ petition is dismissed.

No order as to costs.