
(2015) 04 TP CK 0025
In the Tripura High Court
Case No : W.P(C) No. 397 of 2010

Sanjoy Sarkar

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 TP CK 0025

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

Bench : Division Bench

Advocate : A.K. Deb, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.

1. By filing this writ petition under Article 226 of the Constitution of India, the petitioner who was working as a Riflemen (GD) of 10th Bn. Tripura State Rifles (for short, TSR) prayed for issuing appropriate writ quashing the disciplinary proceeding drawn against him by Memo dated 28.04.2007(Annexure-4 to the writ petition) and also prayed for quashing the provisional dismissal order dated 12.02.2009 (Annexure-6 to the writ petition), final dismissal order dated 09.02.2009, signed on 09.03.2009 (Annexure-8 to the writ petition) and also the appellate order dated 22.01.2010 (Annexure-10 to the writ petition).

2. Heard learned counsel Mr. A.K. Deb for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for the State-respondents.

3. The petitioner, inter alia, contended that he applied for the post of Riflemen (GD) of TSR as a general category candidate and after a selection process he was appointed as a Riflemen (GD) No. 06020673 of 10th Bn. TSR vide offer of appointment dated 31.12.2005 (Annexure-1 to the writ petition) and he joined the post on 20.01.2006. Thereafter he was sent to undergo basic training. After

about 8 months respondent No. 4 issued a notice dated 06.09.2006 (Annexure-2 to the writ petition) with a direction to submit his SC certificate as otherwise departmental action would be taken against him. Thereafter also respondent No. 4 issued two more reminders dated 19.06.2006 and 15.10.2006 asking the petitioner to submit his SC certificate within a fixed date failing which his service would be terminated. It is the case of the petitioner that he has never applied as a reserved category candidate for the post of Rifleman (GD) and that his application was as a general category candidate and so he was put to surprise when he received notice and reminders to submit SC certificate. He does not belong to SC community and that he belonged to "Kapali" community which is OBC community and after receipt of the notice, he applied for SC certificate but he did not get any SC certificate from the competent authority and therefore, there was no question of his submitting a SC certificate to the respondent No. 4.

4. Respondent No. 4 thereafter by Memo dated 28.04.2007 (Annexure-4 to the writ petition) initiated a disciplinary proceeding against him on the following article of charges:-

"Article of charge No. 1:

No. 06020673 Rifleman (GD) Sanjay Sarkar HQ/ADM Coy of 10th Bn. TSR (IR-V) claimed that he is belonged to Scheduled Caste category at the time of interview which was held at Kumarghat on 13.05.2005 before the board under the Chairmanship of Sri Uttam Majumder TPS-1, the then Commandant 7th Bn TSR (Now Superintend of Police North Tripura District) by producing a Panchayat Family Registration Certificate with assurance that he would be able to produce valid SC certificate. But he has failed to produce the valid SC certificate till to date. Thus the act of No. 06020673 Rfn (GD) Sanjoy Sarkar amounts to fraudulent means of cheating.

Article of Charge No. 2:

No. 06020673 Riflemen(GD) Sanjoy Sarkar HQ/ADM Coy of 10th Bn TSR joined in TSR on 20.01.2006 as a Riflemen (GD) against the existing vacancy of SC category vide Commandant 2nd Bn. TSR Office Letter No. F.322/TSR-II/ESTT/RECT (Vac) 332 dated 31st December, 2005 and he was asked in several time to produce valid SC Certificate to prepare his Service Book. But he did not produce any valid S.C. Certificate so far. Thus the act of No. 06020673 Rfn (GD) Sanjoy Sarkar amounts to Misconduct.

Article of Charge No. 3:

No. 06020673 Riflemen (GD) Sanjoy Sarkar HQ/ADM Coy of 10th Bn TSR tried to obtain SC certificate from the concerned authority whereas the said Riflemen (GD) Sanjoy Sarkar and his whole family members belonged to "Kapali" community which is notified as OBC category. Thus the act of No. 06020673 Rfn (GD) Sanjoy Sarkar amounts to fraudulent means of cheating."

5. The petitioner denied the article of charges contending that he has never

applied as a reserved category candidate and that he applied as a general category candidate for the post of Riflemen (GD) and the Interview Board selected him as a general category candidate. In the token issued by the Interview Board in his name, it was clearly mentioned as UR category (Annexure-5 series to the writ petition). At the end of the disciplinary proceeding, the petitioner received provisional dismissal order dated 12.02.2009 (Annexure-6 to the writ petition) wherein the respondent No. 4 proposed to dismiss the petitioner from service and asked him to make his representation on the proposed penalty. The petitioner contended that he did not receive any copy of the inquiry report to make an effective representation, however, he submitted his representation (Annexure 7 to the writ petition) against the provisional order of dismissal on 09.03.2009 but without considering the same, the respondent No. 4 issued final dismissal order dated 09.02.2009 which was signed on 09.03.2009 (Annexure 8 to the writ petition). The petitioner thereafter submitted an appeal before the respondent No. 3 but the appeal was dismissed by order dated 22.01.2010 passed by respondent No. 3 (Annexure-10 to the writ petition).

6. It is further contended by the petitioner that though he belonged to general category and he applied as a general candidate, but along with his application dated 13.05.2005 he had submitted a Panchayat Family Registration Certificate bearing No. 110, Page No. 112, duly signed by the Panchayat Secretary dated 16.12.2004 of Uttar Dhalicherra Gaon Sabha, Pecharthal, North Tripura District showing his family as SC community but it was not known to him that his family has been mentioned as SC community. He never gave any assurance to the recruitment board during oral interview that he belonged to SC community or that he will submit the SC certificate later on. It is the case of the petitioner that he was selected by the interview board not as a SC category candidate but as a general category candidate and therefore, the order of his dismissal from service was absolutely wrong and cannot stand in the eye of law.

7. By filing rejoinder affidavit, the petitioner placed on record a copy of the inquiry report dated 22.03.2008 submitted by the Inquiry Officer in the disciplinary proceeding drawn against the petitioner and it is contended by the petitioner that the Inquiry Officer has observed that the charges framed against the petitioner have not been proved but yet the Disciplinary Authority found him guilty of misconduct and dismissed him from the service illegally. It is contended that Rule 15(2) of CCS CCA Rules, 1965 which is applicable to the case of the petitioner has not been complied by the Disciplinary Authority and hence, the disciplinary proceeding has been vitiated and the dismissal order cannot sustain.

8. The respondents by filing counter affidavit inter alia contended that the petitioner appeared in the selection process as a general category candidate but subsequently at the time of oral interview he claimed himself to be a SC category candidate and that he should be given the benefit of reservation. He claimed such benefit referring to a Panchayat Family Registration Certificate Sl. No. 110, Book No. Ugalcherra-1, Family No. 110, page No. 112 signed by the Panchayat

Secretary Uttar Dhalicherra Gaon Sabha, dated 16.12.2004, Panchayat Extension Officer and the Pecharthal Block Development Officer and he also assured that he would be able to produce the SC certificate soon from the competent authority. In the interview he scored 64 marks whereas in the general category candidate, the last person appointed, scored 65 marks. So as a general candidate he could not be appointed in service. He was considered as a SC category candidate on the basis of his assurance given to the Chairman of the interview board to submit his SC certificate later on and accordingly his name was approved by the interview board for appointment as a SC category candidate. He was thereafter noticed by the respondent No. 4 to submit SC certificate and two reminders were also given but he failed to submit the SC certificate and therefore, the disciplinary proceeding was initiated against him and he has been found guilty in the proceeding. It is clearly contended by the respondents that after the Inquiry Officer submitted his report to the Disciplinary Authority, no copy of the inquiry report was supplied to him and the provisional punishment order was passed by the Disciplinary Authority. It is also contended that on 29.11.2010 a copy of the inquiry report was supplied to the petitioner along with other records of the disciplinary proceeding and he received the same by giving a receipt thereof. There was nothing wrong in the action taken by the respondents and so the writ petition should be dismissed.

9. At the time of hearing, learned Addl. G.A. produced the proceedings of the recruitment board and two registers of UR category and SC category Riflemen enrolled under Kumarghat centre.

10. Before entering into the other issues raised in the writ petition, let us first examine whether the disciplinary proceeding was conducted following the procedure prescribed by law or not.

11. It is an admitted position that the copy of the inquiry report submitted by the Inquiry Officer to the Disciplinary Authority was not furnished to the petitioner after the inquiry was concluded. Even at the stage of sending provisional punishment order, no such inquiry report was sent to the petitioner by the Disciplinary Authority. A copy of the inquiry report is annexed as Annexure 12 to the writ petition (rejoinder affidavit). On perusal of the same we found that the Inquiry Officer observed that the charges framed against the petitioner were not proved. The Disciplinary Authority according to law would disagree with the finding of the Inquiry Officer but in the event of such a disagreement the Disciplinary Authority was bound to arrive at a finding with reasons for disagreement and communicate the same to the petitioner. The disciplinary proceeding against the TSR personnel is guided by the Tripura State Rifles (Discipline, Control, Service Conditions etc.) Rules, 1986. Rule 40 of the said Rules prescribes thus:-

"40. Procedure for Award of a Major Punishment:

Procedure for award of Major Punishments specified in Section 12 of the Act shall

(mutatis mutandis) be the same as is provided for imposing of major penalties on Government servants under the Central Civil Services (Classification, Control and Appeal) Rules 1965 as modified from time to time.

Provided that the defaulter/accused member of the Rifles shall not be permitted to take the assistance of anyone, who is not a serving officer or serving member of the Rifles, to present the case on his behalf."

In view of the above provisions of the Rules of 1986, the provisions of CCS CCA Rules are applicable in a disciplinary proceeding for imposing major punishment. Therefore, the provisions of Rules 14 and 15 and other relevant Rules are applicable in case of a disciplinary proceeding against a TSR personnel. Rule 15(2) of CCS CCA Rules prescribes thus:-

"15(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

12. As per the above provisions, the Disciplinary Authority was bound to forward a copy of the inquiry report along with the tentative reasons for disagreement of the Disciplinary Authority with the report of the Inquiry Officer, to the Government servant (charged officer) for his submitting a written representation in respect of the inquiry report and the tentative reasons of disagreement etc. This is a right of the Delinquent, prescribed by law to get a copy of the inquiry report along with the tentative reasons of disagreement with the inquiry report of the Disciplinary Authority and failure to furnish the same is a violation of the right guaranteed by law to a Govt. servant. For such violation of the provision of law, the disciplinary proceeding and consequential order of dismissal of the petitioner is bound to be held as vitiated.

13. We, therefore, find no other alternative but to set aside the order of punishment including that of the order passed by the Appellate Authority and to direct the Disciplinary Authority to deal with the case of the petitioner as per the provision prescribed in Sub-Rule (2) of Rule 15 of CCS CCA Rules and to afford opportunity to the petitioner to submit his representation and thereafter to pass appropriate order according to law. The entire process should be concluded within 6(six) months from today. Since the petitioner has already been dismissed from service, though we are going to set aside the orders passed by the Disciplinary Authority and the Appellate Authority, we are not inclined to pass any order to reinstate the petitioner in the meantime pending disposal of the disciplinary proceeding afresh by the competent authority.

14. Accordingly, the provisional dismissal order dated 12.02.2009 (Annexure-6 to the writ petition), final dismissal order dated 09.02.2009/09.03.2009 (Annexure-8 to the writ petition) and the appellate order dated 22.01.2010 (Annexure-10 to the writ petition) are set aside and quashed. The respondents are directed to deal with the disciplinary proceeding drawn against the petitioner as per the provisions prescribed by law as indicated hereinabove and thereafter to pass appropriate order according to law and the entire process should be concluded within 6(six) months from today.

15. The proceeding file of the recruitment board and the registers submitted by the learned Addl. G.A. is returned.

16. Parties to bear their own costs.

17. The writ petition accordingly stands disposed of.