

(2014) 02 TP CK 0010
In the Tripura High Court
Case No : Writ Petition (C) 58 of 2007
Sri Mangal Orang VsThe State of Tripura

Date of Decision : 13-02-2014

Acts Referred:

Citation : (2014) 2 GLT 763

Hon'ble Judges : Deepak Gupta, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : S. Deb and Mr. S.B. Debnath, for the Appellant; S. Chakraborty, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Utpalendu Bikas Saha, J.—The writ petitioner filed this petition for issuance of writ of certiorari setting aside the order dated 17.9.2006 passed by the Commandant, 10th Bn. TSR (IR-V), (Annexure-3 to the writ petition) whereby and whereunder he was discharged from service as a Rifleman for his unauthorized absence with effect from 3.8.2005 to 17.9.2006. Heard Mr. S. Deb, learned senior counsel assisted by Mr. S.B. Debnath, learned counsel for the petitioner as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate for the State respondents.

2. The pleaded case of the petitioner, in short, is that the petitioner was recruited as a Rifleman in Tripura State Rifles (TSR) and placed under the Commandant, 10th Battalion TSR (IR-V), the respondent No. 3. While he was discharging his duties as a Rifleman, all on a sudden, he had fallen sick in the month of July, 2005 and as the said illness continued, he attended the Medical Officer available, but he did not recover. In such a situation, in the first week of August, 2005, he submitted an application to the authority for granting him leave, but he did not get any appropriate response in writing, rather he was verbally allowed to go home. Finding no other alternative, on 3.8.2005, the petitioner left for home for his treatment and for proper care by the family members. After arriving at his house, the petitioner with the help of the family members attended the physician at Kailashahar and learnt that he was suffering from malaria and acute jaundice

and as the physician advised him to take complete rest, he sent information to the respondent No. 3 about the circumstances under which he was compelled to leave TSR unit and his condition of health.

3. He was confined in bed for more than one year and in the month of October, 2005, he submitted a representation to the respondent No. 3 for sending his pay and allowance by post to his home address so that he might be able to meet the day to day expenses for medicines and be able to run his family consisting of his old aged parents, wife and children. But the said respondent did not respond to that.

4. While he was suffering from illness, in the second week of May, 2006, he was served with a show cause notice dated 4.5.2006 and from the said notice, he learnt that a departmental proceeding was contemplated against him for his absence in spite of the fact that he had informed the authority specially the respondent No. 3 about his illness.

5. Upon receipt of the aforesaid show cause notice, the petitioner sent a reply to the said show cause notice on 24.5.2006 (Annexure-1) along with all medical papers in respect of his treatment to the respondent No. 3 and the respondent No. 3 vide his letter dated 19.6.2006 directed the petitioner to resume his duties within seven days from the date of receipt of the aforesaid letter subject to completion of departmental proceeding which was in progress.

6. Thereafter, the petitioner submitted another representation to allow him at least fifteen days more time so that he might be able to join his duties.

7. In the 3rd week of August, 2006, he came to Agartala and went to the Battalion Head Quarters for rejoining his duties but he was not allowed to enter the Battalion Head Quarter complex. Ultimately, the petitioner was served the discharge order dated 17.9.2006, wherein it is written that during the enquiry, the petitioner had neither appeared in person before the Enquiring Officer as per the date for deposition of his statement in connection with his long absence without leave and he did not turn up for further examination of witnesses nor made any correspondence to defend himself in regard to the charge framed against him despite given all reasonable opportunities and as such, Departmental enquiry was concluded by the Enquiring Officer ex parte. Challenge in the instant writ petition is the aforesaid order (Annexure-3).

8. The State respondents by way of filing the counter-affidavit denied the allegations of the petitioner and contended that the petitioner was given three minor punishments on different occasions for his insincerity and indiscipline acts towards Govt. duties. It is further stated that during his service period at Murabari T.S.R. camp, no sick report and attendance before the Medical Officer was reported to the authority and even no such request for sending pay and allowances to his home address was received by the office of the Commandant.

9. It is the further case of the respondents that before issuance of the discharge

order, the petitioner was given a number of reasonable opportunities to join his duties, but he did not do so. Not only that, even before passing the final discharge order, a provisional discharge order was also issued on 20.8.2006 in which further fifteen days time was granted to the petitioner to submit his representation either in writing or in person. Not only that, the provisional discharge order was also published in local newspaper on 24.8.2006, but despite all efforts of Respondent No. 3 to retain him in TSR by giving him scope to join his duties, the petitioner did not bother to join his duties and as such, there was no other option to the respondent No. 3 except to discharge the petitioner from the service.

10. Mr. Deb, learned senior counsel while urging for relief sought for would contend that the petitioner was not provided the reasonable opportunity to defend his case either before the enquiry authority or before the Disciplinary Authority, the respondent No. 3, rather the Disciplinary Authority passed the impugned order mechanically without application of mind. More so, after completion of the enquiry and before passing the provisional discharge order, copy of the enquiry report was not furnished to him as he is entitled to and such action of the authority is nothing but the violation of principle of natural justice.

11. He also contended that the petitioner was never asked to appear before the Enquiring Officer nor any date was informed to the petitioner for his deposition. Thus, the whole enquiry is also vitiated for such a wrong action of the authority.

12. Mr. Chakraborty, learned Addl. Govt. Advocate, as directed by us, has placed the proceeding file and contended that the petitioner is trying to mislead the court contending that he was not informed by the Enquiring authority regarding the date relating to the deposition of the witnesses and his appearance, rather it would be evident from the enquiry report itself, that the petitioner was not only informed regarding enquiry, but he himself appeared on 5.6.2006 and received all the relevant documents of the case, but did not turn up for hearing on 15.6.2006 without any intimation and all on a sudden, he appeared on 3.7.2006 and the Enquiring authority as per convenience of the petitioner fixed the date of hearing on 11.7.2006 and on that date, he turned up accordingly and in his presence, four witness were examined and thereafter, he did not turn up and filed a resignation letter to the respondent No. 3 which was received on 15.7.2006. Thus, it cannot be said that the delinquent officer, i.e., the petitioner was not provided the opportunities as he was entitled to under the procedure. Thus, there was no violation of natural justice as contended by the petitioner.

13. He further submits that the discipline in the disciplinary Force is a sine quo non and if a member of such disciplinary Force becomes indiscipline like the delinquent petitioner, then consequence will be nothing, but nullification of the Force which is recognized by virtue of its discipline. He has also submits that natural justice has no straight jacket formula; the same has to be considered taking the facts and circumstances of each case. In the instant case, it is the petitioner who himself deprived him from the benefit of natural justice, though

the Enquiring authority as well as Disciplinary Authority tried to provide him the same. He finally contended that the petitioner was also provided the copy of the enquiry report before passing the final order. Thus, it cannot be said that he was prejudiced for non-furnishing of such copy of the report.

14. Before dealing with the submission of the learned counsel for the parties, it would be proper on our part to reproduce the Article of Charge framed against the petitioner and to survey the enquiry report submitted by the Enquiring Officer. Accordingly, we do so.

Article charge No. 1

No. 01070840 Rfn. (GD) Mangal Orang of "B" Coy., 10th Bn. TSR (IR-V) absented himself from Bn. HQ location w.e.f. 03-08-2005 at 1640 hrs till date i.e. 12-04-2006 without any valid permission of Competent Authority. Thus total days of absent from 03-08-2005(AN) to 12-04-2006 (AN) = 252. Therefore charged for Gross negligence.

15. It appears from the enquiry report that submission of Mr. Chakraborty, inter alia, that the petitioner was informed regarding the date of hearing and examination of the witnesses is correct. The petitioner was not only informed regarding the date of hearing in the enquiry proceeding, rather the date for examination of the witnesses was fixed as per the convenience of the petitioner on 11.7.2006 on which date he appeared and in his presence, four witnesses were examined and the next date was fixed on 17.7.2006 for further examination of the witnesses, but on that date, he did not turn up. Obviously, when the delinquent officer being a member of the disciplinary force did not appear before the Enquiring authority, the said authority had/has no other alternative except to record the statement of the witness ex parte.

16. The Enquiring authority in his report specifically stated "he did not turn up on 17.7.2006. I examined the witnesses and recorded their statement ex-party. He did not give any defence witness even he did not turn of for further examination of witnesses. On the other hand, he submitted a resignation letter to the Comdt. 10th Bn. TSR which was received by Establishment section on 15.07.2006 of which photo copy I have received on 27.07.2006. But the delinquent did not turn up before me for hearing of the case. As a result the last part of the case i.e. the hearing and examination of witnesses had to do in ex-party. I am mentioning the above things to show how irresponsible the delinquent is. He has a little care and respect for the discipline of this department."

17. From the aforesaid observation of the Enquiring authority, it can be easily said that the petitioner was informed regarding the date of hearing as well as examination of the witnesses. Thus, we are unable to accept the submission of Mr. Deb on that count.

18. By this time, it is settled that mere non-furnishing of the enquiry report itself would not vitiate the disciplinary proceeding unless it is established by the

delinquent officer that he was prejudiced for non-furnishing of the copy of the enquiry report. In the midst of hearing on 5.12.2013, we had also gone through the record from which it appeared that the petitioner was aware of the enquiry proceedings and he had received documents. Mr. Deb, learned senior counsel on that date sought for time to obtain instructions from the petitioner and on 6.2.2014, when the matter was taken up, Mr. Deb in his usual fairness submitted that he was wrongly instructed by the petitioner that he was not supplied the copy of the enquiry report. Fact remains that the copy of the enquiry report was supplied to the petitioner.

19. In Channabasappa Basappa Happali Vs. The State of Mysore, the Apex Court considered the case of the appellant therein who was a police officer and remained absent without leave and held as under:

4. The pleas of the petitioner are quite clear; in fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold, that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for that he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the Police Force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did not go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given before him. On the whole therefore the admission was one of guilty in so far as the facts on which the enquiry was held and the learned Single Judge in the High Court was in our opinion, right in so holding.

5. It was contended on the basis of the ruling reported in *R. v. Durham Quarter Sessions; Ex parte Virgo*, (1952 (2) QBD 1) that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea a guilty but one of not guilty. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We

do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.

20. Like the case in hand, in that case also, the appellant therein was actuated by his own feeling that leave would be extended. Not only that, he also did not wish to cross-examine any witness or lead any evidence on his own behalf, like the case in hand. Ultimately, the Apex Court noticing that fact of the remaining unauthorized absence being an admitted one held that there is no violation of principle of natural justice. In the instant case, admittedly, the petitioner appeared on some occasions before the enquiry authority and ultimately did not appear on his own in the enquiry proceeding and also declined to adduce any evidence. Therefore, it cannot be said that the petitioner was not provided opportunity to place his case.

21. A Court cannot lightly consider an award of punishment in a disciplinary matter when the disciplinary proceeding was properly conducted either by the Enquiring authority or by the Disciplinary authority. In the case of Union of India (UOI) and Others Vs. Narain Singh, , the Apex court observed that insofar as punishment imposed on the member of a disciplined force is concerned, power of writ court to interfere with such punishment is severely restricted and ought to be rightly exercised. By now it is well settled principle of law that judicial review is not against the decision, rather against the decision making process and it is also the duty of the charged employee to maintain the position to trust, honesty and integrity for which he was employed and when the said honesty, integrity and trust in question in a disciplinary proceeding, he cannot expect that the disciplinary authority will not take any action against him.

22. In a disciplinary Force, how the authority will maintain discipline in the Force is always with them, the Court cannot rewrite the procedure for maintaining discipline while exercising its power of judicial review. The Court can only interfere if the petitioner can establish on the basis of the record that the authority did not provide him opportunity which he was entitled to according to law covering the field and also the Disciplinary authority proceeded beyond its limit and acted beyond the principle of law. In the instant case, though some allegations are made by the petitioner, but ultimately, the same could not be substantiated. On proper survey of the record, it appears that the petitioner was provided all the procedural benefits as he is entitled to either at the stage of enquiry proceedings or at the stage of passing final order. Thus, we are of the opinion that the petition is devoid of merit and the same is dismissed. No order as to costs.