
(2008) 12 GAU CK 0033
In the Gauhati High Court
Case No : W.A. No. 31 of 2002

Sri Nanigopal Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2009) 1 GLD 141 : (2009) 2 GLT 181

Hon'ble Judges : Jasti Chelameswar, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : B. Das, S. Das and S. Roy, for the Appellant; P.B. Biswas, Asst. S.G., for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. B. Das, learned senior counsel representing the Appellant/writ Petitioner. Also heard Mr. P.K. Biswas, learned Asstt. Solicitor General who represents all the Respondents.

2. Aggrieved by the order dated 13.2.2002 passed in Civil Rule No. 354 of 1996, the unsuccessful writ Petitioner has filed the present appeal.

3. In the writ proceeding, the writ Petitioner, who was employed as a constable under the SSB organization under the Union Government had challenged the order dated 28.6.1994, whereby he has been dismissed from service. The approval of the dismissal order by the appellate authority on 4.5.1995 was also under challenge in the writ petition.

4. A departmental proceeding was initiated against the writ Petitioner with the memorandum dated 30.7.1993, issued by the Commandant, Group Center, SSB, Agartala, whereby charges related to committing of misconduct, remissness and disobedience were alleged and an inquiry was proposed to be conducted into the charge.

5. The articles of charges enclosed to the memorandum dated 30.7.1993 are extracted herein below for ready reference:

Annexure I. - Statement of article of charge framed against No. 84374 CT (GD) Nani Gopal Das-III "E" Coy, Group Center, SSB, Tripura, Salbagan.

Article of charge I. - That the said No. 84374 CT(GD) Nani Gopal Das-III "E" Coy, Group Center, SSB, Tripura while functioning as CT(GD) during the period committed misconduct and remissness in the discharge of his duties in his capacity as a member of a force u/s 11(1) of CRPF Act, 1949 in that he in the forenoon of 8.4.1992 deserted the Unit lines, Group Center, SSB, Hqr. Salbagan without proper permission/sanction of leave from competent authority and still continues to be absent despite of serving rejoining notices to him vide Commandant, Group Centre, Tripura Memo No. PF/231/ND/ESTT/- GCT/92/4375-78 dated 10.4.1992, No. PF/231/ND/ESTT/- GCT/92/5075 and even No. PF/231/ND/ESTT/GCT/92/5076 dated 25.4.1992 and No. PF/231/ND/ESTT/- GCT/92/8802 dated 16.7.1992.

Sd/- 24.7.1993 (R.C. PANDE) COMMANDANT.

Annexure II. - Statement of imputation of misconduct, remissness and disobedience in support of article of charge framed against No. 84374 CT(GD) Nani Gopal Das-III "E" Coy, Group Center, SSB, Tripura, Salbagan.

Article of charge I. - No. 84374 CT(GD)" Nani Gopal Das-III "E" Coy, Group Center SSB, Tripura was posted with E Coy Kashipur. Before his posting/reporting to E Coy, Kashipur he deserted the Unit lines at GC Hqr. Salbagan on 8.4.1992 (FN) without obtaining proper permission or leave from the competent authority. He was served with rejoining notices vide Commandant, Group Center, Tripura Memo No. PF/231/ND/ESTT/- GCT/92/4375-78 DATED 10.4.1992, No. PF/231/ND/ESTT/- GCT/92/5075 and even No. PF/231/ND/ESTT/- GCT/92/5076 dated 25.4.1992 and No. PF/231/ND/ESTT/- GCT/92/8802 dated 16.7.1992. In spite of serving rejoining notices he failed to resume duty and is still so absent. Besides this, FIR was also lodged with the Officer-in-Charge, Police Station East Kotwali, Agartala, Tripura West as well as Officer-in-Charge, Police Station, Sonamura, Tripura West and copy of which was endorsed to S.P. Agartala, West Tripura about his whereabouts vide Comdt. GCT letter No. PF/231/ND/ESTT/- GCT/92/4284-85 dated 9.4.1992 and letter No. PF/231/ND/ESTT/- GCT/92/4457/58 dated 11.4.1992. Since the period of his unauthorized absence exceeded more than 60 days, he has been declared deserter vide order No. PF/231/ND/ESTT/- GCT/92/3810-16 dated 26.3.1993 after conducting a Court of Inquiry.

Sd/-24.7.1993 (R.C. PANDE) COMMANDANT.

6. The Petitioner denied the charges leveled against him and requested for dropping of the proceeding. But the disciplinary authority decided to conduct the inquiry by appointing an Inquiry Officer to prove the charges made against the

Petitioner.

7. During the departmental inquiry proceeding, despite affording several opportunities to the Petitioner, the Petitioner did not appear before the Inquiry Officer on different dates fixed for the purpose of the enquiry. It was also noted that the charged delinquent did not submit any documents or produced any witness in defence nor give any reply to any of the several communications made by the Inquiry Officer to the delinquent. The statement of the prosecution witnesses recorded on 25.3.1994 was also sent to the delinquent under registered cover and even thereafter a final opportunity was given to the Appellant to appear before the Inquiry Officer. But despite the opportunities offered, the delinquent abstained himself from the inquiry and accordingly the Inquiry Officer on the basis of the evidence available and the documents on record, concluded that the Article of Charge I framed against the Appellant has been proved against the delinquent. Thereafter by an order dated 28.6.1994, the Commandant of Group Center, SSB Tripura considered the said enquiry findings and by exercising power under Rule 27 of the CRPF Rules, 1955, the punishment of dismissal from the forces was inflicted on the delinquent constable with immediate effect.

8. The delinquent filed an appeal before the Appellate Authority to challenge the dismissal order and the Appellate Authority by its order 4.5.1995 upheld the dismissal order passed against the writ Petitioner leading to filing of the writ petition being Civil Rule No. 354/95 before this Court.

9. The learned Single Judge took note of the explanation furnished by the Appellant for not participating in the Departmental Inquiry and also took note of the fact that despite several opportunities provided, the Appellant deliberately refused to participate in the inquiry proceeding. The learned Single Judge held that no interference with the order of dismissal is called for and accordingly dismissed the writ petition leading to filing of the present appeal.

10. Mr. B. Das, learned senior counsel appearing for the Appellant submits that only because the delinquent feared for his safety, he refused to participate in the Departmental Inquiry held in the Group Center (SSB), Salbagan, Agartala and his reasonable request for shifting the inquiry to any other place was not acceded to by the Disciplinary Authority and on this ground the ex-parte adverse finding recorded against him, ought not to be relied upon to justify the penalty of dismissal from service inflicted against the Appellant on 28.6.1994. The learned Counsel also submits that the consideration of the appeal filed against the dismissal order by the Appellate Authority was not proper and the order of the Appellate Authority dated 4.5.1995 having been passed on extraneous consideration, ought not to be sustained. The learned Counsel for the Appellant further submits that non-participation in the Departmental Inquiry by the writ Petitioner has vitiated the fairness of the inquiry and accordingly, the inquiry finding ought not to be permitted to be relied upon by the Disciplinary Authority to support the dismissal order passed against the writ Petitioner.

11. Mr. P.K. Biswas, learned Assistant Solicitor General on the other hand submitted that the writ petition filed by the Appellant has been dismissed by the learned Single Judge by considering and dealing with the every submissions made on behalf of the writ Petitioner and as such no interference with the order of dismissal of the writ petition is not warranted by the Appellate Court. Mr. Biswas submits that when writ Petitioner deserted his post without prior permission and failed to resume his duties despite several directions issued to him for resuming his duties, the Disciplinary Authority was forced to declare the writ Petitioner as a deserter and draw up a Disciplinary Proceeding against him. In the Inquiry Proceeding, the writ Petitioner was asked by the Inquiry Officer by communication dated 11.1.1994 to attend before the Inquiry Officer on 27.1.1994 but the writ Petitioner did not attend the inquiry proceeding. Thereafter the Inquiry Officer allowed further opportunity to the writ Petitioner by letter dated 15.3.1994 for the said purpose but even then the writ Petitioner did not attend. Accordingly it is submitted that the writ Petitioner deliberately abstained from the inquiry and only under such circumstances, the inquiry had to be conducted ex parte against the Petitioner. Therefore, it is submitted that under such circumstances, the fairness of the procedure of the enquiry on the ground of absence of the delinquent cannot be questioned as he chose to abstain from the proceedings.

12. It is submitted by the learned Counsel appearing for the Respondents that the learned Single Judge took note of the several correspondence made by the Disciplinary Authority with the writ Petitioner and the further fact that the Inquiry Officer had provided repeated opportunities to the writ Petitioner to participate and to nominate his defence assistant in the enquiry but as has been noted by the learned Single Judge, the writ Petitioner had cared little about the proceeding. For such attitude of the delinquent, it is submitted that the learned Single Judge also was constrained to take the view that a person like the writ Petitioner should not be retained in a disciplined organization like the SSB, as otherwise "it would be very difficult to avoid the infection of such un-orderly adamancy in a disciplined force".

13. Interference, in exercise of writ jurisdiction with the findings of a Departmental Inquiry and the punishment inflicted on the basis of such inquiry findings by its very nature, has to be within narrow confines. Only in cases where there has been denial of fair opportunity to the delinquent to participate in the inquiry proceeding or there has been breach of the principles of Natural justice, there could be a justification for interference. But having examined the records of the instant case, we find that it is the delinquent himself who avoided participating in the inquiry proceedings and despite several opportunities afforded to him, he chose to abstain from the enquiry and even refused to nominate his defence assistant.

14. The demand made by the delinquent for change of inquiry venues was not supported by any acceptable reason, as the demand letter dated 28.8.1992

written by the delinquent makes a sweeping claim that the delinquent fears for his safety and security. The Disciplinary Authority in the instant case had written to the delinquent to assure him of his safety and in our view the delinquent had no factual basis or justification to remain absent from the inquiry proceedings conducted in the Group Center of the SSB. When the Commandant of the Group Center himself assured the safety of the delinquent, it would not be reasonable for the Court to accept the contention made that the safety of the delinquent was jeopardized to such an extent that he had no option but to remain absent from the Departmental Inquiry, conducted in the Group Center of the SSB.

15. We further find that the learned Single Judge had elaborately dealt with every contentions raised by the writ Petitioner in the writ proceedings and after such considerations, had reached the conclusion that it is the Appellant himself who, because of his adamancy remained absent from the inquiry and it was also the opinion of the learned Single Judge based on the conduct of the delinquent, that a person with such adamancy like the writ Petitioner, can have no place in a disciplined force.

16. The Disciplinary Authority of the Appellant have decided to inflict the punishment of dismissal from service after considering the findings of a Departmental Inquiry and in our view, the said Departmental Inquiry had not been conducted in a manner inconsistent with procedural requirement to ensure fairness nor there has been any breach of the principles of natural justice. We, therefore, find no justification to interfere with the punishment inflicted on the delinquent writ Petitioner.

17. Accordingly, we are of the considered opinion that the impugned judgment of the learned single Judge requires no interference and we sustain the same by dismissing the writ appeal.