

(2013) 07 TP CK 0011

In the Tripura High Court

Case No : Writ Petition (C.) No. 197 of 2003 and 430 of 2004

Sudhir Kumar Sharma and Another Vs State of Tripura and Others

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 07 TP CK 0011

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : P.K. Dhar, for the Appellant; J. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Both the writ petitions are taken up to gather for hearing and disposal at the instance of learned counsel of both side, since under the writ petitions, single order passed by the disciplinary authority and affirmed by the appellate authority against the petitioners, has been challenged. Heard learned counsel, Mr. P.K. Dhar for the petitioners in both the cases and learned counsel, Mr. N. Majumder for the respondents in WP(C) No. 197 of 2003 and learned counsel, Mr. J. Majumder in WP(C) No. 430 of 2004.

2. Indisputably, the petitioners were holding the post of Naik in the 3rd Bn. TSR and posted at Ravanpara under Dhalai District. On 24.05.2001, at the time of regular roll-call the petitioners along with another TSR Nape, Bidya Ratan Sinha were found absent. On search they were not available in the TSR camp premises. The Camp In-charge stuck in with anxiety since it was extremists infested area. Immediately thereafter, the Camp In-charge, Mr. B.P. Chakraborty along with a few staff went out to search the missing TSR personnel, i.e. No. 85011099 Nk(GD) Sudhir Kumar Sharma, No. 85010720 NK(GD) Dinesh Debnath and No. 85011158 NK(GD) Bidya Ratan Sinha, and, on search they were found consuming country liquor in a "tong" house belonged to one Harikumar Reang. The Coy. Commander ordered them to immediately proceed to the TSR camp but they paid no heed, rather they abused the Coy. Commands and physically assaulted him. Thereafter, the Coy. Commander returned to the camp. At about 130 pm, the petitioners along with the other TSR Naik, Bidya Ratan Sinha

together returned to the camp in a state of intoxication and with an aggressive mood and they unauthorizedly entered in the room of the Coy. Commander, Mr. B.P. Chakraborty (Assistant Commandant) and abused him with filthy words and assaulted him physically.

3. A common disciplinary proceeding was drawn up against the petitioners and the other TSR Naik, Bidya Ratan Sinha on the following charges:

ARTICLE OF CHARGE NO-I

No. 85011099 NK(GD) Sudhir Kumar Sharma, No. 85010720 NK(GD) Dinesh Debnath and No. 85011158 NK(GD) Bidya Ratan Sinha of 3rd Bn. TSR, Ravan Para under Dhalai District are charged for gross misconduct/misbehavior/creating nuisance/violent in that while posted at Ravanpara Post on 24.5.2001 at about 1130 hours No. 85011099 NK(GD) Sudhir Kumar Sharma who was the Guard Commander of the Ravanpara Post for the day No. 85010720 NK(GD) Dinesh Debnath and No. 85011158 NK(GD) Bidya Ratan Sinha alongwith Constable Gangaram Deb Barma (Police representative) were found absent from the post during a Spl Roll-Call called by the Coy Commander, Shri B.P. Chakraborty Asstt. Commandant which are unbecoming of a member of disciplined Force like TSR.

ARTICLE OF CHARGE NO-II

On being found absent from the post (Ravanpara) as stated in charge No. I, Shri B.P. Chakraborty, AC (Coy Comdr of D Coy) accompanied by Nb/Sub Narayan Chandra Dey, Nb/Sub Kanan Sinha, Shri B.P. Chakraborty, AC (Coy Comdr. of D Coy) accompanied by Nb/Sub Narayan Chandra Dey, Nb/Sub Kanan Sinha, CHM Arjun Shil and few jawans left the camp within a short while to find out them since the Ravanpara Post is an extremist prone. During searching they were found in a Tong house of one Sri Harikumar Reang and consuming country made alcohol. On being found them, Coy Commander ordered them to go back to the post. But they refused to obey the lawful order of Coy Commander. Thus they committed an offence being a member of Disciplined Force like TSR.

ARTICLE OF CHARGE NO-III

On 24.5.2001 at about 1330 hours all the three NKs(GD) mentioned in Charge No. II namely No. 85011099 NK(GD) Sudhir Kumar Sharma, No. 85010720(GD) Dinesh Debnath and No. 85011158 NK(GD) Bidya Ratan Sinha had returned to the Camp (Ravanpara) and entered into the office-cumresidence (after breaking the door) in a aggressive mood and charged him by stating that as to why he went to search them and also asked him are they thieves, thereafter all on a sudden, NK(GD) Sudhir Kumar Sharma started assaulting physically to Coy Comdr(Shri B.P. Chakraborty) as a result he sustained swelling injury in his head. Finding no other alternative he some how managed to get out from the room to save himself. Thereafter NK(GD) Sudhir Kumar Sharma and NK(GD) Dinesh Debnath also assaulted to Nb/Sub NC Dey and Nb/Sub Kanan Sinha when they

rushed to the spot on hearing out-cry to save the Coy Commander from above three NKs. At the time of incident the three alleged NKs were under the influence of alcohol. Thus they committed a serious offence being a member of Disciplined Force like TSR.

4. An inquiry was conducted in due course and one Nandan Sarkar, Assistant Commandant of E. Company, conducted the inquiry as an inquiry officer and he submitted a report, on conclusion of inquiry on 11.06.2001, holding that the charges framed against the petitioners and the other TSR personnel were proved and, accordingly proposed for appropriate punishment. The disciplinary authority by order dated 14.06.2002 (Annexure-VI to the writ petition) inflicted the following punishment on the petitioners:

.....From the findings of the E.O. it is found that the charges drawn against No. 85011099 NK(GD) Sudhir Kr. Sharma, No. 85010720 NK(GD) Dinesh Debnath and No. 85011158 NK(GD) Bidya Ratan Sinha have been proved beyond doubt.

It is a serious case of assault on senior officer without any provocation by his subordinate NCOs, in an interior camp at Ravanpara. No. 85011099 NK(GD) Sudhir Kr. Sharma, and N-85010720 NK(GD) Dinesh Debnath are awarded punishment of reduction in substantive rank i.e. to the rank of Lance-Natk as specified in section 12(g) of TSR Act 1983.

No. 85011158 NK(GD) Bidya Ratan Sinha is awarded punishment of fine of one months Pay and Allowances as specified in section 12(b) of TSR Act 1983.

This order will take effect from 15th Jan, 2002. The DP is hereby disposed off.

(Khatra Joy Reang) Commandant, 3rd Bn. Tripura State Rifles.

5. Appeals were preferred by the petitioners to the appellate authority, i.e. Deputy Inspector General of Police (A/P) but the appeals were also dismissed summarily.

Hence, the present writ petitions.

6. It is submitted by learned counsel, Mr. Dhar that the petitioners were not allowed to examine any defence witness and even they were not asked as to whether they were willing to adduce any defence evidence. Therefore, the finding of "guilt" taken by the disciplinary authority is perverse and not tenable in law and fact. He has also contended that the allegation against the petitioners was that they consumed country liquor in the "tong" house of one Harikumar Reang but they were never medically examined to ascertain the fact that they actually consumed country liquor and got intoxicated thereby. It is also contended that the Coy. Commander, Mr. B.P. Chakraborty, who is the main witness and according to the disciplinary authority he was assaulted by the petitioners causing injury but no injury report proved in the disciplinary proceedings. The further contention of learned counsel, Mr. Dhar is that the appellate order was not a speaking order and, hence the order of punishment given by the

disciplinary authority and affirmed by the appellate authority is liable to be interfered and set aside.

7. Learned counsel of the respondents, on the other hand, have submitted that the petitioners, being members of disciplinary force committed gross misconduct. However, minimum punishment has been inflicted on them. The offence committed by them was enough to dismiss them from service. They went out of the camp without authority and were found consuming country liquor in the tribal hamlet in an extremist prone area, They (sic) their superior offence physically, (sic). All opportunities were provided to them and they never approached to adduce any defence evidence. There is no infirmity in the disciplinary proceeding and hence the order passed by the disciplinary authority and the appellate authority does not deserve interference.

8. Basically, judicial review of administrative action also of legislation, is exercised against the action of the State. Since the State or the public authorities act in exercise of their executive or legislative powers, they are amenable to judicial review. The State, therefore, is subject to "etat de droit". Judicial review is no doubt a weapon in the hands of the Judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power. A judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping the power.

It is a settled law that normally, the High Court or the Supreme Court would not interfere with the findings effect recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be amenable to judicial scrutiny. Abroad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

9. In the case at hand, the petitioners being members of disciplined force, while posted in an extremist infested area, went out, of the camp unauthorizedly and were found absent on roll-call while their authority was supposed to depute them to duty. On search they were found consuming liquor in a tribal hamlet and when were asked to return to camp by the camp in-charge they defied and abused him. Later on they returned in a state of intoxication and unauthorizedly entered in the room of commander, their superior authority, abused him and physically assaulted him. The facts alleged in the charges, proved with overwhelming evidence. All opportunities, as per procedure prescribed by law were afforded to the petitioners in the course of inquiry of disciplinary proceeding.

This Court is not required to sit as an appellate authority to reconsider the findings of the disciplinary authority and the appellate authority. The standard of proof as is required in a judicial proceeding, is not required to that extent in a disciplinary proceeding. If there is some material to arrive at a conclusion for the disciplinary authority in respect (sic) the delinquent, it is enough to uphold the punishment. The extent of judicial scrutiny of the administrative action has now been well settled. There is nothing to show that the petitioners proposed to examine any witness in support of their innocence and that has been refused by the inquiring authority. The inquiry report does not reflect anything that the opportunities which the delinquent were entitled according to law, were refused to them. Non-examination of the petitioners by the medical officer on the date of occurrence as to whether they consumed liquor or not, is of no consequence at all for deciding any proceeding. Further, non-production of the medical report in respect of physical assault on a superior officer also is of no consequence for deciding of a disciplinary proceeding.

10. I have meticulously gone through the records and perused the materials and I find no inconsistency or deliberate violation of any procedural law in respect of the disciplinary proceeding drawn against the petitioners. Therefore, the writ petitions are dismissed being devoid of merit but in the circumstances without costs.