
(2015) 04 TP CK 0010
In the Tripura High Court
Case No : W.P(C) No. 99 of 2013

Sukesh Chakraborty

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Citation : (2015) LabIC 2630

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

Bench : Division Bench

Advocate : A.K. Bhowmik, Senior Advocate, R. Dutta and A. Banik, for the Appellant; J. Majumder, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.

1. The case of the petitioner in short is that he joined Tripura State Rifles (for short, TSR) as a rifleman (G.D.) on 18th September, 2002. He was granted commuted leave for the period from 4th April, 2012 to 3rd May, 2012, while he was posted at Kanchanpur, under 13th Bn. of TSR. He was supposed to resume his duties on 04.05.2012 but he could not do so because of his continuous illness. His illness was aggravated to the extent that he was mentally upset and was suffering from depression and therefore, even could not make any prayer for extension of medical leave. The respondent No. 4 without making any preliminary enquiry initiated a disciplinary proceeding against him by Memo. Dated 17.09.2012 (Annexure-1 to the writ petition) on the following Article of charge:-

"That the said No. 02090149 Rfn (GD) Sukesh Chakraborty of E-Coy, 13th Bn TSR (IR-IX) was granted 30 days Commuted leave w.e.f. 04.04.2012 to 03.05.2012 (AN) and suppose to resumed duty at Bn HQr on 03.05.2012 (AN), but he did not report and remained overstaying unauthorisedly w.e.f. 04.05.2012 (FN) without any permission from the competent authority which is an act of

prejudicial to good order and discipline of the Rifles US 12(1) of TSR Act, 1983."

It is the case of the petitioner that he received Memo dated 17.09.2012 but could not understand the contents of the Memo and therefore, could not make any reply to the said Memo. Subsequently also he received some messages in English and could not understand the meaning of the same because of his physical illness and mental imbalance. Thereafter he received provisional punishment order, dated 11.12.2012 (Annexure-2 to the writ petition) wherein it was mentioned that a copy of the inquiry report submitted by the Inquiry Officer was enclosed but he received no such inquiry report. Around 01.01.2013 he recovered from his illness and his attending physician issued a medical certificate of fitness and with that medical certificate of fitness he went to his battalion headquarters at Kanchanpur on 03.01.2013 and came to know that his final punishment order dated 08.01.2013 (Annexure-3 to the writ petition) has already been signed and so he returned from Kanchanpur and thereafter he submitted an appeal before the respondent No. 3 enclosing all copies of his treatment and medical certificates etc. The respondent No. 3 by order dated 21.02.2013 (Annexure-5 to the writ petition) dismissed the appeal.

It is contended by the petitioner that absence from duty without leave is not a serious offence as contemplated in TSR Act and regarding his absence, the respondent No.4 was bound to report the fact to respondent No. 3 as per Rules but no such report was submitted. Since he was suffering from illness he could not join his duties in time and that ground of appeal has not been considered by respondent No. 3 and the order passed by the respondent No. 3 dated 08.01.2013, cannot therefore stand and is liable to be interfered. The punishment of removal from service is disproportionate to the gravity of the offence and it is shocking to the conscience. The petitioner, therefore, prayed for quashing Memo dated 17.09.2012 (Annexure-1 to the writ petition) initiating the disciplinary proceeding and provisional punishment order dated 11.12.2012 (Annexure-2 to the writ petition), final punishment order dated 08.01.2013 (Annexure-3 to the writ petition) and appellate order dated 21.02.2013 (Annexure-5 to the writ petition) and also prayed for directing the respondents to reinstate the petitioner in service with all his service benefits.

2. The respondents inter alia contended that the petitioner was a habitual absentee from his duties without permission or sanction of leave from the competent authority. Measures on different occasions were taken to correct the petitioner but he was incorrigible. He was censored on several occasions while was working in 2nd Bn. TSR as well as in 13th Bn. TSR for his absence without leave and over stay while on leave. For absence without leave once he was also declared dies-non for one day. He was granted commuted leave for 30 days from 04.04.2012 to 03.05.2012 and he was supposed to join on 04.05.2012 but he did not join his duties and thereafter three notices were sent on 14.05.2012, 02.06.2012 and 22.06.2012 asking him to join his duties but he did not join his duties and therefore a preliminary inquiry was initiated by Subedar Bir Ch. Singh

who submitted a report and thereafter disciplinary proceeding was initiated and he was repeatedly noticed to participate in the disciplinary proceeding and to engage his defence assistant but he did not respond. The provisional punishment order was sent to him along with a copy of the inquiry report and that was received by his mother at his house. He did not make any representation against the provisional punishment order and thereafter in due course the final punishment order was passed. He submitted an appeal and the appeal was disposed of according to law. He did not inform the authority for extension of leave and also did not inform anything about his illness and therefore, the disciplinary authority after due inquiry passed the order of punishment which stands good and cannot be interfered in the writ petition.

3. Learned Sr. counsel Mr. A.K. Bhowmik appearing for the petitioner has submitted that the petitioner duly applied for commuted leave w.e.f. 04.04.2012 to 03.05.2012 and leave was granted. While on leave, his illness aggravated and he was mentally upset and was also suffering from depression and therefore could not join his duties after the leave was over and also could not make any prayer for extension of leave. He has also contended that the petitioner submitted the documents of his illness in connection with the memo of appeal he preferred before the respondent No. 3 challenging the order of punishment. In course of hearing learned counsel produced a bunch of photocopies of prescription and medical certificate and on perusal of the same we were surprised to see that the petitioner was not suffering from any disease rather he suffered a motorcycle accident and therefore, he absented from duty. The contention of the petitioner stated in para 3 of the writ petition that his illness was aggravated and he was mentally upset and out of depression he did not even make any prayer for extension of leave etc. seems to be a false plea taken by the petitioner which is contrary to the medical records. The medical prescription and certificate show that because of motorcycle accident, he suffered compound fracture of his elbow joint and because of non-union or delayed union of the fractured elbow joint he did not join his duties and he absented from his duties. The original prescriptions have not been submitted along with the writ petition. The copy of the memorandum of appeal submitted before the respondent No. 3 also shows that photocopies of the medical documents were submitted. However, the copies of the medical documents now submitted before the Court in no way supports the case of the petitioner that he was suffering from illness rather it shows that because of motorcycle accident, he suffered fracture of elbow joint and therefore, he absented from duty. It is, therefore, evident that the petitioner taken a false plea that he was suffering from illness and was mentally upset and also suffering from depression etc.

4. The next argument advanced by learned Sr. counsel Mr. Bhowmik is that the petitioner is semiliterate and therefore, could not understand the meaning of the notices sent by the respondents and therefore could not respond to those notices.

5. The further argument advanced by learned Sr. counsel Mr. Bhowmik is that

copy of the inquiry report was not sent to the petitioner along with the provisional punishment order and therefore, the valuable right of the petitioner was infringed.

6. Mr. Majumder, learned counsel for the respondents contended that Annexure-2 to the writ petition itself shows that a copy of the inquiry report was enclosed with the provisional punishment order. In their counter affidavit respondents taken a stand that the copy of the inquiry report was sent along with the provisional punishment order.

7. On perusal of the memorandum of appeal (Annexure-4 to the writ petition) submitted by the petitioner before respondent No. 3 we find that no plea was taken by the petitioner in the appeal that the copy of the inquiry report was not sent to him along with the provisional order of punishment. The petitioner admitted that he received the copy of provisional punishment order but he did not submit any representation against the provisional punishment order. By submitting a representation he would take the plea that he did not receive the copy of the inquiry report. It is, therefore, evident that a copy of the inquiry report along with the provisional punishment order was sent to the petitioner and therefore the petitioner did not take any plea even at the time of filing appeal before respondent No. 3 that he did not receive copy of the inquiry report and hence, this plea of the petitioner merits no consideration at all.

8. From the pleadings of the petitioner itself it is clear that the petitioner received several communications from the respondents to join his duties and he also received the memo of disciplinary proceeding but he did not participate in the proceeding. He received the provisional order of punishment but made no representation against the provisional order of punishment. When the final punishment order was passed he filed an appeal and in the appeal also he raised no point that he did not receive the inquiry report along with the provisional order of punishment. It is, therefore, clear that the petitioner willfully and deliberately remained absent from his duties and did not respond to the letters/notices given by the respondents to join his duties and also did not participate in the disciplinary proceeding. The argument that he could not understand the meaning of notices given by the respondents, because of his lack of proper literacy has no merit for consideration since English is the official language and even the petitioner submitted his memo of appeal before respondent No. 3 in English and he put his signature in English. This is a plea appears to have taken only to somehow justify his negligence and callousness as well as disobedience to those notices.

9. The petitioner was a member of disciplined force with uniform serving as a constable of TSR and while working as such he was supposed to remain careful to his duties but, as it appears, the petitioner did not attach any importance to his job and remained unauthorisedly absent even without giving any intimation to the authority.

10. Learned Sr. counsel Mr. Bhowmik has argued that absence from duty cannot be termed as a serious misconduct to impose punishment of removal from service and such punishment is disproportionate to the gravity of the offence.

11. While misconduct has been proved it is the disciplinary authority to decide about the punishment. The power of judicial review of decision of domestic tribunal is very limited. Once the disciplinary authority decided that the petitioner should not be retained in the service for his misconduct, the writ Court while exercising power of judicial review in our considered opinion should not interfere in the order of punishment.

12. Accordingly, we find no merit in the writ petition and the writ petition stands dismissed.

13. Parties to bear their own costs.