
(2000) 03 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 178 of 1991

Tapas Lal Banik

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Tripura State Rifles (Recruitment) Rules, 1984 — Rule 15, 15(2), 15(3)
Tripura State Rifles Act, 1983 — Section 10

Citation : (2000) 2 GLT 351

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : S. Deb, for the Appellant; U.B. Saha and D.C. Nath, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—The issue involved in this writ petition pertains to an order under Rule 15(3) of the Tripura State Rifles (Recruitment) Rules, 1984 whereby the Petitioner, Tapas Lai Banik, was discharged from the services of the Tripura State Rifles.

2. The Petitioner was appointed in the 1st Battalion of the Tripura State Rifles as a Rifleman by an order dated 22nd April, 1985 issued by the Commandant, 1st Battalion of the Tripura State Rifles (TSR in short) and while working as such, he was served with the impugned notice/order dated 4th September, 1968(Annexure-1) which is reproduced below:

ORDER

1. In pursuance of the provision to Rule 15(3) of Tripura State Rifles (Recruitment) rules, 1984 No. 85010839 Rfn Tapas Lal Banik of "D" Coy of this unit is discharged from service with effect from 04 Sept. 88 (F.N.) He shall be entitled to claim a sum equivalent to the amount of his pay plus allowances in lieu of one month notice at the same rates at which he was drawing immediately

before his discharge from service.

2. Character assessed at the time of discharge not satisfactory.

Commandant 1 BN. Tripura State Rifles.

The Petitioner has assailed the aforesaid order as being arbitrary, discriminatory and malafide.

The State/Respondents submitted their affidavit and stated that the order of discharge of the Petitioner was a pure and simple order of termination of a probationer. The Respondents also denied and malice or malafide in passing the aforesaid order.

2. Mr. S. Deb, learned Counsel for the Petitioner, submitted that though the impugned order was innocuously worded, in fact the said order was passed as a measure of punishment. The learned Counsel for the Petitioner submitted that misconduct was the foundation and instead of holding an enquiry as to the misconduct the authority in a most illegal fashion, resorted to Rule 15(3) of the Tripura State Rifles(Recruitment) Rules, 1984 (the Rules, 1984 in short). Mr. Deb, the learned Counsel for the Petitioner, drew my attention to some of the assertions made by the Respondents in their affidavit, more particularly to the averments made in paragraphs Nos. 8 and 10 of the affidavit and reiterated that the order was a discriminatory order and that the same suffered from double jeopardy. In support of his contentions, Mr. Deb, the learned Counsel for the Petitioner placed reliance on the following decisions of the Supreme Court:

1. Parshotam Lal Dhingra Vs. Union of India (UOI),
2. The State of Bihar Vs. Gopi Kishore Prasad,
3. Jagdish Mitter Vs. The Union of India (UOI),
4. Samsher Singh Vs. State of Punjab and Another,
5. (1984) 2 SCC 639 Anoop Jaiswal v. Govt. of India and Anr.
6. Manorma Verma (SMT) vs. The State of Bihar and Ors., 1994 Supp. (3) SCC 671

On the other hand, Mr UB Saha, the learned Govt. Advocate, appearing on behalf of State/Respondent submitted that the impugned order was passed strictly in conformity with Rule 15(3) of the Rules, 1984. The learned Govt. Advocate submitted that the Petitioner was on probation and before confirmation his service was assessed and thereafter terminated from service. The learned Govt. Advocate submitted that the allegation of malafide levelled against the order of termination by the Petitioner is wholly unfounded. The learned Govt. Advocate in support of his contentions referred to the following decisions of this Court as well as the Supreme Court:

1. (1992) 2 GLR 336, Manoharlal Ray v. Union of India and Ors.

2. (1991) 1 SCC 671, State of U.P. and Anr. v. Kaushal Kishore Sukla;
3. (1993) 1 GLR 310, Y. Nimai Singh v. State of Manipur and Ors.
4. State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others,
5. Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another,

3. Rule 15 of the Rules, 1984 relates to the period of service. As per the said rule, a member of the Tripura State Rifles shall be on probation for a period of three years during which period he shall be liable to discharge at any time on one month's notice or on payment of one month's salary in lieu of the same under the orders of the appointing authority. At the end of the period of probation for three years, a member of the TSR may be confirmed and if he is not confirmed, he may be considered for being, declared as a quasi-permanent member by the appointing authority (Sub-rule 2). And if a member is not declared confirmed or quasi-permanent under Sub-rule (2) of Rule 15 of the Rules, 1984 as the case may be, by the appointing authority, he shall continue to be deemed as a temporary member of the TSR, liable to discharge at any time on one month's notice or on payment of one month's salary in lieu thereof under the orders of his appointing authority (Sub-rule 3 of Rule 15 of the Rules, 1984).

In the instant case relating to the service of the Petitioner, the period of three years was over, but the Petitioner neither confirmed nor declared as a quasi-permanent member under Sub-rule (2) of Rule 15 of the Rules, 1984 and therefore, the Petitioner continued to be deemed as a temporary member of the TSR. The authority while exercising its power under Rule 15(3) of the rules, undoubtedly took note of some of the facts as mentioned in paragraphs 8 and 10 of the affidavit-in-opposition filed by the Respondent, wherein it was stated that the Petitioner was asked by the company commander to fetch a water bottle during FPET that was to be conducted on 19.8.88 morning. But the Petitioner not only refused to do so, but also used insubordinate language against his superior officer and also tried to assault the superior officer. The Petitioner was thereafter taken to the Ordinary's room of the Commandant. It was further stated that the Petitioner was confined to quarter Guard for fifteen days with effect from 20.8.88 to 3.9.88 for committing an offence under Sections 10(e) and (f) of the Tripura State Rifles Act, 1983. Taking note of all these aspects of the matter, the authority decided that retention of the Petitioner in the Force would adversely affect the discipline of the Battalion.

4. Whether taking note of all the aforesaid factors, the exercise of the powers under Rule 15(3) of the Rules, 1984 by the authority can be invalidated? Unless it can be concluded from the materials on record that the misconduct of the Petitioner was the foundation of his termination, the order of termination impugned in this proceeding, cannot be faulted.

In *Madan Gopal Vs. State of Punjab*, Shah, J. as he then was, observed that there was no distinction between cases where services of a temporary employee are terminated and where a probationer is discharged. The extent and content of an order of termination/discharge was further dealt with by the Supreme Court in *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd.* and *Another*, where the Supreme Court surveyed the law from *Purushottam Dhingra*(*supra*) onwards. The court in that connection referred to the law laid down in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, The Court in the aforesaid case dealt with the concept of "foundation" and "motive" in the following paragraphs:

...a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and the nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used," and as to motive:

On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.

In *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, the Supreme Court had the occasion to deliberate on this aspect of the matter, wherein the apex court observed as follows:

If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held, no finding was arrived at and the employer was not inclined to conduct an inquiry but, at the same time, did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not be foundation and the simple order of termination would be valid.

5. The factors leading to the impugned order of discharge, as mentioned above,

may be the motive which impelled the authority to terminate the services of the Petitioner. The Petitioner was, after all, serving in a disciplined force. The offence under Sections 10(e) and (f) of the Act, 1983 is "more heinous offences" which are punishable with imprisonment for a term not less than seven years and/or with fine. The Petitioner was found guilty of the said offence and for that he was inflicted with imprisonment. The authority took note of all these aspects and thought it fit to terminate the Petitioner from service.

6. Mr S Deb (Jr.) the learned Counsel for the Petitioner, lastly referring to the words contained in paragraphs two of the impugned order, submitted that the impugned order was stigmatic in content. In the said order, it was mentioned that the character assessed at the time of discharge as not satisfactory. A "stigma" is something that detracts from the character or reputation of a person, a mark, sign etc. Webster's New World Dictionary. According to "The Legal Thesuras" by Burton, "stigma" indicates blemish, defect, discharge, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning of "stigma" as a mark or label indicating a deviation from a norm. The Supreme Court in the case of The State of Orissa and Another Vs. Ram Narayan Das, held that "unsatisfactory work and conduct" in the termination order, would not amount to stigma. In my view, in the instant case, the authority assessed the overall performance of the Petitioner/incumbent at the time of discharge as "not satisfactory". The aforesaid remark in the impugned order cannot thus be faulted as "stigmatic" which may affect the Petitioner in future employment. On overall consideration of the fact situations of the case, I have no hesitation to hold that the order of discharge is a pure and simple order of termination and it does not in any manner put a stigma on the Petitioner, viz, Tapas Lal Banik. Even if it could be construed as such, I think it fit to observe and declare that the said order of discharge shall not put a stigma on the Petitioner which may affect him in his future and other employments). No impropriety or infirmity is discernible in the said order (which is impugned in this proceeding) requiring interference from this Court.

The writ petition, accordingly, is liable to be dismissed and the same is dismissed. There shall, however, be no order as to costs.