

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 17.01.2008

+ **WP(C) No.1770/2001**

Mukesh Chand Bhatt
S/o Sh. Anand Mani Bhatt,
R/o A-2/A-180, Janakpuri,
New Delhi – 110 058

.... Petitioner

Versus

1. Director General of Police,
Indo Tibetan Border Police Force,
CGO Complex, Lodhi Road,
New Delhi
2. Dy. Inspector General,
Jammu and Kashmir,
Indo Tibetan Boarder Police Force,
Pantha Chowk, Srinagar,
Jammu and Kashmir
3. Commandant,
22nd Battalion, Indo Tibetan
Border Police Force,
Through the DIG,
Indo Tibetan Border Police Force,
Pantha Chowk, Srinagar,
Jammu and Kashmir
4. The Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi

.... Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Shiva Kumar Sinha with Mr.Arun
Dhiman, Advocate

For the respondents : Ms.Maneesha Dhir, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K.SIKRI, J (ORAL)

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1. CM No. 820/2008 in WP(C) No.1770/2001

By this application petitioner wants to bring on record the additional documents which are also filed along with the application. Learned counsel for the respondent has no objection. This application is accordingly allowed. CM stands disposed of.

2. WP(C) No.1770/2001

The petitioner herein who was serving in the Indo Tibetan Border Police Force as HC/CM was served with the charge memo dated 21.07.2000, levelling following charges :

“CHARGE NO. 1

ABSENCE FROM CAMP WITHOUT LEAVE ITBPF ACT
SEC-21(a)

That he absented himself on 09.06.2000 from Tac HQRS 22nd Bn., ITB Police Quazigund, without prior permission of competent authority.

CHARGE NO. 2

TO CONSUME OF LIQUOR ON DUTY

ITBPF ACT SEC.-29

That he consumed liquor on 09.06.2000 when he was on duty and found intoxication.

CHARGE NO. 3

VIOLATION OF GOOD ORDER AND DISCIPLINE

ITBPF ACT SEC.-43

That he absented himself from Tac. Hqrs, 22nd Bn., ITB Police Camp, without any prior permission, reached Y.K. Pura and consumed liquor.”

3. Enquiry was held on 26.07.2000 on the basis of which charges were held to be proved and petitioner was dismissed from service vide order dated 26.07.2000. It was also directed that all medals and decorations held by him stood withdrawn. Petitioner’s statutory appeal was also dismissed by the appellate authority vide memo dated 30.10.2000. The petitioner preferred

revision petition which met the same fate as it also came to be dismissed by the concerned authority vide memorandum dated 11.12.2000. In these circumstances, after exhausting the departmental remedies petitioner has filed the present petition under Article 226 of the Constitution of India challenging the aforesaid orders. As is clear from the charge memo reproduced above the main charge against the petitioner was that he had absented himself on 09.06.2000 from his unit and it was found that he had consumed liquor on that day while he was on duty and had reached another camp in the said state of affairs without any prior permission. Being absent from duty is an offence under the ITBPF Act, 1992 and is so stipulated under Section 21 (a) of the Act, punishable with imprisonment upto three years. Intoxication is also treated as offence under Section 29 of the said Act and maximum sentence of six years is provided for the same. Likewise violation of good order and discipline is made offence under Section 43 of the Act punishable with maximum punishment upto seven years. In the first blush, when a person is charged with such an offence of consuming liquor on duty and thereafter absenting himself and also entering into some other

camp without permission, it appears to be a serious offence. However, in order to appreciate the culpability of the petitioner one will have to deal into the past medical history of the petitioner as set out in detail in the writ petition and about which there is no controversy. The petitioner was detected as case of "Chronic Alcohol Dependence Syndrome' some time in December 1997. He was given treatment from time to time. In the counter affidavit filed by the respondent itself it is mentioned that he was initially admitted to unit hospital TPT Battalion w.e.f. 20.12.1997 and remained in the said hospital till 20.01.1998. On this basis he was categorized as medical category CEE (T) for six months. Thereafter he was again admitted to hospital w.e.f. 09.07.1998 and remained indoor patient till 31.07.1998 when he got treatment for the aforesaid disease. He was again brought before the medical board which was convened on 01.09.1998 and was placed under low medical category CEE (T) for six months w.e.f. 31.07.1998. On 17.02.1999 the petitioner was again admitted in the hospital and was there till 28.02.1999. On 24.03.1999 the petitioner was issued memo pointing out that the Psychiatrist had again declared him as a case of 'Chronic Alcohol Dependence

Syndrome' and had recommended his categorization as medical category – 'EEE' and had found him unsuitable for duty with the following recommendation that “he should be presented before invalidation medical board under an escort”. In this memo it was accordingly stated that an invalidation medical board had been constituted and was further stipulated that “until its proceedings are not complete you have to be kept under escort on the recommendation of the Psychiatrist”. It is further made aware to the petitioner that “till the aforesaid proceeding is completed you will not be placed in the valley”.

4. It is clear from the above that even as on March 1999, as per the respondents, the petitioner was suffering from the aforesaid illness and he was to be produced before the invalidation medical board for easing out of service. Such medical board was convened on 30.03.1999. The medical board after examining the petitioner and going through the relevant documents found that “deaddiction was not given to him”. The opinion of the invalidation medical board was that large number of chronic alcoholics became normal after “proper deaddiction”.

The invalidation medical board therefore did not recommend the boarding out of the petitioner and instead opined as under :-

“Therefore the board opines that the individual to be given a chance for proper deaddiction in a good and reputed deaddiction centre and he should be observed for six months after admission at deaddiction centre until further evaluation keeping in view of the above findings and management be is placed in CEE(P) for 2 years w.e.f. 30.03.1999 with six monthly review.”

5. This invalidation board consisted of three senior doctors and only doctors could understand such a problem of alcoholic nature of the petitioner and whether it was curable or not. Two things which are discernible from the opinion are, firstly, that the petitioner was not, upto now, given deaddiction which was required; and secondly, if proper deaddiction would have been given there were good chances of the petitioner getting cured as what generally happens in such cases. In these circumstances the medical board had recommended that the petitioner be given a chance for proper deaddiction in a good and reputed deaddiction centre and should be observed for six months after admission in the said centre. The allegation of the petitioner in the present writ petition is that he was not sent to any

deaddiction centre. Even in the counter affidavit there is no such averment. Though in para six of the counter affidavit, it is admitted that the petitioner was examined by the medical board on 30.03.1999 and was placed in low medical category for two years and six months. And it further states that the treatment was given to the petitioner in the unit, under the direct and close supervision of qualified physician of the unit where he was posted. Even with a limited knowledge we can say, without any fear of contradiction, that such a treatment would not commensurate with the opinion of the medical board whereby the petitioner was advised to be sent to a proper deaddiction centre which clearly means that he was to be treated by the experts in the deaddiction programmes.

6. The petitioner has also produced on record the prescription given by medical doctor viz. Dr. A. Tripathi, CMO posted at 22nd Battalion ITBP which was given on 05.07.2000 as per which the petitioner was undergoing detoxification and deaddiction treatment. His condition as on that date is described in the said prescription, which is termed as “refer sheet”, in the following words :

“Presented with severe pain epigastrium with radiation to back 'illegible' following alcoholic 'illegible' on 05.07.2000. Relieved by H2 Antagonists with PPI. In view of old history of alcohol dependence acute pancreatitis 'illegible' with acute exacerbation.”

7. In view of the aforesaid condition the doctor had further advised that the petitioner needed detailed work at PGI for the same. He referred the petitioner to Medical Specialist, Base Hospital, Ram Garh for treatment / opinion. What follows from the above is that even in July 2000 the petitioner was undergoing treatment for detoxification and deaddiction at the unit where he was posted and was not sent to any Specialist Deaddiction Centre. One can thus infer that the petitioner had not been cured till July 2000.

8. In this back drop we have to test the validity of charge sheet dated 21.07.2000 as per which the aforesaid act is imputed upon him which allegedly happens on 09.06.2000. Obviously even on 09.06.2000 the petitioner was suffering from the said syndrome.

9. Learned counsel for the petitioner referred to Medical Jurisprudence which explains the nature of symptom of such

disease, its effect and also the treatment which is required, It would be relevant to extract therefrom the portion which discusses the aforesaid aspect of the disease with which the petitioner was suffering at the relevant time. It signifies that a patient who suffers from such a syndrome develops dipsomania, an irresistible desire to take large amounts of alcohol until they become almost unconscious from its effect which means that the patient would keep on drinking till he becomes unconscious. It further states that there is some psychological basis of some distressing event in the patient's past life that is generally responsible for this condition. It is not even, in the treatment, possible to withdraw the patient from consuming alcohol as sudden withdrawal can result into withdrawal symptoms which are marked by anxiety, reaction, confusion and hallucinations and even delirium and convulsions. It is further stated that there are tremors, profound sweating, hyperthermia, tachycardia with labile blood pressure.

10. It is for this reason, we pointed out above that a particular expertise is required to treat such patients if such a patient is to be deaddicted. The doctor treating such patients would go into

the past history and would try to find out the psychological basis which led into this disease and the treatment would be more psychological than medicinal, though medicines are also required.

11. Alcohol Dependence Syndrome is one of the most common psychiatric illnesses found in Armed Forces. And since many of them have relapses, the Authority concerned sometimes become pessimistic about the prognosis and tend to think that there is no point in treating Alcohol Dependence Syndrome. Keeping the above paradigm in mind, the study was conducted by Lt Col P Sarkar, Brig S Sudarsanan, Maj S Nath to see the outcome of the standard treatment given in military set up, in India (Lt Col P Sarkar, Brig S Sudarsanan, Maj S Nath, "Outcome of Treatment of Alcohol Dependence Syndrome Patients in Military Psychiatry Set Up" (2004) 60 *Medical Journal Armed Forces India* 247).The result was contrary to a prevailing belief that these patients do not respond much to treatment. It showed that two third of the patients improved, out of which one third were abstinent at the time of review. This study is likely to encourage the doctors, patients and administrative authorities to seek treatment of

patients suffering from Alcohol Dependence Syndrome as treatment definitely helps many of them. The discussion as well as the conclusion of the study be taken note of, and reads as under:

“Some of us harbour a pessimistic view about the outcome of treatment of Alcohol Dependence patients. Some times we tend to think it is useless to treat this group of patients. This is because quite a number of times we find patients coming back in relapses. These relapses are apparently more in number than those of illnesses like Schizophrenia and Mood Disorders. Also, there are some Alcohol Dependent patients who repeatedly have relapses compared to other Alcohol Dependent patients and we tend to remember this group only, as they become regular visitors and some times this creates a false impression about the prognosis of the illness. We also tend to think that it is a self created illness and it is not unusual that we develop negative counter-transference towards this group of patients. The results show that 2/3rd of the patients improved, out of which 1/3rd were found abstinent and 1/3rd improved partially in that there was no longer any impairment of socio-occupational performance though they continued to drink, but in moderation only. 1/3rd of the patients had relapses at any point of time. The result has shown that the chances of relapse decreased with subsequent reviews. This is an important finding. It shows that with repeated exposure to treatment during reviews, there is chance of further improvement. Though in the 4th review the figure came to 32.9%, we must remember that this group consists of patients reviewed after two years and above and had more number of chronic cases who had repeated relapses as most of the patients who remained relapse free in initial reviews

were already declared fit by the psychiatrists and did not reach up to the 4th review. Even with more of chronic patients in the 4th review, the percentage of relapse was still much less than the first review. In addition, the result has shown that the percentage of people remaining abstinent increased with subsequent reviews. This again shows that with repeated exposure to treatment during the reviews, chances of remaining abstinent improve. We have to keep in mind that many patients had improved completely during this period and made fit and were not followed up till two years. With remaining patients, who were more towards chronic side, percentage of patients abstaining is encouraging.

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The study helps us to understand the treatment response of Alcohol Dependence Syndrome patients. We feel that if two third patients responded to treatment, it is a great achievement.

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To conclude, we think that all authorities should be encouraged to detect such patients and to send them for psychiatric help, because it definitely helps.”

12. Several studies have shown the efficacy of motivation (Zhang AY, Harmon JA, Werkner J, et al., “Impact of motivation for change on severity of alcohol use by patients with severe & persistent mental illness” (2004) 65 *Journal of Studies on Alcohol* 392), family therapy (Landau J, Stanton MD, Brinkman-Sull D, et al., “Outcomes with ARISE approach to engaging reluctant drug

and alcohol dependent individuals in treatment” (2004) 30 American Journal of Drug and Alcohol Abuse 711; Gruber KJ, Fleetwood TW, “In-home continuing care services for substance use affected families” (2004) 39 Substance Use & Misuse (Journal) 1379), group therapy (Mcnally AM, Palfai TP, “Brief group alcohol interventions with college students: examining motivational components” (2003) 33 *Journal of Drug Education* 159) and alcohol anonymous (Pagano ME, Friend KB, Tonigan JS, et al., “Helping other alcoholics in alcoholics anonymous & drinking outcome: findings from project MATCH” (2004) 65 *Journal of Studies on Alcohol* 766; McCrady BS, Epstein EE, Kahler CW, “Alcoholics anonymous and relapse prevention as maintenance strategies after conjoint behavioural alcohol treatment for men: 18-month outcomes” (2004) 72 *Journal of Consulting & Clinical Psychology* 870) in the treatment of alcoholism, but the long term prognosis of alcohol dependence in the armed forces at best is guarded as shown in the study discussed above.

13. When we understand the condition of the petitioner in the aforesaid perspective, who was a patient of alcoholic syndrome

and for whom taking alcohol was an irresistible desire. Thus, charging such a person for the alleged offence of consuming alcohol is adding insult to the disease with which the petitioner was suffering therefrom. Instead of adopting humane approach and trying to treat petitioner properly by sending him to PGI or any other well known and established hospital, it is adding insult to the injury by charging him for this offence.

14. Therefore, even if it is presumed that petitioner has consumed liquor on 09.06.2000 and stayed into some other camp which is also treated as being absented from duty, it should not have been treated as misconduct. We, therefore, are of the opinion that very basis of serving such a charge sheet upon the petitioner is uncalled for. At this stage, we may also point out that learned counsel for the petitioner has made attempt to challenge the validity of the enquiry held against him on number of grounds. In the first instance it is mentioned that no defence assistance was provided to him as none was available in the said camp. It is also mentioned that the petitioner was provided with a friend, however, due to last minute change there was another friend provided to him on the evening of 25.07.2000 and the

petitioner did not even had sufficient time to explain to him his disease and the past history as narrated above. And thus, resulting in the infraction of principles of natural justice as the friend of the petitioner was not able to defend the petitioner properly. It is also contended that even record of enquiry was not given to the petitioner and was tried to serve upon him on the evening of 26.07.2000. The learned counsel for the petitioner also argued that in such a case even the punishment imposed is shockingly disproportionate as the petitioner is dismissed from service on the basis of charge which was an act which can be treated as consequence of his disease and therefore such a punishment should not be awarded to him depriving him of his livelihood. It is also submitted that when the petitioner pointed out the aforesaid facts and pleaded against the quantum of punishment, the appellate authority rejected his contention pointing out the past conduct of the petitioner though no such past conduct was stated in the charge sheet and thus, the order of the appellate authority suffers from this lacuna. He further submitted that on the plea of petitioner's past medical history, the appellate authority has remarked that the petitioner was

dismissed from service on the basis of indiscipline and not on medical reports and in this way a very casual approach is given by the revisionary authority to the petitioner's medical reports. In view of our opinion that the act attributed to the petitioner in the circumstances in which petitioner was placed and suffering from aforesaid disease could not have been treated as misconduct or violation of Sections 21(a), 29 and 43 of ITBPF Act, it is not necessary to go into these arguments though we may note that learned counsel for the respondents had refuted these arguments and submitted that the enquiry was conducted in accordance with rules and there was no infraction of principles of natural justice. Before we part with we may take note of the statement made by learned counsel for the petitioner that after his dismissal petitioner took treatment at AIIMS and is now fully cured. He has family with two children and therefore he is competent to discharge the duties.

15. In the consequence of aforesaid discussion, we allow this writ petition. Consequently we make rule absolute and set aside orders dated 26.07.2000, 30.10.2000, 11.12.2000 passed by the disciplinary authority, appellate authority and revisionary

authority, respectively. The petitioner shall accordingly be reinstated in service with 25% of the backwages.

A.K. SIKRI, J.

January 17, 2008
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J.M. MALIK, J.