

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.124 of 2021

Sri Biswajit Patari, S/o Sri Tripurendra Mohan Patari, Vill-Kanchan Nagar,
P.O. Santirbazar, P.S. Santirbazar, District – South Tripura.

..... Appellant(s)

V E R S U S

1. The State of Tripura, represented by the Secretary, Department of Home,
New Capital Complex, Government of Tripura, Agartala.

2. The Director General of Police, Government of Tripura, Police
Headquarter, Fire Brigade Chowmohani, Agartala, P.S. West Agartala,
District-West Tripura.

3. The Deputy Inspector General of Police (AP), (Admn & TRP), Govt. of
Tripura, A.D. Nagar, P.O. A.D. Nagar, District – West Tripura.

4. The Commandant, 12th Bn, TSR (IR-VIII), Vill- Chakmaghat, P.O. & P.S.
Teliamura, District-Khowai, Pin-799206.

5. The Assistant Commandant, 12th Bn, TSR (IR-VIII), Vill- Chakmaghat, P.O
& P.S. Teliamura, District-Khowai, Pin-799206.

.....Respondent(s)

For Appellant(s) : Mr. D.C. Roy, Advocate.
Mr. A.K. Pal, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.,
Ms. N.C. Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and Judgment : 19th April, 2023.

Whether fit for reporting : YES.

JUDGMENT & ORDER(ORAL)

Heard Mr. A.K Pal, learned counsel for the appellant and Mr.
Mangal Debbarma, learned Additional Government Advocate for the State-
respondents.

[2] The order impugned in the writ petition reads as under :

“09.“In view of the above and in pursuance of Rule-12(i)(a) of the TSCS(Leave) (11th Amendment) Rules, 2013 and Finance Department, Govt. of Tripura Notification Vide No.F.1(1)-FIN(GD)/86 dated the 20th June, 2013 & Govt. of Tripura, GA(P&T) Dept. memorandum No.F.20(1)-GA (P&T)/18 (Part) dated 12.12.2018 communicated by the AIGP (HQr), Tripura vide letter No. 33918-62(3)/F.RV(47)/PHQ/09 (Part-II) dated 21.12.2018, No.92020635 Hav (GD) Biswajit Patari of ‘B’ Coy, 12th Bn TSR(IR-VIII) is **deemed to have resigned from Govt. service** w.e.f. 11.01.2019 (AN) and accordingly his name is struck off from the strength of 12th Bn TSR (IR-VIII) **w.e.f. 12.01.2019 (FN).**

10. His period of OSL w.e.f.20.09.2016(FN) to 11.01.2019 (AN) i.e. **844 (eight hundred forty four)** days is treated as “**Dies-Non**”.

11. Any Government lose/outstanding dues lying pending against him will be adjusted from his entitlement.”

The appellant was deemed to have resigned from Government service *with effect from* 11th January, 2019 and the period of absence between 20th September, 2016 to 11th January, 2019 was treated as Dies-Non.

[3] Facts which are not in dispute are as under :

Appellant, a Rifleman GD under Tripura State Rifle (TSR) Service appointed on 27th July, 1992 proceeded on leave from 11th August, 2016 to 9th September, 2016 when he was posted as Havildar GD. He was supposed to join duty on 20th September, 2016 but continued on unauthorized absence in spite of notices issued upon him on 30th September, 2016, 28th October, 2016 and 10th December, 2016 for resumption of duty.

These notices remained un-replied. One more notice was issued upon him under registered cover post with A/D on 7th March, 2017 asking him to join duty immediately failing which disciplinary action would be taken against him. The authority issued a memo of charge on 24th March 2017 thereafter and gave 15 days time to the appellant to submit his reply. Acknowledgement receipt of the said charge-sheet was received by the department but the department chose not to proceed further with the departmental inquiry. Further, communications were sent to the petitioner /appellant for resumption of duty which again remained un-replied. Again notice was sent on 8th August, 2018 to his home address and published in the local newspapers also asking him to report for duty within 15 days. He was also asked to state whether he desired to be heard in person against the charge-sheet dated 24th March, 2017 failing which departmental proceeding would be initiated under CCS (Classification, Control & Appeal) Rules as also under Tripura State Civil Services (Leave) Rules, 1986 as amended in the year 2013. Thereafter, the appellant informed the department through a letter sent through speed post that he would join duty within 15 days. But even thereafter for several months he did not join that precipitated the impugned action.

[4] Learned Single Judge dealt with the contention of the parties, took note of the relevant material facts and also the provisions of the Tripura State Civil Services (Leave) Rules, 1986. Since the appellant had remained

absent without authorization for a period of one year in terms of Rule 12(i)(a) of the Leave Rules as amended, the order impugned in the writ petition amounting to deemed resignation from Government service was upheld. Learned Single Judge having dealt with the relevant provisions of the Rules and the facts on record also found that the case of the petitioner/appellant was not similar to ***Krushnakant B. Parmar versus Union of India and another reported in Civil Appeal No.2106 of 2012***, relied upon by the petitioner. In case of ***Krushnakant B. Parmar***, the precipitate action was penal in nature on account of unauthorized absence. In the present case, the employer chose not to proceed with the disciplinary proceedings but instead chose to invoke the Tripura State Civil Services (Leave) Rules, 1986 as the petitioner/appellant who was an employee of the disciplined force had remained absent without authorization for a period of one year and more.

[5] Learned counsel for the appellant has laboured to impress upon us that the absence of the appellant was not unauthorized as he kept on sending representations/letters for extension of leave; (ii) appellant did not get proper opportunity to defend himself in the departmental proceedings which was continued *ex-parte* and culminated in the impugned order of deemed resignation; (iii) the order passed under the Leave Rules though is treated as deemed resignation from Government service but essentially it amounts to dismissal from service and is thus penal in nature without

following the procedure prescribed in the law; (iv) learned counsel for the appellant has also placed reliance on the judgment of *Krushnakant B. Parmar versus Union of India and another reported in Civil Appeal No.2106 of 2012* in support of the submission that the absence of the appellant was not amounting to misconduct as he was suffering from serious illness and undergoing treatment. On these specific grounds the impugned judgment has been assailed.

[6] Mr. Mangal Debbarma, learned counsel for the State submits that the employer has chosen to invoke the Leave Rules since the appellant was absent from service without authorization despite being a member of the disciplined force for a period of one year and more. Deemed resignation under the Leave Rules would amount to forfeiture of past services and therefore, he would not be entitled to any retiral benefits also. He also submits that the impugned order as affirmed by the learned Single Judge does not suffer from any error on facts or operates as stigma upon the appellant. The employer had an option either to continue with the departmental proceedings or to invoke the Leave Rules. As such, no infirmity can be found in the impugned order as affirmed by the learned Single Judge.

[7] We have given anxious consideration to the submission of learned counsel for the parties, taken note of the relevant material facts

borne out from the records. We have also perused the impugned judgment and gone through the decision of the Apex Court in case of **Krushnakant B. Parmar** relied upon by the petitioner. The chronology of facts recorded at the outset, are not in dispute. Though learned counsel for the appellant has endeavoured to point out that the representations of the appellant for extension of leave were not heeded to and as such his absence was not unauthorized but on the one hand neither are those representations referred to in the writ records nor the employee/appellant chose to approach any Court of law for relief at the appropriate point of time to seek redressal. As the chronology of facts disclose the employer issued several notices upon the appellant to join duty and even after framing of the memo of charge, gave an opportunity to the appellant to resume duty. The employer issued notice upon the appellant clearly informing him that on failure to join duty, departmental action would be taken under the CCS(CCA) Rules as also under Tripura State Civil Services (Leave) Rules, 1986 as amended in the year 2013. The employer had the option to proceed departmentally against the employee or to invoke the Tripura State Civil Services (Leave) Rules, 1986. The employer chose to adopt the second course by invoking the Leave Rules. Rule 12(i)(a) as inserted by the amendment of 2013. The Leave Rules provides that a Government servant shall be deemed to have resigned from service if (a) is absent without authorization for a period of one year; or (b) remains absent from duty for a continuous period of five years, with or

without leave; or (c) continues on foreign service beyond the period approved by the Government. Proviso to this sub-Rule also provides that a reasonable opportunity to explain the reason for such absence or continuation on Foreign Service shall be given to the Government servant before the said Rule is invoked. In the case of the present appellant, reasonable opportunity was extended to him and prior notices for joining duty were given upon him earlier at the time of framing of charge. The department again informed the petitioner that either disciplinary action under CCS(CCA) Rules would be taken as also under Tripura State Civil Services (Leave) Rules, 1986 as amended in the year 2013 would be invoked against him. As such, the learned Single Judge did not find any infirmity in the impugned action.

[8] We have also gone through the decision of ***Krushnakant B. Parmar*** relied upon by learned counsel for the appellant. The facts of the said case do not apply to the case of the present appellant as in the case of ***Krushnakant B. Parmar*** the issue was whether the unauthorized absence of the employee amounted to willful misconduct to proceed against him departmentally. The present case is distinguishable as the department has not proceeded against the employee on a charge of willful absence rather chosen to invoke the Leave Rules under which a Government servant shall be deemed to have resigned from Government service having remained in unauthorized absence for a period of one year. Such deemed resignation

does not amount to stigma. The period of absence has been treated as Dies-Non.

[9] In view of the reasons recorded hereinabove and upon consideration of submission of learned counsel for the parties and the conspectus of relevant facts and circumstances, we do not find any infirmity in the impugned judgment. Accordingly, the appeal is dismissed.

[10] Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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