

HIGH COURT OF TRIPURA
AGARTALA

WA 131 OF 2021

Shri Mahendra Singh Chabarwal,
S/o Shri A. Nandaram, resident of Village:Kalota,
P.O. Kalota, PS: Khetri, District:Jhunjunu,
State:Rajasthan.

....Appellant.

Vrs.

1. The State of Tripura,

Represented by the Chief Secretary to the Department of Home,
Government of Tripura, having his office at New Secretariat Complex,
Agartala, P.O. Kunjaban, P.S. West Agartala, Sub Division-Sadar,
District-West Tripura, Pin-799006.

2. The Director General of Police,

Government of Tripura, having his office at Police Head Quarters,
Agartala, P.O. Head Post Office, P.S. West Agartala, Sub Division-Sadar,
District West Tripura, Pin-799001.

3. The Deputy Inspector General of Police, AP (ADM & TRG),
Government of Tripura, having his office at Police Head Quarters,
Agartala, P.O. Head Post Office, P.S. West Agartala, Sub Division-Sadar,
District-West Tripura, Pin-799001.

4. The Commandant, 13th Battalion (IR-IX),
Tripura State Rifles, Subhash Nagar, kanchanpur,
P.O. & P.S.-Kanchanpur, Sub-Division Kanchanpur,
District-North Tripura, Pin-799102.

....Respondents.

Present:

For the appellant : Mr. Sankar Lodh, Advocate.

For the respondents : Mr. Mangal Debbarma, Addl. G.A.

Date of hearing & date of delivery of judgment : **19.04.2023**

Whether fit for reporting : Yes

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

JUDGMENT & ORDER

[Aparesh Kr. Singh, CJ]

Heard learned counsel for the parties.

2. By the impugned judgment dated 22nd June, 2020, the learned writ court has refused to interfere in the order dated 4th March, 2017 i.e. of punishment of removal from service imposed upon the petitioner/appellant herein as affirmed in appeal vide order dated 22nd August, 2017. In the facts of the present case as are borne out from the records and chronologically recorded in the impugned judgment as well which are not in dispute, the appellant an enrolled follower in the Tripura State Rifles absented from duty after 30 days of his application for earned leave from 29th July 2012 and remained absent for close to four years before he resumed duty on 20th October, 2016. It is not in dispute that the earned leave of the appellant had not been sanctioned prior to his movement on leave on 29th July, 2012. According to the appellant, he had left to attend to his old mother and a disabled child on an urgent phone call received from his near relative that his wife had left the house. The departmental proceeding initiated vide memo of Charge dated 20th October, 2016 ended up in the order of removal from service. The appellant participated in the inquiry proceedings and the copy of the inquiry report was also served upon him to

make his reply. He also submitted his response. The writ petitioner questioned the impugned punishment *inter alia* on the grounds that for the same alleged misconduct, a punishable offence under Section 11(m) of the Tripura State Rifles Act, 1983 (for short, the Act) is made out as such no departmental proceeding could have been initiated. He also took the plea of breach of principles of natural justice as he was denied proper opportunity to defend himself. The petitioner/appellant also relied upon Rule 14(18) of the CCS(CCA) Rules which according to him were violated since at the end of the inquiry the circumstances adverse to him were not put to question to the delinquent. The appellant also took a plea that the appellate order was non-speaking and did not deal with the grounds and contentions raised by the petitioner. The learned writ court dealt with each of these contentions of the appellant as under:

“[6] The material on record clearly suggests that the petitioner while working as an Enrolled Follower, suddenly left the head-quarter on 29.7.2012. Even if, it is accepted that before leaving the headquarter the petitioner had applied for earned leave and under the circumstances he could not have awaited for leave being sanctioned, the fact remains that he did not rejoin the duty after the completion of the period of thirty days, nor applied for extension of leave. He resumed duties only on 20th October, 2016. This incidentally happened to be the date of issuance of the departmental charge sheet. Thus, for a period in excess of four years, the petitioner remained absent from duty without sanctioned leave and without even intimation to the department. For such misconduct, the petitioner was served a charge sheet alleging that his unauthorised absence from duty was an act prejudicial to good order and discipline of the force.

[7] The petitioner did not file any reply to the charge sheet. A departmental inquiry was conducted. The department examined

witnesses before the Inquiry Officer. The charge was duly established. The petitioner did not put up any defence why he had remained absent from duty without leave. In such a background, I do not find that the disciplinary authority committed any error in imposing a major punishment of removal from service. One may recall, the petitioner was a member of a disciplined force. His absence from duty for a period in excess of four years without sanctioned leave and without intimation to the department, was clearly an act of gross misconduct. The petitioner did not offer any explanation or excuse for his absence.

[8] The contention that absence from duty without justification being a punishable offence in terms of Section 11(m) of the Act and, therefore, no departmental action can be taken against the delinquent, cannot be accepted. Section 10 of the Act falls under the Chapter Offences and Punishments. Section 10 defines major heinous offences. Section 11 which also falls in the same Chapter defines less heinous offences. Clause (m) of Section 11 of the Act reads as under:

“(m) absents himself without leave, or without sufficient cause overstays leave granted to him; or”

[9] Section 12 of the said Act which also falls under the same Chapter pertains to departmental punishments. Sub-Section (1) of Section provides that the Commandant or any authority as may be prescribed may impose on the member of the Rifles, one or more of the following punishments for disobedience, negligence in duty, remissness in discharge of any duty or other misconduct which is prejudicial to good order in discipline of the Rifles. This section prescribes major as well as minor punishments. Clause (e) of major punishments pertains to removal from service.

[10] The above noted provisions in the said Act, thus revolved around the punishments that can be imposed on a member of the Rifles upon being convicted for any of the offences specified in Section 10 and 11 of the Act. These provisions do not cover or encompass each and every act or consequence of misconduct in discharge of the duties which are governed independently under the service disciplined and conduct rules. Section 12 of the Act as noted, prescribes major and minor punishments that can be imposed departmentally for proved misconduct. The contention that the absence from duty without leave and sufficient cause being one of the less heinous offences, for any such act, no departmental proceedings can be instituted is wholly erroneous.

[11] Punishment for commission of offences prescribed under Sections 10 and 11 of the said Act is a different consequence from departmental action that can be taken against a member of the Rifles for

alleged misconduct. As noted, Section 12 of the said Act prescribes a range of punishments, minor as well as major. That the Commandant or the prescribed authority may impose on a member of the Rifle for any misconduct.

[12] Though the petitioner has alleged breach of natural justice in conducting the inquiry, no specific instances are cited, none established. The respondents have filed an affidavit stating that the petitioner did not file a reply to the charge sheet and did not engage a Defence Assistant. He was, however, given full opportunity to cross-examine witnesses and produce his own evidence.

[13] It is true that Sub-rule (18) of Rule 14 of CCS CCA Rules requires an Inquiry Officer to question the delinquent on the circumstances adverse to him if he has not examined himself during the inquiry. It is not clear whether in specific terms this requirement was fulfilled in the present case or not. However, the question is, should the departmental action be set aside in facts of the present case? The material on record would show that admittedly the petitioner had remained absent without leave and without intimation to the department for more than four years. The petitioner was a member of the disciplined force. In response to the charge sheet or during the course of the departmental inquiry, the petitioner offered no plausible explanation for his unduly long unauthorised absence from duty. His averments that his wife suddenly left his matrimonial home abandoning his aged mother and disabled child had not been brought on record. Even if the petitioner was correct, absence without leave for more than four years cannot be explained under any circumstances. Lack of strict compliance with a requirement of Sub-rule (18) of Rule 14 of the CCS CCA Rules has thus not resulted into any prejudice to the petitioner. The entire departmental action, therefore, cannot be set aside only on this ground.

[14] It is true that the appellate order is rather brief. However, in facts of the present case, no useful purpose would be served in remanding the proceedings before the appellate authority. Even otherwise, the appellate authority was not required to give detail reasons and findings to conquer with the disciplined authority. In facts of the present case, there is hardly any possibility of deviating from the action taken by the disciplinary authority.

[15] In the result, no case for interference is made out. The petition is dismissed. Pending application(s), if any, also stands disposed of."

3. Before us, learned counsel for the appellant has reiterated the grounds taken before the writ court and also submitted that the impugned punishment is disproportionate to the alleged misconduct. It is submitted that the specific contention raised at para 20 of the writ petition that the delinquent was not allowed opportunity to cross-examine the departmental witnesses has not been specifically denied in the counter affidavit. It is also urged that no record of the inquiry proceedings in the form of order sheet has been maintained.

4. In support of this submission, learned counsel for the appellant has relied upon a case of *Anil Kumar Das Vrs. Senior Superintendent of Post Offices, Kamrup Division, Gauhati*, reported in *1969 AIR (Gau) 1999*. He submits that failure to comply the provision of Rule 14(18) this has prejudiced the delinquent from properly defending himself. Learned counsel for the appellant has also relied upon a decision of this court in the case of *Sri Sahajya Mani Jamatia Vrs. The State of Tripura & Ors.* in *WP(C) No.619 of 2017*, judgment dated 3rd March, 2020 where in a case of an alleged unauthorised absence from duty of a similarly placed Rifleman under Tripura State Rifles, the learned writ court modified the punishment as punishment of dismissal from service to withholding of two increments with cumulative effect as it was disproportionate to the established misconduct. He further submits that the case of the present petitioner may

also be remanded to the disciplinary authority on the quantum of punishment as removal from service for unauthorised absence is disproportionate to the alleged misconduct and shocking the conscience of the court. Learned counsel for the appellant has also relied upon a decision of the apex court in the case of ***Yasodhar Kamat Vrs. Director General, Border Security Force and Ors.***, reported in ***2020 SCC OnLine SC 134***. The apex court in a challenge arising out from the Division Bench judgment of Patna High Court whereunder the dismissal of the appellant was set aside and the proceedings were remitted to the Director General of BSF on the quantum of punishment, proceeded to observe that the imposition of penalty of dismissal would be disproportionate having regard to the material which has emerged from the record. The appellant should be treated as having been discharged from service with effect from the date on which he completes pensionable service of twenty years but he won't be entitled to any back wages between the date on which he was originally dismissed and the date on which he completes the requirement of pensionable service.

Learned counsel for the appellant submits that the present appellant was appointed in the year 2007 and if the punishment is modified, he would at least be entitled to pensionary benefits after completion of the

minimum qualifying years for pension. Based on this submission interference has been prayed for.

5. Learned counsel for the State-respondents has strongly contested the submission of learned counsel for the appellant. He submits that the learned Single Judge has duly considered the entire grounds of challenge to the impugned punishment in the conspectus of facts and chronology of events borne out from the record. Learned Single Judge has after due consideration refused to interfere in the matter since no infirmity in the conduct of departmental proceedings was made out. As such, the appeal is without merit and deserves to be dismissed.

6. On consideration of the rival submission of the parties and the material facts placed on record, the copy of the inquiry report, the order of the disciplinary authority dated 04.03.2017, the order of the appellate authority dated 22.08.2017 and the provisions of the CCS(CCA) Rules under which the impugned punishment has been imposed upon the petitioner/appellant, we do not find any infirmity in the judgment of the learned Single Judge as each of the contentions of the appellant have been properly dealt with. Apart from what has been held by the learned Single Judge, one of the contentions of the appellant that no proper opportunity to cross-examine the departmental witnesses was granted to him during inquiry, are adequately answered by reading of the inquiry report where the

disciplinary authority in the final order dated 04.03.2017 has made the following observations.

“AND WHEREAS, in reply against the provisional order for major penalty, the charged official has submitted a representation in black and white to the undersigned on 04.03.2017 with stating that he has confessed his guilty and during his period of willful absent his whereabouts he could not explained and now he want to dispose the instant DP at the earliest. But he failed to produce any supporting documents in support of his willful absent w.e.f.29.07.2012 at 1800 hrs to 20.10.2016(FN) as well as his representation dated 04.03.2017.”

7. The copy of the representation to the inquiry report is not placed on record but the Inquiry Officer has clearly observed that the representation of the delinquent was to the effect that he has confessed his guilt during the period of willful absence and could not explain his whereabouts. He had also failed to produce any supporting document in support of his willful absence from 29th July 2012 at 1800 hours to 20th October,2016 (FN) as well as his representation dated 4th March, 2017. As such, the novel ground now being taken before the writ court or in appeal that he was denied opportunity to cross examine the departmental witnesses is clearly not made out. Had it been so, the appellant could have at the first instance while submitting his reply to the Inquiry report duly objected to the conduct of inquiry.

8. The plea raised in respect of non-compliance of Sub-rule 18 of Rule 14 of CCS(CCA) Rules by the appellant also has been squarely dealt with by the learned Single Judge at paragraph 13 of the impugned judgment which records that lack of strict compliance of the above Rules has not resulted into any prejudice to the petitioner as the petitioner had no plausible explanation for his unduly long unauthorised absence from duty from 29th July, 2012 till he resumed his duties on 20th October, 2016, the date on which the memo of charge was issued upon him. Learned counsel for the appellant has placed reliance on the case of *Sahajyamani Jamatia (supra)*. However, a perusal of the judgment dated 3rd March, 2020 rendered in the case of *Jamatia (supra)* shows that in the said case the absence was for a brief period from 19th July, 2013 till 23rd September, 2013 and from 22nd October, 2013 till the date of issuance of the memo of charge-sheet on 20th December, 2013 alleging gross misconduct. In the said case, a punishment of dismissal from service was imposed for such period of absence from duty which the learned writ court found disproportionate. Accordingly, the punishment was modified to withholding of 2(two) increments with cumulative effect without interfering the period of dies non.

9. The case of *Yasodhar Kamat (supra)* relied upon by the learned counsel for the appellant is of no help as it would appear from a

reading of para 7 of the judgment of the apex court that the observations and directions made thereunder were in the peculiar facts and circumstances of the case i.e. under Article 142 of the Constitution of India. In the said case also, the absence of a BSF employee was of mere few days between 1st March, 2007 and 4th April 2007. We have also dealt with the contention of the petitioner regarding the denial of proper opportunity and as such, we are of the view that the decision in the case of **Anil Kumar Das** (*supra*) relied upon by learned counsel for the appellant relating to maintenance of an order sheet of departmental proceeding also does not help the case of the present appellant.

10. A perusal of the inquiry report and the order of dismissal show that the appellant delinquent had duly participated in the departmental proceeding but had no plausible explanation for his long unauthorised absence. As such, we do not find any ground made out for interference in the impugned judgment. The writ appeal is accordingly dismissed.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ