

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. 459 of 2020

Sri Swapan Chakraborty

son of late Krishnapada Chakraborty, resident of
Krishnanagar, Pragati Road, P.O. Agartala, P.S. West Agartala,
District- West Tripura

... APPELLANT

(Petitioner in the writ petition)

Versus

1. The State of Tripura

represented by the Secretary to the Government of Tripura,
Home Department, having his office at New Secretariat
Complex, Gurkhabasti, P.O. Kunjaban, P.S. East Agartala,
District- West Tripura, PIN-799006

2. The Commandant

Home Guard Organization, having his office at Agartala, P.O.
Agartala, P.S. East Agartala, District- West Tripura

... RESPONDENTS

(Respondents in the writ petition)

For Appellant(s)	:	Mr. Somik Deb, Sr. Advocate Mr. K. Debnath, Advocate
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA
Date of hearing & delivery of judgment	:	22.03.2023
Whether fit for reporting	:	Yes / No

HON'BLE THE CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

22/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr.
K. Debnath, learned counsel for the appellant. Also heard Mr. M.
Debbarma, learned Additional GA appearing for the respondent-
State.

2. This appeal has been filed by the appellant assailing the
judgment and order passed by a learned Single Judge dated

05.08.2020 in WP(C) no. 368 of 2016 dismissing the writ petition filed by the petitioner, the appellants herein.

3. Briefly stated, while was engaged as Home Guard under the disposal of the respondents, the petitioner went on leave unauthorisedly leaving the station for some political purpose. The respondents issued notice dated 20.06.2005 upon the petitioner to which the petitioner had submitted his reply on 05.07.2005. Disciplinary proceeding was initiated against him. Thereafter, the respondent no. 2 by an order on 20.11.2005 had passed a provisional order striking off the name of the petitioner from the strength of Home Guards Association. The petitioner had submitted his reply on 30.11.2005, but the respondent no. 2 by order dated 19.12.2005 struck off the name of the petitioner from the strength of Home Guards' Association. Thereafter, the petitioner filed a writ petition before this court and a learned single Judge of this Court by order dated 12.02.2014 disposed of the writ petition directing the respondents to furnish a copy of the enquiry report and statement of witnesses to the petitioner. The petitioner was furnished with the copy of the enquiry report and he submitted his reply but, the respondent no. 2 by order dated 19.04.2014 did not accept the reply of the petitioner, and by order dated 24.05.2014 proposed to strike off the name of the petitioner from the Rolls of the Home Guard Organization.

Thereafter, the respondent no. 2 by order dated 09.06.2014 dismissed the petitioner from the Home Guards' Organization. Feeling aggrieved, the appellant had preferred a second round of litigation which has been filed as WP(C) 368 of 2016, and the learned single Judge by its order dated 05.08.2020 had dismissed the said writ petition. Being aggrieved, the petitioner had preferred this writ appeal.

4. Mr. Deb, learned senior counsel appearing for the petitioner has submitted that punishment imposed upon the petitioner is disproportionate and he urged this court only for directing the respondents to release the pensionary benefits of the petitioner so that he can survive. Mr. Deb, learned senior counsel has finally urged to set-aside the order dated 05.08.2020 passed by a learned single Judge of this court keeping in mind that the petitioner had travelled to Hyderabad in regards his treatment but not to attend any political agenda.

5. Learned GA has fairly submitted that findings of the learned single Judge in its order dated 05.08.2020 is valid and no interference is called for since all the allegations against the petitioner had been well proved.

6. We have perused the record and also the judgment of the learned single Judge.

7. From the record, it is evident that the petitioner availed unauthorized leave. It is not in dispute that a disciplinary proceeding was initiated against the petitioner and the inquiring authority had come to a conclusion that the petitioner had travelled to Hyderabad to take part in political activities and the charges against the petitioner has been well proved. The petitioner submitted his sick report but he did not produce any medical certificate from recognized Medical Officer. He only obtained a medical certificate from State Ayurvedic Hospital on 04.03.2004 wherein he was advised to take complete bed rest from 04.03.2004 to 04.04.2004, but did not submit it to the authority. From the enquiry report it is evident that the petitioner went on leave on 04.03.2004 and when the order to submit the medical certificate was issued to him, the same could not be served since the petitioner was not available at his residence. The enquiry report further reveals that the petitioner alongwith two other persons boarded train from Gauhati to Vishakapattanam on 17.03.2004 and during return boarded train from Viskakapattanam on 21.03.2004. The train number and the berth numbers of the petitioner and other two persons have also been disclosed in the enquiry report. It is also revealed that the petitioner had travelled for Guwahati by a travelling agency on 17.03.2004. The enquiry report also discloses the number and

name of the bus by which he had travelled alongwith the seat numbers and the persons who escorted him. It is well established from the enquiry report that inspite the petitioner was in bed rest from 04.03.2004 till 04.04.2004, but during that period he had travelled to other State without prior permission of the authority and also suppressing the truth of his journey to the authority. The petitioner was repeatedly requested by the authority to submit his explanation regarding the show-cause notice issued upon him, but consistently the petitioner had taken a stand that he never travelled outside Tripura though it has been reportedly established that the petitioner had travelled outside Tripura during his sick period, as per the alleged medical document, suppressing the fact to his authority. .

8. Sub-section 6-B of Section 6 of the Bombay Home Guards Act, 1947, reads as follows:

“(6-B). Punishment of members of neglect of duty, etc. –

(1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of Home Guards or to obey such any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant shall also have the authority to dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(1-A) Notwithstanding any thing contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if, in the opinion of the Commandant, the services of such member are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(2) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (1), he shall record such order or cause the same to be recorded, together with the reasons therefore and a note of the inquiry made in writing and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

xxx”

9. In view of the aforesaid discussion, the unauthorised absence on the part of the petitioner and the reasons thereof had been well established, which is a gross misconduct and, hence, the order of punishment passed by the respondent-authorities cannot be labeled as disproportionate nor can it be labeled as unreasonably excessive. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition being W.P. (C) No. 368 of 2016. Thus, we see no reason to interfere with the order passed by the learned Single Judge. Hence, there is no substance in this Appeal, the same is, therefore, dismissed.

Interim application(s), if any, also stand disposed of.

JUDGE

CHIEF JUSTICE (ACTING)



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