

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(WA) No. 4 of 2023

With WA No. 7 of 2023

Date of order: 23.03.2023

Sachin Kumar

vs

Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr B. Pathak, Adv.

For the Respondents : Dr N. Mozika, DSG with
Ms A. Pradhan, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In view of the good grounds shown, the delay of about 98 days in preferring the appeal is condoned and the appeal is taken on board.

2. The appeal is taken up for immediate consideration.

3. The present exercise is nothing but the appellant seeking to take a chance upon the order of dismissal from service being upheld in the domestic appellate forum and the writ court not finding any ground to interfere therewith. Two principal grounds have been taken by the appellant: that the order of dismissal from service was not passed by an

authorised officer of the Assam Rifles entitled to do so in accordance with the prevailing rules; and, the punishment is so grossly disproportionate to the unauthorised absence that the appellant was charged with, that it would shock the conscience of the Court.

4. The appellant does not complain of the procedure adopted in course of the disciplinary proceedings to be unfair. It is evident that the appellant was provided adequate opportunity to present his defence. The appellant's response to the charge-sheet filed against him for his unauthorised absence of about 322 days was that domestic problems kept him back. There does not appear to have been any evidence of the nature of the domestic problem, even if it be assumed that it was possible at all to justify such long unexplained absence because of any domestic issue. In any event, it was up to the appellant to seek permission or keep the employer informed. The appellant appears not to have chosen such course of action.

5. Upon the inquiry being completed and the Commandant, who presided over a Summary Assam Rifles Court, as the disciplinary authority agreeing with the inquiry report and finding that the appellant had been absent from his position for a long time without any explanation or intimation, the severe punishment of dismissal from service was passed. In a disciplined force as a Central Armed Police like the Assam

Rifles, unauthorised leave has to be frowned upon. The offence was such that it invited the severe punishment and the disciplinary authority has furnished adequate reasons for meting out the same to the appellant herein.

6. The appellant carried an appeal to the designated Inspector-General of Assam Rifles. It is evident from the appellate order that the Inspector-General applied his independent mind to the matters in issue and was satisfied that appropriate considerations were taken into account before the punishment was handed out to the appellant. In any event, when an order is upheld by an appellate authority, little reasons need to be furnished as the appellate authority may only indicate that it agrees with the view taken by the lower forum.

7. It is evident from the rules that an Inspector-General in Assam Rifles is authorised to pass an order of dismissal from service. Even if there may have been a slight anomaly in the Commandant passing an order of dismissal when the Commandant may not have had due authority therefor. The procedure to be adopted in such circumstances is for the disciplinary authority who does not possess the power to pass the severe punishment that the case calls for, is to refer the matter to the appropriate authority who does; and, upon the appropriate authority endorsing the view of the junior officer, the severe punishment order is formally made.

In this case, since the appellant herein carried an appeal from the order passed by the disciplinary authority to an officer who was otherwise authorised by the service rules to pass an order for dismissal from service, the appellant's objection in such regard no longer holds any water.

8. At any rate, it is submitted on behalf of Assam Rifles that a Summary Assam Rifles Court is authorised to pass a severe punishment of dismissal from service and the disciplinary order in this case was not passed by the Commandant in his personal capacity but by the Commandant in course of presiding over the SARC.

9. Since the appellant was absent from his post for a period of 322 days without furnishing any explanation or intimation, the punishment that the appellant has suffered as a member of a disciplined force does not shock the conscience of the Court. It is evident from the judgment and order impugned dated October 12, 2022 that the relevant considerations were taken into account and the writ court appropriately found that the limited scope of judicial review available did not permit any interference.

10. WA No. 7 of 2023 is dismissed.

11. MC(WA) No. 4 of 2023 is disposed of.

12. Since the appellant has suffered a severe punishment, no costs are imposed for the further misadventure that the appellant undertook in this Court.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
23.03.2023
"Sylvana PS"

