

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.20/2023 in
WA No.25/2023

Date of order: 14.08.2023

Rakesh Kumar Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Appellant : Mr. M. Chanda, Adv with
Mr. K. Abinav, Adv
Mr. M.L. Nongpiur, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv

i) Whether approved for reporting in Law journals etc.: Yes

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 194 days in preferring the appeal is condoned and the appeal is taken on record.

2. The appeal is taken up for immediate consideration.

3. The appellant herein has suffered a punishment of compulsory retirement passed by the General Assam Rifles Court for the appellant having overstayed his leave without sufficient cause for a period of 439

days. At the relevant point of time, the appellant was an Assistant Commandant (MO) in the force.

4. The primary grounds canvassed by the appellant in the writ petition carried against the order of punishment and the appellate order rejecting the appellant's appeal were that the principles of natural justice were not followed in the sense that no copy of the inquiry report or no finding of the disciplinary authority agreeing with the inquiry report was forwarded to the appellant. It is apparent on a plain reading of the writ petition that the approach of the appellant herein was as in disciplinary proceedings conducted in civilian organisations where an inquiry officer is appointed before whom the delinquent has a chance to rebut the evidence against him following which the inquiry officer's report is dealt with by the disciplinary authority, whereupon, the disciplinary authority issues a notice to the delinquent, upon satisfying himself of the evidence against the delinquent, to consider whether to proceed to award some form of punishment to the delinquent.

5. In such disciplinary proceedings, the delinquent has a chance to adduce evidence to counter the charges levelled against him before the inquiry officer and, again, has a chance to persuade the disciplinary authority to not agree with the findings of the inquiry officer to the

extent they are against the delinquent. Both at the inquiry stage and at the consideration for punishment stage, reasons are required to be recorded and the delinquent is served the inquiry report and the reasoned order of punishment.

6. In the ordinary disciplinary proceedings in any civilian government organisation, the disciplinary authority, upon receipt of the report of the inquiry officer, has several courses of action open. First, the disciplinary authority may altogether disagree with the inquiry officer's report and find that the evidence on the charges to be completely lacking. In such a case, the disciplinary authority does not have to forward the inquiry report to the delinquent, but he merely closes the disciplinary proceedings and informs the concerned employee accordingly. Secondly, the disciplinary authority may, prima facie, agree with some of the findings and, prima facie, disagree with some others and may require the inquiry officer to reconsider the matter upon notice to the delinquent. Thirdly, the disciplinary authority may, prima facie, agree with some of the findings and, to such extent, call upon the delinquent to show-cause why he should not be punished in such regard. Finally, the disciplinary authority may, prima facie, agree completely with the inquiry officer's findings and refer the inquiry report to the

delinquent as to why the findings should not be upheld and the delinquent appropriately dealt with.

7. However, in a disciplined force as any Central Armed Police Force, the procedure for conducting disciplinary proceedings is laid down in the statute governing such force or the rules framed under the governing statute. It is not necessary that every report or every finding be communicated to the delinquent. There are checks and balances to ensure that the findings rendered are confirmed by a superior official. The emphasis is on discipline being maintained in a disciplined force and, as long as the delinquent has been heard on the charges and findings are rendered which are confirmed by a superior official, the procedural integrity is maintained.

8. The discussion in this case need not have been as long as it is, since the appellant herein was charged with unexplained absence from duty for 439 days and his justification therefor was the apparent illness of his mother. On the face of it, the matter appears to be so absurd that it can be hardly expected of a disciplined force to accept such excuse, unless exceptional circumstances are cited.

9. It must also be said at this stage, that the scope of judicial review is limited here to ascertain the procedural fairness and an

enquiry as to whether the delinquent in this case had an opportunity to defend himself. This Court, in exercise of its jurisdiction under Article 226 of the Constitution, does not sit in an appeal over the decision of the disciplinary authority and does not go into the sufficiency of the reasons in such regard. It is the decision-making process, rather than the decision itself, which is reviewed as to its reasonableness.

10. A tentative charge-sheet was served on the appellant on August 31, 2013. He was charged under Section 26 of the Assam Rifles Act, 2006 for unexplained absence from his post. Two instances of absence without justification of 28 days and 439 days were cited against him. There is no dispute that the appellant herein was aware of the charge-sheet and participated in the proceedings, initially before a court of inquiry and, finally, before a General Assam Rifles Court. Indeed, the appellant herein availed of every opportunity available under the statute and the rules framed thereunder to furnish an explanation and get away with the same. After the conclusion of the matter before the Assam Rifles Court, the appellant applied for mitigation in terms of Rule 115 of the Assam Rifles Rules, 2010. He also preferred an appeal before the Director-General against the promulgation of punishment that was

issued on January 5, 2015. In course of his appeal to the DGAR, the substantial ground is captured in the following paragraph:

“(v) The disciplinary proceedings did not take the cognizance of compelling circumstances and justification submitted by me for my absence and sentenced me to a harsh punishment of compulsory retirement. The quantum of punishment in this case exceeds the natural justice.”

11. What cannot be missed is the complete failure on the part of the appellant herein to complain of any procedural irregularity or any prejudice suffered by the appellant as a consequence thereof. Though at this stage in appeal against the writ court's order some specious grounds have been sought to be raised as to the reasons for the punishment not being furnished to the appellant, the appellant was aware of his rights in accordance with the statute and the rules governing him and, at the time of his domestic appeal, the appellant did not raise such grounds. As a consequence, the appellant is estopped at this stage from complaining of any procedural irregularity or the reasons for his punishment not being furnished to him.

12. In any event, even upon a trial being conducted by an Assam Rifles Court, there does not appear to be any specific provision in the statute or in the rules for furnishing the reasons to the delinquent. It appears that reasons ought to be recorded by a Force Court for the

purpose of the confirming authority being persuaded to confirm the punishment proposed or recommended. There is no dispute that the confirming authority in this case duly confirmed the punishment recommended by the Force Court and the nature of such punishment was communicated to the appellant on January 5, 2015 which prompted him to prefer the domestic appeal on or about February 2, 2015.

13. One of the grounds that has been urged by the appellant is that the punishment was not commensurate with the nature of the offence that he was charged with. It is the further case of the appellant that not only was the punishment harsh, but also that such a punishment may not have been permissible since Section 26 of the Act, under which the appellant was charged and which provides for a punishment that may extend up to three years in prison.

14. On behalf of the respondents, copious references have been made to the statute and the rules framed thereunder, including Section 57 of the Act and the scale of punishment set down in sub-section (1) thereof. To boot, Section 57(2) of the Act provides that the descending order of punishment, in terms of its harshness, is indicated in sub-section (1) of the provision. Since the punishment of compulsory retirement in this case is found at Section 57(1)(d), it is a lesser form of

punishment that a term of imprisonment for three years which is covered by clause (b) of the same provision. Section 58 of the Act permits an Assam Rifles Court, on convicting a person, inter alia, under Section 26 of the Act to award the particular punishment with which the offence is stated in the relevant provision or, in lieu thereof, any of the punishments lower in scale set out in Section 57 of the Act. Several provisions from the rules, including the procedure to be followed for recording evidence by a court of inquiry and the procedure to be followed by an Assam Rifles Court have been placed from the rules. There does not appear to be any merit in the vague and general refrain of the appellant that the prescribed procedure was not followed or that any prejudice has been occasioned to the appellant as a consequence thereof.

15. Apropos the appellant's assertion that he was not given the relevant documents for him to either defend himself or understand why he has been punished to the extent that he has been, the respondents refer to a receipt of October 17, 2014, a copy whereof appears at page 119 of the appeal papers. It is the undeniable position from such receipt that the appellant herein was duly forwarded the inquiry report pertaining to his initial period of 28 days' absence and the subsequent

period of 439 days' absence. In addition, the summary of evidence in respect of either charge was also forwarded to the appellant and duly received by the appellant.

16. The respondents also refer to a previous occasion where the appellant was absent without justification for a further period of 450 days some time in 2007 and 2008. Though some minor punishment was suffered by the appellant for such long absence without justification, the Assam Rifles Court and the confirming authority were well within their rights to consider the general conduct of the appellant herein in habitually absenting himself from his post without sufficient cause. As a consequence, the punishment of compulsory retirement awarded to the appellant does not shock the conscience of the Court, since the appellant was employed in a disciplined force.

17. The judgment and order impugned dated December 1, 2022 has taken all relevant considerations into account. It is evident on a reading of such judgment that the primary thrust of the appellant before the writ court was that the procedure which was required to be followed in view of the judgment reported at (1993) 4 SCC 727 (*Managing Director, ECIL v. B. Karunakar*) had been breached. Since the procedure in respect of Assam Rifles is completely different and is not covered by

the CCS Rules and is, rather, laid down in its independent statute and the rules framed thereunder, the reference to the *Karunakar's* case was completely misplaced.

18. Further, as noticed above, the grounds sought to be urged in the writ petition were never canvassed in course of the domestic appeal.

19. There is no merit in the appeal and the writ court was perfectly justified in dismissing the petition and leaving the appellant to his fate.

20. WA No.25 of 2023 is dismissed.

21. Since the appellant has lost his service, he is spared the costs that he richly deserved in carrying this eminently avoidable appeal.

22. MC (WA) No.20 of 2023 is disposed of.

(H. S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
14.08.2023
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