

GAHC010117282022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4074/2022

SATISH KUMAR MISHRA
S/O SRI HARSH NARAYAN MISHRA, R/O VILL-MADHUBANI, BIHAR, P.O.-
JAYANAGAR, DIST-MADHUBANI, BIHAR, PIN-847226

VERSUS

THE UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, GRIHA MANTRALAYA, NEW DELHI, PIN-110001

2:NATIONAL TECHNICAL RESEARCH ORGANIZATION
(UNDER MINISTRY OF HOME AFFAIRS)
GOVT. OF INDIA
REPRESENTED BY THE CHAIRMAN
HEADQUARTERS BUILDING
AYA NAGAR
NEW DELHI-110047

3:THE DEPUTY DIRECTOR
NTRO
HEAD QUARTER BUILDING
AYA NAGAR
NEW DELHI-110047

4:THE DEPUTY DIRECTOR BASE UNIT NTRO
NUMALIGARH
DIST-GOLAGHAT
ASSAM
PIN-78562

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 06.06.2024

Heard Mr. I.H. Saikia, learned counsel for the petitioner and Ms. A. Gayan, learned CGC, appearing for the respondents.

2) The petitioner was awarded the punishment of compulsory retirement vide order dated 09.09.2020. The departmental appeal preferred by the petitioner was dismissed by order dated 08.01.2021. Alleging that the departmental proceeding was concluded in violation of the relevant provisions of the CCA (CCS) Rules, 1965 and that the punishment awarded to the petitioner was shockingly disproportionate to the nature of allegations made against him of allowing unrecorded entry of two women guests of a co-worker, the present writ petition has been filed under Article 226 of the Constitution of India to assail both the said orders.

3) In brief, the case of the petitioner is that at the relevant time, he was working as a Junior Field Assistant in the National Technical Research Organisation (hereinafter referred to as NTRO for short). On an allegation that on 30.06.2019 at 15.00 hours, he and another co-worker had invited and unauthorisedly brought two women from public in NTRO campus without making entries in the IN/OUT register at Gate No.2 despite the security personnel asking them to do so, and they entertained the said women in a vacant quarter of another official, which amounted to severe indiscipline and serious breach of security of protected premises of an intelligence organization in violation of para 2(B) of NTRO Security Instructions dated 13.10.2008, and Chapter 3.1(a) of the NTRO Departmental Security Instructions, 2005 and

serious breach of personal and office decorum and conduct in violation of Rule 3(1)(iii) and Rule 3(1)(xviii) of the CCS(Conduct) Rules, 1964, a Memorandum, Article of Charges, Statement of the imputation of misconduct or misbehavior in support of article of charges, list of documents and a list of witness by whom the article of charges is proposed to be sustained were served on the petitioner.

4) The petitioner had submitted his written statement. In the meanwhile, the Inquiry Officer was appointed to inquire into the charges. On conclusion of the Inquiry, the Inquiry Officer had submitted his report dated 11.06.2020 to the Chairman, Disciplinary Authority. As per the Inquiry Report, it was held that it is beyond any reasonable doubt that both the charged officers invited and unauthorisedly brought inside the NTRO campus two women from public without making entries in the IN/OUT register at the gate and thereafter proceeded to entertain those women in the vacant quarter of another official in his absence without even seeking his permission and accordingly, the charges were held to be proved.

5) The specific finding by the Inquiry Officer was to the effect that on 30.06.2019 (Sunday) at around 1500 hours, the petitioner and his other co-officer reached the gate of the residential premises of Base Unit Numaligarh and the petitioner informed the ITBP Guard on duty that his two women guests are coming. The two officers then proceeded to take the women inside the premises. When asked by the ITBP Guard to make entries in the register, the petitioner had stated that as they were permanent staff of NTRO, there is no requirement of making entries. Reportedly, the Guard insisted on making entries and tried to deny entry for 10 minutes but they did not make entries and took the women inside. Then there was a change of guard and the replacement guard was briefed about the incident, who reported it to NTRO Security Officer. The Security Officer went to the quarter of the petitioner and his other co-

officer and found them locked. Then he observed that the nearby quarter of another person, who was away for some official course was locked from inside and two pairs of ladies slippers were outside. Then the matter was reported to the Station In-Charge and then the persons named therein approached the said quarter and after ringing the door-bell and after knocking at the door, when they opened the door, they found the petitioner and his other co-officer in separate rooms with the women. Thereafter, statements of both women were recorded and they were allowed to leave.

6) Vide Memorandum dated 25.06.2020, a copy of the Inquiry Report dated 11.06.2020 was served on the petitioner and the other charged officer and they were put to notice about the common departmental proceedings for a major punishment under the CCS (CCA) Rules 1965, and they were directed to submit their written representations, if any, on the Inquiry Report within 15 days of the receipt of the memorandum.

7) The petitioner had submitted his written representation, and his wife also had submitted a representation addressed to the Office of the Prime Minister, requesting for a re-inquiry. Thereafter, the Chairman, NTRO, by an order dated 09.09.2020, held that the petitioner had rendered himself unfit for continuation in Government service and accordingly, in exercise of power vested under rule 15 of the CCS (CCA) Rules, 1965, ordered imposition of penalty of "compulsory retirement" on him with immediate effect. Consequential order dated 17.09.2020 was passed and the petitioner was compulsorily retired from service with effect from 09.09.2020 (A/N).

8) The petitioner had preferred a departmental appeal dated 01.10.2020. The copy of the said appeal memorandum is not annexed to the writ petition, but the presentation of such appeal is admitted in the appellate

order dated 08.01.2021, passed by the Deputy Director, NTRO. By the said order, considering all the aspects, the appeal was dismissed and the order of compulsory retirement of the petitioner was affirmed.

9) It may be mentioned that the co-officer, who was also facing charges similar to the petitioner was also awarded the same punishment of compulsory retirement.

10) In support of the challenge to the orders impugned herein, the learned counsel for the petitioner had strenuously submitted that the petitioner was a victim of circumstances that was created by his co-officer. It was submitted that the petitioner had not tried to hide anything and came clean by admitting his mistake and assured the authorities that he would not be repeating such mistake. Moreover, he had assigned reason that as his own quarter was not good, therefore, he had taken the female guests to a quarter of another co-officer, who gone for a official course, as the keys was kept with him. Hence, it was submitted that the punishment of compulsory retirement was shockingly disproportionate. In support of his submissions, he had placed reliance on the decision of the Supreme Court of India in the case of (i) *Colour-Chem Ltd. v. A.L. Alaspurkar & Ors.*, (1998) 3 SCC 192; and (ii) *Management of Hindustan Machine Tools Ltd. Bangalore v. Mohd. Usman*, (1984) 1 SCC 152; and the decision of the Division Bench of this Court in the case of *Mecken Singh N. Marak v. State of Meghalaya*, 2006 Supp GLT 316.

11) Per contra, the learned CGC has submitted that the petitioner could not point out any flaw in the conduct of the disciplinary inquiry/proceeding held against the petitioner. It was submitted that the organization where the petitioner was serving is a defence organization and thus, the premises are sensitive and the area is a protected area. Accordingly, by relying

on the decision of the Supreme Court of India in the case of (i) *S. Sreesanth v. Board of Control for Cricket in India & Ors.*, (2019) 4 SCC 660, and (ii) *R.R. Parekh v. High Court of Gujarat & Anr.*, (2016) 14 SCC 1, it was submitted that this writ petition is liable to be dismissed.

12) Carefully perused the materials on record, including the Report of the Inquiry Officer against the petitioner as well as the other charged officer.

13) The respondents, in their affidavit-in-opposition, had specifically pleaded that NTRO is a premier Intelligence Organisation, working under direct command of the National Security Advisor. Thus, NTRO is an Intelligence Wing of the Defence establishment. Therefore, there cannot be any doubt that NTRO would be handling and processing highly confidential and very sensitive documents and data, which is required for defence purposes of the Country.

14) The petitioner has nowhere denied that there was no requirement to make entry of guests in the gate register before bringing the guests in the protected premises. Even if the petitioner has brought female guests inside the premises, the petitioner and his co-officer could not have unauthorisedly entered into the quarter of another officer with guests, without having their presence recorded at the entry gate, and without the permission either from the concerned officer or from the competent authorities.

15) Thus, in such matters, when the petitioner had breached the security requirement of his employer i.e. NTRO, by bringing guests unauthorisedly into the protected campus without making entry at the gate, despite being asked to do so by the security guard, this does not appear to be a case where the Court would substitute its views over the decision of the management of NTRO, a defence organization, to award punishment of compulsory retirement.

16) The forceful submission by the learned counsel for the petitioner that the petitioner had admitted his guilt and that the said mistake was a first mistake in the entire career of the petitioner does not appear to be an acceptable ground to hold the punishment to be disproportionate because of the nature of defence organization where the petitioner was serving. To unauthorisedly make entry in the quarter of another co-officer to entertain guests is also not excusable so as to tone down the punishment.

17) The memo of examination of the petitioner has been annexed to the affidavit-in-opposition filed by the respondents. It is seen that in his cross-examination, the petitioner has admitted that he knows about the security instructions that visitors are permitted to enter in the residential area premises after making entry in the visitor register at gate no.2.

18) Thus, the mistake, as admitted by the petitioner has the effect of knowingly flouting with the security protocol of the defence intelligence organization. Although the petitioner was not charged with breach of intelligence data, but the unauthorized entry of guests without making entry in the gate had the potential of compromising with the highly sensitive defence information.

19) In the case of *Management of Hindustan Machine Tools Ltd. Bangalore (supra)*, the Labour Court had interfered with the punishment of termination of service as disproportionate, which was not interfered with by the Supreme Court of India. The facts on which the termination was set aside and the facts based on which the said decision was rendered by the Supreme Court of India is also not available. It is not brought to the notice of the Court that the appellant organization in the said case was a defence intelligence organization. Therefore, the said case does not help the petitioner.

20) In the case of *Colour-Chem Ltd. (supra)*, the respondent therein was found sleeping by keeping the machine working without any input of raw material. The appellant organization was not a defence intelligence organization. In the said case, the order of reinstatement with 50% of back wages was not interfered by the Supreme Court of India, albeit, after further allowing reduction of percentage of back wages. Therefore, on facts, this case is dissimilar with the facts of the present case.

21) In the case of *Mecken Singh N. Marak (supra)*, the appellant therein was travelling in a bus and his service revolver was stolen with magazine. As per the evidence, the said appellant was drugged and his service revolver and magazine were stolen. Under the said facts, the punishment of dismissal from service was held to be disproportionate. Thus, on facts, this present case is distinguishable.

22) On facts, there is material on record in this case that the decision of the Inquiry Officer on the charges framed against the petitioner was wrong or perverse. The petitioner had admitted his mistake. Under those facts, the Court is unable to substitute its view with the decision of the Disciplinary Authority. The case against the petitioner was proved beyond reasonable doubt.

23) In the considered opinion of the Court, when it is a case of breach of entry protocol in a defence intelligence organization, by allowing entry of visitors without making entry of visitors in the gate, such breach has the potential of jeopardizing with the sensitive intelligence data, which the said organization may be handling. The Court cannot overlook the fact that the said defence organization is working under direct command of the National Security Advisor of the Country, which is itself indicative of the fact that the said NTRO is an important defence intelligence and research organization and therefore, if

the breach of security protocol is allowed to be diluted, it would jeopardize the security of the Country and defence preparedness of the Country.

24) Hence, the Court is not persuaded to accept the contention of the petitioner, as made in this writ petition. In light of the specific finding by the Inquiry Officer that not only the petitioner had brought two civilian females inside a high security campus without entering their particulars in the visitors register at the gate, but the said two females were entertained by the petitioner and another co-officer in the quarter of another officer by taking advantage of his absence. The Court is inclined to hold that this is not a fit and proper case to interfere with the impugned (i) order dated 09.09.2020, passed by the Disciplinary Authority, thereby awarding the punishment of compulsory retirement to the petitioner; and (ii) order dated 08.01.2021, passed by the competent authority, thereby dismissing the departmental appeal preferred by the petitioner.

25) Accordingly, this writ petition is dismissed. The parties are left to bear their own cost.

JUDGE

Comparing Assistant