



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

WP(C) No.6596 of 2014

No.8752543 NK/GD Manik Daimary,
'A' Coy, 31st Battalion of the Sashastra
Seema Bal, Gossaigaon, District: Kokrajhar
(BTAD), Assam, Son of Late Khargeshwar
Daimari, Resident of Village: Ulubari, PO:
Silkaguri under Bijni Police Station in the
district of Chirang within the State of
Assam.

.....Petitioner

-Versus-

1. The Union of India, represented by the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110001.
2. The Director General, Sashastra Seema Bal, Force Headquarters, East Block - V, R.K. Puram, New Delhi – 110066.
3. The Inspector General, Frontier Headquarters, Sashastra Seema Bal, Guwahati, Sunder Singh Bhawan, Uday Path, SPO, Zoo Road, Guwahati – 781024, Assam.
4. The Deputy Inspector General, Sector Headquarters, Sashastra Seema Bal, Bongaigaon, PO & District: Bongaigaon, Assam – 783380.

5. The Commandant, 31st Battalion, Sashastra Seema Bal, Gossaigaon, PO: Gossaigaon, District: Kokrajhar, Assam – 783360.

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. K.R. Patgiri, Advocate.

For the Respondents : Mr. R.K.D. Choudhury, Deputy Solicitor General of India.

Date of Hearing : 27.03.2024.

Date of Judgment : 27.03.2024.

JUDGMENT & ORDER

Heard Mr. K.R. Patgiri, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, representing all the respondents.

2. The petitioner has instituted the present proceedings assailing an order dated 22.03.2014 issued by the Commandant, 31st Battalion, Sashastra Seema Bal (SSB), Gossaigaon, by which he was dismissed from his services without pension invoking the provisions of Rule 21 of the Sashastra Seema Bal Rules, 2009 (for short, "2009 Rules"). The petitioner has also assailed the order dated 03.06.2014 passed by the Deputy Inspector General, Sector Headquarters, SSB, Bongaigaon, i.e. the Appellate Authority, by which the penalty as imposed upon him came to be upheld.

3. The petitioner was appointed as a Constable (G/D) on 27.03.1987 at the then Group Centre, SSB, Barpeta Road (now 15th Battalion, SSB, Bongaigaon). Thereafter, he was transferred to 16th Battalion, SSB, Kokrajhar and again transferred to 31st Battalion, SSB, Gossaigaon w.e.f. 09.04.2006. On his joining at the 31st Battalion, SSB, the petitioner was assigned to perform the duties of intelligence gathering at the location Takampur since May, 2012. The petitioner, while discharging his duties, was called to appear before the Officer-in-Charge of Kachugaon Police Station on 29.07.2013. Accordingly, the petitioner informed his superiors and proceeded to Kachugaon Police Station, as directed. It is stated that on reaching Kachugaon Police Station, the mobile phone of the petitioner was checked and the petitioner was detained for further investigation on the ground that he was in regular contact with one NDFB active cadre Philip Wary and it was alleged that he was communicating to the said NDFB cadre the information about activities and movement of security forces, battalion personnel as well as the movement of the Commandant, 31st Battalion, SSB, Gossaigaon.

4. The petitioner was arrested in connection with Kachugaon Police Station Case No.32/2013 under Sections 120(B)/ 121/121(A)/122/384/307 IPC read with Sections 15 & 16 of the Unlawful Activities (Prevention) Act, 1967. The petitioner continued to remain under detention since the date of his arrest and accordingly, vide an order dated 29.07.2013, he came to be placed under suspension by the Commandant, 31st Battalion, SSB, Gossaigaon.

5. Thereafter, the petitioner approached this Court by way of filing Bail Application No.2171/2013 and this Court, vide order dated 24.09.2013, on considering the matter, was pleased to enlarge the petitioner on bail. In the said order dated 24.09.2013, it is recorded that there is no material available in the Case Diary to implicate the petitioner under Sections 15 & 16 of the Unlawful Activities (Prevention) Act, 1967.

6. The petitioner, as directed by his superiors, rejoined his service and after such rejoining, he was issued with a notice dated 25.01.2014 intimating him that his retention in service being undesirable and he having committed an act which has the effect of compromising the security and safety of the troops, it was proposed to terminate his services by way of administrative dismissal in terms of Rule 21(2) of the 2009 Rules. The petitioner responded to the said notice vide his reply dated 29.01.2014 and denied the allegations as levelled against him and prayed that he be allowed to continue to serve the Force.

7. On consideration of the said reply as well as the findings as arrived at by the Court of Inquiry held in the matter, the Commandant, 31st Battalion, SSB, Gossaigaon, vide order dated 22.03.2014, proceeded to terminate the services of the petitioner by way of dismissal from service without pension w.e.f. 23.03.2014. The period of suspension of the petitioner as well as the period he was under police custody and judicial custody w.e.f. 29.07.2013 till 22.03.2014 was directed to be

treated as such. The petitioner being aggrieved preferred a departmental appeal before the Deputy Inspector General of the Force. The said appeal was given a consideration and vide order dated 03.06.2014, the Appellate Authority proceeded to dismiss the appeal by recording reasons. It was contended by the Appellate Authority that the charges against the petitioner were of grave nature and trial on these charges is "inexpedient and impracticable" as the witness is a NDFB insurgent and his statement cannot be recorded. Being aggrieved, the petitioner has instituted the present proceeding.

8. Mr. K.R. Patgiri, learned counsel for the petitioner, by taking this Court through the material available on record, has contended that the reason as assigned for invoking the provisions of Rule 21(2) of the 2009 Rules is clearly perverse and the authorities have resorted to the said process only to avoid holding of an inquiry when there existed no material against the petitioner. It is the contention of the learned counsel for the petitioner that the respondent authorities have not construed the provisions of the Sashastra Seema Bal Act, 2007 (for short, "2007 Act") read with the 2009 Rules in its proper perspective and accordingly the penalty as imposed upon the petitioner is unjustified and unwarranted. It is stated that the petitioner was in service since 1987 and there existed no complaint against him but for the allegation that now has been levelled against him by the Police of Kachugaon Police Station. It is contended by the petitioner that although the petitioner was placed under arrest on 29.07.2013, no charge sheet has been filed before the competent Court by the

Investigating Agency till date. Accordingly, the learned counsel for the petitioner submits that the order dated 22.03.2014 along with the order passed by the Appellate Authority in the matter on 03.06.2014 calls for interference by this Court.

9. Per contra, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India submits that the penalty as imposed upon the petitioner by invoking the provisions of Rule 21(2) of the 2009 Rules was so necessitated on account of the circumstances as existing in the case. It is submitted by Mr. Choudhury that the Court of Inquiry as held in the matter w.e.f. 09.08.2013 to 01.10.2013 against the petitioner had brought on record the misconduct committed by the petitioner of being in direct communication with an active member of NDFB, which was a proscribed outfit. It was contended by Mr. Choudhury that the Court of Inquiry had examined the petitioner and therein he had admitted to the fact that he was in contact with the said NDFB cadre. It is contended that on receipt of the said findings of the Court of Inquiry, the Commandant, 31st Battalion, SSB, vide his note dated 30.10.2013, had come to a conclusion that stern disciplinary action is to be initiated against the petitioner in terms of Rule 21(2) of the 2009 Rules. It was contended that the said opinion as rendered by the Commandant, 31st Battalion, SSB was approved by the jurisdictional Deputy Inspector General as well as the jurisdictional Inspector General vide their respective notes and basing on the said decision, as arrived in the matter, the petitioner was issued with the show cause dated 25.01.2014 and thereafter considering the explanation as provided by the

petitioner vide his communication dated 29.01.2014, the order dated 22.03.2014 came to be passed.

It is contended by Mr. Choudhury that the order dated 22.03.2014 read with the order of the Appellate Authority dated 02.06.2014 clearly brings to the forefront the reasons as existing for invoking the provisions of Rule 21(2) of the 2009 Rules against the petitioner for the purpose of dismissing the petitioner from service without pension. It is the contention of Mr. Choudhury that in the event a Force Court is to be convened in the matter against the petitioner basing on the allegations as existing against him, such a course of action would be inexpedient and impracticable inasmuch as such proceeding would require examination of the NDFB insurgent and his statement not being in a position to be recorded, the said charge against the petitioner cannot be established.

Basing on the said premises, Mr. Choudhury submits that the petitioner, on account of the grave misconduct committed by him in discharge of his duties, is not entitled to any relief from this Court and accordingly, the writ petition is required to be dismissed as being devoid of any merit.

10. I have heard the learned counsel appearing for the parties and have also considered the material brought on record.

11. It is an admitted position that the petitioner was implicated in a criminal case being Kachugaon Police Station Case No.32/2013 under Sections 120(B)/121/121(A)/122/384/307 IPC read with Sections 15 & 16 of the Unlawful Activities

(Prevention) Act, 1967 and he was placed under arrest in connection with the same on 29.07.2013. Thereafter, the petitioner was placed under suspension vide an order dated 29.07.2013 issued by the Commandant, 31st Battalion, SSB, Gossaigaon. It is also to be noted that the petitioner had instituted Bail Application No.2171/2013 before this Court and this Court vide order dated 24.09.2013 had enlarged the petitioner on bail by noticing that the Case Diary did not contain material to implicate the petitioner under Sections 15 & 16 of the Unlawful Activities (Prevention) Act, 1967.

12. On resuming his services, the petitioner was required to appear before a Court of Inquiry and the Court of Inquiry, after examining the authorities of SSB as well as the Investigating Authorities including the Additional Superintendent of Police, Kokrajhar and also on examining the documents as relevant to the purpose, had come to a conclusion that the petitioner was in direct communication with the said NDFB cadre. The conclusions and recommendation of the Court of Inquiry being relevant are extracted herein below:-

“OPINION & RECOMMENDATION OF THE COURT

After having gone through the findings of the court, the court opines as under:-

- i. In the light of the statements of relevant witnesses & the available documentary evidences, it is apparent that no.8752543 NK/GD Manik Daimary was in direct communication through his mobile no.7399501782 with mobile no.9859782444 which is reportedly used by Philip Wary who is the active member of NDFB(s) an extremist outfit.*
- ii. However it is not clear as to what information has been conveyed by No.8752543 NK/GD Manik*

Daimary to Philip Wary or the purpose/motive of his communication with the said extremist.

- iii. *The individual is not able to substantiate the reasons for being in contacted with the above person.*
- iv. *At present the matter is sub-judice & is being investigated by Kokrajhar police vide Kachugaon P.S. FIR no.32/13 u/s 120(b)/121 (a)/122/384/307 IPC r/w sec 15/16 of UA(P) Act dated 29/07/2013.”*

13. A perusal of the said recommendations of the Court of Inquiry would reveal that the Court of Inquiry had required that the matter being under investigation by the Police, the outcome of the same be awaited before taking any decision in the matter. The said recommendations of the Court of Inquiry on being placed before the Commandant, 31st Battalion, SSB, the Commandant on consideration of the matter, issued the following recommendations:-

“10. Therefore, I recommend that:

- i) *The offence is triable both by the Criminal Court and a Security Force Court as the offence is committed by Regt. No.8752543 NK/GD Manik Daimary in the course of the performance of active duty as a member of the Force.*
- ii) *As per provisions of SSB Act & Rules the case may not be claimed from Criminal Court by the Force as offence is of complicated nature.*
- iii) *The divulging of secret information to an extremist outfit is punishable under section 3 of the Official Secret Act, 1923. This kind of an act is also tarnished the image of Force and have brought dishonor to own Force. Hence, stern disciplinary action may be initiated against Regt. No.8752543 NK/GD Manik Daimary of 31 BN SSB in the terms of Rule 21(ii) of the SSB Rules 2009.”*

14. A perusal of the said recommendations as made by the Commandant does not reveal the reasons as to why the

provisions of Rule 21(2) of the 2009 Rules was resorted to in lieu of having the allegations levelled against the petitioner considered by a Force Court. On further processing of the matter, the matter came to be placed before the jurisdictional Deputy Inspector General, who on consideration of the matter, required the advice of the Judge Advocate General, Force Headquarter, SSB, New Delhi to be sought. Thereafter, the matter was placed before the jurisdictional Inspector General, Frontier Headquarter, who, on consideration of the matter, approved the opinion of the Commandant 31st Battalion to proceed for administrative termination of the services of the petitioner under Rule 21 of the 2009 Rules. The opinion as approved by the jurisdictional Inspector General, Frontier Headquarter is the opinion rendered on 30.10.2013 by the Commandant. It is again reiterated that in the opinion dated 30.10.2013, as rendered by the Commandant, 31st Battalion while opining for stern disciplinary action against the petitioner in terms of Rule 21(2) of the 2009 Rules, no reasons as to why recourse to the provisions of Rule 21(2) of the said 2009 Rules was not mandated came to be recorded.

15. Before proceeding to examine the opinion as available of the various authorities leading to termination of the services of the petitioner invoking the provisions of Rule 21(2) of the 2009 Rules, the provisions of the 2007 Act relevant to the issue arising in the present proceedings is hereby noted.

16. Section 16 of Chapter-III of the said Act of 2007 relates to offences in relation to enemy and punishable with

death. Section 16(d) mandates that in the event a subject of the Act treacherously holds correspondence with, or communicates intelligences to, the enemy, terrorist or any person in arms against the Union, shall on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned. The provision of Section 16(d) of the said Act of 2007 being relevant is extracted herein below:-

“16. Offences in relation to enemy and punishable with death. – Any person subject to this Act who commits any of the following offences, namely:-

(a)

(b)

(c) ...

(d) *treacherously holds correspondence with, or communicates intelligences to, the enemy, terrorist or any person in arms against the Union; or*

(e)

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.”

17. The allegations now levelled against the petitioner, in the view of this Court, is covered by the provisions of Section 16(d) of the said Act of 2007 and accordingly, the same is required to be considered by the Force Court. A “Force Court” means a Court referred to in Section 76 of the Act.

18. It is to be noted that Rule 18 of the 2009 Rules mandates the authority who would be empowered to impose punishment to the subjects of the act. The petitioner being an under Officer/Enrolled person, for a misconduct committed by him, the Commandant would be the appropriate authority. This

Court now would examine the provisions of Rule 21 of the 2009 Rules. The same being relevant is extracted herein below:-

“21. Termination of service of persons, other than officers on account of misconduct .— (1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him to show cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply: -

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or Force Court: or

(b) where the authority as specified in rule 18 is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the authority as specified in Rule 18 is satisfied that the trial of such a person by the Force Court is inexpedient or impracticable, but is of the opinion, that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the authority as specified in Rule 18 may withhold from disclosure any such report or portion thereof, if in his opinion, its disclosure is not in the interest of security of the state.

(3) The authority as specified in Rule 18 after considering his explanation and defence, if any, or the judgment of the criminal court, as the case may be, may dismiss or remove him from the service.

(4) All cases of dismissal or removal, under this rule, shall be reported to the Director-General.”

19. Rule 21(1) of the 2009 Rules mandates that when it is proposed to terminate the services of a person subject to the

Act other than an Officer, he shall be given an opportunity by the authority competent to dismiss or remove him to show cause in the manner specified in sub-rule (2) against such action. However, the proviso thereof provides that the said Rule would not be applicable where the service of a subject of the Act other than an Officer, is terminated on the ground of conduct which has led to his conviction by a Criminal Court or by a Force Court or where the authority as specified in Rule 18 is satisfied for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause. Further, the provisions of Rule 21(2) mandates that the authority as specified in Rule 18, after considering the reports on the misconduct of the person concerned, is satisfied that the trial of such person by the Force Court is inexpedient or impracticable, but is of the opinion, that his further retention in services is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence thereto. Thereafter, in terms of Rule 21(3), after considering the explanation and/or defence, as may be made in the matter, if any, or the judgment of the Criminal Court, as the case may be, dismiss or remove such person, not being an officer, from the service.

20. The requirement of Rule 21(2) of the 2009 Rules is for recording of a reason by the competent authority under Rule 18 that the trial of such person by the Force Court is inexpedient or impracticable along with a further opinion that the retention of such person in service is undesirable. Now referring back to the

opinion as rendered in the matter by the Commandant, who is the competent authority in the matter under Rule 18 of the 2009 Rules, it is seen that therein it was required that stern disciplinary action be initiated against the petitioner in terms of Rule 21(2) of the 2009 Rules. There is no reason recorded in the said opinion dated 30.10.2013 as to why the recourse to a Force Court is inexpedient or impracticable. The jurisdictional Inspector General, Frontier Headquarter, on consideration of the matter, had brought on record the fact that the recourse to a Force Court in the matter is inexpedient and impracticable as the prime witness/ accused is an active NDFB cadre and his attendance in the Force Court as a witness was an impossibility.

21. The said conclusion, as reached by the jurisdictional Inspector General of Police, when viewed in the light of the provisions of Section 16(d) of the 2007 Act renders such opinion to be perverse inasmuch as the provisions of Section 16(d) envisages the misconduct as alleged against the petitioner herein and the same pertains to the correspondence being made or communication of intelligence by a subject of the Act to the enemy, terrorist or any person in arms against the Union. The provision of Section 16(d) clearly mandates that in the event of such an offence being committed by a subject of the Act, he shall be tried by a Force Court. The Legislative while framing the provisions of Section 16 of the Act of 2007 mandating that commission of an offence as prescribed under Section 16(d) of the Act of 2007 would be triable by a Force Court, was not oblivious of the fact that it would be impossible on the part of the Disciplinary Authority to record the evidence

of such the enemy/terrorist or any person to whom the subject of the Act had disclosed intelligence but still required that in the event of a subject of the Act being alleged to have committed an offence as contained in Section 16(d) of the 2007 Act, he shall be tried by a Force Court.

22. In view of the express provisions of Section 16(d) of the said 2007 Act, the conclusions reached in the matter by the jurisdictional Inspector General of the Force cannot be accepted. In addition to the above, it is to be noted that the conclusion that it is inexpedient and impracticable to try the petitioner before a Force Court, is not supported by any cogent reason. The only reason assigned is that the person to whom the petitioner had divulged the intelligence including the information with regard to movement of Force being an NDFB Cadre, his presence in the inquiry cannot be ensured. Such a conclusion was reached by the authorities without taking into account the fact that a Court of Inquiry was constituted in the matter and the said Court of Inquiry had, after examination of all relevant witnesses including the witnesses from the Investigating Agency as well as on perusal of the documents, came to its conclusion of the involvement of the petitioner in the act of being in direct communication with the said NDFB Cadre.

23. It is not understood as to why if the Court of Inquiry could be conducted, a formal Force Court Inquiry could not have been initiated against the petitioner. Reliance placed upon the findings of the Court of Inquiry without complying

with the minimum requirement of the principles of natural justice by holding a Force Court in the matter is against all canons of fair play and justice. It is seen that the authorities had jumped into the conclusions that the petitioner was guilty of the grave acts of misconduct as alleged against him without proving the same in the manner as contemplated under the provisions of Section 16 of the Act of 2007. The decision to dispense with the inquiry through a Force Court cannot be rested solely on the *ipse dixit* of the concerned authority/ authorities. In the present case, the respondents other than the ground as dealt with hereinabove have not brought on record any material to show that the recourse to a Force Court would be inexpedient and impracticable, more so, when the authority who was required to arrive at such a conclusion, i.e. the Commandant under Rule 18 of the said Rules of 2009, had not recorded in his opinion any such reason for dispensing with the inquiry by the Force Court.

24. In view of the facts and circumstances narrated hereinabove, this Court is of the opinion that there exists no situation which renders holding of an inquiry by the Force Court to be not reasonably practicable. Further, this Court is of the view that the reason as recorded by the respondents towards dispensing with the inquiry by the Force Court does not merit acceptance, more so, when there exists a specific provision for trying the offence as alleged against the petitioner under the provisions of Section 16(d) of the 2007 Act, wherein it has been provided that when a subject of the Act treacherously holds correspondence with, or communicates intelligence to, the

enemy, terrorist or any person in arms against the Union, he shall be punishable on conviction by a Force Court. The said provisions were so incorporated after having knowledge that it would not be possible to bring the enemy to whom such intelligence was leaked as a witness in the proceedings of the Force Court and as such, the respondent authorities could not have discarded the recourse to a Force Court on a ground clearly contradictory to the provisions of Section 16 of the 2007 Act.

25. It is settled position of law that the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and must fail. The respondent authorities have not brought on record any material to justify the dispensation made with regard to conduct of an inquiry by the Force Court in the matter. The subjective satisfaction, as arrived at by the authorities for dispensing the inquiry in the matter and as available in the records of the present case, does not merit acceptance by this Court. In the premises aforesaid, this Court is constrained to interfere with the order dated 22.03.2014 imposing upon the petitioner the penalty of dismissal from service without pension. Consequently, the order of the Appellate Authority dated 03.06.2014 also stands interfered with.

26. The interference made by this Court with regard to the orders impugned in the present proceedings being on the

ground that the respondent authorities have not justified the dispensation of the inquiry by the Force Court in the matter by bringing to the forefront cogent reasons, this Court hereby directs the respondent authorities to expeditiously convene a Force Court in the matter against the petitioner to have the allegations existing against him considered therein. The petitioner, for the purpose of convening the said Force Court, shall be deemed to be under suspension w.e.f. today, i.e. 27.03.2024, and he shall be paid the subsistence allowance in the manner prescribed and the respondent authorities shall proceed with the convening of the Force Court and conclude the same expeditiously. Till the time the proceedings of the Force Court are not concluded and orders not passed thereon, the petitioner shall continue to remain under suspension. On conclusion of the proceedings of the Force Court and the guilt of the petitioner being established therein, the respondent authorities, more particularly, the Disciplinary Authority shall be at liberty to pass appropriate orders as may be called for in the matter. In the event the petitioner is found to be guilty on conclusion of the proceedings of the Force Court and orders terminating his services are issued, the petitioner shall not be entitled to any benefit other than the benefit of subsistence allowance, as directed to be paid to him w.e.f. 27.03.2024 till orders are passed on conclusion of the Force Court. In the event the petitioner's guilty is not established in the inquiry as required to be now done before the Force Court and the petitioner stands exonerated in the matter, the petitioner will be entitled to all consequential service benefits including pay and

allowances w.e.f. 22.03.2014, i.e. the date when he was dismissed from service without pension.

27. With the above observations and directions, the writ petition stands disposed of.

J U D G E

Mukut

Comparing Assistant