

THE HIGH COURT OF TRIPURA AGARTALA

W.P(C) 380 of 2007

Sri Asim Kolai
(No. 821131825)
S/o Sri Khagendra Kolai
Ompinagar,
P.O. Ompinagar,
Dist. South Tripura.

... Petitioner

-VS-

1. The Union of India
(Represented by the Home Secretary,
Govt. of India, New Delhi)

2. The Director General of C.R.P.F.
C.G.O Complex, R.K. Puram,
New Delhi.

3. The Dy. Inspector General of Police,
C.R.P.F., West Block No. 8,
R.K. Puram,
New Delhi.

4. The Commandant,
54 Bn. C.R.P.F, Awantipur,
Srinagar, Kashmir.

.... Respondents

BEFORE THE HON'BLE MR JUSTICE U.B. SAHA

Advocate for the petitioner	:	Mr. KN Bhattacharjee, Sr. Advocate
	:	Mr. S Acharjee, Advocate
Advocate for the respondents	:	Mr. A. Roy Barman, CGC

Date of hearing
and delivery
of the judgment : 09.06.2015

Whether fit for reporting : No

JUDGEMENT AND ORDER (oral)

1. The instant writ petition is filed by the petitioner for setting aside the Order dated 18.09.2006 (Annexure-7 to the writ petition) passed by the Commandant 54 Bn CRPF whereby and whereunder the petitioner was ordered for compulsory retirement under section 40(1) of pension Rules of 1972.

2. Heard Mr. K.N. Bhattacharjee, learned senior counsel assisted by Mr. S. Acherjee, learned counsel for the petitioner as well as Mr. A. Roy Barman, learned CGC appearing for the respondents.

3. The pleaded case of the petitioner is that while the petitioner was serving under 54Bn CRPF as Habilder, on 2.2.2006, a command was issued to him from 54Bn. CRPF Awantipur, Kashmir, directing him to report to 86 Bn. CRPF, Narsingarh, Agartala for performing a duty of ascertaining the position of the matter of grant of compassionate benefit to the family of deceased Habildar Subhash Kumar. Accordingly, the petitioner reached Agartala on 9.2.2006 and reported to 86 Bn. CRPF. In course of duty for which the petitioner was sent,

the petitioner had to go to different offices at Agartala like the office of the SP West Tripura, Bishalgarh Police Station, Home Department in the Secretariat, Govt. of Tripura etc. for collecting information and for passing the necessary official papers to the authorities and the petitioner reported day to day progress to 86 Bn CRPF.

3(i). On 1.3.2006, the petitioner had to talk over telephone with AC-1 and AC-2 of 54Bn CRPF and told about the progress so far made and also gave an idea about further works which would take some more time. Thereafter, as the petitioner fell sick, he informed over phone to both of them that the petitioner needs to avail leave at least for one or two months for his recovery. It is also stated that he had submitted written application seeking leave due to his illness, but the office of the Commandant, 86 Bn. CRPF refused to receive the said application. As a result, he had to talk with the above officers of 54Bn CRPF.

3(ii). The petitioner received medical treatment from the Govt. Hospital, Ompinagar rural hospital in Tripura and continued treatment for which he could not return to 54Bn CRPF, but several occasions he reported about his physical condition to the 54Bn. CRPF.

3(iii) On 2.3.2006, the petitioner requested the AC-1 of 54Bn CRPF over phone to grant him medical leave. The AC-1 told him that he would send a message to 86 Bn. CRPF, but

the petitioner does not know whether the Said message was sent or not. But in spite of his illness, the commandant 86 Bn issued a command to the petitioner directing him to go back to his 54 Bn. CRPF, but due to his illness, he could not proceed.

3(iv). On 1.3.2006, the Govt. medical officer advised the petitioner to take rest for 3 days and to report thereafter. Accordingly, the petitioner went to the said doctor on 4.3.2006. The doctor examined him, prescribed medicines and also advised him bed rest for twenty days.

3(v). On 24.3.2006, the wife of the petitioner informed the Commandant 54 Bn. CRPF over phone that her husband was bed ridden and so he needs leave for some more time as it was not possible for him to move out of the house or to go to the CRPF Bn, No.54 at Kashmir. On 25.3.2006, the petitioner sent a telegram informing about his illness and inability to resume his duties.

4. Thereafter, the petitioner was placed under suspension on 17.5.2006 and on 20.5.2006; an order was issued for holding enquiry against the petitioner under Rule 27 of the CRPF Rules, 1955 on the following charges:

"ARTICLE No.1

No. 821131825 Hav/GD Asim Kolai, F/54 Bn being the member of the force is guilty of the disobedience of orders under rule 11(1) of the CRPF Act, 1949. Under which after issuance of

Movement order to the above said individual by 86 Battalion on 2.3.06 at 0400 hours in the morning for this Battalion, on his own desire, he remained absent for total 77 days from 2.3.06 to 17.5.06 without proper prior permission/information of any competent authority.

Appendix-2.

Article No- One

That No. 821131825 Hav/GD Asim Kolai, being the member of force has committed the disobedience of the orders under Section 11(1) of the CRPF Act, 1949, in which the above said individual had been ordered under Order No. P-three-1/05-Estt-4 dated 19.1.2006 of this office that for getting the present position of the pending case related to the ex-gratia amount to be received from the Tripura Government to the next of kin of No. 880951653 late Havildar/ GD Subhash Kumar of this Battalion, had been nominated for contacting the concerned office/department of the State government and had been directed that he will report to the Commandant -86 Battalion and after completion of the work, will immediately report in this Battalion. The Commandant -86 Battalion has issued order/ Movement order to the above individual after completion of the directed job, on 2.3.2006 at 0400 hours in the morning for departure with the Down Convoy and to report in this Battalion. But the above said official in violation of the orders given, himself on his own wish has become deserted from duty and has remained absent from his duty for total 77 days from 2.3.2006 to 17.5.06 without the proper prior permission/Information of any Competent Authority."

5. The Asstt. Commandant, 54 Bn. CRPF, Awantipur, Srinagar, Kashmir, was appointed as Enquiry Officer for conducting the enquiry relating to absence of the petitioner without leave. Ultimately, the said Enquiry Officer conducted the enquiry. In the enquiry, the charges have been proved. In

consequence upon the enquiry report, the Disciplinary authority punished the petitioner imposing penalty of compulsory retirement vide impugned order dated 18.9.2006 against which the petitioner preferred an appeal before the respondent No. 3, The Dy. Inspector General of Police, CRPF West Block No. 8, R.K. Puram, New Delhi and the appellate authority by order dated 23.4.07 upheld the order of the Disciplinary authority and dismissed the appeal. Hence the present writ petition is filed by the petitioner challenging the order of the disciplinary authority.

6. It is contended by the respondents that the petitioner was sent to 86 Bn. Usha Bazar, Agartala, Tripura with regard to payment of Ex-gratia amount of late HC Subhash Kumar on 2.2.2006 and it was informed vide Comdt. 86 Bn. CRPF message No. D.III-1/06 –Adjutant dated 2.3.2006. Accordingly after availing actual journey period the petitioner was required to report on duty to 54 Bn. CRPF, but he failed to do so and remained absent from duty from the competent authority. The Commandant, 54 Bn. CRPF vide RI No. P-III-1/06 dated 31.3.2006 and company commander F/54 RI No. D.III-1/06-F/54 dated 31.3.2006 instructed/directed the petitioner to report to his duty as early as possible and on receipt of those letters also, the petitioner did not report for duty. The petitioner was relieved from 86 Bn

on 2.3.2006 but he remained absent in those way from duties for 77 days without prior permission of the authority.

7. For the absence of the petitioner from duty for 77 days, a Departmental inquiry was proposed against him and during the inquiry, all sorts of opportunities were provided to him to defend himself. During the court of inquiry, it has been proved that the petitioner remained absent from duty for 77 days unauthorizedly and the offence was grave on the part of the petitioner being a person of disciplinary force, but the punishing authority taking a lenient view passed an order of compulsory retirement w.e.f. 18.9.2006 vide order No. R.XIII-8/06-EC-3 dated 23.4.2007.

8. It is also contended that the petitioner did not make any correspondence in reply to the letters No.P-III-1/06 dated 3/3/2006 and letter No.D.III.1/06.F/54 dated 31.3.2006 by which he was directed to report on duty, though the petitioner sent a telegram to Bn on 25.3.2006 regarding his state of health. At the time of enquiry, the petitioner produced some documents in support of his illness and as per those documents; the petitioner was under treatment w.e.f. 7.3.2006 to 14.3.2006. The petitioner also submitted his medical related slip dated 3.5.2006. According to the slip dated 14.3.2006, he was given 10 days medical rest by medical officer which expired on 24.3.2006 and thereafter

documents produced by him does not show that he obtained treatment for his illness. It is also contended that at the time of enquiry, he was asked by the inquiry officer whether he wants a defence assistant during his departmental inquiry.

9. Mr. Bhattacharjee, learned senior counsel for the petitioner mainly attacked the order of compulsory retirement on the ground that the disciplinary authority did not follow the procedure laid down in the provisions of Rule-31 and also failed to consider the sickness certificate, medical fitness certificate (Annexure 3 series) wherein he was suggested for taking rest. It is contended by the petitioner that while the disciplinary proceeding was initiated against him, though the enquiry was directed appointing the respondent No.4, but the petitioner was not allowed any defence assistant and also the provisions of Rule 31 was not followed before issuing the impugned order.

10. Mr. Roy Barman, learned CGC while resisting the prayer of the petitioner and submission of the learned counsel for the petitioner would contend that the power of the writ court is very much limited so far disciplinary proceeding is concerned and the writ court does not have the power to re-examine or re-appreciate the evidence laid before the inquiring authority or officer for simple reason that it is exercising its power of judicial review under Article 226 of the

Constitution of India, not the appellate power. He also contended that the petitioner was punished for violating the order of the superior authority and also for his unauthorized absence for 77 days; rather he joined only after he was declared as deserter by the court of inquiry.

11. In support of his said contention he has placed reliance upon a decision of the Gauhati High Court in **Union of India & Ors. Vs. Irfan Ali (Md.), 2012(1) GLT 542**, particularly para 14 to 16 which read as follows:

"14. From a bare reading of Clause (a) of Rule 27, it becomes clear that following a formal departmental enquiry, a person, subject to the CRPF Act, may be dismissed or removed from service. If Rule 27 is borne in mind, it becomes abundantly clear that following a departmental proceeding, there is no impediment in dismissing a person from service. Thus, whether a person has been found guilty of offence under Section 9, which deals with 'more heinous offences', or Section 10, which deals with 'less heinous offences', he can nevertheless be dismissed from service by invoking the power under Rule 27.

15. Considering the fact that the CRPF Rules do provide for dismissal from service as one of the modes of penalty for a person, who has been found guilty of a charge under Section 9 or under Section 10 of the CRPF Act, it was not correct for the learned Single Judge to hold that there is no provision for penalty of dismissal from service for a person, who has been proceeded against under Section 10 of the CRPF Act. It is, however, correct, as pointed out by the learned Single Judge, that as far as Section 11 is concerned, it does not prescribe dismissal from service as one of the modes of punishments. What, however, appears to have escaped attention learned Single Judge is that Rule 27 applies to a person, who is found guilty of an offence under

Section 9 or under Section 10 of the CRPF Act. In the present case, as the writ petitioner-respondent was found guilty of offence under Section 10(m) of the CRPF Act, he could have, in the light of the provisions of Rule 27, been dismissed from service.

16. Be that as it may, when Rule 27 provides for penalty of dismissal from service and Rules 27 is not under challenge, the consequence is that though the petitioner-respondent was guilty of the offence under Section 10(m), he could have been dismissed from service by invoking Rule 27. It is, therefore, not correct, contrary to what has been concluded by the learned Single Judge, that the petitioner-respondent could not have been dismissed from service on the basis of the charges on which he had faced the disciplinary proceeding. The reference, made by Mr. Baruah, learned Central Government Counsel, to the case of Union of India & Ors. Vs. Ghulam Mohd. Bhat, reported in (2005) 13 SCC 228, is, therefore, not incorrect inasmuch as in the case of Ghulam Mohd. Bhat (supra), the Supreme Court has clearly held that it is not correct to say that Section 11 prescribes only five modes of punishments as contained in Clauses (a) to (e) and that the expression 'in lieu of or 'in addition to', suspension or dismissal, appearing in sub-section (1) of Section 11 before clauses (a) to (e), shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force, who is found guilty and such dismissal or suspension may be 'in addition to', or 'in lieu of, the punishments mentioned in clauses (a) to (e). The relevant observations, appearing in this regard, in Ghulam Mohd. Bhat(supra), at para 7, read as under:

"7. It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with 'less heinous offence' and clause (m) thereof shows that absence of a member of the Force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments

which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10."

12. He has also placed reliance upon a judgment of the Gauhati High Court in **Naikibrar Khan (No.810706369) vs. Union of India & Ors., 2011(3) GLT 401**, particularly para 15 to 18 which are as follows:

" 15. In support of his aforesaid contention he placed reliance on a decision of Apex Court in State Bank of India & Ors Vs. Ramesh Dinkar Punde, (2006) 7 SCC 212 wherein the Apex Court while considering the order of dismissal passed by the Disciplinary Authority as well as the order of the High Court, noted that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority: "Its jurisdiction is circumscribed and confined to correct error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by depreciating the evidence as an Appellate Authority." The Apex Court also noted that it is impermissible for the High Court to depreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

16. He also contended that in the case *Ramesh Dinkar Punde (supra)* in paragraph 15 of the aforesaid law report, the Apex Court specifically stated that a disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. In the instant case the authority considered the evidence

on record and came to the findings that the petitioner failed to furnish any cogent reason for his unauthorized absence.

17. It is also contended by him that the petitioner nowhere in his petition contended that the disciplinary authority passed the impugned order without any evidence. According to the CGC, this is a case of some evidence and when there are some evidence from which the authority can come to a finding that the delinquent officer committed misconduct and imposed penalty in that case the high court should not exercise its power of judicial review when the petitioner mainly in his writ petition took a ground that he was not given proper opportunity to prove his case which is totally contrary to the records.

18. In support of his contention that there is a difference between the admission of fact and admission of guilt he placed reliance on paragraph 28 and 29 of the judgment of Division Bench of this Court in Union of India Vs. Mohanlal Das, 2008 (3) GLT 812. Paragraphs 28 and 29 are reproduced herein under:-

28. The very fact that the petitioner remained unauthorized absent from duty for months together itself speaks of his desertion of duty. In such circumstances, there was nothing wrong in declaring him deserter with consequential dismissal from service. As has been held by the Apex Court in Channabasappa Happali Vs. State of Mysore, reported in AIR 1972 SC 32, there is no distinction between admission of fact and admission of guilt. As in the instant case, in that case also the police officer remained absent without leave. His prayer for extension of leave was not granted. Thereafter, charge was framed against him. From the materials on record, it appeared that the petitioner did not take part in the enquiry. It was contended that the enquiry was in breach of the principles of natural justice. The Apex Court noticing that the fact of remaining unauthorisedly absent being an admitted one, held that there was no violation of the principles of natural justice. It was observed thus:

".....we do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing else. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of a superior officer, the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amount to a plea of guilty on the facts, on which the petitioner was charged and we are in fully agreement with the observations of the learned Single Judge.

29. In the instant case also, the fact speaks for itself. At the first instance, the petitioner deserted his unit without any authority and/or leave and thereafter, all throughout remained absent. This being the position, nothing more was required to be established that he deserted the unit of BSF. The plea of violation of principles of natural justice will have to be considered in that context. Needless to say that natural justice is not based on any straightjacket formula. It cannot be stretched that far, in which, nothing could be established beyond what has been established even without any notice." 19. This Court has gone through the fact of Channabasappa Happali (supra) as referred to by the Division Bench in its judgment from which it appears that the petitioner of that case did not take part in the inquiry and it was contended that the inquiry was in breach of the principles of natural justice and ultimately the Apex Court noticing that the fact of remaining unauthorizedly absent being an admitted one, held that there was no violation of the principles of natural justice, hi the instant case, the petitioner appeared in the inquiry proceedings and placed his evidence which was also considered by the inquiring authority and the Disciplinary Authority. Therefore, it cannot be said that the petitioner was not provided opportunity to place his case "

13. He finally placed the record of disciplinary proceeding to show that the petitioner at the time of his examination admitted his guilt.

14. He also referred to a decision of the Jammu and Kashmir High Court in **Deen Dayal Yadav, v. The Deputy Inspector General of Police, CRPF, 1974 LAB. I. C. 929** wherein it was held that the major punishment of removal from service can be awarded under section 11 of the CRPF Act 1949.

15. This court has considered the submission of the learned counsel for the petitioner as well as learned counsel for the respondents and the judgment referred to by the learned counsel for the respondents.

16. In **Irfan Ali (Md.)(supra)**, the Division Bench of the Gauhati High Court also considered a judgment of the Apex court in **State of Punjab & Ors. Vs. Mohinder Singh, (2005) 12 SCC 182**, wherein the Apex court held that when a person belonging to paramilitary force remains absent from duty without leave, it is a gravest misconduct and an order of dismissal, if imposed by the disciplinary authority, ought not to be interfered with by the High Court.

17. In the instant case also, the fact speaks for itself that at the first instance the petitioner deserted his unit without any authority or leave though he remained absent on

the ground of his sickness. This court has also gone through the record as produced by Mr. Barman from which it appears that the provisions of Rule 31 have been followed and only after declaration of the petitioner as deserter, departmental proceeding was initiated against him. More so, in the instant case, the petitioner did not make any prayer for quashing the order of the appellate authority dated 23.4.2007 wherein the appellate authority upheld the order of the disciplinary authority though the order of the disciplinary authority merged with the order of the appellate authority. A writ court can interfere with the departmental proceeding only when there are some procedural defects in the departmental proceeding, i.e. when the proceeding is either without jurisdiction or finding of the disciplinary authority is wholly perverse or when the punishment is awarded without any evidence. In the instant case, no such plea is taken by the petitioner.

18. Therefore, according to this court, it would not be proper to interfere with the order of punishment as the enquiring authority as well as disciplinary authority considered all the evidences on record and came to a finding that the unauthorized absence of the petitioner is a misconduct under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955. More so, it is also admitted that the petitioner was a member of the disciplinary Force and it is the

authority who will decide how to maintain the discipline in the Force. The Court cannot re-write the proceedings for maintaining discipline while exercising its power of judicial review. The court can interfere only when the petitioner can establish that the authority did not provide him opportunity which he is entitled to according to the law. Therefore, according to this court, writ petition is wholly devoid of merit and no interference is called for. In the result, the writ petition is dismissed.

No order as to costs.

JUDGE

mdn