

**THE HIGH COURT OF TRIPURA
AGARTALA**

WA.NO.12 OF 2013

Sri Narayan Chandra Dey,
Son of Late Srinibash Dey,
Resident of Village Subhash Nagar,
P.O:- East Pratapgar; P.S:- East Agartala;
District:- West Tripura.

..... *Appellant*

- *Vs* -

1. The Union of India, New Delhi;
Through the Secretary to the Government of India,
Ministry of Home Affairs, P.O:- New Delhi; New Delhi-1

2. The Deputy Inspector General,
Central Industrial Security Force,
Eastern Zone Head Quarters; Boring Road,
Patliputra. Patna, P.O:- Patna, Bihar, PIN -800013

3. The Commandant,
Central Industrial Security Force,
Unit KSTPP Korba; P.O:- Pragati Nagar,
District:- Korba, Chattishgarh.

..... *Respondents*

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. S.M. Chakraborty, Sr. Advocate
Mr. N. Majumder, Advocate

For the respondents : Mr. A. Roy Barman, CGC

Date of hearing and delivery
of Judgment & Order : **25.08.2015**

Whether Fit for Reporting	:	<table border="1"><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>√</td></tr></table>	Yes	No		√
Yes	No					
	√					

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

This writ appeal is directed against the judgment dated
23.11.2012, passed by a learned Single Judge of the Agartala

Bench of the Gauhati High Court, which then exercised jurisdiction of the State of Tripura, rejecting the Writ Petition(C) No.291 of 2002.

2. Briefly stated the facts of the case are that the petitioner was a constable in the Central Industrial Security Force(CISF). He was posted at Korba in Madhya Pradesh. Disciplinary proceedings were initiated against the petitioner and the main charge was that he had assaulted his senior officer, Sub-Inspector Mahavir Singh and hit Mahavir Singh with a *lathi* 3/4 times. Inquiry proceedings were held and this charge was proved against the petitioner. The disciplinary authority, thereafter, dismissed the petitioner from service. Appeal filed by the writ appellant was dismissed. He filed the writ petition challenging the order of dismissal as well as the order passed by the appellate authority. The writ petition was also dismissed. Hence, this writ appeal.

3. At the outset we may notice that from the record of the learned Single Judge it appears that only three points were raised before the learned Single Judge. The petitioner had contended before the learned Single Judge that he was not provided opportunity to inspect the documents and take extract of the official record in terms of Rule 34(3) of the CISF Rules. It was also contended that in terms of Rule 34(5) of the CISF Rules, the delinquent officer was not permitted to take assistance of any other

member of the Force for defending himself. The last contention was that the order of dismissal is disproportionate to the offence.

4. The learned Single Judge on page 8 of the judgment has extracted a portion of the preliminary hearing of the departmental enquiry report which reads as follows:-

"PRELIMINARY HEARING OF DEPARTMENTAL ENQUIRY IN RESPECT OF NO. 83407912 CONSTABLE N C DEY OF CISF UNIT KSTPS KORBA.

.....

7.Q : Do you want to take assistance of any serving member of force to present the case on your behalf? If yes give his name in writing with consent letter from him.

Ans. : No, I will plead my case by myself.

8.Q : Do you want to take extract of any relevant document of the case which have not yet been received by you?

Ans. : No, I do not want.

....."

The aforesaid extract clearly shows that the petitioner was asked by the inquiry officer whether he wanted to name any defence assistant and the petitioner answered that he will plead his case himself. He was also asked whether he wanted to take extract of any relevant documents of the case which may not have been supplied to him and again he answered that he did not want any such document. The learned Single Judge was absolutely right in holding that in the face of this record the petitioner could not argue

that he was denied defence assistance or that he was denied access to the records.

5. It has been urged before us by Mr. Majumder that the petitioner was under arrest and his signature may have been taken under coercion. We are afraid that this point cannot be permitted to be raised at this stage because neither in the writ petition nor while arguing the matter before the learned Single Judge any issue has been raised that the said consent was obtained under coercion. In fact, the stand of the petitioner was that he had never been offered defence assistance and he had never been permitted access to the documents. This has been found to be a false statement because there is a statement of the inquiry report which clearly shows that he was offered both defence assistance and access to the documents and he refused to take the same.

6. The third point urged before the learned Single Judge was that the penalty imposed is disproportionate to the offence committed. We are not at all in agreement with this submission. In a disciplined force, like the CISF we cannot accept the behaviour which has been proved on record that the delinquent officer hit his superior officer. If in a disciplined force, the junior officials are dealt with leniently when they assault senior officials then there will be no discipline left in the forces. Such sort of behaviour can never be condoned.

7. Mr. N. Majumder has raised two other issues before us which were not raised before the learned Single Judge. Normally, no party can be allowed to raise fresh grounds in a writ appeal which have not been raised before the Single Judge while deciding the matter. However, since Mr. Majumder insisted upon arguing these points we have considered the same. The first argument was that there was no eyewitness to the occurrence. This argument is totally wrong because the victim himself is an eyewitness to the occurrence. A victim is also a competent witness. Merely because the only eyewitness is a victim does not mean that there is no eyewitness. This incident happened late at night and the victim and assailant-petitioner were alone. There was no other person. Therefore, there could be no other eyewitness. From the inquiry report, we find that the senior officer Mahavir Singh immediately after coming back from the place of incident had reported the matter to his senior officials and entry was made in this regard in the records and the said officer was also medically treated. This evidence supports the plea of the senior officer that he was assaulted by the writ petitioner with a *lathi*. Therefore, we reject this contention.

8. Another point raised by Mr. Majumder is that the appellate authority has shifted the burden on the accused while dismissing the appeal and his main reliance is that in the order of the appellate authority it has been stated that the appellant failed to disprove the charge during departmental enquiry. This phrase, "*failed to disprove the charge*", cannot be read in isolation. It must

be read in the context of the entire order of the appellate authority and especially, para 4 thereof which reads as follows:-

"4. I have examined the records vis-à-vis appeal of the appellant and observed that the appellant had never demanded any document to defend his case and at no point of time he was forced to attend departmental enquiry. The order of Disciplinary Authority is neither unconstitutional nor violation of any rules, law or manual. The past bad records of the appellant has been discussed by the disciplinary authority while giving comments with regard to service only and it was having nothing to do with regard to quantum of punishment as claimed by the appellant. The plea of the appellant that he was made victim of no fault is not maintainable as he failed to disprove the charge during departmental enquiry. The order of Disciplinary Authority is a speaking order and there is no denial of reasonable opportunity."

9. The appellate authority has dealt with all the contentions and has agreed with the inquiry officer and the disciplinary authority. When we read the order as a whole it clearly shows that the appellate authority was not satisfied with the arguments raised by the appellant. We ourselves have gone through the inquiry report and we find that the inquiry officer has taken a view which was a plausible view. This view has been accepted by the inquiry officer, the disciplinary authority and the appellate authority. The writ Court does not sit in appeal over disciplinary orders unless the order is perverse or the order is one which no sane person could have passed. A writ Court does not

interfere its judgment for the judgment of the appellate authority.
We, therefore, find no merit in the writ appeal which is accordingly
dismissed.

JUDGE

CHIEF JUSTICE