

THE HIGH COURT OF TRIPURA
AGARTALA

WA 55 OF 2013

- 1. Smti. Kaberi Chakraborty,**
W/o Late Bimal Chakraborty.
- 2. Smti Priyanka Chakraborty,**
D/o Late Bimal Chakraborty.
- 3. Sri Rahul Chakraborty,**
S/o Late Bimal Chakraborty.

All are the residents of Village Gokulnagar,
Near first Battalion of TSR location,
P.S. Bishalgarh, Dist:- West Tripura.

.... **Appellants.**

- Vrs -

- 1. The State of Tripura,**
Represented by the Secretary to the
Government of Tripura, Department of Home,
New Secretariat Complex, P.O. Kunjaban,
PIN-799006, Agartala, Dist:-West Tripura.
- 2. Director General of Police,**
Government of Tripura,
Agartala, West Tripura.
- 3. The Commandant, 8th Bn.Tripura State Rifles, (IR-III),**
Manu RD Block, Dist:- Dhalai Tripura.

... **Respondents.**

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

For the appellants : Mr. B.Banerji, Advocate.

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing & : **15.07.2015.**
Delivery of judgment
and order.

Whether fit for reporting : NO

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

This writ appeal is directed against the judgment dated 08.10.2013 passed by the learned single Judge of this Court whereby the writ petition No. 50 of 2007 originally filed by Sri Bimal Chakraborty and now being prosecuted by his legal heirs was dismissed.

2. Disciplinary proceedings were initiated against Sri Bimal Chakraborty who was a Naik in the Tripura State Rifles (T.S.R). The charge against him was that on 05.04.2003 he had unauthorizedly absented himself from duty from 10.00 a.m. to 2.30 p.m. Further it was alleged that when he reached the camp at 02.30 p.m., he was drunk and in an inebriated condition. He was using abusive language against his seniors and behaving in an aggressive manner. He threatened Naib Subedar, Shanti Mahajan that he would remove the two stars from his shoulder and shove them up his backside. The petitioner was suspended and was detailed at the battalion head-quarters at Manu.

3. Part of the inquiry was conducted *ex-prate* and all the charges were found proved against the delinquent official except the charge of his being intoxicated because there was no medical evidence in this regard. It would also be pertinent to mention that at the time when the enquiry report was finalized, the provision of law was changed from Section 11 of T.S.R Act to Section 12. On the basis of the inquiry report the

petitioner was dismissed from the service. This order was served upon the petitioner at his home address and thereafter the petitioner sent a notice through his counsel. It would be pertinent to mention that in this notice the only grievances made were that during disciplinary proceedings there were 16 witness examined but the petitioner was not given a chance to appoint a defence assistant and that the petitioner did not get a chance to cross examine all the prosecution witnesses. It would also be pertinent to mention that in this notice sent by the counsel for the petitioner, reference has to be made to specific pages of the file of the disciplinary proceedings which clearly shows that the petitioner knew what was contained in the disciplinary proceedings file. These were the only two grounds raised in the notice and no ground was raised that copy of the inquiry report had not been supplied.

4. The main argument of the petitioner was that he had not been permitted to nominate a defence assistant of his choice. It was also urged that he had been wrongly proceeded against *ex parte* and the notices with regard to the inquiry were wrongly sent at his home address though he was available in the battalion headquarters at Manu during the period of inquiry. It was also submitted that the inquiry report had not been supplied to him.

5. The learned Single Judge has passed a detailed judgment dismissing the writ petition. To satisfy ourselves we have gone through the record and we find that most of the

allegations made by the original petitioner are totally false and not supported by the record. With regard to the inquiry report we find specifically that before final decision of terminating the services was taken, the copy of the inquiry report was sent to his home address.

6. On 17th May 2003, when late Bimal Chakraborty was present in the inquiry, the enquiry officer has recorded that he had sent a written communication to the delinquent official to furnish the name of the defence assistant but the delinquent official did not submit any reply and he himself functioned as his defence assistant. The duty of the inquiry officer is to afford an opportunity to the delinquent official to appoint a defence assistant. In case the delinquent official takes no steps to appoint defence assistant then it is not the fault of the inquiry officer.

7. The main dispute relates to the evidence recorded on 16th June, 2003. Admittedly prior to that date the petitioner was appearing in the inquiry. The case of the petitioner is that on 16th June he was released from his headquarters at Manu only at 8 a.m. and it was impossible to reach Arundhuti Nagar at Agartala by 10.00 a.m. and by the time he reached there he was not allowed to enter the office and the proceedings were conducted in his absence. The case of the petitioner further is that thereafter he went back to Manu and reported in the battalion headquarters and though he was in the battalion nobody informed him about the next

dates of hearing. The stand of the state is that in fact after the petitioner was released on 16th June to attend the hearing at Arundhuti Nagar, Agartala, he never came back to the battalion headquarters and therefore, the notices of the inquiry officer were sent to his home address.

8. To satisfy ourselves we have carefully gone through the entire inquiry file. We find that after 16th June a communication was sent to the delinquent official, care of the battalion headquarters by the inquiry officer on 4th July asking him to be present on next date i.e. 10th July, 2003 at 10.00 hours.

9. In response to this wireless signal of the inquiry officer a report was sent by the battalion headquarters that Bimal Chakraborty (under suspension) had not reported back at the battalion headquarters. The inquiry officer was asked whether Bimal Chakraborty had appeared before him on 16th June or not. Thereafter the inquiry officer wrote on 7th July that on 16th June he had waited till 1.00 P.M but Bimal Chakraborty did not appear before him and therefore, he had recorded the statement of one witness Shanti Mahajan in the absence of Bimal Chakraborty. Thereafter, a note has been put up by the Naib Subedar of the battalion headquarters that Bimal Chakraborty was commanded to report to the inquiry officer on 16th June 2003 at 08-00 hours but it has been intimated by inquiry officer that Bimal Chakraborty never attended the disciplinary proceedings nor reported to him.

Therefore, the present location of Bimal Chakraborty may be ascertained and he be treated as absent. Therefore, Sri Dilip Debbarma was detailed to investigate the facts and to find out why Sri Bimal Chakraborty was absent and to submit report. Sri Dilip Debbarma furnished his inquiry report on 17.07.2003 in which he has clearly stated that on 16.06.2003 Bimal Chakraborty left the Battalion headquarters for Agartala but he never reported before the inquiry officer and thereafter he did not come back to the battalion headquarters and has left for an un-known destination. On 17th July an order was passed by the commandant of the 8th Battalion TSR which clearly indicates that Bimal Chakraborty did not report back after 16th June 2003 and he remained absent without permission of the higher authority. This clearly means that he was not in the battalion headquarters.

10. These documents which are on the record of the inquiry file clearly indicate that the story put up by Bimal Chakraborty was totally false. He in fact left the battalion headquarters on 16th June and never came back. He himself did not appoint a defence assistant. His statement that the inquiry report was not supplied to him is also found to be false. None of these points were raised in the notice under section 80 CPC filed by him and it appears that at every stage Bimal Chakraborty was taking up new points which were not correct.

11. With regard to the amendment of the charges, it has been urged by Sri Banerjee that this was amended at the back of petitioner Shri Bimal Chakraborty and, therefore, the inquiry proceeding should be set aside. We are not in agreement with the submission of the learned counsel. It is not the charge which has been amended. It is only the provision of law which has been amended. The factual charge remains the same and that has been decided on the basis of the evidence. Initially the charge was framed under Section 10 and 11 of the TSR Act which do not deal with disciplinary proceedings but deal with the judicial proceeding which can be carried out by the police authorities. Section 12 deals with the disciplinary proceedings and we find no prejudice has been caused to the delinquent official.

12. Lastly, it is contended by Mr. Banerji that the punishment imposed is excessive and disproportionate to the crime. In a disciplined force we cannot permit those people who have abused the senior officials and also threatened them to remain in service.

13. In view of the above discussion, we are of the view that the learned single Judge was fully justified in rejecting the writ petition. We find no merit in this appeal which is accordingly dismissed.

JUDGE

CHIEF JUSTICE