

THE HIGH COURT OF TRIPURA
AGARTALA

W.A. 48 of 2013

Sri Ranendu Majumder,
Son of Sri Sachindra Kumar Majumder,
Residing at village Manur Mukh,
P.O. – SBC Nagar, Belonia - 799155,
P.S. – Belonia,
District – South Tripura.

..... *Appellant*

- Vs. -

1. The State of Tripura,
Represented by the Secretary/Commissioner,
Department of Home,
Government of Tripura,
Capital Complex,
P.O. Kunjaban – 799 006,
P.S. East Agartala, Tripura West.
2. The Commandant,
1st Bn. Tripura State Rifles,
Veer Bandhu Gram, Gakulnagar,
P.O. Bishalgarh,
P.S. Bishalgarh, Sepahijala, Tripura.
3. The Deputy Inspector General of Police (PNR),
Government of Tripura,
P.O. Agartala – 799 001,
P.S. West Agartala, Tripura West.

..... *Respondents*

BEFORE

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

For the appellant	: Mr. K.N. Bhattacharjee, Sr. Advocate. Mr. P.S. Roy, Advocate.
For the respondents	: Mr. S. Chakraborty, Addl. GA.
Date of hearing & delivery of Judgment & order	: 23.06.2015.
Whether fit for reporting	: No

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

This appeal is directed against the judgment dated 22.03.2013 delivered by the learned Single Judge of the Agartala Bench of the Gauhati High Court whereby, the writ petition filed by the petitioner was dismissed.

2. Briefly stated the facts of the case are that during elections in the year 1994, the petitioner was deputed on escort duty with the Central Observer appointed by the Election Commission of India. The period of duty was from 28.03.1994 to 05.04.1994. The case set up against the petitioner is that on 01.04.1994 while the Central Observer was taking rest in the Inspection Bungalow in Sabroom, the petitioner along with one rifleman Pranath Sarkar went in a vehicle bearing registration No.TRT-5067 towards the market to have lunch. After having lunch they were returning home. There was some altercation with a newspaper hawker namely Dipak Chakraborty. Immediately some hot exchange took place. Thereafter, the petitioner came back to the Inspection Bungalow, took out his rifle and went back alone to Sabroom town and started indiscriminate firing from his officially issued rifle.

3. A criminal case was registered against the petitioner at the instance of the newspaper hawker Dipak Chakraborty. This

case was compounded between the parties which has the affect of acquittal in terms of Section 320(A) of the Cr.P.C. At the same time, departmental proceedings were initiated against the petitioner. In these departmental proceedings, it was found that the petitioner had picked up a quarrel. It was found that the petitioner had come back to the Inspection Bungalow and picked up his rifle and thereafter had gone to the Sabroom town and started indiscriminate firing. In the disciplinary proceedings findings were given against the petitioner and he was finally ordered to be dismissed from service. The appellate authority has also rejected appeal.

4. The petitioner thereafter filed a petition W.P. (C) No.365 of 2002 which was dismissed by a learned Single Judge. From perusal of the judgment in question, we find that at the time, the petitioner was represented by one other learned counsel and the main submission made by the counsel was that the penalty was disproportionate to the offence committed. The second submission made was that the disciplinary proceedings could not have continued in view of the acquittal in the criminal proceedings. These two objections have now again been raised in appeal.

5. We shall deal with the second objection first. No doubt, under Section 320(A) the discharge of an accused has the affect of acquittal. The question is will this affect the departmental

proceedings or not. In ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679***, the Apex Court clearly held that even after an employee is acquitted in a criminal case, departmental proceedings can continue. The degree of proof required in criminal proceedings is of much higher level. Furthermore, even though an offence may not constitute a criminal offence, it may be misconduct within the rules. The same set of circumstance may not amount to a criminal offence, but may be misconduct within the rules.

6. As far as the present case is concerned, from the documents placed on record, it is apparent that even the petitioner did not rarely dispute the allegations made against him. He has been acquitted not after recording evidence, but on the basis of a settlement arrived at between him and the complainant. No doubt that discharge for all purposes may be an acquittal, but the department cannot be stopped from completing the departmental proceedings against the employee only because the employee and the injured person have settled the matter. The employer is duty bound to see that the employee has not violated the conduct rules and if there is misconduct then the employer is well within its right to take action.

7. In the present case, what stands out is that the petitioner after having a fight with the newspaper hawker did not

end the matters there. He came back to the Inspection Bungalow, took out his rifle and went to town and started firing. It is contended by Mr. K.N. Bhattacharjee, learned senior counsel that because the petitioner has only fired in the air he should be dealt with leniency. We are unable to agree with the submission. The petitioner is a member of a disciplined force. A police official is expected to maintain greatest restraint. He must show greater patience. If he had fired immediately at the time when the fight first took place we may have been persuaded to agree with Mr. K.N. Bhattacharjee. However, the facts as have come out from the record are that he came back to the Inspection Bungalow, picked up his rifle and then went back to the town. This is gross violation of the Rules and discipline. The learned Single Judge was correct in dismissing the petition.

8. As such we find no merit in the appeal, which is accordingly dismissed.

JUDGE

CHIEF JUSTICE

sima