

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No. 34 of 2011

PETITIONER :

Sri Bappi Das,
Ex.CT No.055355164,
S/O. Sri Prafulla Das,
Resident of village-Chhankhala
(Rajeswaripur), P.O.-Kanchanmala,
P.S. Amtali, District-West Tripura,

BY ADVOCATES :

Mr.Somik Deb,
Mr.S.Lodh,
Mr.B.Dutta,

- Versus -

RESPONDENTS :

1. The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
Government of India, having his
Office at North Block Secretariat,
New Delhi-110001.
2. The Director General,
Central Reserve Police Force,
having his office at CGO Complex,
Lodhi Road, New Delhi-110001
3. The Deputy Inspector General,
Central Reserve Police Force,
having his office at Usha Bazar,
Airport Road, Agartala Range,
P.O. Usha Bazar, Agartala, West Tripura.
4. The Commandant,
188 Battalion Central Reserve Police Force,
having his office at Agartala,
P.O. Usha Bazar, West Tripura.
5. The State of Tripura,
represented by the Commissioner &
Secretary, Department of Welfare for
Scheduled Caste & OBCs, having office
at Agartala, P.S. West Agartala,
P.O-Agartala, Sub-Division- Agartala,
District-West Tripura.

6. The Chairman,
State Level Scrutiny Committee
(Commissioner & Secretary SC & OBC
Welfare), Government of Tripura,
having office at Agartala,
P.S. West Agartala, P.O- Agartala,
Sub-Division-Agartala,
District West Tripura.

7. The Member Secretary,
State Level Scrutiny Committee
(Director for Welfare of SC & OBC Tripura),
Government of Tripura, having office
at Agartala, P.S. West Agartala,
P.O:-Agartala, Sub-Division-Agartala,
District-West Tripura.

8. The Sub-Divisional Magistrate,
Bishalgarh, having office at Bishalgarh,
P.O. Bishalgarh, West Tripura.

BY ADVOCATES :

Mr.A.Roy Barman,
Ms.A.S.Lodh,
Mr.A. Nandi,

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

Date of hearing : 09.06.2015.

Date of delivery of
Judgment and Order : **08.07.2015.**

Whether fit for reporting : **Yes.**

JUDGEMENT AND ORDER

S.C.Das.J

Seeking appointing to the post of Constable in the Central Reserve Police Force (for short 'CRPF'), the petitioner applied as a scheduled caste (for short 'SC') category candidate and got selection in due process and was accordingly appointed to the post of Constable of CRPF in the year 2005 and was discharging his duties with all sincerity, efficiency and devotion.

2. A departmental proceeding was initiated against him alleging that the SC Certificate produced by him at the time of his appointment was fake. Initially show cause notice was issued enclosing report of the Sub-Divisional Magistrate, Bishalgarh Sub-Division (for short 'SDM, Bishalgarh') dated 23.09.2008 and the report of Additional District Magistrate, West Tripura, Agartala dated 20.10.2008. The petitioner submitted show cause reply and thereafter a full-fledged departmental enquiry was taken up on the ground that the petitioner has committed grave misconduct by submitting a fake/forged SC Certificate, which was not issued by the competent authority, i.e., SDM, Bishalgarh.

3. In the disciplinary proceeding the petitioner admitted the charge that the SC Certificate produced by him at the time of securing the job was fake and further contended that he actually belonged to a SC community (Dhoba community) and that the SC certificate produced by him at the time of his securing the job was obtained through an agent, namely, Sri Anup Roy and that he believed that SC Certificate to be genuine and only after inquiry he came to know that the SC Certificate produced by him was fake. He has contended that during the course of disciplinary proceeding he approached SDM, Bishalgarh for issuing a SC Certificate and on the basis of his prayer, SDM, Bishalgarh issued a fresh SC Certificate No.3300 dated 28.02.2009 (Annexure-P/4 to the writ petition) certifying that he belonged to SC community and he submitted the same in the disciplinary proceeding. In spite of

submission of genuine SC Certificate, the enquiry officer submitted report against him holding that the charge framed against him is proved and based on that report the disciplinary authority, i.e. respondent No.4 inflicted on him the punishment of removal from service by order dated 31.08.2009 (Annexure-P/1 to the writ petition). The petitioner challenged the order of punishment preferring an appeal before respondent No.3 and a copy of the Memorandum of appeal is annexed as Annexure P/2 to the writ petition. In the Memo of appeal the petitioner contended that he actually belonged to SC community and that during pendency of the proceeding itself he obtained a genuine SC Certificate and that he has been wrongly dismissed by the disciplinary authority. But the appellate authority by impugned order dated 25.05.2010 dismissed his appeal and consequently upheld the order of removal from service passed by the disciplinary authority.

4. The petitioner, therefore, prayed for setting aside/quashing order dated 31.08.2009 passed by the disciplinary authority and also the appellate order dated 25.05.2010 passed by the respondent No.3-appellate authority and prayed for reinstating him in service with all service benefits. He has also contended that he has not been paid the arrears of salary for the period he rendered service with the benefits of 6th Central Pay Commission and he prayed for directing the respondents accordingly to make payment of the said arrears.

5. Respondent Nos.1 to 4 contended that the petitioner secured his job by submitting a fake/forged SC Certificate. Whether he actually belonged to SC community or not was altogether a different issue, but it is an admitted position that he submitted a fake SC Certificate and thereby secured the job practicing fraud on the department and, hence, the CRPF being a disciplined Force thought it appropriate to remove him from service and there is no illegality and impropriety in the action taken by the respondents.

6. Respondent Nos.5 and 8 by filing counter affidavit contended that the SC Certificate produced by the petitioner at the time of securing the job was verified by SDM, Bishalgarh and it was found that no such SC Certificate was issued from the office of the SDM, Bishalgarh. The petitioner committed a criminal offence by securing a false/fake SC Certificate and so, he has been rightly dealt by the disciplinary authority.

7. Heard learned counsel, Mr.Somik Deb for the petitioner and learned CGC, Mr.A. Roy Barman for the respondent Nos.1 to 4 as well as learned Additional Government Advocate, Ms.A. S. Lodh for the respondent Nos.5 to 8.

8. It is an admitted position that the petitioner applied for the post of Constable of CRPF as a SC category candidate and he produced a SC Certificate allegedly issued by SDM, Bishalgarh. The disciplinary authority of the petitioner enquired about the genuinity of the SC Certificate by issuing letter to the District

Magistrate and Collector, West Tripura, Agartala referring the SC Certificate and Annexure-R/2 series submitted by the respondent Nos.1 to 4 show that the Office of the District Magistrate & Collector enquired about genuinity of that SC Certificate, which was allegedly issued by SDM, Bishalgarh and the report submitted by SDM, Bishalgarh, which is annexed with the report of the District Magistrate, shows that the said SC Certificate bearing No.5758 dated 09.04.2001 was a fake SC Certificate and it was not issued from the Office of the SDM, Bishalgarh. In the disciplinary proceeding initiated against the petitioner he has admitted in writing that the SC Certificate produced by him at the time of securing job was not genuine. It is the case of the petitioner that during pendency of the disciplinary proceeding he obtained a fresh SC Certificate No.3300 dated 28.02.2009 and he produced the same before the inquiring authority as well as the appellate authority, but that was not considered and he has been punished by the disciplinary authority with the penalty of removal from service which has been upheld by the appellate authority.

9. Mr. Deb, learned counsel for the petitioner argued that the petitioner actually belonged to SC community and he submitted a genuine SC Certificate at the time of disciplinary proceeding. According to Mr. Deb, the status of the petitioner that he belonged to SC community is the most important factor and not the certificate itself. He obtained a certificate through an agent and that was found to be fake for which the petitioner should not be

held absolutely responsible and he should not be punished to the extent of removal from service. Since he was a genuine SC candidate, he was entitled to get selection as such SC category candidate and so, there was no point of depriving any other person in the selection process. Under such circumstances, the petitioner should not have been removed from service and the punishment inflicted is excessive and harsh. In support of his contention, learned counsel relied on the decision of the Apex Court in the case of **Shalini V. New English High School Association & ors.**, reported in **(2013) 16 SCC 526**.

10. Learned CGC, Mr. Roy Barman, on the contrary, has submitted that the petitioner admitted his guilt that he secured the job with a fake/forged SC Certificate. CRPF is a disciplined Force and the petitioner since secured the job with a forged SC Certificate, the disciplinary authority thought it appropriate to remove him from service and there is no procedural or other infirmity in the proceeding and hence, this Court need not interfere in the decision taken by the disciplinary authority in exercise of power of judicial review.

11. Since the petitioner admitted that the SC Certificate produced by him at the time of securing the job was a fake SC Certificate, submission of a genuine SC Certificate at the time of disciplinary proceeding would in no way absolve the offence already committed by the petitioner at the time of securing the job. Might

be the petitioner belonged to SC community. The fact that the petitioner obtained a SC Certificate on 28.09.2009 and produced it before the disciplinary authority has not been disputed. But mere submission of such a certificate, which might be genuinely obtained, cannot obviously minimize the wrong committed by the petitioner at the time of securing the job. It was up to the disciplinary authority as to whether the disciplinary authority would take a lenient view or not. The disciplinary authority thought it appropriate to remove him from service and passed the order accordingly. It cannot be said that there was no material for the disciplinary authority to arrive at such a conclusion. We are of considered opinion that since it was an admitted position that the SC Certificate submitted by the petitioner in course of securing the job was a fake certificate and there was no infirmity in the disciplinary proceeding, the disciplinary authority rightly held the petitioner guilty of the charge framed against him and we find no infirmity in the action taken by the disciplinary authority.

12. Mr. Deb, learned counsel for the petitioner referring to Section 11 of the Central Reserve Police Force Act, 1949 (for short 'CRPF Act, 1949') has submitted that the petitioner cannot be held guilty of misconduct since there is no allegation of disobedience of duty, neglect of duty or remissness in the discharge of duty. For any act of the petitioner before entering into the job, he cannot be held guilty of misconduct. According to Mr. Deb, learned counsel, the words "other misconduct in his capacity as a member of the

Force" as contained in sub-section (1) of Section 11 of the CRPF Act, 1949 shall only operate in the event the petitioner is found to be guilty of disobedience of duty, neglect of duty or remissness in the discharge of any duty and not otherwise.

Learned CGC, Mr. Roy Barman and learned Additional Government Advocate, Ms. A. S. Lodh, on the other hand, contended that submission of fake certificate to secure the job itself is a misconduct and no further proof is required.

13. Sub-section (1) of Section 11 of the CRPF Act, 1949 reads as follows :-

"11. Minor punishments. – (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say, -

- (a) Reduction in rank;**
- (b) Fine of any amount not exceeding one month's pay and allowances;**
- (c) Confinement to quarters, lines or camp for a term not exceeding one month;**
- (d) Confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and**
- (e) Removal from any office of distinction or special emolument in the Force."**

14. It would appear from a bare reading of the above provision that punishment as prescribed may be inflicted to any

member of the Force, who is guilty of disobedience, neglect of duty or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force. Mr. Deb has emphasized that when the petitioner submitted the fake certificate he was not a member of the Force and, therefore, he should not have been held guilty for punishment under Section 11 of the CRPF Act, 1949.

15. The word 'misconduct' has not been defined in the Conduct Rules. The Central Civil Service Conduct Rules prescribes that every employee shall at all times – "(i) maintain absolute integrity; (ii) maintain devotion to duty; and (iii) do nothing which is unbecoming of a Government employee." Therefore, the word 'misconduct' is a generic term and means "to conduct amiss to mismanage, wrong or improper conduct; bad behavior; unlawful behavior or conduct". It includes malfeasance, misdemeanor, delinquency and offence. It is the intentional doing of something which doer knows to be wrong or which he does recklessly not caring what the result may be.

16. In ***Blacks Law Dictionary***, the word 'misconduct' is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, a misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

17. **P. Ramanath Aiyars Law Lexicon** defines

'misconduct' thus :-

"The term "misconduct" implies a wrongful intention, and not a mere error of judgment. "Misconduct" is not necessarily the same thing as conduct involving moral turpitude. The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the Act or statute which is construed. "Misconduct" literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness an abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behavior or neglect by a public officer, by which the rights of a party have been affected."

Thus, it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct, but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with

reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

18. Rule 14 of the CRPF Rules, 1949 prescribes procedure of verification of a member of the Force, which reads thus :-

"14. Verification. – (a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The Verification Roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The Verification Roll shall be in CRP Form-25 and after verification shall be attached to the Character and Service Roll of the member of the Force concerned.

(c) The Commandant may waive verification in the case of men who have been enrolled in the Force within six months of their discharge from the regular Army."

19. In the writ petition the petitioner contended that a show cause notice was issued to him referring to the report submitted by the Additional District Magistrate, West Tripura, Agartala enclosing a copy of the verification report of SDM, Bishalgarh, wherein it was reported that SC Certificate which the petitioner submitted at the time of securing job was fake. It is, therefore, clear that at the time of verification of the Roll of the petitioner it was found that the SC Certificate submitted by him was fake and, therefore, the wrong committed by the petitioner was detected while he was in the job for which the disciplinary

authority initiated action against him. The petitioner, while approaching the CRPF authority for the job of Constable, expected to submit fairly all genuine documents. The plea of the petitioner is that he obtained the Certificate through an agent and believed it to be true and that he could not know the genuinity of the certificate before it was inquired into, such mere statement cannot absolve the petitioner from the offence of filing a fake certificate to secure the job and definitely it amounts to misconduct, irrespective of the fact that it was submitted before securing the job. The submission of such a fake certificate and thereby securing a job is a continuous offence and such an offence definitely constitute misconduct while in service and the petitioner cannot be excused or let off on the ground as argued by learned counsel, Mr. Deb that he submitted the certificate before he was enrolled as a member of the Force.

20. Section 11 of the CRPF Act, 1949 clearly prescribes that all other misconduct in his capacity as a member of the Force shall come within the purview of the punishment under that Section and so, the petitioner was rightly held guilty by the disciplinary authority. It is not at all an acceptable argument that unless he is found guilty of disobedience, neglect of duty or remissness in the discharge of duty, he cannot be held guilty of misconduct as a member of the Force.

21. Learned counsel, Mr. Deb, has emphatically submitted that the punishment of removal from service is extremely harsh and disproportionate to the offence alleged. On the other hand, learned CGC, Mr. Roy Barman has submitted that punishment is a discretion of disciplinary authority and the Court should not interfere in it in exercise of judicial review.

22. The petitioner admittedly submitted a fake SC Certificate at the time of securing the job. It is the stand of the petitioner that he actually belonged to SC community and, therefore, he has not stolen the job prospect of any other eligible candidate and, therefore, he should not have been punished with removal from service.

23. The power of judicial review of the decision of a domestic Tribunal is very limited. Such judicial review is possible only when the principles of natural justice has been violated, i.e., the opportunities, which ought to be given to the delinquent, as per rules, were not given or that the decision of the domestic Tribunal was based on no evidence and that the punishment inflicted is shocking to the judicial conscience. If there is no glaring violation of principles of natural justice and there is some evidence to support the decision taken by the disciplinary authority, the Court or Tribunal cannot sit as a matter of appeal to re-appreciate the evidence and to substitute the finding of the disciplinary authority with its own findings.

24. It is a settled law that this Court is not required to sit as an appellate authority to re-appreciate and re-assess the quantum of punishment which has been awarded by the disciplinary authority. It is only to be seen whether the punishment is abnormally disproportionate to the offence and is shocking to the judicial conscience. This Court is also not required to substitute its own view, over and above the view taken by the disciplinary authority, unless it is found that the decision taken by the disciplinary authority is based on no evidence or that the failure of justice has occasioned because of any other reason apparent on the face of the record. CRPF is a disciplined Force. The disciplinary authority taking into account that the petitioner submitted a fake certificate at the time of securing job found him guilty of misconduct and thought it appropriate to remove him from service. Possessing such a fake or forged certificate and using it as a genuine is an offence punishable under the penal Code, apart from other action, such as disciplinary action, as in the case of the petitioner, has been taken by the disciplinary authority.

25. In the case of **Shalini(supra)**, the Supreme Court has categorized the action to be taken in respect of the person, who deliberately stolen the benefit of a reserved community person having been not a person of such community at all and a person, who claimed to belong to such community, but were later on found to be not belonged to that community and, therefore, observed that the second category of person should not be treated in a harsh

manner. In para 9 of the judgment, the Supreme Court has observed as follows :-

"9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with the Scheduled Castes or Scheduled Tribes, etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe."

26. The petitioner's case is altogether different and has to be considered differently. Here the petitioner might belong to SC community originally, but the allegation is that he produced a fake/forged certificate at the time of securing the job, which itself constitutes an offence and, therefore, he was found guilty of misconduct. So, the petitioner cannot avail the advantage of the ratio of the decision of Apex Court in **Shalini(supra)**. The punishment inflicted cannot be said to be shockingly disproportionate to the offence alleged and so, this Court cannot

interfere in the punishment inflicted by the disciplinary authority with any other minor punishment.

27. The petitioner contended that he was not paid the arrears of pay and other allowances for the period he served as a Constable of CRPF. Respondent Nos.1 to 4 by filing counter affidavit contended that 60% of the arrears of pay and allowances amounting to Rs.35,942/- had been paid to the petitioner on 12.04.2011 and in support thereof the respondents submitted Annexure-R/1, a receipt issued by the petitioner. The respondents did not state that they have paid the entire arrear pay and allowances to the petitioner for the period he served and so, we think it proper to direct the respondents to pay the petitioner the whole amount towards pay and other allowances to which the petitioner was entitled for the period he served the department and such payment should be made within 45(forty five) days from today.

28. The writ petition is otherwise found to be devoid of any merit and hence, dismissed.

Parties to bear their own costs.

JUDGE

CHIEF JUSTICE