HIGH COURT OF TRIPURA
AGARTALA

WA 204 of 2020

No.98060202, Rfn (GD),
Sri Laxman Satnami,
son of Sri Dera Satnami,
resident of village- Laxmibagan, PO: Tebaria,
PS: Airport, District: West Tripura

----Appellant(s)

Versus

1. The State of Tripura,
   represented by the Secretary-cum-Commissioner,
   Department of Home Affairs,
   New Secretariat Complex, Gorkhabasti,
   PO: Kunjaban, PS: East Agartala,
   District: West Tripura

2. The Director General of Police,
   Government of Tripura,
   Police Head Quarters, PO: Agartala, West Tripura
   PS: East Agartala, District: West Tripura.

3. The Commandant,
   1st Bn. Tripura State Rifles,
   Government of Tripura,
   Veer Bandhu Gram (Gakulnagar),
   PS: Bishalgarh, District: Sepahijala, Tripura.

4. Sri Rajesh Sharma,
   Deputy Inspector of Police, AP (Adm.) (TRG)
   Government of Tripura, Agartala, District: West Tripura.

----Respondent(s)

For Petitioner(s)	: Mr. B. Majumder, Adv.
For Respondent(s)	: Mr. D. Bhattacharjee, GA.
Date of hearing and delivery of judgment and order	: 10.12.2020.
Whether fit for reporting	: NO

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Judgment & Order (Oral)

Heard Mr. B. Majumder, learned counsel as well as Mr. D. Bhattacharjee, learned GA appearing for the respondents.

[2] By means of this intra-court appeal, the judgment dated 29.06.2020 delivered in WP(C)1254 of 2018 has been called in question. In the said judgment, learned Single Judge has observed that he did not find any error which required exercise of the jurisdiction under Article 226 of the Constitution of India. In the perspective-fact of the case, learned Single Judge has further observed that what could be appropriate punishment for the proved misconduct would depend on facts of each case. Since the petitioner was engaged as a Rifle-man and he was discharging his duties in the disciplined force, his long unauthorized absence would not be glossed over.

[3] Mr. Majumder, learned counsel has submitted that learned Single Judge has observed that in the charge-sheet, there was no reference to the statutory provisions. However, according to the learned Single Judge, that can be a technical lapse but power to impose punishment flows from Section 12 of the Tripura State Rifle Act, 1983 (in short, TSR Act, 1983) as amended from time to time. It has been also observed in the judgment that before imposing any punishment , the procedure, in consonance with principles of natural justice, has to be followed. There was no violation in observance of principles of natural justice. Having observed thus, the writ petition was dismissed.

[4] Mr. Majumder, learned counsel has strenuously contended before us that in the memorandum of the charge-sheet dated 10.01.2013 (Annexure-1 to the writ petition), there was no

reference to Section 12 of the TSR Act, 1983 and as such the departmental proceeding shall only be governed and guided by provisions of CCS (Classification, Control and Appeal) Rules, 1965 and under that rules such harsh punishment as imposed on the petitioner by the final order dated 26.04.2014 is improper and inappropriate inasmuch as for unauthorized absence from the service. The penalty of dismissal from the service is, in the circumstances of the case, shockingly disproportionate. Even it is admitted that the misconduct has been well proved.

[5] On query from this court, Mr. Majumder, learned counsel has admitted that the effort of the writ petitioner-appellant to get the order revised by the revisional authority did not succeed as by the order dated 08.01.2019, the Director General of Police, Tripura has observed that no case of revision has been made out and the penalty imposed by the said final order is commensurate with the misconduct as committed by the charged official.

[6] Mr. Majumder, learned counsel has left no stone unturned to impress us that had Rule 11 of the CCS (CCA) Rules, 1965 been applied, penalty would have been less, at least no order of termination or dismissal from service would have been directed. Rule 11 of the CCS (CCA) Rules, 1965 provides two categories of penalties viz; minor penalties and major penalties. It is apparent that catena of major penalties has been prescribed. In a proceeding, carried out under Rule 14 of the CCS (CCA) Rules, 1965, the removal from the service, or dismissal from the service can be imposed by the

departmental authority. Therefore, contention of Mr. Majumder, learned counsel that under the CCS (CCA) Rules, 1965, such major penalty should not have been imposed on the petitioner is without substance. It is an admitted position that in the charged-memo, no reference to Section 12 of the TSR Act, 1983 has been made, but the proceeding was for imposing penalties for misconduct has been clearly mentioned.

[7] Mr. D. Bhattacharjee, learned GA appearing for the respondents has submitted that even if there is no reference to the penal provisions, such reference is not essentially required to be made, as the statute clearly provides how the provisions of CCS (CCA) Rules, 1965 is to be invoked. In this regard, Mr. Bhattacharjee has referred to Rule 40 of Tripura State Rifles (Discipline, Control, Service Condition Etc) Rules 1965 which provides as under:

> **"Procedure for award of Major Punishments specified in Section 12 of the Act shall (mutatis mutandis) be the same as is provided by imposing of major penalties on Government servants under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as modified from time to time.**
>
> **Provided that the defaulter/accused member of the Rifles shall not be permitted to take the assistance of anyone, who is not serving officer or serving member of the Rifles, to represent the case on his behalf."**

There cannot be any amount of difference in the opinion with Mr. Bhattacharjee that the disciplinary authority is empowered by the said Rule 40 to complete a disciplinary proceeding following the procedure as laid down in Rule 14 of the CCS (CCA) Rules, 1965 for purpose of awarding penalty under Section 12 of the TSR Act, 1983.

[8] We are in total agreement with Mr. Bhattacharjee, learned GA that when statute provides a particular procedure to be followed that has to be followed. Whether that was adverted in details or not cannot be ground for objection. Those provisions shall apply or can be adopted, even if not adverted. Thus, the objection as raised by the appellant that for non-mentioning of provisions of Section 12 of the TSR Act, 1983 is fatal is not accepted by us. So far the objection as raised on proportionality, we are completely in disagreement with that proposition, inasmuch as we have taken note of the relevant fact, that there registered absence of 798 days of the appellant from a disciplined force and such misconduct cannot culminate to a rigid stance as taken by the disciplinary authority.

[9] We are not oblivious that in respect of proportionality of penalty the court can hardly interfere unless it is shown that the penalty that has been imposed is so disproportionate that shacks the conscience of the court. It has been the well-entrenched principle that the courts will not lay their hand on the question of proportionality of the penalty. In this regard, we can gainfully refer a decision of the apex court in **Union of India & Ors vs. P. Gunasekaran** reported in **(2015) 2 SCC 610**

> **"12.Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution**

of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;
b. the enquiry is held according to the procedure prescribed in that behalf;
c. there is violation of the principles of natural justice in conducting the proceedings;
d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

[Emphasis added]

[10] We are in agreement with the reasoning of learned single judge. It may be noted that the finding of the disciplinary authority has been confirmed by the revisional authority by a reasoned order. Even on the question of proportionality, we do not find the penalty as

imposed after observing the procedure as laid down, cannot be brought to the category of 'disproportionate to shock the conscience of the court'.

Having observed thus, we are of the view that no interference is at all called for. Hence, this appeal stands dismissed.

There shall be no order as to costs.

JUDGE **JUDGE**

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