HIGH COURT OF TRIPURA
AGARTALA

W.A. No.24/2017

Sri Nirmal Kar, No.02090329, RECT RAFN (DD), 9th Bn. TSR (IR-IV), S/O. Sri Ashutosh Kar, resident of Village-Bamcherra, P.O.-Muhuripur, P.S.-Baikhora, District:- South Tripura.

----Petitioner-Appellant(s)

Versus

1. The State of Tripura, represented by the Secretary, Department of Home, Government of Tripura, having his office at New Secretariate Complex, Gorkhabasti, PO-Kunjaban, PS-East Agartala, Sub-Division-Sadar, District-West Tripura, Pin-799010.

2. The Commandant, 9th BN, TSR, (IR-IV), Baikhora, South Tripura, PO & PS-Baikhora, Sub-Division-Santirbazar, District-South Tripura, Pin-799142.

-----Respondent(s)

For Appellant(s) : Mr. A. Pal, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing and judgment : **24th November, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

(Akil Kureshi, C.J.)

This appeal is filed by the original petitioner to challenge the judgment of the learned Single Judge dated 24.06.2014 passed in WP(C) No.329 of 2006.

2. Brief facts are as under:

The petitioner was selected as a jawan in Tripura State Rifles (TSR). He was sent for training which he joined on 01.10.2002. The training would be of a duration of 2 years and would be completed on 11.02.2004. During such training period the petitioner remained unauthorisedly absent on numerous occasions without proper leave or intimation to the department. On 08.12.2004 the Commandant of his battalion, therefore, conveyed to him that he was absent without leave from 07.08.2004. He must report for duty before 30.12.2004 failing which disciplinary action would be taken against him. The petitioner did rejoin duty on 30.12.2004. However, by an order dated 14.02.2005 the Commandant, 9th Bn TSR discharged the petitioner from service recording that during the training period he had remained absent for a total period of 260 days and as a result, he could not complete his basic training. The order also recorded that number of opportunities were granted to the petitioner but he failed to complete the training. In that view of the matter, in exercise of powers conferred under Rule 10(5) read with Rule 15 of Tripura State Rifles (Discipline, Control, Service Conditions) Rules, 1986 (*hereinafter to be referred to as the said Rules*) discharged the petitioner from service.

3. The petitioner thereupon issued a demand notice dated 27.06.2006 to the Commandant of his battalion and demanded that he should be paid compensation for his illegal discharge from service. The petitioner thereafter filed the above mentioned writ petition and prayed for reinstatement with backwages.

4. The respondents appeared and filed a reply in which it was highlighted that the petitioner was member of a disciplined force. When he rejoined the duty on 30.12.2004 he had absented unauthorisedly for 147 days. Despite opportunities he had failed to complete his training. Earlier also he had remained absent on numerous occasions without leave. Reliance was placed on Rule 15 of the said Rules and contended that the petitioner's service was discharged during the period of probation.

5. The learned Single Judge by the impugned judgment dismissed the petition *inter alia* on the grounds that the petitioner had not given details of his absence and reasons thereof in the petition, that the invocation of powers by the authority under sub-rule (5) of Rule 10 read with Rule 15 of the said Rules was valid. It was also held that in the petition the petitioner had simply prayed for a direction for arranging the payment of the arrears

and for reinstatement in service. Such prayers could not be sustained without a formal challenge to the impugned order dated 14.02.2005.

6. Appearing for the appellant-petitioner learned counsel Mr. A. Pal submitted that the order passed by the Commandant was not a simpliciter discharge order. The order was stigmatic. Such order could not have been passed without holding a departmental inquiry or at least calling upon the petitioner to show-cause. In the present case, no such opportunity was granted. The order was thus plainly bad in law. In support of his contention, counsel relied on the decision of the Supreme Court in case of ***State of Haryana and another vrs. Jagdish Chander*** reported in ***(1995) 2 SCC 567***.

7. Counsel further submitted that the Commandant had issued a notice dated 08.12.2004 requiring the petitioner to report for duty before 30.12.2004 failing which disciplinary action would be initiated. The petitioner reported for duty within the prescribed period, despite which the impugned order of discharge came to be passed.

8. On the other hand, learned Addl. Government Advocate Mr. Mangal Debbarma opposed the appeal contending that the petitioner was member of a disciplined force. Without sanctioned leave or proper reasons,

he abstained from duty for extended period during training. The Commandant was thus within his rights to exercise the powers under Rule 15 of the said Rules. The learned Single Judge has committed no error.

9. Basic facts are not seriously in dispute. The petitioner after being recruited and sent for training as a jawan of TSR remained unauthorisedly absent on numerous occasions. His last spell of absence without sanctioned leave was 147 days when the Commandant issued a notice reminding him that if he did not resume duty within short time disciplinary action could be initiated. The petitioner has not cited any reasons why such absence was otherwise supported by sound reasons for him being away from duty. Neither in the communications with the department nor in the petition the petitioner has made out elaborate grounds which compelled him to absent from duty without leave.

10. The respondents have pointed out that on account of such frequent and long spells of absence the petitioner could not complete his basic training. We have noticed that the training envisaged was of two years period. It was under such circumstances that the competent authority decided to discharge the services of the petitioner while he was still in probation. Rule 10 of the said Rules pertains to procedure for enrolment. As

per sub-rule (3) of Rule 10 every person appointed as a member of the Rifles would be administered an oath or affirmation in the prescribed format after successful completion of his training. Sub-rule (5) of Rule 10 specifically provides that the oath or affirmation shall be administered after the person has successfully completed his training. Failure to complete the training would render the individual liable to discharge without any compensation at the hands of the competent authority. Sub-rule (1) of Rule 15 of the said Rules provides that a member of the Rifle shall be on probation for a period of three years during which he may be discharged at any time after issuing one month notice or payment of one month salary in lieu thereof by the competent authority.

11. Thus, the statutory framework for discharging a probationer is to be found under the said Rules. As noted, the oath or affirmation would be given to an employee only upon successful completion of the training. For further emphasis sub-rule (5) of Rule 10 provides that if a recruit failed to complete the training he would be liable to be discharged. Sub-rule (1) of Rule 15 is a general rule empowering the appointing authority to discharge a probationer from service with one month notice on notice payee. The only question is did the facts necessary to exercise such powers exist. The answer has to be in the affirmative. Firstly, any such consideration has to be the

subjective satisfaction of the competent authority. Secondly, the facts are glaring. Having been recruited as a jawan in a disciplined force and being sent for training of two years duration the petitioner continuously absented himself without leave or intimation to the department. The last spell of unauthorized absence was close to 150 days. As a probationer the petitioner did not have the same level of protection of his tenure as a permanent confirmed Government servant. He could be discharged from service during the probationary period.

12. We are unable to see that the impugned order is stigmatic in nature. It is true that the Commandant has referred to the unauthorized absence of the petitioner on numerous occasions. However, these observations are in the nature of passing remarks in the order and do not amount to stigmatic castigation. These observations were made in the context of requirement of invoking the powers under sub-rule (1) of Rule 15 of the said Rules. Essentially the impugned order is a simpliciter order of discharge of a probationer before confirmation.

13. The decision of Supreme Court in case of ***State of Haryana and another vrs. Jagdish Chander*** (supra) rests on different facts. It was a case in which a constable in the service of State of Haryana was discharged

from service in exercise of a power which granted the competent authority to discharge the service of a constable within three years of appointment if it was found that he was unlikely to prove an efficient police officer. Such order was set aside by the High Court upon which the State of Haryana had approached the Supreme Court. On the basis of the observations of the competent authority in the order of discharge that the employee was unlikely to prove an efficient police officer because "he is a habitual absentee, negligent to his duty and undisciplined". The Supreme Court found that the order of discharge was stigmatic. Such order was passed without following principles of natural justice and, therefore, liable to be interfered with. However, it was observed that the High Court was not justified in straightway setting aside the order and directing reinstatement with consequential benefits. Instead, the proper course would be to direct an inquiry by the employer if it intended to hold one. In the said case thus the order of discharge was held to be stigmatic since the competent authority had come to the conclusion that the employee was habitual absentee, negligent to his duty and was undisciplined.

14. In the result, we find no merits in the appeal. The same is dismissed.

15. Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA
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