HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.1022/2018

Sri Aftab Ali, Havildar (Medical), S/O. Sri Jahur Ali, Vill. & P.O.-Tilla Bazzar, P.S.-Kailashahar, District: - Unakuti, Tripura.

----Petitioner(s)

Versus

1. The State of Tripura represented by the Secretary, Department of Home, Government of Tripura, Agartala.

2. The Director General of Police, Government of Tripura, Police Headquarter, Fire Brigade Chowmohani, Agartala, West Tripura.

3. The Deputy Inspector General of Police (AP) OPS-TSR, A.D. Nagar, Government of Tripura, Agartala.

4. The Commandant, 13th Bn, TSR, Subhash Nagar, P.O. & P.S.-Kanchanpur, North Tripura.

5. The Assistant Commandant, Inquiry Officer, 13th Bn, TSR, Subhash Nagar, P.O. & P.S.-Kanchanpur, North Tripura.

-----Respondent(s)

For Petitioner(s) : Mr. D.C. Roy, Advocate,
Mr. A .K. Pal, Advocate.

For Respondent(s) : Mr. D. Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **7th July, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Petitioner has challenged the order of punishment imposed by the disciplinary authority dated 18.07.2016 removing the petitioner from

service as well as the appellate order dated 31.12.2017 by which the petitioner's appeal against the order of disciplinary authority came to be rejected.

2. Brief facts are as under:

The petitioner at the relevant time was working as Havildar (Medical) in Tripura State Rifles. He was absent from duty without sanctioned leave from 05.11.2012. Despite communications he did not join duty. On account of his continuous and long absence from duty, the disciplinary authority issued a charge-sheet dated 06.07.2014 in which the charge levelled against the petitioner was as under:-

> "Article-I
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> That the said No.91010206 Hav(Med) Aftab Ali of Adm Coy, 13th Bn TSR(IR-IX) while posted at Demdum post was commanded on 05.11.2012 to visit Kailashahar Hospital to perform his assigned duty, but since then he did not resume his duty and thus absenting himself unauthorisedly w.e.f. 05.11.2012 (FN) to till date.
>
> Thus he has committed a gross misconduct, which is an act of prejudicial to good order and discipline of the Rifles U/S 12(1) of TSR Act, 1983."

3. The petitioner did not participate in the departmental inquiry citing the reason for his personal illness. He sent a few medical certificates

claiming that he was incapacitated because of his physical condition from either reporting for duty or to appear before the Inquiry Officer to defend himself. The Inquiry Officer proceeded with the inquiry *ex parte* and submitted his report dated 14.06.2016. The Inquiry Officer held that the charge was proved. The disciplinary authority thereupon issued a provisional order of punishment dated 20.06.2016. He recorded that the departmental inquiry was conducted giving opportunity to the petitioner to defend himself. Despite several notices from the Inquiry Officer, the petitioner neither engaged a defence assistant nor appeared before the Inquiry Officer. He provisionally came to the conclusion that the petitioner had committed misconduct and the charge against him was proved for which he proposed to impose a punishment of removal from service. He granted 15 (fifteen) days to the petitioner to reply to the said proposal. The petitioner did not reply to this notice. The disciplinary authority, therefore, passed the impugned order removing the petitioner from service and treating the intervening period as dies-non. As noted, against such order the petitioner preferred appeal which was dismissed. Hence, this petition.

4. Learned counsel for the petitioner Mr. A.K. Pal submitted that the petitioner was suffering from serious illness which prevented him from resuming his duties. Medical certificates were produced before the

departmental authorities from time to time. Request was also made to the Inquiry Officer not to proceed with the inquiry since the petitioner was unable to participate on account of his illness. Without considering such materials, the inquiry was conducted *ex parte*. The disciplinary authority did not take into account the serious illness of the petitioner before imposing punishment. Counsel argued that the absence of the petitioner was not willful and, therefore, he cannot be stated to have committed any misconduct. He pointed out that the petitioner had requested for voluntary retirement. He had already completed 25 years of service. Without considering such a request, punishment of removal from service was imposed.

5. On the other hand, learned Government Advocate Mr. D. Bhattacharjee opposed the petition contending that the petitioner had committed serious misconduct. He had not reported for duty without leave for years together. When asked to go before the Medical Board, the petitioner refused to do so. The charge against the petitioner was proved. During his service record the petitioner had committed several misconducts. On as many as 6(six) occasions he was visited with penalties, mostly for overstay of leave period.

6. The materials on record would suggest that the petitioner remained absent without leave from 05.11.2012 continuously for years together. At the time of issuance of charge-sheet dated 06.07.2014 nearly 2(two) years later the petitioner had not yet resumed duty. This position continued throughout during the pendency of the inquiry. Before the Inquiry Officer, petitioner neither appeared personally nor through a defence assistant. The Inquiry Officer, therefore, was compelled to complete the inquiry *ex parte*. The reasons cited by the petitioner for his absence from duty and his non-participation before the Inquiry Officer is his personal illness. Here also the petitioner has not produced sufficient evidence to ignore his absence from duty for years together. Several certificates produced in the petition are issued by doctors who described themselves as "registered medical practitioner". The certificates are issued on plain papers without the letterhead of the issuing doctor, his name, designation or description of his dispensary where the petitioner was treated. The illness described in these certificates is mostly "acute, chronic sciatica pain". It is doubtful whether only on account of sciatica pain a person could be incapacitated from discharging his normal duties for years together. When the department asked the petitioner to appear before a Medical Board for his full check up and verification whether he was genuinely unwell enough not

to report for duty or it was only aroused, the petitioner put severe pre-conditions for appearing before the Medical Board. He demanded an escort, ambulance and salary for the past period which was not paid to him. In one of his applications, he demanded an advance of Rs.1 lakh to appear before the Medical Board. Clearly thus, the petitioner avoided his full medical examination at the hands of senior Government doctors.

7. I do not find that the petitioner has made out any case for interference. Petitioner was engaged in Tripura State Rifles, a disciplined force. He cannot simply refuse to attend to his normal work for years together without sound and valid reasons. For such reasons, petition is dismissed.

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

(AKIL KURESHI), CJ

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HIGH COURT OF TRIPURA
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