

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T. 105 of 2013

Buddhadev Biswas

Versus

The State of West Bengal

For the appellant : Mr. Ramen Bose, Adv.

For the State : Mr. Tapan Kr. Mukherjee, Sr.
Advocate & A.G.P.
: Mr. Pinaki Dhole, Adv.
: Ms. Debdooti Dutta, Adv.

Heard on : June 12, 2023

Judgement on : July 27, 2023

Md. Shabbar Rashidi, J.:

1. The instant Writ Petition is in assailment of an order dated January 09, 2013 passed by the West Bengal Administrative Tribunal in O.A. No. 214 of 2001.

- 2.** By the impugned order, the learned Administrative Tribunal refused to interfere with the order of his dismissal from service passed in a disciplinary proceeding initiated against him and upheld in appeal thereof.
- 3.** The petitioner was in service as a sepoy in the Calcutta Armed Police. He was a permanent resident of Nadia district and had no local residence at Calcutta. However, with the consent of his maternal uncle, who was also a Sub-Inspector of police, orally provided his residential address as local address of the petitioner to the authorities. It was contended that the said address as wrongly recorded by the staff of the authorities in his Service Book.
- 4.** It was further contention of the petitioner that on August 12, 1999 the petitioner moved to his native village on sick leave for 3 days. He did not join after 3 days for which a warning notice was issued by the authorities. The said notice could not be served upon the petitioner due to wrong recording of his local address. He lost his

senses for his illness and his family members were not aware of the procedure to inform the authorities and accordingly, they did not take any steps to inform the authorities or to bring the petitioner to Calcutta Police Hospital for his treatment.

5. Being known from source, the petitioner came to know about a warning notice issued against him, the petitioner came to Calcutta on September 15, 1999 and got himself admitted in Calcutta Police Hospital wherefrom he was discharged on September 29, 1999. Being so discharged he reported to his office but he was not allowed to join. The petitioner also came to know that a proceeding was initiated against him for his unauthorized absence and a notice in this regard was served upon him.

6. It is further submitted that the petitioner responded to such notice by submitting a reply, though, admitted his absence but supplied sufficient explanation for his absence.

7. In consideration of the reply and also after affording an opportunity to the petitioner to defend himself, the Enquiry Officer submitted his report on the basis of which, Respondent No.3 issued a provisional order asking the petitioner to show cause as to why a major punishment of dismissal from service be not awarded against him. Upon consideration of the show cause reply, submitted by the petitioner on January 13, 2000, a final punishment order was passed against the petitioner dismissing him from service on February 17, 2000.

8. Challenging the said final order of dismissal, the petitioner carried an Appeal before Respondent No. 2 which was dismissed on June 12, 2000. In the meantime, the petitioner, by a writing dated February 16, 2000, was asked to resume his duties. However, when he came to office, he was not allowed to join on the plea that he was already dismissed from service by an order dated February 17, 2000. The appeal carried by the petitioner

was however, mechanically dismissed by Respondent No. 2 by order dated June 12, 2000.

9. The petitioner challenged the order of his dismissal as well as the order passed in appeal before the West Bengal Administrative Tribunal in 2001. The said proceeding at the behest of the petitioner before the Tribunal was dismissed for default on February 9, 2005 for non appearance of his advocate. The petitioner moved for restoration of his application, so dismissed, on June 28, 2012 which was allowed on October 01, 2012. However, upon hearing of the Original Application, the learned Tribunal by the impugned order, negated the claim of the petitioner and dismissed the Original Application. This has been challenged by the petitioner in the instant writ petition.

10. It has been contended on behalf of the petitioner that disciplinary authority and the learned Tribunal failed to appreciate that the petitioner moved on sick leave for three days and was unable to resume his duties owing to his prolonged illness. Being treated at Calcutta

Police Hospital, the petitioner came back to resume his duties on September 29, 1999 but was not allowed to join on the plea that a warning notice dated August 23, 1999 was sent at his recorded address. It was also submitted on behalf of the petitioner that learned tribunal failed to appreciate that the warning notice could not be served upon the petitioner due to wrong recording of local address by the staff of the authorities. It was stated on behalf of the petitioner that he provided local address to the authorities which was 2/J/Satkuri which was recorded as 2/J/720.

- 11.** It was also submitted on behalf of the petitioner that the warning notice, asking him to resume his duties after the period of sick leave, was never served upon the petitioner due to wrong recording of local address. It was contended that the disciplinary authority as well as learned tribunal committed error in coming to a conclusion that the petitioner was guilty of providing wrong address to the authorities. Learned tribunal was also not justified in relying upon the submissions on

behalf of the respondent the effect that petitioner's conducting diligence was not satisfactory. It was also argued that the learned tribunal failed to appreciate that the petitioner moved on sick leave for three days and was prevented from resuming his duties due to his prolonged illness.

12. In support of his contentions, learned advocate for the petitioner relied upon **(2014) 13 Supreme Court Cases 166 (Chhel Sing V. M.G.B. Gramin Bank Pali & Ors)** and **(2012) 3 Supreme Court Cases 178 (Krushnakant B. Parmar V. Union of India & anr).**

13. The record reveals that the petitioner moved on a sick leave for three days after submitting a formal application in this regard. The petitioner did not return after the period of leave. A warning notice was issued against the petitioner to be served on the local address provided by the petitioner. However, it could not be served as no such address was found. Ultimately, a disciplinary proceeding for misconduct on account of his unauthorized business from service was initiated against

the petitioner being proceeding no. 215. The charges leveled against the petitioner in the said proceeding were that the petitioner submitted an application on August 12, 1999 asking for sick leave at quarters permission at 2/J/720 Mitra Lane P.S. Maniktala, Calcutta-56 and thereafter he became untraced unauthorisedly from the lines which amounted to an indiscipline. The second charge was that the petitioner having moved on sick leave was to join service on August 15, 1999 but he failed to report and at the same time, he also failed to even intimate whether he required any further leave on medical ground. The petitioner was further charged with providing wrong local address to the authorities which could not be located by the postal authority. Such conduct on behalf of the petitioner was alleged to be a misconduct. The petitioner submitted his reply in the aforesaid proceeding on December 12, 1999. In his reply, he admitted that he reported sick at quarter on August 12, 1999 and he might have made a mistake in quoting the address as 720 Mitra Lane instead of Satkari Mitra

Lane. At the same time, the petitioner admitted in his reply that he never resided at Satkari Mitra Lane. In his reply, the petitioner further stated that one sub-inspector Sukhen Biswas used to reside at 2/J Satkari Mitra Lane and with his approval, the petitioner submitted the address in his application with a request to intimate him in case of any official information. In reply to the second charge, the petitioner submitted that being sick, he was going out of disposition and after his reporting sick he had been to his native village. There, he was attacked with Malaria and Jaundice. Thereafter, he returned Calcutta and got admitted in Calcutta Police Hospital for fourteen days where from he was discharged on September 29, 1999 after fourteen days of treatment.

- 14.** Considering the charges and the reply submitted on behalf of the petitioner, the enquiry officer came to conclude that the petitioner, who was granted three days sick leave at quarters unauthorizedly moved to his native place within the district of Nadia with out due permission to leave the station. As such, he was found guilty. The

reports submitted by the assistant commissioner of police dated December 31, 1999 goes to explain that the petitioner was found guilty of leaving the station without due permission from the authorities. He was also found guilty for unauthorized extension of leave without any intimation to the authorities. He was further found liable for knowingly providing wrong address of his local residence. The reply submitted on behalf of the petitioner in the proceeding and the appeal, the charges leveled against the petitioner were admitted. In fact, the enquiry officer and the appellate authority were of the opinion that the medical certificate produced in support of the illness of the petitioner issued by the doctors at Nadia were found to support the allegation that the petitioner left the station without valid permission. It was admitted on behalf of the petitioner that he or his family members did not intimate the authorities when the petitioner was not in a position to resume his duties for his illness.

- 15.** As noted above, the petitioner was granted sick leave for three days at quarters but he moved to his

native place in the district of Nadia without seeking permission to leave the head quarters.

16. When the petitioner did not resume his duties on the expiry of the leave granted to him warning notice was issued and sought to be served on the local address provided by the petitioner while applying of such leave. The said notice could not be served upon the petitioner as the address could not be located by the postal authorities.

17. In his reply, the petitioner has made out a case that he orally provided his local address that the consent of the person residing in such address. It was the contention of the petitioner that due to mistake the said address was written at 2/J/720 Mitra Lane instead of 2/J Satkari Mitra Lane. In the disciplinary proceeding, the enquiry officer observed that the petitioner himself provided such address on a previous occasion also, while the same was found to be the fake address. The copy of the application for leave submitted on behalf of the petitioner dated August 12, 1999 was brought on record

between the affidavit in opposition on behalf of the respondent. The said letter goes to show that the address was provided by the petitioner himself in the application of leave as 2/J/720, Mitra Lane, P.S. Mankitala Cal-56. The record further shows that enquiry regarding the correction of the address provided by the petitioner was conducted by one Minal Kumar Chatterjee, CC 'D', OOH second Battalion CAP. By his report dated September 11, 1999, the enquiry authority found that the local address 2/J/720 Mitra Lane, Cal-56 was found to be false one. The enquiry report also indicated that address of 2/J/Satkari Mitra Lane within the jurisdiction of Maniktala, was though located but the petitioner never stayed at that address. It is on the basis of such report, the petitioner was held guilty of providing false information to the authorities. The petitioner carried an appeal against the order passed by the disciplinary authority.

- 18.** In the said appeal, the petitioner was held guilty and the charges leveled against him was found to be

proved out of reasonable doubts. Thereafter, the petitioner moved before the West Bengal State Tribunal by OA 214/2001 which was disposed of on January 09, 2013, which was dismissed. The learned tribunal refused to interfere that the order of dismissal of the petitioner in consideration of the facts that the petitioner got all the opportunities to defend himself in the proceeding and he pleaded guilty. The learned tribunal also took into account the post conduct of the petitioner while refusing to interfere with the order.

19. In the present proceeding also, the petitioner has submitted that the punishment of dismissal from service was too harsh and proposed for release in this regard.

20. In the facts and circumstances of the case, it is not denied that the petitioner moved on sick leave at quarters and over stayed for a considerable period. It is also not denied that the petitioner left the head quarters without prior permission. It is also admitted that when the petitioner could not resume his duties on the expiry of the leave granted to him, no intimation was given to the

authorities by the petitioner or his family members. We have noted hereinbefore that the petitioner himself provided a wrong local address and he never stayed on the address as alleged by him for which the warning notice could not be served upon him. It is to be considered that the petitioner was serving as a sepoy under the armed police force, a department which requires utmost discipline. The service of the petitioner cannot be equated with any other employment. In the case of Chhel Singh (supra), the Hon'ble Supreme Court was pleased to set aside the order passed by the Division Bench of the High Court upholding the order of learned single judge quashing the order of removal and directing the respondent to reinstate the appellate in service with all sequential benefits. In the aforesaid case, the main allegation against the appellant therein was absence from the duties for a particular period for which no prior permission was obtained from the competent authority. The appellant had taken a plea that he was prevented by his illness from resuming his duties on account of his

illness and produced documents. The enquiry officer therein had held that the appellant's absence from the duty was willful and deliberate. The Hon'ble Supreme Court laid down that in absence of an evidence dislodging the testimony of the medical certificates produced by the appellant, the conclusion of the enquiry officer that the appellant's absence from duty was willful and deliberate was not proper.

- 21.** In the instant case, however, the allegation against the petitioner not only unauthorized absence from duty but the petitioner was also charged with leaving the head quarters without prior permission since he was allowed three days sick leave at quarters. The appellant was also charged for providing false local address resulting in the failure of communication by the authorities upon the petitioner. Moreover, the appellant in the case of Chhel Singh (supra) was an employee of a Bank where as the present petitioner belongs to a Police Force which requires high standard of discipline. Therefore, the ratio

laid down in the case of Chhel Sing (supra) cannot be applied in the facts and circumstances of this case.

22. In the case of Krushnakant B. Parmar (supra) also the appellant therein was proceeded against on the only allegation of unauthorized absence of duty. The Hon'ble Supreme Court held,

“22. In the present case, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri. P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October,

1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office to Telephone calls dated 29th September, 1995 etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.”

23. As we have noted above, the petitioner in the present case was proceeded against for unauthorized absence from duties together with leaving the head quarters without due permission and providing false information to the authorities. Therefore, the principle laid down in the case of Krushnakant B. Parmar (supra) may not be applicable in the facts and circumstances of this case.

24. On the basis of discussion made hereinbefore, we did not find any material warranting any interference into the impugned order. Accordingly, the W.P.S.T. 105 of 2013 is dismissed without any order as to costs.

25. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

26. I agree.

[DEBANGSU BASAK, J.]