



**THE HIGH COURT OF SIKKIM: GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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**W.P. (C) No. 24 of 2023**

Mr. Chandan Bikomiya Deori,  
S/o Shri Lankeswar Bikomiya Deori,  
Aged about 36 years,  
R/o Mahadevpur-I,  
P.O. & P.S. Mahadevpur,  
District Namsi, Arunchal Pradesh.

..... Petitioner

**Versus**

1. Ministry of Home Affairs, Government of India,  
Through the Secretary,  
Department of ITBP 11 Wahini,  
Indo-Tibetan Border Police Force,  
Via 99 Force Post Office  
Pin-110001.
2. The Deputy Inspector General,  
Indo-Tibetan Border Police (ITBP),  
Sector Head Quarter (SHQ),  
Gangtok  
Pin-737101.
3. The Commandant,  
Indo-Tibetan Border Police (ITBP),  
Sector Head Quarter (SHQ),  
Gangtok  
Pin-737101.

.....Respondents

**Application under Article 226/227 of the Constitution of India.**

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**Appearance:**

Ms. Rachhitta Rai, Advocate for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India  
assisted by Ms. Natasha Pradhan and Ms. Purnima  
Subba, Advocates for the Respondents.

Date of hearing : 14.08.2023

Date of judgment : 21.08.2023



## **J U D G M E N T**

### **Bhaskar Raj Pradhan, J.**

1. This writ petition seeks to challenge the impugned order of compulsory retirement dated 25.06.2020 (compulsory retirement order) and impugned office memorandum dated 19.12.2022 (order in appeal) by which the appeal preferred by the petitioner was rejected by the respondent no.2. Heard the learned counsel for the parties.

2. The petitioner was working as constable in Indo-Tibetan Border Police Force (the Force). He joined the Force in the year 2007 and was later posted at 11BN, Chungthang, North Sikkim since 2018.

3. According to the petitioner on 10.05.2020 while he was on duty at Chubaka Station one Manoj Kumar, the Sport Coordinator met him at the Advance Station along with some of his friends celebrating a friend's birthday and having consumed alcohol. Thereafter, there was verbal altercation between them. The Sport Coordinator reported the incident to the higher authority. On 17.06.2020 the petitioner was served with show cause notice giving him three days to show cause his defense. The petitioner



tendered his apology in writing. He now explains that he tendered apology as he did not know what the show cause actually meant. Pursuant to the show cause notice and his written apology the compulsory retirement order was issued. Thereafter, the petitioner filed an application under Rule 28 of the Indo-Tibetan Border Police Force Rules, 1994 (the ITBPF Rules, 1994) before the respondent no.2. The petitioner did not receive any response and therefore, he sent a letter dated 06.11.2020 seeking the status of his letter dated 22.08.2020. On 02.12.2020 the petitioner received a letter from the respondents informing him that his appeal was dismissed reiterating that necessary investigation had been done before issuing the compulsory retirement order and that the appeal was devoid of merit.

**4.** The petitioner thereafter, filed a Writ Petition (C) No. 10 of 2021 before this Court challenging the impugned order of retirement dated 25.06.2020 as well as the Department Memorandum dated 02.12.2020. This Court disposed of the writ petition on the following terms:-

*“4. In view of the submissions made, without going into the merits of the case, the impugned Department Memorandum dated 02.12.2020 passed by the respondent no.2 is set aside. The appeal under Rule 28 of the ITBPF Rules, 1994 shall be heard afresh by the concerned authority after giving an opportunity of hearing including opportunity to file written submissions and personal*



*hearing to the petitioner on a convenient date after due written notice. The writ petition is disposed of accordingly.”*

**5.** Thereafter, on 16.12.2022 the petitioner filed written submissions before the respondent no.2 raising his grounds to set aside of the compulsory retirement order. In the written submissions the petitioner raised the following three issues:-

1. Section 29 of the Indian Tibetan Border Police Force Act, 1992 (ITBPF Act, 1992) does not contemplate termination or compulsory retirement of any of its employees if he is found in a state of intoxication whether on duty or not. Rule 25 of the ITBPF Rules, 1994 therefore cannot override the provisions of the ITBPF Act, 1992. The order of compulsory retirement dated 25.06.2020 is therefore, illegal.

2. The petitioner was never provided with any opportunity of hearing before he was compulsorily retired vide order dated 25.06.2020.

3. Although the departmental memorandum dated 02.12.2020 informed the petitioner that necessary investigation had been done before the impugned order of compulsorily retirement no such investigation have been made.

**6.** The compulsorily retirement order details the numerous instances of indiscipline committed by the petitioner over a period of time. It includes the various



offences and the punishments undergone by him for the year 2013, 2014, 2015, 2016 and 2019. It also details the various opportunities given to him to improve. The compulsory retirement order also narrates the incident of 10.05.2020 in which the petitioner was found drunk and thereafter, started physically fighting with the sports coordinator running after him with a '*khukuri*' to kill him. It refers to the medical examination by the Medical Officer, the finding that he had in fact consumed intoxicants and the fact that he was in an intoxicated state. A perusal of the compulsory retirement order does not reflect that he was compulsorily retired only because he admitted to his guilt in his reply to the show cause notice.

7. The impugned order in appeal issued by the respondent no.2 records that in order to conduct in-depth examination of the points made by the petitioner during his personal hearing on 16.12.2022 and the appeal, the Force, 11<sup>th</sup> Corps had been directed to provide paragraph wise comments and detailed report. Thereafter, it was found:-

- i) अपीलकर्ता द्वारा बार-बार अनुशासनहीनता की कार्यवाही दोहराने पर 11वीं वाहिनी के कार्यालय आदेश संख्या 144 दिनांक 9.01.2020 के तहत कर्मी सेवा में बनाये रखने योग्य हैं अथवा नहीं के संबंध में एक न्यायिक जाँच समिति का गठन किया गया था। उक्त न्यायिक जाँच समिति की राय एवं संस्तुति के आधार पर तथा अपीलकर्ता के पिछले अनुशासनहीनता के रिकार्ड को देखते हुए 11वीं वाहिनी के आदेश संख्या 1023-29 दिनांक 22.02.2020 के तहत अपीलकर्ता को सेवा में बने रहने हेतु एक और मौका देते हुए भविष्य में अनुशासनहीनता की कार्यवाही में लिप्त पाये जाने पर भातिसीपु0 बल अधिनियम/नियम के तहत कार्यवाही किये जाने के आदेश पारित किये गये थे। परन्तु आप अपेक्षाओं पर खरे नहीं उतरे।



- ii) अपीलकर्ता को अपने आचरण व अनुशासन में सुधार का पर्याप्त मौका दिये जाने के उपरान्त भी अपीलकर्ता दिनांक 10.05.2020 को 0930 बजे दैनिक फालन के दौरान अनुपस्थित पाये जाने पर आपके वरिष्ठ है.कां./जीडी मनोज कुमार, 11वीं वाहिनी को आपको ढूँढ़ने के लिए लाईन में भेजा गया। अग्रिम चौकियों पर मदिरा निषेध होने के बावजूद आप उस वक्त मदिरा का सेवन कर रहे थे। है.कां./जीडी मनोज कुमार द्वारा आपको फालन में शामिल होने का आदेश दिया गया तो आपके द्वारा उसकी अवज्ञा करते हुए उसके साथ हाथापाई की गयी और आप खुखरी लेकर उसको मारने के लिए दौड़े। इस संबंध में चौकी में उस समय तैनात मेडिक्स तथा वाहिनी चिकित्साधिकारी की मेडिकल रिपोर्ट के अनुसार आपके द्वारा मदिरा का सेवन किया हुआ पाया गया था। साथ ही उक्त प्रकरण में दिनांक 17.06.2020 को आपको दिया गया कारण बताओ नोटिस में आपके द्वारा अपनी गलती मानते हुए तथा पूर्व में की गई गलतियों पर भी सहमति देते हुए आपको एक और मौका देने हेतु आग्रह किया गया।
- iii) इसके अतिरिक्त आपके द्वारा दलील दी गई है कि कर्मी अधिक शिक्षित नहीं होने तथा हिन्दी उचित रूप से पढ़ने एवं लिखने में सक्षम नहीं होने के कारण सेनानी, 11वीं वाहिनी द्वारा जारी कारण बताओ नोटिस का वास्तविक अर्थ समझ नहीं पाया तथा समवाय लिपिक द्वारा तैयार किये गये प्रत्युत्तर पर हस्ताक्षर कर दिया। इस संबंध में अवगत कराना है कि उपलब्ध अभिलेखानुसार (कै0शीट के अनुसार) आप वर्ष 2004 में Govt Higher Secondary School Mahadevpur (Arunachal Pradesh) से 10वीं कक्षा उत्तीर्ण हैं तथा आपको हिन्दी भाषा का ज्ञान है।
- iv) आपके द्वारा भा0ति0सी0पुलिस बल की अग्रिम चौकियों पर शराब का सेवन करने के साथ अपने वरिष्ठ की अवज्ञा करते हुए धारदार हथियार (खुखरी) से हत्या का प्रयास किया गया है। बल के संवेदनशील दायित्वों के मध्येनजर भातिसीपु नियमावली 1994 के नियम 25 (2) में निहित प्रावधानों के तहत सेनानी 11वीं वाहिनी द्वारा उनके ज्ञापन संख्या 4341 दिनांक 23.06.2020 के तहत आपको स्वेच्छा से सेवानिवृत्त त्याग पत्र प्रस्तुत करने हेतु कहा गया था साथ ही यह भी स्पष्ट रूप से अंकित किया गया था कि आपके द्वारा त्याग पत्र प्रस्तुत न किये जाने पर दिनांक 25.06.2020 से अनिवार्यतः सेवानिवृत्त कर दिया जायेगा।
- v) आपके द्वारा त्याग पत्र प्रस्तुत न किये जाने पर सेनानी 11वीं वाहिनी द्वारा भारत तिब्बत सीमा पुलिस बल अधिनियम 1992 की धारा-11 के साथ पठित भारत तिब्बत सीमा पुलिस बल नियमावली 1994 के नियम-25 में निहित प्रावधानों के तहत प्रदत्त शक्तियों का प्रयोग करते हुए आपको अग्रिम सेवा हेतु अनुपयुक्त पाये जाने पर 11वीं वाहिनी के आदेश संख्या 4358-71 दिनांक 25.06.2020 के तहत दिनांक 25.06.2020 से अनिवार्यतः सेवानिवृत्त किया गया।

**8.** The order in appeal deals with all the points raised by the petitioner. The order in appeal notes that the post held by the petitioner was of sensitive nature. It also notes the various instances of repeated indiscipline committed by the petitioner which led to the judicial committee being constituted on 09.01.2020. It also records that the petitioner was given one more chance to continue service on the condition that he would not indulged in



indiscipline in the future. It notes that the petitioner however, did not live up to the expectation and indulge in the act of gross indiscipline on 10.05.2020 when after consuming alcohol the petitioner disobeyed the orders of his superior, manhandled him and ran to kill him with the “*khukuri*”.

**9.** The petitioner admits that he was found drinking alcohol on the date of the incident in the writ petition. The challenge to the compulsorily retirement order in the writ petition is not on merits but only on technical and peripheral grounds.

**10.** The ITBPF Act, 1992 is an Act to provide for the constitution and regulation of the Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith. The ITBPF Act, 1992 provides for the constitution of the Force and conditions of service of the members of the Force. Section 11 relates to dismissal, removal or reduction of any person by the Director General and by other Officers. Chapter III deals with various offences which can be tried by a Force Court. Section 29 is part of Chapter III and provides that if any person subject to the ITBPF Act, 1992 is found in a state of



intoxication, whether on duty or not, shall on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment.

**11.** In the present proceedings the petitioner was not charged under Section 29 of the ITBPF Act, 1992 but under Rule 25 of the ITBPF Rules, 1994 for his termination on the ground of unsuitability.

**12.** The ITBPF Rules, 1994 was enforced in exercise of the powers conferred by Section 156 of the ITBPF Act, 1992. Rule 25 of the ITBPF Rules, 1994 which was invoked in the petitioner's case reads as under:-

***“25. Termination of service of enrolled persons on the grounds of unsuitability.***-Where a Commanding Officer not below the rank of Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the enrolled person shall be-

- a) so informed;
- b) furnished with the particulars of all matters adverse to him; and
- c) called upon to urge any reasons he may wish to put forward in favour of his retention in the service:

*Provided that clauses (a), (b) and (c) shall not apply, if the Commanding Officer not below the rank of Commandant is satisfied that for reasons to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof;*

*Provided further that such competent authority may not furnish to the enrolled person any matter adverse to him, if in his opinion, it is not in the interest of the security of the State to do so.*

- (2) After considering the explanation, if any, the Commanding Officer not below the rank of Commandant, may call upon the enrolled person to retire or resign and on his refusing to do so,





*the enrolled person may be compulsorily retired or discharged from the service.”*

**13.** A perusal of Rule 25 of the ITBPF Rules, 1994 makes it clear that it is a complete disciplinary rule to proceed against a person on the ground of unsuitability and not anything to do with offences covered by Chapter III of the ITBPF Act, 1992. It requires the satisfaction of the Commanding Officer not below the rank of a Commandant that the enrolled person is unsuitable to be retained in the Force. On such satisfaction the enrolled person is required to be (a) informed; (b) furnished with the particulars of all matter adverse to him; and (c) called upon to urge any reasons he may wish to put forward in favour of retention in the service. The proviso states that if the Commanding Officer not below the rank of Commandant is satisfied that for reasons to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof he may not even comply with the requirement of (a) , (b) and (c) above. Further, the competent authority may not furnish any matters adverse to the enrolled person, if in his opinion it is not in the interest of the security of the State. Sub-section (2) thereof provides that after considering the explanation, if any, the



Commanding Officer not below the rank of the Commandant, may call upon the enrolled person to retire or resign and on his refusing to do so, the enrolled person may be compulsorily retired or discharge from the service.

**14.** It is the petitioner's case that he was furnished with a show cause notice. As such it is clear there has been compliance of all the three requirements contemplated in Rule 25. The excuse of not understanding Hindi and therefore, admitting his guilt in the petitioner's reply to the show cause notice has been examined by the respondent no.2 who has held that the petitioner having passed Class X from a Government Higher Secondary School had enough knowledge of the Hindi language.

**15.** The learned Counsel for the petitioner also urged that although during the relevant time three persons were punished for the same act only the petitioner was issued with compulsorily retirement order. Besides this assertion nothing else is furnished to examine the correctness of the allegation. In writ proceedings this court is required to correct errors of law, procedural errors leading to manifest injustice or gross violations of principles of natural justice. This Court cannot examine the correctness of the allegation



made by the petitioner regarding other persons who are not before this Court. Furthermore, this Court does not exercise appellate powers while exercising power under Article 226/227 of the Constitution of India. The power of judicial review exercised by constitutional courts does not assume the role of the appellate authority. What may be examined, in an appropriate case, is whether there is any error in the decision making process. The merits of the quantum of punishment imposed cannot be interfered with unless the exercise of discretion in awarding punishment is perverse as the punishment is grossly disproportionate. In a Force constituted for ensuring the security of the borders of India discipline is paramount and the writ court would hesitate from interfering in exercise of the discretionary jurisdiction of the authorities constituted and appointed under the ITBPF Act, 1992 and the ITBPF Rules, 1994 unless it is shown that the exercise of power was unconstitutional, arbitrary or perverse. The authorities are best judges to maintain the discipline of the Force. Unless gross violation of natural justice or perversity in the quantum of punishment compared to the quantum specified is seen it would not be wise to interfere in writ



jurisdiction although the power of this Court is sufficiently wide to root out any illegality wherever found.

**16.** Thus, this Court is of the considered view that no case has been made out by the petitioner to invoke the judicial review jurisdiction of this Court against the compulsory retirement order and the order in appeal rejecting his appeal. The writ petition is dismissed. No orders as to costs.

**( Bhaskar Raj Pradhan )**  
**Judge**

Approved for reporting : **Yes**  
Internet : **Yes**  
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