

**HIGH COURT OF TRIPURA
AGARTALA**

WA 117 OF 2023

Shri Balaram Das,
S/o Shri Laxman Chandra Das,
Resident of Tuichindrai, P.O. Hawaibari,
P.S. Teliamura, District-Khowai, Tripura,
Age-35, PIN-799205.

....Appellant.

Vrs.

1. The State of Tripura,
Represented by the learned Government Advocate,
High Court of Tripura, Agartala.

2. The Secretary,
Home Department, Government of Tripura,
New Secretariat Complex, P.O. Kunjaban,
Agartala, District-West Tripura, PIN-799010.

3. The Director General of Police,
Police Headquarter, Fire Brigade Chowmohani,
P.O. Agartala, District-West Tripura,
PIN-799010.

4. The Commandant, 12th BN. TSR (IR-VIII),
Chakmaghat, Teliamura, Khowai, Tripura,
PIN-700205.

5. Shri Shyamal Debbarma,
Assistant Commandant, E.O. of DP No.05/19, 12th BN TSR (IR-VIII),
Chakmaghat, Teliamura, Khowai, Tripura, PIN-700205.

6. Shri Ajay Kumar Das, Dy. SP(Crime Branch),
A.D. Nagar, Agartala, West Tripura, PIN-799003.

...Respondents.

Present:

For the appellant : Mr. S.M. Chakraborty, Sr.Advocate.
Ms. A. Pal, Advocate.

For the respondents : Mr. D. Sarma, Addl. G.A.

Date of hearing and date : **27.03.2024**
of delivery of judgment
and order

Whether fit for reporting : Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER (ORAL)

[Aparesh Kumar Singh,CJ.]

The instant writ appeal is directed against the impugned judgment and order dated 10.08.2023, passed by the learned Single Judge in WP(C) No.1071 of 2022 whereby and whereunder the learned Single Judge has dismissed the writ petition.

2. Facts of the case of the appellant (here-in-after referred to as the petitioner), in a nutshell, are that the petitioner being a Nayeb Subedar (Compounder) was posted in 12th Battalion TSR (TR-VIII) and was attached to medical platoon of the said Battalion. The petitioner alleged that the respondent no.6 vide order dated 27.08.2019 asked him to report to the SDPO, Jirania on 28.08.2019 for performing law and order duty at Radhapur Police Station and on that very date i.e. on 28.08.2019 respondent no.6 again directed the petitioner to accompany the party of law and order duty of the unit of the 12th Battalion TSR along with first aid box and other available necessary Emergency Medical Kits and medicine to attend emergency and casualty to the unit personnel during the law and order duty. It is contended by the petitioner that he tried to make understand respondent no.6 that he being the Compounder attached to the medical platoon of the said Battalion, was not concerned with the law and order duty. On this pretext, respondent no.6 got enraged and rebuked him with filthy languages and asked him not to go for duty and the petitioner eventually did not report to the said law and order duty. It is the contention of the petitioner that he informed the matter to the respondent no.4, i.e. the Commandant of 12th BN. TSR (IR-VIII) but, the issue

was not redressed rather, the respondent no.4 misbehaved with him. Subsequently, being disheartened the petitioner left the Battalion Headquarter on 31.08.2019 for his medical treatment after submitting departure report. Thereafter, the respondent no.4, initiated a disciplinary proceeding against the petitioner. The petitioner could not participate in the said disciplinary proceeding due to his mental illness and ultimately, the said proceeding ended *ex parte* against him proposing to impose the major punishment of removal from service. The petitioner averred in the writ petition that he could not appear in the hearing of provisional punishment order due to nationwide Lock-down for Covid-19. Finally, the respondent no.4 passed the final punishment order dated 6th June, 2020 removing the petitioner from service. The petitioner challenged the said punishment order before the appellate authority but, the appellate authority rejected the appeal and upheld the final punishment order passed by the respondent no.4.

Accordingly, the petitioner had approached this court challenging the said punishment order by way of filing a writ petition, but, the learned Single Judge of this Court vide its judgment and order dated 10.08.2023 dismissed the writ petition with the following observations:

“Having considered the submission as made by the counsel for the parties and also having gone through the record, this court is of the view that the petitioner has not shown any ethics all throughout towards his profession. Though he was initially appointed as Havildar (General Duty) in 2nd Bn TSR and he was, in course of his service, posted as Naib-Subedar (Pharmacist/Compounder) as he had training and skills as well as basic knowledge regarding the same. It is expected from any defence personnel that as and when required he shall be available for performing his duties at any circumstances. It is also evident that the petitioner did not respond to any of the notice sent to him through various methods for appearing before the Inquiry Officer. Moreover, he did not turn up before the Disciplinary Authority within the stipulated date and time as had been asked by them. The petitioner also did not produce any medical report in support of his contention that he was unwell for a prolonged period resulting which he could not appear before the Disciplinary Authority. Subsequently, when the respondents

issued a punishment order vide order dated 06.06.2020, the petitioner seems to have woken up from slumber and preferred an appeal before the Appellate Authority. It is also evident from the record that the petitioner could not make out his case before the Appellate Authority as well. Accordingly, this court is of the view that the petitioner has not approached this court with clean hands and he has failed to make out his case. Therefore, the instant petition stands dismissed affirming the impugned order 06.06.2020 issued by the Commandant, 12th Battalion TSR(IR-VIII).”

3. Being aggrieved by the aforesaid judgment and order, the appellant has filed the instant appeal.

4. In course of hearing, at the very outset, Mr. S.M.Chakraborty, learned senior counsel appearing for the original petitioner has submitted that the petitioner was not afforded reasonable opportunity to defend his case. That apart, a preliminary enquiry conducted against him was also questionable as the respondent no.5 against whom the petitioner made complaint was made the enquiring authority. The petitioner despite submitting application for illness, the enquiring authority did not adjourn the proceeding as per Rule 14(11) of CCS & CCA Rules and was also not sent before the Medical Board to ascertain his illness and thus, by a disproportionate punishment he was removed from service. Mr. Chakraborty, learned senior counsel contended that the learned Single Judge has failed to appreciate that the penalty is disproportionate. Therefore, he prays that the appeal may be allowed by setting aside the impugned order of punishment dated 6th June, 2020.

5. Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents *inter alia* contended that the petitioner was served notices about the fact of his provisional punishment order on several occasions, but the petitioner did not submit any reply nor appeared in person before the disciplinary authority within the stipulated period. It is contended by Mr. Sarma, learned Addl. G.A. that such provisional punishment order was also

published in several local newspapers for his appraisal, but there was no response from his side. Therefore, Mr. Sarma, learned Addl. G.A. opposed the submission of Mr. Chakraborty, learned senior counsel for the petitioner that the petitioner was not afforded any opportunity to defend his case. Further, it is reiterated by Mr. Sarma, learned Addl. G.A. that the petitioner was appointed as Naib Subedar (Compounder) and he is duty bound to perform any kinds of duty specified in Rule-4(1) and (2)(a) & (d) of the TSR Recruitment Rules, 1984 in which maintenance of law and order duty is also included. According to him, learned Single Judge has rightly dismissed the writ petition. He prays for upholding the same.

6. In course of hearing Mr. Chakraborty, learned senior counsel appearing for the writ petitioner-appellant has limited to his argument only on the question of quantum of punishment imposed upon the petitioner-appellant.

7. We have considered the submission of the learned counsel for the parties and gone through the relevant materials placed from record. The petitioner has been removed from service by impugned order dated 6th June, 2020 on the basis of a departmental proceeding initiated vide Memo of Charge dated 21st September, 2019 (**Annexure-5** to the writ petition). The statement of imputation of misconduct in support of the Articles of Charges framed against the petitioner *inter alia* alleged under charge No.1 that the petitioner denied to attend duty on being asked vide order dated 28th August, 2019 and Command Certificate dated 29th August, 2019 along with First Aid Box and all other available necessary Emergency Medical Kit and medicines, to attend any Medical Emergency or Casualty to unit personnel during performance of law and order duty. Such conduct of the petitioner/appellant amounted to

gross disobedience and dereliction of duty punishable under Section 12(1) of the TSR Act, 1983.

8. The second Article of Charges alleged that on 31st August, 2019 at about 1812 hours, the petitioner who held the post/rank of Naib Subedar (Compounder) in 'Adm' Coy, 12th Battalion TSR (IR-VIII) voluntarily left Battalion TAC Headquarter, Chakmaghat submitting a departure information without leave or any permission from the competent authority and thereby absented from duty w.e.f. 31.08.2019.

9. For the aforesaid two misconducts he was proceeded against and punished in an *ex parte* enquiry as he failed to appear despite service of notices before the Enquiring Officer. As it appears from the records pointed out by learned senior counsel for the petitioner that there are no cases of proven misconduct against him for such disobedience of the orders of the superior. As per second Article of Charges, the period of absence was from 31st August, 2019 i.e. two days after the issuance of the Order and Command Certificate to attend with Medical Emergency or Casualty and the charge-sheet was issued on 21st September, 2019 i.e. within 21 days thereafter. The petitioner has been working on the post of Naib Subedar (Compounder) as per the offer of appointment dated 9th November, 2011 (**Annexure-1** to the writ petition) till he was removed from service.

10. Therefore, the punishment appears to be harsh considering the period of absence of 21 days and since there are no instances of previous such misconduct of willful disobedience and dereliction of duty against the

petitioner. There are no Articles of Charges showing previous misconduct of similar nature.

11. Therefore, it appears that the punishment is disproportionate even as per the established misconduct. Reference is made to the ratio of the decision in *Ranjit Thakur Vrs. Union of India & Ors.*, reported in (1987) 4 SCC 611 and *Union of India & Anr. Vrs. R.K. Sharma*, reported in 2022 SCC OnLine SC 2010.

11.1 The Supreme Court in *Ranjit Thakur* (*supra*) at Paras 25 and 26 of the judgment dealt with the issue of disproportionate punishment which reads as follows:

“25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935,950] Lord Diplock said:

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognized in the administrative law of several of our fellow members of the European Economic Community;...

26. In Bhagat Ram v. State of Himachal Pradesh, AIR 1983 SC 454:(1983) 2 SCC 442: 1983 SCC (L&S) 342, this Court held : [SCC p.453, SCC (L&S) p.353, para 15] ”

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the

misconduct would be violative of Article 14 of the constitution.”

11.2 In *R.K. Sharma (supra)*, the Supreme Court took up the issue for consideration whether the punishment of dismissal from service on account of absence from duty for the period mentioned in the Articles of charges was proportionate, reasonable and in conformity with Articles 14 and 16 of the Constitution of India and thereby at Para 11 of the judgment held that –

“11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.”

12. Keeping in mind the principles laid down in the above decisions, we are of the opinion that the punishment of removal from service for absents only for 21 days is disproportionate and not commensurate with the gravity of the misconduct as reflected in the Articles of Charges framed against the petitioner. Accordingly, the impugned order dated 6th June, 2020, issued by the respondent no.4, the disciplinary authority, as upheld by the appellate authority vide order dated 15.07.2022 is quashed.

13. The matter is remitted to the disciplinary authority to reconsider the quantum of punishment imposed upon the petitioner in terms of Section 12 (1) (i) of the Tripura State Rifles Act, 1983.

Let such decision be taken within a period of 8 (eight) weeks from the date of receipt of the copy of this order.

14. However, it is made clear that the petitioner will not be entitled to any back wages for the period he was out of service.

The instant writ appeal accordingly stands disposed of.

Pending application, if any, shall also stand disposed.

(ARINDAM LODH), J

(APARESH KUMAR SINGH),CJ

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