WA 11 (AP) 2013

BEFORE
THE HON'BLE MR. JUSTICE MANOJIT BHUYAN
THE HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

28-01-2016

(Manojit Bhuyan,J)

Heard Mr. T. Tapak, learned counsel for the appellant as well as Ms. G. Deka, learned counsel representing all the official respondents.

2. At the relevant time, the petitioner was employed as a Constable under the 1st IRBN, BHQ Namsang Mukh, Deomali, in the district of Tirap, Arunachal Pradesh. An inquiry against the petitioner was proposed to be held under Rule 7 of the of the Arunachal Pradesh Police (Disciplinary & Appeal) Rules, 1999 on the following 2(two) charges.

"ARTICLE-I

That Ct. Tingkhap Tingkhatra of 1st IRBn while detailed for law and order duty at Diyun was found absent from his duty place w.e.f. 18/01/2005 to 09/07/2005 without any intimation/permission from the competent authority. This the charge.

ARTICLE-II

That on 10/07/05 (the date of suspension) the OC PS Kanubari got information from his source that Ct. Tingkhap Tingkhatra of 1st IRBn who was unauthorisedly absenting is involved in illegal trade of opium and ganja in and around Kanubari area. Relying on the report, OC Kanubari PS launched a search operation with the held of ITBP. During the operation at about 1330 hrs. the OC Kanubari PS recovered 30 grams of opium and 5 packets of ganja from the possession of Ct. Tingkhap Tingkhatra on 10/07/05 and arrested hi. Thus the charge. "

3. To this end, a Memorandum was duly issued under the hand of the Commandant, 1st IRBN, BHQ, Namsangmukh. An Inquiry Officer was appointed to enquire into the charges framed against the petitioner, pursuant to which proceedings were initiated affording opportunity to the petitioner of being heard in his defence. Upon inspection to documents and recording of statements of witnesses, a Report was submitted to the Disciplinary Authority in which the charges famed against the petitioner were found to be proved.

4. On 10-07-2006, a notice was marked to the petitioner providing an opportunity to him to make representation against the proposed punishment of dismissal from service. A copy of the inquiry report was also made over to the petitioner. No representation, whatsoever, was made as against the proposed punishment and eventually by an order dated 07-08-2006, the penalty of dismissal from service was confirmed in exercise of power under sub-rule (2) (a) of Rule 3 of the APP (D&A) Rules, 1999. As per the said order, the name of the petitioner was directed to be struck off from the roll of the 1st IRBn. The period of absence from duty w.e.f. 18/01/2005 to 09/07/2005 was treated as Extra Ordinary Leave and the period of suspension w.e.f 10/07/2005 to 25/01/2006 and from 05/03/2006 to 07/08/2006 was treated be as leave of kind due and the unauthorized absence while under suspension w.e.f. 26/01/2006 to 04/03/2006 was treated as *dies non*.

5. The petitioner preferred an appeal before the Deputy Inspector of Police, Govt. of Arunachal Pradesh, on 18-01-2007 and the grounds of appeal were as follows:-

> ***"A. For that the Commandant, 1st IRBN PHQ, Namsangmukh acted illegally and failed to consider the case of the appellant while passing impugned major punishment Order 07-08-2006 inasmuch as there is no wilful absent from duty and as such the impugned major punishment order is liable to be set aside and***

reconsidered keeping the view that the livelihood of the appellant.

B. For that the Commandant, 1st IRBN PHQ, Namsangmukh, acted illegally and in gross violation of the principle of natural justice in passing the impugned order dated 07.08.2006 and without considering the livelihood of the appellant and his family members and as such same are liable to set aside and reconsidered.

C. For that the appellant petitioner has not received any notice or corresponding made to him after giving his statement before the Inquiry Officer and as such the appellant has not been given an opportunity of being heard to have his say. Therefore, the impugned major punishment order dated 07.08.2006 liable to be set aside and reconsidered/modified.

D. For that the Commandant, 1st IRBN PHQ, Namsangmukh in arbitrary manner and without considering the education qualification of the appellant that he has failed understood the charges framed against him properly as such the appellant has failed to make representation in pursuant to Notice/Order or correspondents made to him. Therefore, the impugned order of Dismissal of Service of the appellant is liable to be set aside and reconsidered.

E. For that the Commandant, 1st IRBN acted illegally and in gross violation of the principle of natural justice in passing the impugned order dated 07.08.2006 and without considering the livelihood of the appellant and his family members and as such same are liable to set aside and reconsidered.

F. For that the appellant is only the earning member of the family and his aged old parents and others family members depending upon the appellant as such dismissal the appellant service, the appellant will not only suffer irreparable loss but untold hampered will cause to the family members of the appellant and will remain bad remarked in the entire life of the appellant."

The said appeal, however, stood rejected by order dated 04-12-2007.

6. Being aggrieved, the petitioner preferred WP(C) 450 (AP) 2010. The sole point urged was that the punishment imposed upon the petitioner was disproportionate to the charges levelled. The learned Single Judge, after perusal of the records, arrived at a finding that there was no perversity while conducting the inquiry and the same had proceeded in due compliance of the rules and order. The learned Single Judge also arrived at the finding and decision that the punishment so imposed was not shocking to the conscience of the Court nor the same was actuated by malice. The writ petition being devoid of merit was accordingly dismissed.

7. It appears that the plea of punishment being disproportionate has been taken as a new plea, inasmuch as, no such ground was taken when a statutory appeal was filed before the appellate authority on 18-01-2007.

8. The law is too well settled with regard to the scope and jurisdiction of this Court while appreciating or interfering with the decision arrived at by the disciplinary authority. We may conveniently refer to the case of **B.C. Chaturvedi Vs. Union of India and Others**, reported in **(1995) 6 SCC 749**, the relevant paragraphs being 13 and 18 thereof. The ratio laid down in the case of B.C. Chaturvedi (supra) is that the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. Also in a catena of decisions, the Apex Court have held that only if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued. In the same breath it was

also held that the disciplinary authority, and on appeal the appellate authority being fact finding authorities, have exclusive power and jurisdiction to consider the evidence with a view to maintain discipline. The High Court while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

9. Having noticed the law as laid down in the case of B.C. Chaturvedi (supra) and having regard to the facts and circumstances of the instant case, the contention that the punishment imposed being disproportionate to the charges levelled and/or the conclusion of the disciplinary authority being perverse and/or based on no evidence, is all together absent in the present case. Also, the petitioner cannot be allowed to improve his case in every forum. Before the appellate authority, no such ground had been raised. Accordingly, in our considered opinion, the appellant cannot be allowed to raise a new plea before this Court at this stage, notwithstanding the fact that there is no teeth in the new plea.

10. From the discussions above, we find no merit in the writ appeal. The judgment and order of the Single Judge is accordingly upheld. As a necessary corollary, this writ appeal stands dismissed. No cost.

JUDGE **JUDGE**

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