



2024:GAU-AS:8678-DB

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.38 OF 2023

1. The Union of India through the Secretary, Home Department, Government of India, New Delhi.
2. The Director General of Central Reserve Police Force, R.K. Puram, New Delhi.
3. The Deputy Inspector General, Government of India, Ministry of Home Affairs, Sashastra Seema Bal, SHQ, SSB, Agnigarh Road, Tezpur, District: Sonitpur, Assam.
4. The Commandant, 33rd Battalion, Sashastra Seema Bal, Rangia, District: Kamrup, Assam.
5. Shri Mrigen Sarmah, Enquiry Officer, C/o the Commandant, 33rd Battalion, Sashastra Seema Bal, Rangia, District: Kamrup, Assam.

.....Appellants

-Versus-

1. On the death of Manoj Kr. Roy, his legal heirs Bhanumati Roy, Wife of Late Manoj Kr. Roy, resident of Village: Majgaon, PO: Chakapara, District: Bongaigaon, Assam – 783380.

2. Krishna Ray,
Daughter of Late Manoj Kr. Roy,
resident of Village: Majgaon, PO:
Chakapara, District: Bongaigaon, Assam
– 783380.

3. Smti. Diji Ray,
Daughter of Late Manoj Kr. Roy,
resident of Village: Majgaon, PO:
Chakapara, District: Bongaigaon, Assam
– 783380.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant(s) : Mrs. A. Gayan, Central Government Advocate.

For the Respondent(s) : Mr. K.R. Patgiri, Advocate.

Date of Hearing : 17.08.2024.

Date of Judgment : 02.09.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mrs. A. Gayan, learned Central Government Advocate appearing for the appellants. Also heard Mr. K.R. Patgiri, learned counsel appearing for all the respondents.

2. This writ appeal is filed by the appellants being aggrieved with the judgment & order dated 22.07.2014 passed by the learned Single Judge in WP(C) No.5869/2011. By the impugned judgment, the learned

Single Judge has allowed the writ petition filed on behalf of the private respondent and set aside the order dated 14.02.2008/15.02.2008 imposing the penalty of dismissal from service upon the private respondent and the order dated 24.06.2011 passed by the Deputy Inspector General of Police, Sector Headquarter, SSB, Tezpur dismissing the appeal preferred by the private respondent. The learned Single Judge has further directed the respondent authorities (appellants herein) to reinstate the writ petitioner (private respondent herein) forthwith to his post and thereafter to impose any penalty other than the penalty of dismissal, removal or termination from service. It is further directed that the entire exercise shall be carried out within a period of 2(two) months from the date of receipt of the said order.

3. During pendency of this appeal, the private respondent, i.e. Manoj Kumar Roy, died on 18.01.2015 and vide order dated 23.05.2022 passed by this Court in I.A. (Civil) No.920/2022, the legal heirs of the private respondent, namely, Smt. Bhaumati Roy, Smt. Krishna Ray and Smt. Diji Ray, were substituted.

4. The brief facts of the case are that the private respondent was initially appointed to the post of Constable/GD on 15.07.1993 at Group Centre, SSB, Bongaigaon. Thereafter, he was transferred to 33rd Battalion, SSB, Rangia on 01.02.2006. During his posting at Rangia, the private respondent was temporarily attached to

ad-hoc Training Centre, SSB, Debendranagar, w.e.f. 14.09.2006 for instructional duty. The allegation against the private respondent is that while performing his duty as an Instructor, he absconded from line barrack on 16.12.2006 at 5:30 Hours without obtaining prior permission from the competent authority. Noticing the same, the authorities concerned had issued notices to him on his home address on 22.12.2006 and thereafter on 06.02.2007; 13.02.2007 and 28.02.2007, respectively, directing him to report on duty. When after a period of 60(sixty) days from the date of his absence, the private respondent did not turn up to resume his duty, he was declared as "DESERTER" w.e.f. 16.12.2006 vide order dated 03.04.2007.

5. The Assistant Commandant of 33rd Battalion, SSB, Rangia was appointed as an Enquiring Authority by the Commandant vide order dated 20.07.2007 and simultaneously charges were framed against the private respondent vide order dated 20.07.2007. The statement of article of charges framed against the private respondent and the statement of imputation of misconduct or misbehavior in support of the article of charges framed are reproduced herein below:-

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO 9352789 CT/GD MONAJ KR ROY OF 33RD BN SSB RANGIA (ASSAM)"

The following articles of charges were framed against No.9352789 CT/GD Manoj Kr Roy of 33rd BN SSB Rangia by the disciplinary authority under his memo no. I/33RD BN/SSB/ESTT/I/PF/MKR/06/4489-

91 dated 20.07.2007 addressed to the Govt. servant charged with endorsing copy of the charge sheet to me being Inquiry authority of the case.

ARTICLE OF CHARGED:I

That the said No.9352789 CT/GD Monaj Kr. Roy of 33rd BN SSB Rangia while functioning as CT/GD at 33rd BN SSB Rangia committed an act of misconduct/Negligence and remissness in the discharge of his duties in his capacity as a member of the force under Section 11(1) of CRPF Act-1949 in that while performing Govt. duties i.e. instructional duty at ATC D/Nagar absconded from duty at his own accord wef 16.12.2006 at 0530 hrs. without obtaining prior permission from the competent authority.

ARTICLE OF CHARGED:II

That the said No.9352789 CT/GD Monaj Kr. Roy of 33rd BN SSB Rangia while functioning as an instructor duties at ATC D/Nagar committed an act of gross misconduct/negligence and remissness in the discharge of his duties in his capacity as a member of the force under section 11(1) of CRPF Act 1949 in that he did not deposit the Govt. Kit items and Identity Card bearing No.043486 issued to him with the intention its illegal use while not on duty, thus has committed an offence under Section 11(1) of CRPF Act 1949.

ARTICLE OF CHARGES:III

The several rejoining notices dated 22.12.06, 06.02.07, 13.02.07, 23.02.07 and 28.02.07 were issued to said No. 9352789 CT/GD Monaj Kr. Roy but he did not bother to intimate his whereabouts. Hence as such committed an act of misconduct/negligence and remissness in the discharge of his duties in his capacity as a member of the force under Section 11(1) of CRPF Act 1949.”

“STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST NO 9352789 CT/GD MONAJ KR ROY OF 33RD BN SSB RANGIA (ASSAM)

ARTICLE I:-

That said No.9352789 CT/GD Monaj Kr. Roy of 33rd BN SSB Rangia while performing the duty at ATC D/Nagar as an Instructor absconded from his duty

*w.e.f. 16.12.2006 at 0530 hrs at his own will without obtaining prior permission from the competent authority. FIR was lodged on 22.12.2006. On the basis of the Court of Inquiry it has been proved *prima facie* that the individual has absconded from the ATC D/Nagar without any leave/proper permission of the competent authority. As such said No.9352789 CT/GD Monaj Kr. Roy has exhibited lack of sense of devotion to his duty and remissness in the discharge of his duty. Accordingly said No.9352789 CT/GD Monaj Kr. Roy was declared DESERTER w.e.f. 16.12.2006 vide order No. after holding proper Court of Inquiry.*

ARTICLE II:-

That said No.9352789 CT/GD Monaj Kr. Roy of 33rd BN SSB Rangia while performing the Instructional duties at ATC D/Nagar absconded himself from ATC D/Nagar w.e.f. 16.12.2006 at 0530 hrs and remained absent at his own accord without obtaining prior permission from the competent authority as well as did not deposit the Govt. kit Items and I/Card bearing No.043486 issued to him to the concerned authorities with clear intention to utilize it for illegal purpose.

ARTICLE III:-

That the said No.9352789 CT/GD Monaj Kr. Roy of 33rd BN SSB Rangia while functioning as an Instructor at ATC D/Nagar absconded w.e.f. 16.12.2006 at 0530 hrs. The several rejoicing notices were issued to him on 22.12.2006, 06.02.2007, 13.02.2007 and 28.02.2007 but no response/intimation received from him, as such he has committed an offence i.e. an Act of misconduct/negligence of duty and remissness in the discharge of his duties as a member of the force under Section 11(1) of CRPF Act, 1949.”

6. The Enquiry Officer issued a notice dated 16.08.2007 to the private respondent and asked him to appear before him on 30.08.2007 at 11:00 AM but the private respondent failed to appear. Thereafter, on 31.08.2007, another notice was issued to the private respondent and he was asked to appear before the Enquiry Officer on 14.09.2007 at 11:00 AM. Pursuant to the said

notice, the private respondent appeared before the Enquiry Officer on 14.09.2007 and, thereafter, the Enquiry Officer has requested him to appear before him on 26.09.2007 at 11:00 AM for the purpose of giving evidence.

7. During the course of enquiry, the statements of the private respondent were recorded on 14.09.2007 and the statements of 4(four) prosecution witnesses were also recorded. It is to be noticed that the private respondent pleaded guilty before the Enquiry Officer and admitted that he had absconded from his duty from 16.12.2006 without seeking prior permission. The private respondent also refused to cross-examine the prosecution witnesses. The Enquiry Officer submitted his Report dated 29.11.2007 while concluding that all the article of charges framed against the private respondent had been proved.

On the basis of the said Enquiry Report, the Commandant issued a show cause notice dated 26.12.2007 to the private respondent with regard to imposing penalty and, thereafter, after providing opportunity of hearing to the private respondent, passed the order dated 14.02.2008/15.02.2008 imposing the penalty of dismissal from service.

8. It appears that against the order of imposition of penalty of dismissal from service, the private respondent preferred an appeal before the DIG, SSB, which was beyond the period of limitation. However, as per the private respondent, the said appeal was not entertained on

the ground that the Deputy Inspector General was not the appropriate authority to consider the appeal.

9. Be that as it may, the private respondent approached this Court by way of filing WP(C) No.2592/2011 and the learned Single Judge vide order dated 23.05.2011 issued a direction to the Deputy Inspector General, Government of India, Ministry of Home Affairs, Sashastra Seema Bal, Tezpur, Sonitpur to dispose of the appeal filed by the private respondent in accordance with law by making a speaking order within a period of 6(six) weeks from the date of receipt of a copy of the said order.

Pursuant to the said order dated 23.05.2011 and the correction order dated 13.06.2011 passed in Misc. Case No.1700/2011, the DIG, SSB considered the appeal filed on behalf of the private respondent and dismissed the same vide order dated 24.06.2011.

10. Thereafter, being aggrieved with the punishment order dated 14.02.2008/15.02.2008 as well as the order dated 24.06.2011, the private respondent preferred a writ petition being WP(C) No.5869/2011, which came to be allowed by the learned Single Judge vide the impugned judgment & order dated 22.07.2014 and, being aggrieved with the said impugned judgment, the appellants have preferred this writ appeal.

11. Assailing the impugned judgment, Mrs. A. Gayan, learned counsel appearing for the appellants has

argued that the learned Single Judge has grossly erred in setting aside the punishment order as well as the order passed by the Appellate Authority.

It is contended that the learned Single Judge, without there being any material available on record, has erred in concluding that as the private respondent has failed to join his duties on account of compelling circumstances such as due to his illness and illness of his father, it can be presumed that the private respondent was unauthorizedly absent from duty but cannot be concluded that his absence was willful. It is argued that the private respondent has pleaded guilty before the Enquiry Officer and has not produced any evidence in respect of the circumstances which had compelled him from joining his duties despite issuance of several notices. It is contended that the reasons for the unauthorized absence of the private respondent in duty, as supplied by him before the Writ Court, are afterthought as in support of the same, the private respondent has failed to submit any proof regarding his illness or illness of his father. It is further contended that the learned Single Judge has erred in recording a finding that the private respondent had been prevented from joining his duties on ground of illness is not disputed by the respondent authorities (appellants herein). It is argued that, as a matter of fact, in the affidavit-in-opposition filed in the writ petition, it is specifically averred that the statement made by the petitioner (private respondent) regarding his illness and his father's illness are incorrect, false, misconceived, arbitrary and misleading.

12. The learned counsel for the appellants has further submitted that in the facts and circumstances of the case, it is clear that the private respondent has deserted the services of the appellants and the said desertion resulted in willful absence from duty and, therefore, in such circumstances, the imposition of penalty upon the private respondent of dismissal from service was perfectly in accordance with law.

It is further argued by the learned counsel for the appellants that a Constitutional Court, while exercising its jurisdiction of judicial review under Article 226 of the Constitution of India, is not supposed to interfere with the findings of fact arrived at in the departmental enquiry proceedings except in case of *mala fides* or perversity, i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at the findings and so long as there is some evidence to support the conclusion arrived at by the Departmental Authority, the same has to be sustained. It is also submitted that the Hon'ble Supreme Court in catena of decisions has categorically held that a Constitutional Court under Article 226 of the Constitution of India cannot act as an Appellate Authority against the decision of the Departmental Authorities in the disciplinary proceedings. It is contended that the impugned judgment passed by the learned Single Judge is contrary to the settled principle of law and, therefore, the same is not liable to be sustained and is liable to be set aside.

13. Mr. K.R. Patgiri, learned counsel appearing for the legal heirs of the private respondent has opposed the writ appeal and has argued that the learned Single Judge has rightly arrived at the conclusion that the case of the private respondent was of unauthorized absence from duty but cannot be termed as willful absence or desertion as the private respondent has failed to join the duties due to compelling circumstances, such as his illness or illness of his father. The learned counsel has argued that the learned Single Judge, while taking into consideration the above facts, has rightly interfered with the punishment order as well as the order passed by the Appellate Authority and has not committed any illegality in observing that the punishment awarded to the private respondent is harsh and grossly disproportionate to the misconduct proved against him. It is, therefore, argued that no case for interference is made out and the writ appeal is bereft of any merit and hence, the same is liable to be dismissed.

14. We have heard the learned counsel appearing for the parties, perused the impugned judgment and the material available on record.

15. So far as the law regarding exercise of power of judicial review by the High Courts under Article 226 of the Constitution of India in disciplinary proceedings against a Government employee is concerned, the law is well settled.
[see – (1) State of A.P. & Ors. -Vs- S. Sree Rama Rao :: 1964 3 SCR 25; (2) State Bank of India -Vs- Ram Lal Bhaskar & Anr. ::

(2011) 10 SCC 249; (3) Union of India & Ors. -Vs- P. Gunasekaran :: (2015) 2 SCC 610; (4) Central Industrial Security Force & Ors. -Vs- Abrar Ali :: (2017) 4 SCC 507; (5) Deputy General Manager (Appellate Authority) & Ors. -Vs- Ajai Kumar Srivastava :: (Arising out of SLP (C) No(s).32067-32068/2018) and (6) Aureliano Fernandes -Vs- State of Goa & Ors. :: (2024) 1 SCC 632]. The Hon'ble Supreme Court in catena of decisions has held that in the disciplinary proceedings, the High Court cannot act as a Court of Appeal and can only interfere with the findings of fact arrived at in the departmental enquiry where – (i) the statutory provisions regarding the disciplinary proceeding has not been followed, and (ii) the finding of fact arrived at in the departmental proceedings suffers from *mala fides* or perversity, i.e. such findings are not based on any evidence or where a finding is such that no man acting reasonably and with objectivity could have arrive at that finding.

16. In the present case, the facts which are not in dispute is that the private respondent has left the duty on 16.12.2006 without seeking any leave or permission from the competent authority. Despite receipt of several notices by the family members of the private respondent, he did not turn up to resume his duties. Thereafter, the private respondent was declared as deserter vide order dated 03.04.2007 from 16.12.2006. The private respondent appeared before the Enquiry Officer only on 14.09.2007 and the statement of article of charges and statement of imputation of misconduct were framed and served upon

him and he was examined by the Enquiry Officer wherein he has pleaded guilty. For the sake of convenience, it would be appropriate to reproduce herein below the statements of the private respondent recorded before the Enquiry Officer on 14.09.2007, copy of which is annexed along with the affidavit-in-opposition filed by the appellants in the writ petition and also not disputed by the private respondent before the Writ Court, containing the signatures of the private respondent.

**"PROCEEDING AGAINST NO.9352789 CT (GD) MONAJ
KR. ROY OF 33RD BN, SSB, RANGIA PRELIMINARY
HEARING HELD ON 14/09/2007 AT 1100 HRS AT
TRAINING CENTRE SSB SALONIBARI**

Q. No.1- *Have you received a copy of charged sheet Memo no-1/33rd BN SSB/Estdt/1/PF/MKR/06-4489-91 Dated 27-07-07 along with its annexure I, II & III issued by the Commandant 33rd BN SSB Rangia.*

Ans:- *Yes I have received the charge sheet Memo No.4489-91 dated 20.07.07 along with it's annexure-I, II & III issued by the Commandant, 33rd Bn Rangia.*

Q. No.2- *Are you mentally and physically fit to appear before the Inquiry Officer for the inquiry?*

Ans:- *Yes.*

Q. No.3- *Do you have any objection having been appointed me as Inquiry Officer in your case?*

Ans:- *No, I do not have any objection.*

Q. No.4- *Have you understood the charge which has been explained to you by the Inquiry Officer?*

Ans:- *Yes, I understood.*

Q. No.5- *Do you admit the article of charge I of the said charge sheet Memo No.1/33rd BN SSB/Estdt/1/PF/MKR/06-4489-91 Dated 27-07-07 and plead guilty?*

Ans:- *Yes sir, I plead guilty.*

Q. No.6- Do you admit the article of charge II of the said charge sheet Memo No.1/33rd BN SSB/Estdt/1/PF/MKR/06-4489-91 Dated 27-07-07 and plead guilty?

Ans:- Yes sir, I plead guilty.

Q. No.7- Do you admit the article of charge III of the said charge sheet Memo No.1/33rd BN SSB/Estdt/1/PF/MKR/06-4489-91 Dated 27-07-07 and plead guilty?

Ans:- Yes sir, I plead guilty.

Q. No.8- Do you want any defence assistant in helping and defending your case during the course of inquiry? Do you want to engage any person as your defence assistant?

Ans:- No, I do not want to engage any person as my defence assistant.

Q. No.9- Do you want to submit/inspect any documents other than those listed in annexure-III of the charge sheet Memo No.4489-91 dated 27/07/07 and which are under control and custody of disciplinary authority? If so, you should submit the list of such documents to the undersigned.

Ans:- No sir.

Q. No.10- Do you want to produce any relevant documents in your defence?

Ans:- Yes sir, relevant documents be submitted in due course of time.

Q. No.11- Do you want to submit anything more?

Ans:- No sir.

The above question and answer read over to me in the language I understand and sign it as correct.

RECORDED BY ME:-

(MRIGEN SARMAH)
Inquiry Officer

(MANOJ KUMAR ROY)
No.9352789 CT (GD)
33rd Bn SSB Rangia”

From the perusal of the said statements, it is clear that the private respondent has admitted his guilt

during the course of the enquiry. It is also not in dispute that the private respondent has refused to cross-examine the prosecution witnesses despite granting opportunity.

17. The learned Single Judge has recorded a finding that the private respondent had the reasons of absence from duty. It is mentioned in the impugned order that the private respondent failed to join his duty on account of his illness and illness of his father. The learned Single Judge has also observed that the private respondent has been prevented from joining his duty on the ground of illness is not disputed by the appellant authorities in their affidavit-in-opposition.

It is to be noticed that in Paragraphs 3 & 4 of the writ petition, the private respondent has took a plea that he was compelled to proceed for his home on 16.12.2006 on account of illness of his father and on reaching at his home, he also suffered from illness and undergone treatment and due to his illness, he failed to join his duties and also failed to respond to the notices issued to him with a direction to join his duties. In the affidavit-in-opposition, the appellants have specifically stated that the statements made in Paragraph 3 of the writ petition are not correct and the statements made in Paragraph 4 of the writ petition are false, misconceived and arbitrary. It is also to be noticed that though in the writ petition, the private respondent took the plea regarding his illness and illness of his father but no document regarding treatment, etc., in support of the said plea is either placed

before Disciplinary Authority, Appellate Authority or the Writ Court.

18. As already noticed, the private respondent has admitted his guilt and pleaded guilty before the Enquiry Officer and taking into consideration the same as well as the previous record of the private respondent regarding his absence and abscondence from duty, the Departmental Authority has imposed him the punishment of dismissal from service. In our view, the finding of fact arrived at by the Departmental Authority cannot be said to be perverse.

19. The learned Single Judge has also observed that as the private respondent joined his duty voluntarily on 19.12.2007, it would be deemed that he was not willfully absented from duty. However, from the material available on record, it is clear that the private respondent joined the disciplinary proceedings on 14.09.2007 pursuant to various notices issued to him and after recording of evidence in the disciplinary proceedings, till passing of the punishment order, the private respondent was allowed to perform his duties. In view of the above facts, it cannot be concluded that the private respondent voluntarily joined duties.

20. In view of the above discussion, we are of the view that the findings recorded by the learned Single Judge that the case of the private respondent was neither a case of willful absence from duty nor desertion is not supported by any material and, therefore, the same cannot be sustained.

21. In the Central Reserve Police Force Rules, 1955 under Chapter VI, Rule 27 speaks about procedure for the award of punishments to the CRPF personnel. It is not the case of the private respondent that the said procedure has not been followed. The learned Single Judge has also not recorded any finding on this aspect. In such circumstances, when the findings of the disciplinary authority are based on evidence available on record and there is no violation of procedure in imposing the penalty, there was no occasion for the learned Single Judge to interfere with the punishment order while recording findings, which are not based on any material.

22. Resultantly, the writ appeal succeeds. The impugned judgment & order dated 22.07.2014 passed by the learned Single Judge in WP(C) No.5869/2011 is set aside. Consequently, the writ petition preferred on behalf of the private respondent and contested through his legal representatives is also dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant