
(1998) 10 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 72 of 1991

Amal Ch. Chakraborty

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Constitution of India, 1950 — Article 1, 311

Tripura Services (Duties, Rights and Obligations of the Govt. Employees) Rules, 1982
— Rule 3

Citation : (1998) 4 GLT 517

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and H.K. Bhattacharjee, for the Appellant; U.B. Saha, G.A. and M.L. Roy, for the Respondent

Judgement

H.K. Sema, J.—Petitioner was serving as Upper Division Clerk in the Grant-in-Aid Section of the Director of School Education. He availed L.T.C. advance of Rs. 5,000/- (Rupees five thousand only) and on completion of the tour submitted final L.T.C. for an amount of Rs. 13,911.84 for the Block Year 1982-86 for his journey from Agartala to Kanyakumarika performed by the Petitioner along with his family members. The said bill was examined by the concerned office and the bill has been passed by the Controlling Officer. A departmental proceeding was however, drawn against the Petitioner vide Memo dated 5.8.85. Along with the Memo, the statement of Article of Charges have also been framed against the Petitioner. Petitioner thereafter, submitted his written statement denying all the charges levelled against him. Inquiry was conducted by the Inquiry Officer and submitted its report on 29.1.87. The Inquiring Authority after recording the statement and after examining the documents found that the Petitioner was not guilty of the 5(five) charges levelled against him. However, the Disciplinary Authority disagreed with the findings of the Inquiring Authority and proposed that the Petitioner be dismissed from the service. By a Memorandum dated 15.10.87, Petitioner was directed to submit a representation against the

punishment proposed. Accordingly, Petitioner by its representation dated 6.11.87 objected the proposed punishment.

2. Mention may be made that in the Memorandum dated 15.10.87, the Director of School Education stated that the charges against the Petitioner that the Petitioner submitted a false claim of LTC for the Block Year 1982-86 for reimbursement of the amount of expenses incurred by the Petitioner for travelling from Agartala via Dharmanagar and Howrah to Kanyakumarika by train in the 1st class compartment is established. It was further alleged that the Petitioner did not travel by train in the 1st class. While recording this finding the Disciplinary Authority has relied on the letters sent by the Station Manager, Dharmanagar Station and Superintendent, Howrah Station showing that the Petitioner did not travel by 1st class train between Dharmanagar Station and Howrah Station. On the other hand, it was confirmed by the Indian Airlines, Central Revenue Accounts, Safdarjung Airport, New Delhi that the Petitioner along with his family members performed return journey from Calcutta to Agartala by Flight IC 237 but submitted a false claim of LTC for the Block Year 1982-86.

3. Aggrieved by the aforesaid Memorandum dated 27.9.87 holding the Petitioner guilty by the Disciplinary Authority, Petitioner, submitted a review petition to the Appellate Authority stating inter alia that one Shri Bandhu Gopal Bhowmik, U.D. Clerk had also performed the journey along with the Petitioner by 1st Class train with the Petitioner from Howrah to Kanyakumarika and returned to Howrah. The Disciplinary Authority also found guilty of Shri Bandhu Gopal Bhowmik but an appeal being preferred by the said Bandhu Gopal Bhowmik, the Appellate Authority has set aside the order of punishment passed against Shri Bandhu Gopal Bhowmik by the Disciplinary Authority. However, the appeal preferred by the Petitioner has been rejected by the Appellate Authority. It is alleged that a different order has been passed by the Appellate Authority on the same set of evidence.

4. Being aggrieved, the Petitioner filed the present petition with a prayer to set aside the impugned order dated 8.7.88 (Annexure-3) passed by the Disciplinary Authority and order dated 15.11.89 (Annexure-4) passed by the Appellate Authority and the order dated 8.2.91 communicated to Petitioner on 22.2.91 as being violative of the constitutional mandate.

5. It is contended by Mr. K.N. Bhattacharjee that the Petitioner has been deprived of a reasonable opportunity enshrined in Article 311 of the Constitution inasmuch as the Station Manager, Dharmanagar Railway Station and Superintendent, Howrah Station whose letters have been relied upon by the prosecution during the inquiry has not been, examined by the Prosecution thereby deprived the Petitioner of cross-examining them, vitiated the entire proceedings against the Petitioner. It is further contended by the counsel of the Petitioner that the case of the Petitioner is similarly situated with one Mr. Bandhu Gopal Bhowmik whose appeal has been accepted by the Appellate Authority by

its order dated 30.10.89. According to the Petitioner's counsel, the Petitioner has been treated differently on the same set of facts. On the other hand, it is contended by Mr. U.B. Saha that this Court while exercising the judicial review is not sitting as an Appellate Court and therefore, not competent to re-appraise the evidence and arrive at a different conclusion.

6. To answer the aforesaid rival contention it is relevant to refer to the main Article of charge against the Petitioner:

ARTICLE-I

That Sri Amal Ch. Chakraborty while functioning as U.D. Clerk in the Grants-in-Aid section of the Directorate of School Education, Agartala, Tripura (now working at Bodhjunga Higher Secondary School, Agartala) submitted an LTC Bill for the amount of Rs. 13,911.84 paise for performing outward and inward journeys from Agartala to Kanyakumari in respect of himself and 7(seven) other family members viz. mother, father, 2 brothers and 3 sisters during the period from 7.5.82 to 31.5.82 against the Block year 1982-86. Sri Chakraborty submitted the said claim for reimbursement of the amount of expenses incurred by him for travelling from Agartala to Kanyakumari via Dharmanagar and Howrah by 1st Class in rail and back according to LTC rules prevailing at that time for the Tripura Govt. employees. On enquiry, it has been observed that Sri Chakraborty did neither perform his rail journeys by 1st class from Dharmanagar nor from Howrah. Further, on enquiry, it has also been confirmed from Indian Air Lines that Sri Chakraborty accompanying 6 (six) other family members (viz. his wife, 4 daughters and 1(one) son performed return journey from Calcutta to Agartala by Air Flight No. IC-237 on 31.5.82. Thus Sri Chakraborty submitted a false claim of LTC for the block year 1982-86 which attracts the Rule 3 of the Tripura Services (Duties, Rights and Obligations of the Govt. Employees) Rules, 1982

7. From the impugned order assailed in this writ petition, it clearly appears that the reliance was placed on the letter of Station Manager, Dharmanagar and Howrah without recording their statement at the time of inquiry. It is also an admitted fact that though reliance has been placed on the letter issued by the Manager, Indian Airlines, the said Manager has not been called as a witness at the time of inquiry. From the inquiry report it clearly appears that the findings of the Disciplinary Authority and the Appellate Authority holding guilty of the Petitioner with regard to Article-1 of the charge is solely based on a confidential inquiry conducted by one Shri Anjan Chakraborty, S.I. of Police and submitted the report. It is also an admitted fact that the inquiry submitted by Shri Anjan Chakraborty, S.I. of Police was behind the back of the Petitioner and without the participation of the Petitioner in the proceedings. During the inquiry, the prosecution referred to the correspondences made with the Station Manager, Dharmanagar and Howrah marked as Exhibit-P1 to P4 but neither Manager, Dharmanagar or Howrah has been called as a witness so also although the prosecution relied on the correspondences made with the Indian Airlines by Shri

Anjan Chakraborty in course of its investigation, the Manager, Indian Airlines has not been called as a witness. This non-observance of the reasonable opportunity enshrined in Article 311 of the Constitution has vitiated the entire inquiry conducted against the Petitioner.

8. A reasonable opportunity enshrined in Article 311 of the Constitution includes:

- (a) an opportunity to deny his guilt and establish his innocence;
- (b) an opportunity to defend himself by cross-examining the witness produced against him and by examining himself or any other witnesses in support of his defence.

9. In the instant case, non-production of the star witnesses of the prosecution namely-Station Managers, Dharmanagar and Howrah Railway Station and the Manager, Indian Airlines has committed a glaring procedural lapses resulting violation of the reasonable opportunity enshrined in Article 311. The Petitioner has been deprived of cross-examining the star witnesses of the prosecution as they have not been called for examination during the inquiry. At the same time, the prosecution has relied on the correspondences by way of letters sent by the Managers marked as Exhibit-P1 to P4. These Exhibits have been marked by one Anjan Chakraborty, S.I. of Police collected at the time of his confidential inquiry behind the back of the Petitioner. It, therefore, clearly appears that the reasonable opportunity enshrined in Article 311 of the Constitution has been denied to the Petitioner.

10. Before I close the record I may dispose of the contention of Mr. U.B. Saha, learned Govt. Advocate. The sole contention of Mr. U.B. Saba is that this Court exercising the power of judicial review is not sitting as an Appellate Court and therefore, is not competent to re-appraise evidence and the conclusion reached by the Disciplinary Authority and therefore, cannot substitute the punishment imposed by the Disciplinary Authority by its own. In this connection, he has referred to the following decisions of the Apex Court.

- (a) High Court of Judicature at Bombay through its High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another,
- (b) State of U.P. and others Vs. Nand Kishore Shukla and another,
- (c) B.C. Chaturvedi Vs. Union of India and others,

11. In the aforesaid cited cases of the Apex Court, it has been held by the Apex Court that the power of judicial review is not a Court of appeal to go into the question of the imposition of punishment and appraisal of evidence and it is open to the Civil Authority to consider what would be the nature of punishment to impose on a Government servant based upon the misconduct proved against him.

12. There is no quarrel over the proposition of law pronounced by the Apex Court. But in the instant case, it is a question of glaring procedural lapses resulting in denial of reasonable opportunity to the Petitioner. In the instant case,

the Respondents have relied on the correspondences made by Anjan Chakraborty, S.I. of Police during the confidential inquiry with the Station Managers, Dharmanagar and Howrah Railway Station and Manager of Indian Airlines with regard to the false claim of purchase of 1st class Railway tickets but the Managers have not been cited as prosecution witnesses and thereby deprived the Petitioner of a reasonable opportunity of defending himself by cross-examining them. It also clearly appears that the confidential inquiry was conducted by Shri Anjan Chakraborty, S.I. of Police at the back of the Petitioner.

13. In the result, the whole proceedings initiated against the Petitioner is vitiated and accordingly, the impugned orders dated 8.7.88 (Annexure-3), 15.11.89 (Annexure-4), 8.2.91 (Annexure-10) passed by the Disciplinary Authority and Appellate Authority are hereby quashed and set aside. The petition stands allowed. In the facts and circumstances, parties are asked to bear their own costs.

There has been some delay in disposing this petition due to intervening long puja vacation. The delay is however regretted.