

(1998) 10 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 72 of 1991

Amal Chandra Chakraborty	Vs	APPELLANT
State of Tripura and Ors.		RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Constitution of India, 1950 — Article 311, 311

Citation : (1999) 1 GLJ 105 : (1998) 4 GLT 517

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

Bench : Single Bench

Advocate : U.B.Saha, M.L.Roy, K.N.Bhattacharjee, H.K.Bhattacharjee, Advocates appearing for Parties

Judgement

1. The Petitioner was serving as Upper Division Clerk in the GrantinAid Section of the Directorate of School Education. He availed LTC advance of Rs.5,000 (Rs Five thousand only) and on completion of the tour submitted final LTC for an amount of Rs. 13,911.84 for the block year 198286 for his journey 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 5.8.1985. 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 29.1.1987. The Inquiring Authority after recording the statement and after examining the documents found that the petitioner was not guilty of the 5 (five) charges lavelled 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 15.10.1987, petitioner was directed to submit a representation against the punishment proposed. Accordingly, petitioner by its representation dated 6.11.1987 objected the proposed punishment

2. Mention may be made that in the memorandum dated 15.10.1987, 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 198286 for reimbursement of the amount of expenses incurred by the petitioner for traveling from Agartala via Dhamanagar 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 by 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 Dharamanagar 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 1C 237 but submitted a false claim of LTC for the block year 198286.

3. Aggrieved by the aforesaid memorandum dated 27.9.1987 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, UD 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 had 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 8.7.1987 (Annexure 3) passed by the disciplinary authority and the order dated 15.11.1989 (Annexure 4) passed by the appellate authority and the order dated 8.2.1991 communicated to the petitioner on 22.2.1991 as being violative of the constitutional mandate.

5. It is contended by Mr. KN 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 crossexamining 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 30.10.1989. 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. UB Saha that this Court while exercising the judicial review is not sitting

as an appellate Court and, therefore, not competent to reappraise 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 1: That Sri Amal Ch Chakraborty while functioning as UD Clerk in the GrantinAid Section of the Directorate of School Education, Agartala, Tripura (now working at Bodhjung Higher Secondary School, Agartala) submitted] an LTC Bill for the amount of Rs. 13,911.84 for performing outward and inward journeys from Agartala to Kanyakumarika in respect of himself and 7 (seven) other family members, viz, mother; father, 2 brothers and 3 sisters during the period from 7.5.1982 to 31.5.1982 against the block year 198286. Sri Chakraborty submitted the said claim for reimbursement of the amount of expenses incurred by him for travelling from Agartala to Kanyakumarika 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 Shri Chakraborty did neither performed his rail jouneys by 1st class from Dharmanagar nor from Howrah. Further on enquiry it has also been confirmed from Indian Airlines that Sri Chakraborty accompanying 6 (six) other family members (viz. his wife, 4 daughter and 1 (one) son performed return journey from Calcutta to Agartala by Air Flight No.IC237 on 31.5.82. Thus Sri Chakraborty submitted a false claim of LTC for the black year 198286 which attracts the Rule 3 of the Tripura Services (Duties, Rights and Obligation of the Govt Employees) Rules, 1982.?

7. From the impugned orders assailed in this writ petition, it clearly appears that the reliance was placed on the letters 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 I of the charge is solely based on a confidential inquiry conducted by one Shri Anjan Chakraborty, SI of Police and submitted the report. It is also an admitted fact that the inquiry submitted by Shri Anjan Chakraborty, SI 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 Exts P1 to P4 but neither Manager, Dharmanagar or Howrah has been called as a witness so also although the prosecution relied on the correspondences a 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 nonobservance 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 crossexamining the witness produced against him and any examining himself or any other witness in support of his defence.

9. In the instant case nonproduction 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 crossexamining 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 Exts P1 to P4. These exhibits have been marked by one Anjan Chakraborty, SI 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. UB Saha, learned Govt Advocate. The sole contention of Mr. UB Saha is that this Court exercising the power of judicial review is not sitting as an appellate Court and, therefore, is not competent to reappraise the 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 Registrar vs. Shrirish Kumar Rangrao Patil, (1997) 6 SCC 339; (b) State of UP vs. Nand Kishore Shukla, (1996) 3 SCC 750; (c) BC Chaturvedi vs. Union of India, AIR 1996 SC 484.

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 Govt servant based upon the misconduct proved against him.

12. There is not 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 correspondence made by Anjan Chakraborty, SI 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 by the Managers have not been cited as prosecution witnesses and thereby deprived the petitioner of a reasonable opportunity of defending himself by crossexamining them. It also clearly appears that the confidential inquiry was conducted by Shri Anjan Chakraborty, SI of Police at the back of the petitioner.

13. In the result, the whole proceedings initiated against the petitioner vitiated and accordingly, the impugned orders dated 8.7.1998 (Annexure 3), 15.11.1989 (Annexure 4) 8.2.1991 (Annexure 10) passed by the disciplinary authority and appellate authority are hereby quashed and set aside. The petition stands allowed In the fact 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.