(2015) 12 TP CK 0006

In the Tripura High Court

Case No : W.P.(C) No. 341 of 2011

Ananda Hari Jamatia APPELLANT

Vs

The State of Tripura and Others RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Citation : (2015) 12 TP CK 0006

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : A. Pal, Advocate, for the Appellant; J. Majumder, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—By means of this petition, the petitioner has challenged the order under No. F. 11(36)-GA (AR)/05/198-200 dated 07.02.2011, Annexure-P/9 to the writ petition and the order under No. F. 11(36)-GA (AR)/05/1103-1104 dated 01.06.2011, Annexure-P/10 to the writ petition. Further challenge has been projected against the inquiry report dated 06.09.2007 in terms of memorandum No. F. 11(36)-GA (AR)/2006/1476-1480 dated 07.06.2006, Annexure-P/7 to the writ petition.

2. The petitioner is an officer, borne in Tripura Civil Service, Grade-II and he had been working as the Block Development Officer (B.D.O., in short), Karbook R.D. Block under South Tripura District from 12.04.2001 to 24.05.2005. On his transfer, he had handed over the charge to his successor with cash analysis report etc. His successor namely, Sri N. Debbarma discovered some discrepancies in the cash analysis report and he informed the matter to the District Magistrate & Collector, South Tripura, who in turn constituted a special audit team headed by Sri S.P. Biswas, Sr. Deputy Magistrate to conduct a special audit in Karbook R.D. Block by the order dated 06.06.2005. The said special audit team submitted their report on 20.06.2005, Annexure-P/2 to the writ petition, observing that "it appears that an amount of Rs. 57,70,480/- only found

as available Cash balance as on 24.05.2005." It has further observed that ''it appears that an amount of Rs. 5,43,752/- only found discrepancies with the cash analysis report of the then B.D.O., Karbook R.D. Block submitted on 24.05.2005 (sic). We have apparently checked the records and the said amount found discrepancies which require a special audit by the A.G. Tripura to find out the actual discrepancies and shortage of amount since inception of the block (sic).''

3. The facts in this case are mostly undisputed. Based on the report dated 20.06.2005, by the memorandum No. F. 11(36)-GA (AR)/2006/1476-1480 dated 07.07.2006, the following articles of charge were levelled against the petitioner:

ARTICLE-I

That the said Shri Ananda Hari Jamatia, TCS. Gr-II while functioning as Block Development Officer of Karbook Rural Development Block, South Tripura for the period from 12.04.2001 to 24.05.2005 failed to maintain absolute integrity and devotion to duty in so far as he defalcated a Government funds of Rs. 5,43,742/- by submitting false statement of cash analysis as detected during the course of audit of accounts of the said Block by the Special Audit Team constituted by the District Magistrate & Collector, South Tripura.

The above act of Shri Ananda Hari Jamatia has been an act of gross misconduct quite unbecoming of a Government servant and thus, Shri Jamatia violated Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

ARTICLE -II

That the said Shri Ananda Hari Jamatia, TCS. Gr-II while functioning as Block Development Officer of Karbook Rural Development Block, South Tripura for the period from 12.04.2001 to 24.05.2005 failed to maintain absolute integrity and devotion to duty in so far as he defalcated a Government funds of Rs. 94,655/- as detected during the course of audit of accounts of the said Block by the Special Audit Team. Detailed of the defalcated amount are as follows:

(i) Rs. 21,000/- against bill No. 228 dated 07.12.04.

(ii) Rs. 20,000/- against bill No. 229 dated 07.12.04.

(iii) Rs. 20,000/- against bill No. 230 dated 07.12.04.

(iv) Rs. 33,655/- shown disbursed in the cash book but not entered in the receipt side of the cash book (cash book pages No. 80, 80, 122, 118, 138 & 116).

The above act of Shri Ananda Hari Jamatia has been an act of gross misconduct quite unbecoming of a Government servant and thus, Shri Jamatia violated Rule 3 of the Tripura Civil Services (Conduct) Rule, 1988.

4. The petitioner since disputed such allegations, a formal inquiry was directed by the Disciplinary Authority, the respondent No. 2. The inquiring authority after the purported analyses of the evidence, both documentary and oral as adduced by the presenting officer and by the delinquent officer came to the finding that

both article of charges have been established against the delinquent officer. By the memorandum No. F. 11(36)-GA (AR)/05/2438-39 dated 10.12.2007, Annexure-P/8 collectively to the writ petition, the petitioner was supplied a copy of the findings of the inquiring authority dated 06.09.2007, Annexure-P/7 to the writ petition, as per provisions of Rule 15(1-A) of the CCS (CCA & A) Rules, 1965 asking him to submit representation, if any, within 15 days from the date of receipt. The petitioner was cautioned that if no representation is filed, the Disciplinary Authority would be compelled to presume that the petitioner had nothing to say on the said report and action would be taken as per rules. The petitioner filed the representation on 10.01.2008 and raised serious objection as to the procedural aspect inasmuch as he was not supplied the documents he requisitioned. He had further raised that the charges as levelled against him are vague and without materials.

5. After taking the concurrence of the Tripura Public Service Commission vide their communication No. F. 6(224) SM/TPSC/2010 dated 13.12.2010, the disciplinary authority imposed the following penalties:

"Penalty of reduction by one stage of the time-scale of pay for a period of 3 years only without cumulative effect and

(b) Recovery of the wrongful loss caused to the Government by the Accused Officer Sri Ananda Hari Jamatia, TCS for amount of Rs. 6,38,397/- (Rupees Six lakhs Thirty Eight thousand and Three hundred Ninety Seven) only."

6. The petitioner being dissatisfied with the outcome of the disciplinary proceeding as stated filed an appeal and the said appeal was dismissed by the order No. F. 11(36)-GA (AR)/05/1103-1104 dated 01.06.2011, Annexure P/10 to the writ petition, by the Chief Secretary who functioned as the appellate authority. In this perspective, the petitioner has filed this writ petition to challenge the aforenoted order passed by the disciplinary and the appellate authority and the inquiry report.

7. Mr. A. Pal, learned counsel appearing for the petitioner at the outset has submitted that the findings so returned by the inquiry authority, as accepted by the disciplinary authority, is based on no evidence inasmuch as there is no evidence as to the defalcation by the petitioner. Defalcation is a well defined word. For supporting his contention, Mr. Pal, learned counsel has made reference to the statement of imputation of misconduct, Annexure-II of the memorandum dated 07.07.2006 (Annexure-P/3 to the writ petition) where it has been stated that the said delinquent officer while functioning as the Block Development Officer of Karbook R.D. Block for the period from 12.04.2001 to 24.05.2005 failed to maintain absolute integrity and devotion to duty in so far as he defalcated the government fund of Rs. 5,43,742/- as detected by the special audit team in course of carrying out the audit of the account of the said R.D. Block. The audit team found that the cash balance as on 24.05.2005 was shown as 52,26,676/- which should have shown as Rs. 57,70,418/-. The delinquent

officer intentionally submitted a statement of manipulated cash analysis. As such, Rs. 5,43,742/- was defalcated by the delinquent officer. Mr. Pal, learned counsel appearing for the petitioner has submitted that from the charge it is not very clear what was the cash available physically with the said Block Development Office. In absence of such definite statement regarding the cash availability on 24.05.2005, the charge of defalcation is bound to fall through. Mr. Pal, learned counsel has further submitted that it would be evident that the petitioner was charged of defalcating further fund of Rs. 94,665/- as detected by the special audit team during their audit of the accounts for the tenure the petitioner served as the B.D.O. Three AC bills amounting to Rs. 61,000/- (against bill No. 228 dated 07.12.2004 for Rs. 21,000/-, bill No. 229 dated 07.12.2004 for Rs. 20,000/- and bill No. 230 dated 07.12.2004 for Rs. 20,000/-) were drawn and deposited in the Bank Account bearing No. CD-66(UBI), Jatanbari Branch on dated 23.12.2004 but those drawals were not shown in the receipt side of the cash book. Out of which Rs. 33,655/- was shown as disbursed in the cash book in 6 phases vide cash book pages No. 80, 122, 118, 128 and 116 while the entire amount of Rs. 61,000/- was not entered in the receipt side of the cash book. Thus, the delinquent officer has been charged for defalcating a sum of Rs. 94,655/- = (Rs. 61,000/- + Rs. 33,655/-).

8. Moreover, Mr. Pal, learned counsel has submitted that the petitioner has been framed without any tenable basis. Even the concurrence report of the Tripura Public Service Commission (TPSC) was not communicated to the petitioner despite the law laid down by the apex court in S.N. Narula Vs. Union of India (UOI) and Others, . This should have been communicated to the petitioner before he was heard by the disciplinary authority.

9. Appearing for the respondents Mr. J. Majumder, learned counsel has expressed his serious reservation whether this Court would at all exercise its jurisdiction in re-appreciating the fact based on which the impugned disciplinary action has been taken. Mr. Majumder, learned counsel has further submitted that following the procedures as laid down in Rule 14 and Rule 15 of the CCS (CCA) Rules, 1965 every opportunity and safeguard has been extended to the petitioner. Mr. Majumder, learned counsel, in compliance of the direction of this Court, has placed the file No. 01/2007/VOL-III and the File No. 02/2007/VOL-II which are the records of the disciplinary proceeding. Mr. Majumder, learned counsel has emphatically submitted that the finding as returned by the disciplinary authority by the impugned memorandum dated 07.02.2011 is not only based on the inquiry report dated 06.09.2007 but also on his appreciation of the materials admitted in the inquiry proceeding. Even the appellate authority while passing the impugned order dated 01.06.2011 re-appreciated the evidentiary materials afresh and affirmed the finding of the disciplinary authority. He urged this Court not to appreciate the evidence afresh in view of the settled position of law that in the judicial review the evidence of the departmental proceeding may not be appreciated as if it was a court of appeal. The exercise shall be confined to the process vis-?-vis the safeguards as provided under the relevant rules or in view

of the principles of natural justice. Mr. Majumder, learned counsel has also produced the Exbt. No. 3, a bill register and Exbt. No. 4, another bill register. Mr. Majumder, learned counsel, has continued to submit that even if for a limited purpose the records are glanced through, it would be apparent that there is no infirmity either in the finding of the inquiry report nor in the finding of the disciplinary authority nor in the affirmation by the appellate authority.

10. This Court is not in agreement with the wholesome submission made by Mr. Majumder, learned counsel for the respondents in respect of the scope of the judicial review when he has stated that in the judicial review under no circumstances the High Court can go through the evidence. It has been held by this Court on numerous occasions that when the delinquent officer takes the plea of complete absence of evidence in returning the impugned finding even in the judicial review, the High Court may appreciate the evidence for a very limited purpose for satisfying whether any evidence at all exists ex-facie or not. Mr. Pal, learned counsel appearing for the petitioner has specifically contended that the findings are not based on any evidence. There is no dispute that the entire disciplinary proceeding has been founded on report of the said special audit. The said audit had commenced when the communication under No. 02/BDO/KBK/CON/2005-06/693 dated 04.06.2005 (Exbt. P/1) by the succeeding B.D.O., namely N. Debbarma (PW-1) was received. For purpose of reference, the said communication is entirely reproduced hereunder:

"To

The District Magistrate & Collector, South Tripura, Udaipur

Subject - Discrepancy of Cash Analysis statement on 24.05.2005

Sir,

With reference to the subject cited above, I would like to inform you that I have taken over the charge of Office of the Block Development Officer, Karbook R.D. Block on 24.05.2005 from Sri Ananda Hari Jamatia, Ex. B.D.O. Karbook R.D. Block.

Cash Analysis Statement of Karbook R.D. Block as on 24.05.2005 submitted by Sri Ananda Hari Jamatia Ex. B.D.O. Karbook R.D. Block & Sri Binda Basi Jamatia, Cashier has been found discrepancies in Sub-Total column after thoroughly checking scheme wise receipt and balance amount by me on the following:

There is no signature of D.D.O. of the Bill Register against the Bill drawn which requires the Signature of D.D.O. in order to ensure the drawal of Bills from Sub-Treasury while signing in the Cash Book. Scheme wise Advance Register etc. are not maintained by the Block during the tenure of Sri Jamatia, Ex. BDO and Cashier. The above documents should be available in the cash section for getting correct picture of the cash position in the Block. I consider it is against financial rules. It is noticed that Bill No. 389 dt. 17.03.2005 (T.W.) for an amount of Rs. 3,60,490/- was presented to Sub-Treasury, Amarpur and drawn and reflected in the cash book for Rs. 3,60,490/- but shown in the receipt column of Cash Analysis Statement of Rs. 3,06,490/-.

A fresh cash analysis statement may be submitted by Sri Jamatia, Ex. B.D.O. after rectifying the cash Analysis statement submitted on 24.05.2005 and other documents/papers may be regularized by the then BDO.

At present I am not in a position to transact all kinds of receipt and payment in the office unless and until Cash Analysis Statement, Cash Book etc. are rectified and verified at an early date.

I would, therefore, request you to kindly arrange for verification of cash so that accurate figure of cash balance is reflected whatever amounts are lying with this Book."

11. It is the admitted position that based on the said communication, the special audit was carried out by Sri S.P. Biswas, one Senior Deputy Magistrate (PW-2) and on completion of the special audit, the said Officer and other members of the special audit, filed a report to the DM & Collector, South Tripura, Udaipur under his communication No. 1(2)-Sr. Dy. Mag/S/DM/Misc/05/305 dated 20.06.2005. In the said report it has been observed as under:

"As per your kind order No. 1(23)-DM/S/05/42-47 dated 06.06.2005, regarding special audit of the Accounts of Karbook R.D. Block, South Tripura, the team has visited the Karbook Block and subsequently the present BDO Karbook has been requested to appear in DM''s Office, South will all relevant records and concerned dealing assistants. The present BDO Karbook has appeared in DM''s Office on 09.06.2005 with all relevant records and concerned staff. We have started scrutiny of all records of schemes on 09.06.2005. After thorough checking of available records of drawal of scheme as well as expenditure thereon for ascertaining total cash balance with Schemes Register and Cash Book, it appears that on amount of Rs. 57,70,418/- only found as available Cash balance as on 24.05.2005. A statements showing detailed scheme-wise drawal, expenditure and undisbursed balance with a Synopsis is enclosed for your kind perusal and doing the needful. It appears that an amount of Rs. 5,43,752/- only found discrepancies with the cash analysis report of the then BDO Karbook RD Block submitted on 24.05.2005 with bank. We have apparently checked the records and the said amount found discrepancies which require a special audit by the A.G., Tripura to find out the actual discrepancies and shortage of amount since inception of the Block."

12. Shri N. Debbarma (PW-1) appeared in the inquiry proceeding but he failed to state anything about the nature of discrepancies, he had mentioned in his report (Exbt. P/1). He has stated in the inquiry proceeding as under:

"I have taken over the charge from Sri Ananda Hari Jamatia as per closing balance of the Cash Book. Immediately after taking over the charge, I could find out some discrepancies in the Cash Book, as it appears to me, were not properly credited in the Cash Book.

I cannot exactly remember Bill No. etc..., which were not credited in the Cash Book"

Sri S.P. Biswas (PW-2) has stated in the inquiry proceeding that he headed a team of officials to examine the Cash Analysis report submitted by the petitioner covering the period from 09.06.2005 to 17.06.2005. Thereafter, he has stated that:

"As per our examination, the cash balance should have been Rs. 57,70,418/- (Rupees fifty seven lakh seventy thousand four hundred eighteen) only and not Rs. 52,26,676/- (Rupees fifty two lakh twenty six thousand six hundred seventy six) only. We have further found that 3(three) A.C. Bills amounting to Rs. 61,000/- (sixty one thousand) only were drawn. These three A.C. bills, amount drawn mentioned against each have not been entered in the cash books are (1) bill No. 228 dated 07.12.2004, Rs. 21,000/- (2) 229 dated 07.12.2004, Rs. 20,000/- (3) bill No. 230 dated 07.12.2004, Rs. 20,000/-. These amounts were drawn and deposited in the bank account C.D. No. 66 of U.B.I., Jatanbari Branch on 23.12.2004, were not entered in the cash book.

Another amount Rs. 33,655/- (Rupees thirty three thousand six hundred fifty five) only has been shown to be disbursed in the cash book vide six pages of cash book page No. 80, 122, 118, 138 and 116 of Total Sanitation Campaign (TSC) amount. Total amount thus comes to Rs. 94,655/- (Ninety four thousand six hundred fifty five) only, were not entered in the cash book."

13. So far the article of charge No. II is concerned, the note appearing with the special audit report, which contains 9(nine) pages, is very relevant and for that purpose the said note appearing at the bottom of the page No. 6 of the said report is reproduced.

"N.B. 3 Nos. of A/C bill amounting to Rs. 61,000/- (Bill No. 228 dated 7/12/04 Rs. 21,000/-, Bill No. 229 dated 7/12/04 Rs. 20,000/- & Bill No. 230 dated 7/12/04 Rs. 20,000/- respectively) has been drawn & deposited in the Bank A/C No. CD-66(UBI) on 23/12/04 against which Rs. 33,655/- has been shown disbursed in the Cash Book, in 6 phases vide Cash Book P-No. 80, 80, 122, 118, 138 & 116 while the entire amount not entered in the receipt side of cash book. Hence there shall be difference for Rs. 94,655/- only between the Bank A/C & Cash Book."

14. It is apparent from the said note that the entire amount of Rs. 61,000/- against three AC Bills had been drawn and deposited in the AC No. CD-66 (U.B.I.) on 23.12.2004 and out of that amount a sum of Rs. 33,655/- has been shown to be disbursed in the cash book. There is no allegation that those entries were falsified or that amount was not actually paid. This is really absurd to arrive at an inference that the difference was therefore Rs. 94,655/-. If the payment was made out of Rs. 61,000/- balance which should remain in the bank account

is at Rs. 27,345/-. Even there is no allegation against the petitioner that the said amount was not found in the said account or its remainder. As such, the article of charge No. II cannot be sustained on two counts, one, there is no evidence of ''defalcation'' of Rs. 94,655/- or part thereof, and two, when the amount is in the official account how there can be any allegation of defalcation. Hence, the charge as brought against the petitioner under the article of charge-II is without any foundation or the evidence and accordingly, the said charge is set aside.

15. The petitioner did not adduce any oral or documentary evidence, so far the article of charge-I is concerned, on the face of Exbt. 4, the special audit report, it is apparent that there was shortage of cash amounting to Rs. 5,43,752/- in the cash analysis statement, the petitioner has manipulated the figures writing Rs. 52,26,676/-. What is evident from Exbt. P/1 which also contains the cash analysis statement submitted by the petitioner is that the cash balance ought to have been Rs. 57,70,418/- on 24.05.2005 when the petitioner filed that cash analysis statement. The petitioner has not denied that statement of deliberate manipulation in any manner. Therefore, the respondents have correctly stated that the petitioner has failed to give any explanation whatsoever for the shortage/ discrepancy of Rs. 5,43,742/-. As such, the finding as returned by the inquiry authority that the petitioner has defalcated an amount of Rs. 5,43,742/- cannot be questioned in any manner, particularly so when there is no explanation from the petitioner himself in the inquiry proceeding, except his general denials. Thus, the findings as returned by the disciplinary authority as well as by the appellate authority so far the article of charge-I are concerned, do not warrant any interference from this Court. The petitioner has also failed to make out a case how he has been prejudiced for non-furnishing of the concurrence report by the TPSC.

16. In view of what has been held by this Court, the impugned order dated 07.02.2011 requires to be modified by the disciplinary authority. The amount shall be recovered from the petitioner in view of setting aside of the article of charge No. II shall be Rs. 5,43,742/-. Necessary order shall be passed by the disciplinary authority forthwith. The other penalty as imposed shall remain intact.

17. Hence, the writ petition is allowed partly, to the extent as indicated above.

There shall be no order as to costs.

The records produced by Mr. Majumder, learned counsel for the respondents relating to the disciplinary proceeding shall be returned.

