
(2013) 03 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 304 of 2008

Bacchu Miah

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 3 GLD 274 : (2013) 5 GLT 405 : (2013) LabIC 2169

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : A.K. Bhowmik, R. Datta, A. Das, S.R. Dey, S. Ghosh and Ms. M. Choudhury, for the Appellant; A. Ghosh, State Counsel, for the Respondent

Judgement

Subhasis Talapatra, J.—Heard Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner as well as Mr. A. Ghosh, learned State counsel appearing for the respondents. The petitioner who was serving as the Assistant Investigator under the Directorate of Economics & Statistics, Govt. of Tripura did not attend his duty for a long period from 11-05-1993 till filing of the memorandum of charges on 19-09-1994. Having no knowledge of the said proceeding the petitioner filed a petition before this Court challenging the action of the respondents for not allowing him to resume the duties. The said writ petition being W.P(C) No. 203 of 2002 was ultimately withdrawn by the petitioner when he came to know that the disciplinary proceeding had been drawn up against him. By the order dated 19-11-2007 this Court allowed the petitioner to withdraw the writ petition with liberty.

2. It appears from the records so produced by Mr. A. Ghosh, learned State Counsel and also from the counter affidavit filed by the respondents that on receipt of the memorandum of charges the petitioner filed the written statement and he also denied the charges when the preliminary hearing was carried out by the inquiring authority but thereafter he did not attend the proceeding without any information to the inquiring authority or to the disciplinary authority. It is also contended by the respondents that notwithstanding the notices those were

sent for securing attendance of the petitioner, he did not attend the proceeding and ultimately the report dated 18-10-1999 as submitted by the inquiring authority on completion of the inquiry was received by the disciplinary authority and the said report of the inquiring authority gave finding in no uncertain terms against the petitioner holding that the charges of absents from duties unauthorizedly w.e.f 11-05-1993 onwards, intentional failure to resume his duties by violating the repeated directions of his superior authority, non-submission of any application for leave along with the medical certificate as required by the relevant leave rules and for making no response to the official memorandum asking him to explain reasons as to why the disciplinary action should not be taken against him for his prolonged unauthorized absence w.e.f. 11-05-1993 have substantially been proved.

3. The disciplinary authority by the office order dated 02-12-1995 on consideration of the said inquiry report imposed penalty of removal from service with immediate effect. After more than 6(six) years the petitioner filed a statutory appeal, but the appellate authority dismissed the said appeal dated 04-12-2007 as barred by limitation. The petitioner, as relentless as he was, filed an application to the Chief Secretary to the State for review of the order of the disciplinary authority and the Chief Secretary on affording due opportunity of hearing on 26-05-2008 disposed the said review proceeding by the order dated 16-06-2008 holding that:

As per provision of Tripura Civil Service conduct Rule, all employees are supposed to show total devotion to duty. In the instant case, the petitioner had admitted that he remained unauthorizedly absent from duty for about two years. His such authorized absence from duty had affected the public service and penalty of removal from service was imposed after following the laid down procedure. While the submission of the petitioner that he remained unauthorizedly absent from duty as he was mentally upset deserve sympathy, admitting his request for reinstatement in service will set wrong precedent and affect discharge of public service very adversely.

4. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner with sufficient vehemence submitted that the disciplinary authority on receipt of the inquiry report did not furnish a copy of the report to the petitioner asking for his comments or the reply thereof and thereafter without affording such opportunity to which the petitioner is entitled in view of Rule 15(2) and (2-A) of CCS (CCA) Rules, 1965 as amended which stipulates as under:

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days,

irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

The disciplinary authority has acted in defiance to the procedural safeguards as provided by the said provisions. Thus the petitioner suffered serious prejudice as the petitioner could not place his say demonstrating that he was prevented by mental illness and for that he could not attend duties for a substantial period.

5. To nourish his contention Mr. Bhowmik, learned senior counsel has referred the grounds as cited in the memorandum of appeal. The petitioner has categorically taken a plea at para-17 as follows:

That it has been held by the Apex Court that even if there is no provision for supply of copy of enquiry report the copy has to be supplied to the Government servant, who is/was to be punished as a result of disciplinary proceeding. I refer to a decision reported in AIR 1994 SC 1074 (a five Judges' judgment of the Supreme Court), which contemplated that copy of the enquiry report is to be supplied and in case of non-supply causes prejudice to the Government servant, the order of punishment has to be quashed.

Even thereafter according to Mr. A.K. Bhowmik, learned senior counsel the appellate authority did not consider the matter and on the ground of limitation dismissed the appeal.

6. As it appears from the records that the reviewing authority also did not consider this aspect of the matter whether for non-appearance in the subsequent phases of the departmental proceeding the petitioner would be disentitled from receipt of the inquiry report or not.

7. Be that as it may, the review authority has reflected in his order dated 16-06-2008 as under:

**** He stated that he was suffering from mental disability as after a few days of his appointment, his residential house was gutted by fire accident and he could not perform duties. He stated that on account of his mental disability, he could not understand the departmental proceeding and participate in the proceedings.

Even though all these circumstances which prevented the petitioner from attending his official duty have been recorded by the reviewing authority, but those were not taken care of at that phase, as the inquiry report stood against the petitioner.

8. Mr. A. Ghosh, learned State counsel appearing for the respondents submitted that it would be evident from the records that the inquiring authority had repeatedly given notice for securing the attendance of the petitioner in the proceeding, but he did not come to attend the proceeding for his defence. Now,

the petitioner cannot be allowed to say that the procedural safeguards were not provided to him.

9. The solitary question that has been poised for appreciation that if the delinquent did not attend in the inquiring proceeding, whether the right to get copy of the inquiry report would be forbidden or taken away as has been done in this case. The answer must be in the negative. Even if the inquiry is concluded ex-parte, the right as provided in Rule 15(2) and (2-A) of CCS (CCA) Rules, 1965 cannot be made non-operative by the disciplinary authority as he is obliged to act in accordance with what has been provided by way of the statutory rules, In the proceeding whether the delinquent participated or not, will not make any difference. The disciplinary authority shall be under obligation to supply the copy of the inquiry report, because these provisions in Rules 15(2) and 15(2A) of the CCS (CCA) Rules, 1965 has provided additional safeguards before the disciplinary authority passed the final order.

10. In this case, Mr. A. Ghosh, learned State counsel very candidly submitted that in the records, there is no note or reflection whether the inquiry report was furnished to-the petitioner or not. This Court on scrutiny of the counter affidavit finds no such averments that there had been compliance of the Rule 15(2) and (2A) of the CCS (CCA) Rules, 1965.

11. The impugned order dated 02-12-1995 (Annexure 1 to the writ petition), the order of the appellate authority dated 05-01-2002 and the order of the reviewing authority dated 16-06-2008 (Annexure-2 to the writ petition) are therefore liable to be interfered with. Hence those are interfered with and set aside. The Director, Directorate of Economics & Statistics, Government of Tripura, the disciplinary authority, the respondent No. 3 is directed to furnish a copy of the inquiry report to the petitioner within a period of 15 days from today and the petitioner would be allowed another 15 days therefrom for furnishing his reply whatsoever and thereafter the respondent No. 3 shall pass the appropriate order on appreciation of the representation that might be filed by the petitioner, the inquiry report and the materials as placed in the inquiry proceeding. The final order shall be passed within a period of 3(three) months from today, meaning thereby, within two months from the date of filing of the representation. It is made clear that petitioner shall not be afforded further opportunity beyond what has been provided by this order.

12. With this observation and direction, this petition stands partially allowed. There shall be no order as to cost. The records as produced by Mr. A. Ghosh, learned State counsel is returned.