

(2007) 09 GAU CK 0002
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 129 of 2007

Bibhuti Bhushan Sarkar

APPELLANT

Vs

State of Tripura and Ors.

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 20, 20, 21, 21

Constitution of India, 1950 — Article 14, 14

Citation : (2008) 2 GLR 795

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : O.K.Biswas, P.Dutta, S.Lodh, T.D.Majumdar, Advocates appearing for Parties

Judgement

1. Upon perusal of the materials on record and as agreed to by the learned counsel of both the parties and considering the matter in its entirety and in the interest of justice, this writ petition is taken up for hearing, at the admission stage.

2. By this writ petition under article 226 of the Constitution of India, the petitioner has sought for, in the form of certiorari, an appropriate a order to quash the departmental proceeding, initiated by the respondent No. 2, namely, the Principal Secretary to the Govt. of Tripura, General Administration (AR) Department, Agartala, (Disciplinary Authority), vide Memorandum, dated 25.9.2006, Annexure5 to the writ petition and also prayed for a further direction, in the nature of writ of mandamus, to the respondents, to forward the applications of the petitioner for the post of Principal and Professor in the College of Agriculture, Tripura submitted on 22.3.2007 and not to obstruct the process of selection, if the petitioner is called for such selection, on the plea of the aforesaid Departmental Proceeding.

3. Heard Mr. D.K. Biswas, learned counsel along with Mr. S. Lodh, learned

counsel for the petitioner. Also heard Mr. T.D. Majumder, learned Additional Govt. Advocate appearing for the State respondent Nos. 1 and 2 and Mr. P. Dutta, learned counsel for the respondent No. 3.

4. The case of the petitioner for decision in the instant writ petition is that while the petitioner was serving as a member of the Tripura Higher Agricultural Service, Grade II and functioning as Sr. Horticulturist in the Directorate of Horticulture & Soil Conservation, Government of Tripura, the authority lent him to the Tripura Horticulture Corporation Ltd. ("Corporation"), to act as managing director of the said Corporation on and from 13.9.2002. As such, he served for one year two months in the said Corporation as managing director and thereafter, he was repatriated to his parent department on 10.11.2003, namely, the Directorate of Horticulture & Soil Conservation. When he was acting as a Sr. Horticulturist in his parent department after his repatriation, he was placed under suspension in contemplation of a departmental proceeding vide order, dated 12.5.2004, Annexure 1 to the writ petition, which was revoked after two and half years vide order, dated 31.10.2006, Annexure 2, to the writ petition.

5. During the period of his suspension, the petitioner in respect to a notification, applied for the post of Professor in the National Council for Educational Research and Training (NCERT), through proper channel, vide his prayer, dated 28.2.2005, but he was informed that the Government has declined to forward his prayer, vide letter, dated 19.3.2005, Annexure 3 to the writ petition.

6. Similarly again on 8.11.2006, the petitioner applied for the post of the Joint Director, I.C.A.R Research Complex at Meghalaya, but the same was also not forwarded by the respondents on the ground that a disciplinary proceeding is pending against him.

7. In the meantime, on 25.09.2006, a Memorandum enclosed with Article of Charges has been issued, vide Annexure 5 to the writ petitioner, by the respondent No. 2, contemplating a departmental proceeding against the petitioner. By filing this writ petition, the petitioner has challenged the propriety and authority of the respondent No. 2 to initiate the said departmental proceeding, against the petitioner. Relying on the Memorandum, dated 17.8.2004, issued by the General Administration (AR) Department, it is contended by the petitioner that the departmental proceedings against the officers for their misconduct during the period of deputation would be initiated only on specific proposal from the borrowing authorities in terms of the law already in force under rule 21 of the CCS (CCA) Rules, 1965, a copy of the said Memorandum dated 17.8.2004 is annexed as Annexure 7 to the writ petition. The petitioner also referred to a decision of this court rendered in WP(C) No. 455 of 2005 stating, inter alia, that the petitioner in that case was also on deputation to Tripura Horticulture Corporation and was sought to be proceeded against similar offence of negligence and the hon'ble court quashed the proceeding against the petitioner on the ground that the said proceeding was not initiated on the basis of no specific complaint from the borrowing department. Therefore, it is

submitted by the petitioner that in the case of the petitioner also, there is no specific proposal from the borrowing Authority/Corporation alleging misconduct committed by the petitioner and on that ground alone, the proceeding initiated by the Memorandum, dated 25.9.2006, against the petitioner is improper and contrary to the Rules and the same should be quashed, as neither the chairman nor the Corporation has ever made any proposal contending that a proceeding should be drawn against the petitioner. Hence, without a proposal of a specific misconduct made by the borrowing Authority, the lending department has no authority to initiate a departmental proceeding against the petitioner.

8. In response to the Memorandum, dated 25.9.2006 (supra), the petitioner sought for some information/documents to be supplied him under the Right to Information Act, so that he can give proper answer to the said Memorandum, dated 29.5.2006, within the stipulated period of ten days from the date of receipt of the said memorandum. The documents for which he asked for are as follows :

(i) Copies of the Notice and Orders in the related file which may justify the delay of two and a half years in preparing the charge for the Departmental Proceeding.

(ii) Copy of the complaint, if any by the THCL to the Government suggesting proceeding against the petitioner for misconduct contained in the Charge Sheet.

(iii) Copies of the Enquiry Report and notice since 16.12.2003 when the 3 member committee headed by Shri M.C. Dutta submitted its report explaining the reasons for damage of potato seeds.

9. The SPIO/Under Secretary to the GA (AR/Vig.) Department, by his forwarding letter, dated 17.4.2007, (Annexure 6(I) to the writ petition), furnished the information relating to item No. 2 only contained in 3 sheets, which are enclosed as Annexure 6(ii), 6(iii) and 6(iv) to the writ petition, on which the petitioner contends that the aforementioned documents supplied to the petitioner do not contain any specific proposal for proceeding against the petitioner. So, it will be illegal on the part of the respondent to initiate the instant disciplinary proceeding against the petitioner, therefore, the same is liable to be set aside and/or quashed.

10. The further case of the petitioner is that though he once again applied for the post of Principal and Professor in the College of Agriculture, Tripura, he has apprehension that the respondents may not forward his applications for the aforesaid posts to the concerned authority on the plea of the disciplinary proceeding being pending against him. Therefore, a direction to the respondents is called for to forward his applications, dated 22.3.2007 and also not to obstruct his process of selection, if he is called for such selection.

11. In response to the contention of the petitioner made in his petition, the respondent No. 3, Tripura Horticulture Corporation Ltd., (THCL) has filed its affidavit in opposition stating, inter alia, that the writ petitioner was appointed on 13.9.2002 as Managing Director of THCL and on 10.11.2003 he was duly

repatriated to the parent department. The Teliamura Cold Store at Gamaibari is at the disposal of Tripura Horticulture Corporation Ltd., Agartala and in the year 2003, the entire stock of potato seeds kept in the cold store have been damaged. In this respect, the then Managing Director, THCL duly wrote a letter, dated 2.12.2003, to the Principal Secretary to the Government of Tripura, Department of Agriculture, Agartala that an enquiry might be conducted to the fact that the entire stock of potato seeds had been damaged at Teliamura Cold Store. In a special meeting of Board of Director of THCL held on 21.10.2003, a committee consisted of four officials/members has been formed and the committee was asked to submit its report by 28.10.2003. The said committee submitted its report on 28.10.2003, but a special meeting of the THCL held on 3.11.2003 did not consider the said report and further directed the committee to submit additional information within fifteen days before the Board. In the meantime, the writ petitioner, who was the Managing Director, THCL and the Chairman of Teliamura Cold Storage Enquiry Committee, was repatriated to his parent Department on 10.11.2003 as per decision of the Government. Consequently, no further report as desired by the Board was possible to submit again.

12. The respondent Nos. 1 and 2 have jointly filed their counter affidavit. It is the case of the respondents that the Managing Director of Tripura Horticulture Corporation Ltd., who is the Borrowing Authority, made a complaint to the Principal Secretary, GA(AR), Department regarding damage of 425 M.T. potato seeds in Teliamura Cold Store and requested to make an enquiry thereupon and on the basis of the enquiry report, it appeared that the writ petitioner, who was the Managing Director of THCL, did not perform his supervision works on Teliamura cold storage with devotion and sincerity, for which 425 MT potato seeds of cultivators was damaged. Thereafter, the Disciplinary Authority issued suspension order as well as charge sheet to the petitioner and the delay in issuance of charge sheet was made in observing the official formalities. So, the allegation that without specific proposal of a misconduct made by the borrowing Authority, the lending department shall have no authority to initiate a departmental proceeding against the Government servant is not tenable and the charge sheet against the writ petitioner was issued properly as per Rule. As regards the information sought for by the petitioner, it is stated by the respondents that the G.A. (P&T) Department supplied the documents mentioned in Item No. (ii) of the application of the petitioner and the others were not supplied to the petitioner as it was considered that disclosure of such information is barred by section 8(1)(h) of the Right to Information Act, 2005. Relating to the application of the petitioner for the post of Principal and Professor in Tripura Agriculture College, it is submitted by the respondents that the apprehension of the petitioner is not tenable as the competent authority will consider the aspects of the interview strictly as per Rules.

13. Mr. D.K. Biswas, learned counsel for the petitioner submits that the respondent No. 2, the Principal Secretary to the Government of Tripura, vide Memorandum, dated 25.9.2006, (Annexure5), proposed to hold an enquiry

against the petitioner for alleged misconduct while he was on deputation in the Tripura Horticulture Corporation Ltd. (THCL) as Managing Director of the said Corporation which is without jurisdiction and violative of Memorandum, dated 17.8.2004, (Annexure7), issued by the Joint Secretary to the Government of Tripura. In the said Memorandum, it was specifically mentioned that the initiation of a disciplinary proceeding against the Govt. officials, who were/are on deputation to some other Department/PSU/Corporation/Organization, etc., is governed by rules 20 and 21 of the CCS (CCA) Rules, 1965, as adopted in the State of Tripura and the powers of the Appointing Authority and the Disciplinary Authority of those officials for their acts of misconduct committed during the period of deputation are vested in the borrowing authority. He further submits that the lending Authority has no power to initiate any disciplinary proceeding against the petitioner for his alleged misconduct during the period of deputation without any specific complaint by the borrowing Authority, i.e., Tripura Horticultural Corporation Ltd., which is absent in the instant case, for which itself, the impugned Memorandum, dated 25.9.2006, (Annexure5), by which the departmental proceeding is initiated against the petitioner, is called for interference and liable to be set aside. On similar ground, this court set aside the disciplinary proceeding initiated by the lending department against the petitioner in that case in W.P.(C) 455 of 2005, who was also on deputation in the same Corporation, i.e., THCL.

14. Per contra, Mr. T. D. Majumder, learned Additional Government Advocate, appearing for the respondent Nos. 1 and 2, submits that there is no quarrel with the submissions of the learned counsel for the petitioner and that for initiating a disciplinary proceeding against the officials who were/are on deputation to some other Department/PSU/Organization/Corporation, etc., the disciplinary action has to be taken only by following the rules 20 and 21 of the CCS(CCA) Rules, 1965 as decided by the Government vide Memorandum, dated 17.8.2004, Annexure7 to the writ petition. He further submits that in the instant case, the respondents followed the requirements of the aforesaid Rules. Not only the borrowing Authority i.e. the Corporation, wherein the petitioner was on deputation, made complaint against the petitioner and asked to initiate a disciplinary proceeding against him, but they also requested to start an enquiry to take action against petitioner. Hence, the Disciplinary Proceeding in question is only on the basis of the request of the borrowing Department, i.e., the respondent No. 3/Corporation, vide Annexure 6(111) and 6(IV) to the writ petition. Therefore, action of the respondents cannot be called in question on the ground of jurisdiction. Therefore, the Departmental Proceeding as initiated against the petitioner, vide Annexure5, is valid as the same was issued after following provisions of the rules 20 and 21 of the CCS (CCA) Rules read with Memorandum, dated 17.8.2004, (Annexure7 to the writ petition).

15. Mr. P. Dutta, learned counsel for the respondent3/Corporation, in addition to adoption of submissions of Mr. Majumder, learned Additional Govt. Advocate for the State respondents 1 and 2, submits that it would be evident from

Annexure6(IV), the letter, dated 16.4.2004, which was written by the managing director to the Chief Secretary, Government of Tripura, that the Corporation asked the State Government to take action against the petitioner and made an enquiry against him.

16. On scrutiny of the submissions of the learned counsel for the parties as well as controversy involved in the matter, the simple question arises for decision by this court is whether the lending department has the power to initiate a disciplinary proceeding against an employee while he was on deputation either to any other department or any Organisation/Corporation/Autonomous Body, etc. and whether the Government has the power to violate its own circular wherein it is stated that to initiate a disciplinary proceeding against an official while he was on deputation, provisions of rules 20 and 21 of the CCS(CCA) Rules shall be complied with and disciplinary proceeding has to be initiated after following the requirement of the said Rules,

17. This court has given an anxious thought to the submissions of the learned counsel for the parties and the averments made in the writ petition as well as in the affidavit in opposition filed by the parties and the decision of this court in W.P. (C) 455 of 2005.

18. For proper decision of the question arises in this petition, it would be proper to reproduce the provisions of rules 20 and 21 of the CCS(CCA) Rules and also Memorandum, dated 17.8.2004. Annexure7 to the writ petition.

"20. Provisions regarding officers lent to State Governments, etc. (1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority ("the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent, the services of the Government servant ("the lending authority*") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

In the light of the findings in the disciplinary proceeding conducted against the Government servant

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) If the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass orders on the case as it may deem necessary.

Provided that before passing any such order the disciplinary authority shall comply with the provisions of subrules (3) and (4) of rule 15.

21. Provisions regarding officers borrowed from State Governments, etc.

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant if the disciplinary authority is of the opinion that any of the penalties specified in clause (i) to (iv) of rule 11 should be imposed on him, it may subject to the provisions of subrule

(3) of rule 15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case as it may deem necessary

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the penalties specific in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace the services of, such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it may deem necessary."

Annexure7

"GOVERNMENT OF TRIPURA

CENTRAL ADMINISTRATION (AR) DEPARTMENT

No. F. 11 (20)GA(AR)/2004 Dated, Agartala, the 17thAugust, 2004.

MEMORANDUM

It has been observed that some Departments have been requesting the GA(AR) Department to initiate disciplinary proceedings against those officials who were/are on deputation to some other Department/PSU/Corporation/Organization, etc. Disciplinary action against such officials is government by rules 20 and 21 of the CCS(CCA) Rules, 1965 and the powers of Appointment Authority and the Disciplinary Authority of those officials for their acts of misconduct committed during the period of their deputation are vested in the Borrowing Authority. It will be illegal on the part of the lending Authority to initiate disciplinary proceeding against such officials unless there is any such specific proposal for the borrowing Authority

2. All Departments/Head of Departments are, therefore, requested to follow the provisions of rules 20 and 21 of the CCS(CC&A) Rules, 1965 when initiating proposal for taking disciplinary action/taking disciplinary action against the officials for their misconduct committed during the period of their deputation to other Departments/PSUs/Corporations/Organisations.

Sd/16.8.2004

(L. H. darlong)

Joint Secretary to the Government of Tripura"

19. On perusal of the aforesaid provisions of the Rules and the Memorandum, dated 17.8.2004, (Annexure 7), it appears that the Disciplinary Authority in respect of the acts of the misconduct committed by an employee while he was on deputation are vested on the borrowing Authority/Department and not with the Lending Authority/Department, unless the Borrowing Department after repatriation of the said official, specifically made a complaint against him to the Lending Department for initiating disciplinary proceeding for his alleged misconduct during the period of deputation, as all the powers of Appointing Authority remain with the Borrowing Authority regarding those employees for the said period. It also appears from the Annexure 7 to the writ petition that the provisions of rules 20 and 21 of the CCS(CCA) Rules shall govern the initiation of disciplinary proceeding against the officials, who were/are on deputation to some other Department/PSU/Corporation/Organisation, etc., for their misconduct during the period of deputation.

20. Now it is necessary for scrutiny whether the borrowing Department/Organisation, i.e., the respondent 3/Corporation made any complaint specifically against the petitioner to the Lending Department, i.e., the respondent Nos. 1 and 2 for taking any action or enquiry by way of initiating a disciplinary proceeding, as contended by the learned Addl. Govt. Advocate for the State respondents. It appears from the letter, dated 16.4.2004, [Annexure 6(IV)] and letter, dated 2.12.2003, [Annexure 6(111)], that request was made by the Managing Director of the Corporation to "take action on the issue" and "make an enquiry on the issue" and the issue involved in those letters are damage of stock of potato seeds kept in the cold storage, namely, Teliamura Cold Store at Gamaibari, not

against the petitioner or for his misconduct. For better appreciation, both the aforesaid letters are quoted hereunder :

Annexure6(III)

"Tripura Horticulture Corporation Limited (A Government of Tripura Undertaking)
Registered Office : Palace Compound(West) Agartala :

Tripura

No. F.2(17)/THCL/8889/3114 Dated, Agartala, the 2nd
December, 2003.

To

The Principal Secretary to the

Government of Tripura,

Department of Agriculture

Agartala

Attention : Joint Secretary (Agriculture)

Sir,

Teliamura Cold Store at Gamaibari is at the disposal of the Tripura Horticulture Corporation Ltd. Agartala. In the recent past the entire stock of potato seeds kept in the cold store has been damaged.

It is requested to kindly make an enquiry on the issue.

In this connection, it may be mentioned here that we have distributed 425 M.T. Potato seeds and 24.390 Kg. True Potato Seeds (TPS) to the affected cultivators as per decision of the Government.

Yours faithfully,

SdA

Managing Director"

Annexure6(IV)

"Tripura Horticulture Corporation Ltd. (AGovt. of Tripura Undertaking) Registered
Office PALACE COMPOUND (WEST), AGARTALA

TRIPURA

* * *

CONFIDENTIAL

To

The Chief Secretary
Government of Tripura
Agartala

Sub : Enquiry on Teliamura Cold Storage and action thereof.

Ref: Letter No. F.2(17)/THCL/8889/3114 Dated, 2nd December, 2003 addressed to Principal Secretary to the Deptt. of Agriculture.

Sir,

As per request of THCL Government has made an enquiry on the issue of Teliamura Cold Storage. We think in the meantime, enquiry has been completed, based on enquiry Government may take action on the issues.

Yours faithfully,

Sd/16.4.2004

Managing Director"

21. It also appears from Annexure6(II), note of the Joint Secretary, Agriculture, that the Corporation has made a formal request to make an enquiry into the damage of potato seeds at the Teliamura Cold Storage, not against the alleged misconduct of the petitioner. In the said note, it is also stated, inter alia, "earlier in our original file lying with the GA(AR) Department, we proposed to put two of THCU's Executives under suspension followed by initiation of disciplinary proceedings. The present letter from the THCL might make the process easier". According to this court, the aforesaid note of the Joint Secretary, Agriculture, shows that before the said request was made by the Managing Director, vide letter, dated 2.12.2003, Annexure6(III), there was no letter from the Corporation requesting the Lending Authority for going into any enquiry into the damage of the potato seeds, far to the misconduct of the petitioner.

22. This court is of the considered view that there was no complaint/request by the respondent No. 3/the borrowing Authority/Corporation to the Lending Authority, i.e., the respondent Nos. 1 and 2 for initiating any departmental proceeding against the petitioner while he was on deputation in the Corporation for his alleged misconduct as stated in the charge sheet (Memorandum, dated 25.9.2006, Annexure5, to the writ petition) and action of the respondent No. 2 is, thus, contrary to the prescription of his own Department, i.e., the General Administration (AR) Department, (Memorandum at Annexure7). An authority, Who issued any order or direction to follow certain procedure to other Departments, is under obligation to follow the same. Unless the issuing authority follows its own order, how can it be expected that other authorities will follow the same.

23. In the instant case, it is an admitted position that the Borrowing Authority/Corporation did never make any complaint against the petitioner. Though Mr.

Majumder, the learned Additional Govt. Advocate for the State respondent Nos. 1 and 2 as well as Mr. Dutta, learned counsel for the respondent No. 3 urges before this court, that the Borrowing Authority/Corporation made specific request to the lending department, i.e., the respondent Nos. 1 and 2 for initiating a departmental proceeding against the petitioner for his alleged misconduct during the period of deputation in the said Corporation, but they failed to produce any document in support of their contentions. Hence, action of the respondent No. 1 as well as Memorandum, dated 25.8.2006, (Annexure5), issued by the Principal Secretary to the Govt. of Tripura, (the Disciplinary Authority) is wholly without jurisdiction and when an action is without jurisdiction, the same can be treated unfair and if the action is unfair, then the same is unreasonable .and an unreasonable order is always arbitrary, thereby the same is violative of article 14 of the Constitution of India and required to be interfered with by the court of law. Consequently, the Annexure5 to the writ petition is hereby set aside and quashed.

24. As this court has set aside the Disciplinary Proceeding in question, there is no hurdle for the respondents/authorities for forwarding the applications of the petitioner to the concerned authority to whom he applied for the post of Principal/ Professor. The respondent Nos. 1 and 2 are, therefore, directed to forward the application of the petitioner, dated 22.3.2007, to the concerned authority immediately and also not to create obstruction in the process, if the petitioner is called for selection and selected by the concerned authority on the ground of Disciplinary Proceeding for alleged misconduct while he was on deputation as the same has already been set aside.

25. In the result, the writ petition is allowed with no order as to cost.