
(2015) 09 TP CK 0002
In the Tripura High Court
Case No : WP(C) No. 430 of 2011

Dhiman Singha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Citation : (2015) 09 TP CK 0002

Hon'ble Judges : Deepak Gupta, C.J.;S.C. Das, J

Bench : Division Bench

Advocate : P. Roy Barman and Samarjit Bhattacharjee, for the Appellant; D.C. Nath, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—The petitioner by means of this writ petition has challenged the order terminating him from service and the main ground is that the second inquiry held against him is totally illegal and therefore any order based on the second inquiry is vitiated.

2. The brief facts of the case are the petitioner was working as a Drug Inspector and on 26.06.2000, a Memo. was issued whereby inquiry proceedings were initiated against the petitioner. The allegations against the petitioner were serious in nature and it was alleged that the petitioner had been totally negligent in the discharge of his duties. A regular disciplinary inquiry was conducted, witnesses were examined and thereafter the inquiry officer vide his report 28.10.2002 came to the conclusion that the prosecution could not bring home the charge against the petitioner and the petitioner was duly exonerated.

3. Thereafter an order was passed which reads as follows:--

"NO.F14(48)-HFW/86 GOVERNMENT OF TRIPURA HEALTH & FAMILY WELFARE DEPARTMENT Dated, Agartala. The 19th May, 2005 ORDER

WHEREAS it is decided by the Disciplinary Authority to re-enquire into the

charges framed against Shri Dhiman Singha, Inspecting Officer (Drug), Health & Family Welfare Department, Govt. of Tripura.

AND

WHEREAS, the Governor, Tripura considers that an Inquiry Officer should be appointed to re-enquire into the charge framed against him.

Now, THEREFORE, the Governor, Tripura in pursuance of sub-rule (2) of Rule 14 of C.C.S. & (C.C.A.) Rules, 1965 hereby appoint Sri S.K. Saha, Special Commissioner of Departmental Inquiries, Government of Tripura, Agartala as Inquiring Authority to re-enquire into the charges framed against Shri Dhiman Singha, Inspecting Officer(Drug), Accused Officer.

By order and in the name of the Governor, -sd/- Smt. Binapani Deb Barma) Deputy Secretary to the Government of Tripura"

4. Basically, what the State did was to direct that a fresh de novo inquiry be held and a new inquiry officer was appointed to re-inquire into the charges framed against him. The petitioner took part in this inquiry proceeding and after recording evidence the inquiry officer held that the petitioner was guilty and thereafter the disciplinary authority imposed penalty of dismissal from service. Appeal filed by the petitioner was dismissed and hence the present writ petition.

5. The main ground raised is that the order dated 19.05.2005 which is the basis for the second inquiry proceedings is itself invalid and therefore the entire inquiry proceedings which were held for the second time are vitiated.

6. It is not disputed before us that the CCS (CC&A) Rules are applicable in the present case. The inquiry was held in accordance with these rules. Rule 15 of the CCS (CC&A) Rules deals with the action to be taken on the inquiry report, and reads as follows:--

"15. Action on the inquiry report

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

[(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the 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).]

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge 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 shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry 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 make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government Servant."

7. Sub-Rule (1) of Rule 15 envisages a situation where the disciplinary authority is itself not the inquiring authority. On going through the report of the inquiry officer, if the disciplinary authority finds that further inquiry proceedings should be held then it must record its reasons for coming to such a finding and thereafter it must remit the case to the inquiring authority for further inquiry and report the matter to the disciplinary authority. Therefore, what is contemplated under this sub-rule is a further inquiry which obviously means a continuation of the old inquiry but not a fresh or de novo inquiry. The language used is very specific that the disciplinary authority after recording its reasons in writing can remit the case to the inquiry officer. Remission of a case means that it must be sent back to the same authority to proceed further in accordance with law. Officers may change but the authority must remain the same. The words, "remit" and "further inquiry" leave no manner of doubt that what is contemplated under Rule 15(1) is the continuation of the old inquiry by the same authority which conducted the inquiry earlier.

8. Furthermore, before remitting the matter the disciplinary authority must give reasons to support its action in remitting the matter. In this behalf, we may make reference to the judgment of the Apex Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, AIR 1971 SC 1447 : (1971) 1 LLJ 427 : (1971) 2 SCC 102 : (1971) SCR 375 Supp wherein the Apex Court in para 13 held as follows:--

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence..."

9. What the Apex Court has held is that where the enquiry has not been proper, or where there is a serious defect in the inquiry or where some important witnesses have not been examined by the inquiring officer or certain important documents have not been taken to consideration or proved before the inquiry officer, the disciplinary authority is not remediless. It can send back the matter to the inquiring officer for conducting further inquiry in accordance with law.

10. Rule 15(2) deals with a different situation. This contemplates a situation where on the evidence on record and without any further evidence being recorded the disciplinary authority is of the view that the finding recorded by the inquiring officer exonerating the delinquent official is against the evidence of law. In such a case, the disciplinary authority is directed to indicate and give its prima facie or tentative reasons for disagreeing with the report of the inquiring authority and then communicate the reasons to the delinquent official giving him a chance to put forth his case and answer the queries of the disciplinary authority.

11. Thereafter, the disciplinary authority is required not only to consider the inquiry report but also its own tentative reasoning as well as the reply given by the delinquent official. After considering all three the disciplinary authority has a right to form his own opinion on the basis of the evidence. This does not envisage the holding of any fresh inquiry but only on the basis of the evidence already recorded by the inquiring officer the action is to be taken.

12. There is no rule which permits the disciplinary authority to start a fresh inquiry. In the present case, the disciplinary authority did not follow any of the above two options. In case the disciplinary authority was of the view that the statements of some material witnesses had not been recorded or that some material evidence had not been taken into consideration then the disciplinary authority should have recorded these reasons and then could have remitted the matter to the inquiring officer to carry out the further enquiry in terms of Rule 15(1). This has not been done. What has been done is to order a fresh inquiry officer and start de novo inquiry which is not permissible under the law. The procedure followed is totally illegal. We, therefore, have no option but to set aside the entire inquiry proceedings and quash the order dismissing the petitioner from service.

13. The petitioner has been out of service from 06.08.2010. He is directed to be reinstated in service on or before 31st December, 2015. 50% of the back-wages shall be paid to him for the period from the date of his dismissal from service till his reinstatement. However, the entire period from the date of his termination till

his reinstatement shall be counted towards the seniority, fixation of pay, Career Advancement Scheme (CAS) and other service benefits, including pension and other retiral benefits.

14. With these observations the writ petition is disposed of.