
(2015) 07 TP CK 0011
In the Tripura High Court
Case No : WP(C) 302 of 2009

Dilip Kumar Chakraborty

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 07 TP CK 0011

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : S. Deb (Gupta), for the Appellant; A.S. Lodh, Addl. G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Utpalendu Bikas Saha, J.—The instant writ petition is filed by the petitioner, namely, Sri Dilip Kr. Chakraborty challenging the order of punishment dated 29.01.2009 passed by the learned Addl. Secretary, Govt. of Tripura, as Disciplinary Authority, wherein the Disciplinary Authority imposed a penalty of withholding of 10% of the pension for a period of two years, and the order dated 17.07.2009 passed by the Chief Secretary, Govt. of Tripura, as the Appellate Authority wherein the order of the Disciplinary Authority was upheld.

2. Heard Ms. S. Deb (Gupta), learned counsel for the petitioner as well as Ms. AS Lodh, learned Addl. GA for the respondent Nos. 1 to 4 and Mr. A Lodh, learned counsel for the respondent No. 5.

3. The undisputed facts are that a common disciplinary proceeding was drawn up against the present petitioner, a Range Officer under the Manu Forest Division, along with one Safiqur Rahman vide memo dated 05.08.2006 (Annexure-1 to the writ petition) on the following Article of Charges:

"Article-I

That the said Sri Dilip Kumar Chakraborty, FR, while functioning as Range Officer,

Manu, received and forwarded the application of one Sri Chandan Acharjee, S/O Late Jogendra Acharjee of Hapania, Agartala to DFO, Manu for collection of stone boulders, without proper scrutiny of application and field verification, resulting in irregular grant of permission for extraction of stone boulders. Thus he acted negligently and with ulterior motive to give undue benefit to the trader in detriment to the Government interest.

Article-II

That Md. Safiqur Rahaman, HFG of Kathalcherra Beat under Manu Forest Division, without authority started extraction of 12.9.15 cum of stone boulders and chips from Kukicherra riverbeds located in Longthorai R.F. by engaging labourers of nearby village, illegally and in violation of the provisions of Forest (Conservation) Act, 1980. Further, illegal extraction of 14,463 cum of stone boulders from Ghagracherra riverbeds located in Longtharai RF was also arranged by Shri Dilip Kumar Chakraborty. FR then RO Manu and Md. Safiqur Rahaman, HFG with an intention to give undue benefit to the trader Shri Chandan Acharjee S/O Late Jogendra Acharjee of Hapania, Agartala and to the detriment of Government interest. Shri Dilip Kumar Chakraborty, FR then RO Manu failed to stop such illegal extraction of stone boulders timely and take action against the concerned staff and the persons involved in such extraction. Thus Shri Dilip Kumar Chakraborty, FR and Md. Safiqur Rahaman, HFG are charged for serious misconduct and dereliction of duty.

Article-III

That Shri Dilip Kumar Chakraborty, FR then RO Manu and Md. Safiqur Rahaman, HFG tried to mislead the Department by concealing the information and giving false statements and reports as an attempt to cover up the whole issue when the matter was being investigated by the protection staff. Thus they are charged for serious misconduct.

Thus by the above acts of omissions and commissions, Shri Dilip Kr. Chakraborty FR then RO Manu and Md. Safiqur Rahaman, HFG, failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby violated the provisions of Rule 3(1)(i) (ii) and (iii) of Tripura Civil Services (Conduct) Rules 1988."

4. On receipt of the memo of charge, the petitioner submitted his reply. Thereafter, an inquiry was done by the Addl. Commissioner, Departmental Inquiries and the inquiring authority after examining the witnesses and considering the documents produced by the parties held that the prosecution had established the charges against the petitioner.

5. The petitioner, being aggrieved by the findings of the inquiring authority, made a representation to the Joint Secretary to the Govt. of Tripura, Forest Department, wherein he has stated as follows:-

"3. That Sir, besides the above, the prosecution witness have given contradictory

statement during their examination. Their key witness Shri Nirode Baran Debnath, ACF has given a false statement before the Inquiring Authority. In each and every stage of his examination and cross-examination he has given so many contradictory statements. None of the government witnesses has corroborated the statement of each other in conformity with the Charge sheet. We have brought the attention of the Inquiring Authority on all the contradictions during their examinations and cross-examinations. We have also clearly pointed the same in our written brief of arguments with related Rulings/verdict of the High Court and quoted the concerning rules for interest of fair justice. He has mentioned in his Findings that Range officer is "Proper Channel" to file or submit any petition or application to the DFO, Manu. He has also opined that as soon as receipt of any application addressed to the DFO, Manu in the Range office, the Range Officer must enquire into the contents of the petition and submit the same to the DFO, Manu with enquiry report for his decision. But it was clearly established during examination of the witnesses that there was no order or circular in this regard from the Forests Department. Until and unless the Range Officer is asked by specific order to enquire into any application of anybody else, the Range Officer has no power to take any action on that application. But the Inquiring Authority held me responsible for forwarding the application of Shri Chandan Acherjee illegally and without any basis."

6. The Disciplinary Authority, considering the report of the inquiring authority and the representation of the petitioner passed the impugned order dated 29.01.2009 withholding 10% of the petitioners pension for a period of two years under the provisions of Rule 9 of the CCS (Pension) Rules, 1972. Being aggrieved by the order of the Disciplinary Authority, the petitioner preferred an appeal before the Chief Secretary, Govt. of Tripura who vide his order dated 17.07.2009 upheld the order of the Disciplinary Authority and rejected the appeal.

7. Dissatisfied with the order of the Disciplinary Authority as well as the appellate authority, the petitioner preferred the instant writ petition.

8. The respondent Nos. 1 to 4, by way of filing their affidavit, have contended that the petitioner acted negligently and with ulterior motives to give undue benefit to one Chandan Acharji for collection of stone boulders and chips and tried to mislead the Department by concealing the information giving false statements and report as an attempt to cover up the whole issue. It is also stated that the matter was investigated by protection staff, and it has been proved that the petitioner failed to maintain absolute integrity and violated the provisions of Rules 3(1)(ii) and (iii) of the Tripura Civil Services (Conduct) Rules, 1988.

9. The respondents have also stated in their affidavit that the omission to produce documents which are not relevant and has not caused prejudice to a delinquent cannot be made a ground for interfering with the finding of guilt reached against a delinquent and in the instant case, the documents which the petitioner sought for production at the time of inquiry were not relied upon by

the inquiring authority or the appellate authority for sustaining the charge framed against the delinquent and that the petitioner also failed to point out as to what prejudice has been caused to the petitioner.

10. Ms. Deb (Gupta) while urging for setting aside the order of the Disciplinary Authority, which was upheld by the appellate authority, would contend that the entire enquiry is vitiated due to non-supply of copies of the documents mentioned at Sl. 5, 6, 12 and 14 in the list of additional documents. She further submits that the Disciplinary Authority passed the impugned order entirely on the basis of the perverse report of the inquiring authority. Thus, the same is also liable to be set aside.

11. On the other hand, Ms. Lodh, while relying upon the findings of the inquiring authority, inter alia, that "it is true that the prosecution did not exhibit some listed documents in Exbt. S/3 and it is also true as pointed out by the Defence about the relevancy of some exhibited items but it cannot be said that all such items as pointed out by the defence about the irrelevancy of the documents are correct and beyond the relevant fact" would contend that the submission of the petitioner that some documents were not supplied to him was also considered by the inquiring authority.

12. She has also referred to the findings of the inquiring authority that prosecution could not supply some copies of admitted documents. From the order dated 30.08.2007 it appears that due to non-availability of the records, the Presenting Officer (P.O.) could not supply the copy of some items to the Accused Officer (A.O.). Non supply of some additional documents, as pointed out by the defence, that the cross examination was not possible, Ms. Lodh submits that had those been supplied by the prosecution there would not have been material difference in the merit of the case since the exhibit S/10, S/11, S/12 (statement of the AOs) clearly and distinctly wrapped them in the alleged charge. She has also contended that non-supply of copy of the documents which was not relied upon by the inquiring officer to support the charge does not amount to violation of principles of natural justice.

13. In support of the aforesaid contention she has relied upon the judgment of the Apex Court in Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), AIR 1988 SC 117 : (1987) 4 JT 398 : (1988) LabIC 339 : (1987) 2 SCALE 1058 : (1987) 1 SCC 518 Supp : (1987) SCC 518 Supp : (1988) 1 SCR 1102 : (1988) 1 SLJ 180 wherein the Apex Court held as follows:

"It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer, that would

amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case."

14. She further submits that the petitioner in his affidavit specifically stated that he had forwarded application of Chandan Acharji (Exbt.S/2) to the DFO without holding any inquiry and acted as a mere post box. She has also referred to the judgment of the Apex Court in State Bank of Patiala and others Vs. S.K. Sharma, (1996) 3 AD 349 : AIR 1996 SC 1669 : (1996) 3 JT 722 : (1996) 2 LLJ 296 : (1996) 3 SCALE 202 : (1996) 3 SCC 364 : (1996) 3 SCR 972 : (1996) 2 UJ 338 , where in the Apex Court held as follows:

"We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has

prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee....."

15. She has also placed reliance on the decision of the Apex Court in *Syndicate Bank and Others Vs. Venkatesh Gururao Kurati*, AIR 2006 SC 3542 : (2006) 108 FLR 1043 : (2006) 2 JT 73 : (2006) 1 LLJ 988 : (2006) 2 SCALE 101 : (2006) 3 SCC 150 : (2006) SCC(L&S) 487 : (2006) 1 SCR 920 : (2006) 2 SLJ 285 : (2006) AIRSCW 680 : (2006) 1 Supreme 582 , particularly, paragraph 18 of the said report which is as follows:

"In our view, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

16. According to her, in the instant case, the inquiring authority came to its findings only on the basis of Exbt S/10 (statement of the accused officer) which

has been admittedly supplied to him. Thus, it cannot be said that mere non-supply of certain documents, which were not relied upon by the inquiring authority for the purpose of holding him guilty, would cause prejudice to him.

17. This court has gone through the findings of the inquiring authority where the inquiring authority in its report stated that the A.O. Sri Chakraborty, being DW1, has stated that an application of Sri Acharji was submitted in his office, during his absence, which was addressed to the DFO, Manu Division and since he had not been instructed either verbally or by a circular/notification, he had no right to act upon that application. In the result, he simply forwarded the same to the addressee for doing the needful. In its findings the inquiring authority also stated, inter alia, that "I am of the opinion that since AO (Dilip Chakraborty) was not a mere post box to send such application of Sri Chandan Acharji to the addressee without any comments and filed verifications in terms of the application where valuable property, i.e. a good quantity of stone boulders and chips are involved. It is the admitted fact that the AO Sri Chakraborty being the forwarding authority just on receipt of the said application of Sri Acharji without any enquiry sent the said application to the DFO and it is also admitted that Sri Chakraborty was a responsible officer like Range Officer of Forest Range and as such he cannot forward any application to its addressee for taking necessary action without verification of the subject matter in issue. Therefore, being proper channel he has no chance to evade his responsibility by mere sending such application though the said application of Chandan Acharji was addressed to the DFO through proper channel (A.O.)."

18. On appreciation of the records, this Court is of the opinion that the admission of misconduct cannot be said to have suffered from any infirmity. Moreover, the petitioner has in his statement specifically stated that he has forwarded the application of Chandan Acharji to the addressee DFO without any inquiry. This court has also perused the order of the appellate authority wherein the appellate authority has noted, inter alia, that "Shri Chakraborty has contended that he was not given copies of all documents mentioned in the charge sheet and that the Presenting Officer also did not supply some additional documents required by the Accused Officer. In this connection Shri Chakraborty has also mentioned a verdict of Hon"ble High Court of Calcutta. However, a later judgment [Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), AIR 1988 SC 117 : (1987) 4 JT 398 : (1988) LabIC 339 : (1987) 2 SCALE 1058 : (1987) 1 SCC 518 Supp : (1987) SCC 518 Supp : (1988) 1 SCR 1102 : (1988) 1 SLJ 180] of the Hon"ble Supreme Court holds that even though a document finds mention in the charge sheet but it is not relevant to the charges or is not referred to or relied upon by the inquiry officer, nor is it necessary for the purpose of cross-examination, the non-supply of its copy does not violate principles of natural justice. The reasons for denial to give copies of documents have been noted by the Inquiry Authority in his report citing irrelevance of documents in establishing guilt. Thus, the contention of Shri Chakraborty is untenable."

19. By this time it is settled that the Courts will not act as an appellate authority and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (See *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S) 721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583).

20. In the instant case, though admittedly certain documents were not supplied to the petitioner but fact remains that the inquiring authority did not rely upon those documents for the purpose of finding him guilty. Thus, the mere non-supplying of those documents have not prejudiced the petitioner. It also appears from record that the petitioner has cross-examined all the five witnesses, examined by the department. Not only that, he has also examined himself to disprove the charges. More so, the petitioner failed to explain how he was prejudiced due to non-supply of the documents as mentioned in the charge sheet which were admittedly not relied upon by the inquiring authority.

21. In view of the above discussions, the instant writ petition is dismissed being devoid of merit. No order as to costs.