
(2009) 08 GAU CK 0039
In the Gauhati High Court

Goutam Sengupta

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1), 10(5)

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50(3)

Citation : (2010) 2 GLR 432 : (2009) 5 GLT 252

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—By this writ petition, the writ petitioner, who had already retired from service on superannuation on 30.4.2008, is assailing the order of the Director of Fisheries, Government of Tripura (disciplinary authority) dated 4.9.2008, who disagreed with the report of the Inquiry Officer dated 24.11.2008 that the charges against the writ petitioner held not proved, deciding to conduct further enquiry without giving opportunity to the present writ petitioner for the incident, which took place during the period from 22.4.1991 to November, 1992 and also the corrigendum dated 9.3.2006 for deleting the words "the entire period of suspension will be treated as on duty" appealing in the order dated 19.1.2006, for reinstating him (writ petitioner) in service by revoking the suspension order.

2. Heard Mr. Somik Deb as well as Mr. B.N. Majumder, learned Counsels appearing for the petitioner as well as Mr. T.D. Majumder, learned Additional Government Advocate appearing for the respondents.

3. Sans unnecessary details, the fact of the petitioner's case, tersely put up in the present writ petition; is recapitulated.

The writ petitioner was appointed as Fishery Officer under the respondents in the

year 1973. While he was working as Fishery Officer under the respondents, he was sent on deputation to the Tripura Apex Fishery Cooperative Society Ltd., Agartala and posted as Executive Officer. In the year 1992, an allegation was made against the writ petitioner that the petitioner did not deposit the official fund and accordingly, a criminal case was instituted vide East Agartala P.S. Case No. 12UD/1992. By an order of the respondent No. 2 dated 12.11.1992, the writ petitioner was placed under suspension in exercise of powers conferred under Sub-rule 1 of Rule 10 of CCS(CCA) Rules, 1965. It is stated that the alleged incident for non-deposition of official fund by the writ petitioner was during period from 22.4.1991 to November, 1992. Departmental enquiry/disciplinary proceeding against the petitioner for the incident which took place during the period from 22.4.1991 to November, 1992 was not initiated for a long period of about 14 years. Only on 18.1.2006, the Director of Fisheries, Government of Tripura, issued the Memorandum No. F.16(121)-P-Fish(vigi)/93-94 dated 18.1.2006 for framing the article of charges against the petitioner for holding disciplinary enquiry and Mr. S.K. Saha, the then special Commissioner of Departmental Inquiries, as an Inquiry Officer, had to enquire into the charges framed against the writ petitioner. However, Mr. S.K. Saha vide his letter dated 25.1.2006 initiated the disciplinary enquiry against the petitioner and he dealt with the disciplinary enquiry against the petitioner up to only 25.1.2006. Subsequently, one M.L. Reang, IAS, Commissioner of Departmental Inquiries, Tripura, Agartala was appointed as an Inquiry Officer for the said disciplinary enquiry against the writ petitioner.

4. The Director of Fisheries (disciplinary authority), Government of Tripura, issued order being No. F.2-391(P)/Fish, Agartala, dated 19.1.2006, in exercise of powers conferred by Clause (C) of Sub-rule (5) of Rule 10 of the CCS (CCA) Rules, 1965 for revoking the said suspension order of the petitioner dated 12.11.1992 with immediate effect and posted him under the Deputy Director of Fisheries, North Tripura, Kumarghat and also that the entire period of suspension will be treated as on duty. The said order of the disciplinary authority dated 19.1.2006 (Annexure-A/2 to the writ petition) reads as follows:

No. F. 2-391 (p)/Fish GOVERNMENT OF TRIPURA DEPARTMENT OF FISHERIES
Dated, Agartala, the 19th January, 2006.

ORDER

Whereas an order placing Shri Goutam Sengupta, Fishory Officer working under Supdt. of Fisheries, Sadar under suspension was made by the order No. F.19(1)-Fish(Plan)/87-90 dated 12th November, 1992.

Now, therefore, the undersigned in exercise the powers conferred by Clause (C) of Sub-rule (5) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect and posted him under the Dy. Director of Fisheries, North Tripura, Kumarghat. The entire period of suspension will be treated as on duty.

Sd/- 19.1.2006. R.K. Datta DIRECTOR OF FISHERIES TRIPURA.

Subsequently, without giving any opportunity to the writ petitioner and also without showing any reason, the Director of Fisheries issued the impugned corrigendum being No. F.2-391(p)/Fish, Agartala, the 9th March, 2006 to the effect that the words "the entire period of suspension will be treated as on duty" shall be deleted. The said corrigendum reads as follows:

No. F.2-391(p)/Fish GOVERNMENT OF TRIPURA DEPARTMENT OF FISHERIES
Dated, Agartala, the 9th March, 2006.

CORRIGENDUM

Please read the following sentence of the order issued vide this Deptt. No. F. 2-391(p)/Fish dated 19th January, 2006 as deleted.

The entire period of suspension will be treated as on duty.

Sd/- 9.3.2006. R.K. Datta DIRECTOR OF FISHERIES TRIPURA.

5. The Inquiry Officer also submitted the inquiry report dated 25.11.2006 that there was no scope to prove the charges against the petitioner and, therefore, the writ petitioner was exonerated from all the charges framed against him. The disciplinary authority did not agree with the findings/decisions of the Inquiry Officer in his report dated 25.11.2006 that the charges against the petitioner held not proved and the writ petitioner was exonerated from all the charges framed against him. The disciplinary authority without giving any opportunity to the writ petitioner to submit his show cause as to the tentative reasons of disagreement of the disciplinary authority with the favourable findings of the Inquiry Officer issued the impugned order dated 4.9.2008 for taking final decision to conduct further enquiry on receipt of the relevant documents from the court of the learned Chief Judicial Magistrate, West Tripura, Agartala. The grounds, inter alia, for assailing the impugned order dated 4.9.2008 for taking final decision to conduct further enquiry are that (i) it was issued in violation of the principles of natural justice inasmuch as the writ petitioner was not given the opportunity to persuade the disciplinary authority to accept the enquiry report dated 25.11.2006 submitted by the Inquiry Officer in favour of the writ petitioner by giving the opportunity for such persuasion, (ii) opportunity should have been given to the petitioner to submit his show cause statement to the tentative reasons of the disciplinary authority for disagreeing with the favourable findings of the Inquiry Officer, (iii) without giving show-cause notice the disciplinary authority cannot take the final decision by issuing the impugned order dated 4.9.2008 to conduct further enquiry for the incident which took place during the period from 22.4.1991 to November, 1992 (iv) much prejudice had caused to the writ petitioner because of the delay of more than 14 years in completing the departmental enquiry and (v) after a considerable delay of about two decades, without any cogent reason for the delay, cannot conduct further enquiry to the incident which took place during the period from 22.4.1991 to November, 1992.

6. The respondents filed their affidavit-in-opposition. It may be apposite to mention that in the affidavit-in-opposition filed by the respondents there is no whisper about the reasons for the delay of about two decades in completing the disciplinary enquiry against the writ petitioner and also the reasons for the delay of about 14 years in framing the article of charges for the incident which took place during the period from 22.4.1991 to November, 1992. Further, in their affidavit, the respondents are not denying that no opportunity was given to the writ petitioner by furnishing tentative reasons for disagreement with the favourable findings of the Inquiry Officer in his report dated 25.11.2006 before taking the final decision by the disciplinary authority in the impugned order dated 4.9.2008 for conducting further enquiry for the same charges for the incident which took place during the period from 22.4.1991 to November, 1992.

7. Mr. Somik Deb, learned Counsel, in order to support the case of the writ petitioner, contended that the disciplinary enquiry against the writ petitioner for the incident which took place during the period from 22.4.1991 to November, 1992 is liable to be quashed for the delay without any justification and reason and in support of his contention, he had put into service the decisions of the Apex Court viz. (1) The State of Madhya Pradesh Vs. Bani Singh and another, (ii) State of Andhra Pradesh Vs. N. Radhakishan, and (iii) M.V. Bijlani Vs. Union of India (UOI) and Others,

8. In Bani Singh case (supra) the charge sheet against the respondent, Shri Bani Singh, for conducting a departmental enquiry in respect of certain incidents that happened in 1975-76 was issued on 22nd April, 1987. The respondent, Shri Bani Singh, had approached the Tribunal for quashing the charge memo and departmental enquiry on the ground of inordinate delay of 12 years in the Initiation of the departmental proceedings against Shri Bani Singh with reference to an incident which took place in 1975-76, and the Tribunal quashed the charge memo as well as the departmental enquiry on the ground of inordinate delay. The appeal filed against the said order of the Tribunal by the State of Madhya Pradesh before the Apex Court was also dismissed. The Apex Court in Bani Singh case (supra) held that it would be unfair to permit a departmental enquiry to be proceeded as there is no unsatisfactory explanation for the inordinate delay of 12 years in issuing the charge memo and that there are no grounds to interfere with the Tribunal's order for quashing the charge memo and the departmental enquiry on the ground of inordinate delay of 12 years. Para 4 of the SCC in Bani Singh case (supra) reads as follows:

4. The appeal against the order dated 16th December, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came

to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceeding as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

In the instant case, as stated above, there was long inordinate delay of 14 years in issuing the charge memo or in framing the charges and also that no cogent and rational reasons were forthcoming from the side of the respondents inasmuch as there was no reason or justification for such delay in their affidavit-in-opposition not even letter/intimation for the inordinate delay in issuing the charges for the incident which took place during the period from 22.4.1991 to November, 1992 to the writ petitioner.

9. The Apex Court in N. Radhakishan case (supra) held that it is not possible to lay down any predetermined principles applicable to all the cases and in all situations where there is delay in concluding the disciplinary proceedings. It is now well settled law that the delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Para 19 of the SCC in N. Radhakishan case (supra) reads as follows:

19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is a delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the

delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is this basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately the court is to balance these two diverse considerations.

10. In M.V. Biljani case (supra), the disciplinary proceedings remained pending for a period of seven years. A report was submitted by the Enquiry Officer only in the year 1982 and Mr. Bijlani was directed to be removed from service by the disciplinary authority by an order dated 21.12.1983. The appeal filed by the appellant came to be dismissed after a period of seven years by an order dated 21.2.1991. The Apex Court in M.V. Biljani case (supra) did not remit the matter back to the disciplinary authority as the charges related to the year 1969-70 inasmuch as Mr. Bijlani suffered a lot due to pendency of the disciplinary proceedings and directed to be reinstated in service if he has not reached the age of superannuation. However, keeping in view the fact that he has not worked for a long time, he may be paid only 50% of the back wages.

11. Keeping in view of the decision of the Apex Court discussed above this Court, after giving patience hearing to the rival contention of the parties and also perusal of the respective pleadings of the parties is of the considered view that in absence of cogent and rational reasons for the inordinate delay of 14 years in framing the charges against the petitioner for the incident which took place during the period from 22.4.1991 to November, 1992, it would be unfair to permit the respondents to conduct further disciplinary enquiry for the said incident against the writ petitioner inasmuch as for no fault of the writ petitioner, the departmental enquiry against him for the said incident had been delayed for the period mentioned above and also the petitioner had suffered a lot because of the delay in completing the departmental enquiry and also the right of the petitioner for speedy conclusion of the departmental enquiry had been violated.

12. Admittedly, the impugned order dated 4.9.2008 was issued by the disciplinary authority, who did not agree with the findings of the enquiry report dated 25.11.2006, without giving any opportunity to the writ petitioner to submit the show-cause notice to the tentative disagreement of the disciplinary authority with the favourable findings of the Inquiry Officer and also without giving opportunity to the writ petitioner to persuade the disciplinary authority by giving reasons to accept the findings of the Inquiry Officer; and it is the case of the writ petitioner that only on this score the writ petition is liable to be allowed by not only quashing the impugned order dated 4.9.2008 but also the present

disciplinary proceedings against the writ petitioner. In support of the case of the writ petitioner, Mr. Somik Deb, learned Counsel, had placed heavy reliance on the decisions of the Apex Court (i) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, (ii) Yoginath D. Bagde Vs. State of Maharashtra and Another, (iii) State Bank of India and Ors. v. K.P. Narayanan Kutty (2003) 2 SCC 739 and (iv) Lav Nigam v. Chairman and MD ITI Ltd. and Anr. (2006) 9 SCC 440.

13. In Punjab National Bank case (supra), the Apex Court held that the principles of natural justice have to be read into Regulations 7 of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 and that in case of the findings in a disciplinary proceedings by the Inquiry Officer favourable to the charged employee, the disciplinary authority is required to give opportunity of representation to charged employee before deferring with those findings of the Inquiry Officer and also that the charged officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer; and only after giving such opportunity, the disciplinary authority, who disagreed with the report of the Inquiry Officer on the article of charges, can take a final decision. Paras 18 and 19 of the SCC in Punjab National Bank case (supra) read as follows:

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakr's case AIR 1994 SCW 1950.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and delinquent officer will have

an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

In Punjab National Bank case (supra) further held that as more than 14 years have elapsed since the delinquent officer had superannuated, it will not be in the interest of justice that at this stage the case should be remanded to the disciplinary authority for the start of another innings. Para 21 of the SCC in Punjab National Bank case (supra) reads as follows:

21. Both the respondents superannuated on 31.12.1983. During the pendency of these appeals Misra died on 6.1.1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start or another innings. We, therefore, do not issue an such directions and while dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs. Appeals dismissed.

14. The Apex Court in K.P. Narayanan Kutty case (supra) held that in the case of not fully accepting the report of the inquiry officer favourable to the delinquent, opportunity should be afforded to the delinquent irrespective of whether or not some prejudice is shown to have been caused by the denial of such opportunity. Para 6 of the SCC in K.P. Narayanan Kutty case (supra) reads as follows:

6. It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned Counsel cited a decision of this Court in Union Bank of India Vs. Vishwa Mohan, As already noticed above, before the High Court the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned Counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in Punjab National Bank case, extracted above, when it is clearly stated that the principles of natural justice have to be read into

Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

15. The ratio laid down in Punjab National Bank case (supra) and K.P. Narayanan Kutty case (supra) is also followed by the Apex Court in Lav Nigam case (supra), wherein the Apex Court held that notice should be given to the charged officer before the disciplinary authority records his final conclusion deferring with the findings of the Inquiry Officer.

16. For the foregoing reasons, this Court is of the considered view that the impugned order of the disciplinary authority dated 4.9.2008, who disagreed with the favourable findings of the Inquiry Officer, for coming to his final conclusion, for further inquiry, without notice in the manner discussed above to the writ petitioner is illegal and liable to be quashed, and accordingly, the same is quashed.

17. For the reasons and findings in the foregoing paras, the writ petition is allowed. In the result, the impugned corrigendum dated 9.3.2006, the impugned order dated 4.9.2008 and the present disciplinary proceedings against the writ petitioner are hereby quashed. The parties are to bear their own costs.