
(1999) 09 GAU CK 0043
In the Gauhati High Court
Case No : Civil Rule No. 182 of 1998

Jailal Saithal

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 23, 24
Constitution of India, 1950 — Article 226

Citation : (1999) 3 GLT 469

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A. Roy Barman, for the Appellant; S. Roy, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The Petitioner was working as Forest Ranger in the Forest Department of the Government of Tripura. By a memorandum dated 18.11.91 issued by the Principal Chief Conservator of Forest, Tripura, an inquiry was proposed to be held against the Petitioner under Rule 14 of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965, in respect of six articles of charge misconduct. By the said memorandum, the Petitioner was asked to submit his written statement in defence. Thereafter, an inquiry was held and the Inquiring Authority submitted his report on 15.11.95 finding the Petitioner guilty of four charges out of six articles of charge. The disciplinary authority, namely the Principal Chief Conservator of Forest, Tripura, furnished a copy of the findings of the Inquiring Authority to the Petitioner and called upon him to submit a representation against the proposed penalty of dismissal from service by his order dated 30.7.97. The Petitioner then submitted his representation dated 12.12.97 against the proposed penalty and after considering the said representation of the Petitioner, the disciplinary authority passed an order dated 22.1.98 to the effect that the Petitioner shall be compulsorily retired from service with effect 31.1.98 and the mis-appropriated

amount of Rs. 1,46,780.60 would be recovered from the Petitioner as per rules. Against the said order of penalty, the Petitioner preferred an appeal under Rules 23 and 24 of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965, before the Principal Secretary, Forest Department, Govt. of Tripura. But the said appeal was rejected by the aforesaid appellate authority. Aggrieved, the Petitioner has filed the present application under Article 226 of the Constitution for quashing the order of penalty dated 22.1.98 passed by the disciplinary authority and the order rejecting the appeal passed by the appellate authority.

2. Mr. A. Roy Barman, learned Counsel for the Petitioner, submitted that the Inquiring Authority and the disciplinary authority have relied on the statements of some of the beneficiaries of Social Forestry Scheme undertaken by the Petitioner as Forest Ranger for recording the findings of mis-appropriation against the Petitioner. He explained that the statements of different beneficiaries were collected during the preliminary inquiry but these beneficiaries were not produced at the time of inquiry before the Inquiry Authority. As a result, the Petitioner did not get an opportunity to cross-examine the said beneficiaries. He relied on the decision of this Court in the case of *Prasanta Paul Choudhury v. Tripura Public Service Commission* 1999 (1) GLT 162, in which this Court following the judgment of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, and *State of Uttar Pradesh Vs. Om Prakash Gupta*, held that the statements of witnesses collected in course of a preliminary inquiry prior to the disciplinary proceedings can be utilised in the disciplinary proceedings if the person against whom the inquiry is being conducted has been given an opportunity to cross-examine the said witnesses in accordance with the principles of natural justice. Mr. Roy Barman vehemently argued that the principles of natural justice has been violated in the present case and, therefore, the findings of the Inquiring Authority and the disciplinary authority that the Petitioner was guilty of charges stood vitiated and are liable to be quashed. He further argued that a reading of the inquiry report would reveal that the Inquiring Authority had recorded his findings against the Petitioner in a mechanical way without applying his mind to the materials available before him.

3. Mr. S. Roy, learned Counsel for the Respondents, on the other hand, produced the records of the inquiry and submitted that the statements of the beneficiaries were recorded in the preliminary inquiry in presence of the Petitioner and the Petitioner has also signed the said statements. He also contended that the Petitioner has also admitted his guilt before the department and has requested the authorities to give him sometime to make payment of the misappropriated amount in instalments. He argued that the Petitioner had not at any stage of inquiry made a demand before the Inquiring Authority that the beneficiaries of Social Forestry Scheme should be produced before the Inquiring Authority for cross-examination. On these facts, according to Mr. Roy, principles of natural justice have not been violated and the findings of the Inquiring Authority and the disciplinary authority cannot be held to be vitiated.

4. On a perusal of the records of the inquiry produced before the Court, I find that the statements of beneficiaries of Social Forestry Scheme undertaken by the Petitioner were not the only materials which were produced in the inquiry to establish the articles of charge against the Petitioner but voluminous documentary evidence, such as, vouchers, preliminary survey report, check survey report and a detailed report dated 13.1.91 submitted by Shri S. Kumar, the then Divisional Forest Officer, Manu Forest Division, were produced and exhibited in the inquiry. The said Shri S. Kumar, the then Divisional Forest Officer, Manu Forest Division, was also examined before the Inquiring Authority as PW-1, and the Petitioner had the opportunity to cross-examine the said Shri S. Kumar, the then Divisional Forest Officer, Manu, in the inquiry. Further, Shri Salil Kumar Banerjee was the officer who recorded the statements of various beneficiaries of Social Forestry Scheme. Shri Mohendra Kumar Sinha who has been examined as PW-2 has stated before the Inquiring Authority he accompanied Shri Salil Kumar Banerjee, SFR, during his field verification at Sabuwal village relating to Social Forestry Scheme when the A.O. (Petitioner) was also with them at the spot and they could not find the area in which the scheme was implemented. Therefore, even if the statements of the beneficiaries of Social Forestry Scheme collected during preliminary inquiry cannot be utilised in the disciplinary proceedings against the Petitioner, the charges against the Petitioner stand established on the basis of other voluminous documentary and oral evidence produced in the inquiry.

5. That the findings of the Inquiring Authority are not solely based on the statement of beneficiaries under the Social Forestry Scheme would be clear from the findings of guilt recorded against the Petitioner by the Inquiring Authority. The Inquiring Authority has found the Petitioner guilty of charges under articles II, IE, IV and VI which are to the following effect--

Article No. II

That the said Sri Joy Lal Saithal, F.R. while functioning as R.O.B.S.F. Range, Kanchanpur, defalcated a large amount of Government money to the tune of Rs. 61,462/- only showing it as paid to the Farm Forestry beneficiaries by forgoing acquittances and making false vouchers which amounts to complete lack of integrity to the detriment of Govt. interest.

He is thus charged for lack of integrity and serious mis-conduct.

Article No. III

That Sri Joy Lal Saithal, F.R. while functioning as R.O. B.S.F. Range, Kanchanpur, deliberately inflated the area of 1990 plantation of coupe and submitted false maps & vouchers and thereby misappropriated Govt. money amount to Rs. 34,510.00 only. He is charge with serious conduct and a complete lack of integrity to the detriment of government interest.

Article No. IV

That Sri Joy Lal Saithal, F.R. while functioning as R.O. B.S.F. Range, Kanchanpur,

misappropriated the number of 1990 nursery beds created and shown and thereby" misappropriated Govt. money amounting to Rs. 44,928.60 only. He is charged with serious misconduct and a complete lack of integrity to the detriment of Govt. interest.

Article No. VI

That Sr. Joy Lal Saithal, F.R. while functioning as R.O. B.S.F. Range, Kanchanpur, submitted the vouchers alongwith muster rolls for the same work, that is 2nd wooding works of 1989 Teak nursery beds & thereby misappropriated Govt. money amounting to Rs. 5,880/- only. He is thus charged with maintaining false muster rolls and misappropriation of Govt. money and a complete lack of integrity to the detriment of government interest.

A reading of aforesaid articles of charge would show that while the statements of beneficiaries under Social Forestry Scheme are relevant in respect of the charge under article No. II, the statements are not relevant for recording the findings of guilt in respect of charges under Article Nos. III, IV and VI. Thus, even if the statements of the beneficiaries under Social Forestry Scheme cannot be utilised against the Petitioner for establishing the charge under Article Nos. No. II, the statements are of no relevance to charges under Article Nos. III, IV and VI. As a matter of fact, the report of the Inquiring Authority shows that the inquiring authority has relied on various evidence other than the statements of the beneficiaries under Social Forestry Scheme to record his finding of guilt against the Petitioner in respect of charges under article Nos. III, IV and VI. For these reasons, the findings of the Inquiring Authority in respect of charges cannot be held to be vitiated for violation of principles of natural justice.

6. In the case of Prasanta Paul Choudhury v. Tripura Public Service Commission (supra) cited by Mr. A. Roy Barman, learned Counsel for the Petitioner, charge against the Petitioner in that case was that in the final LTC bill the Petitioner claimed to have performed the journey from Dharmanagar to Delhi and from New Delhi to Dharmnagar by purchasing Railway tickets. But on a reference to the Railway authorities at Dharmanagar, Delhi and New Delhi, it was found that no such railway tickets were actually issued. To establish this charge, the letters of railway authorities at Dharmanagar, Delhi and New Delhi to the effect that railway ticket numbers claimed to have been purchased by the Petitioner for the said journey had not been actually issued by the railway authorities were produced in the inquiry and marked as exhibits-P1, P6 and P7. The Inquiring Authority, however, held that he cannot place reliance on the said exhibits as the persons who had written the said letters had not been produced in the inquiry for cross-examination by the Petitioner. The disciplinary authority, on the other hand, took a view that even if the persons who had written the said letters had not been produced in the inquiry, the said letters exhibits-P1, P6 and P7 could be relied upon for holding the Petitioner guilty of the charge. The Court, however, held that the statements of the three persons contained in exhibits-P1, P6 and P7 could be relied upon by the disciplinary authority only if the Petitioner had the

opportunity to cross-examine the persons who had made the statements and accordingly quashed the order of punishment passed by the disciplinary authority on the ground that principles of natural justice had been violated. In the case of Prasanta Paul Choudhury v. Tripura Public Service Commission therefore, the statements contained in the exhibits-P1, P6 and P7 were only the materials on the basis of which the disciplinary authority had found the Petitioner guilty of charge of misconduct and the said statements were directly relevant to the charge in question. But in the instant case, as has been held above, the statements of the beneficiaries under Social Forestry Scheme were not the only materials on the basis of which the Inquiring Authority and the disciplinary authority have found the Petitioner to be guilty of the charge and the said statements of the beneficiaries under Social Forestry Scheme have also no relevance to three out of four articles of charge in respect of which the Petitioner has been found guilty by the Inquiring Authority and the disciplinary authority. For these reasons, it is difficult to hold that the findings of the Inquiring Authority and the Disciplinary Authority that the Petitioner was guilty of the charges are vitiated by violation of principles of natural justice.

7. Regarding second argument of Mr. A. Roy Barman, learned Counsel for the Petitioner, that the Inquiring Authority has mechanically recorded his findings against the Petitioner, I find on a reading of the copy of the inquiry report that he has applied his mind to the materials placed before him in the inquiry with meticulous care and has thereafter recorded his findings of guilt against the Petitioner in respect of articles of charges Nos. II, III, IV and VI and further held that the prosecution has failed to prove the charges under articles I and V against the Petitioner. The contention of Mr. A. Roy Barman, learned Counsel for the Petitioner, therefore, that the Inquiring Authority has not applied his mind to the materials before him is misconceived.

8. In the result, this writ petition has no merit and is accordingly dismissed. However, considering the facts and circumstances of the case, the parties shall bear their own costs.