
(2002) 01 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 224 of 1992

Keshab Kanti Bhattacharjee

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(8)
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 2 GLT 410

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Advocate : D.K. Biswas, M.N. Indu and S. Lodh, for the Appellant; U.B. Saha and A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

H.K.K. Singh, J.—In this application filed under Article 226 of the Constitution of India the petitioner has challenged the order dated 29.6.1990 of the Governor of Tripura imposing penalty of with-holding of 3 (three) increments of pay with cumulative effect to the petitioner (Annexure-O to the writ petition) and also the letter dated 28.5.1992 issued by the Joint Secretary to the Govt. of Tripura by which the review application of the petitioner was rejected (Annexure-V to the writ petition).

2. At the relevant time the petitioner was serving as Executive Engineer, Public Health Engineering Division No. II at Kumarghat and in course of his duty he issued an indent for supplying of 2000 bags of cement from Stores Division, Arundhutinagar, Agartala, when cement could easily be collected from the nearest stock available at Dharmanagar. In connection with this the petitioner was put under suspension on 28.1.1983 and thereafter a disciplinary proceeding was initiated.

3. The charges levelled against the petitioner are found in the Memorandum dated 10.1.1984 (Annexure-C to the writ petition). For convenience the articles

of charges are reproduced below :

"Article No. I - That the said Shri Keshab Kanti Bhattacharjee while functioning as Executive Engineer. Public Health Engineering Division No. II, Kumarghat, during the period from 4.3.1981 to 9.11.1982 failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant inasmuch as he had issued indent to the Executive Engineer, Stores Division (PWD), Arundhutinagar and specially requested the Executive Engineer, Stores Division to supply 2000 bags of cement from Arundhutinagar PWD Stores for taking the same cement back to Kumarghat through the Carrying Contractor Shri Mrinal Kanti Ghose against the work of Sanitation & Water Supply Urban Water supply scheme at Kallashahar without any justification, when cement could easily be collected from the nearest stock available at Dharmanagar (PWD) Stores Sub-division.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules. 1965.

Article No.-II - That during the aforesaid period and while functioning in the aforesaid office the said Shri K. K. Bhattacharjee, failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant Inasmuch as he had issued work order to Shri Mrinal Kanti Ghose. a Carrying Contractor, for carrying 2000 bags of cement from Arundhutinagar PWD Stores to Kumarghat without inviting any tender or without executing any formal agreement for carrying 2000 bags of cement from Arundhutinagar PWD Stores to Kumarghat.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules, 1965.

Article No.-III - That during the aforesaid period and while functioning in the aforesaid office the said Shri K.K. Bhattacharjee, failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant inasmuch as he had endorsed on indent for 2000 bags of cement to the carrying contractor against the work of sanitation and water supply-Urban Water Supply Scheme at Kailashahar, for carrying cement from PWD Stores, Arundhutinagar to Kumarghat at his own accord without any requisition or having any signature of the concerned Assistant Engineer. P.H. Engg. Sub-division No. V, Kailashahar, when the cement was sufficiently stocked at the nearest godown of Dharmanagar (PWD) Stores Subdivision.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules. 1965.

Article No.-IV - That during the aforesaid period and while functioning in the aforesaid office the said Shri K.K. Bhattacharjee, failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant inasmuch as he had signed as indent for issuing cement being prepared by his Section Officer without having the signature of the concerned Assistant Engineer, Public Health Engineering Subdivision No. V, Kailashahar. There was no reason for by passing

the Assistant Engineer incharge of the work.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules, 1965.

Article No.-V - That during the aforesaid period and while functioning in the aforesaid office the said Shri K.K. Bhattacharjee, failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant inasmuch as he had issued work order as well as an Indent to the carrying contractor for bringing 2000 bags of cement from Agartala to Kamarghat where there was no suitable godown at Kumarghat for safe custody.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules, 1965.

Article No.-VI - That during the aforesaid period and while functioning in the aforesaid office Shri K.K. Bhattacharjee, failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant inasmuch as Shri Bhattacharjee had issued irregular work order to Shri Mrinal Kanti Ghose, a Carrying Contractor without inviting tender and executing agreement for carrying 2000 bags of cement without any justification from a far distance place of Arundhutinagar PWD Stores Division to Kumarghat than the nearest Dharmanagar PWD Stores under SDO (PWD) Stores Sub-division when sufficient stock of cement was readily available there, at the higher rate fixed arbitrarily with an irregular Indent issued to the Executive Engineer, PWD Stores Division, Arundhutinagar at his own desire, knowing fully the fact that cement neither required for any Govt. work at Kailashahar nor there was any place of safe custody at Kumarghat.

Shri K.K. Bhattacharjee, immediately after issue of the aforesaid work order and indent had proceeded to Delhi on leave without any kind of advance from the Department, by deriving illegal gain from the aforesaid carrying contractor favoured irregularly with the aforesaid order.

The above acts constitute good and sufficient reasons for proceeding against the said Shri K.K. Bhattacharjee under Rule 14 of the CCS (CC&A) Rules, 1965."

4. The list of documents by which the articles of charges framed against the petitioner were proposed to be proved, so also the names of the witnesses to be examined were also furnished. The petitioner also submitted a detailed statement of defence and he also gave list of witnesses and submitted a petition for calling some documents for perusal.

5. The aforesaid enquiry took some time. Originally one Shri B.K. Baul, IAS, Commissioner of Taxes was appointed Inquiring Officer. Thereafter Shri R.K. Vaish, IAS, Commissioner for Departmental Enquiries was appointed Inquiring Officer in place of Shri B.K. Baul and subsequently on 19.7.1987 Shri K. Arya, IAS, Secretary to the Government of Tripura was appointed Inquiring Officer. For the delay in the proceeding and also for his prolonged suspension from the

service, the petitioner approached this court by filing a writ petition being CR No. 128 of 1987 thought the said petition was closed as infructuous as, on receipt of the notice of that writ petition the suspension order of the petitioner was revoked. In course of the proceeding petitioner also took the aid of defence assistant and ultimately the Inquiring Officer submitted a report and on the basis of the report the aforesaid penalty of withholding of 3 (three) increments with cumulative effect was imposed (Annexure-Q). Thereafter a copy of the order of penalty and also a copy of the Enquiry Report were furnished to the petitioner. The petitioner filed a statutory appeal (Annexure-T) but the Government intimated that the petitioner had no right of appeal as the order was passed by the Governor and hence the petitioner filed a review petition (Annexure-Q) which was ultimately rejected vide order dated 28th May, 1992 (Annexure-V).

6. The first argument advanced by Mr. D.K. Biswas, the learned counsel for the petitioner is that the petitioner was not allowed to engage a legal practitioner for his defence whereas the Presenting Officers were all trained in law, one was Additional Superintendent of Police and other was Deputy Superintendent of Police, both belonged to Anti-Corruption Organisation and as such denial of the prayer of the petitioner for allowing him to have the assistance of legal practitioner amounted to violation of his right of proper defence.

7. The second point raised by Mr. Biswas is that the enquiry was conducted by different Inquiring Officers but the report of the enquiry was not made available before passing of the order of punishment. It was submitted by Mr. Biswas that the report of the Inquiring Officer was only furnished along with the order of punishment. This, according to the learned counsel, is also impermissible in law as the petitioner was deprived of making proper representation against the enquiry report before passing of the order of punishment. Mr. Biswas also submitted that the Disciplinary proceeding was protracted and the petitioner was kept under suspension for a long period and he was not even given subsistence allowance for a long time and only when writ petition bearing No. CR 128 of 1987 was filed, the order of suspension was revoked. It is also submitted by Mr. Biswas that adequate time and opportunity was not given to the petitioner to produce his witnesses in support of his case. Lastly it is submitted by Mr. Biswas that in many other cases when other Executive Engineers passed supply order supplying cement from Agartala other than from nearest place of execution, no action had been taken.

8. As noticed from the articles of charges, the allegation against the petitioner is that during the period from 4.3.1981 to 9.11.1982 the petitioner issued indent to the Executive Engineer, Stores Division (PWD), Arundhutinagar for supplying 2000 bags of cement through the Carrying Contractor Shri Mrinal Kanti Ghose when cement could easily be collected from Dharamnagar, i.e., the nearest stock and the work order was issued to the Carrying Contractor without inviting any tender and without executing any formal contract and also the petitioner signed the indent for supplying of the aforesaid quantity of cement without any

requisition or without having any signature of the concerned Assistant Engineer when the cement was sufficiently stocked at the nearest godown at Dharmanagar and also that the petitioner issued the work order for delivering 2000 bags of cement from Agartala to Kumarghat when there was no suitable godown at Kumarghat.

9. On appreciation of the materials, evidence collected at the time of enquiry and also on the basis of the report of the Inquiring Officer, the Disciplinary Authority passed the order of punishment. Judicial Review under Article 227 is primarily directed against the decision making process, not to the decision. Here in the present case, the first point taken by the learned counsel Mr. Biswas is that the service of legal practitioner was not allowed to the petitioner. In this respect we have a statutory provision. Sub-rule (8)(a) of Rule 14 of CCS, (CCA) Rules is the concerned provision. The said provision is extracted below:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not Engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits :

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

10. From the above provision it is clear that it is not the statutory right for the delinquent officer to have assistance of legal practitioner unless the Presenting Officer is a legal practitioner or the disciplinary authority having regard to the circumstances of the case so permits. In the present case the prayer of the petitioner was denied by the authority considering the nature of the case. The petitioner is also an experienced Government servant and the disciplinary proceeding was in respect of supply of cement/making of indent/engagement of contractor and also approval and proceeding of departmental files which are normal and routine matter to be performed by the officers and staff of the department and as such the order of the authority denying service of legal practitioner cannot be held to be an action which amounts to violation of any law. It is not shown that the Presenting Officers were legal practitioners before or had any qualification for legal practice. Accordingly the contention of Mr. Biswas on the first point has no force.

11. Regarding the second point i.e. non-furnishing of the report of the Inquiring Officer before passing of the order of punishment, the law had been settled by the Constitution Bench of the Supreme Court reported in AIR 1994 SC 1974. The Apex Court held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's

report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. It was also held that since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural Justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The Apex Court further held law that "delinquent is entitled to copy of Inquiry Officer's report". It is made applicable prospectively w.e.f. 20.11.1990 i.e. the date on which the Supreme Court decided the case of Union of India and others Vs. Mohd. Ramzan Khan,

12. In the present case at hand the order of penalty was passed on 29.8.1990 (Annexure-Q). Thus the petitioner missed the bus. As of right, the petitioner cannot claim that non-supply of copy of the enquiry report amounted to denial of reasonable opportunity of being heard.

13. The petitioner's review petition was rejected vide order dated 28.5.1992. The operative portion of the order is reproduced below :

"From the petition of Shri K.K. Bhattacharjee referred to above, it is evident however, that no new material or evidence has been adduced which was not earlier available during the course of the departmental enquiry. There are therefore, no ground for admitting a petition for review in terms of Rules-29A of the CCS (CC&A) Rules."

14. The provision of review as has been enacted as Rule 29 A of the CCS (CCA) Rules has given the scope and the reach of the power and according to the authority, the Governor in the present case, has found that the case of the petitioner did not come within the purview of Rule 29 A and as such the petition was rejected. I do not find any fault in the aforesaid order.

15. Lastly the learned counsel has submitted that in many other cases of such supply order having been given to the carrying contractor and also for carrying cement from godown which are located at a distant place, no action had been taken against those concerned officers, cannot be taken as a case of discrimination. The fact that the disciplinary proceeding took a long period is not by itself a sufficient ground for quashing the disciplinary proceeding. Period during suspension had been treated as period on duty and on many occasions the petitioner himself prayed for time and also due to other administrative reasons Inquiring Officer had to be changed.

16. For the aforesaid reasons and conclusion, the writ petition stands dismissed.

But under the facts and circumstances of the case there would be no order as to costs.