
(2015) 07 TP CK 0010
In the Tripura High Court
Case No : WP (C) 206 of 2010

Manik Nama

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 07 TP CK 0010

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : B.N. Majumder, for the Appellant; S. Chakraborty, Addl. G.A.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.

1. The Petitioner, while was working as a Store-Keeper of Hrishyamukh Food Godown, South Tripura, under the respondent Nos. 1 and 2, during the period from 12.07.2002 to 01.10.2004, alleged to have failed to maintain proper books of accounts and further that during the period he has misappropriated 9695 kg of rice valued Rs. 85,377.25 paisa and thereby committed gross dereliction of duty which was amounting to misconduct on his part as a public servant. Consequently, a disciplinary proceeding was initiated by issuing memo dated 31.10.2006 (Annexure P-1 to the writ petition) against the petitioner on the following article of charges:-

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI MANIK NAMA. STORE-KEEPER, HRISHYAMUKH GOVT. FOOD GODOWN, UNDER BELONIA SUB-DIVISION, SOUTH TRIPURA.

ARTICLE OF CHARGE-1

That, Shri Manik Nama, Store-keeper while in the charge of Hrishyamukh Govt. Food Godown, Belonia Sub-Division in South Tripura during the period from

12-07-2002 to 01-10-2004 exhibited gross dereliction of duty, absolute carelessness, lack of integrity and devotion to duty entrusted with him by way of not maintaining the books of accounts and other records properly thereof in the manner prescribed/instructed by the competent Authority which is unbecoming on the part of a Government Servant and amounts to gross misconduct. By resorting to such activities with malafide intention to derive personal benefit, said Shri Manik Nama, Store-Keeper misappropriated 9695 kg Rice, money value of which comes to Rs. 85,377.25 (Rupees Eighty-five thousand three hundred Seventy-seven and paisa Twenty-five) only.

These sorts of activities on the part of said Sri. Manik Nama, Store-Keepr of Hrishyamukh Govt. Food Godown, Belonia, South Tripura attract Rule-3 of Tripura Civil Services (Conduct) Rules, 1988 and action thereof under Central Civil Services (Classification, Control and Appeal) Rules, 1965."

2. The petitioner submitted show cause reply pursuant to memo dated 31.10.2006, inter alia, contending that even after repeated requisition he was not supplied BIN card register, SAV register etc. to maintain books of accounts of the Food Godown properly even after repeated requisition, by the State-respondents and, therefore, it was not possible on his part to properly maintain the books of accounts and further that the allegation of misappropriation of 9695 kg of Rice was not correct.

3. Respondent No. 3, the Addl. Commissioner of Departmental Inquiries was appointed as the Inquiring Authority in the disciplinary proceeding drawn against the petitioner and the Inquiring Authority in due course after holding the inquiry submitted report against the petitioner holding that the charge framed was established and in view of that report, respondent No. 2 issued show cause notice to the petitioner by issuing memo dated 19.08.2008 (Annexure P/7 to the writ petition) asking the petitioner to make his written representation against the finding of the Inquiring Authority within fifteen days and accordingly the petitioner submitted his show cause reply on 11.09.2008 (Annexure P/8 to the writ petition) and taking into consideration the inquiry report and show cause reply the Disciplinary Authority i.e. respondent No. 2 issued order dated 03.08.2009 imposing penalty on the petitioner of the recovery of entire amount of pecuniary loss of Rs. 85,377/- @ Rs. 3000/- per month from his salary commencing from the month of September 2009 payable in October 2009 till 100% recovery of the loss and further with- holding of two periodical future increments of the petitioner that would fall due after passing of the order for two years with cumulative effect. The petitioner preferred appeal before the Appellate Authority i.e. the principal secretary to the Government of Tripura and the Principal Secretary by order dated 18.02.2010 (Annexure P/12 to the writ petition) dismissed the appeal.

Hence the writ petition is filed seeking quashing/setting aside of the disciplinary proceeding and also the consequent order of punishment dated 03.08.2009 (Annexure P/9 to the writ petition) issued by the respondent No. 2 and the

Appellate order dated 18.02.2010 (Annexure P/12 to the writ petition) passed by the Appellate Authority.

4. Respondents contended that the petitioner, while was working as a Store-Keeper of Hrishyamukh Food Godown was found to be grossly negligent in the discharge of his duties since he did not maintain proper books of accounts of the Food Godown and thereby was found to be lacking in the discharge of his duties and also misappropriated 9695 kg of Rice worth Rs. 85,377.25 paisa and, therefore, after preliminary inquiry a disciplinary proceeding was initiated against him and the inquiry was conducted as per Rule 14 of CCS(CCA) Rules by the Addl. Commissioner of Departmental Inquiries i.e. respondent No. 3. All opportunities as per rule were provided to the petitioner and there was no infirmity in the disciplinary proceeding and the petitioner was found guilty of the charge framed against him. The evidence recorded during inquiry clearly proved the charge and hence the writ Court may not interfere in the order passed by the Disciplinary Authority.

5. Heard learned counsel, Mr. B. Nandi Majumdar for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for the State respondents.

6. Mr. Nandi Majumdar, learned counsel for the petitioner has submitted that the petitioner took a clear stand that he was not supplied BIN Card Registers and SAV Registers, even after requisition by the respondents and, therefore, he could not maintain all the books of accounts as required and that as he has adduced evidence also to that effect but that has not been considered by the Inquiring Authority and Disciplinary Authority also ignored the stand taken by the petitioner and mechanically imposed the order of penalty which is harsh and not tenable.

It is also contended by learned counsel, Mr. Nandi Majumdar that the disciplinary proceeding was initiated based on a report submitted by one Sibani Dey, DCM, Belonia and that Sibani Dey, though was listed as a witness of the prosecution, but she was not ultimately examined by the prosecution and based on the evidence of one witness i.e. SDM, Belonia, the Inquiring Authority submitted report against the petitioner mechanically and the Disciplinary Authority also imposed penalty based on the report of the Inquiring Authority without application of mind and hence the order of punishment cannot sustain and is liable to be interfered.

7. Learned Addl. G.A., Mr. Chakraborty has submitted that the petitioner examined himself as DW 1 in the disciplinary proceeding. He simply stated that BIN Card Register and SAV Register were not supplied to him by the department and, therefore, he could not maintain the books of accounts. He has produced no evidence to show that he made requisition for those registers and even after requisition those were not supplied. Regarding the charge of misappropriation he simply stated that the allegation was false. So the petitioner has failed to justify his claim of innocence regarding the charge framed against him. He has further

contended that the charge against the petitioner is based on documentary evidence and so the evidence of PW 1 who proved Exhibit S-1 to Exhibit S-5 were sufficient to prove the charge against the petitioner on the basis of which the inquiry report has been submitted by the Inquiring Authority and there is no infirmity in the report and the action taken by the Disciplinary Authority. The non-examination of Sibani Dey, DCM, is of no consequence since the report has been exhibited and the report has not been otherwise challenged.

8. A disciplinary proceeding is an in-house proceeding of a domestic tribunal in respect of misconduct alleged to have committed by a public servant in the discharge of his official duty. If there is some evidence on record in support of the allegation and if the Disciplinary Authority satisfied on the basis of such evidence and taken action against a particular employee, the Court of law is not ordinarily require to interfere in such action taken by the Disciplinary Authority. The scope of judicial review is very limited and only in the event it is found that the principles of natural justice is not followed and that the facilities/opportunities which were supposed to be given to the delinquent were not given only under that circumstance, the power of judicial review may be exercised in a disciplinary proceeding.

9. In the present case, there is no allegation that principles of nature justice were not followed or that the opportunities which were available to the petitioner as per law were not given to him. Only issue raised by the petitioner is that certain registers such as BIN card and SAV registers were not supplied by the department to the petitioner and, therefore, he could not maintain proper books of accounts of the Food Godown. The stand taken by the petitioner ought to be substantiated by him. While he was In-charge of the Food Godown he was supposed to maintain all the books of accounts of the Food Godown. Though he has taken the plea that BIN card register and Store Adjustment Vouchers register were not supplied but he has produced no document nor even adduced any evidence in his deposition that he gave requisition for those registers to the department and in response he got communication from the department that those registers were not available and in the absence of any such material, the plea taken by the petitioner that he was not supplied the relevant registers is just a plea in the air without any supporting evidence. We may reproduce here the evidence of DW 1 i.e. the petitioner in the Disciplinary Proceedings which reads as follows:-

"I am the A. O. in the instant proceedings. Due to non supply of the BIN card register and SAV register by the department I could not maintained the same in my go-down. The charge brought against me is false.

Cross-Examination:- It is not a fact that I have deposed false. It is not a fact that I prepared the SAVs without ascertaining the actual physical shortage."

10. The above statement of the petitioner as DW 1 in the disciplinary proceeding makes it abundantly clear that he has just taken a plea that the registers were

not supplied and in support thereof he adduced neither any documentary evidence nor made any clear statement as to when he made the requisition and what was the reply received from the department about the requisition. Therefore, this plea of the petitioner has no merit for consideration.

11. The second plea of the petitioner is that the disciplinary proceeding suffers from infirmity for non examination of Sibani Dey who has conducted the physical verification of the Food Godown. Annexure P/1 to the writ petition, i.e. the memo dated 31.10.2006 and its Annexure shows that the prosecution listed two witnesses, No. (1) Sri Dulal Das, SDM, Belonia and No. (2) Smt. Sibani Dey, DCM, Belonia. Sri Dulal Das, SDM, Belonia has been examined as a prosecution witness and he proved 5(five) items of documents in support of the prosecution case. Sibani Dey though was listed as a prosecution witness but was not ultimately examined by the prosecution. It is a fact that Sibani Dey made the inspection of Hrishyamukh Food Godown for the period from 12.07.2002 to 01.10.2004. On the basis of the report submitted by Sibani Dey the disciplinary proceeding was initiated. The report submitted by Sibani Dey has been proved and marked exhibits as S-2 in the disciplinary proceeding.

12. In a Disciplinary Proceeding strict rule of evidence is not required to be applied. For proving a document in a disciplinary proceeding the maker of the document is not always required to be examined unless the authenticity of the document is challenged. The charged officer i.e. the petitioner did not challenge the authenticity of Exhibit S-2 i.e. verification report submitted by Sibani Dey. It was a report submitted in the ordinary course of business of the official process and PW 1 i.e. the Sub Divisional Magistrate proved the document and also proved the Stock Adjustment Vouchers on the basis of which the verification report was prepared. Those documents clearly shows a shortage of 9695 kg of Rice valued Rs. 85,377/-. Therefore, I find justification in the submission of report by the Inquiring Authority. Sibani Dey was just a formal witness and non-examination of Sibani Dey has in no way vitiated the disciplinary proceeding drawn against the petitioner. This argument advanced by learned counsel, Mr. Nandi Majumdar, therefore, merits no consideration.

13. No other infirmity is found in the disciplinary proceeding and the punishment also found to be proportionate to the offence committed and hence I find no merit in the writ petition and accordingly the writ petition stands dismissed.

14. Return the records of the disciplinary proceedings to the learned Addl. G.A. submitted by him.