(2002) 02 GAU CK 0013

In the Gauhati High Court

Case No : Writ Appeal No. 156 of 2001 in Civil Rule No. 262 of 1992

Manindra Chandra Dhar APPELLANT

Vs

Tripura Road Transport Corporation and Others RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(4)

Citation : (2002) 1 GLT 518 : (2002) 3 LLJ 1094

Hon'ble Judges : H.K.K. Singh, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B. Das, for the Appellant; A.C. Debnath, for the Respondent

Judgement

1. This is an appeal against the judgment and order dated 28th September, 2001 passed by the learned Single Judge in Civil Rule No. 262/1992.

2. The relevant facts and circumstances for the purpose of disposal of the writ appeal are that, the appellant was working as Heavy Vehicle driver under the Tripura Road Transport Corporation. By a Memorandum dated 16.6.1990, the Managing Director of the said Corporation informed the appellant that he proposed to hold an inquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which were applicable to the employees of the said Corporation. Along with the said Memorandum, the substance of the imputation of his mis-conduct in respect of which the inquiry was proposed to be held was set out. The appellant was directed to submit within 10 (ten) days on receipt of the said Memorandum the written statement of his defence and further informed that if he did not submit the written statement of defence on or before the date specified, the Inquiry Authority may hold the inquiry against him ex parte. After receiving the said Memorandum dated 16.6.1990, the Appellant did not file any written statement of defence. Thereafter the Managing Director appointed one Mr. Amit Kumar Debbarman as Inquiry Officer and the said Inquiry Officer submitted his report dated 27th February, 1992. In the said inquiry report, it has been stated in para 4 that all

the articles of charges were read over and explained to the appellant and he was allowed to inspect all the listed documents and contents of such documents were also explained to him to his full satisfaction and understanding and appellant pleaded guilty to all the charges. On the basis of the said plea of guilt of the appellant to all the charges, the Inquiry Officer held that the articles of charges No. I & II are found to have been established beyond any reasonable doubt during enquiry. The Managing Director by his order dated 21.3.1992 allowed the appellant an opportunity to make a representation against the findings of the Inquiry Officer and the proposed punishment of withholding of 3 (three) periodical increments falling next due to the appellant with cumulative effect. The appellant submitted his representation dated 31st March, 1992. The Managing Director, however did not accept the representation of the appellant and on consideration of the findings in the Inquiry Report, imposed the punishment of withholding 2 (two) periodical increments of pay with cumulative effect on the appellant. Aggrieved by the said order of punishment, the appellant submitted a representation to the Managing Director of the Corporation dated 26th June, 1992, but since no relief was granted to him, he filed the aforesaid writ petition Civil Rule 262/1992. By the impugned judgment and order dated 28th September, 2001, the learned Single Judge dismissed the writ petition. Aggrieved, the appellant has filed the appeal against the said judgment of the learned Single Judge.

3. Mr. B. Das learned counsel for the appellant submitted that it appears from the findings of the Inquiry Officer in his report that no inquiry as such has been conducted by the Inquiry Officer and the Inquiry Officer has held the appellant guilty of all charges only on the alleged admission of guilt by the appellant. But he submitted that the appellant never admitted his guilt at any stage and therefore, it was incumbent upon the Inquiry Officer to have conducted the inquiry into the charges and only after recording the evidence such inquiry, he should have submitted his report on the charges. But, since no such inquiry has been conducted in accordance with Rule 14 of the CCS (CCA) Rules, 1965, the findings of the Inquiry Officer as well as the order of the disciplinary authority on the basis of the said findings are liable to be quashed.

4. Mr. A.C. Debnath, learned counsel appearing for the Corporation, on the other hand, sought to sustain the findings of the Inquiry Officer as well as the order of the disciplinary authority pursuant to the findings of the Inquiry Officer. He referred to the averments in paragraph 10 of the Affidavit-in-reply filed on behalf of the Corporation in the C. R. No. 262/1992 to show that in his preliminary statement before the Inquiry Officer, the appellant admitted his guilt to all the charges and did not intend to put in his defence. He argued that in view of the said admission of guilt to all the charges by the appellant, this is not a fit case in which the Court should quash the Inquiry report as well as the order passed by the disciplinary authority on the basis of the findings in the said inquiry. He further submitted that there is no infirmity in the impugned judgment of the learned Single Judge and thus, this Court should not interfere with the said

judgment of the learned Single Judge in the writ petition.

5. It is not disputed by Mr. Debnath, learned counsel for the Corporation that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are applicable to the Corporation, Further, it appears that by the memorandum dated 16.6.1990, the Managing Director of the Corporation proposed to hold an inquiry against the appellant under Rule 14 of the said Rules, 1965. Sub-rule (4) of Rule 14 of the Rules, 1965 provides that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges or charges proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether the desires to be heard in person. In accordance with the said Sub-rule 4 of Rule 14 of the Rules, 1965, the memorandum dated 16.6.1990 issued by the Managing Director of the Corporation directed the appellant to submit within 10 (ten) days of the receipt of the memorandum a written statement of his defence and also to state whether he desires to be heard in person. In paragraph 4 of the Memorandum dated 16.6.1990, the appellant was also informed of the consequences that will ensue if he did not submit his written statement of defence on or before the date specified, i.e., within 10 (ten) days. The said paragraph 4 of the Memorandum dated 16.6.1990 is quoted below :

"4. Shri Dhar is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the Inquiry Authority or otherwise fails or refuses to comply with the provision of Rule-1 of C.C.S.(C.C. & A.) Rules, 1965, or the orders/directions issued in pursuance of the said Rule, the Inquiry Authority may held the inquiry against him ex parte."

It will be clear from aforesaid paragraph of the Memorandum dated 16.6.1990 that of the appellant did not submit his written statement of defence on or before the date specified. Inquiry Authority may hold an inquiry against him ex parte. This stipulation in paragraph 4 of the memorandum dated 16.6.1990 Issued by the Managing Director was consistent with the provision in Sub-rule (5) of Rule 14 of Rules, 1965 which provided that on receipt of the written statement of defence the disciplinary authority may itself inquire into such articles of charge as are not admitted, or, if do so, appoint under Sub-rule (2), an inquiring authority for the purpose and where all the articles of charges have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence, as it may think fit and shall act in the manner laid down in Rule 15, The aforesaid provision In Sub-rule (5) of Rule 14 of the Rules, 1965 makes it abundantly clear that if the Government servant admits the articles of charges in his written statement of defence, no inquiry need be conducted into the articles of charge as are admitted but if the Government servant does not admit all or any of the articles of charges in the written statement of defence, an inquiry is to be conducted either by the disciplinary authority or by an inquiring authority appointed by the disciplinary authority under Sub-rule (2) of Rule 14 of Rules, 1965 into such articles of charges as are not admitted in the written statement of defence.

6. In the present case, as indicated above, no written statement of defence, was filed by the appellant after receipt of the memorandum dated 16.6.1990 issued by the Managing Director. Thus, he did not admit any of the articles of charges in his written statement of defence. If that be so, in accordance with Sub-rule (5) of Rule 14 of the Rules, 1965, it was incumbent upon the disciplinary authority to either inquire into the charges himself or to appoint an Inquiry Officer to inquire into the charges. As a matter of fact, in consonance with the said Sub-rule (5) of the Rule 14 of the Rules, 1965, the disciplinary authority appointed an Inquiring officer to inquire into the Charges but unfortunately, the Inquiring officer instead of inquiring into the charges ex parte or otherwise and recording his findings on the charges on the basis of evidence adduced in such inquiry held the appellant guilty of the charges on the basis of the alleged admission of guilt by the appellant in his preliminary statement before him.

7. We called upon Mr. Debnath to point out the provision in Rule 14 of the Rules, 1965 under which the Inquiring officer has been empowered to record admission or guilt to the charges by an Government servant but Mr. Debnath was unable to point to any such provision in Rule 14 of the Rules, 1965 except the Sub-rule (18) thereof in which it is provided that the Inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. A plain reading of the Sub-rule (18) of Rule 14 of the Rules , 1965 would show that the Inquiring authority has been empowered to question the Government servant "on the circumstances appearing against him in the evidence" for the purpose of enabling the Government servant to explain any "circumstances appearing in the evidence against him". Thus, only after evidence is adduced and recorded by the Inquiring authority in the inquiry, the Inquiring authority has been empowered to call upon the Government servant to explain the circumstances appearing against him in the evidence and this provision has been made with a view to give an opportunity to such Government servant to explain those circumstances appearing against him in the evidence. In this present case, as indicated above, no evidence was recorded by the Inquiring officer in the inquiry and therefore, the provision in Sub-rule (18) of Rule 14 of the Rules, 1965 was not attracted.

8. Since no inquiry has been held by the Inquiring officer in accordance with Rule 14 of the Rules, 1965 into the articles of charge, he could not have recorded any finding of guilt against the appellant. The report of the Inquiring officer holding the appellant guilty of the charges thus stands vitiated. So also the order of

punishment imposed by tile disciplinary authority on the basis of the said report of the Inquiring officer stands vitiated for violation or the provision of Rule 14 of the Rules, 1965. But, on perusal of the impugned judgment and order of the learned Single Judge, we do not find the learned Single Judge has gone into this vital aspect of the case. We, therefore, set aside the impugned judgment of the learned Single Judge as well as the Inquiry report and the order of punishment imposed by the disciplinary authority. It will be open for the disciplinary authority to hold an inquiry in accordance with Rule 14 of the Rules, 1965 against the appellant and pass such order as may be necessary in accordance with the said Rules.

