

(2013) 06 TP CK 0001

In the Tripura High Court

Case No : Writ Petition (C) No. 12 of 2007

Md. Madhu Mia VsThe State of Tripura and Another

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2013) 06 TP CK 0001

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; B.C. Das, General, Tripura and T.D. Majumder, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The petitioner has filed this writ petition for setting aside the Memorandum dated 19.2.97 (Annexure-2 to the writ petition) whereby the charge was framed and the disciplinary proceeding was initiated and the order dated 5.9.2006 (Annexure-7 to the writ petition) whereby and whereunder the Disciplinary Authority (District Magistrate & Collector, North Tripura, Kailashahar), the respondent No. 2 herein has inflicted the penalties to the petitioner for withholding of 1 (one) increment due next without cumulative effect and also for not making any arrear pay to the petitioner other than the amount already paid during the period of suspension. Further prayer of the petitioner is to set aside the order of suspension dated 27.12.1996 (Annexure-1 to the writ petition) and to treat his period of suspension from 27.12.96 to 16.12.97 as on duty and consequent thereto, to pay the pay and allowances for the said period with other consequential service benefits. Heard Mr. C.S. Sinha, learned Counsel for the petitioner as well as Mr. B.C. Das, learned Advocate General assisted by Mr. N.C. Pal, learned Govt. Advocate appearing for the State respondents.

2. Brief facts needed to be discussed are as follows:

The petitioner is a Group-D employee (peon) under the Respondent No. 2 and while he was working in the office of the Secretary, Uttar Tripura Jilla Parisad, North Tripura District on deputation, he was arrested on 27.10.1996 and

remained in jail custody up to 3.11.1996 as an accused in connection with Kailashahar P.S. Case No. 184 under Sections 148 /149 /326 /325 IPC which arose on the basis of complaint made by one Md. Basir Alia. Therefore, the petitioner was placed under suspension with immediate effect vide order dated 27.12.1996 (Annexure-1 to the writ petition).

3. In connection with the aforesaid police case, a GR case No. 372 of 1996 was registered in the Court of the Chief Judicial Magistrate, North Tripura, Kailashahar. But being no incriminating evidence was found against the accused persons including the petitioner, they were not examined u/s 313 Cr.P.C. and ultimately, the petitioner was acquitted from the charge with four others.

4. Thereafter, he was served the memorandum of charge dated 19.2.1997 asking him to submit his written statement of his defence with regard to the article of charge enclosed thereto which reads as under:

"ARTICLE-1"

That the said Md. Madhu Mia, Peon, of District Administration, North Tripura, now working in the office of the Secretary, Uttar Tripura Zilla Parisad, Kailashahar, on deputation was arrested on 27.10.96 and remained in jail custody upto 3-11-96 as an accused in Kailashahar P.S. Case No. 184/96 u/S. 148 /149 /326 /325 IPC. The fact of his being involved in a criminal case is violative of Rule 3(1)(iii) of Tripura Civil Services (Conduct) Rules, 1988.

5. The petitioner submitted his written statement on 28.2.1997 (Annexure-3 to the writ petition) stating, inter alia, that a false criminal case was filed against him by one Md. Basir Ali, Dy. Collector, SDO's office, Kailashahar, North Tripura and thus prayed to relieve him from the charge brought against him.

6. On the basis of charge of being his involvement in the aforesaid criminal case, a disciplinary proceeding was conducted and on conclusion of the departmental proceeding, the Disciplinary Authority has passed the impugned order of penalty as stated above/Hence the writ petition.

7. Later the order of suspension was revoked and the petitioner submitted his joining report on 17.12.1997.

8. The respondents have filed their counter-affidavit stating, inter alia, that the petitioner was proceeded with departmental proceedings on the ground of his arrest and detention in jail custody from 27.10.1996 to 3.11.1996. According to the respondents, involvement in a criminal case is violative of Civil Services (Conduct) Rules, 1988 and it was proved that the petitioner was involved in a criminal case and was in custody and merits of the proceedings in criminal case are immaterial for the purpose of seeing misconduct of the delinquent.

9. It is further stated that the disciplinary proceedings did not proceed on the basis of same set of facts. The criminal proceedings and the disciplinary proceedings are quite distinct and separate. The charge in the disciplinary

proceedings and in the criminal case is not the same. The factum of his arrest and detention in custody and his involvement in criminal case were the basis of disciplinary proceedings and it is immaterial that the criminal case ended with compromise. A compromise justifies the involvement of the facts alleged in criminal case. During the disciplinary proceeding, all sorts of opportunity were given to the petitioner and there was no complaint from the petitioner that he was prejudiced at any time. The facts of his arrest, detention in custody and involvement in criminal case are proved in the disciplinary proceedings. Even thereafter, a minimum punishment was inflicted upon him.

10. It is also stated by the respondents that the petitioner has not been suspended for the cause of the Department and during suspension he was not allowed to work and that he has been prevented from doing service during suspension is not for any cause of the Department but for him. Therefore, the authority has considered the period of suspension to be treated as on duty for the purpose of pensionary benefit only, he will not get any further amount of pay and allowance for the aforesaid period of suspension.

11. The moot question arises in the instant case as to whether charge can be framed against an employee only for his involvement in a criminal case and consequent thereto; a disciplinary proceeding can be initiated.

12. Mr. Sinha, learned Counsel for the petitioner while urging for quashing the impugned order of punishment dated 5.9.2006, would contend that the Article of Charge framed by the Disciplinary authority itself is contrary to law being there is no mention of committing misconduct and if the initiation of the disciplinary proceeding itself is without jurisdiction, then the order of penalty by the Disciplinary authority consequent to the said charge is also vitiated and liable to be quashed.

13. He again submits that it would be evident from the Article of Charge that the Departmental proceeding was initiated against the petitioner not for committing any misconduct, but for his detention in custody on being arrested in a criminal case from 27.10.1996 to 3.11.1996, but admittedly, the petitioner was discharged from the said criminal case.

14. He further contends that involvement in a criminal case itself is not violative of any provisions of Tripura Civil Services (Conduct) Rules, 1988, rather facts constituted any criminal case relating to an act of a Govt., employee can be considered as misconduct and for such misconduct, a departmental proceeding can be initiated.

15. He also contends that if the Article of Charge is taken as it is, then the charge in the criminal case and the charge in the departmental proceeding ought to have been considered the same and when the petitioner is admittedly tried for the charge in the criminal case, for the same charge, a departmental proceeding is not permissible.

16. He again urges that the respondents themselves in their counter-affidavit have made a statement that the petitioner was not arrested for the cause of the department. Therefore, for what purpose, the departmental proceeding was initiated against the petitioner is also not stated in the counter-affidavit.

17. Mr. Das, learned Advocate General appearing for the State respondents submits that the charge in the Disciplinary proceedings and in the criminal case is different. In the Disciplinary proceedings, the charge was framed against the petitioner for being involved in a criminal case which is violative of Rule 3(1)(iii) of Tripura Civil Services (Conduct) Rules, 1988, as the petitioner involved in a criminal case is quite unbecoming as a public servant which warrants disciplinary action against him. Accordingly, a Disciplinary proceeding was conducted and at the conclusion, the petitioner was awarded a minor penalty of withholding of one increment due next but without cumulative effect. Since the petitioner was arrested in connection with a criminal case and in custody from 27.10.1996 to 3.11.1996, he was placed under suspension. During the period of suspension, subsistence allowance as he entitled to was paid, but no pay and allowance over and above the subsistence allowance for the period of suspension is paid even after the suspension order was revoked subsequently, as the petitioner being involved in a criminal case was not allowed to work in the Govt. service till the suspension order was revoked. As such, he is not entitled to any pay and allowances other than subsistence allowance which was duly paid for the period of his suspension. However, taking a lenient view, the Disciplinary authority allowed the pensionary benefit to the petitioner for the said period.

18. He further submits that a criminal case is established for committing criminal offence, The criminal case in which the petitioner was involved was instituted on the basis of a complaint made by one Md. Basir Ali against the petitioner and others, but subsequently, the matter was amicably conciliated. In this regard, the complainant gave a written submission, which would be evident from Annexure R1 to the counter-affidavit, on the basis of which; the petitioner got discharged in the criminal case. Therefore, it cannot be said that the petitioner was not involved in a criminal case, and involvement of a public servant in a criminal case warrant a disciplinary action which has been done in respect of the petitioner by conducting a disciplinary proceeding and imposing a minor punishment. Thus, the writ petition is devoid of merit and the same is liable to be dismissed.

19. Before going to the discussion on the rival submission of the learned counsel, for better appreciation of the provisions of 3(1)(iii) of Tripura Civil Services (Conduct) Rules, 1988 is reproduced hereunder:

3. General

(1) Every Government Employee shall at all times--

(i) * * *

(ii) * * *

(iii) do nothing which is unbecoming of a Government employee.

20. The learned Chief Judicial Magistrate, North Tripura has passed the order of acquittal dated 14.8.2002 in G.R. case No. 372 of 1996 which reads as under:

Order dated 14.8.02

Learned A.P.P. is present for the State.

All the five accused persons are also present before the court.

This day was fixed for examination of the accused persons u/S. 313 Cr.P.C.

Learned A.P.P. verbally submits that there is no incriminating evidence against the accused persons for which they can be examined u/S. 313 Cr.P.C.

Learned A.P.P. further submits to acquit the accused persons from the instant case for fair ends of justice as there is no incriminating evidence against them.

Heard learned A.P.P. and considered.

Perused the case record.

I also do not find any incriminating evidence against the accused persons for which they can be examined u/s. 313 , Cr.P.C.

Considering the facts and circumstances and for fair ends of justice I do hereby acquit all the five accused persons namely, (i) Asad Ali, (ii) Ismad Ali, (iii) Watir Ali, (iv) Madhu Miah and (v) Mantaj Ali from the instant case and they are set at liberty henceforth. The surety/sureties is/are also hereby discharged from the liability of her/their suretyship.

The case is disposed of on contest accordingly.

21. A disciplinary proceeding can be initiated for misconduct of an employee. Now let us examine, what is "misconduct". As per Black's Law Dictionary, Sixth Edition, at page 999, misconduct is

a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

22. In Law Laxicon, Reprint Edition 1987 at page 821 defines "misconduct" thus:

The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite

rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

23. Admittedly, in Tripura Civil Service (Conduct) Rules, 1988, "misconduct" is not defined and when the misconduct is not defined in a statute, then a general meaning of the word has to be considered. In the instant case, it appears from the Article of charge that the departmental proceeding has been initiated against the petitioner on being involved in the criminal case, not for his alleged act for which he was involved in the criminal case. A disciplinary proceeding can be initiated against an employee for an act which constitutes misconduct, not for mere implication in a criminal case.

24. In

Baldev Singh Gandhi v. State of Punjab and Ors. (2002) 3 SCC 667 (AIR 2002 SC 1124)

the Apex Court also considered the word "misconduct" and noted in para-9 of the said Report that "'Misconduct' has not been defined in the Act. The word 'misconduct' is antithesis of the word 'conduct'. Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meanings of the expression 'misconduct', we, therefore, have to construe the expression 'misconduct' with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute...."

25. In

Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409 (AIR 1999 SC 2881)

the Apex Court noted as under :

42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

26. In the instant case, admittedly, the Article of charge is not relating to

"misconduct", rather charge is admittedly for involvement in a criminal case. It is a settled position of law that charge should be definite and distinct which is totally absent in the instant case. More so, the petitioner is admittedly acquitted from the charge levelled against him in the criminal case though mere acquittal of an employee from the criminal charge would itself not be a bar to proceed against the said employee for his misconduct, as charge in a criminal case is relating to a penal offence and the charge in a disciplinary proceeding is for committing misconduct.

27. Upon perusal of the order dated 14.8.2002 passed by the learned Chief Judicial Magistrate, North Tripura, in G.R. case No. 372 of 1996, it appears that the learned Chief Judicial Magistrate even did not find any incriminating evidence against the accused persons involved in the aforesaid case including the petitioner herein for recording their statement u/s 313 Cr. P. C. and thus acquitted them.

28. It is settled by the Apex Court that initiation of a disciplinary proceeding against an officer cannot take place on information which is vague or indefinite. This Court has no hesitation to hold that the Disciplinary authority failed to discharge its duty while framing the charge against the present petitioner.

29. This Court is of further opinion that involvement in a criminal case itself is not violative of any provision of Tripura Civil Services (Conduct) Rules, 1988, rather facts stated in a criminal case relating to an act of a Govt. employee can be considered as misconduct and for such misconduct a departmental proceeding can be initiated which is totally absent in the instant case. It cannot be ruled out that a criminal case can be instituted against a person for some definite purposes even with false allegations for taking revenge. Thus, before initiation of a disciplinary proceeding, the authority should have verified the allegations against the employee concerned. In the instant case, admittedly the petitioner appeared in the disciplinary proceeding initiated by the authority following the order of suspension and admittedly the authority revoked the suspension order. Thus, it would not be proper on the part of this Court to quash the order of suspension. In view of the above, this Court is of opinion that the disciplinary proceeding initiated against the petitioner mere on the ground of involvement in the criminal case with a vague charge vitiated the entire proceedings and thus, Memorandum dated 19.2.97 (Annexure-2) whereby the charge has been framed and consequent thereto, the impugned order of penalty dated 5.9.2006 (Annexure-7) as imposed in the instant case being bad is set aside. In the result, the writ petition is allowed. Regarding the period of suspension, the authority should pass necessary order in accordance with law applicable.