

(2014) 12 TP CK 0004
In the Tripura High Court
Case No : W.P. (C) No. 305 of 2014

Mihir Kumar Roy

APPELLANT

Vs

Agartala Municipal Corporation and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 463, 468, 471
Prevention of Corruption Act, 1988 — Section 13

Citation : (2015) LabIC 917

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : P. Roy Barman and Samarjit Bhattacharjee, Advocates for the Appellant; B.C. Das, Advocate General and A.S. Lodh, Addl. G.A, Advocates for the Respondent

Judgement

S. Talapatra, J.—The petitioner has retired from Agartala Municipal Corporation as the Executive Engineer on 31.10.2003. He was scheduled to retire on 28.02.2003 on his superannuation but he continued to serve the said post till 31.10.2003 as his tenure was extended by the respondents No. 1 and 3. But the petitioner did not receive his retiral benefits for a long time even after knocking the doors of the competent authorities. Finally, the petitioner has approached this Court by filing this petition for direction on the respondents to release the pension other retiral benefits w.e.f. 01.11.2003 and special leave salary, special allowance for his holding the post of current duty charge in the post of Superintending Engineer in addition to his charge of Executive Engineer etc. with interest. The respondents Nos. 1, 2 & 3 by filing a counter-affidavit asserted that the Executive Officer, Agartala Municipal Council, as then it was, sought a decision from the Director, Urban Development Department, Government of Tripura on reference to a previous letter dated 05.07.2004, addressed to the General Administration (Administrative Reforms) Department in respect of release of the retirement benefits to the petitioner. In response to that letter dated 20.07.2004, Annexure-R/2 to the counter-affidavit, the Director & Joint

Secretary, Urban Development Department addressed a letter on 23.08.2004 and placed his opinion on provisional pension. It appears that thereafter, the provisional pension was released to the petitioner but his regular pension and other retiral benefits were not released as Agartala Municipal Council did not receive "any clearance" from the Vigilance Department. On 15.12.2004 the Director, Urban Development Department by his communication informed the Executive Officer, Agartala Municipal Council that:

"only provisional pension may be paid to Sri M.K. Roy, Retd. Executive Engineer, Agartala Municipal Council as admissible on the basis of qualifying service without any other pensionary benefits like gratuity etc. until the conclusion of the departmental/judicial proceeding and issue of the final orders thereon."

2. On a bare reading of the said communication dated 15.12.2004 it may appear that "departmental/judicial proceeding" was pending against the petitioner in the relevant time. In response to a further communication dated 17.02.2006 from the Chief Executive Officer, Agartala Municipal Council, the Addl. Director, Urban Development Department by the letter dated 27.03.2010 advised the Chief Executive Officer:

"to intimate the action taken against the above Retired Officer on the basis of Special audit Report conducted at Municipal Council on the points as stated below:

(i) Unless the case of misappropriation is finalized and Sri M.K. Roy, Retired Ex-Executive Engineer is free from guilty, pensionary benefits of Sri M.K. Roy may not be finalized.

(ii) Incidentally, Sri M.K. Roy was the Executive Engineer of AMC and thereafter, the disciplinary authority will also be Chairperson of AMC. So necessary action on the issue to be taken by the AMC itself.

It is also requested to intimate the action in the case of misappropriation of money amounting to Rs. 15.42 lakhs (approx) against the above mentioned official in respect of recovery of misappropriated money early.

3. Mr. P. Roy Barman, learned counsel appearing for the petitioner has submitted that neither a departmental proceeding nor a criminal proceeding was pending against the petitioner at any point of time. Even after receipt of the said letter dated 27.03.2010, no such action had been taken against the petitioner. On the basis of the inquiry report from the Superintendent of Police (Vigilance), a Joint Secretary to the Government of Tripura namely, Mr. H. Das filed one first information report dated 15.01.1999 where it has been stated unambiguously that:

"Both Executive Engineer Sri M.K. Roy and Sri Dinesh Ch. Datta, Accountant-in-Charge should have noticed it in time if they have been performing their duties properly.

12. The passbooks of the banks kept in the custody of the cashier Nirode Baran Dey had shown inflated and fabricated amount (drawn by cashier by inserting "1" (one) in the left side). Had Sri M.K. Roy, Executive Engineer and Sri Dinesh Ch. Dutta, Accountant-in-Charge been more careful the manipulated amount would have been called out early and reported to the higher authority in time.

13. Sri Dinesh Ch. Dutta, Accountant-in-Charge did not sign the cheques at any stage and therefore it appears that he was not party in the cheque manipulation at any stage though in recording the accounts he had shown carelessness.

14. Sri M.K. Roy also did not appear to be a party in the manipulation of the cheques or counterfoils and cash book show same manipulated figures, unless handwriting expert shows that his handwriting was there in the manipulated cheques. But he also did not show supervisory competence as mentioned in para-11 above.

15. Under the above circumstances, it is evident that during 1994-95 Sri Nirode Baran Dey, Cashier, PW Wing of Agartala Municipal Council committed the offences of criminal breach of trust, forgery for the purpose of cheating and using forged documents and corruption under Sections 409/463/471 IPC and 13 of Prevention of Corruption Act."

4. It appears further from the record that the charge was only framed against one Nirode Kumar alias Baran Dey and after the trial he was also acquitted from the said charge by the judgment and order dated 28.06.2012 delivered in case GR No. 43 of 1999. The respondents Nos. 1, 2 & 3 by referring one letter written by the Assistant Public Prosecutor on 03.06.2013 assumed that the prosecution had also been launched against the petitioner but there is no basis of such assumption borne in the record. Finally, the respondent No. 5 by filing the counter-affidavit in response to the order dated 09.09.2014 passed by this Court has contended as under:

"That it is pertinent to mention here that the petitioner suppressed the fact of his involvement in a criminal case being GR No. 43 of 1999 which was lodged under Sections 409, 468 and 471 of Indian Penal Code. However, subsequently, he was not charge-sheeted and the cashier was charge-sheeted. However, the case ultimately ended in acquittal of the accused. Simultaneously, during pendency of the criminal case, a vigilance case was registered against both the cashier as well as the petitioner and as a result, no vigilance clearance was given in the case. Even after the disposal of the criminal case, the respondent No. 5 did not have any information relating to the vigilance clearance for which the Agartala Municipal Corporation was asked to get it before the pension proposal could be finalized. The Deponent vide his letter dated 24.10.2014 to the Agartala Municipal Corporation wanted to about the vigilance report of the petitioner to which the Agartala Municipal Corporation replied on 31.10.2014 giving a vague reply. (copy of which is annexed herewith and is marked as Annexure-D-1).

I beg to say that it was only on 11.11.2014 that the Superintendent of Police

(Vigilance), Tripura informed the Agartala Municipal Corporation that no vigilance case was pending against the writ petitioner, the then Executive Engineer, Agartala Municipal Corporation, Agartala. Thereafter, the pensionary benefit in favour of the petitioner has been approved and sanctioned by the Government vide letter dated 10.11.2014 and 13.11.2014, (copies of which were annexed herewith and marked as Annex-ure-D/2 and D/3)"

From this affidavit, it surfaced that one vigilance case was pending against the writ petitioner. Only on 11.11.2014 according to the said respondent No. 5, the Agartala Municipal Corporation received the clearance from the Superintendent of Police, Vigilance. The said vigilance clearance certificate records as under:

"it is to inform you that at present there is no Vigilance case pending against Sri M.K. Roy, Retd. Executive Engineer, AMC, Agartala".

5. It has been further asserted that by the letter dated 10.11.2014, Annexure-D/2 to the counter-affidavit filed by the respondent No. 5, the Municipal Commissioner, Agartala Municipal Corporation was communicated as follows:

"It is informed that the pensionary benefits in favour of Sri M.K. Roy, Retd. Executive Engineer, Agartala Municipal Corporation, has been approved by the State Govt. in Urban Development Department for releasing.

2. In this context, it is requested to take necessary action for finalizing the final payment of pensioner benefit in favour of Sri M.K. Roy, Retd. Executive Engineer, AMC.

3. Sanction of provisional gratuity and to be recorded the same in the Service Book.

4. Sanction of Leave Salary and to be recorded the same in the Service Book.

5. Dues, if any remain outstanding with Sri Roy may be deducted from gratuity and recorded the same in the Service Book.

6. No demand Certificate in prescribed format after deduction of all outstanding dues.

7. Vigilance Clearance, Integrity Certificate from Municipal Authority.

The Service Book of Sri M-K-Roy is returned herewith for necessary action please.

6. Mr. B.C. Das, learned Advocate General appearing for the respondent No. 5 along with Ms. A.S. Lodh, learned Addl. G.A. has further submitted that by the letter dated 13.11.2014, Annexure-D/3 to the counter-affidavit, the Director, Urban Development Department has communicated the Municipal Commissioner as under:

"With reference to your letter No. 703/F. VII-39/70 dated 13.11.2014, I would like to forward herewith PPO bearing No. 136/PEN/AMC/2014 dated 13.11.2014 issued in favour of Shri Mihir Kumar Roy, Retd. Executive Engineer, after

finalization of pension for @ Rs. 7288/- (Rupees Seven thousand two hundred & eighty eight) only p.m. plus DR which will take effect w.e.f. 01.11.2003 and subject to the following conditions:

1. Payment will be made to pensioner/family pensioner after Proper identification and signature as per Disbursement portion of pension payment order.
2. If illiterate, left/right hand thumb impression of pensioner/family pensioner as the case may be accepted.
3. If the payment is required to be made through authorized agent, a copy of the sanction order may be supplied to the agent and acknowledgment of payment should be obtained and recorded.
4. Payment of above pension may be entertained on production of the personal copy of sanction order by the pensioner concerned.

Finally, learned Advocate General has contended that now the petitioner shall get the regular pension and other retiral benefits after the procedural formalities are completed.

7. This is a saga how a public servant has suffered by the bureaucratic apparatus. The Superintendent of Vigilance has disposed the reference by the report dated 23.05.1998 which was made part of the first information report, Annexure-R/1 to the counter-affidavit filed by the respondents Nos. 1, 2 & 3. It is really surprising how the respondents have contended that they waited for the vigilance clearance. It is apparent on the face of the records that on acting on the vigilance report, no departmental action has been taken against the petitioner. Even no memorandum containing the allegation of misconduct was ever filed against the petitioner. From the judgment and order dated 28.06.2012 it is apparent that the first information report filed by Sri H. Das, Joint Secretary to the Government of Tripura on 15.01.1999 culminated into case No. GR. 43 of 1999. The petitioner was not even an accused in that case. Rather, we have noticed that the petitioner deposed as the witness (PW-1) in the said trial inasmuch as he was witness to the seizure of various documents.

8. There had been no ground whatsoever to hold back the pension and other retiral benefits of the petitioner. It is well settled that unless the memorandum of charge is filed against a Government employee no action adverse to his interest can be taken by any authority. The authority in the Urban Development Department has acted in such a brazen manner that should invite departmental action against them inasmuch as pension and the other retiral benefits cannot be released without their sanction. We leave this conduct to be properly inquired into by the competent authority and the appropriate action to be taken thereafter. Having held so, we have no hesitation to hold that the pension and other retiral benefits of the petitioner ought to have been released immediately after his retirement. But that has not so been done despite the numerous representations from the petitioner. We are further persuaded by the

circumstances unfolded in this case that penal interest to be awarded. Hence, the respondents are directed to release the pension and pensionary benefits to the petitioner within a period of 3(three) months from today with interest @ 12% p.a. w.e.f. 01.09.2003 till such payment is made. Other reliefs as mentioned in the writ petition have not been pressed before us at the time of hearing.

Accordingly, this writ petition stands allowed to the extent as indicated above.

A copy of this order be sent to the Chief Secretary to the Government of Tripura for taking appropriate action against the erring officers in the Urban Development Department.

There shall be no order as to costs.