

(2007) 01 GAU CK 0013
In the Gauhati High Court

Nibaran Chandra Das

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Citation : (2007) 2 GLT 376

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Judgement

A.B. Pal, J.—The petitioner Nibaran Chandra Das while working as Accountant in the Social Welfare Department under the respondents since 08.09.90, was placed under suspension in contemplation of a disciplinary proceeding. The suspension continued for 15 months. Thereafter he was reinstated. However, on 28.02.2001 a common proceeding under Rule 18 of the Central Civil Service (Classification Control and Appeal) Rules 1965 (for short C.C.S/C.C.A. Rules) against the petitioner and one Prasanta Debbarma, the Inspector of Schools at the relevant time, was drawn. Manipulation of certain tender documents by way of over-writing and correction for the benefit of some tenderers was the specific charge against the petitioner. The charge was found to be proved in the departmental inquiry where-upon on 31.01.2003 the disciplinary authority imposed on the petitioner a penalty of reduction of pay by 5(five) increments from Rs. 8975 to Rs. 8100. The said proceeding was issued providing that the Governor would function as the disciplinary authority and would be competent to impose any of the penalties provided in Rule 11 of the CCS (CCA) Rules. It is contended that inspite of such specific provision the order of penalty was issued by the Director of School Education, an authority much lower in position which is contrary to the initial order of the common proceeding. It has been observed in the appellate order that the Director of School Education could not act as disciplinary authority and therefore, the impugned order of penalty was not sustainable in law. The appeal was thus allowed. On 19.08.2004 the Governor of Tripura cancelled the entire proceeding.

2. Though the common proceeding thus came to a fiasco with its annihilation by the order dated 19.08.2004 issued in the name of the Governor, the penalty imposed by order dated 31.01.2003 continued to have its away as the petitioner's pay reduced to Rs. 8100/- was not restored to Rs. 8975/- as on 31.01.2003. He went on presenting representation after representation on 22.07.2004, 11.04.2005, 22.04.2005 and finally on 16.06.2005 for restoring his pay to the original position, release of increments as admissible subsequent there to and release of part of the salary which was not paid to him as a consequence of the order of penalty which remained no longer. But all the representations aforementioned could evoke no response from the respondents with the result that the petitioner continued to get the reduced pay and remained deprived from the part of the salary he was entitled to following cancellation of the entire proceeding.

3. On the contrary, on 18.10.2005 the second respondent herein issued a memorandum proposing to hold an enquiry only against the petitioner on self same charges. On 07.11.2005 the petitioner submitted his written statement briefly raising the question of maintainability of a fresh proceeding against him. Ignoring the objection on 23.11.2005 the respondent appointed the Inquiry Officer and the presenting officer and at that stage the petitioner chose to institute the present writ petition calling in question the maintainability of the fresh proceeding itself and praying for restoring his pay to the earlier petition, release of increments and part of the pay withheld following the penalty. On 20.02.2006 the petitioner obtained an interim order from this Court in CM. Appl. No. 503 of 2005 whereby further proceeding of the departmental inquiry was stayed with liberty to the respondents to seek modification or cancellation of the said order. Accordingly, a prayer for vacation of the interim order under Clause (3) of the Article 226 of the Constitution was filed, but the same was rejected as respondents themselves sought adjournment, which cause the delay in disposal of the interim prayer.

4. The respondents in the joint counter affidavit, which was amended later, contended inter alia that though the joint proceeding had to be cancelled following Government of India's instructions No. 6 under Rule 27 of the CCS/CCA Rules, the suspension of the petitioner for a period of 15 months was yet to be regularized and, therefore, the claim of the petitioner for restoring his pay and release of the increments are not sustainable in law. Nothing has been said why the suspension period could not be regularized as admittedly the joint proceeding having been cancelled ab initio there remained no justification to treat any period under suspension. With the joint proceeding in connection with which the petitioner was suspended came to be non est the suspension order has to be held to be without any justification entitling the petitioner thereby to all the benefits admissible to him had there been no order of penalty. The other contention of the respondent is, that a de-novo proceeding having been initiated, the past period of suspension cannot be regularized during pendency of the proceeding. No contention, however, has been raised as to whether and how the

suspension of the petitioner in connection of the joint proceeding came to be connected to the de-novo proceeding against him.

5. As regards maintainability of the de-novo proceeding the respondent contended inter alia that though the joint proceeding was cancelled because of the technical flaw noticed later, the second respondent being the disciplinary authority of the petitioner was not rendered powerless to initiate a fresh proceeding against the petitioner alone on self same misconduct.

6. I have heard Mr. S. Talapatra, learned Senior counsel for the petitioner and Mr. J. Majumder, learned Counsel for the respondents.

7. Mr. Talapatra, learned Senior Counsel for the petitioner has correctly submitted that there is nothing on record to show any link between the order of suspension, which was issued in connection with the joint proceeding, and the de-novo proceeding which was drawn only on 18.10.2005, after a period of about five years from the date of initiation of the joint proceeding. No order has been passed by the competent authority placing the petitioner under suspension in connection with the de-novo proceeding or connecting the earlier suspension with the fresh proceeding. Thus the order of suspension has to be treated as non-existent when the joint proceeding was cancelled by the governor on 19.08.2005. This being the position there cannot be any justification to treat any period as a period under suspension and therefore, the petitioner is entitled to full pay and allowances for the entire period of suspension. For the same reason it has to be held that the order of penalty dated 31.01.2003 having been quashed by the appellate authority he is entitled to get his pay of Rs. 8975/- restored as on 31.01.2002. Thereafter, he would be entitled to periodical increments in the pay scale of Rs. 5500- 10700. The contention that because of the pendency of the de-novo proceeding the period of suspension cannot be regularized and consequently the reduced pay cannot be restored is wholly untenable in law. The petitioner is entitled to all the benefits of his pay and allowances as the order of penalty dated 31.01.2003 did not exist.

8. As regards the maintainability of the de-novo proceeding, it is submission of Mr. Talapatra that the appellate authority in its order dated 04.11.2003 clearly provided that the order of penalty was set aside without prejudice to the finding of the inquiry authority and, therefore, it was not open to the disciplinary authority to initiate a de-novo proceeding dismantling thereby the report of the inquiry authority in the joint proceeding. Mr. Mazumdar, learned Counsel for the respondents has, however, strongly submitted that the observation of the appellate authority, as aforesaid, cannot in any way affect the power of the disciplinary authority to draw a separate proceeding afresh against the petitioner only.

9. It has however, to be noticed that the joint proceeding was initiated by an order of the Governor presumably because the other delinquent officer, Sri Prasanta Deb Barma, was a Gazetted Officer while the petitioner was holding non-

Gazetted post. On 19.08.2004 the entire joint proceeding was cancelled in the name of the Governor. No argument can be legally advanced to say that the Governor had no power to cancel a proceeding, which was drawn by him. With the joint proceeding having rendered non-est by the order dated 19.08.2004, the order of the appellate authority passed on 04.11.2003 saving the findings of the inquiry authority has no consequence. Thus, nothing in the appellate order has any force after cancellation of the joint proceeding by the Governor and therefore, the state being clear it was legally permissible for the second respondent being the disciplinary authority to initiate a fresh proceeding against the petitioner alone. I find no illegality in the order dated 18.10.2005 impugned herein whereby a fresh proceeding has been drawn against the petitioner.

10. In view of the discussions made herein above this writ petition is partly allowed directing that the petitioner shall be entitled to full pay allowances for the period of suspension and his pay Rs. 8975 as on 31.01.2003 shall stand restored. He shall be entitled to periodical increment admissible thereafter and the part of the pay which was not paid to him because of the order of penalty aforesaid. This should be complied within a period of two months from the date of passing the judgment and order. The respondents will be at liberty to proceed with the de-novo proceeding if not otherwise decided or barred. There shall be no order as to cost.