
(1999) 02 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 88 of 1994

Prasanta Paul Choudhury

APPELLANT

Vs

Tripura Public Service Commission and Others

RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 24
Constitution of India, 1950 — Article 226, 311
Evidence Act, 1872 — Section 35, 58

Citation : (1999) 1 GLT 162

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A. Chakravorty and P. Paul, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

A.K. Patnaik, J.—In this writ petition under Article 226 of the Constitution, the Petitioner has prayed for quashing the orders dated 11.8.93 and 16.8.93 of the disciplinary authority in a disciplinary proceeding initiated against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (for short "CCS (CCA) Rules 1965").

2. The facts briefly are that the Petitioner is a Grade-IV employee working under the Tripura Public Service Commission, On 2.5.89 he was placed under suspension and a disciplinary proceeding was initiated against him by Memorandum dated 2.5.89 of the Secretary to the Tripura Public Service Commission, the disciplinary authority. As per the said Memorandum dated 2.5.89 the first article of charge against the Petitioner was that he took an advance of Rs 2,500/- on 24.7.84 towards LTC, but did not initially submit a bill for adjustment of the said advance on completion of journeys and submitted a bill only after a lapse of one year which was unbecoming of a government servant. The second article of charge against the Petitioner was that in the final LTC bill he claimed to have performed journey from Dharmanagar to Delhi on

2.8.84 by purchasing railway ticket Nos 04502,04503 and 04504 and from Delhi to Dharmanagar by purchasing railway ticket Nos 34251,34252 and 34253, but on reference to railway authorities at Dharmanagar, Delhi and New Delhi it was found that no such tickets were actually issued by them. Hence the LTC bill submitted by the Petitioner was bogus and false and he had misappropriated government money amounting to Rs 2,500/-. The Petitioner submitted his written statement of defence on 16.5.89 wherein he has denied the aforesaid charges. Thereafter, Shri N K Sinha of the Judicial Service of Tripura was appointed as Inquiring Authority by the disciplinary authority. He enquired into the matter and submitted his enquiry report dated 1.4.91 holding that the disciplinary authority had failed to prove the charges levelled against the Petitioner. The disciplinary authority, however, disagreed with the said finding of the inquiring authority and wrote a letter dated 29.4.91 to the Inquiring Authority requesting him to hold further enquiry into the matter and submit a report to him. When the Inquiring Authority did not hold the further enquiry, the disciplinary authority passed a detailed order dated 31.7.91 holding that the two articles of charges had been fully established against the Petitioner. In the said order dated 31.7.91, the disciplinary authority proposed to impose on the Petitioner the penalty of recovery of the advance made to the Petitioner for the LTC with penal interest and the penalty of reduction to two lower stages of time scale of pay for a period of two years. By the said order dated 31.7.91, the disciplinary authority also proposed to pass an order that no further amount will be paid to the Petitioner during the period of suspension and gave an opportunity to the Petitioner to make a representation against the aforesaid penalty proposed by him. Aggrieved by the said order dated 31.7.91, the Petitioner moved this Court under Article 226 of the Constitution in Civil Rule No 238/91 and the said Civil Rule was disposed of by order dated 7.7.93 by this Court with the direction to the Respondents not to implement the proposed punishment until the representation submitted by the Petitioner against the proposed punishment was disposed of in accordance with law. Thereafter the impugned order dated 11.8.93 was passed by the disciplinary authority in exercise of powers conferred on him under Rule 11 of the CCS (CCA) Rules, 1965 directing that the pay of the Petitioner be reduced by two stages from Rs 1160/- and Rs 1110/- in the time scale of pay for the period of one year with effect from 1.9.93 and further directed recovery of the amount of Rs 2,500/- drawn by the Petitioner less the amount already realised from him together with penal interest. This was followed by an order dated 16.8.93 of the disciplinary authority to the effect that the Petitioner would not be entitled to any further payment other than subsistence allowance already drawn by him during the period spent under suspension from 2.5.89 to 31.7.91 as the disciplinary proceedings had culminated in award of punishment. Aggrieved by the said orders dated 11.8.93 and 16.8.93, the Petitioner has moved this Court in the present writ petition for appropriate reliefs.

3. Mr. A.Chakravorty, learned Counsel for the Petitioner, submitted that the Petitioner is an illiterate person and does not understand the technicalities of

Rules and procedure and that he had in fact undergone the journey from Dharmanagar to Delhi and back and submitted a final LTC bill for Rs 835.90 and after adjustment of the said amount the unspent balance of Rs 1664.10 had been recovered from the salary of the Petitioner by six equal monthly instalments of Rs 277.36. Mr. Charkravorty further contended that the disciplinary authority appears to have recorded the findings of guilt against the Petitioner on the basis of letters received from the railway authorities which were marked as Exts-P-1, P-6 and P-7 in the enquiry but the persons who had written those letters had not been produced as witnesses and as a result the Petitioner could not cross-examine those persons with regard to the veracity of the contents of the letters. He further submitted that even the final LTC bill in which the ticket Nos were mentioned by the Petitioner was not produced in the enquiry. It is for these reasons that the Inquiring Authority had come to a finding that the charges levelled against the Petitioner had not been established. But the disciplinary authority has totally ignored the said finding of the Inquiring Authority and recorded his own finding against the Petitioner relying on Exts-P-1, P-6 and P-7 in gross violation of principles of natural justice. Mr. Chakravorty finally submitted that a clear direction was given by this Court in its order dated 7.7.93 in Civil Rule No 238/91 not to implement the proposed punishment against the Petitioner without first disposing of the representation submitted by the Petitioner and yet the disciplinary authority implemented the proposed punishment in the impugned order dated 11.8.93 without considering the representation of the Petitioner.

4. Mr. U.B. Saha, learned Counsel for the Respondents, on the other hand, supported the impugned order passed by the disciplinary authority. He submitted that a reading of the order dated 31.7.91 of the disciplinary authority would show that he has placed reliance on Sections 58 and 35 of the Indian Evidence Act, 1872, and has recorded the finding of guilt against the Petitioner on the admission of the Petitioner and on Exts-P-1, P-6 and P-7. He argued that since in his written statement of defence the Petitioner had admitted the Nos of tickets which were given by him in the final LTC bill, it was not necessary for the disciplinary authority to produce the final LTC bill in the enquiry. He referred to the provisions of Section 58 of the Evidence Act, 1872, which stated that no fact need to be proved in any proceeding which the parties there to admit. He further contended that the communications received from the railway authorities and marked as P-1, P-6 and P-7 were relevant u/s 35 of the Indian Evidence Act, 1872, as they have been made by the railway authorities in discharging of their official duties. Mr. Sana submitted that as the strict Rules of evidence were not applicable to enquiries in disciplinary proceedings, it was not at all necessary to produce those persons who had written Exts-P-1, P-6 and P-7 as witnesses in the enquiry. Mr. Sana relied on decision of the Supreme Court in the case of High Court of Judicature at Bombay, through its High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, to the effect that sufficiency of evidence and scrutiny of conclusions drawn in a departmental

enquiry were not to be examined by the, court in exercise of powers of judicial review. He submitted that as the findings of the disciplinary authority in the instant case have been arrived at on appreciation of the materials before the disciplinary authority including Exts. P-1, P-6 and P-7, the court should not interfere with the said findings.

5. There can be no dispute over the proposition that the court in exercise of its powers of judicial review cannot re-appreciate the evidence adduced during the enquiry and substitute its own view for that of the disciplinary authority. It is also true that since the railway ticket Nos as indicated in the LTC bill submitted by the Petitioner are not disputed by the Petitioner in his written statement of defence, the production of the LTC bill was not absolutely necessary in the enquiry to establish the charge. It also appears from the impugned order dated 11.8.93 that the same was passed by the disciplinary authority after considering the representation dated 9.8.91 of the Petitioner. Hence, the only question for consideration in this case is whether the impugned order dated 11.8.93 is liable to be quashed for violation of principles of natural justice.

6. The Second article of charge against the Petitioner was that he had not actually undertaken the journey from Dharmanagar to Delhi and back on 2.8.84 and 10.8.84 and according to disciplinary authority the said charge was established by the letters of the railway authorities at Dharmanagar, Delhi and New Delhi which were marked as Exts P-1, P-6 and P-7 by the Inquiring Authority to the effect that the railway ticket Nos claimed to have been purchased by the Petitioner for the said journey have not been actually issued by the railway authorities. The inquiring authority did not take into consideration Ext-P-1 as he was of the view that the ticket Nos mentioned in Ext P-1 could only be verified by reference to the LTC bill, but the said LTC bill was not produced before him by the disciplinary authority. Regarding Exts P-6 and P-7, the inquiring Authority was of the view that Principles of natural justice would be violated, if the letters Exts P-6 and P-7, were relied upon. These reasons given by the Inquiring Authority for not placing any reliance on Exts-P-1, P-6 and P-7 did not find favour with the disciplinary authority who was of the view that the Exts P-1, P-6 and P-7 being public documents are relevant u/s 35 of the Indian Evidence Act, 1872, and that in any case strict standards of proof as applicable to criminal cases were not applicable to enquiries in a disciplinary proceeding. The question that arises for decision in this case, therefore, is whether Exts.-P-1, P-6 and P-7 could be relied on by the disciplinary authority for holding the Petitioner guilty of the second article of charge against him.

7. On scrutiny of the records of the enquiry produced before the court, it appears that alongwith the Memorandum dated 2.5.89, the disciplinary authority furnished a list of documents by which two articles of charges were proposed to be sustained and in respect of the second article of charge, letter dated 27.10.86 from the Station Superintendent (Coaching) Dharmanagar Railway Station, letter dated 6.6.87 from the Chief Booking Supervisor, Northern Railways, New Delhi

railway Station and the letter dated 30.9.86 from the Chief Booking Supervisor, Northern Railways, Delhi Railway Junction, received by the Tripura Public Service Commission were included in the said list of documents. No list of witnesses, however, were appended to the Memorandum dated 2.5.89 of the disciplinary authority. Subsequently, by a corrigendum dated 15.6.90, a list of witnesses by whom the articles of charges were proposed to be sustained was furnished to the Petitioner as well as the Inquiring Authority and in the said list of witnesses, the Chief Booking Supervisor, Northern Railways, New Delhi Railway Station, the Chief Booking Supervisor, Northern Railways, Delhi Railway Junction, and the Station Superintendent (coaching), Dharmanagar Railway Station, were included. In the enquiry, however, the Chief Booking Supervisor, Northern Railways, New Delhi Railway Station and the Chief Booking Supervisor, Northern Railways, Delhi Railway Junction, did not appear. The result was that no one appeared before the Inquiring Authority to vouch-safe with regard to the truth of the contents of the letter dated 30.9.86 of the Chief Booking Supervisor, Northern Railways, Delhi Railway Junction and the letter dated 6.6.87 of the Chief Booking Supervisor, Northern Railways, New Delhi Railway Station, to the Tripura Public Service Commission yet they were marked as Exts-P-6 and P-7.

8. The position is in no way different in the case of Ext-P-1, Ext-P-1 is a communication made by the Station Superintendent (Coaching) Dharmanagar Railway Station, to the Under Secretary to the Tripura Public Service Commission on 27.10.86 during the preliminary enquiry and in the said communication, the Station Superintendent (Coaching), Dharmanagar Railway Station, has stated that the tickets as claimed to have been purchased by the Petitioner for his journey to Delhi on 2.8.84 were not sold. But it appears from the records of the enquiry that the said station Superintendent (Coaching) Dharmanagar Railway Station, Shri N K Das who made the statements in Ext P-1 did not appear as witness before the court and instead one Shri J Chakravorty, Station Superintendent (Coaching Dharmanagar Railway Station, appeared as witness and was examined as P. W. -3 and in his evidence he only stated that he knew the signature of Shri N K Das who had written the letter dated 27.10.86, but he has not stated that he himself verified the official records of the railways and found that the tickets were not actually issued to the Petitioner as claimed by him. The deposition of Shri J Chakravorty, P.W. -3, is extracted herein below.

I was posted as Station Superintendent (Coaching) Dharmanagar Railway Station since 15.12.87. Previous Shri N K Das was in the charge of the said post. I know the signature of Shri N K Das. The letter dated 27.12.86 was issued by Shri Das. This is the said letter and this is the signature of Shri N K Das. The letter is marked as Ex-P-1 and the signature is marked as Ex-P-1/1.

Cross-examination

Nil.(The A.O. submitted that his helper is ill and he cannot cross-examine the witness).

9. In the case of *State of Mysore Vs. S.S. Makapur*, the Supreme Court, however, held that the Tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict Rules of evidence and unlike courts they can obtain all information material for the points under enquiry from all sources and through all channels, without being fettered by Rules and procedure which govern proceedings in court. But in the said decision the Supreme Court made it clear that the statements of a witness collected in course of the preliminary enquiry prior to the disciplinary proceedings can also be utilized in the disciplinary proceedings so long as the persons against whom the enquiry is being conducted in the disciplinary proceedings has been given an opportunity to cross-examine the said witness in accordance with the principles of natural justice. This position of law has been reiterated by the Supreme Court in the case of *State of Uttar Pradesh Vs. Om Prakash Gupta*, which was a case of an enquiry under Article 311 of the Constitution. In the instant case, the three witnesses who had furnished the information in Exts-P-1, P-6 and P-7 to the effect that the Petitioner had not purchased tickets under which he had claimed to have undertaken the journey from Dharmanagar to Delhi and back were not available in the enquiry to be cross-examined by the Petitioner and hence their letters collected in the preliminary enquiry prior to the disciplinary proceedings could not be utilized. The result is that the findings of the disciplinary authority on the basis of Exts P-1, P-6 and P-7 that the second article of charge against the Petitioner was established is vitiated by principles of natural justice.

10. The reliance placed by the disciplinary authority on Section 35 of the Indian Evidence Act, 1872, for utilizing ExtsP-1, P-6 and P-7 is misconceived in law, Section 35 of the Indian Evidence Act, 1872, is quoted here in below:

35. Relevancy of entry in public record, made in performance of duty, An entry in any public or other official book, registered or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

A reading of the aforesaid Section 35 of the Indian Evidence Act, 1872, would make it clear that the said Section applies to entries in any public or other official book, register or record and does not apply to a letter issued by a public servant on the basis of entries in any public or other official book, register or record. As per the decision of the Supreme Court in the cases cited above, the said statements of the three persons contained in letters Exts P-1, P-6 and P-7 could be relied on by the disciplinary authority only if the Petitioner had the opportunity to cross-examine the persons who have made the said statements. The impugned order of punishment passed by the disciplinary authority is, therefore vitiated by principles of natural justice and is liable to be quashed.

11. Mr. U.B. Saha, learned Counsel for the Respondents, submitted that under Rule 24 of the CCS (CCA) Rules, 1965, an appeal is provided against the

impugned order but the Petitioner has not availed the said remedy by way of an appeal. Since the present writ petition was admitted on 17.2.94 and has remained pending before this Court for more than four years and since the impugned order of punishment is vitiated for violation of principles of natural justice, I am not inclined to dismiss the writ petition on the ground that the Petitioner has not availed the alternative remedy by way of an appeal as provided under the Rules.

12. In the result, the impugned orders dated 11.8.93 and 16.8.93 of the disciplinary authority are quashed and the disciplinary authority will now pass fresh orders in accordance with law. However, considering the facts and circumstances of the case, the parties shall bear their own costs.