

(2014) 11 TP CK 0029

In the Tripura High Court

Case No : Writ Petition (Civil) No. 66 of 2006

Shib Chandra Debbarma Vs The State of Tripura

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2014) 11 TP CK 0029

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : D. Bhattacharji, Advocate for the Appellant

Judgement

S.C. Das, J.—By filing this writ petition, the petitioner prayed for quashing order dated 09.06.2006 (Annexure-E to the writ petition) passed by the disciplinary authority in a departmental proceeding drawn against him.

2. Heard learned counsel, Mr. D. Bhattacharji for the petitioner. Even after repeated calls nobody appeared on behalf of the State-respondents.

3. Since this is a writ petition of the year 2006, I think it should be disposed on merit hearing the petitioner side as the State-respondents opted not to remain present in the hearing.

4. The disciplinary proceeding was initiated by Memorandum No. 11(56)-GA(AR)/2000/1961-63 dated 22.11.2001 (Annexure-A to the writ petition) by the disciplinary authority, i.e. Government of Tripura on the following article of charges:-

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SC DEBBARMA, FORMER SUPERINTENDING ENGINEER, 2ND PWD CIRCLE, AGARTALA

ARTICLE-I

During the period when the said Shri Debbarma was functioning as Superintending Engineer, 2nd PWD Circle, Agartala, works for construction of multi-storied residential complexes at Malanchanagar, Agartala were awarded to Shri Sudhindra Saha, Contractor, but these works were not completed within the

stipulated time as indicated in the Agreements bearing No. 28/SE-II/95-96 and No. 29/SE-II/95-96. The completion of the works was delayed by more than 4 years. But the said Shri Debbarma failed to take appropriate steps for completion of these works within stipulated time and thereby the Government was made to suffer financial loss.

By the aforesaid conduct the said Shri Debbarma failed to maintain absolute integrity in discharge of his assigned responsibilities and thus violated provisions of the TCS(Conduct) Rules, 1988.

ARTICLE-II

During the period when the said Shri Debbarma was functioning as Superintending Engineer, 2nd PWD Circle, Agartala, Shri Sudhindra Chandra Saha, Contractor was awarded works for construction of multi-storied residential complexes at Malanchanagar, Agartala and he under contractual obligation to complete construction of two sets of multistoried buildings within 13 January 1997 as per Agreements bearing number 28/SE-II/95-96 and 29/SE-II/95-96. But he failed to do so. Completion of both the works awarded to him was delayed. These were completed after about 4 years 10 months. Because of this delay, the Contractor had to be financially compensated. But the said Shri Debbarma failed to take appropriate steps for completion of these works within stipulated time and thereby the Government was made to suffer financial loss.

By the aforesaid conduct the said Shri Debbarma failed to maintain absolute integrity in discharge of his assigned responsibilities and thus violated provisions of the TCS(Conduct) Rules, 1988.

ARTICLE-III

During the period when the said Shri Debbarma was functioning as Superintending Engineer, 2nd PWD Circle, Agartala, Shri Sudhindra Chandra Saha, Contractor was awarded works for construction of multi-storied residential complexes at Malanchanagar, Agartala and he under contractual obligation to complete construction of two sets of multistoried buildings within 13 January 1997 as per Agreements bearing number 28/SE-II/95-96 and 29/SE-II/95-96. But he failed to do so. Completion of both the works awarded to him was delayed. These were completed after about 4 years 10 months.

The Assistant Engineer and Executive Engineer concerned recommended that the whole period of delay might be split into two parts and extension granted to the Contractor with levy and without levy vide Memo. No. F.20(212)/SE-II/606 dated 15 May, 2001 and No. F.2(212)/SE-DIV-III/674 dated 16 May, 2001.

Both the Assistant Engineer and Executive Engineer concerned agreed that the total periods claimed by the Contractor should not be extended without levy and they were satisfied that a substantial part of delay was attributable to the Contractor for which he cannot be compensated under the Agreements.

But the final orders extending time were issued by the said Shri Debbarma indicating "Under the circumstances explained by the Executive Engineer, Agartala Division No. -III, extension of time up to 20 June 2000 is hereby granted for completion of work without levy of compensation." Although in reality, the Executive Engineer concerned did not recommend extension of time for the full period asked prayed by the Contractor without levy. Thus the order issued by the said Shri Debbarma did not reflect the factual position.

The said Shri Debbarma disagreed with the Assistant & Executive Engineers concerned about the part of the delay in completing the works that is attributable to the Contractor without any valid reason or any valid documents and gave the benefit to the Contractor overlooking the interest of the Government. While doing so, the SE 2nd Circle ignored the recommendations of the concerned engineering officers with sufficient reasonable justification. It is an act of serious indiscretion and a definite motive is discernible.

By the aforesaid conduct the said Shri Debbarma failed to maintain absolute integrity in discharge of his assigned responsibilities and thus violated provisions of the TCS(Conduct) Rules, 1988.

ARTICLE-IV

During the period when the said Shri Debbarma was functioning as Superintending Engineer, 2nd PWD Circle, Agartala, allowed extension of time to Shri Sudhindra Chandra Saha, Contractor arbitrarily ignoring recommendations of the concerned Assistant Engineer and Executive Engineer and thereby created a scope for the Contractor to obtain approximately Rs. 352000.00 lakhs and approximately Rs. 253000.00 lakhs against the aforementioned works. The additional amounts were payable to the Contractor because of the orders passed in his favour extending time without levy by the said Shri Debbarma was functioning as Superintending Engineer, 2nd PWD Circle, Agartala.

By the aforesaid conduct the said Shri Debbarma failed to maintain absolute integrity in discharge of his assigned responsibilities and thus violated provisions of the TCS(Conduct) Rules, 1988."

5. The Special Commissioner, Departmental Inquiries was appointed as the Inquiring Authority and after having the inquiry the Special Commissioner, Departmental Inquiries submitted his report on 31.10.2002 holding:-

"8. FINAL DECISION

From the above facts and circumstances I do not find that the A.O. has acted negligently. It is not found that the extension of time without levy was unjustified and as such I find and hold that the prosecution has failed to establish the charges against the A.O. Sri Shib Chandra Debbarma."

6. The disciplinary authority did not agree with the finding of the inquiring authority and vide Memo dated 02.09.2003(Annexure-C to the writ petition) the

petitioner was asked to furnish his representation, if any, regarding the finding of the inquiring authority and the disagreement of the disciplinary authority in respect to the finding of the inquiring authority. In response thereto, the petitioner submitted his show cause reply (Annexure-D to the writ petition) and considering that reply the disciplinary authority vide impugned order dated 09.06.2006 imposed a major penalty of reduction of his pay in his existing time scale of pay by two stages for a period of two years with effect from the next date of his increment.

7. Learned counsel, Mr. Bhattacharji appearing for the petitioner has submitted that the inquiring authority was a Judicial Officer appointed as the Special Commissioner of Departmental Inquiries by the State Government and he has conducted the inquiry in respect of the charges framed against the petitioner and after collecting evidence of both side he has given his finding that during the impugned period the petitioner was holding the charge of Superintending Engineer only for the period from 01.06.2000 to 04.09.2001. Before him during the period of execution of the work five Superintending Engineers were in-charge of the works and, therefore, coupled with other reasons as stated in the inquiry report, the inquiring authority has held that the charges framed against the petitioner were not proved. It is also submitted by Mr. Bhattacharji, learned counsel that the disciplinary authority while disagreeing with the report of the inquiring authority sent the records to the Tripura Public Service Commission for its opinion and the Public Service Commission did not agree with the proposal of the disciplinary authority twice and even thereafter the disciplinary authority without assigning any reason inflicted punishment on the petitioner.

8. The respondents in their counter affidavit contended that based on the evidence and materials collected during inquiry, the disciplinary authority was satisfied that the charges framed against the petitioner were sufficiently proved and, therefore, issued notice to the petitioner informing him the disagreement of the disciplinary authority about the inquiry report submitted by the inquiring authority and after affording him reasonable opportunity the punishment was imposed and so, there was nothing wrong in the action taken by the disciplinary authority.

9. There is no doubt that the disciplinary authority has the jurisdiction to disagree with the report of the inquiring authority and the disciplinary authority issued notice to the petitioner and the petitioner submitted his representation in response to the notice. The impugned order dated 09.06.2006 (Annexure-E to the writ petition) passed by the disciplinary authority inflicting punishment on the petitioner shows no reason at all as to why the disciplinary authority disagreed with the finding of the inquiring authority and why the disciplinary authority also disagreed with the advice of the Tripura Public Service Commission. The impugned order dated 09.06.2006 reads as follows:-

"NO.F.11(56)-GA(AR)/2001/1246-1248 GOVERNMENT OF TRIPURA GENERAL ADMINISTRATION (AR) DEPARTMENT

Dated, Agartala, the 9th June, 2006

ORDER

Whereas a disciplinary proceeding under Rule 14 of the CCS(CC&A) Rules, 1965 was drawn up against Sri Shib Charan Debbarma the then Executive Engineer (SE on CDC), 2nd Circle now attached to Office of the Engineer-in-Chief, Water Resources, PWD, Kunjaban, Agartala vide Memo No. F.11(56)-GA(AR)/01/1961-63 dated 22-11-2001 for failure to take appropriate steps for completion of the construction works within the stipulated time and for allowing the Contractor extension of time without levying compensation;

AND

Whereas, Sri Debbarma submitted his defence statement on 5-12-2001 denying the charges leveled against him;

AND

Whereas, Sri P.B. Nath, Special Commissioner of Departmental Inquiries was appointed Inquiry Officer to enquire into the charges framed against Sri Shib Charan Debbarma vide Order No. F.11(56)-GA(AR)/2001/337-340 dated 12-2-2002 and Shri P.B. Nath after conducting enquiry into the charges submitted his findings on 21.11.02. As per findings of the Inquiry Officer, the charges against Shri Debbarma could not be proved. But the Disciplinary Authority after examination of the case records dis-agreed with the findings of the Inquiry Officer;

AND

Whereas, Shri Debbarma was given an opportunity to submit his written statement, if any against the disagreement of Disciplinary Authority with the findings of the Inquiring Authority vide Memo.F.11(56)-GA(AR)/2001/2187 dated 2-9-03;

AND

Whereas, Shri Debbarma has submitted his representation on dated 18-10-03 in response to the Memo. Dated 2-9-03;

AND

Whereas, after careful examination of the representation of Shri Debbarma, it has not been found satisfactory;

AND

Whereas, it was provisionally decided by the Government to impose upon Shri Debbarma a major penalty of reduction of his pay in his existing time scale of pay by 2(two) stages for a period of 2(two) years with effect from the next date of his increment pending advice of the Tripura Public Service Commission(TPSC);

AND

Whereas, the Tripura Public Service Commission(TPSC) did not agree to the proposal of the Government vide letter No. F.EX.1/49(50)-TPSC/2005 dated 3-1-06(copy enclosed) and thereafter, the Disciplinary Authority again referred the matter to the Tripura Public Service Commission(TPSC) for reconsideration of their earlier decision. But the Tripura Public Service Commission stick to their earlier views and left the matter to be decided by the Disciplinary Authority vide their letter No. F.EX.1/49(50)-TPSC/2006 dated 18-4-06(copy enclosed).

Now, after a careful consideration of all aspects of the case, the Governor is pleased to impose upon Sri Shib Charan Debbarma, Ex. Executive Engineer(now SE on CDC) a major penalty of reduction of his pay in his existing time scale of pay by 2(two) stages for a period of 2(two) years with effect from the next date of his increment. Shri Debbarma(AO) will not earn any increment of pay during the period of reduction and on expiry of this period, the reduction will not have the effect of postponing his future increments of pay.

By order of the Governor, Sd/- 9.6.06 (M.L. Das) Under Secretary to the Government of Tripura."

10. The disciplinary authority was supposed to assign reason considering the evidence collected during inquiry and further considering the inquiry report as well as the show cause reply submitted by the petitioner, but nothing has been discussed in the impugned order. The impugned order is, therefore, shocking to the judicial conscience and, therefore, cannot sustain in law and fact. No doubt power of judicial review in respect of a domestic inquiry is very limited, but where the power of the domestic tribunal is exercised arbitrarily and capriciously without assigning any reason, the Court has definitely got the power to interfere in it.

11. The disciplinary authority since did not agree with the report of the inquiring authority and the advice of the Public Service Commission, it was supposed to assign cogent reason for its disagreement with the report of the inquiring authority and the advice of the Public Service Commission. Since that has not been done, I find no other option but to interfere with the order passed by the disciplinary authority.

12. Accordingly, the impugned order dated 09.06.2006 (Annexure-E to the writ petition) passed by the disciplinary authority inflicting punishment on the petitioner is set aside and quashed. It is submitted by learned counsel, Mr. Bhattacharji that the petitioner has retired in the mean time. Therefore, it is ordered that all the service benefits which were due to the petitioner, but has been withheld or not given because of this disciplinary proceeding, shall be given to the petitioner within six months from today.

13. Accordingly, the writ petition stands disposed of. No costs.