
(2012) 06 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No. 4642 of 2011

Shri Anil Barman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 1 GLD 180 : (2013) 2 GLT 1129

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : U.K. Nair, for the Appellant; U.K. Das, SC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. U.K. Nair, learned counsel for the petitioner as well as Mr. U.K. Das, learned SC, Social Welfare Department (SWD). The petitioner is aggrieved by order dated 09.09.2011 (Annexure-13) issued by the Govt. of Assam in the SWD under the signature of the Secretary. By the said order, the petitioner was placed under suspension pending drawal of the departmental proceeding. The ground on which the petitioner has been placed under suspension is the action in modifying the accounts payee cheques to bearer cheques without the approval of the Deputy Commissioner, Sonitpur who was one of the signatories of the said accounts payee cheques. The total number of the cheques modified in that manner is 546 and the amount involved is 78,54,200/-. For a ready reference the impugned notification dated 09.09.2011 is quoted below:

Government of Assam Social Welfare Department Dispur Orders by The Governor
Notification

Dated Dispur the 9th September, 2011

No. SWD. 378/2011/: Whereas it appears from the report of the Deputy Commissioner, Sonitpur, as communicated vide letter No. SCM. 24/2011/612,

dated 06.09.2011, that Sri Anil Barman, District Social Welfare Officer, Sonitpur unauthorisedly modified many cheques from crossed cheques to bearer cheques unilaterally without approval by Deputy Commissioner, Sonitpur although both the Deputy Commissioner, Sonitpur and District Social Welfare Officer, Sonitpur were joint signatories.

Whereas, it appears that since 5.06.2010 as many as 546 Nos. of crossed cheques amounting to Rs. 78,54,2000/-(Rupees Seventy Eight Lakhs Fifty Four Thousand & Two hundred) only were modified to bearer cheques unilaterally by Sri Anil Barman, DSWO, Sonitpur.

Whereas all the cheques on being modified to bearer cheques were asked to be paid to one, Sri D. Das. & whose signature was attested by the Sri Anil Barman, DSWO, Sonitpur, himself.

The act of Sri Anil Barman, DSWO, Sonitpur converting crossed cheques to bearer cheques without the knowledge of the Deputy Commissioner, Sonitpur tantamount to serious irregularities and an act unbecoming of a responsible Govt. Officer.

Now, therefore the Governor of Assam decides to initiate departmental proceeding against the said officer under Assam Service (Disciplinary & Appeal) Rules, 1964.

Pending drawal of Departmental Proceeding against Shri Anil Barman, DSWO, Sonitpur, he is placed under suspension with immediate effect and until further order under provision of Rule 6(1) of the Assam Service (Disciplinary & Appeal) Rules, 1964 as amended.

During the period of his suspension, he will not leave headquarter without prior permission of the concerned authority. He will be entitled to get his subsistence allowance as per rules. By order and in the name of Governor of Assam

Sd/- Secretary to the Govt. of Assam Social Welfare Department, Dispur

2. This Court while entertaining the writ petition by order dated 13.09.2011 suspended the impugned order dated 09.09.2011 and thus, the said order could not be given effect to. In the meantime, the petitioner has been served with charge sheet dated 01.10.2011 with the following charges:

You are hereby required to show cause under Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964 read with Article 311 of the Constitution of India, why any of the penalties prescribed in the Rule 7 of the aforesaid Rules, should not be inflicted on you on the following charges based on the statement of allegation attached herewith.

That while you were working as DSWO, Sonitpur, it is reported by the Deputy Commissioner, Sonitpur vide letter No. SCM. 24/2011/612, dated 06.09.2011 that you unauthorisedly modified the original crossed cheques to bearer cheques unilaterally without approval of the Deputy Commissioner, Sonitpur although

both the Deputy Commissioner and District Social Welfare Officer, Sonitpur were joint signatories" These cheques were meant for under various schemes of Social Welfare Department namely Baidew, Nabow, Nabureri. Jiban Jyoti Bima Achoni under CM's special package 2010-11 which were issued to the beneficiaries under joint signature of DSWO and Deputy Commissioner from the A/c No. CD626 of AGBB, Tezpur Branch. As reported by the Deputy Commissioner, Sonitpur you had actually modified many cheques from crossed cheques to bearer cheques and since 05.06.2011 as many as 546 Nos. of crossed cheques amounting to Rs. 78,54,200/-(Rupees Seventy Eight Lakhs Fifty four thousand and two hundred) only were modified to bearer cheques unilaterally by you. Further, all cheques were asked to be paid to one, Shri D. Das and whose signature was attested by you. Regarding this modification of cheques you did not take any approval from the Deputy Commissioner, Sonitpur.

Your such act of converting crossed cheques to bearer cheques without the knowledge of the Deputy Commissioner, Sonitpur tantamount to serious irregularities and an act unbecoming on the part of a responsible Govt. Officer vested with DDO's power.

You are therefore, charged with gross irregularities in handling of Govt. fund and unauthorised application of Govt. machinery without following rules and regulations and as well as by adopting corrupt practices to fulfill your personal interest.

List of documents and witnesses proposed to be relied upon for providing those charges and allegations are also enclosed.

You should submit your written statement in defence within (ten) days from the date of receipt of this communication provided you don't intend to inspect the documents which have relevance with the issues under inquiry. In case you intend to inspect those documents you should write to the undersigned for the same within 7 (seven) days from the date of receipt of this communication and submit your explanation thereafter within 10 (ten) days from the date of completion of the inspection.

Your written statement stating whether, you desire to be heard in person should be submitted to the undersigned within the period specified above.

If the disciplinary authority decide to appoint an Enquiry Officer to enquire into the charges, you shall be allowed in present your case, if you so desire, with the assistant of any other Govt. servant approved by the disciplinary, authority but will not be allowed to engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority to present the case in support of the charges before the inquiring authority is a legal practitioner or unless the disciplinary authority so permits.

3. Mr. Nair, learned counsel for the petitioner submits that the mistake on the part of the petitioner in converting the accounts payee cheques to bearer

cheques is without any defalcation of the amount and the petitioner could not have been placed under suspension for such unintentional act. On the other hand, Mr. U.K. Das, learned SC, SWD submits that the petitioner could not have converted the accounts payee cheques to bearer cheques without the approval the competent authority, more particularly the Deputy Commissioner, Tezpur who was one of the signatories of the said accounts payee cheques.

4. The respondents namely the respondent No. 2 and 4, have filed individual affidavits. In the affidavit filed by the said two respondents it has been contended that the petitioner being not authorised to convert the accounts payee cheques to bearer cheques, could not have done so without the knowledge of the Deputy Commissioner of the District who was one of the signatories of the said cheques. As noted above, the total number of cheques involved is 546.

5. In paragraph-4 of the counter affidavit filed by the respondent No. 4, it has been stated that the Govt. never delegated the power to the petitioner (District Social Welfare Officer) or any person to unilaterally or illegally convert the accounts payee cheques jointly signed by two, without the knowledge of the other signatory. It will be pertinent to mention here that the petitioner by converting the accounts payee cheques to bearer cheques authorised one of the office staff to receive the payment on behalf of all the beneficiaries.

6. In the counter affidavit filed by the respondent No. 4, it has further been stated that the Bank which has allowed encashment/ later on admitted irregularities by its letter dated 12.09.2011. The Bank has also issued show cause notice to one Md. Amanullah Ahmed, Sr. Manager of Assam Gramin Vikash Bank, Tezpur Branch who has allowed the encashment on the basis of the converted bearer cheques from accounts payee cheques. It has also been stated that the petitioner on earlier occasion also had done such act in respect of some other cheques. In this connection, the authority has collected photo copies of the cheques from the Bank. It has been stated that in the affidavit that same has revealed manipulation of many cheques of Rs. 25,000/- each given to the beneficiaries under Chief Minister's Jivan Jyoti Achani. The said cheques were also signed jointly by the Deputy Commissioner and the District Social Welfare Officer, Tezpur, i.e. the petitioner.

7. From the above, what is seen is that the petitioner not only converted the accounts payee cheques to bearer cheques that were issue to the beneficiaries, but he had also done the same act on earlier occasion also. However, learned counsel for the petitioner submits that such fact having not formed part of the allegations, same cannot be decisive towards the decision in respect of legality or otherwise of the impugned order of suspension.

8. The petitioner in support of his defence that there was no mala fide intention in converting the accounts payee cheques to bearer cheques, has referred to Annexures-5, 6, 7, 8, 9 and 10 letters dated 10.01.2011, 26.01.2011, 03.02.2011, 03.06.2011, 5.06.2011 and 10.06.2011 respectively. All the said

letters are written by the political bosses like Ex-MP, Minister, MLA, Deputy Speaker and also by some of the beneficiaries. The petitioner was urged upon to make provision for encashment of the cheques without being deposited in the Bank. It was contended that since the beneficiaries are poor people, it will be convenient to get the cheques encashed without being deposited in the Bank. Learned counsel for the petitioner submits that to facilitate the easy access to the amount by the beneficiaries, the petitioner converted the accounts payee cheques to bearer cheques.

9. The aforesaid plea of the petitioner is not at all tenable. Apart from the fact that the accounts payee cheques had been signed by the two authorities, i.e. the petitioner (DSWO) and the Deputy Commissioner of the District, it is an admitted position that the accounts payee cheques were converted to bearer cheques by the petitioner without the knowledge of the other signatory, namely the Deputy Commissioner, Tezpur. Even if the aforesaid request had been made to the petitioner and the petitioner felt that it would be convenient for the beneficiaries to get bearer cheques, it was Incumbent on his part to get the approval from the competent authority. Not to speak of obtaining such approval, he even did not inform the other signatory of the cheques numbering 546. If such action on the part of the petitioner has been viewed seriously towards placing him under suspension to facilitate the departmental proceeding, no fault can be attributed to the respondents.

10. Mr. Das, learned SC, SWD has drawn my attention to Annexure-4 minutes of the meeting of the District Level Selection Committee held on 10.12.2010 which was attended to by the petitioner alongwith other members. The petitioner is a signatory of the said minutes of the meeting in which it was resolved inter alia that the beneficiaries would be paid accounts payee cheques and that the same would be distributed ceremonially in presence of Minister as well as public representatives. It was only thereafter the petition took recourse to the above action plan.

11. In view of the above, I have no hesitation to hold that the impugned order dated 09.09.2011 (Annexure-13) is fully justified and there is no question to revoke the same. The disciplinary proceeding initiated against the petitioner shall be completed by the disciplinary authority as early as possible. The writ petition is dismissed, without, however, any order as to costs. Since a departmental proceeding is pending against the petitioner, any of the observations made in this order dealing with the impugned order of suspension shall have no bearing in the said proceeding.