

(1997) 01 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 71 of 1994

Shyamal Bhattacharjee

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (1998) 3 GLT 278 : (1998) 1 LLJ 399

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Deb and A. De, for the Appellant; U.B. Saha, G.A., for the Respondent

Final Decision : Allowed

Judgement

N.G. Das, J.—By means of this application filed under Article 226 of the Constitution of India the petitioner who is Sub-Inspector of Police challenged the legality and validity of the order of Superintendent of Police (West) dated July 22, 1993 contained in Annexure-13 whereby the petitioner was dismissed from service with effect from the afternoon of July 23, 1993 and also the order of the appellate authority dated December 30, 1993 contained in Annexure-15. affirming the aforesaid order of dismissal.

2. I have heard Mr. S. Deb, the learned senior counsel appearing on behalf of the petitioner and Mr. U.B. Sana, learned Government Advocate appearing on behalf of the respondents.

3. The case of the petitioner, shortly put, is that while serving as O.C., Ganganagar Police Station under South Tripura District he was suddenly transferred to the Office of the Superintendent of Police, West Tripura Dist. and thereafter a departmental proceeding was started in respect of two charges which are as follows:

"Statement of charge framed against S.I. Shyamal Bhattacharjee of un-armed

Branch, South Tripura District now posted at West Tripura District, vide D. P. No. 1 /91 dated January 17, 1991

Article-1

Annexure-I

S.I. Shyamal Bhattacharjee, U/B, South Tripura District, now posted at West Tripura District is charged for misconduct in (hat while he was posted at Ganga Nagar P.S. w.e.f. December 27, 1989 to Septeme-ber 26, 1990, he visited the P.P.Shop of one Sri Batendra Tripura, an authorised dealer of Bhubananda Roazapara P.P. Shop, located at Pokri on May 26, 1990 at about 13.00/14.00 hrs. and took away 100kgs of C.B. Rice from the said P.P. Shop and for which he did make any payment of the aforesaid rice. Moreover, he collected an amount of Rs. 1000/- from the dealer Batendra Tripura by corrupt means.

Annexure-II

Statement of imputation upon which the Charge of Article Framed Against S.I. Shyamal Bhattacharjee of Unarmed Branch, South Tripura District now posted at West Tripura District.

From the report of C.I. Gandacherra, South Tripura District dated September 1, 1990 it transpired that S.I. Shyamal Bhattacharjee, U/B South Tripura District, now posted at West Tripura District while he was posted at Ganganagar P.S.w.e.f. December 27, 1989 to September 26, 1990 on May 26, 1990 about 13.00/14.00hrs. he visited the F. P. Shops of Batendra Tripura of Jatindra Roazapara, an authorised dealer of Bhubananda the Roazapara located at pokri in plain clothes Shyamal Bhattacharjee demanded 100.Kgs. of C.B.Rice and Rs. 2000/- from the dealer Sri Batendra Tripura on a plea that the dealer is engaged in smuggling activities and if the dealer tailed to fulfil the demand he (dealer) would be for-warded to Amarpur Court. Out of fear Sri Batendra Tripura, Dealer, delivered 100 Kgs. of C.B.Rice and cash worth Rs. 1000/-S.T.Shyamal Bhattacharjee loaded those C. B.Rice in a jeep bearing No. TRT-11931 (which was attached to Ganganagar P.S.On May 26, 1990) without making any payment for the rice."

4. The aforesaid charges were communicated to the petitioner by a memorandum dated June 5, 1991 (Annexure-2) and he was asked to submit his written statement within 10 days stating specifically as to whether he admits or denies the charges. In response to this memorandum the petitioner submitted a written statement denying the aforesaid charges and also requested the Superintendent of Police (Reserve), Tripura (West) Agartala to furnish him copies of the following documents, namely, (i) copy of Stock Register of Bhubananda Roazapara F.P. Shop dated May 26, 1990.

(ii) copy of the Cash of Bhubananda Roazapara P.P. Shop dated May 26, 1990.
(iii) copy of the Sale Register of Bhubananda Roazapara P.P. shop dated May 26, 1990 and (iv) copy of report, if any, submitted by Batendra Tripura against him.

He also prayed for the copies of the following documents, namely, (i) copy of complete case record of Ganganagar P.S. Case No. 1(2) 90, (ii) copy of report/statement of Shri Rebat Biswas, C.I., Gandacherra (iii) Copy of report of Shri J.M. Deb Roy, S.D.P.O. Amarpur, (iv) copy of report of B.K.Neg, C.I., Amarpur and (v) copy of report of B.B. Debnath, Crime Reader (South) to enable him of furnish his written statement and also prayed for appointing S.I. Satish Bhattacharjee as his Defence Assistant. But it is contended in the writ petition that even though the petitioner prayed for furnishing him copies of the aforesaid documents, the Inquiring Officer without furnishing him the copies of the aforesaid documents started enquiry and as such the petitioner was deprived of reasonable opportunity to cross-examine the P.Ws effectively. Apart from that during enquiry proceedings the petitioner also submitted an application on January 14, 1993 to call for the log book of the vehicle that was engaged at the Amarpur P.S. at the relevant time. But the Inquiring Officer did not make available the Log Book of the vehicle. Moreover the Disciplinary Authority awarded the provisional punishment without furnishing the enquiry report to him. The petitioner has, therefore, alleged that no reasonable opportunity was given to him for defending his case and that for non production of the relevant Log Book he was also deprived of the opportunity to lead his own defence. The petitioner has, therefore, prayed for quashing the entire proceeding and the impugned orders.

5. The respondents resisted the writ petition by filing an affidavit-in-opposition wherein all the material averments of the writ petition were denied and it was further contended that the Respondent No. 3 passed necessary order requiring the concerned officer under the South Tripura District ie. Ganducherra P.S., S.D. P.O, Amarpur, Circle Inspector of Police, Amarpur and Crime Reader (South) to allow the petitioner to see the documents which he prayed for. Therefore, there is no-scope to say that principles of natural justice were denied. As regards production of Log Book it was contended that the Inquiring Officer directed the petitioner to produce the said Log Book. It was further contended that along with the provisional order i of punishment the report of Inquiring Officer was sent to the petitioner. The petitioner is therefore, not entitled to take the stand that the enquiry report was not supplied to him. The respondents have, therefore, prayed for dismiss-ing the writ petition.

6. It is an admitted fact that in response to the memorandum dated June 5, 1991 whereby the charges were communicated to the petitioner, the petitioner by his petition contained in Annexure-3 requested Superintendent of Police (Reserve), Tripura (West) for furnishing him with the copies of the documents mentioned therein to enable him to submit his written statement of defence.

7. Mr. S. Deb, the learned senior counsel appearing on behalf of the petitioner has contended that even after submission of this Annexure-3 petition the petitioner submitted another application on July 13, 1992 contained in Annexure-7 for furnishing him with the copies of all the documents before

starting the enquiry. But the Inquiring Officer Mr. T.B.Roy started the enquiry i.e. recording of the evidence of witnesses without furnishing the copies of the documents mentioned in the application of the petitioner contained in Annexure-3. Mr. U.B. Saha, learned Government Advocate appearing on behalf of the respondents has, on the other hand, contended that the documents which the petitioner prayed for were not relied on by the Inquiring Officer and as such there is no scope to say that the petitioner was prejudiced. In support of his contention learned Government Advocate has placed reliance upon a decision of the Delhi High Court rendered in the case of Madan Lal Sethee, v. The Union of India, Ministry of Defence and Ors., reported in 1979 (3) SLR 93. In this decision the learned Judge made the observation under para 22 of his judgment that it was not shown how non-supply of the documents adversely affected the petitioner's defence. It may, however, be noted here that by this judgment also learned Judge struck down the impugned order and remanded the case back to the appellate authority for reconsideration on merits in accordance with law. But Mr. Deb has contended that the charge No. II will clearly indicate that the petitioner carried the rice in question in a Jeep bearing No. TRT-1193. The petitioner by his application wanted the Log Book of this vehicle to prove that such a vehicle did not go to the Fair Price Shop of Batendra Tripura on the date and time as mentioned in the charge.

8. I am, therefore, of opinion that not only the Log Book of this vehicle was very much relevant but also it was necessary to examine the driver of the vehicle. But admittedly neither the Log Book was made available to the petitioner nor the driver of the vehicle was examined in this case. In response to the petitioner's letter dated July 13, 1992 the Inquiring Officer gave the reply by his letter dated July 14, 1992 contained in Annexure-8. The letter contained in Annexure-8 may be quoted as under;

"To

SI Shyamal Bhattacharjee, (Delinquent),

C/o. City Control.

Sub: Supply of relevant records/ documents D.P.N0.1/91&2/91

Ref; Your letter No. nil dated July 13, 1992 and my previous letters Nos. nil dated May 6, 1992 and July 8, 1992.

It is reiterated that it is the liability of the delinquent to have access towards those documents/records relevant for the purpose of the defence. The undersigned as Enquiry Officer is in no way liable to supply those as per the existing rules and regulations referred to in my previous letters. Please treat this letter as a matter of last correspondence from the side of the undersigned on this subject and no further correspondence on this subject will be entertained by the undersigned.

The undersigned will proceed as per rules and regulations on the conduct of the

enquiry henceforth.

Sd/Illegible

T.B.Roy

14.7.92

Addl. Superintendent of Police(RL)

E.O.

West Tripura"

9. This letter shows that the Inquiring Officer threw the responsibility on the petitioner as according to him as per rules and regulations he was not liable to supply those documents. Learned Government Advocate, however, could not produce me the relevant rules and regulations to show that there are some rules and regulations which do not cast any responsibility upon the Inquiring Officer to supply the copies of the documents asked for by the petitioner in his defence. In this context the decision of the Supreme Court rendered in the case of Tirok Nath, v. Union of India and Ors., reported in 1967 SLR 759 may be quoted as under;

"Had the copies of the documents been furnished to the appellant he might after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of 2 the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused a prejudice to the appellant in making his defence at the Inquiry. The Inquiry held must, in these circumstances, be regarded as one under Article 311(2). Accordingly we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi."

10. Similarly in the case of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), the Supreme Court held as follows:

"It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination."

11. It would be quite apparent from charge No. II that the petitioner carried the rice bag in Jeep No. TRP - 1193. The Log Book of this vehicle and examination of the driver of this vehicle were undoubtedly very much relevant. It is an admitted fact that this Jeep was attached with Amarapur Police Station at the relevant time.

It was, therefore, incumbent upon the Inquiring Officer to make the Log Book available to the petitioner for effective cross-examination of the witnesses and also for his defence.

12. Apart from this on examination of the file of the departmental proceeding produced before me by learned Government Advocate I find that the Inquiring Officer by his order dated March 20, 1992 was also of the view that the departmental proceeding could not be proceeded with unless the documents sought for by the petitioner were supplied to him. The order of Inquiring Officer dated March 20, 1992 may be quoted as under:

"***** The enquiry in the case cannot be proceeded if the following records are not supplied to the delinquent for his defence presentation.

- (i) Copy of Stock Register of Batendra Roazapara F.P. Shop dated May 26, 1990.
- (ii) Copy of Cash Memo of the said Shop dated May 26, 1990.
- (iii) Copy of Sale Register of the said Ration Shop of the said date &
- (iv) Copy of report, if any, submitted by Shri Batendra Tripura against the delinquent.

Enquiry is pending till receipt from the S.P.,C.S.,"

13. But subsequent orders passed by the Inquiring Officer show that even though he sent some reminders those records were not made available to the petitioner. The order dated May 16, 1992, however, shows that the petitioner was allowed access to those documents. But this order does not indicate where those documents would be available for inspection. The order of Inquiring Officer dated July 14, 1992 shows that on this date the petitioner again submitted an application to supply him the copies of the documents asked for. But instead of furnishing the copies of those documents the Inquiring Officer wrote annexure-8 letter which I have discussed above. It is, therefore, clear that copies of the documents asked for by the petitioner were not furnished to him. On the other hand the order dated July 22, 1992 shows that on that day one witness was examined and that he was examined without furnishing the copies of the documents asked for by the petitioner. Not only this, order dated July 25, 1992 shows that on the day after examination of one witness, namely, Bishnu Marak the case had to be adjourned for a short while as no other witness was available. The Inquiring Officer recorded an order under heading "Note" which shows that at 14.00 hours it was reported to him that some P.Ws, namely, Balendra Tripura, Batendra Tripura and Prasanta Deo were waiting at Ganganagar P.S. and since they were very poor tribal as recorded by the Inquiring Officer, the Inquiring Officer, himself left for Gangangar to bring those witnesses and actually he did so and thereafter recorded the statements of those witnesses in absence of the petitioner. It is not at all understandable to me why the Inquiring Officer took so much interest to go to the Ganganagar P. S. to bring the witnesses and examine them in the absence of the petitioner.

14. In view of this fact the contention of the petitioner that the Inquiring Officer was biased cannot be lightly brushed aside. In my opinion, the Inquiring Officer ought not to have taken the pains to go to Ganganagar P.S. personally to bring the witnesses and examine them in the absence of the petitioner. It is highly illegal and cannot, therefore, be appreciated. It would be quite apparent from the report of the Inquiring Officer that he placed reliance upon the evidence of these witnesses who were examined in the absence of the petitioner. It is true that copies of the statements of those witnesses were subsequently furnished to the petitioner but order sheets of the departmental proceedings do not indicate that those witnesses were again summoned for the purpose of cross-examination. This is, in my opinion, a gross violation of principles of natural justice since the rules of procedure for departmental enquiries require that the evidence on the basis of which the public servant is proposed to be penalised must be given in his presence. He cannot be called upon to rebut the evidence unless the same was examined in his presence.

15. The next contention urged by Mr. Deb is that before awarding the provisional punishment the petitioner was not furnished with the copies of the enquiry report and this is highly illegal in view of the decision of the Supreme Court rendered in the case of Managing Director, ECIL, Hyderabad and Anr., v. B.Karunakur and Ors. reported in 1994 LLJ 162 . Learned Government Advocate has, however, argued that punishment can be awarded without furnishing the enquiry report particularly when the delinquent officer did not ask for the enquiry report. In support of his contention Mr. Saha has placed reliance upon a decision of the Supreme Court rendered in the case of State of U.P., v. Om Prakash Gupta, reported in 1969 SLR 890. I have gone through the judgment and I am of opinion that the facts of that case are quite distinguishable from the present one. In para 9 of the judgment their Lordships observed that all that the Court have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. It is clearly indicated in para 9 of that judgment that a summary of that report was given to the delinquent officer before passing the order of dismissal. In the case of Managing Director, ECIL (supra) the Supreme Court held:

"The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Enquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employees' reply to the Enquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence when the Enquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges

levelled against him. A denial of the Enquiry Officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

16. In another case, namely, Union of India and Ors., v. Mokd. Rarnzan Khan, reported in 1991 LLJ 29 the Supreme Court held

"Disciplinary inquiry is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facts do make the matter quasi-judicial and attract the principles of natural justice. With the Forty Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions, in case his conclusions are kept away from the delinquent officer and: the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected."

17. The impugned order shows that the petitioner was given hearing but what statements the petitioner made have not been discussed. The order of punishment was passed on July 22, 1993 to be effective from July 23, 1993. This is virtually a non-speaking order. The Inquiring Officer made the finding that the story of taking Rs. 1000/- from Batendra Tripura was well corroborated by other witness the petitioner should have been furnished with the copies of the relevant documents, namely, Stock Register, Sale Register, Cash Memos etc. of the Fair Price Shop. Admittedly those copies were not furnished to the petitioner before recording of the evidence of the witnesses. Not only that it is found that the vital witnesses were examined in the absence of the petitioner. The Supreme Court in the case of State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, reported in AIR 1961 SC, 1623 held that the right to cross-examine the witnesses who give evidence against the petitioner was a valuable right and for the effective exercise of such a right the Inquiring Officer has to give relevant documents failing which the enquiry would not be in accordance with the rules of natural justice.

18. For all the infirmities pointed out above, I find the entire proceeding is vitiated and accordingly I quash the proceeding and the impugned order of dismissal from service passed against the petitioner.

19. In the result, I allow the writ petition and hereby quash the impugned order

of dismissal dated July 22, 1993 contained in Annexure-13 and the order of the appellate authority dated December 30, 1993 contained in Annexure-15. The respondents shall reinstate the petitioner in the post which he was holding on the date of order of dismissal from service within a period of four weeks. So far as past wages are concerned it is left with the discretion of the authority as the petitioner did not adduce any cogent evidence to show that he remained unemployed during the period. The parties are left to bear their own costs.