
(2016) 01 TP CK 0008
In the Tripura High Court
Case No : W.P. (C) No. 326 of 2007

Siddhartha Debbarma

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 511

Citation : (2016) 01 TP CK 0008

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : P. Dhar, Advocate, for the Appellant; J. Majumder, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Utpalendu Bikas Saha, J.—1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the order dated 06.12.2005 passed by the Disciplinary Authority imposing upon the petitioner a major penalty of reduction to the lowest of the time scale of pay in the initial grade of Tripura Health Service without a bar to his future promotion for a period of 3 years during which he will not earn any increment, and also the order dated 16.04.2007 whereby, the appeal preferred by the petitioner was treated as a review petition and ultimately the review authority rejected the same confirming the penalty imposed upon him.

2. Heard Mrs. P. Dhar, learned counsel appearing for the petitioner as well as Mr. J. Majumder, learned counsel appearing for the State respondents.

3. The allegations against the petitioner are that the petitioner, a Medical Officer in the Tripura Health Services, while serving as a Medical Officer in the 1st BN. TSR, Gakulnagar, was asked to medically examine newly recruited 514 Nos. of 4th BN-TSR during the month of Sept.1997 and it was found that he declared 13 Nos. of Riflemen medically unfit for the job, who Subsequently, were found

medically fit. It is alleged that they were made unfit intentionally because they did not pay money to the doctor. Thus, he has violated Rule 3 of the Tripura Civil Services(Conduct) Rules 1988. Therefore, a disciplinary proceeding was drawn against the petitioner vide memorandum dated 20.03.2001 on the following article of charge:

Article-I

"That the said Dr. Siddhartha Debbarma while functioning as Medical Officer, 1st BN. TSR, Gakulnagar during the period of his incumbency from July 1995 to January 1998 had conducted the medical examination of about 514 recruits for enrolment as Riflemen/EF in 4th BN-TSR during the month of September 1997 at Gakulnagar. 1st BN-TSR HQ being detailed by the Inspector General of Police (ADM) and it was intimated that under no circumstances the recruits would be charged any fee for the medical examination. Dr. Debbarma after medical examination declared Pradip Roy and 12(twelve) other recruits medically unfit. Subsequently the unfit 13 recruits on medical examination was declared fit for appointment in TSR by medical board of Dr. Tapan Das (Ortho), G.B. Hospital and 2 (two) others. Some of the recruits stated that the attending doctor made hint to them for money keeping the drawer of his table open and some of them stated that they heard from other recruits that they gave money to the Medical Officer. The circumstances strongly indicate that malpractices in the medical examination by Dr. Debbarma had actually taken place and an inference could be drawn in this line when the medical board nullified the opinion of Dr. Debbarma. The aforesaid act on the part of Dr. Debbarma is the violation of the instruction of authority and amounts to gross misconduct and failure of absolute integrity which is unbecoming of a Govt. servant.

These constitute good and sufficient reasons for proceeding against Dr. Siddhartha Debbarma for violation of Rule-3 of Tripura Civil Services (Conduct) Rules, 1988".

4. Thereafter, the petitioner was asked vide memorandum dated 18.05.2001 to submit his defence statement and the petitioner submitted his defence statement through the Director of Health Service and the matter had been sent for inquiry to the Special Commissioner of Departmental Inquires, Government of Tripura.

5. It is submitted by the petitioner that in the written statements of defence dated 18.05.2001 and 26.06.2001, the petitioner informed his difficulties with regard to the documents included in Annexure-3 to the memorandum dated 20.03.2001 and demanded for supply of copies of those documents so that he could reasonably defend himself but those were not taken care of by the Disciplinary Authority prior to the referring the matter to the inquiring authority vide communication dated 18.10.2001. Thus, the petitioner was seriously prejudiced and he was deprived of reasonable opportunities as provided under law. Ultimately the petitioner was compelled to participate in the disciplinary proceeding and he was examined under Rule 14(9) of the CCS (CC & A) Rules 1965, wherein, he pleaded not guilty and claimed to contest the allegations.

6. Before the inquiring authority as many as 14 witnesses were examined by the Department, out of them PW-1 to 10 were the riflemen who appeared for medical examination.

7. PW-11, a doctor was a member of the Medical Board subsequently constituted. PW-12 is also a member of the said board. PW-13 is an Inspector of Police working in the Vigilance Department and PW-14 is another member of the Medical Board. After recording the statements of PWs, the petitioner adduced two witnesses, namely, Kali Pada Debbarma as DW-1 and Parimal Debbarma as DW-2.

8. On conclusion of recording of the witnesses and on admission of the documents on records of proceedings, both the presenting officer of the department and the petitioner have submitted their written arguments before the Inquiring Authority.

9. In the inquiry proceedings, the Inquiring Officer framed the following issues:

"1. Whether Dr. Siddhartha Debbarma while functioning as medical officer, 1st BN-TSR, Gakulnagar during the period of July 1995 & January 1998 had conducted medical examination of about 514 recruits during the month of Sept. 1997?

2. Whether it was found by him that 13 Nos. of recruits were medically unfit for appointment in TSR?

3. Whether he engaged any person in civil dress for standing in the door of the room to ask the Riflemen for paying fees and whether that man actually asked the riflemen for paying fees to the doctor?

4. Whether Doctor S. Debbarma, kept his table drawer opened and indicated the riflemen to keep fees in this drawer?

5. Whether these 13 persons were subsequently tested by the Medical Board at G.B. Hospital and found them medically fit?

6. Any other factual or legal position effecting the proceedings?"

10. After issue wise discussion the Inquiring Officer has submitted his report on 25.07.2002 holding as under:

"7(a). From the result of issue wise discussion I find that the matter of taking bribe in the name of fees could not be proved by the prosecution as lacking sufficient reliable evidence. None deposed that he paid such fees to the A.O. but heard from others that they paid fees. The "others" could not be traced out by the police. But attempt of taking bribe is well established from the direct evidence as well as from the circumstantial evidence i.e. report of Medical Board, non-finding of knock knee by the Medical Board and at the time of cross examination. Naturally a question arises as to why the A.O. has declared the said Riflemen unfit? There is no answer except the inference that he demanded bribe/illegal fees which he did not get from the said Riflemen as a result they were

declared medically unfit.

7(b). Now, the question arises whether attempt to take bribe is a misconduct and failure of absolute integrity? It was argued that the Medical Board was not constituted as per rule and Doctors were not aware of the criterion for medical fitness for serving in the TSR.

I do not find much force in this argument of defense because the matter of knock knee, flat feet, etc. are easily visible. If such defects were there the same must not escape the sight of a Doctor of Orthopedic department. The medical report though made in a paper (not separately in forms) yet shows that the 3 Doctors of the G.B. Hospital (Board) had not found any such defect in any Riflemen. The story of disappearance of knock knee after the laps of 41/2 years, even if believed, yet the report of the Medical Board which examined them within a very short period cannot be disbelieved. Matter of defect in formation of Board and submission of report in a paper are all formal in nature and for this minor defects the report of medical examination cannot be called in question. So, change of knock knee after 4-years etc., if possible is not proved.

(I) Charge was framed on strong presumption of taking bribe on the basis of statement of Riflemen and report of Medical Board. But the presumption turned into reality from the desperate cross examination asking Riflemen (PW-1) to pull his pant to exhibit to the Inquiring Authority that there is knock knee and the report of A.O. is correct but result stood total destruction adding another direct evidence in support of the case of prosecution.

The answer must be "Yes". Attempt to commit an offence (here in this case taking of bribe) is a punishable offence (Section 511 of the I.P.C.). Here in this instant case it is gross misconduct and failure of integrity which is unbecoming of a Govt. servant.

FINAL DECISION

8. Under the above discussed facts circumstances and legal position analysed and keeping in mind the result of all the issued made earlier I find and hold that the A.O. has violated Rule 3(1)(i) and 3(1)(iii) of the TCS (Conduct) Rules, 1988 and he is guilty to the charge."

11. After accepting the report of the Inquiring Authority, the Disciplinary Authority passed the impugned order dated 06.12.2005. The relevant part of the order runs as follows:

"Now therefore, after careful consideration of the case, the Government is pleased to impose upon Dr. Siddhartha Debbarma, Medical Officer, 1st BN-TSR, Gakulnagar, Tripura West (now Medical Officer, Bishramganj PHC, Tripura (West)) a major penalty of reduction to the lowest of the time scale of pay in the initial grade of Tripura Health Service without a bar to his future promotion. This reduction will be for a period of 3(three) years during which he will not earn any increment."

12. Being aggrieved by the said order dated 06.12.2005 the petitioner preferred an appeal under Rule 23 of the CCS (CC & A) Rules, 1965 on 12.04.2006 on the following grounds:

"I. That the framing of charge against the petitioner at the outset of the proceeding was based on no material, but on presumption of misconduct. Such framing is not permissible under Rule 14 of the CCS (CC & A) Rules, 1965.

II. That the charge framed against the appellant is vague and presumptive in nature. Thus, the petitioner was seriously prejudiced and as such the proceeding itself is vitiated.

IV. That the Inquiring Authority and the Disciplinary Authority have committed serious illegality bringing the allegations beyond the charge framed against the petitioner in the charge memo lost illegally.

V. That the register which was maintained by the petitioner, was not produced to prove that the persons who were declared unfit and later on declared fit by the so called Medical Board, G.B. Hospital, Agartala were at all examined by the petitioner on the relevant date. Non production of document will lead to adverse inference that those persons were not at all examined as alleged."

13. Ultimately the said appeal was converted as a review and it was dismissed vide impugned order dated 16.04.2007. Being aggrieved by the decision of reviewing authority, the petitioner preferred this writ petition.

14. The respondents by way of filing counter affidavit denied the contentions of the petitioner and stated that the Inquiring Authority before coming to its conclusion has followed all the statutory requirements and there is no procedural flaw while coming to its conclusion. As such it can be stated that no prejudice has been caused to the petitioner at any stage of the enquiry by the Inquiring Authority.

15. It is further stated that the Disciplinary Authority did not commit any wrong while imposing punishment relying upon the findings of the Inquiring Authority and the Reviewing Authority confirmed the order of Disciplinary Authority as there was no material ground to differ with the said order of punishment.

16. Ms. Dhar, learned counsel appearing for the petitioner while urging for setting aside the order of the Disciplinary Authority and the Reviewing Authority would contend that the finding of the Inquiring Authority is based on no evidence rather on mere presumption.

17. She has also contended that there is no evidence whatsoever that the report of the petitioner was produced before the said Medical Board, G.B. Hospital, Agartala which found subsequently the Riflemen fit. According to PW-12, one of the members of the Medical Board categorically stated that the report which has been placed before the Inquiring Authority is not the report he has signed as the member of the Medical Board and that he signed another report. But the

Inquiring Authority relied upon the said document which is not permissible under the law. Not only that even PW-11 has categorically stated that he does not know whether the persons were previously examined by any doctor in TSR.

18. She has further contended that the appeal filed by the petitioner was converted as a review without notice to the petitioner and the same was dismissed even without hearing him. The case in hand is at best a case of wrong assessment regarding the fitness of the Riflemen but not a case of misconduct.

19. Mr. J. Majumder, learned counsel appearing for the respondents submits that the "Scope of Judicial Review" is very limited and a Court cannot convert it into an appellate authority, exercising its power of "Judicial Review". He further contended that adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceeding.

20. He further submitted that the findings of the Inquiring Authority is fully based on evidence on record and the Inquiring Authority rightly came to an inference that the petitioner demanded bribe/illegal fees which he did not get from the said Riflemen, as a result of which they were declared medically unfit and such a conduct of the petitioner is a misconduct.

21. He has also contended that the Disciplinary Authority did not commit any wrong imposing the punishment upon the petitioner accepting the findings of the Inquiring Authority. Mr. Majumder, learned counsel again contended that the petitioner failed to make out any case of prejudice. Thus, the writ petition is liable to be dismissed.

22. Mr. Majumder, learned counsel finally contended that the doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some materials on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. But in the instant case the presumption proves its case as required under the law.

23. This Court has considered the rival submission made by the learned counsel appearing for the parties and perused the record. It would be pertinent to deal with the legal issues involved herein, before dealing with the case on merits.

24. Legal issues: Standard of proof in a disciplinary proceeding/departmental inquiry, which has quasi criminal/quasi judicial in nature. In *M.V. Bijlani v. Union of India and Ors.*, AIR 2006 SC 3475, the Apex Court held:

"...Disciplinary Proceedings, however, being quasi-criminal, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi- judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the

relevant facts. He cannot shift the burden on proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."

25. In *Prahlad Saran Gupta v. Bar Council of India & Anr.*, , AIR 1997 SC 1338, the Apex Court observed thus:

"When the matter relates to a charge of professional mis-conduct which is quasi-criminal in nature, it requires proof beyond reasonable doubt. In that case the finding against the delinquent advocate was that he retained a sum of Rs. 15,000/- without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession". On the said fact-situation, this Court imposed a punishment of reprimanding the advocate concerned.

26. In *Noor Aga v. State of Punjab & Anr.*, , AIR 2009 SC (Supp) 852, wherein, the Apex Court has held as under:

"That the departmental proceeding being a quasi judicial one, the principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles."

27. There is no doubt that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. Only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. But that does not mean that the Court when came to a conclusion that the decision of the Inquiring Authority when based on no evidence cannot interfere with the said findings and the decision thereof. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides.

28. In the instant case, the departmental authority has examined as many as 14 witnesses out of which 10 were the Riflemen who appeared for medical examination and the delinquent officer examined 2(two) witnesses in-respect of his case.

29. The Inquiring Authority in his report specifically stated that the matter of taking bribe in the name of fees could not be proved by the prosecution for

lacking of sufficient reliable evidences. None of the Riflemen was examined as a witness and deposed that they paid such fees to the accused officer but they heard from others that they paid fees and those could not be trust-out by the police.

30. The Inquiring Authority has stated that taking bribe is well established from the direct evidence as well as from the circumstantial evidence i.e. report of Medical Board and non-finding of knock knee by the Medical Board. According to the Inquiring Authority, the accused officer has declared those Riflemen unfit for not getting the demanded money from them. Such findings of the Inquiring Authority is on presumption.

31. The Inquiring Authority, while discussing the issue No. 4 i.e., whether the petitioner kept the drawer of his table opened and indicated the Riflemen to keep fees in this drawer, stated that the story of keeping the drawer of the table of the doctor open remained uncorroborated and there is no evidence on record to prove that any one of them or any recruits paid any money to the 3rd person or to the doctor. Some witnesses stated about the existence of the 3rd person asking the Riflemen to pay money to the doctor. The said 3rd person was not produced by the prosecution.

32. It is also stated that the police officer failed to search out any of the Riflemen who paid money to the doctor, the delinquent officer. It is further stated that there is no independent witnesses or any responsible officer deposing in this case to corroborate the statement of the unfit Riflemen yet circumstantial evidence strongly corroborated the Riflemen and there is no way out to disbelieve them.

33. The Inquiring Authority specifically stated that there is no evidence that the A.O engaged any person to stand near the door and ask the Riflemen to pay the fees to the doctor. Regarding existence of any person in civil dress at the door, Amiruddin Ali, stated that at the time of entering into the room of the doctor, one person in civil dress asked him whether he took money or not by signing of his hand. But fact remains that the said 3rd person was not examined or even not found out.

34. It also appears from the record that the Register maintained by the delinquent officer regarding examination of the Riflemen was not placed before the Medical Board which subsequently, examined the unfit Riflemen and found them fit. And finally on the basis of the aforesaid evidence the Inquiring Authority prepared his report and came to the conclusion stating that "taking bribe in the name of fees could not be proved by the prosecution as lacking sufficient reliable evidence. None deposed that he paid such fees to the A.O but heard from others that they paid fees. The "others" could not be traced out by the police. But attempt of taking bribe is well established from the direct evidence as well as from the circumstantial evidence i.e., report of Medical Board, non-finding of Knock Knee by the Medical Board and at the time of cross examination. Naturally a question arises as to why the A.O. has declared the said

Riflemen unfit? There is no answer except the inference that he demanded bribe/illegal fees which he did not get from the said Riflemen as a result they were declared medically unfit."

35. Assessment regarding the medical fitness of a person may differ person to person. Here in the instant case the accused officer while assessing physical fitness of the Riflemen appeared before him found some of them not fit and subsequently those Riflemen were found fit by the Medical Board. These difference of assessment between two authorities cannot be said to be misconduct in absence of evidence regarding taking of bribe in the name of fees or keeping open the drawer by the accused officer.

36. It also appears from the record that the reviewing authority while converted the appeal of the petitioner as review, admittedly did not provide any opportunity to the petitioner and also did not give any reason for upholding the order of the Disciplinary Authority as the orders passed by the Disciplinary Authority as well as Appellate Authority have severe civil consequences, appropriate reason should have been given. In the instant case, the Inquiry Officer had relied upon hearsay evidence produced by the prosecution but the persons from whom those witnesses heard that the petitioner asked for bribe have also not been examined. Materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principle of natural justice has to be followed. As the report of the Inquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Inquiry Officer apparently were not supported by any evidence. Suspicion as is well known, however, high may be, can under no circumstances be held to be a substitute for legal proof.

37. There is no doubt that even on the basis of inference the person can be found guilty but for such inference there must have some legal evidences. In the instant case, there is no legal evidence on the basis of which it can be said that the delinquent officer is guilty of committing misconduct or negligence as held by the Disciplinary Authority and confirmed by the Reviewing Authority.

38. In the result, the writ petition is allowed. The impugned orders dated 06.12.2005 and 16.04.2007 are set aside.