
(2011) 07 GAU CK 0024
In the Gauhati High Court
Case No : Writ Petition (C) No. 572 of 2010

Sri Jayanta Sarkar

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 GAU CK 0024

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

Bench : Single Bench

Advocate : A. Roy Barman, for the Appellant; J. Majumdar, GA, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard Mr. A. Roy Barman, learned Counsel for the Petitioner as well as Mr. J. Majumdar, learned State Counsel. By means of this writ petition, the Petitioner has put to challenge the order dated 21.2.2007 passed by the Registrar of Cooperative Societies, Tripura in the capacity of Disciplinary Authority, by which the Petitioner has been imposed with the penalty of recovery of an amount of Rs. 1,16,965/- from the salary along with 5% interest per annum. Another penalty imposed is that the Petitioner will not be entitled to get promotion to next higher post till full recovery of the amount. The Petitioner has also put to challenge the order dated 22.9.2010 by which his appeal was disposed of without interfering with the order of the Disciplinary Authority mentioned above.

2. The Petitioner, while was serving as Managing Director of the particular unit under the Registrar of Cooperative Societies, Govt. of Tripura, was served with the memorandum of charge sheet dated 10.3.2004 leveling the following charge

It is found from the audited accounts & report of the Champaknagar Anchalik LAMPS Ltd., for the period from 1992-93 to 1996-97 that Sri Jayanta Sarkar, Inv.

(Co-op), ex-Managing Director of the said LAMPS has misappropriated an amount of Rs. 1,16,965.50 (Rupees one lac sixteen thousand nine hundred sixty five & paise fifty) only from the fund of the said LAMPS during his tenure of service as M.D. to that society.

Thus, Sri Sarkar has breached the trust which amounts to misconduct on the part of a public servant. He has thus violated the provision of Rule 3 of TCS (Conduct) Rules, 1988.

3. Alongwith the charge memorandum, the statement of imputation of misconduct and the lists of documents and witnesses were also furnished.

4. On conclusion of the departmental enquiry, the Inquiry Officer furnished his report dated 31.5.2006 holding the Petitioner not guilty of misappropriation of the aforesaid amount. Although, the Petitioner was held not to be guilty of the specific charge leveled against him but the Inquiry Officer held the Petitioner responsible due to lack of supervision. It will be pertinent to mention here that Lack of supervision on the part of the Petitioner was not the charge leveled against him. It is in this context, learned Counsel for the Petitioner submits that the Petitioner having been held not guilty of the specific charge, the Inquiry Officer could not have held him guilty of lack of supervision, so as to hold the Petitioner guilty of the specific charge itself.

5. In response to the inquiry report, the Petitioner submitted his written representation dated 19.8.2006. Thereafter, the Disciplinary Authority passed the impugned order dated 21.2.2007 directing recovery of the amount of Rs. 1,16,965.50 with the further stipulation that during the recovery period, the Petitioner would not be entitled to promotion and also that for the period of suspension, no further amount would be paid except the subsistence allowance that was already paid to him. Being aggrieved by the said impugned order dated 21.2.2007, the Petitioner made a departmental appeal to the Appellate Authority, which was disposed of by the impugned order dated 22.9.2010.

6. The Appellate Authority while holding that the suspension of the Petitioner was totally unjustified in view of the fact that the charge against the Petitioner related back to 11 1/2 years for the audit period 1992-93 and that the charge sheet was issued 11 1/2 years thereafter i.e. on 10.3.2004, however, maintained the order of the Disciplinary Authority, by which recovery of the aforesaid amount was directed as a measure of penalty. The Appellate Authority, although, has ordered that the entire period of suspension of the Petitioner should be treated as on duty but at the same time without addressing to the reasons assigned for treating the period of suspension as on duty, upheld the order of the Disciplinary Authority towards recovery of the amount as a measure of penalty. It is on this count, Mr. a. Roy Barman, the learned Counsel for the Petitioner has submitted that there is apparent contradiction in the appellate order requiring interference of this Court.

7. The Respondents have filed their counter affidavit justifying the impugned

orders. Mr. J. Majumdar, learned State Counsel submits that since the charge of lack of supervision could be gathered from the specific charge itself, there was nothing wrong on the part of the Inquiry Officer to hold the Petitioner guilty of the charge of lack of supervision. He also submits that having regard to the gravity of the offence, the Disciplinary Authority has passed the impugned order and the Appellate authority has upheld the same for the reasons mentioned in the impugned orders. According to him, the Writ Court exercising its power of judicial review under Article 226 of the Constitution of India will not sit on appeal over findings of the said two authorities.

8. I have considered the submissions made by the learned Counsel for the parties and have also considered the entire materials on record. The specific charge against the Petitioner has been noted above. There was no charge of lack of supervision on his part. The Inquiry Officer having held the Petitioner not guilty of misappropriation of the amount, could not have exceeded in his jurisdiction, so as to hold the Petitioner guilty of another charge "Lack of supervision", in respect of which the Petitioner was not called upon to have his say. The whole basis of the impugned order dated 21.2.2007 is the said charge of lack of supervision purportedly established against the Petitioner. While doing so, the Disciplinary Authority did not consider that lack of supervision was not the charge against the Petitioner. The charge itself that was leveled against the Petitioner having not been established, neither the Inquiry Officer nor the Disciplinary Authority could have held the Petitioner guilty of another charge i.e. lack of supervision coupled with the fact that he was not given any opportunity of being heard in respect of the said charge.

9. This now leads us to the impugned appellate order. The appellate authority inspite of having held that there was delay in framing the charge against the Petitioner and that the Petitioner ought not have been placed under suspension after expiry of more than 11 years from the year of the purported incident, however, passed the order towards maintaining the penalty of recovery imposed against the Petitioner by the Disciplinary Authority. Like that of the Disciplinary Authority, the appellate authority also held the Petitioner guilty of lack of supervision and control over the activities of the particular unit of the Cooperative Society, unmindful of the fact that the Petitioner was never charged for lack of supervision and control over the activities of the particular unit. In paragraph 7 of the appellate order, it has been observed thus: "

7. I have considered the matter in it's entirety and after hearing the submissions adduced during appeal, I am of the considered view that the punishment awarded to the A.O. appears to be disproportionate. Further, the AO was charge sheeted on 10.3.04 i.e. after 11 years (1992-93 to 1996-97) from the Audit year, which itself amounts to inordinate delay. Moreover, the A.O. was suspended after 11 1/2 years of the Audit year (1992-93 to 1996-97) i.e. after the charge sheet was issued. Thus, the suspension provisions were routinely and wrongly exercised by the Disciplinary Authority and the same was not only unjustified but

also against the principles of Natural justice as well as against the provisions. Further, the suspension of A.O. was revoked on 21.2.2007 i.e. after 9(Nine) months from the date of submission of I.O's report/findings (31.5.2006).

10. From the above, what is seen is that the appellate authority although duly appreciated the fact of there being delay of more than 11 1/2 years and accordingly made the Petitioner entitled to get the entire period of suspension treated as on duty but at the same time upheld the order of penalty imposed against the Petitioner. This depicts total nonapplication of mind.

11. At this stage, Mr. A.R. Barman, learned Counsel for the Petitioner referring to the decision of the Apex Court reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, submits that the delay of 11 1/2 years towards leveling the charge against the Petitioner itself is a ground of interfere with the entire departmental proceeding. In the said case, the Apex Court interfered with the initiation of departmental proceeding for inordinate and un-explained delay of 10 years. In the instant case also, there is no reasonable explanation from the Respondents as to why there was delay of 11 1/2 years towards initiation of the departmental proceeding against the Petitioner.

12. For all the aforesaid reasons, I am inclined to accept the writ petition and accordingly both the impugned orders dated 21.2.2007 and 22.9.2010 are set aside. Consequently, the Petitioner shall be entitled to all the consequential benefits.

13. Writ petition is allowed. There shall be no order as to costs.