

(2017) 01 TP CK 0033
In the Tripura High Court
Case No : 227 of 2011

Sri Paresh Chandra Pal, S/O Late Umesh Chandra Pal	APPELLANT
Vs	
The State of Tripura, (Represented by the Principal Secretary to the Government of Tripura), Agriculture Department, & Anr.	RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

[Central Civil Services \(Classification, Control and Appeal\) Rules, 1965](#), [Rule 20](#), [Rule 21](#), [Rule 11](#)

Citation : (2017) 01 TP CK 0033

Hon'ble Judges : S.C. Das

Bench : Single Bench

Advocate : B.B. Das, B. Dutta

Final Decision : Allowed

Judgement

1. Heard learned counsel, Mr. B.B. Das for the petitioner and learned counsel, Mr. B. Dutta for the respondents.

2. Respondent No.2, the Director of Agriculture, Government of Tripura, under Memo.No.F.2-2401(P)/Part-I/8911- 8914 dated 19.11.2007(Annexure-4 to the writ petition) initiated a disciplinary proceeding against the petitioner for gross misconduct on the following article of charges:

"Article of charge :-I

That the said Sri Paresh Chandra Pal, U.D.C. how posted under the disposal of V.S.P.O., Nagicherra while functioning as Cashier/In-charge Store in the office of the Dy. Project Officer(North), Ambassa during the period from 31-8-2000 to 24-1-2006 failed to maintain absolute integrity and devotion to duty and acted in a manner of un-becoming of Govt. servant in so far as Sri Pal did not maintained the Cash Book as well as Stock Register relating to purchase of different

Stationary Articles etc. as per norms of the Govt. As per Departmental inquiry report of the three members Committee headed by the than Dr. Abdul Haque, Soil Survey Officer now M.D. THCL. it was detected that a defalcation and misappropriation of Govt. money amounting to Rs.1,47,887/-(Rupees one lakh forty seven thousand eight hundred eighty seven) only was made by Sri Paresh Chandra Pal, Cashier(U.D.C.).

Thus the above act committed by Sri Paresh Chandra Pal, U.D.C.(Cashier/In-charge Store) now under suspension shown lack of absolute integrity, lack of devotion to Govt. duty and thereby he has violated of Rule 3 of T.C.S.(Conduct) Rules, 1988 and for which Sri Pal rendered himself liable for being charge sheeted for facing enquiry under Rule-14 of C.C.S.(C.C.&A), 1965 r.w. Rule-11 of the Rules ibid."

3. The Additional Commissioner of Departmental Inquiries, Government of Tripura was entrusted to inquire into the above charges framed against the petitioner. In course of inquiry, 5(five) witnesses were examined on behalf of the disciplinary authority(prosecution), namely-PW1, Abdul Haque, PW2 Bishurai Debbarma, PW3 Paresh Ch. Karmakar, PW4 Jogesh Biswas and PW5 Tutan Deb.

During examination of the aforesaid witnesses following documents were also proved on behalf of the disciplinary authority:

Exbt.S/1- One memorandum of the Director of Agriculture dt. 04- 06-2006.

Exbt.S/2- Inquiry report jointly submitted by Dr. Abdul Haque, Dy. Director, Agri. and two other members of the committee dt. 20-9-2006.

Exbt.S/3- Memorandum of the Director of Agriculture dated 20-7- 2007.

Exbt.S/4- 4 nos. Bill registers for the year 2002 to 2006.

Exbt.S/5- Cash book for the period from 18-6-2004 to 24-8-2005, 01-10-2002 to 17-06-2004 and 25-8-2005 to 05-04- 2006.

Exbt.S/6- Cash book from 01-10-2002 to 17-6-2004.

Exbt.S/7- Cash book from 25-8-2005 to 05-04-2006.

Exbt.S/8- Stock Register for the year 2002 to 2006(4 nos. Register).

After the evidence of the disciplinary authority was closed, the charged officer i.e. the petitioner herein(hereinafter mentioned as the petitioner) examined himself as DW1 and in support of his contention he proved one copy of a Memo. dated 03.08.2000 issued by the Deputy Project Officer(North), Ambassa marked as Exbt.D1.

After recording evidence and hearing arguments of both side, the inquiring officer submitted report to the disciplinary authority holding that the charge framed against the petitioner was proved.

4. Show cause notice was issued to the petitioner by the respondent No.2 forwarding a copy of the inquiry report by issuing Memo. dated 07.03.2009, in response to which the petitioner submitted his representation dated 24.03.2009 to respondent No.2(Annexure-6 to the writ petition), and thereafter considering the report of the inquiring authority and the representation made by the petitioner, the disciplinary authority i.e. the Director of Agriculture issued the impugned office order dated 23.10.2009(Annexure-7 to the writ petition) inflicting punishment on the petitioner. The impugned order dated 23.10.2009 reads as follows:

"NO.F.2-2401(P)/Part-II/964-66

Government of Tripura

Department of Agriculture

Dated, Agartala, the 23/10/2009.

OFFICE ORDER

WHEREAS, a departmental proceeding was drawn against Sri Paresh Chandra Pal, U.D. Clerk for mis-appropriation of Govt. money, mis-conduct and negligence in Govt. duty vide Deptt. Memo. of even number dated 19-11-2007.

AND, WHEREAS, the Inquiring Authority found him guilty in the charges of mis-conduct vide his letter NO.F.1171/INQ/Agri/2008/1247 dated 16-12-2008.

AND, WHEREAS, Sri Paresh Chandra Pal, U.D. Clerk responded to the Departmental memo. of even number dated 7-3-2009 which seems not satisfactory, so, a punishment is inflicted by the undersigned to Sri Paresh Chandra Pal, U.D. Clerk.

THEREFORE, under 11 of C.C.S.(CC&A) Rules, 1965, the undersigned withholds his 2(two) nos. periodical increments in the grade with cumulative effect and also instructs to deposit the entire defalcated Govt. money amounting to Rs.1,47,887/- (Rupees one lakhs forty seven thousand eight hundred eighty seven) only through Treasury Challan which is to be submitted to the Head of Office within 60(sixty) days from the date of receipt of this Order.

Sd/- Eligible

DIRECTOR OF AGRICULTURE

TRIPURA

To:-

Sri Paresh Chandra Pal, U.D. Clerk through the Supdt. of Agriculture, Rajnagar, Belonia, South Tripura for compliance."

5. Aggrieved, the petitioner preferred an appeal to the appellate authority(Principal Secretary to the Government of Tripura) and the appellate

authority by order dated 07.05.2011(Annexure-10 to the writ petition) dismissed the appeal and thereby upheld the punishment order passed by the respondent No.2. The impugned order dated 07.05.2011 reads as follows:

"NO.F.2-2401(P)/Part-II/4957-62

Government of Tripura

Department of Agriculture

Dated, Agartala, the 07/05/2011.

ORDER(on appeal)

A departmental proceeding was drawn against Sri Paresh Chandra Pal, U.D. Clerk for the charges of defalcation and mis-appropriation of Govt. money amounting to Rs.1,47,887/-(Rupees one lakh forty seven thousand eight hundred eighty seven) only vide Deptt. Memo. of even number dated 19-11-2007.

The Inquiring Authority found him guilty against the charges vide his letter NO.F.1171/INQ/Agri/2008/1247 dated 16-12-2008.

On receipt of the Findings of the Inquiring Authority the Disciplinary Authority after observing all formalities imposed penalty Upon him in the shape of withholding 2(two) nos. periodical increments in the grade with cumulative effect and instructed to deposit the entire defalcated govt. money amounting to Rs.1,47,887/-(Rupees one lakh forty seven thousand eight hundred eighty seven) only vide this Deptt. Office order No.F.2-2401(P)-Part-II/964-66 dated 23.10.2009 but on the Context Sri Pal, U.D.C. has made an appeal to the Appellate Authority for kind review of the penalty order of the Director of Agriculture and Appellate Authority heard him personally on 1st June, 2010. Subsequently a show cause Notice was issued to Sri Pal, UDC Vide No.F.2-2401(P)-Part-III/728-29 dated 26.02.2011, where he was asked to explain as to why Addl. Penal rate of interest Rs.11.25% Per annum shall not be imposed on the defalcated Govt. money of Rs.1,47,887/- (Rupees one lakh forty seven thousand eight hundred eighty seven) from the date of defalcation and Sri Pal, UDC has submitted his reply to the show cause notice on 09.03.2011.

Finally, the Appellate Authority after examining all documents, finding, appeal petition, etc. of the instant case come to the conclusion that:-

- 1) The procedure laid down in the rules has been complied with.
- 2) The findings of the Inquiring Authority are adequately supported by the evidence on record.
- 3) The penalty imposed by the Disciplinary Authority is just and proper.

Considering all above circumstances, the undersigned is in the opinion that the penalty imposed by the Disciplinary Authority vide No.F.2-2401(P)-Part-III/964-66 dated 23-10- 2009 shall stand.

The appeal is thus disposed.

Sd/- Eligible

Appellate Authority

Principal Secretary to the

Government of Tripura

Department of Agriculture

To:-

Sri Paresh Chandra Pal, U.D. Clerk through the Executive Engineer(Mechanical), Department of Agriculture, Dutta Tilla, A.D. Nagar, West Tripura for compliance."

6. The case of the disciplinary authority i.e. the prosecution was that the petitioner was posted in the office of the Deputy Project Officer(North), Ambassa as UDC and was entrusted with the charge of cashier/in-charge storekeeper during the period from 31.08.2000 to 24.01.2006 and during that period the petitioner failed to discharge his duty with integrity and devotion and that he did not maintain the cash books and stock registers in respect of the articles purchased in the office of the Deputy Project Officer(North), Ambassa. The respondent No.2 i.e. Director of Agriculture constituted a 3-member inquiring committee headed by PW1, Dr. Abdul Haque, with members, namely PW2 Bishurai Debbarma and PW3 Paresh Ch. Karmakar, and they on inquiry found defalcation of an amount of Rs.1,47,887/- by the petitioner and submitted a report dated 20.09.2006 to that effect to the respondent No.2, i.e. Director of Agriculture and the Director of Agriculture taking into consideration that report initiated the disciplinary proceedings against the petitioner by Memo. dated 19.11.2007.

7. The case of the charged officer i.e. the petitioner herein was that he was appointed as an LDC by the Director of Agriculture on 27.02.1980, but subsequently under the Department of Agriculture, two Directorates were created, i.e. (1) the Directorate of Agriculture and (2) the Directorate of Horticulture & Soil Conservation by Memo. dated 31.05.1985. The office of the Deputy Project officer(North), Ambassa, Dhalai was under the Directorate of Horticulture, and so the respondent No.2 had no authority/jurisdiction to initiate a disciplinary proceeding against the petitioner. It was the further case of the petitioner that as per Govt. Notification vide No.F.5(3)ARD/77 dated 28.09.1985 (Annexure-11 to the writ petitioner and Annexure-R2 to the counter affidavit), the Director of Horticulture & Soil Conservation was the disciplinary authority of the petitioner and the proceeding was drawn up by the respondent No.2 without any jurisdiction, and therefore the whole proceeding vitiated.

It was also contended by the charged officer i.e. the petitioner that he was working as UDC in the establishment section of the Deputy Project Officer(North), Ambassa and that one Kanti Bhattacharjee was the cashier of the

office. That Kanti Bhattacharjee was on leave from 07.08.2000 to 08.09.2000 and during that period only he was in-charge of the cash section and so the charge brought against him was false and not tenable. He also denied the charge of defalcation of Rs.1,47,887/-.

8. It was vehemently argued by learned counsel, Mr. Das that the department of Agriculture originally had one Directorate headed by Director of Agriculture. The petitioner was appointed as LDC by the Director of Agriculture in the year 1980. In the year 1985 the Agriculture Department of the Government of Tripura created two Directorates, namely (1) Directorate of Agriculture headed by a Director and (2) Directorate of Horticulture & Soil Conservation headed by a separate Directors, and that was done with effect from 01.06.1985 vide Memo. No.F.2(152)-Agri(Estt)/84- 85 dated 31.05.1985(Annexure-R3 to the counter affidavit). The office of the Deputy Project Officer(North), Ambassa was under the Directorate of Horticulture and the service of the petitioner was placed under the said directorate. The petitioner was transferred to the office of the Deputy Project Officer(North), Ambassa as UDC on 20.07.1988 and he was working in the establishment section. It was also argued by learned counsel, Mr. Das that the petitioner was in-charge of cash section only for the period from 07.08.2000 to 08.09.2000 when the incumbent cashier i.e. Kanti Bhattacharjee was on leave and after Kanti Bhattacharjee resumed duty the charge was handed over to Kanti Bhattacharjee and the petitioner was no longer the cashier of the office of the Deputy Project Officer. It was also argued that while the petitioner was working under the Directorate of Horticulture & Soil Conservation, the respondent No.2 i.e. Director of Agriculture without having any authority over the office of Deputy Project Officer(North), Ambassa and without having any complaint from the office of the Deputy Project Officer, and/or any communication from the Directorate of Horticulture, initiated an inquiry through a committee headed by PW1 with PWs 2 and 3 and that committee wrongly and illegally submitted a report on the basis of which the impugned disciplinary proceeding was drawn against the petitioner and he had been punished by the respondent No.2 without having any jurisdiction and authority. Referring to Annexure-11 i.e. the notification dated 28.09.1985, which is also referred by the respondents marked as Annexure-R2, it was submitted by Mr. Das, learned counsel that w.e.f. 28.09.1985 the Director of Horticulture was the disciplinary authority in respect of the staff of the Directorate of Horticulture and the Director of Agriculture was no longer a disciplinary authority. The proceeding was therefore in violation of the Rules 20 and 21 of the CCS(CC&A) Rules, 1965, and hence the order of punishment passed by the disciplinary authority and affirmed by the appellate authority shall be liable to be quashed.

9. On the other hand, learned State counsel, Mr. Dutta submitted that the petitioner was appointed by the Director of Agriculture. He was transferred to the office of the Deputy Project Officer by the Director of Agriculture. He was all along a staff of the Directorate of Agriculture under the Department of Agriculture and so the Director of Agriculture had the authority to initiate

disciplinary proceeding against the petitioner pursuant to the report submitted by the inquiry committee constituted by the Director of Agriculture. According to Mr. Dutta, the Director of Agriculture was the appointing and disciplinary authority as per notification dated 07.04.1976(Annexure-R1 to the counter affidavit) and subsequently by notification dated 28.09.1985(Annexure-R2) the Director of Horticulture was notified as the disciplinary authority of Class III and Class IV staff who were appointed by the Director of Horticulture and since the petitioner was appointed by the Director of Agriculture he was all along a staff of the Director of Agriculture and therefore initiation of the proceeding against the petitioner by the Director of Agriculture i.e. the respondent No.2 cannot be said to be without jurisdiction. It was also submitted that the petitioner was dealing with the cash section of the office of Deputy Project Officer(North), Ambassa and the inquiry committee submitted definite report against him that he had defalcated the amount and did not maintain cash books, stock registers, etc. of the office stationeries purchased in the office. The evidence on record proved the allegation and so this Court in exercise of the power of judicial review may not interfere in the order of punishment.

10. This Court is quite aware that the power of judicial review of the decision of a domestic Tribunal is very limited. Such judicial review is possible only when the principle of natural justice has been violated i.e. the opportunities, which ought to be given to the delinquent/charged officer, as per rules, were not given or that the decision of the domestic tribunal was based on no legal evidence and that the punishment inflicted is shocking to the judicial conscience. If there is no glaring violation of the principles of natural justice or procedural defect, the Court should not interfere in the ultimate decision of the disciplinary authority. If there is some evidence in support of the decision taken by the disciplinary authority and there is no fundamental defect in the proceeding, the Court or tribunal cannot sit as a matter of appeal to re-appreciate the evidence and to substitute the finding of the disciplinary authority with its own finding.

11. It is an admitted position that the petitioner was appointed as LDC by the Director of Agriculture in the year 1980. The Agriculture Department of the Government of Tripura had one Directorate, namely Directorate of Agriculture headed by the Director, Agriculture at that point of time. It is also an admitted position that the Agriculture Department bifurcated the Directorate of Agriculture in two directorates, namely Directorate of Agriculture and Directorate of Horticulture & Soil Conservation, headed by two separate Directors by Memo. dated 31.05.1985(Annexure-R3) w.e.f. 01.06.1985. It is also an admitted position that the petitioner was transferred and posted in the office of the Deputy Project Officer(North), Ambassa w.e.f. 20.07.1998.

12. It was argued by learned counsel, Mr. Das that the petitioner was working in the establishment section as a UDC and that he was in-charge of the cashier section only for the period from 07.08.2000 to 08.09.2000 when the regular cashier Kanti Bhattacharjee was on leave and in support of it the petitioner as

charged officer proved Exbt.D1 i.e. Memo. dated 03.08.2000. No doubt, that Memo. dated 03.08.2000(Annexure-1 to the writ petition) shows that one Kanti Bhattacharjee, LDC was the cashier and the petitioner was in-charge of the cashier during the period from 07.08.2000 to 08.09.2000 when Kanti Bhattacharjee was on leave. That contention of learned counsel, Mr. Das does not appear to be correct and this is a wrong submission made by Mr. Das, learned counsel. It is clearly in contradiction of the pleading of the petitioner himself. In para 5 of the writ petition the petitioner stated thus:

"5. That Shri Kanti Bhattacharjee LDC Cum Cashier resumed his duties on 11.09.2000 after enjoying earned leave, but the petitioner was verbally asked by the Deputy Project Officer, North Ambassa to look after the cash section also. No formal Order was issued asking the Petitioner to hold the charge of cashier after resumption of duties by Shri Kanti Bhattacharjee or to execute Fidelity Bond as is required to be executed by the regular cashiers. The Petitioner continued to work in the cash Section informally up to 24-01-2006 without any official order."

The above statement of the petitioner makes it abundantly clear that he was looking after the works of cash section till 24.01.2006 on the verbal direction of the Deputy Project Officer(North), Ambassa. The submission of learned counsel, Mr. Das, is therefore a false submission in contradiction of the statement made in the writ petition itself.

Further, as I find all the witnesses of the prosecution stated that the petitioner was working in the cash section of the office of the Deputy Project Officer and in the cross-examination of the PWs the petitioner did not dispute it. The petitioner in his deposition as DW1 stated that he did not work in the cash section beyond the period from 07.08.2000 to 08.09.2000 but the above quoted pleading of the petitioner as stated in the writ petition shows that he was all along working in the cash section also under the verbal direction of the Deputy Project Officer. The inquiring authority therefore rightly found that the petitioner was looking after the cash section of the office of the Deputy Project officer during the period from 31.08.2000 to 24.01.2006.

13. Let us now come to the point as to whether the Director of Agriculture had the jurisdiction to initiate a disciplinary proceeding against the petitioner or not. In the writ petition in paragraphs 16 and 17 the petitioner raised a specific point that the office of the Deputy Project Officer(North), Ambassa was under the Directorate of Horticulture.

The statements made in paragraphs 16 and 17 of the writ petition read thus:

"16. That there are three Directors including the Director of Agriculture and Director of Horticulture & Soil Conservation under the Agriculture Department and both of them are declared as Head of Department of their respective directorate. The Officers of the Deputy Project Officer, North, Ambassa, and the Vegetable Seed Production Officer(Re-designated as Senior Horticulturist), Horticultural Research Complex), Nagicherra are under the direct control and

supervision of the Director of Horticulture and Soil Conservation. According to the CCS(CCA)(Tripura Twenty fourth Amendment) Rules, 1985, the Director of Horticulture and Soil Conservation is the appropriate Disciplinary Authority for imposing any penalty on all class-III and Class-IV employees under the Director vide Notification No-F.5(3)ARD/77 dated 28-09-1985.

A copy of the said Notification dated 28.09.1985 is annexed and marked as Annexure-11.

17. That the Director of Agriculture does not have any authority or jurisdiction either to suspend a member of the staff of the Director of Horticulture & Soil Conservation or to draw up Departmental Proceedings against him or to issue any order imposing penalty on him as per provision of Rules 20 & 21 of the CCS(CCA) Rules, 1965 read with the Memo No.F.11(20)-GA(AR)/2004 dated 17/08/2004 of the GA(AR) Deptt.

A copy of the Memo dated 17/08/2004 is annexed and marked as Annexure-12[Vide Judgment delivered by this Hon"ble High Court in WP(C)/129/2007 between Dr. Bjbhuti Sarkar and the State of Tripura.]"

14. The respondent Nos.1 and 2 submitted a joint counter affidavit. Respondent No.3, the Director of Horticulture did not submit any counter affidavit and thereby did not dispute the contention of the petitioner. In response to the pleadings of the petitioner made in paragraphs 16 and 17 of the writ petition, the respondents Nos.1 and 2 in their counter affidavit in para 16 stated thus:

"16) That, in reply to the averments and/or contentions made in Paragraphs 16 and 17 of the writ petition, I state that it appears from the Notification No.5(1)-ARD/72 dated 07.04.1976 that the Director of Agriculture has been notified in Sl. No.25 as Disciplinary Authority for all Class-III and Class-IV posts under the Directorate of Agriculture. Subsequently, vide notification No.F.5(3)-ARD/77 dated 28-09-1985 Sl. No.61 has been inserted for the existing Sl. No.60(meant for Class-III and Class-IV under the office of the Inquiring Authority) for notification of Disciplinary Authority in favour of "Director" for all Class-III and Class-IV posts under the Directorate of Horticulture & Soil Conservation. So, it is crystal clear that the notification dated 07.04.1976 not yet amended or seized. Beside, the Authority inserted vide notification dated 28.09.1985 in Sl. No.61 also not replacing or amending the authority in Sl. No.25 vide notification dated 07-04- 1976. As the Director of Horticulture & Soil Conservation is not Appointing Authority, hence, the term "Director" mentioned in column Nos.3 and 4 of Notification dated 28-09-1985 is only meant for "Director of Agriculture". As such, the Director of Agriculture as Disciplinary Authority has drawn Disciplinary Proceeding against Sri Paresh Chandra Pal U.D.C.(Now retired). The Memo. dated 17th August 2004(Annxure-12 of the Writ Petition) is not at all related with the instant case as Sri Pal, U.D.C.(Retired) was not placed on deputation in any organization during the period of proceeding. Rather, he was posted in the Office of the Dy. Project Officer, North, Ambassa under the Department of Agriculture.

Moreover a separate Directorate of Horticulture and Soil Conservation has been created under the Department of Agriculture w.e.f. 01-06-1985 vide Memo. No.F.2(152)-Agri(Estt)/84-85 dated 31st May, 1985.

Copies of Notification dated 07-04-1976, 28-09- 1985 and 31-05-1985 are enclosed herewith and marked as Annexure-R/1, R2 and R/3 respectively."

15. A careful reading of the pleading of the parties as reproduced hereinabove shows that the petitioner raised a serious and specific point that the office of the Deputy Project Officer(North), Ambassa was under the Directorate of Horticulture. That particular point has not been specifically answered by the respondent Nos.1 and 2 in their counter affidavit. They were supposed to admit or deny the same specifically. The document annexed by respondent Nos.1 and 2, itself shows that the Directorate of Horticulture & Soil Conservation was created in the year 1985(Annexure-R3 to the counter affidavit). Before that there was only one Directorate i.e. Directorate of Agriculture, and as per the provisions of CCS(CC&A) Rules(Annexure-R1), the Director of Agriculture was the disciplinary authority of all Class-III and Class- IV staff as indicated in Sl. No.25 of Annexure-R1, i.e. notification dated 07.04.1976. After the new Directorate was created in the year 1985, necessary amendment was brought in the CCS(CC&A) Rules by notification dated 28.09.1985(Annexure11 to the writ petition and Annexure-R2 to the counter affidavit) and that notification clearly shows that for all Class III and Class IV staff of the Directorate of Horticulture & Soil Conservation, the Director of Horticulture was made the disciplinary authority. Further, the Rules of Executive Business of the Government of Tripura shows that the Agriculture Department had two parts, i.e. (A) Agriculture and (B) Horticulture. In the Agriculture part, item No.28 contains establishment, budget and accounts matters and in Horticulture part item No.10 contains the establishment, budget and accounts matters. It is, therefore clear that under the Department of Agriculture of the Government of Tripura, there were two separate directorates, namely Directorate of Agriculture and Directorate of Horticulture & Soil Conservation, headed by two separate directors having separate establishment, budget, accounts, etc. So long there was only one Directorate of Agriculture, the Director, Agriculture was the appointing authority and disciplinary authority. After the directorate was bifurcated, the Director of Horticulture was the appointing and disciplinary authority of the Class III and Class IV staff as per notification dated 28.09.1985. It was therefore apparent that the Director of Agriculture had no authority to initiate a disciplinary proceeding against a staff of the Directorate of Horticulture.

16. The Director of Horticulture has been made a party in the writ petition but the Director, Horticulture did not submit any counter affidavit and did not contest the writ petition. The respondent Nos.1 and 2 in support of their action stated that the petitioner was under the Director of Agriculture. It is the definite case of the petitioner that the office of the Deputy Project Officer(North), Ambassa was under the Directorate of Horticulture. That contention of the petitioner has not

been denied by the respondent Nos.1 and 2. Rather, as I find in the deposition of the PW1, who was a responsible officer of the Directorate of Agriculture in his cross-examination admitted that the office work of the Deputy Project Officer(North), Ambassa was looked and controlled by the Director of Horticulture and that he did not obtain any permission from the Director of Horticulture to inspect the accounts of the Deputy Project Officer(North), Ambassa. It was, therefore admitted by the disciplinary authority that during the impugned period of defalcation the petitioner was working in an office under the control and supervision of the Director of Horticulture. If the contention of the respondents is accepted that the petitioner was a staff under the control and supervision of the Director of Agriculture, he was definitely lent by the Director of Agriculture to the office of the Director of Horticulture and so the provisions of Rules 20 and 21 of the CCS(CC&A) Rules shall apply for initiating a disciplinary proceeding. The provisions of Section 20 and 21 read as follows:-

"20. Provisions regarding officers lent to State Governments, etc.

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant(hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the enquiry and thereupon the lending authority may, if it is the Disciplinary Authority, pass such orders thereon as it may deem necessary,

or, if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass such orders on the case as it may deem necessary :

Provided that before passing any such order, the Disciplinary Authority shall comply with the provisions of sub-rules (3), (4) of Rule 15.

EXPLANATION. - The Disciplinary Authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 14.

21. Provisions regarding officers borrowed from State Governments, etc.

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant, if the Disciplinary Authority is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of Rule 15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case, as it may deem necessary-

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the Disciplinary Authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action, as it may deem necessary."

17. Admittedly, the petitioner was working in the office of the Deputy Project Officer(North), Ambassa. As already discussed above, it was under the Directorate of Horticulture. So, while the petitioner was working under the Director of Horticulture, the Directorate of Horticulture was the borrowing authority and the Director of Agriculture was the lending authority. The lending authoring being the appointing and disciplinary authority, no doubt can initiate a proceeding but that must be subject to a complaint made by the borrowing authority. Even if it is accepted that the lending authority itself can initiate a proceeding but for initiating such a proceeding the lending authority should have

a complaint or an intimation from the borrowing authority. As it appears, the Director of Agriculture constituted a committee consisting of PWs 1, 2 and 3, to inquire into the office of the Deputy Project Officer(North), Ambassa and according to PWs 1, 2 and 3 they accordingly inspected the office and submitted a report to the Director of Agriculture. The petitioner contended that no permission was taken from the Director of Horticulture. The leader of the inspecting team i.e. PW1 in his cross-examination clearly stated that no permission was taken from the Director of Horticulture and the PWs also admitted that no complaint was received from the Director of Horticulture in respect of the allegation made against the petitioner. Under such circumstances, it is quite apparent that the Director of Agriculture has acted beyond jurisdiction while initiating the disciplinary proceedings.

18. The inquiry report submitted by PWs 1, 2 and 3 has been proved and marked as Exbt.S2 wherein specific indication has been made that the petitioner did not maintain the cash books and stock registers properly. Learned State counsel was directed to produce the relevant files of the disciplinary proceedings along with the documents exhibited but though the files produced the relevant exhibited documents have not been produced which has been indicated in the last order of this Court. Be that as it may, I am of clear opinion that the Director of Agriculture has acted beyond jurisdiction while initiating the disciplinary proceedings and punishing the petitioner and that issue though was raised at every stage of inquiry by the charged officer i.e. the petitioner, it was not answered neither by the disciplinary authority nor by the appellate authority. The petitioner did not submit any statement of defence but raised the issue before the inquiring authority also but the inquiring authority while deciding point No.1 has mechanically rejected the contention of the charged officer i.e. the petitioner and that issue was not at all answered by the disciplinary authority i.e. the Director of Agriculture in the order of punishment, and, the appellate authority in the appellate order. The whole disciplinary proceeding was therefore out of jurisdiction and hence the order of punishment inflicted on the petitioner vide order dated 23.10.2009(Annexure-7 to the writ petition) and order dated 07.05.2011(Annexure-10) i.e. the appellate order passed by the Principal Secretary to the Government of Tripura in the Agriculture Department, are all quashed. However, this will not operate as a bar in initiating a fresh proceeding by the appropriate authority according to law, if not otherwise barred.

19. The writ petition is accordingly allowed.

20. Parties are to bear their own cost.

21. Return the files submitted by learned State counsel.