

(1995) 11 GAU CK 0010
In the Gauhati High Court
Case No : First Appeal No. 2 of 1982

State of Tripura

APPELLANT

Vs

Dilip Ranjan Datta

RESPONDENT

Date of Decision : 28-11-1995

Acts Referred:

Citation : (1996) 1 GLJ 84

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

Bench : Single Bench

Advocate : B.Das, M.K.Dutta, Advocates appearing for Parties

Judgement

1. This first appeal is directed against the judgment and decree of learned Additional District Judge, West Tripura, Agartala dated 21.12.1981 whereby learned Additional District Judge decreed the suit of the plaintiff.

2. To appreciate the contentions canvassed at the Bar by learned counsel for the parties, the facts relevant for the purpose may be stated as under.

The plaintiff who is the respondent before me filed a suit for setting aside/quashing the order dated 6.8.75 and 11.1.76 passed by the Commandant, Tripura Armed Police Battalion and Inspector General of Police, Tripura respectively dismissing him from the service and also for a decree of Rs. 19,486/ as his pay and allowances for the period starting from 12.8.75 to 31.7.78. The plaintiffs case was that he joined as a Constible on 13.7.53 AD under the Police Department, Government of Tripura and he had been discharging the duties to the satisfaction of his superiors and due to extraordinary ability he was also rewarded. On 18.4.74 he was deployed along with a platoon at Durga Choumuhani, Agartala for the maintenance of law and order. While performing his duties at that place he apprehended a person named Nikhil Deb at about 7.45 PM and sent him to the Police Station in a vehicle of the Police Station. But after that incident an enquiry was made against the plaintiff and thereafter a departmental proceeding was started against him on the basis of a charge to the

effect that while functioning as Head Constable in the Tripura Armed Police Battalion he assaulted one Shri Nikhil Chandra Deb on 18.4.74 between 1900 hours and 1945 hours under the influence of liquor. After framing of this charge, one Rafiqul Islam, Assistant Commandant, Tripura Armed Police Battalion was appointed Inquiry Officer to enquire into the charge against the plaintiff.

3. After his appointment as Inquiry Officer, Rafiqul Islam started the enquiry after service of notice to the plaintiff asking him to submit his written statement. Accordingly the plaintiff submitted his written statement denying the allegations of the charge. But the Inquiry Officer during his enquiry recorded the statements of a few witnesses, took the aid of some documentary evidence and thus after completing the enquiry submitted his report to the Commandant with the finding that although the plaintiff was found at fault, the matter needs consideration of the superior officers as the practice of detailment of TAP Battalion for maintaining law and order duty might deteriorate their efficiency for which they were not trained.

4. The Commandant, however, held the view that the plaintiff should be dismissed from the service and accordingly he issued notice to the plaintiff proposing to dismiss him from service. The plaintiff again submitted a representation to the Commandant stating that during enquiry he was not supplied with the copies of the documents which he called for and that he was also not favoured to take assistance of a defence assistant for conducting the case on his behalf. That apart the witnesses whom he wanted to examine were also not summoned. But in spite of those facts, the Commandant by his order dated 13th of August, 1975 dismissed the plaintiff from service with effect from the forenoon of 12th August, 1975. The plaintiff thereafter filed an appeal to the Inspector General of Police, Tripura for favour of consideration of his representation. But the Inspector General of Police by his order dated 11.1.76 rejected the appeal. The plaintiff, therefore, filed the suit for the reliefs as already stated above.

5. The suit was resisted by the defendant by filing a written statement wherein it was contended, inter alia, that the plaintiff was given all opportunities for his defence and as such his contention that he was not allowed to take assistance of defence assistant for conducting the case on his behalf is not correct. It was averred that during enquiry the plaintiff did not pray for appointment of defence assistant. It was also averred that the plaintiff himself submitted an application for disposal of his case on the basis of the evidence of the witnesses who were examined on behalf of the prosecution. It was stated that the charge that the plaintiff assaulted one Nikhil Deb under the influence of liquor was affirmatively proved and as such he was not entitled to get any sort of reliefs prayed for.

6. Upon the pleadings, the learned trial Court framed the following issues for determination of the suit:

1. Is the suit maintainable in its present form ?

2. Is the suit barred by limitation ?
3. Is the notice under section 80 CPC valid and sufficient ?
4. Are the order of the Disciplinary Authority and Appellate Authority valid and enforceable ?
5. Is the order of dismissal of the plaintiff permissible, competent and valid?
6. Are the disciplinary and appellate orders based on any evidence or the orders cryptic and arbitrary ?
7. What should the decree be ?
8. To what other relief or reliefs the plaintiff is entitled.

7. The learned trial Court took up issue Nos. 1,2 and 3 together and decided all these three issues in favour of the plaintiff. Thereafter he took up issue Nos.4, 5 and 6 and also decided the issues in favour of the plaintiff and thus the learned trial Court came to the conclusion that the orders of the Disciplinary Authority as well as the Appellate Authority were bad in law as those were devoid of reasons.

8. I have heard Mr. MK Dutta, the learned counsel appearing on behalf of the appellant and Mr. B. Das, the learned senior counsel appearing on behalf of the respondent.

9. The first contention canvassed on behalf of the appellant was that the learned trial Court erred in law in holding .hat reasonable opportunity was not given to the plaintiff. It is submitted by Mr. Dutta that the plaintiff himself did not make any prayer for appointment of a defence assistant and as such the finding of the learned trial Court that he wasnot given opportunity to seek assistance of an officer in his defence is not acceptable. But Mr. Das has Submitted that the plaintiff being a Constable it was incumbent upon the Inquiry Officer to inform the plaintiff that he was entitled to seek assistance of an officer in his defence. The records of the entire departmental proceeding have been produced before me and on examination of the order sheets I find that the Inquiry Officer at no point of time informed the plaintiff that he was entitled to seek assistance of an officer in his defence. It is also submitted by Mr. Das that not only the Inquiry Officer did not appoint any defence assistant for the plaintiff but the plaintiff was also not given any opportunity to held his own evidence and to present his side of the case. In support of his contention Mr. Das placed reliance upon a decision of the Supreme Court rendered in the case of Bhagat Ram vs. State of Himachal Pradesh & others reported in AIR 1983 SC 454. In the aforesaid case their Lordships held :

"It is well established that in a disciplinary enquiry, the delinquent has a right to crossexamine witnesses examined on behalf of the disciplinary authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. The provisions contained in the Central Services Rules do make

adequate provisions for the same and there should be substantial compliance of them. The principle deducible from the provision contained in subrule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an over all view of the joint inquiry of the delinquent and his Superior Officer shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a Superior Officer, codelinquent, is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the inquiry. In fact, justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary Authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Govt. servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still choose to proceed with the inquiry without obtaining assistance, one can say there is substantial compliance with the rules."

10. In the instant case it, however, does not appear from the records that the departmental authority appointed any officer as Presenting Officer. On perusal of the records it is found that the Inquiry Officer himself summoned the witnesses and examined them in support of the charge. It appears that he himself took the role of Presenting Officer. On perusal of the order sheets of the departmental proceeding it is found that at no point of time the Inquiry Officer informed the plaintiff that he was entitled to take the assistance of an officer of the same department to help him in support of his defence. Mr. Dutta has, however, repeatedly argued that the plaintiff wanted for early disposal of the enquiry and he did not want any defence assistant. But in view of the decision of the Supreme Court as referred to above it is clear that it would be incumbent upon the Disciplinary Authority to inform the delinquent regarding his right to get the help of another Government servant before the commencement of the enquiry. 7 Hence in view of the decision referred to above the contention of Mr. Dutta is a

not acceptable..

11. The next contention of Mr. Dutta is that the finding of the learned trial Court that no opportunity was given to the plaintiff for adducing defence evidence is not acceptable as the plaintiff himself wanted closure of the enquiry early. But on examination of the records it is not found that the Inquiry Authority fixed date for examination of the defence witnesses. The order dated 14.1.75 whereby the Inquiry Officer closed the enquiry may, therefore, be quoted as under:

"Examined PW SI M. Sengupta in presence of the delinquent H/C. Other PWs were not present. As the delinquent submitted a petition to complete the enquiry taking evidence of the available witnesses, I close the enquiry today. Findings will be finalised as early as possible."

12. The above quoted order very well indicates that the plaintiff was not afforded any opportunity of adducing his defence witnesses. In his defence statement dated 28.7.74 (Ext A/13) the plaintiff wanted to examine as many as five witnesses as his defence witnesses. But the order as quoted above shows that after closure of evidence of the prosecution side the Inquiry Officer did not pass any order in respect of examination of the defence witnesses.

13. That apart the plaintiff by his application dated 28.6.74 (Ext A/6) wanted the copies of the following documents viz (1) No of PRB Rules under which he was charged, (2) Copy of the statement of Nikhil Chandra Deb S/O Haradhan Deb of Durga Chowmohani made before the police just after the occurrence and the report of the MO regarding the injuries sustained by him in connection with the case, (3) Copies of the statement made by the local people who became e agitated during the occurrence recorded by the police, (4) Copy of the statement made by Himangshu Paul of Ramnagar Road No.2, (5) Copy of the GD Entry made by SI Manindra Sengupta after his arrival at the PS with the delinquent and others, (6) Copy of the MO's report regarding the condition of the delinquent and the injuries sustained by others in this connection and (7) Copy of the complaint made by the public against the delinquent in this respect. In reply to this prayer, Commandant, Tripura Armed Police Battalion, Agartala supplied him copies of the documents mentioned under item Nos.5 and 6. "The reply which the Commandant, Tripura Armed Police Battalion, Agartala gave has been marked as Ext A/9 and may be reproduced as under :

"Government of Tripura

Office of the Commandant TAP Battalion, Tripura: Agartala.

No.7654/RSVP/TAP Bn/74, Dated, Agartala the 4th July, 1974.

To, H/C Dilip Dutta

Through O/c "C"Coy, TAP Battalion.

Ref: Prayer of HC Dilip Dutta, TAP BN (C.Coy) for copies of allegation made against him in connection with proceeding No.20/74 dated 22.6.74.

No. 1 He may note that the PRB Rules which would be applicable to him will be decided after the findings of the Inquiry Officer is received.

No.2 Not available in this office.

Np.3 Not available in this office.

No.4 Not available in this office.

No.5 Copy enclosed.

No.6 Copy of MO"s report enclosed,

No.7 Not available in this office.

Enclo : 2 (two) So/ Illegible, 4.7.74, Commandant

Tripura Armed Police Battalion, Agartala."

14. The record further shows that the plaintiff furnished the address of Himangshu Paul and it was also stated that he was an employee of the Education Department, Government of Tripura, Agartala but the Inquiry Officer neither fixed any date for examination of the defence witnesses nor made any sort of endeavour to examine him. The question of examining the defence witnesses arises after closure of the evidence of prosecution side. But in the instant case the order dated 14.1.75 as quoted above shows that the Inquiry Officer closed the enquiry without fixing any date for examination of the defence witnesses.

15. In this context the decision of the Supreme Court rendered in the case of Tirlok Nath vs. Union of India & others 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 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 prejudice to the appellant in making his defence at the Inquiry. The Inquiry held must, in these circumstances, be regarded as one in violation not only of Rule 55 but also of Article 311 (2). Accordingly we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi."

16. Similarly in the case of Chandrama Tewari vs. Union of India reported in AIR 1988 SC 117 the Supreme Court held as follows :

"It is now well settled mat 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 crossexamination."

17. Mr. Dutta has, however, argued that barring two documents copies of which have been furnished to the plaintiff the Inquiry Officer did not place reliance upon any other document as called for by the plaintiff and hence it cannot be said that for non furnishing of the copies of those documents the plaintiff was prejudiced. But the contention of Mr. Das is that the plaintiff needed copies of those documents for proper crossexamination of the witnesses whom a the prosecution examined and as such he was very much handicapped for crossexamining the prosecution witnesses effectively. It is true that the enquiry report does not clearly indicate that the Inquiry Officer placed any sort of reliance on the documents, the copies of which were furnished to the plaintiff. But the order sheets of the departmental proceeding clearly show that no opportunity was given to the plaintiff for examination of witness in support of his defence. It is also clear from the order sheets of the departmental proceeding that the Inquiry Officer never informed the plaintiff that he is entitled to take the help of another Government servant to represent his case. In the case of Bhagat Ram (*supra*) it has been clearly laid down that the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. But in the instant case it has not been done. The Commandant, however, made an observation in his order marked as Ext A/41 that the Inquiry Officer gave all facilities to the delinquent to defend his case. But, as already stated, on perusal of the order sheets of the departmental proceeding I find that the Inquiry Officer never informed the plaintiff that he was entitled to get defence assistant to defend his case. That apart no order was passed to the effect that the plaintiff did not want to adduce any evidence in support of his defence. Moreover, on perusal of the findings of the Inquiry Officer I find that the Inquiry Officer raised some question about the deployment of Armed Police Personnel, particularly TAP Bn for maintenance of law and order. The Inquiry Officer was of the view that members of Armed Force were not meant for performing duties for maintenance of law and order as they were not trained for that purpose. With such observation the Inquiry Officer also invited the attention of the superior officers to formulate some policy in this regard. But the Commandant did not make any observation in respect of the aforesaid question raised by the Inquiry Officer in his report.

18. The last contention urged by Mr. Dutta is that the judgment and decree of the learned trial Court must be set aside for the reason that it declared that the plaintiff was entitled to arrears of pay during pendency of the suit. Mr. Dutta has argued that there was no evidence on record to show that the plaintiff was not engaged elsewhere during the period of his suspension and as such a decree

must be set aside. It is true that the learned trial Court did not make any finding to the effect that the plaintiff did not work elsewhere during the period of his suspension. But the evidence adduced on behalf of the defendant also does not show that the plaintiff worked elsewhere during the period of his suspension. This contention cannot, however, help the appellant in view of the failure of the Inquiry Officer to inform the plaintiff/respondent that he was entitled to take the help of another Government servant to defend his case and also in view of the failure of the Inquiry Officer to fix a date giving opportunity to the plaintiff/respondent for examining the defence witnesses. Thus during the enquiry it caused prejudice to the plaintiff/respondent in making his defence at the enquiry. The enquiry held must, in these circumstances, be regarded as one in violation not only of the Rules but also of Article 311 (2).

19. For the reasons stated above the appeal is dismissed but under the circumstances the plaintiff/respondent be paid 40% of the arrears of salary from the date of termination till the date of reinstatement. The period between the date of termination of service and the date of reinstatement shall be treated for other purposes as on duty. The order reinstating the plaintiff/respondent in service must be carried out within 4 (four) weeks from today and the arrears shall be paid within 4 (four) weeks thereafter. The costs of the appeal shall be paid by the appellant.