

(2007) 01 GAU CK 0079
In the Gauhati High Court

State of Tripura

APPELLANT

Vs

Santi Kumar Deb

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Citation : (2007) 2 GLT 979

Hon'ble Judges : Maibam B.K. Singh, J;Aftab H. Saikia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.H. Saikia,J.

1. Since delay in preferring this appeal has been condoned vide order dated 18.01.2007 in CM Application No. 136/06 and also taking into account the importance and the nature of controversy raised in this writ appeal, this Court proposes to dispose of the writ appeal today itself at the admission stage.

2. Heard learned Counsel for the parties.

3. This writ appeal has been carried from the order dated 21.7.2006 passed in W.P.(C) No. 294 of 2003 allowing the writ petition preferred by the respondent as writ petitioner who has challenged the order dated 14.05.2005 re-imposing the penalty of removal of the petitioner from service who was serving as Forester at the time of such imposition of punishment of removal.

4. The facts narrated in this writ appeal have projected a chequered history. The petitioner who was working as Forester in the Forest Department, under the Government of Tripura initially was charged with as many as three allegations vide memo dated 18.4.1985 and during the departmental proceeding the enquiry officer on his enquiry found all those charges to be proved against the petitioner. Eventually the departmental authority by its order dated 27.2.93 on perusal of the enquiry report so submitted by the enquiry officer, imposed upon the petitioner the penalty of removal from service.

5. That aforesaid removal order was challenged by the petitioner in Civil Rule No. 298/1993 and this Court by order dated 20.08.2002 on elaborate consideration of the materials available on record, came to the finding that the charges of unauthorized absence of the petitioner for 11 (eleven) years was not framed and in arriving at such finding it was held that the petitioner was deprived of getting reasonable opportunity of hearing. Under such circumstances, this Court allowed the writ petition setting aside and quashing the removal order dated 27.2.1993 and remitted the matter to reconsider the same in the light of the discussion made in the writ petition itself and to pass appropriate order as may be deemed fit and proper with further direction that the disciplinary authority in passing the order would be guided by the principle of natural justice and fair play in action.

6. To understand the purport and intent of the order dated 20.8.2002, it would be necessary to quote its operative part which read as under:

9. In the opinion of this Court, therefore, it was not open for the disciplinary authority to take that aspect into consideration to decide the penalty to be imposed. It is clearly not permissible in law on this ground, therefore, the impugned order of penalty is liable to be set aside. However, in view of the order which this Court proposes to pass in the above setting of facts, no further comments or observations on the other submissions of the learned Counsel for the parties relating to the manner to which the disciplinary proceeding had been conducted are considered necessary. Suffice it to mention that the order of penalty, for the reasons as indicated above, is not sustainable in law and is thus set aside. The matter is, therefore, remanded to the disciplinary authority, who would reconsider the same in the light of the discussions made hereinabove and pass appropriate orders as may be deemed fit and proper.

10. Needless to mention that the disciplinary authority in passing any order in the matter would be guided by the principles of natural justice and fair play in action. As the grievance of the petitioner is a long standing one, it is expected that the disciplinary authority would take appropriate action as expeditiously as possible and in any case not later than six weeks from the date of receipt of the certified copy of this judgment and order.

This order was not carried to the higher forum and as such the same has attained its finality. It was categorically provided that the disciplinary authority in reconsidering the matter under remand would be guided by the principles of natural justice and fair play.

7. Pursuant to the aforesaid High Court's order, the impugned order dated 14.5.2003 was passed by the competent authority. It would be apt and necessary to notice this order for the proper adjudication of the issue raised in this writ appeal and the same is quoted thus:

Government of Tripura Office of the Principal Chief Conservator of Forests Tripura, Agartala.

ORDER

Whereas a disciplinary proceeding was drawn up against Shri Santi Kr. Deb, Forester under Rule, 14 of CCS (CCA) Rules, 1905 vide Memo No. F. 17 (58)/Vig/For-84/16, 816-18 dated 18.04.85 with following charges:

(i) That said Santi Kr. Deb, Forester while functioning as Beat Officer Belcharra under Divisional Forest Officer Teliamura Division acted quite unbecoming with ulterior motive by remaining absent from duty without authority w.e.f. 09.03.1981 to 29.06.1981 and from 10.05.1982 to 14.12.1982 (i.e., till the date of report by the D.F.O. Teliamura Division) and neglected his duty by not attending any work at Belcharra.

(ii) That said Santi Kr. Deb, Forester while functioning as Beat Officer Belcharra neglected his duty and disobeyed the instruction of Divisional Forest Officer, Teliamura by not raising Sal in 1981 plantation over 20 hac. At Belcharra and subsequently left the plantation work by violating the instruction of Divisional Forest Officer, Teliamura to the detriment of Govt. interest.

(iii) That said Santi Kr. Deb, Forester failed to maintain absolute integrity and devotion to his duty by not carrying out the survey and resurvey works over the proposed area of 100 hac. For raising 1982 plantation and by adjusting fictitious expenditure showing the work done over 100 hac. He showed fictitious, irregular and excess expenditure for an amount of Rs. 8,036.00 without authority for his personal gain which is detriment to the Govt. Interest.

And whereas the case was remitted to the Inquiry Authority for enquiry and to submit report.

And whereas the Inquiry Authority submitted his finding dt. 12.04.1991 and held that the accused officer is guilty of the charges as framed against him under Article-I, II and III.

And Whereas the said findings with proposed penalty was sent to Shri Santi Kr. Deb, Forester and given him an opportunity for submitting representation against findings and proposed penalty vide No. F. 10 (186)/Vig/For-97/7, 671-76 dated 8.3.92. But no representation was received even expire lapse of 10 months. It is, therefore, presumed that he had nothing to represent. There is also nothing on record to prove that Shri Santi Kr. Dey, (sic) Forester resumed his duty after 10th May 1982.

And whereas Shri Santi Kr. Deb, Forester was removed from service indicating that he was been absenting from duty for more than 11 years since 10.05.1982 with immediate effect vide No. F. 19(136)/Vig./For-87/8, 435-40 dated 27.02.1993. And Whereas the said order of punishment dated 27.02.1993 has been set aside by the Hon''ble High Court on the ground that the chargesheet was not framed against him for a period of 11 years unauthorized absence from duty, but not on merit of the case vide judgment dated 20.08.2002 in C.R. No. 219 of 1998. The said order of judgment of the Honb''le High Court has been

complied by the undersigned on consideration of the circumstances of the case and also decided that further action should be held vide No. F. 19.(136)/Vig./For-87/24, 402-07 dated 29.12.2002.

And whereas the Charges as framed against Shri Santi Kr. Deb, Forester have been proved and he has been found guilty of the charges according to the finding of the Inquiring Authority, I agree with the findings of the Inquiring Authority and have come to the conclusion that Shri Santi Kr. Deb, Forester is not a fit person to be retained in service according to the gravity of the charges which are such as to warrant the imposition of major penalty.

Now, therefore, I as disciplinary authority after careful consideration of all aspect of the case, hereby remove the said Shri Santi Kr. Deb, Forester from service w.e.f. 10.05.1982.

Sd/- (M.A. Khan) Principal Chief Conservator of Forest. Tripura, Agartala.

Regd. With A/D. To, Shri Santi Kr. Deb, Forester, P.O.-Palatana (Deb Bari Para) Via-Radhakishorepur, South Tripura.

No. F.19(62)/Case/Vig/For-93/Part/43 dt 14.05.2003

8. A bare perusal of this order of removal would go to indicate that the petitioner was reimposed with the penalty of removal on consideration of his earlier charges so framed against him and it was also reflected that the direction given in the judgment dated 20.08.2002 of this Court was complied with by the authority concerned on consideration of the facts and circumstances of the case and also decided that further action should be held vide No. F-19 (136) Vig/For-87/24, 402-07 dated 29.12.2002.

9. An attempt has been made by the learned Sr. Counsel representing the State that the order dated 29.12.02 so indicated in this order is none but a show cause giving a reasonable opportunity to be heard.

10. Be that as it may, this order was challenged again for the second time by the writ petition (Civil) No. 294 of 2003 and by the impugned order dated 21.07.2006, this Court again allowed the aforesaid writ petition holding in clear finding recorded in paragraph-10 of the judgment, held that the order of removal dated 14.5.2003 was passed without proper application of mind and in derogation to the directions of the order dated 20.8.2002 and in defiance to the principles of natural justice and fair play inasmuch as no opportunity of hearing in consonance to the principles of natural justice and fair play was ever afforded to the petitioner in terms of the earlier Court's order dated 20.08.2002.

11. As already noticed above, the order dated 14.5.03 has made no whisper as regards giving any such opportunity of hearing to the respondent/petitioner as per direction of this Court. A plain reading of the order abundantly would go to show that since all the three charges so levelled against him vide memo dated 18.4.1985 were found to be proved by the Inquiry Officer earlier and that as he

was also removed from service due to his absents from duty, he was found to be not a fit person to be retained in the service according to gravity of the charges and eventually the penalty of removal from service was imposed upon the petitioner agreeing with the findings of the enquiry authority so submitted earlier. Only a mention has been noticed in the order dated 14.5.03 as regards the communication dated 29.12.02 which, according to the learned Sr. Counsel, was the show cause notice issued to the petitioner in compliance of the order dated 20.8.02 by this Court. However, this Court has been detained from laying its hand on this order communication dated 29.12.02 as the same has not been placed before this Court.

12. More significantly, the affidavit-in-opposition filed by the State against this writ petition before the writ Court does not demonstrate anything convincing with regard to giving any reasonable opportunity of hearing to the appellant in terms of the Court's order dated 20.8.2002 though the learned Sr. Counsel has tried to reinforce his submission as regards affording reasonable opportunity of hearing in compliance of the order of the Court by referring to paragraph-13 of the response.

13. For the sake of convenience, paragraph-13 of the Government's affidavit is quoted as under:

13. That in reply to the contention made in paragraph 6 of the writ petition, I state that the petitioner has been removed from service with effect from 5.10.1982 by an order dated 14.5.2003 as issued under the provisions of the Rules without violation of principles of natural justice and the petitioner was not prejudiced. It is not correct that the petitioner was not given any opportunity to defend the case. The petitioner was given reasonable opportunities to defend the case. The Hon"ble High Court disposed with petition with a direction that the Disciplinary Authority would take appropriate action in respect of departmental proceedings. The Hon"ble Court did not interfere the entire proceedings. Therefore, the Disciplinary Authority had concluded by passing order in the light of the direction of the Hon"ble High Court so the question of violation of the order dated 20.8.2002 does not arise.

14. A plain reading of the averments made in the paragraph aforesaid of the affidavit would simply reflect that the same was made in a vague, causal and routine manner without being supported by any relevant materials. Even no such materials having relevancy to substantiate such averment has been placed for perusal of the Court. It, thus, appears that only a mere statement as regards affording of opportunity to the respondent was made in the above paragraph. Surprisingly, the communication dated 29.12.2002 which was reflected in the order dated 14.5.03 has not also been mentioned anywhere in this affidavit-in-opposition including this paragraph.

15. In view of what has been discussed and observed above, this Court is of the considered view that no reasonable opportunity of hearing has been afforded to

the respondent to satisfy the fundamental principles of natural justice as well as in compliance of the order dated 20.8.2002 above and the learned Single Judge was, therefore, wholly justified and right in allowing the writ petition.

Under such circumstances, we do find no merit in this writ appeal and accordingly the same stands dismissed at the admission stage itself.