

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.58/2012

Sri Ashit Kumar Das, S/o Lt. Ashutosh Das,
resident of Lichu Bagan, Gosh Para, East Barjala,
P.O : Kathal Bagan, District : West Tripura.

---- Petitioner.

Versus

1. The State of Tripura, represented by the Home Secretary, Govt. of Tripura, New Secretariat Complex, P.O : Kunjaban, District : West Tripura.
2. The Director General of Police, Tripura, Police Head Quarter, P.O : Agartala, District : West Tripura.
3. The Inspector General of Police, Tripura, Police Head Quarter, P.O : Agartala, District : West Tripura.
4. The Superintendent of Police, South Tripura, P.O: Radhakishorepur, Udaipur, District : South Tripura.

---- Respondents.

सत्यमेव जयते

For petitioner : Mrs. S Deb(Gupta), Advocate.

For Respondent(s) : Mr. S Chakraborty, Addl. G. A.

HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI

Judgment

Judgment reserved on : 19th March, 2018.

Date of Judgment : 27th March, 2018.

The instant writ petition has been filed for quashing of the memorandum dt.13.3.2010 initiating disciplinary enquiry against the petitioner and the order of penalty/punishment

which has been finally inflicted upon him vide order dt.15.7.2010 modified to some extent in departmental appeal vide order dt.18.7.2011.

[2] The brief facts of the case, in a nutshell, which are relevant for the purpose leading to examine the matter, are that the writ petitioner while working as Inspector(UB) in SP(S) office, South, Udaipur for some alleged misconduct served with memorandum dt.13.3.2010 along with the Statement of Article of Charge for holding disciplinary enquiry under Regulation 861 of P.R.B., 1943.

[3] At the outset, we noticed that in a regular disciplinary enquiry two charges were levelled against the petitioner-delinquent and the enquiry officer found Charge No.I proved out of the two charges levelled against him as it reveals from the enquiry report dt.26.5.2010 and after the copy of enquiry report was served upon the petitioner and taking his comments, the disciplinary authority confirmed/accepted the finding of the enquiry officer in reference to Charge No.I and punished him with a penalty of reducing the pay to the minimum of basic pay for three years without any cumulative effect vide order dt.15.7.2010.

[4] That came to be challenged by the petitioner-delinquent in a departmental appeal and in the departmental appeal, the petitioner placed cogent material on record to justify

that there was no misconduct of a kind being committed by the petitioner and at the same time, Rule 145 of the Central Treasury Rules has no application in the facts of the given case. The appellate authority although has not interfered with the finding which was recorded by the enquiry officer and confirmed by the disciplinary authority in respect of Charge No.I but at the same time, considered it appropriate to modify the punishment inflicted upon the writ petitioner-delinquent holding that it does not commensurate with the charge proved and, accordingly, modified the punishment to reduction in pay by two stages for two years without cumulative effect vide order dt.18.7.2011.

[5] The Article of Charge No.I relevant for the purpose is reproduced herein below :

"ARTICLE OF CHARGE -I

Inspr.(UB) Asit Kumar Das is charged for gross misconduct and dereliction in duty, in that while he was posted to SP(S) office as DDO, on 01.02.10 he issued a back dated duplicate Acquaintance Roll of TA Bill No.1368 dated 16.10.2006 in respect of Insp.(UB) Gopal Brahma, the then O/C cum CI Santirbazar PS, amounting Rs.3,240/- without the knowledge of Head of office, contravening the application of financial power rules pertaining to prudence to be exercised by DDO which is unbecoming on the part of the disciplined and responsible police officer.

[6] The main thrust of submission of the counsel for the petitioner is that Rule 145 of the Central Treasury Rules apply where the government officer has asked for issuance of duplicate copies of bills or other documents for the payment of money which has already been paid on the allegation that originals have been lost but in the instant case, indisputably no payment was made to the government officer(complainant) and on issuance of duplicate copies of bills or other documents which are duly verified at the first instance by the (Ex-cashier)Head Clerk of the SP(S) Office, South, Sri Ashok Acharjee, payment was made to the government officer(complainant) Insp. (UB) Sri Gopal Chandra Brahma. The premise on which allegation was made against the petitioner for issuance of duplicate copies of bills or other documents for payment of money to the government officer, is factually incorrect and was not at all a misconduct of a kind being committed by him for which he was charge sheeted.

[7] Counsel further submits that in a given point of time when the petitioner-delinquent was posted to SP(S) office South, Udaipur, as DDO on 01.02.2010, one Ashok Acharjee was serving there as (Ex-cashier) Head Clerk, he too was charge sheeted for the alleged action and on a complaint of Inspector(UB), Sri Gopal Chandra Brahma, to whom the Acquittance Roll of T.A Bill No.1368 dt.16.10.2006 were issued in duplicate on 01.02.2010, a sum of Rs.3,240/- was remitted to

him which considered to be a gross misconduct and dereliction of duty.

[8] Counsel submits that against the then (Ex-cashier) Head Clerk Ashok Acharjee the allegation was that he, as a person, did not hand over Rs.3,240/- due to Inspector(UB), Gopal Chandra Brahma, for many years and misappropriated the amount by making false entries in records and he was purportedly involved himself in that conspiracy with the DDO who is none other than the present petitioner. In the case of Ashok Acharjee, who was served with separate charge sheet, enquiry was conducted against him but on the basis of evidence collected from the statement of witnesses and the documentary evidence on record the charge was not found proved against him and the inquiry officer arrived to a conclusion that there is no scope of holding further enquiry on the basis of the statement of the witnesses and other documentary evidence on record and recommended to drop the departmental proceedings against him, as it reveals from the report of enquiry officer dt.21.7.2011 which was accepted by the disciplinary authority and order dt.02.8.2011 came to be passed dropping the departmental proceedings against Ashok Acharjee, (Ex-Cashier) the then Head Clerk of SP South Office, Udaipur, South Tripura.

[9] Taking assistance the learned counsel submits that if enquiry in the case Sri Ashok Acharjee has been dropped & Rule

145 of Central Treasury Rules has no application in the facts and circumstances of the instant case, there appears no reason in holding the petitioner guilty in reference to charge No.I as it was neither a misconduct nor a dereliction of duty and inflicting penalty upon him is a clear abuse of the power vested with the disciplinary authority and the very memorandum served upon him in furtherance thereof the penalty inflicted, both are not legally sustainable in the eye of law and deserves to be quashed and set aside.

[10] The respondents have filed their counter-affidavit and submit that the very issuance of the duplicate Acquittance Roll implicits that payment was made and there is a reason for which duplicate copies of bills or other documents were issued in the year 2010 on the allegation that originals have been lost and this is nothing but a clear gross misconduct on the part of the petitioner and Rule 145 of the Central Treasury Rules was applicable in the facts of the case for which he was charge sheeted and after being held guilty was rightly punished.

[11] Counsel further submits that Ashok Acharjee was posted as Ex-cashier at the relevant point of time when the alleged incident took place. Although, enquiry was finally dropped in his case but that will not absolve the conduct of the petitioner in regard to the dereliction of duty which has been committed by him. In the present facts and circumstances, after

the petitioner being afforded reasonable opportunity of hearing punishment has been inflicted upon him after due compliance of the principle of natural justice, more so, when it is not the case of the petitioner that he has been deprived of either reasonable opportunity of hearing or a right of defence has been denied or the procedure prescribed under the disciplinary Rules has not been complied with. In absence thereof there appears no reasonable justification to interfere in the limited scope of a judicial review in disciplinary enquiry under Article 226 of the Constitution of India.

[12] I have heard counsel for the parties and with their assistance perused the material on record.

[13] The indisputed facts which manifests from the record are that the petitioner at the relevant point of time was serving as an Inspector(UB) posted at the office of SP(S), South, as DDO on 01.02.2010 and a duplicate Acquittance Roll of T.A. Bill No.1368 dt.16.10.2006 in respect of Inspector(UB) Gopal Chandra Brahma was issued for payment of Rs.3,240/- which was considered to be a contravention of the financial power and not expected from a disciplined & responsible police officer and for which memorandum was issued on 13.3.2010. After the enquiry, charge No.I against the petitioner was found proved and finally held guilty, the disciplinary authority punished him with a penalty vide order dt.15.7.2010 and while upholding the

guilt the punishment order was modified by the appellate authority vide order dt.18.7.2011.

[14] Indisputably, it is not the case of the petitioner that fair opportunity of hearing has not been afforded or there is a violation of principle of natural justice or the procedure prescribed under disciplinary rules has not been followed by the enquiry officer during the course of enquiry being conducted against him but the fact still remain that one can be charge sheeted only if the delinquent has committed a misconduct or there is a dereliction of duty if has been committed by the delinquent in discharge of his official duty.

[15] Rule 145 of the Central Treasury Rules certainly has a bearing on the realm of issue if has been violated certainly it can be considered to be a misconduct on the part of an officer delinquent and I consider it appropriate to quote Rule 145 of the Central Treasury Rules which is relevant for the purpose:

"145.(1) No Government officer may issue duplicates or copies of bills or other documents for the payment of money which has already been paid, on the allegation that the originals have been lost. If any necessity arises for such a document, a certificate may be given that on a specified day a certain sum was paid to a certain person. This prohibition extends only to the issue of duplicates on the allegation that the originals have been lost and does not apply to cases, if any, in which, by any rule or order,

duplicates have to be prepared and tendered with the originals.

(2) In the case of a bill passed by the Drawing Officer/Controlling Officer for presentation at a treasury but lost either before payment or before presentation at the treasury, the Government Officer, who drew the original bill, shall ascertain from the treasury that payment has not been made on it before he issues a duplicate thereof. The duplicate copy if issued must bear distinctly on its face the word 'duplicate' written ink. The fact that duplicate bill has been issued shall be immediately communicated to the Treasury Officer with instructions to refuse payment on the original bill if presented.

NOTE :- For the purposes of this rule, the Treasury Officer on receipt of a request from any Drawing/Controlling Officer shall, after due verification from his records furnish a certificate in the following form :-

'Certified that Bill No....., Dated, for Rs.(Rupees.....) reported by to have been drawn by him on this Treasury in favour of has not been paid, and will not be paid if presented hereafter.'

(3) When any kind of bill is required to be prepared in duplicate or triplicate, only one copy shall be signed or countersigned in full and the other copy or copies may be only initialed. If the pre-audit by the Accountant-General is required, only the original copy shall be sent to that authority."

[16] The provision, as referred to, clearly envisages that no government officer shall issue duplicate copies of bills or other documents for payment of money which has already been paid on the allegation that originals have been lost. Obviously, the payment once made and an impression has been given that originals since lost obtaining duplicate copies of bills and other documents for the purpose of payment of money, indisputably, it is an attempt for misappropriation of government funds and any person who intends to obtain a duplicate copies of bills or other documents for payment of money which has already been paid is a serious misconduct on the part of a delinquent.

[17] But, in the instant case, there was no such allegation against the petitioner that Inspector(UB), Gopal Chandra Brahma has ever been paid in reference to TA Bill No.1368 dated 16.10.2006 and for the reason that it was not paid prior thereto to the Inspector(UB), Gopal Chandra Brahma, duplicate Acquittance Roll of the aforesaid TA Bill No.1368 was issued on 01.02.2010 and for the first time, payment was made to him on issuance of duplicate Acquittance Roll on 01.02.2010 amounting to Rs.3,240/- and that being a factual situation, this court is of the view that Rule 145 of the Central Treasury Rules has no application in the facts of the instant case and no finding has been recorded by the enquiry officer that the duplicate Acquaintance Roll of TA Bill No.1368 dated 16.10.2006 was issued on 01.02.2010 when the payment was already made. In

the given facts and circumstances, it may be a case of irregularity but, at least, could not be construed to be a gross misconduct or a dereliction of duty on the part of the petitioner, as alleged, for which a memorandum with charge sheet was served upon him as referred to in charge No.I and departmental enquiry was conducted in which he was held guilty.

[18] This court finds substance in the submission of the petitioner's counsel and is of the view that it was not a misconduct or a dereliction of duty on the part of the petitioner being committed, the very issuance of a memorandum and holding a departmental enquiry and further to punish the petitioner without any foundational basis, are the very actions which are not legally sustainable in the eye of law and the modified punishment inflicted by the appellate authority under order impugned dt.18.7.2011 is also not legally sustainable in the eye of law.

[19] This court finds substance in the submission made by the counsel for petitioner that Ashok Acharjee, the then (Ex-Cashier)Head Clerk of SP(S) South office, Udaipur, was also served with charge sheet and against him the charge was that while he was posted as (Ex-Cashier) Head Clerk of SP(S) South office, Udaipur he did not hand over Rs.3,240/- due to Inspector(UB), Gopal Chandra Brahma for many years and misappropriated the said amount by making false entries in

records and this, according to the allegation levelled against him, was a criminal breach of trust and the authority considered appropriate to quote both the two Articles of Charge I & II against Ashok Acharjee and after the enquiry being held, the enquiry officer took note of the complaint of Sri Gopal Chandra Brahma and all other documentary evidence on record & finally arrived to a conclusion that either of the Articles of charge I & II is not proved and the enquiry against him was to be dropped and that was finally accepted by the disciplinary authority as it revealed from order dt.18.7.2011.

[20] The Articles of Charge No.I & II in respect of Ashok Acharjee, (Ex-cashier) Head Clerk and findings of the enquiry officer are reproduced herein below :

"ARTICLE OF CHARGE -I

Sri Ashok Acharjee(Ex-Cashier), Head Clerk of SP South Office Udaipur is charged for gross misconduct while discharging duties as cashier, SP South office in that he did not hand over Rs.3,240/- due to Insp. Gopal Chandra Brahma for many year and misappropriated the said amount by making false entries in records.

Thus the act of Sri Ashok Acharjee(Ex-Cashier), Head Clerk of SP(S) office Udaipur amounts to gross misconduct and negligence in duty which is unbecoming of a member of responsible clerk in Police Department.

ARTICLE OF CHARGE -II

Sri Ashok Acharjee (Ex-Cashier), Head Clerk of SP(S) office Udaipur is charged for gross misconduct and criminal breach of trust in that he purportedly involved himself in a conspiracy with the DDO and indulged in abetment of the act of manipulation of office records to show the said TA money disbursed from a back date by way of a duplicate A. roll.

FINDINGS :

The evidences collected from the statements of PWs I am in the opinion that charge under Article No.I & II framed against the charged officer Sri Ashok Acharjee (Ex-Cashier) Head Clerk of South Tripura District in the instant DP No.01/10 dt. 05.03.2010 are not proved.

Moreover the complainant Insp. Gopal Ch. Brahma (Now retired) submitted a written petition earlier on 01.02.2010 addressed to E.O stating that he already had received the claimed TA bill Rs.3,240/- Now he has withdrawn the complaint lodged against Ashok Acharjee(Ex-Cashier) of SP(S) office and he has requested to drop the DP drawn against Ashok Acharjee.

I being the enquiry officer called the complainant to my office chamber on 08.06.2011 to record his statement. Accordingly, he appeared before me on 08.06.2011 at 11.00 hrs and his statement was recorded. In statement he stated that he had received the claimed TA bill amounting to Rs.3240/- during his service tenure in South District. He has retired from service in the month of February, 2010,

So, he has no grievances against Ashok Acharjee(Ex-Cashier) of SP(S) office.

In the above circumstances, there is no scope to further continue the enquiry of DP drawn against Ashok Acharjee(Ex-cashier) Head Clerk of SP(S) office. So, it is submitted that the instant DP No.01/10 dated, 05.03.2010 drawn against Ashok Acharjee(EX-cashier) head clerk may be dropped.

Submitted to the Superintendent of Police South Tripura District Udaipur for kind perusal and necessary instruction.”

[21] In the given facts and circumstances, where no complaint was made by the recipient Insp. (UB), Gopal Chandra Brahma, that he has received the amount of Rs.3,240/- earlier during his service tenure in reference to TA Bill No.1368 dt.12.12.2006 and that duplicate was issued only on 01.02.2010, pursuant to which the payment for the first time was made to him and the allegation against Ashok Acharjee was of retaining and misappropriation of the money by making false entries and manipulation of records not being found to be proved and enquiry proceeding was finally dropped, there appears no reason under what circumstance the petitioner who served as DDO could be charge sheeted and held guilty, at least, in the light of the finding which has been recorded in the case of Ashok Acharjee the reference of which has been made hereinabove and explained by the petitioner in detail when the appeal was considered by the appellate authority but no finding

to the contrary has been recorded and the appellate authority after going through the detail reference of the documents relied upon by the parties without activation of mind has confirmed the finding of the disciplinary authority.

[22] Though the appellate authority by taking note of the guilt held that the punishment inflicted upon the writ petitioner-delinquent is not commensurate with the charge proved to the nature of penalty, modified the penalty but the fact is that if the Charge No.I levelled against the petitioner from its very inception could not have been considered to be a misconduct or dereliction of duty on his part, at least, in the light of what being observed by the disciplinary authority in the case of Ashok Acharjee, who was posted as Ex-cashier at a given point of time and this Court is of the view that the very memorandum served upon the petitioner and charge No.I levelled against him in particular was neither a misconduct nor a dereliction of duty on his part, in absence whereof the impugned memorandum and charge levelled against the petitioner are not sustainable in law.

[23] In consequence thereof there was no scope of conducting disciplinary enquiry against the petitioner and holding him guilty and inflicting penalty upon the petitioner, are not sustainable and deserves to be set aside.

[24] Consequently, the writ petition is allowed. The impugned memorandum dt.13.3.2010 and consequential

punishment orders dt.15.7.2010 & 18.7.2011 respectively are hereby quashed and set aside. The petitioner is entitled to all consequential benefits following thereof, as admissible, under the law.

No cost.

CHIEF JUSTICE



Sukhendu