HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.994/2017

Shri Prasad Biswas, Son of Shri Pranab Kanti Biswas,
resident of village Durgapur, P.O. Paiturbazar,
P.S. Fatikroy, District – North Tripura.

…… *Petitioner(s).*

Vs.

1. The State of Tripura,
   Represented by the Secretary to the Government of Tripura,
   Rural Development Department, Secretariat Complex,
   Khejurbagan, P.O. Kunjaban, P.S. East Agartala,
   District – West Tripura.

2. The Secretary to the Government of Tripura,
   Rural Development Department, Secretariat complex,
   Khejurbagan, P.O. Kunjaban, P.S. East Agartala,
   District – West Tripura.

3. The District Magistrate & Collector,
   North Tripura, Kailashahar.

4. The Additional Commissioner,
   Department of Inquiries, Tripura,
   Agartala Gurkhabasti, P.O. Kunjaban,
   P.S. East Agartala, District – West Tripura.

…… *Respondent(s).*

_B_E_ F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : Mr. A Bhowmik, Advocate,
Mr. A T Pal, Advocate.

Date of hearing & judgment : 29th May, 2020.

Whether fit for reporting : No.

J U D G M E N T (O R A L)

This petition has a long history. Briefly stated, the petitioner has challenged an order dated 1st August, 2017 passed by the disciplinary authority imposing punishment of reduction of the pay of the petitioner to a lower stage for 2(two) years w.e.f 1st November, 2007 further providing that during such period the petitioner will not earn any increment.

[2] While the petitioner was working as a Junior Engineer in the Rural Development Department of the State of Tripura, he was visited with a charge sheet dated 14th May, 2003 in which 3(three) separate and distinct charges were levelled against the petitioner. Since the inquiry officer as well as the disciplinary authority agreed that Articles Charge I and III were not proved, we may focus on Charge Article II only. In this charge, it was alleged that the petitioner while functioning as a Junior Engineer was engaged in implementing the work of construction of OBB building at Rangauti during the year 2001-2002. Owing to sub-standard execution of such work which can be attributed to the negligence on part of the petitioner, the constructed building collapsed on 26th April, 2002 causing serious loss to the Government exchequer. Such loss was estimated at Rs.43,268/-. Petitioner denied the charges upon which departmental inquiry was conducted. The inquiry officer submitted his report dated 31st July, 2007 in which he held that only the above-mentioned charge was established. The disciplinary authority thereafter without providing a copy of the inquiry officer's report imposed punishment on the petitioner under

order dated 26th October, 2007 of reduction to a lower stage in time scale of pay for 5(five) years from the date of order further providing that during such period the petitioner shall not earn any increment. He also ordered recovery of a sum of Rs.43,268/- from the pay of the petitioner which would be inclusive of a sum of Rs.15,000/- already separately recovered under an order dated 10th May, 2002.

[3] After unsuccessfully challenging the said order before the appellate authority the petitioner approached this Court by filing writ petition No.WP(C) 331/2011. His petition was disposed of by a judgment dated 16th December, 2015. The learned Single Judge held that the disciplinary authority would not have imposed the punishment without providing a copy of the inquiry officer's report to the petitioner and inviting his representation thereon. Resultantly, after quashing the order of disciplinary authority the matter was remanded back to the said authority for affording an opportunity to the petitioner to make representation against the report of the inquiry officer and thereafter to pass a fresh order.

[4] Thereupon the disciplinary authority permitted the petitioner to make a representation against the inquiry officer's report and also granted personal hearing. The minutes of such personal hearing given to the petitioner on 27th June, 2017 drawn by the disciplinary authority records that a committee was formed under a memorandum dated 4th August, 2016 to examine the issue which committee had submitted a report with their observations. The disciplinary authority passed the final order dated 1st August, 2017 which is impugned in this petition. In this order, he has

referred to the report of the inquiry officer, the representation made by the petitioner on 3rd May, 2016 to such report, the report of the committee formed under a memorandum dated 4th August, 2016 and the submissions made by the petitioner during personal hearing. The order records that after taking into consideration these materials, the disciplinary authority was of the opinion that the above noted punishment of reduction of the pay of the petitioner to a lower stage of pay for 2(two) years would be appropriate.

[5] At the outset, learned counsel Mr. Arijit Bhowmik for the department has raised an objection that the petitioner has before this petition challenged the order of disciplinary authority without availing statutory remedy of appeal. Learned counsel Mr. Raju Datta, however, clarified that he confines his petition to a single argument of clear breach of principles of natural justice and that therefore, the petitioner may not be relegated to the remedy of appeal.

[6] In such background, considering the fact that the petitioner has confined his argument to only one contention of clear breach of principles of natural justice, as also considering the fact that the petition was admitted in the year 2017 and has come up for final hearing now, I do not find it appropriate to relegate the petitioner to appeal remedy. Instead I have heard counsel for the parties on the singular contention raised by the counsel for the petitioner. This contention happens to be that the disciplinary authority had drawn a committee to submit a report. Such a committee had submitted the report which contains certain observations. This report and the observations made by the members of the committee

were examined and taken to consideration by the disciplinary authority while passing the final order of punishment. Such a report was never supplied to the petitioner and thus, the disciplinary authority has taken into consideration materials collected behind the back of the petitioner. This was clear in breach of principles of natural justice.

[7] Learned counsel Mr. Bhowmik submitted that the disciplinary authority did not accept the recommendations of the committee but has imposed punishment which is lesser than what was recommended.

[8] To my mind, the fact that the disciplinary authority did not accept the recommendations of the committee fully is of no consequence. The fact remains that the disciplinary authority constituted a committee to submit a report on the inquiry officer's report and the representation of the petitioner made in response to such a report after the High Court set aside the previous order of punishment. Such a committee submitted its report which contains certain observations. It is not important that the disciplinary authority might have deviated from the punishment recommended by the committee in such a report. The fundamental question was did the disciplinary authority accept the report of the inquiry officer? Only then, the question of imposing punishment would arise. This had to be done after taking into consideration the representation made by the petitioner to the report of the inquiry officer. Only if the disciplinary authority was of the opinion that despite the representation of the petitioner inquiry officer's findings are required to be accepted, the question of imposing punishment would arise. In clear terms, the disciplinary authority collected material

behind the back of the petitioner and relied on such material before holding that a Charge Article II against the petitioner was proved and proceeding to impose punishment against him. At that stage, the disciplinary authority provided a copy of such a report to the petitioner. This was opposed to all cannons of principles of natural justice. It is doubtful whether the disciplinary authority could have invited any such report from an outside agency. In terms of the service rules he had already instituted a departmental inquiry and appointed an inquiry officer to conduct such inquiry. Once an inquiry officer completed such an inquiry and submitted his report the duty of such disciplinary authority flowing from the CCS (CCA) Rules, 1965 was to decide whether he agrees with the findings of the inquiry officer or not after taking into consideration the representation made by the petitioner to the report of the inquiry officer. He ought not to have formed yet another committee on the question whether the report of the inquiry officer should be accepted or not and if yes, what punishment should be imposed. It was his sole prerogative and duty in law.

[9] Under the circumstances, only on this ground impugned order of penalty dated 1st August, 2017 is set aside. The matter is placed back before the disciplinary authority to pass a fresh order in accordance with law without taking into consideration the report of the said committee. By now the disciplinary authority may have changed. Previously the petitioner was granted an opportunity of personal hearing. Considering such factors, the disciplinary authority shall grant a personal hearing to the petitioner before passing a fresh order. It is clarified that if the disciplinary authority forms an opinion that the said Charge Article II is established against the

petitioner, he would not be bound by any of the penalties previously imposed by the earlier disciplinary authorities which penalty orders have been set aside by this Court in WP(C) No.331/2011 and now in this case.

[10] Petition is disposed of accordingly. Pending application, if any, also stands disposed of.

(AKIL KURESHI), CJ

Sukhendu