**(2004) 05 GAU CK 0003**

**Gauhati High Court (Agartala Bench)**

**Case No:** Civil Rule No. 473 of 1994, RE. No. AS WP (C) No. 463 of 2003

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| Adhir Chandra Chowdhury | | APPELLANT |
| | Vs | |
| State of Tripura and Others | | RESPONDENT |

**Date of Decision:** May 11, 2004

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 99
- Criminal Procedure Code, 1973 (CrPC) - Section 465

**Citation:** (2006) 1 GLR 490 : (2005) GLT 742 Supp

**Hon'ble Judges:** I.A. Ansari, J

**Bench:** Single Bench

**Advocate:** B. Das and S. Das, for the Appellant; R. Dasgupta, for the Respondent

**Final Decision:** Dismissed

**Judgement**

I.A. Ansari, J.

The petitioner herein, namely, Sri Adhir Chandra Chowdhury, while serving as Forest Ranger at Laxmipur in Kanchanpur Sub Division, withdrew an amount of Rs. 30,000 on 15.11.1989, from the cash deposit of Dasda Branch of Tripura Gramin Bank. Out of the amount so withdrawn, the petitioner disbursed an amount of about Rs. 19,000 and kept the remaining money amounting to Rs. 11,885 with him in one of the rooms of his official residence and slept in the other room of his residence as usual. On 19.11.1989, the petitioner lodged FIR with the local police station informing the police that some miscreants, on the night of 18.11.1999, entered into his residence and took away the said amount of Rs. 11,885 lying in his almirah along with some other materials. As the instructions issued by the Chief Conservator of Forests, Tripura, Agartala, Vide his Memo. F.l-3/2/For-83/Acctt/7997-8546, dated 3.2.1984, forbids that heavy cash should not be retained in the DFO''s Office/Range Offices or in Beat Office, Plantation Centres, Soil Conservator centres, Drop Gates, etc. and hat whenever money is required for payment, the amount should be drawn and paid on the same day without taking risk of keeping the cash overnight and,

further, that in no case, the undisbursed Government cash should exceed Rs. 500, the petitioner faced disciplinary proceeding for disobeying the Instructions of the higher authorities concerned by retaining with him as much as Rs. 11,885 in cash, although a CD account No. 11 stood opened in Dasda Branch of Tripura Gramin Bank. On receiving the show cause notice, in this regard, issued by the disciplinary authority, the petitioner submitted his reply thereto, wherein he did not dispute the fact that the amount, in question, was stolen away from his official residence : but what he pleaded was that the said amount was retained and could not be disbursed on account of unavoidable reasons, for, the Bank was located at a distance of about 2 kms from his official residence. Not satisfied with the reply so received from the petitioner, the disciplinary authority appointed an enquiry officer, who conducted the enquiry and submitted the report holding the petitioner guilty of the charge. A copy of the enquiry report was served on the petitioner and he made his representation against the said finding. Upon consideration of the enquiry report and the representation of the petitioner, the respondent No. 2, as the disciplinary authority, held the petitioner guilty of the charge and imposed a penalty of withholding of one increment with cumulative effect and with further direction that the amount of Rs. 11,885.20, which was the loss sustained by the Government, shall be recovered from the petitioner''s salary in monthly instalments of Rs. 500 till the entire amount was recovered.

2. Against the penalty so imposed, the petitioner preferred an appeal, which was turned down by the appellate authority, namely, the respondent No. 1, on 28.7.1994 (communicated to the petitioner on 5.8.1994). The petitioner has, now, impugned in this writ petition, the finding of guilt reached against Him and the penalty imposed on him seeking to get, inter alia, quashed the same.

3. I have heard Mr. B. Das. learned senior counsel, assisted by Ms S. Das, appearing for the petitioner, and Mr. R. Das Gupta, learned counsel appearing on behalf of the respondents.

4. Drawing the attention of this Court to a letter at Annexure-B to the writ petition, Mr. Das has pointed out that by this letter, the petitioner had sought for production of four documents and out of the documents so sought for, the inquiring officer allowed two of the documents to be produced, but none of these documents was, eventually, produced at the enquiry and as a result thereof, the whole enquiry and the consequential penalty imposed upon the petitioner stands vitiated. Support for the submission is sought to be derived by Mr. Das from Triloknath v. Union of India and Ors. reported in 1967 (1) SLR 759 .

5. Mr. Das has also submitted that the petitioner was unaware of the Instructions asking the employees concerned not to maintain cash beyond a sum of Rs. 500. This apart, further submits Mr. Das, the cash was maintained by the petitioner at his official residence for reasons beyond his control. Impugning, further, the penalty imposed on the petitioner, Mr. Das has submitted that the State respondents had

been selective in dealing with its employees inasmuch as in the past, persons, who had lost Government money in cash, had not been proceeded against, but the petitioner was selected for punishment. Such selective discrimination cannot, contends Mr. Das, be allowed by the Court to be inflicted on the petitioner. Reference, in this regard, is made by E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another,

6. Drawing, further, the attention of this Court to the order, dated 28.7.1994, whereby the appellate authority maintained the finding of guilt reached against the petitioner and the penalty imposed on him, Mr. Das has submitted that though the petitioner had raised several points for consideration in his appeal, the appellate authority did not deal with them clearly and specifically, rather, the appellate authority merely expressed his satisfaction that the petitioner had flouted the said instructions by not to depositing the cash in Tripura Gramin Bank, Dasda Branch, and by maintaining cash in excess of the amount permitted by the said Instructions.

7. Controverting the above submissions made on behalf of the petitioner. Mr. R. Das Gupta, learned counsel appearing on behalf of the respondents, has submitted that the finding of guilt arrived at against the petitioner is wholly justified in the face of the materials on record and the law relevant thereto and, hence, the same needs no interference. The penalty imposed on the petitioner is, according to Mr. Das Gupta, lenient and needs no interference.

8. While dealing with the rival submissions made before me on behalf of the parties, what is of immense importance to note is that it is not in dispute before me that the Instructions, as mentioned hereinabove, did exist at the relevant time prohibiting the employees concerned from maintaining cash beyond the permissible limit of Rs. 500 nor is it disputed before me that the instructions exist allowing the employees aforementioned to deposit cash with the local police station. Even at the time of hearing of this writ petition, the fact that such instructions were in existence has not been boldly disputed before me nor is it disputed that the petitioner did withdraw a sum of Rs. 30,000 on 15.11.1989 from Tripura Gramin Bank, Dasda Branch, and, after disbursing an amount of about Rs. 19,000. retained the remaining amount of money with him. It is also not in dispute that though the petitioner had withdrawn the amount of Rs. 30.000 on 15.11.1989, he had cash with him amounting to Rs. 11,885 even as late as on the night of 18.11.1989, when the same was allegedly stolen away.

9. It is, thus, clear that the petitioner retained the cash with him contrary to the said instructions not only on 15.11.1989, 16.11.1989 and 17.11.1989, but also on 18.11.1989. For the amount so retained, no cogent explanation was offered by the petitioner except that he could not deposit the cash with the Bank for reasons beyond his control. What was the reason, which made it impossible for the petitioner to deposit the cash with the Bank as per the Instructions from 15.11.1989 to 18.11.1989 remained a mystery and is only known to the petitioner and none

else. Having not disclosed clearly the reasons for withholding the cash with him, the petitioner clearly violated the said Instructions and in fact, disobeyed the same. The plea of the petitioner that he was unaware of such Instructions can be of no avail to him inasmuch as a Government employee, who deals with the cash, cannot plead ignorance in respect of such Instructions, for, if such a plea is permitted, the Government Instructions will be observed more in violation than in obedience.

10. In the face of what have been pointed out, I am, now, required to consider if the petitioner was selectively discriminated against by the authorities concerned. While considering this aspect of the matter, it is pertinent to note that the petitioner has, nowhere, alleged that at or about the time, when he was proceeded against for maintaining cash with him beyond the amount permitted by the said Instructions, anyone, other than the petitioner, had been let off despite violating the said Instructions. In such circumstances, the grievance of the petitioner that the authorities concerned had discriminated against him cannot be accepted. If any Government employee was, in the past, not dealt with sternly for such disobedience to the said Instructions, it does not preclude the authorities concerned from taking such action as is permissible in law nor does any such action, on the part of the Government, makes it obligatory for the Government to allow such disobedience of the said Instructions to be perpetuated. The reference made by Mr. Das, learned counsel for the petitioner, to T.V. Choudhury''s case (supra) is, therefore, wholly misplaced. In the case of TV Choudhury (supra), the Court dealt with a case in which some officers were allegedly let off from adverse action, whereas Sri T. V. Choudhury was placed under suspension. In such circumstances, the Apex Court observed that if the Court is prima facie Satisfied that the grievance of Sri T.V. Choudhury is correct, then, it is competent for the Court to advise the Government to take similar adverse action against other equally culpable officers or, otherwise, the Court would revoke the adverse order made against the aggrieved officer. The case of T.V. Choudhury (supra) clearly shows that when, in the course of one proceeding, several persons are involved, but some of them are let off and against someone adverse action is taken, the Court would ask the authorities concerned to take action against all the officers or else revoke the adverse action selectively made by the authorities concerned against the officer, in question. The case of T.V. Choudhury (supra), nowhere, lays down that if the Government has not taken any action, in the past, against an employee, the Government is precluded from taking disciplinary action against any employee similarly situated.

11. In the case at hand, as already indicated hereinabove, the petitioner has, nowhere, shown that any one was at or about the time, when the petitioner was departmentally proceeded against, let off from the similar charge. In such a situation, the mere fact that action had allegedly not been taken in the past against some persons cannot be made a ground for not taking action against the petitioner too. If such a plea is allowed, the Government Instructions will remain as mere paper formalities and will be violated with the impunity till eternity making the

Government Instructions meaningless and otiose.

12. Let me, now, look into the grievance of the petitioner as regards non-production of the documents. White considering this plea, it is important to note as to what the decision in Trilok Nath (supra) lays down. In this case, the Apex court observed as under :

...It is for this reason that it is obligatory upon the Inquiry officer not only to furnish the public servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry officer or required by the public servant for his defence.

13. From the above observations, it is clear that the emphasis given by the Apex court in Trilok Nath (supra) is at relevance of the documents, in question. Those documents are relevant, which are relied upon by the inquiring officer for sustaining the charge. This apart, those documents are also relevant, which are required by the public servant for the purpose of his defence.

14. In other words, only those documents are required to be produced, which are relevant. As to what documents can be regarded as relevant are only those documents on which an Inquiring officer relies upon and those documents, which are required for the purpose of defence of the public servant,

15. The decision given in Trilok Nath case (supra) has been considered by the Apex court in State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., wherein the Apex court held, thus -

...It was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the fact of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry ; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the contention urged by the counsel for the appellant that the view taken by the trial court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative.

16. In Kashinath Dikshita Vs. Union of India (UOI)and Others, the Apex court held, thus -

And such a stance was adopted in relation to any inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP Paper Book has set out in a tabular form running into 12 pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.
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The appellant relied on Trilok Nath v. Union of India 1967 1 SLR 759 (SC), in support of the proposition that if a public servant facing an enquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

Had he decided to do so, the documents would have been refused to the appellant for cross examining the witnesses who deposed against him. Again, had the copies of the documents been furnished to the appellant he might, after perusing them, well have exercised his right under the Rule and asked for an oral enquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of the documents such as FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the enquiry.

17. In the light of the law discussed above, one has to consider the case of the State Bank of Patiala and others Vs. S.K. Sharma, wherein the apex Court has held, thus,

In this case though the copies of the statements of two witnesses were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. Of the two witnesses, B was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements was disabling him or had disabled him. as the case may be, from effectively cross-examining the witnesses or to defend himself. No prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. In the circumstances there

has been a substantial compliance with of Regulation 68 (II)(X)(b)(III) of the Regulations. The Regulation contains provision corresponding to Section 99 CPC or Section 465 Cr.P.C. Therefore, failure to literally comply with sub-clause (III) of clause (b) of Regulation 68 would not vitiate the enquiry altogether. Setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (III) would not be in the interest of justice, instead, it would be its negation.

18. From the law discussed above, it dearly transpires that the omission to produce documents, which are not relevant and has not caused prejudice to a delinquent, cannot be made a ground for interfering with the finding of guilt reached against the delinquent. In the case at hand, none of the four documents, which the petitioner had sought to get produced at the time of enquiry, were relied upon by the inquiry officer and/or by appellate authority for sustaining the charge framed against the delinquent. Let us, now, consider if those documents were required for the purpose of defence. A careful reading of the petitioner''s letter, dated 24.9.1992 aforementioned, whereby the petitioner requested for production of the documents, in question, will show that those documents did not have any bearing in determining the guilt of the petitioner with respect to the charge. The Government Instructions, as indicated . hereinabove, was disobeyed, when the petitioner, admittedly, maintained the cash amount of Rs. 11,885 from 15.11.1989 to 18.11.1989. What the petitioner tried to show with the help of those documents, in question, was that a theft had genuinely taken place and that his superior officer, i.e., the DFO had held the petitioner not liable for action. While dealing with this aspect of the matter, it is important to bear in mind that the opinion of the DFO in considering the charge was immaterial, for, if the DFO had given a clean chit to the petitioner, such a clean chit could not have been made the ground for exonerating the petitioner from the charge levelled against him and, similarly, if the DFO had found the petitioner guilty of violation of the Government Instructions, such finding of the DFO could not have been made a basis for sustaining the charge The charge would have stood or fallen on the basis of the materials brought on record and the materials on record clearly prove that the Government Instructions for not maintaining the cash beyond a sum of Rs. 500 did exist and the petitioner, in disobedience of the Government Instructions, maintained cash as much as of Rs. 11,885 with him and the same was stolen away on the night of 18.11.1989. This fact being not in dispute, it is immaterial as to what observations were made in the cash book and/or the inspection report by the DFO as regards the culpability of the petitioner.

19. Coupled with the above, this Court made a pointed query from Mr. Das to show as to what prejudice has been caused to the petitioner on account of failure of the disciplinary authority to produce the documents, in question. Mr. Das could not point out anything, at the time of hearing of this writ petition, to show as to what prejudice has been caused to the petitioner nor could he show that the finding of

the inquiry officer could have been belied, had the documents, in question, been produced. This apart, Mr. Das could also not point out even an iota of materials on record to show that the finding of guilt reached against the petitioner was incorrect in the face of the materials on record.

20. Situated, thus, there is no escape from the conclusion that the materials on record proved the charge brought against the petitioner. In such circumstances, the only aspect, which is left for consideration is as to whether the penalty imposed on the petitioner is harsh or unreasonable. In this regard, I find that the petitioner has been penalized by withholding of only one increment with cumulative effect and the recovery of the lost amount of Rs. 11,885.20 was ordered to be made in monthly instalments of Rs. 500 from his salary. In the facts and circumstances of the case, the petitioner cannot be held to have been harshly dealt with. The penalty, therefore, imposed on the petitioner also does not call for any interference.

21. As regards the petitioner''s grievance that the appellate authority has not assigned sufficient reasons for turning down the petitioner''s appeal, suffice it to mention here that since this Court has already found that the finding of guilt reached against the petitioner was just and proper in the face of the materials on record and the law relevant thereto and, further, that the penalty imposed on the petitioner is not harsh, it is immaterial as to whether the appellate authority has assigned cogent reasons or not for disallowing the appeal.

22. What crystallises from the above discussion is that no prejudice is caused to the petitioner by non-production of the documents, in question, and that the charges stood proved on the basis of the materials on record.

23. Because of what have been discussed and pointed out, I do not find any merit in this writ petition and the same is accordingly dismissed.

24. I make no order as to costs.