

(2013) 03 GAU CK 0041**Gauhati High Court****Case No:** Writ Petition (C) No. 267 of 2003

Chandan Majumdar

APPELLANT

Vs

Tripura Road Transport
Corporation and Others

RESPONDENT

Date of Decision: March 13, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Road Transport Corporations Act, 1950 - Section 34

Citation: (2013) 3 GLD 269 : (2013) 3 GLT 682 : (2013) LabIC 2559**Hon'ble Judges:** S. Talapatra, J**Bench:** Single Bench**Advocate:** D.K. Biswas, for the Appellant; P. Datta and N.C. Pal, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

S. Talapatra, J.

Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. P. Datta, learned counsel appearing for the respondent Nos. 1 and 2 as well as Mr. N.C. Pal, learned Govt. Advocate for the respondent Nos. 3 and 4. The petitioner who was working as the Foreman, In-charge of Works Manager in the respondent Corporation was directed to assist one Dilip Kumar Choudhury, Asstt. Engineer (Mechanical), P.W.D. in order to conduct the pre-delivery inspection of the buses. The said Dilip Kumar Choudhury was authorised to conduct the overall supervision as it transpires from the order dated 22-06-1993 (Annexure-3 to the writ petition). Posterior to the delivery that was caused by the TELCO, it was found that the arrangement as indented had not been observed by the said manufacturing company. Instead of 52 seats each bus was having 50 seats and that was according to the Corporation deviation from the specification as communicated to the

manufacturing company. It appears further that there had been a conciliation to sort out the imbroglio between the respondent No. 1 and the TELCO and the TELCO had come to an agreement to pay the compensation to the extent of Rs. 75,000/- for five numbers of buses supplied to the respondent No. 1. The settlement in this regard has been reflected in the minutes of the meeting held on 13-10-1993 (Annexure-4 to the writ petition). The petitioner was taken by surprise when he was furnished with a copy of the order dated 18-07-1995 (Annexure-6 to the writ petition) issued by the Under Secretary to the Govt. of Tripura in the Administrative Reforms Department, informing that in exercise of powers as conferred under sub-rule (1) and (2) of Rule 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereinafter for short "CCS(CCA) Rules, 1965", the Governor has directed to take a disciplinary action against the petitioner and the said Dilip Kumar Choudhury in a common proceedings. It has been also stated that the Governor of Tripura shall function as the disciplinary authority for the purpose of the common proceedings and shall be competent to impose any of the penalties mentioned in Rule 11 of the CCS(CCA) Rules, 1965. The petitioner was also supplied with the copy of the memorandum of charges dated 18-07-1996 as issued by the said Under Secretary to the Govt. of Tripura. It transpires from the said memorandum of charges that the charge against the petitioner and Sri Dilip Kumar Choudhury framed as under:

That Shri Dilip Kumar Choudhury, Assistant Engineer (Mech.), P.W.D. while functioning on deputation as Controller of Stores and Purchase to T.R.T.C. (Tripura Road Transport Corporation) Agartala during the period from 01-12-1992 to 31-12-1994 failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant in that Shri D.K. Choudhury, C.O.S.P., TRTC failed to carry out his responsibilities and duties assigned to him by T.R.T.C. authority for proper checking and inspection phase by phase of 10(ten) Nos. of 52 Seater District Type Body built buses as per specification from M/S. Tramco Jamshedpur, as recommended by TELCO, Calcutta as well as he submitted incomplete reports relating to his phase by phase inspections in respect of those ten buses to the authority of the TRTC concealing some material facts resulting monitory loss of huge amount to the management of T.R.T.C.

The said D.K. Choudhury, Assistant Engineer (MECH.), Public Works Department being in-charge C.O.S.P., TRTC, Agartala by his above act has shown lack of integrity and devotion to his official duties with ill motive and violated the provision of Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

2. Without any ambiguity, it appears that there is no imputation against the petitioner. The imputation is entirely against Mr. D.K. Choudhury, Assistant Engineer (Mech.), PWD, Tripura, being in-charge of the Controller of Stores & Purchase, TRTC, Agartala. As excerpted, the crux of the charge is "by his above act has shown lack of integrity and devotion to his official duties with ill motive and violated the provision

of Rule 3 of the Tripura Civil Services (Conduct) Rules. 1988". Unless Tripura Civil Services (Conduct) Rules, 1988 adopted by the respondent No. 1, it cannot be automatically applicable to the service of the petitioner. It is admitted that Corporation has not adopted the said conduct rules.

3. Mr. Biswas, learned counsel appearing for the petitioner has further pointed out that the petitioner from the first instance has raised objection that the person who has framed the charges has no competence whatsoever direct or to entangle him in the disciplinary proceeding in the manner as emerged. With reference to paragraph 11 of the Inquiry Report dated 03-02-1003 (sic), Mr. Biswas submitted that the said observation stands to vindicate that even the inquiring authority was not certain how to discharge the objection as raised by the petitioner. It would be also evident therefrom that how the charge has been expanded by the inquiry authority to return the impugned finding. For better appreciation, para-11 of the Inquiry Report is reproduced hereunder:

11. Now, it may be pointed out that I have conducted the inquiry against both the Accused Officers no doubt, but Shri D.K. Choudhury, Asstt. Engineer (Mech.), PWD is an officer of the State Government whereas Shri Chandan Majumdar, Asstt. Engineer is an officer of TRTC a Government undertaking. I am not sure whether any inquiry can be held under the provisions of Rule 14 of CCS (CCA) Rules. 1965 alongwith another State Govt. employee. I am mentioning this aspect because one of the Accused Officers Shri Chandan Majumder has repeatedly raised this line on different stages. This may be checked by GA(AR) Department separately. Moreover, as pointed out by me in the beginning, in the Memorandum No. F. 11(175)-ARD/93(P) of the Administrative Reforms Department dated 18-07-1995 it is stated that the inquiry was to be held against both the Accused Officers namely Shri D.K. Choudhury, Asstt. Engineer (Mech.), PWD and Shri Chandan Majumder, Asstt. Engineer, TRTC. But in the statement of Article of charge (Annexure-D and in the statement of imputation of misconduct in support of Article of charge (Annexure-II) mention has been made of the name of only Shri D.K. Choudhury. Asstt. Engineer (Mech.) PWD. However, since all the 3 inspections were conducted by both the Accused Officers jointly and written reports were also submitted jointly the charge against both of them are clearly established without any doubt.

[Emphasis supplied]

4. On the basis of the said report, the Managing Director, Tripura Road Transport Corporation Ltd. passed the order dated 23-07-2003 (Annexure-8 to the writ petition), imposing penalty on the petitioner in the following terms:

NOW, therefore, the undersigned being the Disciplinary Authority, TRTC in exercise of powers conferred under Rule 14 of the CCS (CC & A) Rules, 1965 read with sub-rule of Rule 11 of the said Rule hereby orders to impose following punishment upon Shri Chandan Majumder, Foreman (the then I/C AE(Mech.), TRTC).

(a) The actual proportional financial loss sustained by the TRTC which works out to Rs. 7.265 lakh shall be recovered from the Accused Officer Shri Chandan Majumder, Foreman (Present I/C Works Manager, TRTC) as per rules. In this regard, the proportional compensation paid or agreed to be paid by M/s. TELCO may also be taken into consideration. The recovery is to be effected from the salary bill of Shri Chandan Majumder, Foreman from the month of August, 03 onwards in easy instalments till the full recovery is made.

(b) The pay of the Accused Officer, Shri Chandan Majumder, Foreman (I/C Works Manager, TRTC) shall be reduced to the lowest level in his present scale for a period till the date of superannuation with the effect of postponing the future increment.

(c) Moreover, the suspension period of Shri Chandan Majumder, Foreman spent from 13-10-93 to 05-02-95 for this purpose would not be treated as on duty and he would not be paid anything more in addition to what has been paid to him as subsistence allowance during the suspension period.

Being aggrieved, this petition has been filed.

5. In the writ petition, the petitioner has categorically projected his challenge regarding initiation of the proceeding in the following manner:

That the Memorandum of charges (Annexure-6 srs.) would clearly show that allegations are all made only against D.K. Choudhury and no allegation or imputation of offence has been levelled against the petitioner. Thus without any pleading of any offence against this petitioner a proceeding or a trial with a finding of fault cannot be termed as anything, but perverse and flagrant violation of Rules.

6. Mr. D.K. Biswas, learned counsel appearing for the petitioner while summing up his submissions, contended that the memorandum of charge as drawn by the said Under Secretary has not been drawn by a person having competence to draw such charge against the petitioner and at no point of time the said Under Secretary was the Disciplinary Authority so far the service of the petitioner is concerned. The Disciplinary Authority who passed the impugned order of penalty was not the person/authority who framed the charge against the petitioner. Apart that, he contended that a bare reading of the Article of Charge would show that there is no imputation of misconduct at all against the petitioner. Therefore, in absence of any charge how the Disciplinary Authority held that the petitioner would be guilty of the misconduct and basing thereon imposed the punishment by the impugned order.

7. From the other side, Mr. P. Datta, learned counsel appearing for the respondent Nos. 1 and 2, by virtue of the affidavit-in-opposition, submitted that the Managing Director or the General Manager of the Corporation is the Disciplinary Authority for all the employees of the Corporation in terms of the decision of the Board taken in its 27th meeting held on 23-02-1974. He has drawn attention of this court that in terms of Section 34 of the Road Transport Corporation Act, 1950, the State

Government has the right to give directions to the Corporation. For purpose of appreciation, Section 34 of the Road Transport Corporation Act, 1950 is excerpted hereunder:

34. (1) The State Government may after consultation with a Corporation establish by such Government, give to the Corporation jointly instruction to be followed by the Corporation and such instruction may include directions relating to the recruitment conditions of service and training employees wages to be paid to the employees, reserves to be maintained by it and its profits or stock. Moreover TRTC is fully financed by the State Government.

(2) In exercise of his power and performance of his duties under this Act the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government.

8. Mr. Datta, learned counsel for the respondent Nos. 1 and 2 further contended that since the respondent No. 2 is the Disciplinary Authority he, on receipt of the inquiry report has correctly imposed the penalty on the petitioner. Mr. Datta also raised one objection regarding the maintainability of the writ petition that the petitioner without exhausting the procedure of appeal has directly approached this court by filing the writ petition under Article 226 of the Constitution of India, which according to him cannot be sustained in law. However, he stated that in Annexure-II of the Memorandum of charge, imputation of misconduct will be found available. Before appreciating the contentions as projected by the counsel for the parties, Rule 21(1) of the CCS(CCA) Rules, 1965 is required to be appreciated in the context of the case as under:

21(1). Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

9. Apart Rule 21 of the CCS(CCA) Rules, 1965, there is no provision in the CCS(CCA) Rules, 1965 to deal with a common proceeding against a borrowed employee and an employee of the authority or undertaking which borrowed the said employee. Rule 18 of the CCS(CCA) Rules, 1965 therefore has no application for drawing up a common proceeding against the petitioner and the said Dilip Kumar Choudhury. As such, drawing up of the common proceeding was without authority since the initiation. In addition thereto, it has been observed by this court that the Under Secretary who framed the Article of Charge has no competence to draw up any charge against the petitioner. The disciplinary authority as indicated by Mr. P. Dutta,

learned counsel for the respondent Nos. 1 and 2 would be the competent person to draw up the charge against the petitioner on allegation of any misconduct.

10. Section 34 of the Road Transport Corporation Act, 1950 does not confer such authority to the said Under Secretary. The purport of the said provision is entirely different and has no relevance in the context of this case. Therefore, the charge as drawn up against the petitioner was without competence and in contrast to law. Apart that, the Article of charge as available in the Annexure-I does not bear any imputation of misconduct against the petitioner. Though in Annexure-II while elaborating the charge some allegations are found made against the petitioner. Unless the imputation of misconduct is described in the Annexure-I, by description in the Annexure-II, the imputation of misconduct cannot be described in terms of Rule 14(3) of the CCS(CCA) Rules, 1965. The Annexure-I is for the substantive charge. If any imputation does not find place in the Annexure-I, that cannot be accommodated in the Annexure-II. Apart that, unless the imputation of misconduct is projected definitely that cannot be used against the delinquent.

11. The Apex Court in [M.V. Bijlani Vs. Union of India \(UOI\) and Others](#), held as follows:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority Which are based on the said enquiry report thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.

(Emphasis added)

12. The Apex Court in [The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu](#), precisely laid down the law in this regard as follows:

9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In charge 1. what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO. etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, charge 1 was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.

13. In this case, this court is of the considered opinion that in Annexure-I there is no imputation of misconduct against the petitioner. The Departmental Proceedings as initiated by the Under Secretary to the Govt. of Tripura was entirely without competence. As such, the charge as considered by the inquiry authority having not been the part of the charge, framed by the disciplinary authority is liable to be termed as non east in the eye of law. As corollary, the consequential orders of punishment cannot be allowed to stay in the records.

14. In the result, the impugned order of punishment (Annexure-8 to the writ petition) is set aside. The respondent-Corporation is directed to release all the pecuniary and service benefits to the petitioner within a period of 3(three) months from today as by now the petitioner has suffered a lot. With this observation and direction, this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.