

THE HIGH COURT OF TRIPURA
A G A R T A L A

C.M. APPL. NO. 1 OF 2015
IN WA NO.1 OF 2015

Appellant-applicants :

- 1. The State of Tripura,**
Represented by
Commissioner and Secretary,
Department of Food, Civil Supplies and
Consumer Affairs,
Government of Tripura,
Agartala, Tripura West.
- 2. The Director,**
Department of Food, Civil Supplies and
Consumer Affairs, having his office at
Khadya O Bhokta Bhawan, Pandit Nehru
Complex, Gurkhabasti, Agartala,
District-West Tripura.

By Advocate :

Mr. B. Banerji

Respondent/writ petitioner :

Sri Dibeyendu Das,
S/O Late Dhirendra Chandra Das,
Resident of Village-Ratiabari,
P.O. Kumarghat, P.S. Kumarghat,
Sub-Division-Kailashahar,
District-North Tripura, holding the substantive
post of Junior Store Keeper, Department of
Food, Civil Supplies and Consumer Affairs,
Government of Tripura and posted at Manu
Crossing Government Food Go-down,
Manu, Dhalai, P.S. Manughat,
Sub-Division-Longtharai Valley,
District-Dhalai Tripura,
Now posted at Central Stores, Food Go-down,
Arundhutinagar, P.S. A.D. Nagar, Sub-
Division-Sadar, District-West Tripura.

By Advocates :

Mr. Somik Deb, Advocate

WA NO.1 OF 2015**Appellants :****1. The State of Tripura,**

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By Advocates :

Mr. Somik Deb, Advocate

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S.C. DAS

Date of hearing &
Delivery of Judgment
& Order : **24th March, 2015.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

We propose to dispose of this application for condonation of delay along with the writ appeal itself.

[2] This writ appeal is directed against the judgment dated 11.07.2014 passed by a learned Single Judge of this Court in WP(C) No.364 of 2008 whereby the learned Single Judge set aside the order dated 13.06.2008 passed by the disciplinary authority as well as the order dated 30.07.2008 passed by the appellate authority and the petitioner was exonerated of the charges leveled against him vide charge Memo. dated 14.11.2002.

[3] Briefly stated the charges against the petitioner was that he while working as Storekeeper in-charge of the Kumarghat Food Go-down had mis-conducted himself and had not performed his duties properly, had shown lack of integrity and devotion to duty by not maintaining books of accounts and other records and had with evil intention to derive personal benefit misappropriated 26,182.50 Kgs. of rice, the monetary value of which was ₹3,20,647.93/-.

[4] We are not going into other aspects of this matter in this case but we would like to point out that the learned Single Judge while passing the impugned order has placed strong reliance on the statement of PW3 who at the relevant time was posted as Deputy Collector, Kumarghat,

Kailashahar. It is not disputed that the original writ petitioner was junior to PW3. The cross-examination of PW3 reads as follows:-

"Before forwarding the Exbt.S/5 series I had gone through the contents of the same. During my incumbency as D.C., Revenue on several occasion I visited the concerned food go-down. And during my visit I had seen that the condition of the said go-down was not upto the mark for storing the food grains due to damage of roof, floor and windows of the said go-down. There was a drain around the concerned go-down and due to blockage of drain water entered into the go-down and damaged 284 bags of rice. As a result, later on the said damaged rice had thrown-out."

[5] The learned Single Judge relying upon this statement of the PW3 held that the senior officer was aware that the rice was rotten and therefore the stand of the petitioner that he had thrown out the rice at the instance of PW3 could not be said to be unbelievable. We would also like to make reference to para 9 of the judgment of the learned Single Judge which reads as follows:-

"9. From the other side, Mr. T.D. Majumder, learned G.A. appearing for the respondents has submitted that the petitioner was not authorized by the competent authority to throw out 284 bags of damaged rice from the godown. As such, the finding as returned by the Additional Commissioner of Departmental Inquiries that the petitioner is guilty of the charge cannot be faulted with. But when this Court confronted Mr. Majumder, learned G.A. whether there was any guidelines for disposal of the damaged rice he took time for necessary instruction. On taking instruction, Mr. Majumder, learned G.A.

has submitted that there were no such guidelines for disposal of the damaged rice. He has accepted that even no reference has been made in the charge that the petitioner had violated any such guidelines. Mr. Majumder, learned G.A. has fairly admitted that there is no evidence of dereliction of duty against the petitioner. This Court commends the fairness of Mr. Majumder, learned G.A."

[6] A bare perusal of this paragraph shows that the learned Government Advocate appearing for the State of Tripura had admitted before the learned Single Judge that there is no reference in the charge that the petitioner had violated any guidelines. Even after seeking time and seeking instructions from the Department the learned Government Advocate had failed to bring any guidelines to the notice of the learned Single Judge. Most important are the following lines of the above paragraph—

"Mr. Majumder, learned G.A. has fairly admitted that there is no evidence of dereliction of duty against the petitioner. This Court commends the fairness of Mr. Majumder, learned G.A."

[7] This clearly shows that the Court decided the case on the basis of the statement made by Sri Majumder. A rather surprising submission has been made before us that the statement made by the Government Advocate cannot bind the Govt. It has been urged that only the Advocate General can make a statement binding the Government and nobody else. We are not at all in agreement with this statement. When cases are heard the counsel representing the parties are expected to be fair to the Court and they can make statements on fact which bind their clients even if the client be the Government. The exception to this rule is that the counsel cannot make a

concession on a point of law which would not bind the Government and there the position of the Advocate General would be different because the Advocate General represents the State and can put-forth the views of the Government with regard to the policies of the State. As far as factual matters are concerned the counsel is fully empowered to make statements. Even more shocking is the fact that after the statement was recorded in the judgment the State has not deemed it fit to approach the learned Single Judge to contend that the portion of the judgment is not a true deposition of what transpired in Court but straightway filed the appeal. This means that the State accepts that the learned Government Advocate had made such a statement.

[8] This brings us the issue as to whether the guidelines which are now being relied upon by Sri Banerji can be relied upon by us. These guidelines admittedly do not form part of the charge sheet against the delinquent officer. These guidelines are not part of the documents relied upon by the Department while deciding the inquiry proceedings. These guidelines were not placed on record of the writ petition nor produced during hearing of the same. Even in the guidelines produced before us there is no endorsement that these have in fact been sent to all Store Officers or brought to their notice. Inquiry proceedings are decided on material which is before the inquiring officer. The rules of natural justice demand that the delinquent official should be apprised of all the material which is sought to be used against him. Admittedly, these guidelines were never produced during the inquiry proceedings or even before the learned Single Judge.

[9] When we were dealing with the application for condonation of delay it was submitted before us that the delay occurred because time was taken to search out the guidelines. On 18.03.2015 we had passed the following order in CM Appl. No.1 of 2015, i.e. the application for condonation of delay:-

"18.03.2015

List on 24-03-2015 when the records of the Law Department and the Food and Civil Supplies Department relating to the documents sought for shall be placed before this Court."

[10] We have perused the record which has now been produced before us and in the entire record there is no reference to any such guidelines. The only note that Mr. Banerji had written is a note dated 10.12.2014 stating, *"Place all relevant records"*. Nowhere, not in the communication of the Department, not in the communication or noting of the Law Department, not in the communication of the learned counsel, is there any reference to the guidelines. These guidelines which now are the sheet anchor of the State's case were not even attached with the writ appeal and have been produced before us only today. How can these guidelines be used in departmental proceedings against a person when he was not even charged with having violated these guidelines.

[11] We could have passed a simple order rejecting the application for condonation of delay but we have had to pass this long order to clarify the situation with regard to the position of the Government Advocate. We reiterate that the Government Advocate is the senior most counsel for the

Government on the civil side other than the Advocate General. He enjoys a high position and it is not expected of the State to undermine the position of its own Government Advocate. We also had to pass a lengthy order because of the stand taken before us, which according to us is not at all a correct stand. We may also point out that even as per the statement of PW3 which stands un-rebutted, the go-down in which the rice was kept was in a deplorable condition. Its roof, its walls, its windows were damaged. There was a drain running around the Store and water was entering the Store. The responsibility of maintaining the Store is not of the Storekeeper but of official of a much higher rank. Did the State take any steps to find out whether any senior official had visited the Store and taken steps to get the Store repaired? In a country like India, where millions of people are deprived of food, it is the Government's responsibility to ensure that the stores in which food are kept are maintained in a proper manner and these stores should not be maintained in such a manner that rain water enters at odd times.

[12] In view of the statement of PW3 it is clear that there was no pecuniary advantage gained by the delinquent official because he had thrown out 284 bags which even according to PW3 were completely rotten. Even if there be some technical mistake in not following the guidelines, we feel this is not a case where departmental action should have been initiated, especially in view of the fact that the senior officials of the Department were aware of the deplorable condition of the go-down and the immediate senior official, Dy. Collector, Revenue (PW3) had himself visited the go-down, seen the shocking condition of the go-down and had verified the fact that 284 bags of rice were totally rotten.

[13] We may make it clear that we have not gone into the other aspects on merits but one thing is absolutely clear that in a case of this nature we would have expected the State not to file an appeal. Therefore both the applications of condonation of delay as well as the appeal are dismissed.

JUDGE

CHIEF JUSTICE