

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 285 of 2009**

Sri Manik Nama,  
Son of Late Raimohan Nama,  
Resident of village-Jolaibari,  
P.S. Baikhora, District-South Tripura

..... Petitioner.

**Versus**

1. The State of Tripura  
Represented by the Commissioner  
-cum-Secretary to the Government  
of Tripura in the Department of Food,  
Civil Supplies and Consumer Affairs,  
Agartala, Tripura.
2. The Director of Food, Civil Supplies and  
Consumer Affairs, Government of Tripura,  
Agartala, Tripura.

..... Respondents

**BEFORE  
THE HON'BLE MR. JUSTICE U. B. SAHA**

|                                                   |                                |
|---------------------------------------------------|--------------------------------|
| For the petitioner                                | : Mr. BN Majumdar, Advocate    |
| For the respondent                                | : Mr. S Chakraborty, Addl. GA. |
| Date of hearing & delivery<br>of Judgment & order | : 23.07.2015.                  |
| Whether fit for reporting                         | : <b>NO</b>                    |

**JUDGMENT & ORDER (ORAL)**

The instant writ petition is filed by the petitioner for setting aside the report of the inquiring authority (Annexure-P/2 to the writ petition) as well as the order of punishment dated 06.09.2002 (Annexure-P/4 to the writ petition) wherein the disciplinary authority inflicted penalty of recovery of an amount of Rs.3,77,110/- from the salary of the petitioner, to be recovered at monthly installments of

Rs.1,500/- from the salary of the petitioner commencing from October, 2002.

2. Heard Mr. BN Majumdar, learned counsel for the petitioner as well as Mr. S Chakraborty, learned Addl. GA for the State.

3. Pleaded case of the petitioner is that while the petitioner was posted as Store Keeper at Rupaichari Govt. Food Godown, Sabroom, South Tripura the respondent No. 2, Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura issued memorandum dated 06.02.1998 for holding inquiry on the ground that the petitioner committed gross negligence and misconduct by not maintaining accurate accounts and other records while he was posted at Bagafa, Govt. Food Godown, Santirbazar, South Tripura during the period from 29.08.1991 to 22.06.1993 and 23.06.1993 to 25.01.1994. Thereafter, the charge was framed against the petitioner, which reads as follows:

**“Article of Charge-I**

**That the said Shri Manik Nama while in the charge of Bagafa Government godown under Belonia Sub-Division during the period from 29.8.91 to 22.6.93 & 23.6.93 to 25.11.94 exhibited gross dereliction to duties, absolute carelessness, lack of integrity and devotion to duties entrusted upon him by way of not maintaining the books of accounts and other records thereof in the manner prescribed/instructed by the competent Authority which is unbecoming of a government servant and amounts to misconduct or misbehaviour. By resorting to such activities with evil intention to derive personal benefit, said Shri Manik Nama, Store Keeper, misappropriated 1,24,104.270 Kgs of rice and 14,627 Kgs of salt and 145 Kgs of Wheat, money value of which comes to Rs.3,88,711.04.**

**This attracts Rule 3 of Tripura Civil Services (conduct) Rules, 1988 and action thereof under Central Civil Services (Classification, Control & Appeal) Rules, 1965”**

**4.** The matter was referred to the Additional Commissioner of Departmental Inquiries, Government of Tripura for proceeding with the inquiry and on completion of inquiry the Additional Commissioner held that the prosecution was successful in proving the charge against the petitioner. The respondent No. 2, the Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura on the basis of the inquiry report held by the inquiring authority inflicted upon the petitioner the minor penalty of recovery of pecuniary loss caused to the government property to the tune of Rs.3,77,110/- to be recovered from the monthly salary of the petitioner at monthly installments of Rs.1,500/- commencing from October, 2002.

**5.** Being aggrieved by the order of the disciplinary authority, i.e. the respondent No. 2, the petitioner preferred an appeal before the appellate authority and as the said appeal was not disposed of within a reasonable period, the petitioner has preferred this writ petition.

**6.** The State respondents, by filing affidavit, contended that the writ petition is liable to be dismissed only on the ground that the petitioner has approached this Court after seven years from the date of filing of the departmental appeal. It is further contended that the charge leveled in the departmental proceeding is different than the charge in the criminal case.

**7.** It is also contended that after examination of witnesses and considering the facts on record, the inquiring authority came to the conclusion that the petitioner was found guilty of the charge

leveled against him and the disciplinary authority passed the order of punishment taking a lenient view. It is also contended that inadvertently the appeal was not disposed of by the appellate authority.

8. Mr. Majumdar while urging for setting aside the order of punishment, as impugned in the writ petition, would contend that the petitioner was acquitted by the criminal court regarding the same charge of mis-appropriation and thus no departmental proceedings could be initiated against the petitioner on the same charge. He again contended that for completion of departmental proceedings the respondents took near about 8 years and the appeal preferred by the petitioner in the year 2002 is still pending.

9. It is further contended that a long period of delay in disposing of the disciplinary proceeding and the appeal by itself vitiates the proceedings initiated against the petitioner-accused officer as delay by itself causes prejudice to the employee in conduct of proceedings against him. Consequently, the delay by itself is a sufficient ground to quash the disciplinary proceedings or proceeding for imposing penalty, i.e. recovery of money by monthly installments.

10. Mr. Majumdar has placed reliance on the decision of the Apex Court in **State of A.P. Vs. N. Radhakishan, (1998) 4 SCC 154** and the decision in **M.V. Bijlani Vs. Union of Indian and Ors., (2006) 5 SCC 88**.

11. Mr. Chakraborty, learned Addl. GA while supporting the order of punishment would contend that the petitioner being a Store

Keeper failed to maintain his integrity. He further submits that the appellate authority is the Secretary-cum-Commissioner, Department of Food & Civil Supplies, Govt. of Tripura but the petitioner submitted his appeal before the Court of the Revenue Commissioner-cum-Secretary, Govt. of Tripura through the Sub-Divisional Magistrate, Belonia, South Tripura and for that reason the appeal could not be disposed of in time. Except the question of delay, Mr. Majumdar did not point out any procedural irregularity in the proceedings.

**12.** This Court has gone through the record produced by Mr. Chakraborty. It appears from the record that though in the index of the appeal it is mentioned, 'In the Court of the Revenue Commissioner-cum-Secretary' but fact remains that in the appeal, it is specifically mentioned, 'The Appellate Authority (The Secretary-cum-Commissioner) Department of Food & Civil Supplies)' and the Sub-Divisional Magistrate, Belona also sent the said appeal to the respondent No. 2, the Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura but there is no indication whether the said memo of appeal was placed before the appellate authority or not.

**13.** Mr. Majumdar, at this stage, submits that the petitioner has already retired from service.

**14.** This Court has gone through the inquiry report as well as the order of disciplinary authority from which it appears that the petitioner was provided all the opportunities to defend the charge and there is no procedural defect except the delay in completion of the

disciplinary proceedings. Admittedly, the appeal has not been disposed of by the appellate authority as the same was not placed before the appellate authority and, therefore, it cannot be said that the appellate authority did not dispose of the appeal in time.

**15.** In **N. Radhakishan** (supra) question arose as to why the promotion of the respondent could be denied after his name had been included in the panel prepared by the DPC on the ground that the disciplinary proceedings initiated by the authority against him had not yet been terminated and ultimately the Tribunal allowed the petition of the respondent-Radhakishan and directed the State to promote him to the category of Director of Town and Country Planning in the existing vacancy, ignoring the charge memos dated 31.07.1995 and 27.10.1995, etc. But in the case in hand, the writ petition is filed after completion of the disciplinary proceeding when the appeal was allegedly pending before the appellate authority. Thus, according to this Court, the aforesaid decision has no direct bearing in the matter in hand.

**16.** In the case of **M.V. Bijlani** (supra) the Apex Court held that the Inquiring Authority cannot shift the burden of proof on the accused and cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. The Apex Court held that the report of the enquiry officer suffers from some vices and the order of the disciplinary authority as also the Appellate Authority, which were based on the inquiry report, cannot be sustained and ultimately allowed the appeal preferred by the accused officer therein and as the charge was relating to the year 1969-1970, the Apex Court did not

remit the matter back to the Disciplinary Authority as due to pendency of the proceedings the accused officer had suffered a lot. The Apex Court directed the respondents therein to reinstate the accused officer in service.

**17.** In the instant case, admittedly, the petitioner participated in the disciplinary proceedings which took a long time for completion. Delay by itself is no ground to quash the proceedings though speedy trial is no doubt a part of the right to be treated reasonably, fairly and justly. But at the same time, mere delay by itself does not entitle the delinquent officer to escape from the charge established against him.

**18.** There is no period provided for initiating a proceeding before retirement, though a period of four years from the date of incident for initiating proceedings after retirement has been statutorily provided for. Again the terminus a quo for commencement of four years would vary according to the facts and circumstances of each case. In the instant case, it is the admitted position that the appeal is pending for a long time but question remains whether the appeal was submitted before appellate authority and whether the appellate authority got the opportunity to dispose of the same.

**19.** From the record placed before this Court, it appears that the memo of appeal of the petitioner was submitted to the appellate authority through the Sub-Divisional Magistrate, Belonia and the Sub-Divisional Magistrate, Belonia sent the same to the Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura, who in his turn did not place the memo of appeal before the appellate authority.

As the appellate authority did not get any opportunity to decide the appeal, it would not be proper to accuse the appellate authority for non-disposal of the appeal.

**20.** Thus, this Court is of the view that it would meet justice if the writ petition is disposed of with a simple direction to the respondent No. 2, the Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura to place the appeal preferred by the petitioner before the Commissioner-cum-Secretary, Govt. of Tripura, Department of Food & Civil Supplies, respondent No. 1 herein, appellate authority, within ten days from today. Ordered accordingly.

**21.** The respondent No. 1 is directed to dispose of the appeal of the petitioner within a period of three weeks from the date of receipt of the same, by a reasoned order as the petitioner has already retired from service. He is also directed to give a personal hearing to the petitioner while disposing of the appeal.

**22.** With the aforesaid order, the instant writ petition is disposed of.

**JUDGE**

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