

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 265 OF 2011

Shri Nandalal Das,
S/O. Late Ramlal Das,
Resident of village Taranagar,
P.O.: Mohanpur, P.S. Sidhai,
District- West Tripura.

..... **Petitioner.**

- V e r s u s -

1. Tripura Khadi & Village Industries Board,
(a statutory authority constituted under
the Tripura Act No. 4 of 1966) having its
office at Colonel Chowmuhani, Agartala,
799001, P.S. West Agartala,
District: West Tripura,
represented by its Executive Officer.
2. The Executive Officer,
Tripura Khadi & Village Industries Board,
Colonel Chowmuhani, Agartala, 799001,
P.S. West Agartala, District: West Tripura.
3. Shri M.K. Sengupta,
Law Officer cum Draftsman,
Directorate of Co-operation,
Government of Tripura, Palace Compound,
Agartala, (acting as Inquiring Authority).

..... **Respondents.**

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

For the petitioner	: Mr. A.K. Bhowmik, Sr. Advocate, Mr. R. Dutta, Advocate, Ms. A. Banik, Advocate.
For the respondents	: Mr. N. Majumder, Advocate.
Date of hearing and delivery of judgment and order.	: 28.07.2015.
Whether fit for reporting	: YES.

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

By means of this writ petition, the petitioner has prayed for quashing of the charge-sheet dated 25.02.2011 and has basically prayed that the departmental proceedings against him be quashed.

2. This is a rather unusual case. On 06.11.1999 an order was passed suspending the petitioner and fixing his headquarters at Agartala on the ground that some disciplinary proceedings are contemplated against him. According to the petitioner, after this order was passed no disciplinary proceedings were initiated against him. It, however, appears that on 15.11.2009 a complaint was made by the Executive Officer of the Tripura Khadi and Village Industries Board to the Officer-In-Charge of the West Agartala Police Station which was received in the West Agartala Police Station on 15.11.1999. In this complaint, it was alleged that the petitioner and one Ashis Kanti Saha had committed the offence of criminal breach of trust during the period from 14.02.1994 to 13.10.1999. The petitioner remained under suspension till 2011 though we have been informed that during the period of suspension he was paid his full salary. On 25.02.2011, disciplinary proceedings were initiated against the petitioner and Shri Ashis Kanti Saha and memorandum was issued to him.

3. The gravamen of the charges against the petitioner and Shri Ashis Kanti Saha are that whereas Ashis Kanti Saha was Assistant Organizer (Khadi), the petitioner Nanda Lal Das was the Junior Supervisor in the Tripura Khadi and Village Industries Board. According to the Board, during the period from 14.02.1994 to 06.11.1999 these two officials received 301075 hanks of yarns but did not make any entry in the stock register with regard to the receipt of such yarn. It is alleged that this was done with an ulterior motive and the petitioner and Shri Ashis Kanti Saha simply used to issue a certificate on the reverse of the wages bill stating that the yarn was received in good condition. According to the department, the non-entry of the yarn in the stock register resulted in loss of Rs.11,30,018.60 to the Board for which both the petitioner and Ashis Kanti Saha are responsible.

4. It is not disputed that on these very allegations a case of criminal breach of trust has also been lodged against the petitioner and Shri Ashis Kanti Saha. The petitioner thereafter filed WP(C) No. 154 of 2011 before this Court in which the main ground raised was that the Tripura Civil Services (Conduct) Rules, 1988 were not applicable prior to 13.01.2011 and as such, the proceedings against the petitioner cannot be proceeded under the said rules. From the order dated 07.04.2011, we find that no other point was raised. The learned Single Judge directed that the petitioner shall make a representation to the Board which shall consider the same and decide the same in accordance with law.

5. Not being satisfied against the said judgment of the learned Single Judge, the petitioner filed a writ appeal being W.A. 18 of 2011 which came up before a Division Bench of this Court. Again the main contention was that the disciplinary proceedings initiated by the respondent-Board under the Tripura Civil Services (Conduct) Rules were not maintainable as these rules were adopted after the order of suspension and alleged misconduct. The Division Bench upheld the judgment of the learned Single Judge but gave the petitioner opportunity to make a representation within 15 (fifteen) days of the passing of the order by the Division Bench and also directed the Board to pass a speaking order on such representation.

6. Thereafter, the petitioner filed a representation wherein the main point raised was that since the CCS (CCA) Rules were not applicable and the Tripura Civil Services (Conduct) Rules were also not applicable prior to 13.01.2011, the proceedings were initiated. It was also contended that since criminal proceedings have now been initiated, the disciplinary proceedings should be stayed and lastly, it was contended that the disciplinary proceedings were drawn up after an unusual delay of 11 years from the date of incident. This representation has been rejected and hence, the present writ petition.

7. At the outset, we may note that the question of delay though raised in the representation filed subsequent to the orders

of the Division Bench does not appear to have been raised either before the learned Single Judge or before the learned Division Bench in a writ appeal. Be that as it may, we are of the considered opinion that delay is not fatal in all cases.

8. Reliance placed by Mr. A.K. Bhowmik, learned Sr. Counsel appearing for the petitioner, on the judgment of the Gujarat High Court in ***Mohanbhai Dungarbhaji Parmar vs. Y.B. Zala and another, [1979(3) SLR 130]*** is totally misplaced. That was a case where the delinquent official who was a police constable was late in attending the roll call and notice of disciplinary proceedings was issued 1½ years later. The Gujarat High Court held that a person could not be expected to remember after 1½ years as to what was the reason why he could not come in time and attend the roll call. The facts of this case are totally different. The allegations against the petitioner and Ashis Kanti Saha are that they have not maintained the stock register properly which has resulted in loss to the Board. This is not a matter of memory but a matter squarely depending on documents as to whether the stock register was properly maintained or not.

9. The other point raised is that since criminal proceedings are going on on the same set of circumstances, these disciplinary proceedings should not continue. In this behalf, we may make reference to the judgment of the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., [(1999) 3 SCC 679]*** wherein the Apex Court in para-13 held as follows:-

“13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

10. Thereafter, the Apex Court discussed the entire law on the subject and culled out its ratio in para-22, which reads as follows:-

“22. The conclusions which are deducible from various decisions of this Court referred to above are :

(i) *Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*

(ii) *If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*

(iii) *Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.*

(iv) *The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*

(v) *If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in*

case he is found guilty, the administration may get rid of him at the earliest.”

11. The Apex Court has clearly held that department proceedings in criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately. Even if departmental proceedings and criminal cases are based on identical and similar set of facts, these can proceed because the degree of proof required in a criminal case is beyond reasonable doubt but in departmental proceedings it is preponderance of evidence which has to be taken into consideration. In departmental proceedings what has to be decided is whether the employee has misconducted himself. Even if an employee conducts misconduct, he may not be guilty of a criminal offence. If he commits a criminal offence, then no other inquiry is required to prove that he is guilty of misconduct but the reverse is not true. Even an acquittal in a criminal case is no bar to continuation of disciplinary proceedings.

12. As far as the present case is concerned, assuming for the sake of argument that there is no *mens rea* but if it is found that the stock register was not properly maintained and that has caused loss to the Board, that would amount to misconduct even though it may not amount to criminal breach of trust. Therefore, we are of the opinion that these proceedings can continue.

13. It is contended by Mr. A.K. Bhowmik, learned Sr. Counsel appearing for the petitioner, that since the Tripura Civil Services (Conduct) Rules and the CCS (CCA) Rules were not

applicable to the Board at the relevant time, the entire proceedings are misconceived. We are not at all in agreement with this submission. In the Tripura Khadi and Village Industries Board Regulations, 1970, it is clearly provided that in respect of disciplinary proceedings until provisions in this behalf are made by the Board, the procedure laid down by the Government will be followed. Even assuming that such provision was not there, in case there is alleged misconduct all that the employer is required to follow is the rules of natural justice and nothing more. If we were to accept the plea of the petitioner, then the Board could only give a written notice and seek his reply and take appropriate action. The rules of natural justice do not require that in each and every case evidence has to be recorded. The CCS (CCA) Rules give a lot of benefits to the employees. They are probably the most employee friendly rules anywhere in the world. These rules epitomize the rules of natural justice in every form and once these rules are being followed it cannot be said that any prejudice is caused to the accused.

14. Lastly, it was contended that the inquiry proceedings have been directed to proceed *ex parte* on a date when the accused was directed to appear in Court. To this limited extent, we allow the petition and set aside the *ex parte* order and direct that the petitioner shall be permitted to appear and contest the disciplinary proceedings in accordance with law.

15. The department is directed to proceed with the disciplinary proceedings by associating both the delinquent officials, i.e. Shri Ashis Kanti Saha and the petitioner. The Inquiry Officer is directed to ensure that the inquiry is conducted as early as possible and shall be conducted on day to day basis, if necessary, and it shall be ensured that the same are concluded by 31.12.2015.

16. The writ petition is disposed of in the aforesaid terms.
No costs.

JUDGE

CHIEF JUSTICE