

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)179 OF 2012

Sri Sadhan Biswas,
Son of late Bhagaban Ch. Biswas,
Resident of South Jolaibari,
Sub-Division -Santirbazar, South Tripura

..... Petitioner

- Vs -

1. The State of Tripura
represented by the Secretary to the
Government of Tripura
Department of Education (School) P.O. Kunjaban,
New Capital Complex, P.S. West Agartala,
District : West Tripura.
2. The Principal Secretary to the
Government of Tripura
Department of Education(School),
P.O. Kunjaban, New Capital Complex,
P.S. West Agartala, District : West Tripura.
3. The Director of School Education,
Government of Tripura
P.O. Agartala, P.S. West Agartala,
District : West Tripura.

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. P.K. Biswas, Senior Advocate
Mr. P. Majumder, Advocate

For the respondents : Mr. G.S. Bhattacharjee, Advocate

Date of hearing & order : 20.08.2015

Yes	No
	✓

Whether fit for reporting :

JUDGMENT & ORDER (ORAL)

Heard Mr. P.K. Biswas, learned senior counsel, assisted by Mr. P. Majumder, learned counsel appearing for the petitioner as well as Mr. G.S. Bhattacharjee, learned counsel appearing for the official respondents.

[2] Being aggrieved by the order under No. F.5(1 - 3605)-SE-E(DP)/2010 dated 27.12.2010 (Annexure-3 to the writ petition) as well as by the subsequent order dated 03.09.2011 (Annexure-6 to the writ petition) and the order of the Appellate Authority under No.F.5(1-3605)-SE-E(DP)/2010 dated 15.11.2011 (Annexure-8 to the writ petition) the petitioner has filed this petition. The petitioner has admitted that he was absent from the duty for the period from 18.10.2000 to 26.03.2005 in (28 spells) and from 29.03.2005 to 27.01.2009 in (20 spells) on the purported ground of his illness. The petitioner's plea of his illness was not accepted by the competent authority and as such his absence from duty was not regularized. Ultimately by the Memorandum under No.F.5(1-3605)-SE-E(DP)/2010 dated 06.09.2010 (Annexure-1 to the writ petition) the following article of charge was levelled against the petitioner :

“That Shri Sadhan Biswas, while serving as an Assistant Teacher P.R. Bari High School under Education Inspectorate, Belonia, South Tripura District used to keep himself absent from duties most irregularly by submitting illness certificate in every occasion with effect from 18.10.2000 to 26.03.2005 (28 Spells) and from 29.03.2005 to 27.01.2009 (20 spells), though he fail to establish his illness before the Standing Medical Board by submitting any vital documents and his aforesaid period of absence from duty is treated as absence in an unauthorized manner as per rules and his

leave is fully unjustified as per opinion of the Standing Medical Board.

The aforesaid lapse of Shri Sadhan Biswas A/T, is a gross misconduct within the meaning of Rule 3(1) of the TCS(Conduct) Rules,1988, for which Sadhan Biswas, A/T, renders liable for being charge sheeted under Rule 16 of the CCS (CC&A)Rules, 1965 read with Rule 11 of the said rules.”

[3] Having received that memorandum, the petitioner filed a representation contending that during that period he had been seriously ill and he filed illness certificates to the authority concerned. But when he was sent to the standing medical board, he could not produce the medical certificates on demand of the medical board and despite his request to bring those records from the authority to whom he submitted those certificates, the standing medical board observed that the petitioner could not justify his illness and as such the petitioner was not entitled to any leave on the ground of his illness.

[4] The petitioner was given a further opportunity of personal hearing and after hearing, the impugned order dated 27.12.2010 (Annexure-3 to the writ petition) was passed by the Director of School Education, Tripura who is the disciplinary authority of the petitioner. In the said order dated 17.12.2010, it has been observed that during the personal hearing on 08.11.2010, Sri. Biswas confessed his guilt and begged pardon to the authority and accordingly he submitted a written statement on that day, which had been carefully examined and found not convincing as Sri. Biswas has failed to submit any valid document in support of the facts stated by him in the said written statement, from which it is clear that the charge brought against Sri. Biswas is established. After observing the same, the disciplinary authority has passed the following order:

“It is further ordered that the period of absence of Sri. Sadan Biswas, A/T, Thakur Cherra S.B. School under Education Inspectorate, Santirbazar, South Tripura District that the entire period of absence with effect from 18.10.2000 to 26.03.2005 and from 29.03.2005 to 27.01.2009 is treated as “Dies Non” (for all purposes i.e. increment, pension, leave etc.) without forfeiture of his past service. The contents of the order to be recorded in the service book of Sri. Sadan Biswas, A/T with proper attestation.”

[5] Immediately after having the said order, the petitioner has made an endeavour to say that he confessed 'the matter of discussion', not beyond that. This kind of explanation given subsequent to the confession on 08.11.2010 does not make any sense for any purpose. It rather says that the petitioner did not make such representation on 08.11.2010 with clean hands.

[6] Thereafter, the petitioner filed a petition for review of the order passed by the disciplinary authority on 27.12.2010 by filing a representation on 23.08.2011. The disciplinary authority, on examining that representation, regretted to accede to that. Thereafter, the petitioner has filed a regular appeal under Rule 23 of the CCS (CCA) Rules, 1965, almost repeating the grounds that he had canvassed in the written statement of defence.

[7] Moreover, it has been stated that no formal charge was framed against the petitioner and no reason has been shown by the disciplinary authority why the illness certificates produced by the appellant before the authority which were annexed with the application for leave, were not considered. Further it has been asserted that in violation of Rule 16 of the CCS (CCA) Rules, 1965, such order has been passed.

[8] By the memorandum dated 05.11.2005 (Annexure-8 to the writ petition) the appellate authority affirmed the reasons given by the disciplinary authority and rejected the appeal.

[9] Mr. P.K. Biswas, learned senior counsel appearing for the petitioner has submitted that the penalty that has been awarded cannot come within the ambit of Rule 16(1) of the CCS (CCA) Rules, 1965, inasmuch as the effect of such penalty would be withholding of more than 3 increments. For purpose of reference, Rule 16(1) of the CCS (CCA) Rules, 1965, is reproduced hereinafter:

“(1) Subject to the provisions of sub-rule(3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after ----

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules(3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour ;and

(e) consulting the Commission where such consultation is necessary.”

[10] It is true that, withholding of more than 3 increments does not come within the purview of Rule 16(1) of the of the CCS (CCA) Rules, 1965 and such withholding does not come within the penalties

as depicted under Rule 11 in clause (i) to (iv). But, at the same time, this court cannot be oblivious that no penalty as depicted in Rule 11 of CCS(CCA) Rules, 1965 has been imposed on the petitioner. The impugned order is an order of “Dies Non” which is not at all covered by the penalty as catalogued by Rule 11 of the of the CCS(CCA) Rules, 1965. “Dies Non” operates through FR 17A and Rule 24 of the Tripura Civil Services (Leave) Rules, 1986. This special measure can be availed by the competent authority. For purpose of taking any action under FR 17A, the only requirement is that, an inquiry by affording reasonable opportunity to the delinquent should be carried out.

[11] As the period of absence has not been disputed in any manner, it should not be held that the petitioner was not afforded any reasonable opportunity for projecting his defence. This court is rather constrained to observe that by showing the extra-amount of leniency, the order of “Dies Non” was passed by the disciplinary authority and obviously not an order, under Rule 11 of the CCS (CCA) Rules, 1965. When an authority is entitled to pass an order of “Dies Non” under FR 17A after affording the reasonable opportunity, it is the authority which has to be satisfied that the reasonable opportunity has been given to the petitioner and when the petitioner assails such order for not affording such opportunity the petitioner must show that no such opportunity was extended to him.

[12] In the view of this court, “reasonable opportunity” means that the petitioner must be afforded opportunity to lay his defence properly. From the records it can be gathered that the petitioner neither along with the written statements nor at any stage of the proceedings did lay any document about his illness. Even the

petitioner has attempted to flay the integrity of the standing medical board which is completely unwelcome attitude of a Government officer. It is not the duty of the medical board to lay or collect the necessary documents from the other authorities for purpose of ascertaining whether the petitioner had suffered illness or not. Such duty completely lies with the person who claims that he had suffered illness.

[13] Even though the proceeding that was taken up was under Rule 16 read with Rule 11 of the CCS (CCA) Rules, 1965, but the penalty was not awarded under Rule 11 of the CCS (CCA) Rules, 1965 but showing an extra amount of leniency, the petitioner has been awarded "Dies Non" without forfeiture of his past service, meaning the period of absence shall not be counted as his service for purpose of pension and other benefits. Therefore, the contention of Mr. P.K. Biswas, learned senior counsel that more than 3 (three) increments have been withheld and therefore the enquiry should not have been carried out under Rule 16(1) of the CCS (CCA) Rules, 1965 and hence the proceeding is attended by illegality or on the basis of such proceedings no punishment can be awarded on the petitioner, cannot be accepted.

[14] To substantiate bonafide reasons for absence, the petitioner has failed to submit a piece of document, not a single prescription of the doctor by justifying grant of leave. What is required to be submitted is not the prescriptions, but the certificate of illness and certificate of fitness as per the leave rules. Despite that the petitioner has nowhere claimed that he had submitted a single prescription from the doctor in support of his illness. This court, even

if held that the proceeding under Rule 16(1) of the CCS (CCA) Rules, 1965, has been vitiated then also, the impugned order cannot be held to be improper insofar as the said disciplinary authority, as the leave sanctioning authority has the power to declare a period of absence if he is not satisfied from the records about the causes so assigned, as “Dies Non” and “Dies Non” has its own consequence. “Dies Non” has never been treated per se penalty under the CCS (CCA) Rules, 1965 . Hence, this court does not find any merit in this writ petition as the petitioner could not find a straw to justify his long absence.

[15] Accordingly, the writ petition is dismissed. However, in the circumstances, there shall be no order as to costs.

JUDGE

Sabyasachi.B