

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.25 of 2022

Shri Matilal Jamatia

S/o Late Jagatguru Jamatia,
A resident of Village – Ujan Abhoynagar,
Agartala, P.O. – Abhoynagar,
P.S. – East Agartala,
District – West Tripura
Aged about 56 years

---Petitioner(s)

Versus

1. The State of Tripura

Through the Secretary to the
Government of Tripura,
Department of PWD,
Civil Secretariat, Agartala,
P.O.-Agartala Secretariat-799010,
West Tripura

2. The principal Secretary

To the Government of Tripura,
GA (AR) Department,
(Disciplinary Authority),
Civil Secretariat, Agartala,
P.O – Agartala Secretariat -799010
West Tripura

3. The Chief Secretary

to the Government of Tripura,
GA (AR) Department,
(Appellate Authority),
Civil Secretariat, Agartala,
P.O – Agartala Secretariat-799010,
West Tripura

---Respondent(s)

For Petitioner(s)	:	Mr. S. M. Chakraborty, Sr. Advocate Mrs. P. Chakraborty, Advocate Ms. Ankita Pal, Advocate
For respondent(s)	:	Mr. Rajib Saha, Advocate
Date of hearing & delivery of Judgment & Order	:	09.01.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

By way of filing the present writ petition, the petitioner has challenged the impugned order of penalty of withholding of 1 (one) increment with cumulative effect.

2. Briefly stated, the petitioner while serving as Executive Engineer/(CDC) of Water Resource Division No.V, Kamalpur, was charged for misappropriation of Government fund to the tune of Rs.2,72,017/- and thereby failed to maintain absolute integrity and devotion to the Government duties. The Inquiry Authority (IA) being appointed by the Disciplinary Authority held enquiry on the charge framed against the petitioner. Evidences were adduced by the departmental officers as well as the delinquent officer. The inquiry authority examined the evidences and on consideration of the materials on record held that *“Since original MB and measurement report of the inquiry team, if any, could not produce during examination of PW or DW, the charge of misappropriation of Government money is not established*

against the AOs namely I) Sri Prafulla Chandra Das. II), Sri Arup Kumar Das and III) Sri Matilal Jamatia, executive engineer.”

3. While furnishing his report, the Inquiry Authority held that the charges of misappropriation against the delinquent officer, i.e. the petitioner herein, have not been proved. It was further held that the petitioner being the Executive Engineer has not gone through the prevailing financial rules and issued order without observing formalities and for this reason, a major penalty was imposed upon him holding that the charge of misappropriation has partly been proved.

4. I have heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty and Ms. Ankita Pal, learned counsels appearing for the petitioner and Mr. R. Saha, Ld. counsel appearing on behalf of the respondents.

Mr. Chakraborty, learned senior counsel has submitted that on bare perusal of the Articles of Charges, it can easily be said that no charge has been framed as to whether the petitioner being one of the accused officers (AOs) has violated the financial rules prevalent in the State of Tripura. Had this charge been framed, the petitioner could have substantiated the fact that he did not violate any provision of the financial rules applicable to the State.

5. Mr. Saha, learned counsel appearing for the State-respondents has also admitted that there is no separate charge framed as to whether the petitioner has violated the prevailing financial rules and issued order without observing formalities.

6. I have considered the above submissions advanced by learned counsels appearing for the parties.

7. Before I advert to the merit of the case, I have taken note of a decision passed by the Hon'ble Supreme Court of India as cited by Mr. Chakraborty, learned senior counsel for the petitioner in ***Narinder Mohan Arya Vs. United India Insurance Co. Ltd., (2006) 4 SCC 713***, wherein, the Hon'ble Supreme Court explained the scopes of judicial review as regards the findings and decision of the disciplinary authority as well as the appellate authority. It reads as under: [SCC. p 724, para 26].

“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam v. Mahendra Kumar Das :(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. [See Khem Chand v. Union of India: (1958 SCR 1080) and State of U.P. v. Om Prakash Gupta: (1969) 3SCC 775.] (3) Exercise of discretionary power involves two elements – 9 i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State Bank of India: (1984) 1 SCC 43.] (4) It is not possible

to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan: (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra: (1987) 2 Cal LJ 344] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. V. Prakash Chand Jain:(1969) 1 SCR 735, Kuldeep Singh v. Commr. of Police:(1999) 2 SCC 10]”

8. If the question raised in this writ petition and as submitted by learned counsel for the petitioner is looked into in the light of above principles laid down by the Hon'ble Supreme Court of India, then, it can be said that power of judicial review of this Court in exercise of its jurisdiction under Article 226 of Constitution of India is limited but the power can be invoked when it is found that penalty is imposed on the basis of a finding which was not of the subject matter of the charges and when the findings are based on no evidence.

9. Mr. Saha, learned counsel for the respondents-State submits that since the prevailing financial rules were not observed by the petitioner, he committed this conduct under Rule 3 of Tripura Civil Services (Conduct) Rules, 1988.

10. As I already held that no charge has been framed and no opportunity was given to the petitioner to defend the charge that he committed misconduct for not following the provisions laid down under the prevailing financial rules, the findings of the inquiry authority in this regard as appreciated by the disciplinary authority and as well as the appellate authority do not sound good.

11. In the case at hand, this Court finds that no charge was framed against the petitioner that he had violated any of the provisions of the prevailing financial rules. I am in agreement with the submission of learned counsel for the petitioner that if this charge was framed or incorporated in the Articles of Charges, then, the petitioner could lay evidence in his defense against such charge.

12. In the above backdrop, I find merit in the present writ petition challenging the impugned order of penalty imposed upon the petitioner withholding of one increment with cumulative effect. Neither the disciplinary authority nor the appellate authority had taken into consideration the fact that without framing a charge that the delinquent officer, i.e. the petitioner herein, had violated the prevailing financial rules, a major penalty was imposed. *Since there is no charge, there is no question of recording evidence in this regard and further, since these two essentialities are found absent, the petitioner was not given a reasonable opportunity to defend the finding that he had violated the prevailing financial rules. In this circumstance, procedural infirmities are apparent on the face of record. It is well-settled that in department proceedings fairness and fairplay in the procedure are parts of the doctrine of natural*

justice. Non-observance or non-compliance offends the doctrine of fairplay in administrative action and violates rules of natural justice.

13. Furthermore, the allegations on the basis of which a major penalty of withholding of one increment of pay with cumulative effect was imposed *was not the subject matter of the charge framed against the petitioner, and in such a case, the punishment calls for interference to uphold the doctrine of fairness and fairplay as well as the rules of natural justice.*

14. In sequel, the impugned order of penalty (Annexure-7 to the writ petition) issued by the disciplinary authority and upheld by the appellate authority is interfered with, and accordingly, the same is set aside and quashed.

Consequently, all the service benefits, the petitioner was/is entitled to shall be released within a period of 3(three) months from the date of receipt of a copy of this order.

With the aforesaid observations and directions, the instant writ petition stands allowed and thus disposed of.

सत्यमेव जयते

JUDGE

Rohit