

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.96 OF 2023**

Sri Bikash Bhowmik

..... **Appellant(s)**

Vs.

The State of Tripura and ors.

..... **Respondent(s)**

For the Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Mrs. R. Chakraborty, Advocate.

For the Respondent(s) : Mr. D. Sharma, Addl. G.A.
Mr. R. Datta, Advocate.

Date of hearing and delivery of
Judgment & Order : 19.07.2023

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

" i. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for transmitting the records, lying them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Order dated 27.12.2022(Annexure-15 supra)

ii. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to forthwith revoke/rescind the impugned Order dated 27.12.2022(Annexure-15 supra), and further, for mandating/directing them, to reinstate the petitioner in service, with effect from the date of his dismissal from service, i.e.27.12.2022, alongwith all other consequential benefits;

iii. Call for the records, appertaining to this writ petition;

iv. After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (ii) above;

v. Costs of and incidental to this proceedings;

vi. Any other Relief(s) as to this Hon'ble High Court may deem fit and proper."

2. Heard Mr. Somik Deb, learned Sr. counsel assisted by Mrs. R. Chakraborty, learned counsel appearing for the petitioner as well as

Mr. D. Sharma, learned Addl. G.A. appearing for the respondent-State and Mr. R. Datta, learned counsel appearing for respondent-TPSC.

3. Mr. Deb, learned Sr. counsel appearing for the petitioner submitted that the disciplinary authority proceeding with a pre-meditation fixing the goal to punish the petitioner. The penalty imposed on the petitioner by the impugned Order dated 27.12.2022 is disproportionate and the same is liable to be set aside.

To support his argument, Mr. Deb, learned sr. counsel referred to Para-22, 26 and 27 of the Hon'ble Apex Court Judgment reported in **(2014) 9 SCC 105** titled as **Gorkha Security services Vs. Government(NCT of Delhi) and ors.** The same is reproduced herein under:-

"20) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

i) The material/ grounds to be stated on which according to the Department necessitates an action;

ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement. Discussion with reference to the instant case.

26) In the present case, it is obvious that action is taken as provided in sub clause 2(ii). Under this clause, as is clear from the reading thereof, the Department had a right to cancel the contract and withhold the agreement. That has been done. The Department has also a right to get the job which was to be carried out by the defaulting contractor, to be carried out from other contractor(s). In such an event, the Department also has a right to recover the difference from the defaulting contractor. This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/ security deposit, if so required. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/ or forfeiture of earnest money/ security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words "if so warranted", thus,

assume great significance. It would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/ security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.

27) We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

4. On the other hand, Mr. D. Sharma, learned Addl. G.A. appearing for the State respondent submitted that the petitioner has accumulated an unaccounted sum of wealth which is disproportionate to his income and the impugned order as passed by the disciplinary authority is just and proper.

To support his argument, learned Addl. G.A relied upon **Para-15** of the Full Bench Judgment of the Hon'ble Apex Court Judgment passed in **State of Madras Vs. A.R. Srinivasan** reported in **(1966) AIR(SC) 1827**. The same is reproduced herein:-

"15. We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no. doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

5. Heard both sides and perused the evidence on record.
6. It is evident from the record that though an allegation has been raised that the petitioner has accumulated unaccounted wealth disproportionate to his income, but, the count of those wealth has not been given or pinpointed as to where the petitioner has accumulated it. No bank statements or property has been mentioned by the respondent authorities. Further, the respondents have not given proper reasons and passed a detailed order while imposing punishment on the petitioner herein. Even in the **A.R. Srinivasan(supra)**, the Full Bench of Hon'ble Apex Court stated that the authorities have to pass a detailed order while imposing punishment in a Disciplinary proceeding, but the same has not been followed in the case at hand. The inquiry report since not accepted no reasons to is given indicating as to what portion of the report is not accepted. It is against Rule 15 of CCS CCA Rules.
7. In view of the above reasons, the present writ petition is allowed and the impugned Order is set aside. The petitioner is reinstated into his service with all consequential benefits. However, this Court has taken into consideration the prima facie allegations of disproportionate assets against the petitioner herein and directs the respondents that while reinstating the petitioner to his service, he should not be posted to the original place of posting instead the petitioner should be posted elsewhere in the same rank.
8. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by RAJKUMAR
SUHANJIT SINGHA
Date: 2023.07.21 16:01:00
+05'30'