

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.149 OF 2022**

Kishore Kumar Banik

..... **Petitioner(s)**

Vs.

The State of Tripura and ors.

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

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. M. Debbarma, Addl.G.A.

Date of hearing and delivery of
Judgment & Order : 14.12.2023.

Whether fit for reporting : YES/NO.

**HON'BLE MR JUSTICE T. AMARNATH GOUD
JUDGMENT AND ORDER(ORAL)**

Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. G.A., appearing for the State-respondents.

2. The brief of the case is that the petitioner who was working as a Junior Engineer Grade I under the Rural Department has challenged the impugned order dated 23.09.2021 passed by the Secretary, Rural Development Department imposing a major penalty of compulsory retirement upon the petitioner. The petitioner has also challenged the order dated 19.01.2022 passed by the Special Secretary, to the Government of Tripura (Rural

Development Department). Earlier, the Inquiring Authority submitted a report dated 20.07.2020, wherein Inquiring Authority held that charges framed against the petitioner could not be established by the prosecution and the accused-officer i.e., the petitioner herein is not guilty of violating the provisions of Rule 3(1)(i)(ii) & (iii) to Tripura Civil Service(Conduct) Rules, 1988. But the Secretary to the Govt. of Tripura, RD Dept. vide memorandum dated 11.11.2020 informed the petitioner that the Disciplinary Authority tentatively disagrees with the findings of the Inquiry Authority. Subsequently, vide Order dated 23.09.2021, the Secretary to the Government of Tripura imposed a major penalty of compulsory retirement on the petitioner. Vide memo issued by the Addl. Secretary Rural Development Department, Government of Tripura, the petitioner was asked to appear with reference to the appeal dated 25.10.2023 filed by the petitioner for a hearing before the Chief Secretary(Appellate Authority) scheduled to be held on 06.01.2022. The petitioner appeared and put his attendance but no hearing took place. Thereafter, the Appellate Authority vide impugned order dated 19.10.2022 dismissed the appeal preferred by the petitioner upholding the Order of Penalty dated 23.09.2021. As such, the petitioner has preferred this present writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

" i. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby

quashing and cancelling the Memo. Dt. 26.09.2017, issued by the District Magistrate & Collector, Sepahijala District, Bishramganj.

ii. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby quashing and cancelling the Memorandum dt. 11.11.2020, issued by the Secretary to the Govt. of Tripura (Rural Development Department).

iii. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders direction/directions of like nature shall not be issued whereby quashing and cancelling the order dated, 23.09.2021, passed by the Secretary to the Government of Tripura(Rural Development Department).

iv. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby quashing and cancelling the Order dated 19.01.2022, passed by the Special Secretary to the Government of Tripura (Rural Development Department)."

3. Mr. P. Roy Barman, learned Sr. counsel appearing for the petitioner submits that without any reason and most arbitrarily, the inquiry report was not accepted by the Secretary Rural Development Department. The petitioner submitted detailed representation dated 30.11.2020 to the Secretary, Rural Development Department, Govt. of Tripura, against the non-acceptance of the Inquiry Report, by the Secretary, Rural Development Department, Govt. of Tripura. But the representation of the petitioner has not been taken into consideration. The impugned order of Penalty dated 23.09.2021 has been passed in violation of the mandate of Rule 15(4) of the Central Civil Services(Classification, Control & Appeal) Rules 1965. The penal imposed is disproportionate to the alleged mis-conduct. The respondents have acted arbitrarily and unreasonably. Accordingly

in view of the above arguments, learned Sr.counsel urged this Court to allow this present petition.

4. On the other hand, Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents submits that the petitioner has accepted the alleged diversion of fund and lying of unspent amount. However the said issues have not been dealt with by the inquiry authority.

5. Heard both sides and perused the evidence on record.

6. It is seen from the record that various allegations were leveled against the petitioner, but in the inquiry report, the Inquiring Authority has observed that '*the prosecution has failed to establish/sustain the Article of Charges brought against AO*'. Thereafter in the subsequent proceedings, nor the Secretary, to the Government of Tripura (Rural Development Department) or the Appellate Authority has been able to come over or deal with the said finding of the Inquiry Authority. As such this Court is of the opinion that the Appellate Authority should reconsider the entire issue and also take into consideration the said Inquiry report dated 20.07.2020 and passed a reasoned order.

7. Accordingly, the impugned Appellate Authority Order is set aside and the matter is remanded back for fresh adjudication after taking into consideration the entire issue. While adjudicating the matter, the Appellate Authority shall also take in the consideration the inquiry officer's report, wherein, he has

categorically stated that the *prosecution has failed to establish/sustain the Article of Charges*, and the inquiry report is given in favour of the writ petitioner herein. This exercise shall be completed within a period of 3(three) months from the date of receipt of the copy of this Order.

8. With the above observation and direction, this present writ petition is disposed of. Stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

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SUHANJIT
SINGHA

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SUHANJIT SINGHA
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