

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 182 of 2022**

No 97040664, Hav (GD)

Dilip Kumar Tripura

E Coy, 2nd Bn TSR, State Rifles

R.K. Nagar, P.O. Kash Noagaon

District- West Tripura

Now posted at

Boys Hostel, Tripura Medical College

AGMC & GBP Hospital Complex,

Agartala, P.O. Agartala, Dist- West Tripura.

--- Petitioner(s)

Versus

1. The State of Tripura,

Represented by the Commissioner

Cum Secretary to the Government of Tripura,

Home Department, New Capital Complex,

P.O. Kunjaban, Agartala, District- West Tripura.

2. The Deputy Inspector General of Police (AP)

Government of Tripura, Agartala, West Tripura.

3. The Inspector General of Police (TSR & OPS)

Government of Tripura, Agartala, West Tripura.

4. The Commandant, 2nd Bn TSR,

R.K. Nagar, West Tripura.

5. The Deputy Commandant, 2nd Bn TSR,

R.K. Nagar, West Tripura.

---Respondent(s)

For Petitioner(s)	:	Mr. A. Acharjee, Advocate.
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For Respondent(s)	:	Mr. D. Sarma, Addl. GA
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Date of hearing and
delivery of judgment

and order	:	21.11.2023
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Whether fit for reporting	:	Yes
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HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & order (Oral)

This writ petition has been filed under Article 226 of the Constitution of India for issuance of writ of certiorari and/or in the nature thereof, for quashing or setting aside the punishment order No.DP/07/2011/DKT/TSR/-II/Estt/11/11597/11606 dated 27.09.2011 and the order vide No.3440-42/F.47(17)/DAP/TSR/RSV/11 dated 13.05.2019.

[2] Brief facts, leading to this case is that on 15.09.1997, petitioner joined service as TSR personnel as Hav(GD) E Coy, 2nd Bn. R. K Nagar, West Tripura. While the petitioner discharging his duty as night guard Commander in the ONGC Office main gate, on 08/09.02.2011 in the midnight, 5/6 civilians entered into the complex without taking prior permission from the superior authority. Thereafter on 24.02.2011, respondent no.4 i.e. the Commandant, 2nd Bn TSR, R.K. Nagar, West Tripura issued a memorandum to start an enquiry against the petitioner. Subsequently, one departmental proceeding was drawn and on the basis of that, on 30.08.2011, respondent no.4 issued a provisional punishment order vide No. DP/07/2011/DKT/TSR-II/Estt/11/7849 dated 30.08.2011 and punished the petitioner by withholding three annual increments of pay of the petitioner with cumulative effect. Petitioner was directed to submit his representation or to appear personally before the enquiry officer. Thereafter, the petitioner submitted his representation on 16.09.2011 and stated everything as defence statement. It was submitted by the petitioner that during departmental proceeding no documents relating to the DP were supplied to the petitioner inspite of his representation and the petitioner had been kept in confinement in the barrack and the competent assistant

was not provided to him. It is pertinent to mention that on 27.09.2011, respondent no. 4 issued a punishment order vide No.DP/07/2011/DKT/TSR/II/Estt/11/11597-11606 was passed stating that in exercise of power conferred by Rule 12(1) of Tripura State Rifles Act, 1983 and Rule 11(iv) of CCS (CCA) Rules, 1965 two annual increments of pay with cumulative effect of the petitioner be withheld.

[3] The Commandant, 2nd TSR (ONGC) Battalion, R.K. Nagar, Tripura West vide memorandum dated 24th February, 2011, framed the following Article of Charge against the petitioner, Dilip Kumar Tripura:

"ARTICLE-I

No 97040664 Hav (GD) Dilip Kumar Tripura of E/TSR-2 was performing the duty of night Guard Commander on 08/09-02-2011 night at ONGC office gate allowed 5/6 civilians in the midnight to enter inside ONGC Base Complex un-authorisedly without obtaining any permission of his superior by threatening the duty sentry, which is gross misconduct and prejudicial to the good order and discipline of the Rifles."

[4] The petitioner submitted a representation on 16.09.2011 in his defence stating that during departmental proceeding, no documents related to the DP were supplied to him inspite of his representation. He further stated that though he was asked to engage defence assistance, but he had been kept in confinement in the barrack and inspite of his request, he had not been allowed to go out to engage a defence assistant. It was also submitted that he had been instructed to engage a defense assistant from the battalion but no such competent person came forward to assist him or such competent person was not available in the barrack.

[5] On 27th September, 2011, the punishment order vide No. DP/07/2011/DKT/TSR-II/Estt/11/11597-11606 was passed by the respondent No.4 against the petitioner, which reads as under:

"NOW THEREFORE, I Shri Khatra Joy Reang, IPS, Commandant, 2nd Bn TSR being the appointing authority in exercise of the power conferred by Rule- 12(1) of the

Tripura State Rifles Act 1983, and Rule 11(iv) of CCS (CCA) Rules 1965, do hereby awarded punishment of 'Withholding of 02(two) Annual Increments of Pay with cumulative effect' to No.97040664 Hav (GD) Dilip Kumar Tripura of 'E' Coy, 2nd Bn TSR. DP No.07/2011 is hereby disposed off."

[6] A criminal complaint was also lodged by the departmental authority, 2nd Bn. TSR against the petitioner bearing Amtali Police Station Case No. 16 of 2011 under Section 379 of the Indian Penal Code. Subsequently, petitioner faced trial before the then Sub-Divisional Judicial Magistrate, West Tripura, Bishalgarh on the said charges in PRC 49 of 2011. Learned Sub-Divisional Judicial Magistrate, West Tripura, Bishalgarh, while examining the witnesses, opined vide his judgment dated 01.06.2016 that from the evidence of PW.1 (Md. Habib Miah) and PW.4 (S.I. Obaidul Haque, the I.O), it was quite evident that it was Biswajit Deb (PW.3) who had performed duty at the relevant time on the alleged date of occurrence. Examining all the witnesses and materials on record, leaned SDJM has acquitted the petitioner of the charge leveled against him. For the purpose of reference, the relevant portion of the judgment passed by the then SDJM, Bishalgarh, West Tripura on 01.06.2016 is quoted hereinbelow:

"ORDER

In the result, the accused persons namely Dilip Kumar Tripura and Raju Das are hereby acquitted of the charge levelled against them u/s. 379 of IPC and they are set at liberty.

The surety of the accused persons stands discharged from the liability of the bail bond.

The seized article, if any, shall be disposed of as per law after expiration of period of appeal, if no appeal is preferred.

The Judgment is pronounced in the open Court.

The case is thus disposed of on contest on acquittal....."

[7] On 28th October, 2016, Commandant, 2nd Bn, Tripura State Rifles, Office of the Commandant, 2nd Bn Tripura State Rifles, R.K. Nagar,

West Tripura vide order No. 10689-94/F.107/TSR-II/Suspension/12 finalized the departmental proceeding, the relevant portion of which is extracted herein-below:

".....4. NOW THEREFORE, the period of Suspension from 23.02.2011 to 29.05.2011 in respect of No.97040664 Hav(GD) Dilip Kumar Tripura of 'E' Coy, 2nd Bn TSR (Now 'D' Coy) has been treated as "SPENT OF DUTY" under Rule- FR-54(B) since the Disciplinary Proceeding drawn up against him was finalized by awarding Minor Punishment."

[8] The petitioner, on 25.02.2019, filed an appeal before the respondent No.2 for review and revocation of punishment imposed upon him by the respondent No.4. But, the respondent No.2 upheld the punishment imposed by the respondent No.4 vide order No.3440-42/F.47(17)/DAP/TSR/RSV/11 dated 13th May, 2019 with a view that the charges in criminal case as well as in the departmental proceedings are different. For the purpose of reference, the relevant portion of the order of the Dy. IG of Police (AP), Tripura, Agartala i.e. Respondent No.2 is quoted below:

".....5. The charges in criminal case as well as in the Departmental proceedings are different. Moreover, the 30 days time limit for appeal has been long over. In view of the above, the undersigned does not find merit in the contention of the appellant that in view of the judgment in criminal case his punishment should be reviewed. Undersigned finds no justifiable grounds that warrants relook into the punishment order of the then Commandant, 2nd Bn TSR."

6. The appeal petition is disposed off accordingly."

[9] Thereafter, on 22.05.2019, the petitioner submitted an application before the respondent No.3 i.e. the Director General of Police, Government of Tripura, Agartala for revocation of punishment order imposed by the respondent No.4 and the petitioner has stated that he has been acquitted from the charges under Section 379 of IPC but, the said prayer of the petitioner was rejected by order dated 25.06.2019. The

relevant portion of the order dated 25.06.2019 passed by the I/C Director General of Police, Tripura, Agartala is quoted below for the purpose of reference:

".....4. The undersigned does not find merit in the appeal petition of the applicant to review the punishment order as he was acquitted of the charge leveled by the Court of SDJM, Bishalgarh. The charges in both the instances are different. The undersigned agrees with the order of the Appellate Authority (DIG, AP) as there is no justifiable ground to relook into the punishment order. The appeal petition is disposed off accordingly."

[10] Aggrieved thereby, the instant writ petition has been filed by the petitioner seeking 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.

(ii) 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 directing the respondents to provide 02(two) Annual Increments of pay of the petitioner with cumulative effect and to provide the financial benefit thereto and for quashing or setting aside the punishment order No. DP/07/2011/DKT/TSR/-II/Estt/11/11597/11606 dated 27.09.2011 and the order vide No.3440-42/F.47(17)/DAP/TSR/RSV/11 dated 13.05.2019.

[11] Heard Mr. A. Acharjee, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. representing the respondent-State. Perused the material evidence on record.

[12] Mr. A. Acharjee, learned counsel representing the petitioner submits that though the petitioner was acquitted of the charge leveled against him by the learned SDJM, the respondents have illegally withheld two annual increments of pay of the petitioner with cumulative effect and therefore, he prays that the punishment order passed by the respondent(s) be declared illegal, arbitrary, unreasonable, unconstitutional. Learned counsel, therefore, urges before this Court for directing the respondents to provide 02(two) Annual Increments of pay of the petitioner with

cumulative effect setting aside the punishment order imposed upon the petitioner in the departmental proceedings.

[13] Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents on the other hand contends that it is not a fact that charge in the criminal case and in the instant departmental proceeding was identical and same. As such, he submits that the instant writ petition has no merit and same is liable to be dismissed.

[14] In the punishment order dated 27th September 2011, it has been observed that the petitioner repeatedly allowed some people to enter inside the gate and to move outside whereas, 1st sentry Rfn(GD), namely, Biswajit Dey was deployed in the duty. From the above mentioned punishment order, it is also revealed that at the night of incident, there were other personnel alongwith the petitioner, but, strangely, they kept silent and did not complain their superior authority immediately that the petitioner who was not on duty at that time of occurrence was allowing some civilians to enter inside the gate in committing theft with one Cycle Cart and leaving the barrack thereafter. This Court is surprised to observe that the respondents authority held an inquiry only against the petitioner, sought for explanation and imposed punishment on the petitioner only and they did not take any action against the other personnel performing sentry duty, who might be directly or indirectly involved in the incident of theft. The respondent authorities could have called for explanation from the security in-charge of the barrack regarding theft in the complex at that night but, they did not do so. For the purpose of reference, the relevant portion from the punishment order dated 27th September, 2011 is quoted below:

"WHEREAS Guard Commander Hav(GD) Dilip Kumar Tripura said, he would perform sentry duty himself from 1900 hrs to 2300 hrs, 1st Sentry Rfn(GD) Biswajit Dey

from 2300 to 0130 hrs, 2nd Sentry Rfn(GD) Bintesh Kumar Singh from 0130 hrs to 0400 hrs and Rfn(GD) Binod Das from 0400 hrs to 0700 hrs 3rd sentry would perform sentry duty but Guard Commander Hav(GD) Dilip Kumar Tripura did not mention the time in the Guard Register. Accordingly, they started sentry duty in the night. At 2300 hrs 1st Sentry Rfn(GD) Biswajit Dey took up sentry duty of ONGC Base Complex Main Gate from Guard Commander Hav(GD) Dilip Kumar Tripura. Guard Commander returned to his Guard Room but again came out repeatedly. He was also found talking with someone over mobile phone to come quickly.

WHEREAS After about half-an-hour he again called them up and went out of the gate. At about 0115/0120 hrs, when 02(two) civilian came near the gate Hav(GD) Dilip Kumar Tripura allowed them to come inside the gate 1st sentry Rfn (GD) Riswajit Dey raised objection but Hav(GD) Dilip Kumar Tripura did not care and allowed the civilian to inside alongwith him. After 10/15 minutes, he also allowed 3/4 persons inside with one Cycle Cart. At about 0145 hrs, they brought Cycle Cart loaded with some materials duly covered and left ONGC Base Complex through Main Gate. Hav (GD) Dilip Kumar Tripura also went outside ensuring the leaving of Cycle Cart. It was also revealed that as per direction of Hav (GD) Dilip Kumar Tripura, 1st Sentry Biswajit Dey continued duty upto 0220 hrs. Hav (GD) Dilip Kumar Tripura also given false OK report to Nb/Sub(GD) Habib Miah on 09-02-2011 at 0715 hrs that no incidents took place on 8/9-02-2011 night at ONGC Base Complex to save himself from illegal activities."

[15] It is evident from the record that in the departmental inquiry and in the criminal case before the then learned Sub-Divisional Judicial Magistrate, West Tripura, Bishalgarh against the petitioner, Nb/Sub (GD) Habib Miah and Rfn (GD) Biswajit Dey were the common witnesses. While examining the witnesses, learned SDJM, West Tripura, Bishalgarh in his judgment dated 01.06.2016 mentioned that from the evidence of PW.1, Md. Habib Miah, and PW.4, S.I. Obaidul Haque, the I.O., it was quite evident that it was Biswajit Deb (PW.3) who had performed duty at the relevant time on the alleged date of occurrence. The said observation of the then learned SDJM, West Tripura, Bishalgarh is quoted hereunder for the purpose of reference:

".....PW.1 Md. Habib Miah also in his cross-examination stated that on the alleged date of

occurrence from 11pm to 1:30 Biswajit Deb (PW.3) was in duty.

From the evidence of PW.1 and PW.4 it is quite evident that it was Biswajit Deb (PW.3) who had performed duty at the relevant time on the alleged date of occurrence.

[16] Having appreciated the facts and circumstances of the case and the submissions made by the learned counsel appearing for the parties, this Court is of the view that the proper departmental inquiry was not conducted by the respondent authorities and no proper action was taken against all those personnel who were directly or indirectly involved in the alleged offence. It was not only the petitioner who might have allowed the persons inside but, at the same time, the personnel who were present at the place of occurrence at that night also kept quiet allowing 5 to 6 civilians to enter inside 3/4 times and to commit theft of the property of the respondent department from the barrack. The personnel present there who did not inform the matter to the higher officials and colleagues immediately, might be responsible for the incident of theft and the same could have been inquired into. The security in-charge of the barrack was supposed to guard his barrack round the clock and he could not escape from the responsibility bestowed upon him by his superior authority. In the case in hand, the respondent- authorities imposed punishment only upon the petitioner excepting all other personnel who might be responsible for the alleged incident. A discrete departmental inquiry is required against all those personnel who might be directly or indirectly involved in the matter. Accordingly, the matter needs re-examination in its entirety and appropriate action needs to be taken against all the responsible personnel directly or indirectly involved in the matter allowing the civilians to enter into the barrack.

[17] In view of the above discussion, this Court feels that the

matter needs to be remanded back to the respondent authorities for conducting the discrete enquiry into the matter keeping in view the observations made above by this Court and a final decision be taken in accordance with law. Thus, the impugned orders herein passed by the respondent authorities need to be set aside and accordingly, the same is set aside. It is further observed that the petitioner shall cooperate with the respondent authorities during the course of the enquiry.

[18] In terms of the above directions, the present case in hand is remanded back to the respondent authorities and accordingly, the present writ petition stands disposed of. Miscellaneous application(s) pending, if any, shall also stand closed.



JUDGE

**SABYASACHI
GHOSH**

Sabyasachi G.

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