

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.174 OF 2023**

Sri Goutam Saha

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

Vs.

The State of Tripura and ors.

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

For the Petitioner(s) : Mr. A. Bhaumik, Advocate.
Mr. S. Dey, Advocate.

For the Respondent(s) : Mr. Kohinoor N. Bhattacharyya, Advocate.

Date of hearing and delivery of
Judgment & Order : 05.10.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

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

"i. Issue Rule calling upon the Respondents to show cause as to why a Writ of Certiorari for setting aside the provisional order dated 28.08.2019(Annexure-2), the final order dated 17.09.2019(Annexure-3) as well as the Article of Charge(Annexure-1) to the writ petition shall not be set aside and quashed.

ii. Issue a 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 quashing the order dated 01.02.2020(Annexure-4) passed by the Appellate Authority and the order dated 07.12.2020(Annexure-6) whereby the appeal and revision presented by the petitioner, were rejected.

iii. Issue a 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 directing the respondents to reinstate the petitioner in service along with all consequential benefits.

iv. Call for the records appertaining to this petition;

v. After hearing the parties be pleased to make the Rule absolute in terms of Prayer i, ii, iii and above;

vi. Costs of and incidental to this proceeding;

vii. Any other relief(s) as to this Hon'ble Court may deem fit and proper;"

2. Heard Mr. A. Bhaumik, learned counsel assisted by Mr. S. Dey, learned counsel appearing for the petitioner as well as Mr. Kohinoor N. Bhattacharjee, learned counsel appearing for the respondents.

3. Mr. A. Bhaumik, learned counsel appearing for the petitioner submits that the petitioner has sufficient cause to overstay his leave as because the wife of the petitioner was suffering from a serious illness at that time. The appellate authority also found the said statement of the petitioner to be correct. It is evident that the department proceeding was without jurisdiction and the inquiry authority most illegally and unlawfully held the petitioner guilty of the charge without concluding as to whether there was sufficient cause for his overstay.

4. Mr. Kohinoor N. Bhattacharjee, learned counsel appearing for the respondents has argued that in the light of the Judgment of this Court passed in **WA No.79 of 2020** titled as **06020475 RFN(GD) Fulkumar Sarkar Vs. The State of Tripura and ors.**, the Tripura State Rifles Act, 1983 under Rule 11 dealing with less heinous offences, need not be punished with one years imprisonment or fine or with both. But the officers in the interest of the Department can deal with the matter and by way of disciplinary proceeding punishment can be imposed depending on the facts and circumstances of the case. Also the punishment

under Rule 12 of Tripura State Rifles Act, 1983 can be sustained in this present matter.

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

6. Here the allegation against the petitioner is that he had gone on leave and overstayed without obtaining any proper permission from the concerned authority and this Court feels that the this falls under Rule 11(m) of the Tripura State Rifles Act, 1983, and for which the punishment is up to one-year imprisonment or fine or with both.

7. A fair reading of the impugned proceeding issued in the Article and as well as in the order passed by the Appellate Authority reveals that same do not deal with the exemption of Rule 11 of Tripura State Rifles Act, 1983 i.e., punishment under less heinous offences and also the procedure adopted in the light of the Judgment passed by this Court in **Fulkumar Sarkar(supra)** as pointed out by Mr. Kohinoor N. Bhattacharjee, learned counsel appearing for the respondents. The service of the petitioner was put to an end by way of permanent retirement.

8. Since the same is silent, in the impugned proceeding, this Court feels that the impugned order passed herein is a non-speaking order to the effect what the respondent-counsel has argued, and it reflects upon the respondent authorities for not considering the Rule 11 of Tripura State Rifles Act, 1983.

9. Accordingly, the impugned order and the order in the appeal are set aside and the matter is remanded back for fresh consideration to the original authority to pass a speaking order in this aspect considering Rule 11 of The Tripura State Rifles Act, 1983 and also the Judgment passed by this Court in **Fulkumar Sarkar(supra)**. However, till the matter is decided, the petitioner shall not be in service.

10. It is needless to observe that the order passed by this Court confines only to the extent that the concerned authorities need to pass a speaking order on the discussion made above but not otherwise by again reopening a departmental inquiry.

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

सत्यमेव जयते **JUDGE**

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