

HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.301 OF 2022

Sri Rajib Saha,
S/O Lt. Haradhan Saha,
Resident of Village-Dhaleswar, Agartala,
Near Kamini Kumar Singha School,
P.O. Dhaleswar, P.S. East Agartala,
Sub-Division-Sadar,
District-West Tripura, Pin-799 001.

---Petitioner

Versus

1. The State of Tripura,
Represented by the Chief Secretary to the
Government of Tripura, having his office at
New Secretariat Complex, Agartala,
P.O. New Secretariat, P.S. NCC,
Sub-Division-Sadar,
District-West Tripura, Pin-799 010

2. The Secretary,
Rural Development Department,
Government of Tripura, having his office at
New Secretariat Complex, Agartala,
P.O. New Secretariat, P.S. NCC,
Sub-Division-Sadar,
District-West Tripura, Pin-799 010.

---Respondents

For Petitioner(s)	:	Mr. A. Pal, Advocate Mr. D. Biswas, Advocate
For Respondent(s)	:	Mr. D. Bhattacharya, G.A.
Date of hearing & delivery of Judgment & Order	:	19.05.2023
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER(ORAL)

By means of filing the instant writ petition, the petitioner has prayed for quashing the impugned order dated 12.03.2021(Annexure-2 to the writ petition) whereby and whereunder the Disciplinary Authority had imposed the following punishment:

“Now therefore, after careful examination of the findings of the Inquiring Authority and the representation of the A.O. and applying the mind in view of the nature of misconduct committed by Sri Rajib Saha, UDC A.O. the undersigned being the Disciplinary Authority, has decided to impose the penalty of reduction of his pay to the lower stage of the time scale for a period of 5(five) years and during this reduction of pay he will not earn any increment. After expiry of the penalty he will earn increment from that lower stage but he will not earn the five increments in future. The period of his suspension will not be treated as spent on duty.”

2. Briefly stated, while initiating a disciplinary proceeding against the petitioner following Articles of Charges were framed by the competent authority:

“Article of charge-I

*Shri Rajib Saha, U.D. Clerk(RD)(under suspension)
while functioning as Cashier in the office of the Executive*

Engineer, R.D. Store Division, West Tripura, Gurkhabasti, Agartala also holding the charge of Cashier of the office of the Executive Engineer, R.D. Planning & Monitoring Cell, Gurkhabasti, Agartala during the period from 23.05.2008 to 06.05.2009 failed to maintain absolute integrity and devotion to duty as enjoined under Rule 3 of the Tripura Civil Services(Conduct) Rules, 1988 as he has not handled the Govt. cash properly.

Such act on the part of Shri Rajib Saha, UDC(RD)(under suspension) being a Government employee is unbecoming and tantamount to gross misconduct and warrants disciplinary action under the provision of the Central Civil Services(Classification, Control and Appeal) Rules, 1965; the details of which has been set forth in the statement of imputation of misconduct or behavior in Annexure-II.

Article of charge-II

Shri Rajib Saha, U.D. Clerk(RD)(under suspension) while functioning as Cashier in the office of the Executive Engineer, R.D. Store Division, West Tripura, Gurkhabasti, Agartala also holding the charge of Cashier of the office of the Executive Engineer, R.D. Planning and Monitoring Cell, Gurkhabasti, Agartala during the period from 23.05.2008 to 06.05.2009 failed to maintain absolute integrity and devotion to duty as enjoined in Rule 3 of the Tripura Civil Service(Conduct) Rules, 1988 as Shri Saha, UDC(RD)(under Suspension) absented himself from his duties unauthorizedly without prior sanction of leave on

09-06-2009, 12-06-2009 and from 15-06-2009 to 21-09-2009{the date prior to the receipt of suspension order by Shri Rajib Saha, U.C. Clerk(RD) issued vide No.F.7(93)DM(W)/ESTT/2009/9456-58 dated 17-09-2009}.

Such act on the part of Shri Rajib Saha, U.D. Clerk(RD)(under suspension) being a Government employee is unbecoming and tantamounts to gross misconduct and warrants disciplinary action under the provision of the Central Civil Services(Classification, Control and Appeal) Rules, 1965; the details of which has been set forth in the statement of imputation of misconduct or misbehavior in Annexure-II.”

3. On the basis of the aforesaid Articles of Charges, the department concerned had adduced evidence through their witnesses and the accused officer i.e. the petitioner herein also adduced evidence. Thereafter, on the basis of the materials and evidence on record, the Inquiring Authority submitted report holding that the Articles of Charges framed against the petitioner had been proved. The Disciplinary Authority on perusal of the report issued show-cause notice upon the petitioner proposing penalty. The petitioner submitted representation against the proposed penalty. After consideration of the representation, the Disciplinary Authority imposed the aforesaid penalty upon the petitioner. The petitioner preferred statutory appeal against the

impugned order of punishment. However, the appellate authority upheld and affirmed the order of penalty imposed by the Disciplinary Authority. Being aggrieved by and dissatisfied with the order of penalty as imposed by the Disciplinary Authority confirmed by the Appellate Authority, the petitioner has filed the instant writ petition challenging the legality and validity of the impugned order of punishment as quoted here-in-above.

4. Mr. Pal and Mr. Biswas, learned counsel appearing for the petitioner have submitted that the impugned order of penalty is based on no evidence. To justify their submissions, they have relied upon the evidences adduced by the prosecution witnesses. The contention of the learned counsel appearing for the petitioner is that the concerned Executive Engineer who stated that he had issued the cheque to the tune of Rs.2,076/- in the month of June, 2009 is relevant to test the reasonableness of the impugned order passed by the Disciplinary Authority.

5. Mr. Bhattacharya, learned GA appearing for the respondent has also emphasized on the evidence of PW5, who adduced evidence in support of the Articles of Charges framed against the petitioner. Both the learned counsel appearing for the parties have laid much emphasis on the evidence of PW5, which leads this Court to carefully scrutinize

the evidence of PW5. For convenience, the evidence let in by PW5 may be reproduced hereunder, in *extenso*:

“I know the AO while I was Executive Engineer in erstwhile RD Planning and Monitoring Cell Gorkhabasti, Sri Rajib Saha, LDC functioned as cashier during the material period. Sri Rajib Saha, Cashier applied earned leave probably in the month of June, 2009 and leave was granted and charge of cashier was assigned to one Sri Debajyoti Nag, LDC. After reconciliation of the account of the office with TGB Gorkhabasti Branch it was found that a self cheque amounting Rs.2076/- was issued. But the amount was debited as per bank statement was Rs.42076/- whereas Rs.2076 has been recorded in cash book and counterfoil of the cheque. After detection of such incident of fraud FIR was lodged in West Police Station, Agartala against Sri Saha. Thereafter, he was suspended.

Cross-Examination: *I issued the cheque. The amount was written in figure and words for Rs.2076. The alleged tempered cheque which is lying with PO adduced and marked as Exbt. S/4 and S/4(a). Signature on the counterfoil and cheque identified as mine. I denied that the amount was not written in figures and words before signing the cheque. No payment certificate of this amount was obtained from the Bank.”*

6. I have perused the evidence of other witnesses also. None of the witnesses has neither stated that the Executive Engineer handed over the said cheque to the petitioner nor that the said cheques were

routed through the Charged Officer. Moreover, it transpires from the record that the Executive Engineer(PW5) himself granted leave of the petitioner in the month of June, 2009 when the incident occurred. The Executive Engineer and other witnesses also have deposed that the petitioner handed over the charge to one Debajyoti Nag(PW6). There is absolutely no evidence that the cheque had been deposited by the petitioner, i.e. the charged officer for withdrawal of the amount mentioned in the cheque.

7. I have seen the copy of the cheque as produced by the learned GA. In the cheque, the amount is written in figures which amounts to Rs.42,076/- and Rs.45,000/-. There is no evidence at all whether the said cheques were shown to the accused officer i.e. the petitioner herein to verify his handwriting. No attempt was made to compare his handwriting with the handwriting of the drawer of the cheque. In his cross-examination, PW5 i.e. the Executive Engineer denied that he had not written the amount in figures and words. PW5, neither in his chief examination nor in cross-examination has stated that which portion of the cheque he has not written in figures and words. From this nature of evidence it comes to fore that it is the Executive Engineer who himself had written the amount in figures and words. If that was the fact, now the question is as to how the petitioner would

interpolate the amount in figures and words. From the evidence of PW5 it further transpires that the Executive Engineer (PW5) has not assigned any reason as to why the F.I.R. was lodged against the petitioner when admittedly at the relevant point of time he was on leave and the Executive Engineer himself sanctioned the leave of the petitioner. There is absolutely no evidence as regards the fact that it was the petitioner who interpolated the figures and words in the cheque.

8. Further, I find from the records that the relevant documents lying with the bank have not been called for by the respondents. No attempt was made to call for the concerned person who disbursed the amount from the counter of the bank.

9. This Court is well aware of the established principle of law that the Court should be slow in re-appreciating the evidence in a departmental proceeding.

10. Again, it is well-settled that in a departmental proceeding a charge can sustain by applying the principle of preponderance of probability. But, some mere evasive statements made by the prosecution witnesses without any sort of proof, and in absence of any materials to substantiate the charge framed against a delinquent will not lead the Court to hold the Charged Officer guilty of committing the misconduct by applying the doctrine of preponderance of probability.

11. To attract the principle of preponderance of probability, the prosecution has to make out a case and lead evidence indicating the probability of committing the alleged misconduct by the Charged Officer. What the phrase “preponderance of probability” means is “more probable and rational view of the case”, not necessarily there should be evidence with certainty towards the proof of guilt of the Charged Officer.

12. It is true that the writ Court cannot re-appreciate or re-weigh the evidence which were adduced in course of the departmental proceeding in exercise of its power of judicial review under Article 226 of the Constitution of India.

13. It is also equally true that a writ court should interfere in an appropriate case when it is found that the impugned order of penalty imposed by the Disciplinary Authority is based on no evidence.

14. After careful scrutiny of the evidence let in, in the departmental proceedings, to substantiate the Articles of Charges framed against the petitioner, which I have narrated in the preceding paragraphs, according to me, the present case is a case based on no evidence, which has influenced this Court to interfere with the impugned order dated 12.03.2021 confirmed by the Appellate Authority by order dated 28.12.2021.

Accordingly, the impugned order of penalty passed by the Disciplinary authority dated 12.03.2021 and confirmed by the appellate authority by order dated 28.12.2021, stand set aside and quashed.

15. Consequently, the petitioner is entitled to all the service benefits including all arrears of salary and other ancillary service benefits including promotion as if he has been in service all along by way of regularizing his suspension period.

In view of the above observations and directions, the instant writ petition stands allowed and thus disposed of.

Pending application(s), if any also stands disposed of.

JUDGE



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Snigdha