

**HIGH COURT OF TRIPURA
AGARTALA
W.A.184 of 2021**

Sri Santosh Bahadur,
son of Late Harka Bahadur
of Thakurpalli Road, Krishnanagar,
P.O. Agartala, District – West Tripura

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

Versus

1. The State of Tripura,
represented by the Secretary cum Commissioner,
Department of Home (Jail), Secretariat Building,
New Capital Complex, P.O. Kunjaban, Agartala,
West Tripura

2. Chief Secretary,
Government of Tripura, Secretariat Building,
New Capital Complex, Agartala, West Tripura

3. Secretary, Department of Home(Jail),
Secretariat Building, New Capital Complex,
P.O. Kunjaban, Agartala, West Tripura, (Disciplinary Authority)

4. Inspector General of Prisons,
Government of Tripura, Prisons Directorate,
Agartala, West Tripura, P.O. Dhaleswar

5. Commissioner of Departmental Inquiries,
Government of Tripura, Secretariat Annexe,
Pandit Nehru Complex, Agartala, West Tripura

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

For Appellant(s)	:	Ms. R. Purakayastha, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. S. Saha, Adv.

Date of Hearing of Judgment & Order	:	05.01.2023
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**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order(Oral)

[Chief Justice (Acting)]

Heard Ms. R. Purakayastha, learned counsel appearing for the appellant.

2. The fact of the case of the appellant is that the appellant had joined in Kendriya Sanshodhanagar on 31.03.2016 as Superintendent in Charge. On 21.10.2016, three convict prisoners fled away from Kendriya Sansodhanagar. In connection with this unwanted incident, a disciplinary proceeding was drawn against the appellant. On 28.02.2017, the appellant had submitted his detailed defence statement. On 11.12.2017, the Inquiring Authority had submitted his finding with the most illegal observation. Against the finding of the Inquiring Authority, the appellant had submitted his detailed representation on 30.12.2017. But the disciplinary authority by the impugned memo dated 20.01.2018 proposed a penalty of reduction of pension by 7.5% for a period of three years w.e.f. the date of superannuation of the appellant. Against the memo dated 20.01.2018 proposing the penalty, the appellant had submitted the representation dated 12.02.2018. But this representation of the appellant had not been considered and the respondent No.3 has passed the impugned order of Penalty vide No.F.X-498/IGP/2016(P)/719-21 dated 17.02.2018 issued by the Secretary to the Government of Tripura, the respondent No.3 whereat most illegally a penalty of reduction of pension by

7.5% for a period of three years w.e.f. the date of superannuation has been imposed upon the appellant.

3. The contention of the appellant is that he had not exhibited any negligence in discharge of his duties. The internal inquiry of the department suggested that there was no involvement of the appellant. But most illegally, the respondent No.2 without any basis and absolutely on his own whims had placed the appellant, along with two others under suspension. On perusal of the note sheet dated 23.10.2016, it would appear that the respondent No.2 had reached to the observation that the appellant is responsible for dereliction of duty on the basis of the reports submitted by the respondent No.4 and SDPO but most surprisingly in any of these reports, there is not even a single word against the appellant in respect of any negligence or fault or dereliction on his part in connection with this incident. Rather, his prompt action has been highly appreciated in these reports. However, subsequently, the departmental charge-sheet came to be filed and the disciplinary authority wrongly concluded that the appellant was guilty of misconduct. Moreover, the finding of the Inquiring Authority is highly illegal and not tenable in the eye of law as none of the witnesses has uttered a single word against the appellant nor none of the documents so exhibited prove his guilt. The Inquiring Authority had submitted his finding with the most illegal observation "Hence, Sri Santosh Bahadur, A.O. is found partially guilty and it is decided accordingly." This inquiry report is not at all tenable in the eye of law because the charges so alleged against the appellant in the articles of charges are not at all of financial nature. So, there can be no question of the appellant to be 'partially guilty'. Either the appellant

can be guilty or not guilty, there cannot be any mid way to the same. Moreover, as per the CCS(CCA) Rules and as per judgment of the Hon'ble Apex Court witness cannot function as enquiry Officer. Moreover, the Enquiry Officer must be an official superior to the A.O. But in the instant case in hand, Sri Bani Kantha Debbarma was the Presenting Officer, who was junior to the appellant during his service. As such, this entire enquiry procedure has been null and void in view of violation of the mandate of law.

4. The memorandum of charge, the enquiry report as well as the impugned order of punishment is surprisingly vague and not at all as per law. It is very unfortunate that in the impugned order of punishment, it is simply stated that the enquiry officer in his findings had hold that the accused Officer is partially guilty to the charges brought against him. In the said memo, nowhere it has been stated that due to violation of which Section or Rule which specific charge, this penalty has been imposed upon the appellant. It is pertinent to mention here that no specific violation of any provision has been made out either in the impugned enquiry report or in the impugned order of punishment. Moreover, the violation of provisions of law that have been attracted against the appellant in the memorandum of charge was not even sustained after submission of the defence statement by the appellant.

5. The learned Single Judge vide order dated 05.08.2020 delivered in WP(C)No.259 of 2018 has given the following decision which reads as under:

"9. As noted, the charge against the petitioner was of negligence in discharge of his duties and failure to supervise his subordinates which enabled three convicts lodged in the jail to escape. The Inquiry Officer in his report has discussed the materials on record at considerable length. The disciplinary authority has accepted the findings of the Inquiry

Officer and after enabling the petitioner to make a representation, imposed punishment. It is well settled that the findings arrived at by the disciplinary authority in a duly constituted domestic inquiry would not be open to interference unless they are shown to be perverse. No perversity is pointed out in the present case. Even otherwise, it can easily be appreciated that three prisoners were facing convictions, escaped from jail by devising a plan as simple as taking out a 20 feet long iron pipe from a kitchen shed and placing it on the wall of the jail for climbing over and escaping. It was not an externally intelligent plan devised which with a minimum of care and vigilance the jail staff could not have anticipated and prevented. To begin with, why the fact of a missing iron pipe from the shed of the kitchen not reported is not clear. Further, the watch and ward staff Sri Ashu Kr. Jamatia whose duty was to guard a particular watch tower, was absent when this incident took place. The petitioner was in-charge of Kendriya Sansodhanagar. He cannot escape his liability by simply suggesting that it was a duty of the lower staff to guard the jail and ensure against any escape of the inmates.

10. Coming to the question of the imposition of a cut in pension, looking to the proved charges, the same cannot be stated to be disproportionate, leave alone grossly disproportionate. The cut in pension is not permanent but would operate only for a period of 3(three) years.

12. As a result, the petition fails and is dismissed."

6. Ms. R. Purakayastha, learned counsel appearing for the appellant has referred to paras-4 and 5 of the Review Pet.No.12 of 2021 dated 18.03.2021 where it has been stated as follows :

"4. Learned counsel Ms. R. Purakayastha for the petitioner raised two contentions :

(i) That on the date of the incident of the three convicts escaping from the jail, the petitioner was not in charge. He was attending a workshop and had handed over the charge to the Deputy Jailor and (ii) that the Presenting Officer was examined as a witness in the departmental inquiry which was contrary to the Government of India instructions under CCS(CCA) Rules.

5. She recollects having raised both these contentions while conducting hearing of the writ petition and points out that these contentions were not dealt with in the judgment. I am prepared to go back her recollection. Despite this, I do not think the petitioner has made out a case for review. Firstly, there was not even a finding in the departmental proceedings that on the particular date when the incident took place, the petitioner was present, was in-charge and that is how he had exhibited negligence in discharge of his duties. In the

judgment dismissing the writ petition also, what was observed was that the convicts escaped from the jail by devising a plan which was as simple as taking out 20 feet long iron pipe from a kitchen shed, placing it on the wall of the jail and climbing over and escaping. It was observed that this was not a very complicated plan and which with minimum of care and vigilance by the jail staff could have been prevented. The petitioner as In-charge of the jail cannot escape his liability by simply suggesting that it was a duty of the lower staff to guard the jail and ensure against any of the inmates escaping."

7. Ms. R. Purakayastha, learned counsel appearing for the appellant has submitted that the learned Single Judge has justified the finding of guilt of the appellant by the disciplinary authority just on the ground that the appellant at that relevant point of time, has hold the charge of Superintendent in Charge and not for his negligence in duty. And just because of this post of entrustment, the appellant has been held guilty. Going by that analogy all the other officials including the Jailor, and even the IG Prison should have been charged but unfortunately, the appellant became the scapegoat only. From the enquiry report, it is revealed it was the stand of the appellant that on the fateful day, the appellant along with the Jailor had gone to Pragna Bhawan, Agartala to attend the workshop at 9 a.m. on "HIV/AIDS", in their respective official capacity and as such, he had returned to his office in the evening. And therefore, on that day, the duty of allotment of Watch and Ward Staff of KST was done by the Deputy Jailor. This stand of the appellant has not been nullified by the respondents during the enquiry proceedings. According to learned counsel, the appellant had not exhibited any negligence.

8. Ms. Purakayastha, learned counsel has submitted that the judgment passed by the Single Judge is unjustified, unreasonable, arbitrary,

unwarranted in law and facts and as such, no tenable in the eye of law and liable to be set aside.

9. After hearing the argument as advanced by the learned counsel appearing for the appellant as well as scrutinized the records we are of the opinion that the appellant has made gross negligence in discharge of his duties and failed to supervise his subordinates which enabled three convicts to escape. According to this court, the appellant while attending a workshop which was a part and parcel of his official responsibility was not on vacation. Moreover, when he was attending the workshop it was his responsibility to keep a track with his subordinates about the safety and security in Jail. He was totally negligent in discharging his duty. He has to periodically call up his subordinates to whom he has given the charge and verify what is happening in Jail, whether things are alright, whether the convicts are fine, whether they are provided proper food in right time or not, whether proper security is provided. Keeping a check and issuing instruction and again cross checking with other Officer whether the first caller before whom he has spoken is right or not? It only includes the responsibility. But he has miserably failed to do his responsibility.

In terms of the above observation, this appeal stands dismissed.

JUDGE

CHIEF JUSTICE (ACTING)