

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.632 of 2022

Sri Sanjit Debbarma,
S/O Late mansingh Debbarma
of- Ujain Abhoynagar P.O.- Agartala,
District- West Tripura

....Petitioner(s)

Versus

1. The State of Tripura

represented by the Chief Secretary, Department of Home (Jail),
Secretariat Building, New Capital Complex, P.O.- Kunjaban,
Agartala, West Tripura.

2. Chief Secretary,

Home (Jail) Department, Government of Tripura, Secretariat
Building, New Capital Complex, Agartala, West Tripura

3. Secretary,

Home(Jail) Department, Government of Tripura, Secretariat Building,
New Capital Complex, Agartala, West Tripura.
Government of Tripura, Agartala, West Tripura

4. Commissioner of Departmental Enquiries,

Government of Tripura, Gurkhabasti, Agartala, West Tripura.

5. Inspector General of Prisons

Government of Tripura, Prisons Directorate, Agartala, West Tripura,
P.O.- Dhaleswar.

....Respondent(s)

For the Petitioner(s)	:	Ms. R. Purkayastha, Advocate
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For the Respondent(s)	:	Mr. D. Bhattacharjee, G.A. Mr. S. Saha, Advocate
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Date of hearing and

Delivery of Judgment & Order	:	01/08/2023
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Whether fit for reporting	:	Yes
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HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Ms. R. Purkayastha, learned counsel appearing for the
petitioner. Also heard Mr. D. Bhattacharya, learned G.A. assisted by Mr. S.
Saha, learned counsel appearing for the respondents.

2. By means of filing the instant writ petition, the petitioner has challenged the imposition of penalty of withholding of 2(two) increments without cumulative effect vide order dated 08.12.2021 (Annexure-L to the writ petition), which was also upheld and affirmed by the appellate authority under the order dated 12.05.2022 (Annexure-N to the writ petition).

2.1. During the course of proceeding before the inquiring authority, the prosecution, i.e., the department concerned had produced one witness, namely Bhaskar Ghosh, who deposed as PW-2. The inquiring authority had formulated the following three points for decision:-

“(1) Whether the Accused Officer, Sri Sanjit Debbarma, Jailor, while posted at Kamalpur Sub-Jail had sent two convicted prisoners namely Nripendra Debnath and Sanjit Debnath, to a rice mill at Fuljari Bazar, in civil dresses, to carry 11 bags of his paddy crop for being milled into rice, without any escort or prior permission from appropriate authority thereby jeopardizing and causing breach of the security of the jail and giving opportunity to the said prisoners to flee away from the jail custody?”

(2) Whether, the AO, Sri Sanjit Debbarma had violated the provisions of Rule 242 and 248 of the Bengal jail Code?

(3) Whether, the AO, Sri Sanjit Debbarma, due to the above, has failed to maintain absolute integrity and devotion to Govt. duty and thereby violated the provisions of Rule 3(1) & Rule 3(2)(i) of the TCS (Conduct) Rules, 1988?”

2.2. Shortly stated, the petitioner while posted as Jailor at Kamalpur Sub-Jail, was subjected to disciplinary proceeding on the following article of charge:-

“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SANJIT DEBBARMA, JAILOR, SABROOM SUB-JAIL, SOUTH TRIPURA

Article-I

That the said Shri Sanjit Debbarma, Jailor, Sabroom Sub-Jail while posted at Kamalpur Sub-Jail on 04th march, 2016, failed to maintain integrity to duty. He sent two convicted prisoners namely Sri Nipendra Debnath and Sri Sanjit Debnath in civil dresses in a rice mill at Fuljari Bazar located alongside the Kamalpur-Ambassa road at distance of about 800 meters from the Kamalpur Sub-Jail to Carry 11(eleven) bags of his paddy crop to the mill for being milled into rice without any escort or prior permission from appropriate authority. Thereby, Sri

Sanjit Debbarma, the then Jailor of Kamalpur Sub-Jail violated provision of Rules 242 and 248 of Bengal Jail Code, Vol-I, Part-1 and Rule 3(1) and 3(2)(i) of Tripura Civil Services (Conduct) Rules, 1988.”

2.3. On conclusion of recording of evidence, the inquiring authority submitted his report dated 30.07.2019. While deciding the point no.1, the inquiring authority in his findings stated that *“however, the prosecution had not exhibited any of these listed documents other than Sl. No.2, i.e. the statement submitted by PW-2, as evidence, due to which the lack of both documentary evidence and oral evidence through witness had failed to establish the validity of the charge against the AO of sending the two convicted prisoner on his personal work in plain/civil clothes outside the jail premises without escort and prior permission of the authority. Hence, as the Presenting Officer had failed to submit/produce neither documentary evidences nor oral evidences in support of the charge of utilizing the services of the convicted prisoners for personal works that too by jeopardizing the security of the prison by the AO, Sri Sanjit Debbarma, as such the decision of Point No.1 is given in the negative and goes in favour of the defence and against the prosecution.”*

2.4. While deciding point no.2, the inquiring authority found that the charged officer was not aware of Rules 242 of the Bengal Jail Code (for short, “BJC”). During his examination under Rule 14 (18) of CCS (CC&A) Rules, 1965, the Accused Officer (for short, “AO”) specifically denied the allegations brought against him and stated that he was not aware of such incident. However, the inquiring authority found him guilty of misconduct for ignorance of Rule 242 of the Bengal Jail Code (herein-after referred to as “Jail Code”).

2.5. While deciding point no.3, the inquiring authority came to a finding that the charged officer has failed to maintain absolute integrity and devotion to government duty and thereby violated the provision of Rule 3(1) and Rule 3(2)(i) of Tripura Civil Services (Conduct) Rules, 1988, since point no.2 has been established against the charged officer that he was ignorant of Rules 242 of Jail Code.

2.6. After receipt of the enquiry report, the disciplinary authority communicated his finding to the petitioner vide memo dated 21.01.2020 (Annexure-D to the writ petition) wherein the disciplinary authority came to a finding that he had disagreed with the findings of the inquiring authority that the article of charge had partially been proved and held the charges been fully proved. This correspondence dated 21.01.2020 issued by the Principal Secretary, Home (Jail) Department, who is the disciplinary authority had been challenged by the petitioner by way of filing of a writ petition which was numbered as **WP(C) No.742 of 2020 titled as Sri Sanjit Debbarma Vs. The State of Tripura & Ors.** While disposing of the said writ petition, a coordinate Bench of this Court (Justice Akil Kureshi, the then C.J) vide order dated 08.01.2021 had disposed of the writ petition with the following observation and directions:-

“This assertion of the disciplinary authority defies all logic. To begin with he had to record his tentative reasons of disagreeing with the findings of the inquiry officer and then gave a notice to the petitioner to respond to the same. He instead, after making above noted strange observations recorded that he has disagreed with the finding of the inquiry officer. His disagreement is thus final and not tentative. More importantly, it is based on no evidence. No disciplinary proceedings can proceed on assumption of examination of witnesses or of production of documents which are not produced; and of more efficient functioning of the inquiry officer to the satisfaction of the disciplinary authority.

The impugned communication dated 21.01.2020 is therefore set aside. Let the disciplinary authority take a final decision on the report of the inquiry officer as it stands. In the process, he shall take into account the contention of the petitioner that there was no evidence whatsoever which would even enable the inquiry officer to hold the charge partly proved. This exercise shall be completed within four months from today.

Petition disposed of accordingly.”

2.7. Thereafter, the disciplinary authority, i.e., the Principal Secretary Home (Jail) Department vide communication dated 06.03.2021 requested the petitioner to submit representation in the manner as under:-

*“Government of Tripura
Home (Jail) Department*

No.F.X-501/IGP/2017/323

Dated, the 06th march, 2021

To
Sri Sanjit Debbarma, Jailor,
Kailashahar District Jail,
Unakoti Tripura.

Subject:- Sending of copy of the findings in connection with Case No.169/InQ/CDI/JAIL/18.

Sir,

A charge Memorandum was drawn up against you vide No.F.X-501/IGP/2016/950-51 dated 09/02/2017. Inquiring Authority was appointed to inquire into the charges.

The Inquiring Authority submitted a report which is enclosed. The inquiring Authority held the charges as "partly proved".

The Disciplinary Authority had disagreed with the findings of the Inquiring Authority and held the charges as fully proved vide communication dated 21st January, 2020.

However, in connection with Case No.W.P(C) No.742 of 2020 order dated 08.01.2021 the Hon'ble High Court of Tripura had issued order that communication dated 21st January 2020 shall be deemed to have been set aside and also directed the Disciplinary authority to take final decision on the report of the Inquiring Officer as it stands.

In view of the above, you are requested to submit your views, if any, on the findings of the Inquiring Authority, within 15 days from receipt of this letter as per Rule 15(2) of CCS (CCA) Rules, 1965.

Yours Faithfully,

Enclo:As stated.

*Sd/- illegible
(BARUN KUMAR SAHU, IAS)
Disciplinary authority
Principal Secretary
Home (Jail) Department"*

In response to the said communication dated 06.03.2021, the petitioner had submitted representation.

2.8. In the above background facts, I have heard Ms. R. Purkayastha, learned counsel for the petitioner and Mr. D. Bhattacharya, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

2.9. Ms. Purkayastha, learned counsel for the petitioner has submitted that after consideration of the representation, the disciplinary authority imposed punishment upon the petitioner by order dated 14.06.2021. Though, in the said punishment order it was stated that the disciplinary authority had taken the

concurrence of Tripura Public Service Commission (for short, “TPSC”), but no materials related to the advice of TPSC, which forced the petitioner to file another writ petition which was numbered as WP(C) No.457 of 2021 titled as ***Sri Sanjit Debbarma Vs. The State of Tripura & Ors.*** A coordinate Bench of this Court disposed of the writ petition vide order dated 10.09.2021 in the following manner as under:-

“Petitioner has challenged an order dated 14.06.2021 by which the Principal Secretary as a disciplinary authority has imposed a punishment of withholding of two increments for two years without cumulative effect. While issuing notice in the petition, it was highlighted that the main ground of challenge of the petitioner was that the disciplinary authority had sought and relied upon the advice of the TPSC which was in any case a statutory requirement, before passing the impugned order without providing a copy of the advice of the TPSC and permitting the petitioner to make a representation with respect to the same.

In this respect, in the affidavit-in-reply filed by the respondents it is stated that:

“Thirdly, it is mentioned here that due to oversight copy of the concurrence of the TPSC was not provided to the petitioner.”

*Only on this ground of non-supply of copy of the advice of the TPSC to the delinquent and giving opportunity of making representation with respect to the contents thereof before taking into consideration for coming to the final conclusion, the impugned order must go. Learned counsel for the petitioner correctly points out that the law on the topic is sufficient to hear through the decisions of Supreme Court in case of ***Union of India and others vrs. S.K. Kapoor*** reported in (2011) 4 SCC 589 and ***Union of India and others vrs. R.P. Singh*** reported in (2014) 7 SCC 340.*

Impugned order is set aside. The respondents shall provide a copy of the advice of the TPSC to the petitioner, enable the petitioner to make a representation with respect to the same and thereafter may pass fresh order in accordance with law. Entire exercise may be completed within four months from today. Since the impugned order is set aside only on this ground, I have not examined any of the other grounds of the petitioner. If the disciplinary authority passes a fresh order which is

adverse to the petitioner, it would be open for the petitioner to challenge the same on all grounds available in law.

Petition disposed of accordingly.”

2.10. In compliance of the order dated 10.09.2021, the petitioner was supplied with the copy of the advice of TPSC against which the petitioner also submitted representation on 02.11.2021(Annexure-K to the writ petition). Thereafter, the impugned order of punishment dated 08.12.2021 had been passed imposing the above penalty upon the petitioner. The petitioner preferred an appeal before the appellate authority, but, it was dismissed upholding the impugned order of penalty imposed by the disciplinary authority.

3. Ms. Purkayastha, learned counsel for the petitioner has strenuously argued that, in the instant case, punishment has been imposed based on no evidence. Learned counsel for the petitioner has drawn my attention to the article of charge as well as the evidence let in by the department concerned, i.e., PW-2, Bhaskar Ghosh. For convenience, the evidence of Bhaskar Ghosh may be reproduced here-in-below, *in extenso*:-

“English Rendering of Statement of Bhaskar Ghosh

Statement

I, Sri Bhaskar Ghosh, aged about 32 years, S/O Sri Bimal Ghosh, presently posted at Kamalpur Subjail as warder, am voluntarily deposing my statement today on 5th day of March, 2015 A.D. in the evening at 4.15 p.m. in presence of the following witnesses before the Kamalpur Sub-Divisional Magistrate.

Yesterday 4th March 2016 A.D. at 6.50 a.m. in the morning, I and my colleague warder Sri Shibuprasad Chakraborty jointly had taken over the charge of work schedule of 9 prisoners from the concerned jamadar Sri Samiran Bhowmik. Out of these 9 prisoners, I had taken the charge of 4 prisoner under my personal supervision and the responsibility of rest 5 prisoners was taken by Sri Shibuprasad Chakraborty. Sri Nripendra Debnath and Sri Sanjib Debnath were amongst the five prisoners whose liability was lying with Sri Shibuprasad Chakraborty. Since, I was feeling unwell, so I handed over the charge of 5 prisoners under my personal supervision, to warder Sri Swapan Debbarma, deployed at jail Gate at 10.30 min. Then I returned

to the barrack. I had informed about my illness to the Jailor and the jamadar Sri Braja Kumar Debbarma.

Witnesses

Illegible

Bhaskar Ghosh

Illegible

Jail Warder

05/03/2016

Recorded by me and read over to the deponent Sd/- 06/03/2016

SDM Kamalpur.”

4. On going through the evidence of PW-2, I find that PW-2 nowhere had stated that he had seen the two prisoners, namely Nripendra Debnath and Sanjib Debnath to go outside the jail premises. The documents produced by the presenting officer only proved that the concerned duty officer i.e. Samiran Bhowmik due to his illness handed over the charge of 4(four) prisoners, who were under his control, to one Shiburprasad Chakraborty, another Jail Warder of the same jail.

5. In this situation, the inquiring authority held that the article of charge in respect of the allegation that the Jailor had committed misconduct since he allowed two prisoners to go outside the jail premises to carry 11 bags of paddy crop to the mill for being milled into rice without any escort or prior permission from appropriate authority.

6. As I said earlier, the inquiring authority had formulated 3(three) points to determine the extent of misconduct allegedly committed by the petitioner which have been quoted in the preceding paragraphs of the judgment.

7. Learned counsel for the petitioner has submitted that since the 1st point has been decided in favour of the petitioner, then the two other charges being interlinked or correlated to the first point, automatically, the remaining two points would be of no consequence. Learned counsel has reiterated that it is a case based on no evidence and as such, the said order of penalty is liable to be quashed.

8. On the other hand, Mr. Bhattacharya, learned G.A. has strongly opposed the contention advanced by the learned counsel for the petitioner. Learned G.A. has tried to persuade this court that it is settled proposition of law that every charge has to be proved independently and there is no straight formula that if one charge is not proved, the charged officer cannot be held to be guilty on the basis of other established charges.

According to learned G.A., the disciplinary authority has the right to impose penalty if he is convinced that other charges have been proved. To substantiate his submissions, learned G.A. has placed reliance upon the case of **Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava**, reported in (2021) 2 SCC 612 [SCC, p-626, 627; para 22, 23, 24, 25, 26, 27 and 28]. Learned G.A. has tried to persuade this Court that when there is evidence, then the exercise of power of judicial review of this Court is very limited under Article 226 of Constitution of India. I have noticed that in **Ajai Kumar Srivastava (supra)** the Hon'ble Supreme Court in para 39 has clearly held thus:-

“39. The constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the court may not exercise its power of judicial review.”

What the Hon'ble Supreme Court wanted to settle is that amongst many charges, if one of the charges is proved and justify imposition of penalty, in that case the Court may not exercise his power of judicial review on the pretext that other charges have not been proved.

9. I have given my thoughtful consideration to the submissions advanced by learned counsel appearing for the parties.

10. The point to be determined in the present case whether the punishment imposed upon the petitioner is based on no evidence. There is no quarrel in the proposition of law that the court can exercise its extraordinary power of judicial review under Article 226 of Constitution of India if it finds

that punishment upon a delinquent/charged officer is based on the basis of no evidence, which has also been held by the Hon'ble Supreme Court in the case of *Ajai Kumar Srivastava (supra)*.

11. On bare perusal of the evidence let in by Bhaskar Ghosh (PW-2), it is crystallized that PW-2 has not stated anything that the Jailor, i.e. the petitioner herein, has allowed the prisoners to go outside the jail premises to bring some articles as charged. It is the inquiry officer himself who came to a finding that the presenting officer or the department concerned had failed to establish the fact that the two prisoners went outside the jail premises on 04.03.2016.

12. According to me, the disciplinary authority could not assign any reason while rejecting the finding of the inquiry authority. There is absolutely no evidence which prompted the disciplinary authority to come to a finding that the petitioner, being Jailor had allowed the two prisoners to go outside the jail to bring some articles. The Warder, Shiburprasad Chakraborty under whose custody the prisoners were on 04.03.2016, was not examined by the prosecution. Even the prisoners were not produced before the enquiry officer to justify the charge levelled against the petitioner. It is the allegation in the charge that they were sent to bring paddy from market, but no such witness had been produced by the prosecution to justify the allegation that they went to the market to bring paddy. If that be so, the mill owner or the mill person could easily be produced by the prosecution to establish the charge.

13. Considering the aforesaid circumstances, in my opinion, the entire allegation levelled against the petitioner is found to be baseless and the respondents have miserably failed to establish the article of charge framed against the petitioner. The findings of the inquiry officer, in my opinion, seem

to be correct that the department concerned had failed to establish the article of charge framed against the petitioner.

14. The next two points as formulated by the inquiry officer as to whether the AO had violated the provisions of Rule 242 and 243 of the BJC and whether the charged officer, i.e. the petitioner has failed to maintain absolute integrity and devotion to Government duty, in my opinion, these two points are interlinked and co-related to point no.1. Once it is established that the prosecution has failed to establish the article of charge that the petitioner had sent two prisoners outside the jail premises to pound paddy in a mill, then, automatically there would be no violation of the provisions of Rules 242 and 248 of the BJC. Rules 242 and 248 of the Bengal Jail Code may be re-produced here-in-below:-

“242. The Jailer shall be the chief executive officer of the jail and shall control the whole subordinate jail establishment under the orders of the Superintendent and shall assist the Superintendent on all occasions, and see that his instructions are carried into effect. He shall be responsible for the strict carrying out of all the rules in this Code relating to the management of the jail and prisoners. He should therefore make himself thoroughly acquainted with the rules and with the circulars issued by the Inspector-General.

248. His chief duties are to secure the safe custody of prisoners, to enforce discipline among prisoners and his subordinates, to ensure that prisoners sentenced to rigorous imprisonment do the work assigned to them, and to maintain a high standard of health among them so far as this can be secured by strict compliance with the rules and orders made with this object. The sedulous attention to all matters which can improve the health of the prisoners will be considered one of the highest qualifications for the post of Jailer. He shall visit every part of the jail daily, including cells and hospital, and see every prisoner at least once in every 24 hours.”

15. At the cost of repetition, I reiterate, since there is no proof that the petitioner being the jailor at that relevant point of time allowed the two prisoners to go outside the jail premises, there is no question of violation of the provisions as laid down in Rules 242 and 248 of BJC. I have noticed that the inquiry officer has given a finding in his report that at the time of examination of the AO, he stated that he was not aware of Rules 242 and 248 of the Jail Code, which led the inquiry officer to come to a finding that the accused officer had committed misconduct due to mere ignorance of the above rules. In my opinion, ignorance of any rule or law will not constitute misconduct if it does not lead to commit any illegalities in the performance of one's duties. Since I have come to a finding that ignorance of law does not amount to misconduct, then it can easily be said that point no.3 as formulated by the inquiry officer is not established.

16. Next, on perusal of the impugned order of punishment dated 08.12.2021, I find that there is no discussion on the satisfaction of the disciplinary authority to come to a conclusion that the accused officer i.e., the petitioner herein had committed misconduct. Here, the disciplinary authority has not assigned any reason to substantiate the misconduct allegedly committed by the petitioner. Furthermore, the learned G.A could not substantiate that the letter dated 21.10.2021 issued by the disciplinary authority addressed to the petitioner is a note of disagreement. In my opinion, letter dated 21.10.2021 reproduced here-in-above is simply a letter asking the petitioner to submit his representation. There is nothing to satisfy this court that it is a note of disagreement.

17. I have taken into consideration the ratio of the decision rendered by the Hon'ble Supreme Court in **Ajai Kumar Srivastava (supra)**. It is a case where article of charge framed against the delinquent officer for misappropriation of fund. Altogether 7(seven) charges were framed and the Hon'ble Supreme Court came to a finding that there are materials to justify the imposition of penalty upon the delinquent officer. It is no longer *res integra*

that to establish a charge in a departmental proceeding, strict rule of evidence is not required and it can be decided on the evidence of preponderance of probability, but, to apply the doctrine of preponderance of probability, some reliable evidence must be on record which may convince the court to justify the imposition of penalty upon the delinquent officer.

18. In *Ajai Kumar Srivastava (supra)* a three Judge Bench of the Hon'ble Supreme Court has categorically held that in case of disagreement, duty casts upon the disciplinary authority to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent, may record his own findings if the evidence available on record is found to be sufficient for such exercise or else remit the case to the inquiry officer for further inquiry. It is further held that strict rules of evidence are not applicable to departmental proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of charge against the delinquent. The Hon'ble Supreme court has further held that mere conjecture and surmise cannot sustain finding of guilt even in the case of departmental proceeding. As I said and discussed earlier, the present case is a case where penalty has been imposed upon conjectures and surmises. Added to it, the disciplinary authority has failed to record his own reasons of disagreement with the findings of the inquiry officer while deciding the point no.1 in respect of the charge that the petitioner had allowed the two prisoners to go outside the jail premises to carry paddy crop to the mill for being milled into rice and virtually, there is no "note of disagreement".

18. In this situation, according to me, the court must exercise its power of judicial review under Article 226 of Constitution of India.

In view of the above and for the reasons discussed aforesaid, in my opinion, the findings of the disciplinary authority is wholly perverse.

In the light of above conspectus, the impugned orders of penalty passed by the disciplinary authority as well as the appellate authority need to be interfered with and, are, accordingly interfered. The orders of penalty are accordingly set aside and quashed.

19. With the above observations, the writ petition stands allowed and thus disposed of.

JUDGE

SAIKAT KAR
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by SAIKAT KAR
Date: 2023.08.08
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Rohit

