

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 835 OF 2021

Sri Pintu Das, son of Late Jagabandu Das, aged about 52 years,
Resident of Gandhighat, PS-West Agartala,
P.O. & Sub-Division-Agartala, District-West Tripura.

Vrs.

1. State of Tripura, represented by the Principal Secretary,
General Administration (AR) Department, Government of Tripura,
New Capital Complex, P.O. Kunjaban, PS-New Capital Complex,
Agartala, District-West Tripura.

2. Principal Secretary, General Administration (AR) Department,
Government of Tripura, New Capital Complex, P.O. Kunjaban, PS-New
Capital Complex, Agartala, District-West Tripura (Disciplinary Authority).

3. Chief Secretary, Government of Tripura, New Capital Complex,
P.O. Kunjaban, PS- New Capital Complex, Agartala,
District-West Tripura (Appellate Authority).

4. District Magistrate & Collector, West Tripura, Agartala.

5. Sub-Divisional Magistrate, Sadar, District-West Tripura.

6. Commissioner of Department Enquiries, Secretariat Annexe,
Pandit Nehru Complex, P.O. Kunjaban, Agartala, District-West Tripura.

7. Tripura Public Service Commission, represented by its Secretary,
A.K. Road, Near Fire Service Chowmohani, P.S. West Agartala,
District-West Tripura, Pin-799001.

8. The Secretary, Tripura Public Service Commission, A.K. Road,
Near Fire Service Chowmohani, PS-West Agartala, District-West Tripura,
Pin-799001.

Present:

For the petitioner (s) : Mr. S. Lodh, Advocate.

For the respondent (s) : Mr. M. Debbarma, Addl. G.A.
Mr. Raju Datta, Advocate.

Date of hearing and : 07.01.2023
 delivery of judgment
 and order

Whether fit for : Yes
 reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(Oral)

By way of filing the present writ petition, the petitioner has challenged the impugned order of penalty issued by the respondents vide No.F.11(1)-GA(AR)/2014/571-73, dated 15.02.2021 [Annexure- 16 to the writ petition] wherein his three increments were withheld with cumulative effect. The petitioner has further challenged the memorandum No.F.35(29)-(P&T)/2011 dated 05.05.2021 [Annexure-20 to the writ petition] wherein the petitioner was informed that he was not entitled to get pay and allowances for the period of suspension i.e. 27.11.2013 to 28.05.2014 and the said period shall not be treated as spent on duty for all purposes.

2. Background facts, are, while the petitioner was posted as Deputy Collector and Magistrate in Sadar Sub-Division, at that time, a news was published in a local daily that he forged the Epic Card of a lady and visited Kolkata with that lady. The petitioner reacted to the said news item and *suo moto* informed his higher authority denying the said news item. Thereafter, Sub-Divisional Magistrate, Sadar, asked the petitioner to

submit additional representation, and in response to that query, the petitioner denied that he had any involvement with the lady, named, Smt. Nita Das.

However, the petitioner was put on suspension having proposed to initiate a departmental proceeding. Accordingly, during his suspension period a departmental proceeding was initiated and five numbers of Articles of Charges were framed. Inquiry was conducted and after its conclusion, the Inquiring Authority held that Articles of charges No. I, II & III had not been proved. However, the Articles of Charges no. IV and V were held to be proved. On the basis of enquiry report, provisional penalty order of withholding three increments with cumulative effect was proposed and by issuing a show cause notice the petitioner was asked to submit representation. Accordingly, he submitted representation. The Disciplinary Authority after consideration of his representation and the evidences on record concurred the finding of guilt recorded by the Inquiring Authority and thereby imposed penalty as aforestated.

3. The petitioner preferred statutory appeal. The Appellate Authority on perusal of the materials upheld and affirmed the penalty imposed by the Disciplinary Authority.

4. Being aggrieved, the petitioner has filed the present writ petition challenging the penalty imposed with a prayer for treating him as on duty during his suspension period for regularization of his pay and

allowances and claims that he is entitled to pay and allowances for the period he was under suspension for the reason that in the revocation order of suspension dated 28.05.2014 the competent authority concerned had not passed any order as regards his pay and allowances during the suspension period.

5. Keeping in mind the challenge posed by the petitioner, at the outset, it would be relevant to reproduce here-in-below the two charges, which are held to be proved:

“Article-IV

Shri Pintu Das, Ex-DCM, Sadar while working in the O/o the SDM, Sadar failed to maintain absolute integrity and devotion to duty as enjoined in Rule-3 of TCS (Conduct) Rules, 1988 as he has misused his official position in certifying 24 Nos. of false vouchers amounting to Rs.21,600/- only submitted by Shri Subhaji Parial being the hiring charges of vehicles on different occasions. It is evident that the vouchers submitted by Shri Parial, he has mentioned himself as Driver of the vehicle. But, in fact at the relevant period he is working as Data Entry Operator in the O/o the DCM, Sadar. It is evident from the above that Shri Pintu Das, Ex-DCM has an unholy alliance with Shri Subhajit Parial, Data Entry Operator since long and by using such alliance he could utilize the service of Shri Parial in manipulating the EPIC No.HJRO386029 for his personal interest.

Thus, the said Shri Pintu Das, former DCM, Sadar has committed gross misconduct, lack of integrity and devotion to

duty and violated Rule-3 of the Tripura Civil Services (Conduct) Rules, 1988.

Article-V

Shri Pintu Das, Ex-DCM, Sadar while working in the O/o the SDM, Sadar failed to maintain absolute integrity and devotion to duty as enjoined in Rule-3 of TCS(Conduct) Rules, 1988 as he has misrepresented the facts in his defence to the DM & Collector, West Tripura with a copy to the SDM, Sadar on 26-11-2013 and another to SDM, Sadar on 07-12-2013 regarding his stay at Kolkata with one lady names Smt. Nita Das, W/o Shri Manik Lal Das. Shri Pintu Das, Ex-DCM had not mentioned the name of Smt. Nita Das, W/o Shri Manik Lal Das in his letter dated 26-11-2013 to the DM & Collector, West Tripura whereas in his letter dated 07-12-2013 addressed to the SDM, Sadar has mentioned the name of Smt. Nita Das, W/o Shri Manik Lal Das who stayed with him at Kolkata in building at Spacecircular, Green Valley, Kailkhali, Kolkata. It is pertinent to mention here that the holder of the EPIC No.HJRO386029 is Smt. Nita Das.

Thus, the said Shri Pintu Das, former DCM, Sadar has committed gross misconduct, lack of integrity and devotion to duty and violated Rule-3 of the Tripura Civil Services (Conduct) Rules, 1988.”

6. I have heard Mr. S. Lodh, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents and Mr. Raju Datta, learned counsel appearing for the Tripura Public Service Commission.

7. Mr. Lodh, learned counsel appearing for the petitioner, firstly, has urged this court to take on the charge framed under Article-V. Learned counsel for the petitioner submits that from the very beginning the petitioner, Sri Pintu Das was denying the allegations that he visited Kolkata with Smt. Nita Das. The petitioner in his representation also narrated that both the petitioner and Smt. Nita Das and her husband had family relations and there was no merit in the reports published in the local daily. The petitioner also denied that he forged/manipulated the Epic Card No.HJRO386029 for his personal interest. In the departmental proceeding, Smt. Nita Das had adduced evidence as a witness and in her evidence she denied the entire allegations involving her with the petitioner. The Inquiring Authority while deciding the charge under Article-III, held that the charge of forging/manipulating Epic Card No. HJRO386029 had not been proved which was also confirmed by the Disciplinary Authority and the Appellate Authority as well.

8. On perusal of the findings of the Inquiring Authority, I am of the opinion that the Charge No.III has a direct link with Charge No.V and since the Charge of forging/manipulating the EPIC Card of the lady i.e. Smt. Nita Das for his personal interest has not been proved, the findings of guilt as regards the Charge No. V that the petitioner committed misconduct

staying in a hotel at Kolkata with Smt. Nita Das by way of forging her EPIC Card for his personal interest is perverse being based on no evidence.

9. Next, criticizing the findings of guilt as regards the Charge No.IV, Mr. Lodh, learned counsel for the petitioner has strenuously argued that the owner of the vehicle himself appeared and adduced evidence that he received the bill to the tune of Rs.21,600/- (Rupees twenty one thousand six hundred) only for hiring his vehicle by the department. In this situation, question arises as to why the petitioner knowing fully-well that Sri Subhajit Parial had no authority to raise the bill on behalf of the owner of the vehicle, who styled himself as the driver of the vehicle, had certified 25 nos. of vouchers amounting to Rs.21,600/- only being the hiring charges of the vehicle on different occasions. It was within the full knowledge of the petitioner that Sri Shubhajit Parial at the relevant point of time was working as Data Entry Operator in his own office, i.e., Office of the DCM, Sadar. In view of this, the findings of the Disciplinary Authority as well as the Appellate Authority that the petitioner had an unholy alliance with Subhajit Parial, Data Entry Operator cannot be said to be perverse finding and hence, does not call for interference.

10. Next, Mr. Lodh, learned counsel submits that under Sub-Rule (iv) of Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 [here-in-after referred to as the “Rules”] withholding

of increment of pay is a minor penalty. Mr. Lodh, learned counsel has strenuously argued that the court should give literal meaning of the said Sub-Rule (iv) of Rule 11 of the Rules. Under the normal rule of interpretation, the court should not mend or incorporate any other words in a statute when the language of the statute is clear, plain and unambiguous to give a different meaning to the language used in the statute. I have no quarrel with this submission of learned counsel appearing for the petitioner.

11. The above submission prompts me to have a re-look to Rule 11 of the Rules. Here, it would be appropriate to reproduce here-in-below the relevant rules regarding imposition of penalties upon a civil servant.

“11. Penalties --

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties –

- (i) censure;*
- (ii) withholding of his promotion;*
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;*
- (iii a) reduction to lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.*
- (iv) withholding of increments of pay;***

Major Penalties –

- (v) save as provided for in clause (iii) (a), reduction to a lower stage in the timescale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;*
- (vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period*

to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service.

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of possession of assets disproportionate to known-sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.”

12. On careful reading of the above provisions under Rule 11, in the opinion of this court, it is clear that withholding of increments of pay simpliciter without any impact over employee's future pay structure would certainly come within the meaning of Sub-Rule (iv), but, when penalty was imposed withholding increments of pay with cumulative effect, it would certainly mean that the increments earned by the employee were cut off as a measure of penalty for ever in his upward movement of earning higher scale of pay during his future tenure of service. The stoppage of increment or increments would not be counted in determining his future time scale of pay which will ultimately affect his pensionary benefits. In that eventuality, stoppage of even one increment with cumulative effect, by

no stretch of imagination, falls within the ambit of Sub-Rule (iv) of Rule 11 of the Rules. In other words, withholding of increments of pay with cumulative effect would reduce the pay scale of an employee to a lower stage in the time scale of pay permanently effecting the employee's ultimate salary and allowances. In view of this, withholding of increments of pay and allowances with cumulative effect would not be treated as minor penalty, but a major penalty. So, the submission of learned counsel for the petitioner does not have any legal support.

13. Mr. Lodh, learned counsel appearing on behalf of the petitioner further submitted that the respondents had not indicated in the order as to how the suspension period would be reckoned, and further, no decision was taken as regards the entitlement of full salary and allowances for the period the petitioner remained under suspension.

14. In the instant case, the respondents while revoking the suspension or within the reasonable time thereof no order was passed pertaining to pay and allowances for the period the petitioner was put under suspension. FR-54B legally obligates the competent authority to deal with the suspension period, i.e. as to how the suspension period would be treated or payment of salary and allowances for suspension period while reinstating Government servant after revocation of his suspension otherwise, the said authority would be precluded from exercising his power under FR-54B. Keeping in mind the legal position that while revoking the

suspension or within a reasonable time thereof if no order is passed pertaining to pay and allowances for the period of suspension, the authority considered is denuded from passing any order subsequently i.e. at a belated stage and at the stage of imposing punishment disentitling him from getting full pay and allowances for the period of suspension and in that case, the delinquent employee, would be entitled to full pay and allowances for the period he remained under suspension. [*Ref.Vijay Kumar Agarwal Vrs. Union of India & Anr., (2015) 17 SCC 625, paras 20-21*].

15. In the case in hand, the suspension order was revoked vide order dated 28.05.2014 and the order disentitling the petitioner from getting full pay and allowances for the suspension period was passed under Memorandum dated 5th May,2021 along with the impugned order of penalty imposed upon the petitioner. As such, the order passed by the respondents i.e. the Department of General Administration (Personnel & Training), Government of Tripura, disqualifying the petitioner from the benefit of full pay and allowances for the period of suspension is inconsistent with the settled law as stated above and this part of the order is liable to be interfered with.

16. At this juncture, Mr. Lodh, learned counsel appearing for the petitioner has tried to persuade this court that the penalty imposed upon the

petitioner withholding of 3 (three) increments with cumulative effect is disproportionate to the charges proved against him.

17. I have considered this aspect. This court has set aside one Charge i.e. Charge No.V. In view of this, according to this court, withholding of one increment with cumulative effect will commensurate to the gravity of the misconduct committed by the petitioner as is charged under Article-IV, which also amounts to a major penalty.

18. In the light of above analysis, this court deems it appropriate to allow the writ petition with the following directions:

- (i) The Articles of Charges framed under Charge No.V is set aside;
- (ii) The penalty of withholding 3 (three) increments with cumulative effect is modified and reduced to the extent of withholding 1(one) increment with cumulative effect, which is treated to be a major penalty;
- (iii) The petitioner is entitled to full pay and allowances for the period he remained under suspension; and

The instant writ petition stands allowed in part in the above terms and thus, disposed of.

JUDGE