

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.896 OF 2021**

Sri Prasenjit Singha Barua(50 years)

No.91010681 Ex. Havildar(GD),
S/o- Sri Prakash Kusum Barua,
Resident of Vill-Subash Nagar,
P.O. & P.S.- Kanchanpur,
Dist- North Tripura.

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

Vs.

1. The State of Tripura.

Represented by the Secretary,
Home Department, Govt. of Tripura,
P.O.- New Capital Complex,
District- Tripura(W), Agartala.

2. The Inspector General of Police(TSR),

Police Head Quarters,
Fire Brigade Chowmohani,
Agartala, West Tripura.

3. The Deputy Inspector General of Police,

A.P.(ADM & TRG), Tripura,
A.D. Nagar, Agartala,
Dist- West Tripura.

4. The Commandant,

8TH Bn. Tripura State Rifles (IR-III),
Lalcherra, Chailengta,
Dist- Dhalai Tripura.

5. The Enquiry Officer,

D.P. No.01/2021,
8th Bn, Tripura State Rifles(IR-III),
Lalcherra, Chailengta,
Dist- Dhailai Tripura.

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

For the Petitioner(s) : Mrs. S. Deb(Gupta), Advocate.

For the Respondent(s) : Mr. D. Sharma, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 24.02.2023

Whether fit for reporting : YES/NO.

**HON'BLE THE CHIEF JUSTICE(ACTING)
JUDGMENT AND ORDER(ORAL)**

The brief fact leading to this instant writ petition is that the petitioner entered into service as Rifle Man(GD) in the year 1991 under 1st Bn. Tripura State Rifle. He was promoted to the post of Havildar (GD). On 03.04.2016, respondent No.4 issued a suspension order to the petitioner under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules read with Rule 43 of the Tripura State Rifles (Discipline, Control, Service Condition etc.) Rules 1986. On 19.04.2016, respondent No.3 issued a corrigendum and modified the suspension order dated 03.04.2016. In the said corrigendum, respondent No.3 issued an order to the petitioner not to leave the DIGP, A.P.(Ops), A.D. Nagar, Agartala instead of Battalion Head Quarter Lalcherra. On 06.05.2016 & 23.06.2016, the petitioner submitted a prayer to respondent No.3 and contended that due to serious illness, he was not able to report to him and prayed to allow him to report after total cure of his health. On 22.06.2016, the petitioner submitted a prayer to respondent No.3 praying for clarification of some points and

also prayed for allowing him to remain in his house. On 17.07.2019, after three years and four months, respondent No.4 revoked the suspension order of the petitioner dated 03.04.2016. On 04.08.2019, the petitioner received the said revocation order dated 17.07.2019 and on 07.08.2019, the petitioner joined his duties under respondent No.4. On 12.10.2019, respondent No.4 issued a punishment order to the petitioner and he was removed from service without disqualifying his future employment under the Government as *dies none*. On 23.11.2019, the petitioner filed an appeal before respondent No.3 against the punishment order of the removal from service dated 12.10.2019. On 21.01.2020, respondent No.3 revoked/set aside the punishment order dated 03.04.2016. On 26.01.2020, the petitioner received the order dated 21.01.2020. Accordingly, on 07.02.2020, the petitioner joined under respondent No.4 as Havildar (GD). On 08.02.2020, respondent No.4 issued an order to reinstate the petitioner into service in compliance with the order of the Appellate Authority dated 21.01.2020. On 08.02.2020, respondent No.4 issued a memorandum with an Article of Charges. On 17.06.2020 a provisional punishment order was issued by respondent No.4 asking the petitioner to submit representation against the provisional order of punishment

proposing removal from service which shall not be a qualification for future employment under the Government. On 01.07.2020, the petitioner submitted the representation. On 17.07.2020, final punishment was passed by the respondent wherein the petitioner was removed from service which shall not be a qualification for future employment under the Government. On 26.08.2020, the petitioner filed an appeal before respondent No.2. The said appeal was disposed on 31.12.2020. Respondent No.3 set aside the order of punishment dated 17.07.2020 passed by respondent No.4 and remanded back the matter to respondent No.4 and allowed the petitioner to defend his case by engaging defence assistant as per norms. The petitioner was again reinstated in the same post after the order of respondent No.3 dated 31.12.2020. On 20.01.2021, respondent No.4 issued a memorandum and the same set of charges. On 04.08.2021, a provisional punishment was passed by respondent No.3. On 17.08.2021, the petitioner submitted representation against the provisional punishment order dated 04.08.2021. On 24.08.2021, respondent No.4 without considering the representation of the petitioner imposed major punishment of removal from service which shall not be a qualification for future employment under the Government. On 15.09.2021, the petitioner filed an appeal

before respondent No.3 against the punishment order dated 24.08.2021 passed by respondent No.4. On 23.11.2021, respondent No.3 dismissed the appeal of the petitioner.

2. Aggrieved thereby, the petitioner has filed this instant appeal and prayed for the following reliefs:-

" i. Admit the petition of the petitioner and call for records relevant to the subject matter from the custody of the respondents.

ii. As to why writ in the nature of certiorari and/or in the nature thereof, for calling for records, lying with the respondents, for rendering substantial and conscionable justice to the petitioner, and for quashing/setting aside the impugned punishment order vide No.TSR-8/Esst/DP (01/21)10933-52 dated 24.08.2021 (Annexure-18) passed by respondent No.4, order dated 23.11.2021, vide No.10438/42/F.Pers/PSB/Appeal/DIGP(AP & OPS)/19 passed by the respondent No.3.

iii. As to why writ in the nature of mandamus and/or in the nature thereof, for mandating/directing the respondents to revoke/rescind the impugned punishment order TSR-8/Esst/DP(01/21)10933-52 dated 24.08.2021 passed by the respondent No.4 order dated 23.11.2021 vide No.10438/42/F.Pers/PSB/Appeal/DIGP(AP&OPS)/19 passed by the respondent No.3.

iv. As to why writ in the nature of mandamus and/or in the nature thereof, for mandating/directing the respondents after revoking the impugned punishment order TSR-8/Esst/DP(01/21)10933-52 dated 24.08.2021 passed by the respondent No.4 order dated 23.11.2021 vide No.10438/42/F.Pers/PSB/Appeal/DIGP(AP&OPS)/19 passed by the respondent No.3 reinstate in service.

v. As to why writ in the nature of mandamus and/or in the nature thereof, for mandating/directing the respondents after revoking the impugned punishment order vide No. TSR-8/Esst/DP(01/21)10933-52 dated 24.08.2021 passed by the respondent No.4 order dated 23.11.2021 vide No.10438/42/F.Pers/PSB/Appeal/DIGP(AP&OPS)/19 passed by the respondent No.3 reinstate the petitioner in service and treat the total period of unjustified suspension order vide No.F.131/TSR-8(IR-III)/Estt/11/3813-70 dated 03.04.2016 to 0708.2019 (3 years 4 months 22 days) as on duty and to treat the periods of first removal of service w.e.f. 12.11.2019 to 07.02.2020(88 days), second removal from service w.e.f.17.07.2020 to 14.01.2021 (122 days) for same allegation and third removal from service for same allegation w.e.f. 24.08.2021 till reinstate in service on duty.

vi. Pass such other or further order/orders and directing/directions as to your Lordship deem fit and proper having regard to the facts and circumstance of the case."

3. Heard Mrs. S. Deb(Gupta), learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the State-respondents.

4. Mrs. Deb(Gupta), learned counsel appearing for the petitioner submitted that impugned punishment order was passed without giving the petitioner adequate opportunity. The petitioner herein has valid medical reason for his absence from duty. Sri Gopal Krishna Nath, a retired inspector was engaged as defence assistant of the petitioner but due to COVID-19 pandemic, the engaged defence assistant of the petitioner was indisposed on many occasions. Respondent No.4 i.e. the Commandant did not consider the representation submitted by the petitioner and imposed major punishment of removal from service and respondent No.3 also whimsically dismissed the appeal filed by the petitioner.

5. On the other hand, Mr. D. Sharma, learned Addl. G.A. appearing for the respondents submits that the petitioner herein was given ample opportunity to defend himself during the proceedings. The petitioner herein did not obey the lawful order of the authority. He remained on unauthorized absence from duty for a long duration of time which is against the good order and discipline of the Tripura State Rifle.

6. Heard both sides and perused the evidence on record. It is seen from the record that the petitioner herein on 15.05.2021 made a request indicating that his defence assistant Mr. Gopal Krishna Debnath was 75 years old and he was indisposed because of quarantine during the COVID-19 period. The said contention has also been made in the representation submitted dated 17.08.2021 before the Commandant. Without dealing with the said contention, the Commandant i.e. respondent No.4 passed the impugned order dated 24.08.2021. Hence, this Court feels that the impugned order of punishment dated 24.08.2021 passed by the Commandant is against the principles of natural justice, and the same is accordingly set aside and the matter is remanded back to the respondents for continuing with the inquiry from the place where it stood during COVID period. The same shall be done as expeditiously as possible. However, it is made clear that in the course of the inquiry, the petitioner shall strictly adhere to the terms of service rules and conditions. It is agreed by the counsel for the petitioner that the notices be served on the address of the petitioner through the concerned Police Station or SHO in the residential address which is mentioned in the service record of the petitioner.

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

CHIEF JUSTICE (ACTING)

suhanjit

