

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 923 OF 2021

Sri Sunil Chandra Das, son of Amarendranath Das, aged about-64 years,
Resident of Kalikapur, PO-Ramnagar, PS-West Agartala,
Sub-Division-Agartala, District-West Tripura, Pin-799002.

.....**Petitioner.**

Vrs.

1. Tripura Gramin Bank, having its Head Office at Abhaynagar,
Agartala, District-West Tripura, Pin-799005, represented by its Chairman.

2. The Disciplinary Authority (Chairman),
Tripura Gramin Bank, having its Head Office at Abhaynagar, Agartala,
District-West Tripura, Pin-799005.

3. Inquiry Officer (Chief Managar) (SPF-123),
Tripura Gramin Bank, Head Office (C & R Department), Abhaynagar,
Agartala, District-West Tripura, Pin-799005.

.... **Respondents.**

Present:

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

For the respondent (s) : Mr. A. Roy Barman, Advocate.

Date of hearing and
date of delivery of
judgment and order : **13.03.2023**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(Oral)

By means of filing the present writ petition, the petitioner has
challenged the impugned order of penalty, dated 27.10.2021 (Annexure-8
to the writ petition), directing recovery of one third of monthly pension

admissible to the petitioner until recovery of pecuniary loss to the bank in terms of the Regulations 40 and 46 of Tripura Gramin Bank (Employees') Pension Regulations, 2018 [for short, the TGB Pension Regulations, 2018].

2. Facts:

2.1 Shortly stated, the petitioner was an officer of Tripura Gramin Bank, the respondents herein. He retired from service on 28.02.2018 on superannuation as Senior Manager. After 2(two) years of retirement, the Bank through respondent no.2 issued a notice dated 04.03.2020 asking him to show cause for violation of the lending norms of the Bank. He sanctioned and disbursed loans to 11(eleven) persons. The petitioner was asked to submit his reply within a period of 10 days from the date of receipt of the said show cause notice [Annexure-1 to the writ petition].

2.2 On receipt of the show cause notice dated 04.03.2020, the petitioner submitted his reply on 27.03.2020, stating *inter alia* that he had retired from service on 28.02.2018 and since 2 (two) years had elapsed over, it was not possible for him to respond to the notice adequately. That apart, the petitioner in his reply further contended that at the time of retirement he handed over the charge to the concerned authority and he was allowed to go on retirement by the authority as it was found that he had no liability towards the bank, and he had discharged his duties and responsibility sincerely and honestly to the satisfaction of the bank. It was

further stated in his reply that he never acted in any manner which was detrimental to the interest of the bank and never violated any norms or regulations prescribed by the bank time to time.

2.3 Further, the respondents-bank framed Articles of Charges and proceeded with the inquiry. The petitioner did not participate in the proceeding and it continued *ex parte*. Final order was passed on 27.10.2021 wherein it was stated that the petitioner was given reasonable opportunities to participate in the inquiry and for cross-examination of the prosecution witnesses on behalf of the managements of the bank. The petitioner was given all reasonable opportunities to defend himself and to adduce evidence.

2.4 Considering all aspects, it was held in the impugned punishment order dated 27.10.2021 that the petitioner had violated Regulations 18 and 20 of Tripura Gramin Bank (Officers and Employees) Service Regulations, 2010 [for short, the TGB Service Regulations, 2010] during his service period and for not taking care of the interest of the bank in an effective manner as well as the customers. In consultation with the Board and considering the gravity of misconduct resulting pecuniary loss to the bank, the respondents inflicted penalty of recovery of 1/3rd of monthly pension admissible until recovery of pecuniary loss to the bank following the Regulations 40 and 46 of the TGB Pension Regulations, 2018.

2.5 In view of the aforesaid impugned order of penalty, the respondents-bank at present has been deducting different amount at different times from the pension of the petitioner as would be evident from the statements reflected in the bank's passbook [Annexure-9 to the writ petition] of the petitioner.

3. Submissions of the Counsel:

3.1 In the light of aforesaid background, I have heard Mr. Sankar Lodh, learned counsel appearing for the petitioner and Mr. A. Roy Barman, learned counsel appearing on behalf of the respondents-bank.

3.2 Mr. Lodh, learned counsel appearing on behalf of the petitioner has submitted that the impugned order of penalty for recovery of the alleged loans of the bank is illegal, arbitrary and is liable to be quashed. Mr. Lodh, learned counsel has made the following arguments:

(i) The TGB Pension Regulations, 2018 is not applicable to the case of the petitioner since it came into force w.e.f. 01.04.2018 and admittedly, the petitioner retired from service on 28.02.2018.

(ii) The TGB Pension Regulations, 2018 was not given retrospective effect.

(iii) The TGB Pension Regulation 46 of the TGB Pension Regulations, 2018 is not applicable to the petitioner and no punishment can be imposed on the petitioner in terms of Regulation 46.

(iv) Regulation 46 will only be applicable if a pensioner is found to be guilty of committing grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of service and the conduct of the petitioner does not come within the purview of the parameter mentioned in Regulation 46 to pass an order of recovery to the extent of pecuniary loss caused to the bank. On the date of retirement of the petitioner, there was 'O' (zero) pension of the petitioner as per the schematic pattern of the bank.

(v) During service life of the petitioner, there was not a single instance where the authority concerned had criticized the role of the petitioner in rendering service to the bank and to protect the interest of the bank. The petitioner was given time to time promotion and the respondent-bank had allowed the petitioner to go on retirement without any stigma.

(vi) Actual loss suffered by the bank during the inquiry proceeding as well as in the impugned order of penalty dated 27.10.2021, has not been mentioned and the bank authority is deducting a substantial amount from his pension at their own whims. The petitioner does not know what is the quantum of loss to the bank and the amount to be recovered from his pension and lastly,

(vii) Mr. Lodh, learned counsel has placed reliance upon a decision of the Delhi High Court in ***WP(C) 10968/2009*** titled as ***Amarjit Singh Vrs. Punjab and Sind Bank***, decided on November 21, 2013.

3.3 On the other hand, Mr. Roy Barman, learned counsel for the respondents-bank has argued that—

(i) The TGB Pension Regulations, 2018 is well applicable to the case of the petitioner.

(ii) The proceeding has been initiated after 2(two) years of the retirement of the petitioner which is within the limit of 4(four) years of drawing disciplinary proceeding against any employee of the bank after his retirement from service.

(iii) Regulation 46 clearly stipulates that even after the date of retirement, if the bank finds any of its employees committed gross misconduct or criminal breach of trust as embodied in the said provision, the bank may initiate disciplinary proceeding against such an employee.

(iv) Pension scheme was introduced in the bank on 13th December, 2018 (i.e. date of gazette notification) giving its effect from 01.04.2018 and the petitioner came within the purview of the pension scheme and from the date of retirement, he has enjoyed the benefit of pension. However, the petitioner was brought under the ‘National Pension

System’ as per Regulation 3(c) the Pension Regulations, 2018 since the petitioner had exercised option.

(v) The disciplinary or the punishing authority is not under any mandatory obligation to mention the amount of actual loss incurred by the bank in the order of penalty since Inquiring Authority after going through the records produced by the management of the bank had determined the loss to the tune of Rs.1,01,05,124/- (Rupees one Crore One Lakh Five Thousand One Hundred and Twenty Four) only.

4. **Analysis:**

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

4.2 From the impugned order of penalty dated 27.10.2021 [Annexure-8 to the writ petition], it comes to fore that the petitioner has been punished for committing breach of the Regulations 40 and 46 of the Pension Regulations, 2018, which need to be reproduced here-in-below, for convenience:

“40. Pension subject to future good conduct.—

Future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations.

“46. “Recovery of pecuniary loss caused to the Bank.-

(1) The competent authority may withhold or withdraw a pension or a part there of, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found

guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that before passing any final orders under this sub-regulation, the Board shall be consulted:

Provided further that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations:

Provided also that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be the proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued service.

(2) No departmental proceedings shall be initiated in respect of an event if more than four years time lapsed after the event:

Provided that the disciplinary proceedings initiated under this sub-regulation shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the competent authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the employee.”

4.3 From the Articles of Charges, I find that the main allegation against the petitioner is that the petitioner had sanctioned loan of a certain amount at a certain interest. For example, Rs.14:00 lakh @ Rs.11.50% interest. During the continuous repayment period, the interest rate was reduced, for example @ 9.25%. According to the bank, the petitioner had sanctioned further loan to the same borrower before its liquidation, for example, Rs. 14:00 lakh. While granting such loan, outstanding balance of earlier Rs.14:00 lakh was first adjusted with the former loan giving benefit

to the borrower to repay the loan amount at lesser rate of interest. According to the bank, the bank was supposed to receive repayment of the entire loan amount @ Rs.11.50% interest, but, after closing the former loan and sanctioning the fresh loan again the bank had incurred loss to the extent of the difference of the interests rate between the former loan and the later fresh loan. It is the contention of the bank that the said conduct of the petitioner is contrary to the lending policy of the bank. One of such cases, relating to different customers may be reproduced here-in-below, for convenience:

*“**Shilpi Biswas:** Smt. Shilpi Biswas was sanctioned new HBL (804330212565 @ Rs.9.25% interest) for new house construction without valid documents for Rs.14 lakh. However, existing HBL (8043302113362 @ Rs. 11.50 % interest) was adjusted to give her reduced interest benefit where outstanding balance was Rs.12,25,947/- out of Rs.14 lakh. **Why extra Rs.1,74,053/- was given not understood.** It was against lending policy of the bank. The bank has to loss interest margin of 2.25% over the loan. The processing of the loan was not properly done. Total deduction exceeded 60% of her gross salary. The landed property as security offered owned by Shri Bikash Cnashtra Sarkar (Husband) was found neither as co-loanee nor guarantor against the loan. No record found for extension of Equitable mortgage either with re-valuation of the property. It appeared as unsecured loan. The whole process was illegal, detrimental for the interest of the bank.”*

The TGB Pension Regulations, 2018 came into force w.e.f. 01.04.2018. Admittedly, under Sub-Regulation 1(c) of Regulation 3, the petitioner had opted for pension on the basis of which he was granted pension w.e.f. date of his retirement i.e. from 28.02.2018.

4.4 Considering the submissions of Mr.Lodh, learned counsel appearing for the petitioner as regards the retrospective effect of Pension Regulations 2018, in my opinion, Regulation 46 in expressed terms has dealt with various facts of initiating departmental proceeding against the retired employee of the bank. Regulation 46 clearly speaks of certain *contingencies of initiation of departmental proceeding qua the requirements of imposition of penalty. It clearly stipulates that if an employee is found to be guilty of committing grave misconduct, negligence or criminal breach of trust or fails to protect the interest of the bank, in that case, a departmental proceeding can be initiated irrespective of the fact that he has retired and such proceeding would be deemed to be the proceedings under the TGB Pension Regulations, 2018 which would be continued and concluded by the authority, as if, such employee is in service under the bank.* Here, the petitioner retired from service on 28.02.2018. The departmental proceeding was initiated on 22.09.2020 as submitted by learned counsel appearing on behalf of the petitioner in presence of an officer of the bank in the court. As such, in view of clear expressions embodied under Regulation 46 of TGB Pension Regulations, 2018, the framers of the said Regulations have given its retrospective effect in the matter of drawing up of disciplinary proceeding subject to the

contingencies as embodied in Regulation 46 quoted here-in-above. In the instant case, all the events had occurred within four years,

4.5 At this juncture, I have given look to the imputation of misconduct as revealed from Annexure-II of Articles of Charges, which is as under:

*“IMPUTATION OF MISCONDUCT
AGAINST SRI SUNIL CHANDREA DAS (SPF-403),
(Retired Senior Manager)*

You have violated Regulation 18 & 20 of Tripura Gramin Bank (Officers and Employees) Service Regulations, 2018 by not complying Rules and Regulations of the Bank and by not taking care of interest of the Bank rather you have undertaken some irregular activities and failed to serve the bank honestly and faithfully, which amounts to major misconducts attracting invocation of Sub-Regulation (2) under Regulation 46 of Tripura Gramin Bank (Officers and Employees) Pension Regulations, 2018 in respect of article of charge under item No.1 to 18 as mentioned in Annexure-I.

*DISCIPLINARY AUTHORITY
CHAIRMAN
TRIPURA GRAMIN BANK”*

4.6 Here, learned counsel appearing for the respondents-bank has clarified that the year of the Regulations under which imputation of misconduct was made by the authority concerned is a typographical mistake. It should be made as ***“Regulations 18 and 20 of the “Tripura Gramin Bank (Officers and Employees) Service Regulations, 2010”*** instead of ***“Regulations 18 & 20 of the Tripura Gramin Bank (Officers and Employees) Service Regulations, 2018”***

4.7 Regulations 18 and 20 of the TGB Service Regulations, 2010 is reproduced here-in-below for convenience:

“18. Liability to abide by the regulations and orders.—
Every officer or employee shall conform to and abide by these regulations and shall also observe, comply with and obey all orders and directions which may, from time to time be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be posted.”

“20. Obligation to Promote the Bank’s interest.—
Every officer or employee shall serve the Bank honestly and faithfully, and shall use his utmost endeavour to promote the interests of the Bank and shall show courtesy and attention in all transactions and dealings with officers of Government, the Bank’s constituents and customers.”

4.8 A plain reading of Regulation 18 of the TGB Service Regulations, 2010 makes it clear that all officers and employees have to strictly adhere to the Regulations made thereunder and shall also act in accordance with the orders and directions they receive from time to time from his/her higher authorities.

Regulation 20 clearly speaks of the responsibilities of the officers and the employees who shall serve the bank honestly and faithfully and shall make their maximum endeavour to promote the interests of the bank.

4.9 From the imputation of misconduct as quoted here-in-above, it is alleged that the petitioner failed to act honestly and faithfully, which amounts to a major misconduct attracting invocation of Sub-Regulation (2)

under Regulation 46 of the TGB Pension Regulations, 2018. On careful reading of Sub-Regulation (2) under the Regulation 46 along with its proviso, it comes to fore that it provides the procedure which was prevailing during the service of the pensioner, that is, before the date of his retirement, will be applicable to disciplinary proceeding in relation to such employee. It does not in any way relate to nature of commission of any misconduct.

4.10 Mr. Roy Barman, learned counsel for the bank has tried to emphasize upon Regulations 18 and 20 of the TGB Service Regulations, 2010 to invoke Regulation 46 of TGB Pension Regulations, 2018, as an aid to pass order of penalty of recovery of pecuniary loss caused to the bank. Mr. Roy Barman, learned counsel appearing for the bank in response to a query made by this court has submitted that there is no disagreement to the effect that for violation of Regulations 18 and 20 of the TGB Service Regulations, 2010, disciplinary proceeding can be initiated in terms of the prevailing Regulations applicable to such retired employee during his service period.

4.11 In the context of the present case, Sub-regulation (2) of Regulation 46 of the TGB Pension Regulations, 2018, according to this court, will play a vital role to adjudicate the questions raised in this writ petition as regards concluding of disciplinary proceeding in relation to the

petitioner in accordance with TGB Pension Regulations, 2018. Sub-regulation (2) of Regulation 46 starts with a *non obstante* clause when it is categorically stipulated that- “*no departmental proceedings shall be initiated in respect of an event if more than four years time lapsed after the event.*” The said Sub-regulation (2) has to be read in conjunction with its *proviso* where it is clearly stated that the disciplinary proceedings initiated under Sub-regulation (2) would proceed *in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.* Admittedly, the petitioner is a pensioner and disciplinary proceedings has been initiated after his retirement when TGB Service Regulations, 2010 was in vogue. Thus, the procedure to be adopted to conduct and conclude the disciplinary proceedings would have to be regulated in relation to the petitioner under TGB Service Regulations, 2010 and not under TGB Pension Regulations, 2018.

4.12 In the opinion of this court, the words, “***procedure applicable to disciplinary proceedings***” means and includes not only the procedure to be followed in the disciplinary proceedings, but also it includes procedure of imposing penalty. ***[emphasis supplied]***

4.13 In the case in hand, the Disciplinary Authority inflicted penalty of withdrawal of 1/3rd of monthly pension admissible under recovery of pecuniary loss to the bank following Regulations 40 and 46 of

the TGB Pension Regulations, 2018 for committing misconduct as provided under Regulations 18 and 20 of the TGB Service Regulations, 2010. In my considered view, in view of the procedure embodied in Sub-regulation (2) of Regulation 46 of the TGB Pension Regulations, 2018, the penalty imposed upon the petitioner in terms of Sub-regulations (1) and (3) of Regulation 46 of the TGB Pension Regulations, 2018 is utterly illegal and arbitrary.

4.14 In my opinion, the Disciplinary Authority ought to have imposed penalty upon the petitioner in terms of the relevant provisions as contemplated under the TGB Service Regulation, 2010 instead of the TGB Pension Regulation, 2018.

4.15 Here, it will be worthy to have a look to the schematic pattern of imposing penalty upon a retired employee of the bank affecting his pension. Chapter IV of the TGB Pension Regulations, 2018 absolutely deals with the grant of pension and pensioner where the drafters have imbibed some contingencies to institute disciplinary proceeding against a petitioner. Regulation 40 of the TGB Pension Regulations, 2018 lays down that *future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations*. From the impugned order passed by the Disciplinary Authority, it comes to fore that punishment of 1/3rd of monthly pension was imposed following the

Regulation 40. There is no material and even no charge has been framed that the petitioner has committed any misconduct after his retirement so that the bank authority can interfere with the grant of pension and its continuance. Regulation 41 clearly says that- *the competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct.* It is not the case here that after his retirement, the petitioner was found to be convicted of being involved in a serious crime or in criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct.

4.16 Regulation 42 speaks of a situation *where a pensioner is convicted of a serious crime by a court, action shall be taken in the light of the judgment of the court relating to such conviction.* Regulation 43 envisages that *in a case not falling under regulation 42, if the competent authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in the Service Regulations i.e. TGB Service Regulations, 2010.*

4.17 Now, under the “explanation” of Regulation 44, the nature of crime is explained. Explanation (a) defines “serious crime”, which includes *a crime involving an offence under the Official Secrets Act, 1923;*

Explanation (b) defines “grave misconduct” which includes *the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, documents or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State;*

Explanation (c) defines “fraud”, which *shall have the meaning assigned to it under section 25 of the Indian Penal Code, 1860;*

Explanation (d) defines “criminal breach of trust” which *shall have the meaning assigned to it under section 405 of the Indian Penal Code, 1860* and

Explanation (e) defines “forgery” which *shall have the meaning assigned to it under section 463 of the Indian Penal Code, 1860.*

4.18 So, recourse to Regulation 46 of the TGB Pension Regulations, 2018 can only be taken when a pensioner is found to be involved in committing serious crime or grave misconduct or fraud or criminal breach of trust or forgery as quoted here-in-above and in terms of Regulations 40, 41, 43 of the TGB Pension Regulations, 2018.

4.19 Noticeable feature, is that, Chapter IX of the TGB Pension Regulations, 2018 primarily centres round with various aspects related to the pensioners and deals with the circumstances or events including

initiation of disciplinary proceeding and penalty thereof. It is noted that Regulation 46 of the TGB Pension Regulations, 2018 in unambiguous terms prescribes the situations, rather, to say, certain contingencies, under which penalty for recovery of pecuniary loss be imposed if a pensioner is found to be guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. The imputation of charges made against the petitioner under Regulations 18 and 20 of the TGB Service Regulations, 2010. On plain reading of the definition of 'grave misconduct' as quoted here-in-above, it can easily be said that it is not the case here that the petitioner had made any communication or disclosed any secret official code or password as mentioned in Section 5 of the Official Secrets Act, 1923. The charge framed against the petitioner is for committing 'grave misconduct'. As such, in my considered view, no punishment or penalty can be imposed upon the petitioner for recovery of pecuniary loss to the bank from the pension of the petitioner as provided under Sub-regulation (3) of Regulation 46 of the TGB Pension Regulations, 2018.

4.20 Yet another aspect, which falls for consideration is that the Disciplinary Authority has not mentioned the actual pecuniary loss caused to the bank in the impugned order of penalty dated 27.10.2021.

4.21 The report of the inquiring authority is the foundation of the formation of the opinion of the disciplinary authority. It is the statutory obligation of the Disciplinary Authority to mention in his show cause notice or order as regards the penalty/punishment he proposes to inflict upon the petitioner. In the instant case, the Disciplinary Authority has not mentioned the actual pecuniary loss suffered by the bank, and quantum to be recovered from the petitioner.

4.22 In addition, Sub-regulation (3) of Regulation 46 clearly speaks that recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the employee. From the bank statement dated 01.10.2021, it is found that the pension amount of the petitioner as on September, 2021 was Rs.42,495/-. Now from the statement dated 01.11.2021, it is found that the pension amount against the petitioner was credited to his account to the tune of Rs.14,165/- and from the statement dated 1.12.2021, it is found that the pension amount was credited to the account of the petitioner for an amount of Rs.25,796/-. So, it is apparent from the statement of the bank that different amounts are being deducted by the bank at different times and there is no fixed amount which were deducted from the pension amount of the petitioner, which fact is neither disputed by the bank officer present in the court nor by leaned counsel for the bank.

5. Conclusion:

5.1 In the light of above discussions, by way of imposing penalty of withdrawal of one third of monthly pension admissible until recovery of pecuniary loss to the bank, following the Regulations 40 and 46 of the TGB Pension Regulations, 2018, in my considered view, the respondents-bank has committed a serious error in law and as such, the impugned order of recovery dated 27.10.2021 [Annexure-8 to the writ petition] is illegal, arbitrary and contrary to established principle of law and liable to be set aside and quashed.

5.2 Accordingly, the impugned order of recovery dated 27.10.2021, passed by the respondents-bank stands set aside and quashed.

5.3 The money already recovered by the respondents-bank shall be refunded/credited to the relevant bank account of the petitioner within a period of two months from the date of receipt of a copy of this judgment/order.

5.4 The writ petition, accordingly, stands allowed and disposed of in the above terms.

JUDGE