

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.969 of 2021

1. Dr. Tamal Ray

S/O Lt. Samir Chandra Ray,
R/O- Village & P.O- Satchand,
P.S- Manubazar, Sabroom, South Tripura.

2. Dr. Sanjit Tripura

S/O Prafulla Tripura,
R/O- Village –South Hichachara,
P.O- Thakurchara, P.S- Baikhora,
Santirbazar, South Tripura

....Petitioner(s)

Versus

1. The State of Tripura

to be represented by the Principal Secretary to the Govt. of Tripura
(Disciplinary Authority), GA (AR) Department, New Secretariat
Building, New Capital Complex, Agartala, West Tripura, Pin-799010

2. The Chief Secretary, (Appellate Authority)

Govt. of Tripura, New Secretariat Building, New Capital Complex,
Agartala, West Tripura, PIN-799010.

3. The Director of Health Service,

Govt. of Tripura, Gorkhabasti, Agartala, West Tripura.

4. The Director of Family Welfare & P.M,

Govt. of Tripura, Agartala, West Tripura.

5. The Inquiring Authority,

The Commissioner of Departmental Inquires, Govt. of Tripura.

....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
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For the Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
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Date of hearing and

Delivery of Judgment & Order	:	15/05/2023
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Whether fit for reporting	:	No
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HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

By means of filing the present writ petition the petitioners have prayed for quashing the order of major penalty of withholding 3(three) increments for 3(three) years with cumulative effect imposed by the disciplinary authority and confirmed by the appellate authority in the departmental proceedings (Annexure-14 to the writ petition).

2. I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents.

3. Mr. Nath, learned counsel for the petitioners has submitted that the petitioners admitting their guilt had undertaken that there would be no repetition of such acts and conducts and the mistake was occurred due to their inexperience being junior in service at that time. They were not involved in any unethical activities detrimental to the interest of the patients. Against the proposed penalty, in their representations dated 27.11.2020 and 08.04.2021, the petitioners had stated that the allegations that they had prescribed same medicines against many patients, but, no prescriptions had been introduced in evidence to substantiate the said allegation. Furthermore, the allegation that the patients were advised to purchase the prescribed medicines from a particular medical shop nearing to the place of the PHC had also not been substantiated by the

respondents since no patient was examined to prove this allegation. According to the petitioners, entire allegations were levelled on surmises and conjectures.

4. Mr. Mr. Nath, learned counsel has submitted that the statements the petitioners had made during the course of enquiry were taken under pressure and threat that they would be dismissed from service. Learned counsel for the petitioners has strongly emphasized that the appellate authority did not at all consider the representation of the petitioners because he has not passed any speaking order.

5. Per contra, Mr. Debbarma, learned Addl. G.A. has submitted that serious allegations are levelled against the petitioners and the imputations of misconduct as framed under articles of charges have been proved. Additionally, learned Addl. G.A. has further reminded the limitations of this court as regards the re-appreciation of evidence by this court in a case of this nature. Learned Addl. G.A. has further contended that all reasonable opportunities were provided to the petitioners and he strongly denied the submission of learned counsel for the petitioners that the undertaking of the petitioners regarding admission of their guilt during the course of enquiry is absolutely false and fabricated and there was no pressure on anyone and the petitioners voluntarily had admitted their guilt.

6. I have considered the rival submissions of learned counsel appearing for the parties.

It is settled proposition of law that this court will not re-appreciate the evidence in exercise of its power of judicial review as vested upon it under Article 226 of the Constitution of India unless and until the court comes to a definite finding that the evidence recorded during the inquiry and the findings thereof by the inquiring authority is wholly perverse.

7. Keeping in mind the aforesaid principle, I straightway have gone through the representations submitted by the petitioners and the order passed by the appellate authority.

8. Having considered the statements made in the representation and the order of the appellate authority, in my opinion, the punishment imposed upon the petitioners is shockingly disproportionate. There should be an order of penalty commensurate to the misconduct committed by the petitioners.

9. Considering the entirety of the factual and legal aspects, the penalty may be modified and reduced to the extent of withholding 3(three) increments for 3(three) years without cumulative effect, which, in the opinion of this Court, would be proportionate to the misconduct.

10. In the light of the above, I set aside the impugned order of penalty dated 06.05.2021 imposed by the Disciplinary Authority and

affirmed by the Appellate Authority under order dated 26.08.2021 stand modified to the extent as indicated above. Ultimate order of penalty would be the penalty of withholding of 3(three) increments for 3(three) years without cumulative effect.

Accordingly, the instant writ petition stands disposed.

JUDGE

Rohit

