

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 340 of 2023

Manik Lal Majumder,
TPS Grade-I (Retd.), son of late Balahari Majumder,
resident of Ananya Complex, near Bangladesh Visa Office,
Agartala, District- West Tripura.

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

Versus

- 1. The State of Tripura,**
represented by the Principal Secretary to the
General Administration (AR) Department,
Government of Tripura, New Secretariat Complex,
Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division Sadar, District- West Tripura.
- 2. The Principal Secretary, General Administration**
(P& T) Department, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division Sadar, District- West Tripura.
- 3. The Chief Secretary,** Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division Sadar, District- West Tripura.
- 4. The Under Secretary, General Administration**
(P&T) Department, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division Sadar, District- West Tripura.
- 5. The Director General of Police,**
Government of Tripura, Akhaura Road, P.O. Agartala,
P.S. West Agartala, District- West Tripura, PIN 799001.
- 6. The Commissioner of Departmental Inquiries,**
Government of Tripura, PN Complex, Gurkhabasti,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division Sadar, District- West Tripura.

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

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. Koomar Chakraborty, Advocate
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A.
Date of hearing and delivery of judgment and order	:	05.02.2024.
Whether fit for reporting	:	Yes.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order(Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. representing the State respondents.

[2] The present writ petition is filed under Article 226 of the Constitution of India seeking following reliefs:

(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for quashing/setting aside the impugned Order dated 20.11.2020, the impugned Second Inquiry Report dated 16.03.2022, the impugned Order of Penalty dated 25.05.2022 & the impugned Appellate Order dated 16.12.2022.

(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to make payment of the full pay & allowances (after adjusting the subsistence allowance as received), in favour of the petitioner, for the period of his suspension (i.e., w.e.f, 02.04.2008 to 30.09.2010);

(iii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to make payment of the full pay and allowances, for the period between the date of dismissal of the petitioner from service and his date of retirement(i.e., w.e.f. 25.06.2013 to 30.06.2014);

(iv) Issue Rule, calling upon the respondents and each one of them , to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to release the post-retiral benefits of the petitioner viz. Gratuity & Leave Salary , along with Interest @ 10% (w.e.f. from elapse of 30 days from the date of his retirement);

(v) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/ directing them, to refund the amount of monthly pension, as deducted by the respondents in connection with the penalty of '30% cut in pension, for a period of 10 (ten year)', as inflicted vide the impugned Order of Penalty dated 25.05.2022.....

[3] The case of the petitioner in brief is that on 25.10.2010, a disciplinary proceeding was contemplated against the petitioner and thereafter, another disciplinary proceeding was contemplated against him on 04.11.2010. The petitioner serving in the post of TPS Gr.I was dismissed from service on

25.06.2013, owing to his conviction & sentence by the Sessions Court. The date of superannuation of the petitioner was 30.06.2014. The said conviction and sentence of the petitioner was set aside by this Court on 02.05.2019. On 20.06.2020, the respondents set aside the dismissal order of the petitioner. Thereafter, on 20.11.2020, the respondents decided not to pay back wages to the petitioner.

[4] On 25.03.2021, this Court directed the respondents to release all the post-retiral benefits of the petitioner. The relevant portion of the order dated 25.03.2021 passed by this Court in WP(C) No.106 of 2021 is extracted herein-under:

".....In background of such facts, I am of the opinion that the petitioner must receive his provisional pension from the date of his retirement till the disciplinary authority takes final decision on the departmental inquiry against him. Further, considering the facts of the case such departmental proceedings must be completed expeditiously. The incident in relation to which the departmental inquiry is instituted is an old one. It may be that considerable time was consumed in pursuing the criminal case against the petitioner. However, having crossed the age of superannuation in June, 2014, the petitioner has a right to be informed about the outcome of the inquiry against him.

Under the circumstances, the petition is disposed of with following directions:

(i) The respondents shall issue a formal order releasing the provisional pension of the petitioner within one month from today. Such provisional pension with arrears from the date of superannuation till date shall be paid over to the petitioner within a month thereafter.

(ii) If there are any other post retiral benefits which the petitioner can claim under the Service Rules despite pendency of the departmental inquiry, the same may also be released.

(iii) The departmental inquiry shall be completed within six months subject to cooperation by the petitioner in early disposal of the inquiry.

With these directions petition is disposed of. Pending application(s), if any, also stands disposed of."

[5] On 18.01.2022, the disciplinary proceeding (initiated on 04.11.2010) was closed. Thereafter, 25.05.2022, a major penalty of 30% cut in pension for 10 years was imposed upon the petitioner in connection with the disciplinary proceeding initiated on 25.10.2010. Again, on 16.12.2022, the appeal preferred there against was dismissed. Aggrieved thereby, the petitioner has approached

this Court by preferring the present writ petitioner seeking reliefs as mentioned earlier.

[6] Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner submits that the Disciplinary Authority, as well as the Appellate Authority has committed manifest error of law by failing to appreciate that if the Disciplinary Authority was not satisfied with the findings of the Inquiring Authority, then in view of Rule 15(2) of the CCS (CCA) Rules, 1965, he could have forwarded the same to the petitioner alongwith his tentative reasons of disagreement thereto, but could not have ordered for further inquiry.

[7] It is further contended by Mr. Roy Barman that the petitioner is entitled to receive his post-retiral benefits viz. Gratuity & Leave Salary in terms of order dated 25.03.2021 passed by this Court in WP(C) No.106 of 2021 but, till date, the same have not been released by the respondents. He also submits that the connected disciplinary proceeding which is under challenge herein, has already attained its finality in the eyes of the respondents and the penalty in connection therewith i.e. 30% cut in pension for a period of 10(ten) years has already been inflicted upon the petitioner. Learned senior counsel further submits that no cogent reason could be traced out for withholding the said post-retiral benefits of the petitioner.

[8] On the other hand, Mr. D. Sarma, learned Addl. G.A. on behalf of the State respondents opposes to the averments made by the learned senior counsel on behalf of the petitioner and urges before this Court that the present petition filed by the petitioner be dismissed.

[9] For the purpose of ready reference, the provisions under Rule 11 of the CCS(CCA) Rules are quoted hereunder:

"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 a 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 in clause (iii) (a), reduction to a lower stage in the time-scale 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:.....”

[10] The provisions under Rule 15(2) of the CCS (CCA) Rules are quoted as under:

“15.

.....(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.....”

[11] Heard the submissions made at the Bar by the respective parties.

Perused the evidence on record.

[12] On perusal of records, this Court opines that the respondents have violated the principles of natural justice in deducting 30% of pension for a period of 10(ten) years inflicted upon the petitioner. As per Rule 11 of the CCS (CCA) Rules, the respondents cannot impose 30% deduction on pension of the petitioner. It is further observed that the disciplinary authority, as well as the appellate authority has committed manifest error of law as they failed to appreciate that if the disciplinary authority was not satisfied with the findings of the inquiring authority, then in view of Rule 15(2) of the CCS (CCA) Rules, 1965, the same should be forwarded to the petitioner alongwith tentative reasons of disagreement thereto, but the respondents could not follow the said Rules and have ordered for further inquiry.

In view of the above, the present writ petition is allowed setting aside the impugned orders of the respondents. Respondents are further directed to release all the consequential benefits/amounts which the petitioner is entitled to within a period of 2(two) months from the date of receipt of the copy of this order.

With the above observation and direction, this writ petition is allowed and accordingly disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

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