

IN THE HIGH COURT OF TRIPURA
AGARTALA

WA No.108 of 2023

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.

– V e r s u s –

..... Appellant(s)

1. **Sri Pintu Das,**
son of late Jagabandhu Das, aged about 52
years, resident of Gandhighat, P.S. West
Agartala, P.O. & Sub-Division- Agartala,
District- West Tripura
2. **Tripura Public Service Commission,**
represented by its Secretary, A.K. Road,
Near Fire Service Chowmohani, P.S. West
Agartala, District-West Tripura, Pin-799001

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

..... Respondent(s)

For the Appellant (s)	:	Mr. D. Sarma, Addl. GA				
For the Respondent (s)	:	Mr. S. Lodh, Adv. Mr. R. Datta, Adv.				
Date of hearing & delivery of Judgment & order	:	02.04.2024				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA
JUDGMENT & ORDER (ORAL)

Heard Mr. D. Sarma, learned Addl. GA appearing for the appellants-State as well as Mr. S. Lodh, learned counsel appearing for the writ petitioner-respondent and Mr. R. Datta, learned counsel appearing for the TPSC-respondents.

[2] The appellants-State is aggrieved by the judgment dated 7th January, 2023 passed by the learned Writ Court in W.P.(C) No.835 of 2021, whereby the writ petition was allowed 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.

[3] The disciplinary proceeding was initiated against the writ petitioner while he was posted as Deputy Collector & Magistrate in the office of the SDM, Sadar, Agartala, West Tripura. Vide memorandum of charges dated 26th April,

2024 [Annexure-7 to the writ petition] there were 5[five] article of charges supported by statement of imputations of misconduct/misbehaviour. He was also placed under suspension on 27th November, 2013. After participation in the inquiry proceedings, report was submitted by the inquiring officer on 14th June, 2019. The petitioner was served with a show cause notice and proposed penalty vide memorandum dated 20th August, 2020 [Annexure-11 to the writ petition]. Out of the five articles of charges, only Charges No.IV & V were proved against the writ petitioner. The disciplinary authority while issuing second show cause notice, proposed to impose a major penalty of withholding of 3[three] increments with cumulative effect upon the writ petitioner. The writ petitioner submitted his written representation against the second show cause notice containing the proposed penalty. Thereafter, the disciplinary authority imposed major penalty withholding of 3[three] increments with cumulative effect vide order dated 15th February, 2021 [Annexure-16 to the writ petition]. The writ petitioner preferred an appeal which was also dismissed by the order dated 6th September, 2021 [Annexure-18 to the writ petition] passed by the Chief Secretary-cum-Appellate Authority. The writ petitioner being aggrieved approached the Writ Court.

[4] The learned Writ Court was of the opinion that the Charge No.III had a direct link with Charge No.V and since the Charge of forging/manipulating of the EPIC Card of the lady namely, Smt. Nita Das for his personal interest had not been proved, the findings of guilt as regards the Charge No. V, 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. However, the learned Writ Court did not

find any perversity in the finding of the inquiry officer so far as Charge No.IV is concerned. The learned Writ Court however upheld the findings of Charge No.IV in the following manner:

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.

[5] The learned Writ Court thereafter proceeded to examine whether the penalty of withholding of 3[three] increments with cumulative effect under Rule 11 was proper or not in terms of CCS (CCA) Rules, 1965. It was also held that withholding of increments of pay and allowances with cumulative effect would not be treated as minor penalty, but a major penalty as it 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. Withholding of increments of pay with cumulative effect is not enumerated under any of the minor or major penalties under Rule 11 of CCS(CCA) Rules, 1965. The learned Writ Court further examined as to whether the writ petitioner is entitled to full salary and allowances for the period remain under suspension. Relying upon FR-54B, the learned Writ Court observed that the competent authority is under obligation to deal with the suspension period as to how the suspension period has to be treated.

[6] In the case at hand, the suspension order was revoked vide order dated 28th May, 2014 and the order disentitling the writ petitioner from getting

full pay and allowances for the suspension period was passed on 5th May, 2021 along with the impugned order of penalty imposed upon the writ petitioner. As such, the order passed by the respondents disqualifying the writ petitioner from the benefit of full pay and allowances for the period of suspension was held as inconsistent with the settled law and liable to be interfered with. The learned Writ Court also took into consideration the submission of the writ petitioner that withholding of 3[three] increments with cumulative effect was disproportionate to the charges proved against him.

[7] Being aggrieved by the impugned judgment, the respondents-State of Tripura is in appeal.

[8] We have heard learned counsel for the parties and taken note of the relevant materials placed from the pleadings and enclosed documents on record.

It is to be mentioned here that the findings of the learned Writ Court so far as it relates to Charge No.IV have remain unassailed as the writ petitioner withdrew the appeal being W.A. No.28 of 2023. Much submission has been made by the learned counsel for the parties as to whether the findings of the learned Writ Court on sustainability of Charge No.V are proper in the eye of law. On one hand, learned counsel for the writ petitioner has submitted that the Charge No.V was unsustainable as Charge Nos.I, II & particularly III were not proved against him. On the part of the appellants-State, it is argued that the Charge No.V was sustainable independent of the findings under Charge Nos.I, II & III. However, learned counsel for the State has at the same time also argued that the learned Writ Court ought not to have interfered with the quantum of penalty as even if Charge No.V is held to be unsustainable for the time being, Charge No.IV constitutes a serious misconduct of financial irregularities on

the part of the writ petitioner in his capacity as Drawing and Disbursing Officer as he certified fake vouchers to the tune of Rs.21,600/-. Findings on Charge No.IV were enough to sustain the penalty of withholding of 3[three] interments with cumulative effect. It is further submitted that if the learned Writ Court was persuaded by the arguments that the quantum of penalty was harsh or disproportionate, the matter could at best be remanded to the Disciplinary Authority to take a fresh decision in accordance with law. However, the Writ Court had committed error by substituting the quantum of penalty of withholding of 1[one] increment with cumulative effect which is to be treated as a major penalty. Therefore, on both counts, the impugned judgment is fit to be set aside.

[9] We have considered the submission for the learned counsel appearing for the parties and also examined the grounds urged. The Charge No.III related to misuse of official position and preparation of EPIC Card by the writ petitioner by manipulation with *mala fide* intention. This EPIC Card related to one Smt. Nita Das in respect of whom the Charge Nos.I & II were also framed. However, the inquiry officer found all the Charge Nos.I,II & III not proved. Charge No.V related to misrepresentation of facts regarding writ petitioner's stay at Kolkata with one lady namely, Smt. Nita Das, wife of Sri Manik Lal Das and misrepresentation in his defence to the District Magistrate and Collector, West Tripura. While dealing with Charge No.V, the learned Writ Court was of the opinion that since Charge No.III had a direct link with Charge No.V and since the charge of forging/manipulation of EPIC Card of the lady namely, Smt. Nita Das for his personal interest had not been proved, the findings of guilt as regards of Charge No.IV that the writ petitioner committed

misconduct staying in a hotel at Kolkata with Smt. Nita Das by way of forging her EPIC Card for his personal interest was based on no evidence. Since the learned Writ Court after due consideration of the allegations made in respect of Charge Nos.I, II & III *vis-a-vis* the Charge No.V have found that the allegation of manipulation of EPIC Card of the lady by the writ petitioner had not been proved, the Charge No.V relating to his stay in hotel at Kolkata with Smt. Nita Das by way of forging her EPIC Card was based on no evidence.

[10] We do not intend to interfere on these findings of fact by the learned Writ Court. However, we find that the learned Writ Court has held that the imposition of penalty of withholding of 3[three] increments with cumulative effect is disproportionate to the charges proved against him and proceeded to impose a penalty of withholding of 1[one] increment with cumulative effect which is to be treated as a major penalty.

[11] The Charge No.IV related to financial irregularities by the writ petitioner of certifying false vouchers in respect of a vehicle used in the office of the SDM, Sadar in his capacity as a Drawing and Disbursing Officer. This charge is of serious financial irregularities. We however find that under Rule 11 of CCS (CCA) Rules, 1965 the learned Writ Court has referred to the penalties proposed under Rule 11 of the CCS (CCA) Rules, 1965 where withholding of increments of pay is a minor penalty. Withholding of increments with cumulative effect has not specifically been enumerated under any of the minor or major penalties. Imposition of withholding of three increments with cumulative effect amounted to a major penalty [*See Kulwant Singh Gill Vs. State of Punjab, (1991) Supp (1) SCC 504*]. In that case, the right course for the learned Writ Court would have been to remit the matter to the Disciplinary

Authority to pass a fresh order on the quantum of penalty considering the gravity of the charges established against the writ petitioner. The learned Writ Court however, proceeded to substitute the penalty by withholding of 1[one] increment with cumulative effect which is to be treated as a major penalty. We, therefore, are inclined to interfere with the impugned judgment and order to that extent. The matter is, therefore, remitted to the Disciplinary Authority to pass a fresh order on the quantum of penalty to be imposed upon the writ petitioner for the established charge. The Disciplinary Authority would take such a decision within a period of 12[twelve] weeks from the receipt of the copy of this judgment and order.

Accordingly, the instant appeal is allowed to the extent as indicated above.

Pending application (s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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