

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 626 of 2022

1. Sri Prabhat Chandra Sil, son of late Rai Mohan Sil, near Matarbari Block, P.O. Matarbari, P.S. R. K. Pur, Udaipur, Gomati-District, Tripura, PIN-799120.

.....Petitioner

-VERSUS-

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, New Capital Complex, Kunjaban, Agartala, West Tripura.
2. The Secretary, Department of Home, Government of Tripura, New Capital Complex, Kunjaban, Agartala, West Tripura.
3. The Director General of Police, Government of Tripura Police Headquarter, Fire Brigade Chowmuhani, Agartala, P.O. Agartala, P.S. West Agartala, District: West Tripura.
4. The Superintendent of Police, Sepahijala District, P.O. Bisharamganj, P.S. Bishramganj, Sepahijala District.
5. The Inquiry Officer of the D.P. No.02 of 2017 Sri Asish Debnath, In-Charge Additional Superintendent of Police, Dhalai District.
6. The Superintendent of Police (RSV), Dhalai District, Jaharnagar, Disciplinary Authority.
7. The Deputy Inspector General of Police, Northern Range, Kumarghat, Tripura, Appellate Authority.

..... Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. A. K. Pal, Advocate. Mr. D. C. Roy, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. D. Sarkar, Advocate.
Date of hearing	:	18.01.2024
Date of delivery of judgment and order	:	22.01.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. A. K. Pal, learned counsel and Mr. D. C. Roy, learned counsel appearing for the petitioner also heard Mr. M. Debbarma, learned Addl. G.A. and Mr. D. Sarkar, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for challenging the memorandum of article of charges vide memorandum dated 09.05.2017 and also petitioner challenged the inquiry report, provisional punishment order, final punishment order and order of the appellate authority before this Court for setting aside the said article of charges and orders of the respondents. Further, to set aside the false inquiry proceeding against the petitioner.

[3] Brief facts of the case are that the while the petitioner was posted at Boudhjungnagar P.S. in the capacity of Officer-in-Charge, then the contraband items like contraband drugs (Phensedyl) and other were seized by the police of the said P.S. and those articles were kept in the Malkhana of the P.S. and after transfer of 6(six) months from the said P.S. to Kalamchaura P.S., the respondents initiated a false and fabricated departmental proceeding against the petitioner and others police staffs including Malkhana In-charge for misappropriation of said seized contrabands articles from the Malkhana of the P.S. and the respondents bring article of charges No. 1 to V against the petitioner and others staffs. During the inquiry, except the petitioner all other police staffs of the said police station were discharged from article of charges levelled against them.

[4] But the respondents as well as Inquiry Officer falsely and illegally gave the punishment to the petitioner withholding 3(three) increments with cumulative effect and after receipt the punishment order the petitioner filed an appeal before the appellate authority challenging

the final punishment order issued by the Disciplinary Authority, but without any hearing the same was rejected without any reason.

[5] Hence the petitioner filed this writ petition before this Court for setting aside the said illegal punishment order as the petitioner is innocent and he is not involved in the said crime.

[6] Mr. Pal, learned counsel appearing for the petitioner has submitted that when the petitioner was posted at O/C of Boudhjungnagar police station, the contraband articles were seized. The petitioner as an O/C of the P.S. was not In-Charge of Malkhana of the seized articles, but the respondents illegally and arbitrarily initiated departmental proceeding against the petitioner. The petitioner was transferred and released from the Boudhjungnagar P.S. on 04/07/2016 from Boudhjungnagar P.S. to Kalamchura P.S. and joined at new place of posting at Kalamchura P.S. vide order UD No. 11432-33/16 dated 02/06/2016 of the higher authority.

[7] But after lapsed of near about one year from the date of transfer of the petitioner the respondents initiated a departmental proceeding against the petitioner and others police staffs of the P.S. vide D.P. No. 02/2017 dated 09/05/2017 and during the period from the date of transfer and date of starting departmental proceeding, the seized contraband articles in the Malkhana of Boudhjungnagar P.S. may be misappropriated in absence of the petitioner by the Malkhana In-charge and others, but at the time of handing over charges, all the seized articles lying in the Malkhana was handed over to his reliever who has taken the charge of O/C of Boudhjungnagar P.S. from the petitioner.

[8] As such, there is no question of misappropriation of seized contraband articles during his duty period at Boudhjungnagar P.S. and the reliever of the petitioner has not raised any question in respect of the seized Malkhana articles when he received the charges from the petitioner as O/C of the P.S. So the petitioner submits that he is innocent and he is not involved in the said article of charges brought against him

illegally and arbitrarily by the respondents in view of harassing him and it is also mentioned that the other charged officers of the said departmental proceeding along with the petitioner were involved in the article of charges by the respondents.

[9] It has been further contended that the inquiry officer illegally and arbitrarily submitted an inquiry report against the petitioner that the article of charges No. 1 to 5 were proved against the petitioner and the article of charge No.V was not proved against the petitioner.

[10] After the receipt of the inquiry report from the Inquiry Officer, the Disciplinary Authority of the petitioner i.e. S.P. (RSV) Dhalai District, Jawahar Nagar issued a provisional punishment order vide no. 952/19 dated 30/05/2019 in connection with Dhalai District D.P. No 01/2019 dated 08/02/2019 (Sepahijala District D.P. No. 02/2019 dated 09/05/2017) drawn up against S.I Prabhat Ch. Sil of District Dhalai and in the said provisional punishment order, the respondent no. 6, Disciplinary Authority proposed to imposed the punishment" withholding 3(three) scale increment with cumulative effect" and the Disciplinary Authority given opportunity to make representation on the penalty imposed upon the petitioner within 30 days from the receipt of this order of provisional punishment order.

[11] After receipt the provisional punishment order dated 30/05/2019, the petitioner submitted representation on 02/07/2019 against the said provisional punishment order to the respondent no.6 and in the said representation, the petitioner stated that the charged framed against the petitioner in article No. I to V are not genuine and fake and he was prejudice and reasonable opportunity was not given him and the inquiry have been vitiated as evidence and their examination and cross examination and the charges were not proved and he prayed that he may be exonerated from the all the charges brought against him for the interest of principle and natural Justice.

[12] The petitioner submitted written brief argument on behalf of defence before the Addl. S.P. Sepahijala dated 11/12/2018 and in the said written argument, the petitioner stated that there are no collaborating witnesses to prove the said false and arbitrarily article of charges against the petitioner. The petitioner also submits that after filing of charge sheet of those NDPS cases, the seized contraband (Phensedyl) were destroyed by the Drug Disposal Committee. But the In-charge of Malkhana namely S.I Makhana Das made his concocted and false evidence against the petitioner after thought. It is mentioned that the seized contraband was not carried by the government vehicle from the P.S. to the Ld. Court. Those were transported by engaged private vehicle, as such there is no question to misappropriate the seized contraband drugs (Phensedyl).

[13] During the departmental proceeding there is so many witnesses given their statements have been recorded by the Inquiry Officer in the Departmental Proceeding against the petitioner and in the statement of witness S.I. (UB) Dilip Sarkar has stated that there is nothing loss of the government money and there is no misappropriated seized contraband articles from the Malkhana of the P.S. and he also stated that, S.I Makhana Das was the Malkhana In-charge. Statement of NK (AB) Safiul Azam in his statement as witness in the departmental proceeding, he state that there is no contrabands items were misappropriated and those seized articles were disposed by the Disposal Committee and he also making videography of the said contrabands items. He also stated that there is no loss from the side of the government.

[14] Mr. Pal, learned counsel has further contended that it reveals from the statement of SI Jahangir Hossain that seized property were in Malkhana and keys were in the custody of SI (UB) Makhan Das, I/C of Malkhana and the said witness stated that there is no adverse witness were made against the petitioner.

[15] Witness SI (UB) Makhan Das who was the Malkhana In-charge and custodian of seized contrabands items and at the time of witness he falsely stated against the petitioner for save himself from the charge levelled against him and the petitioner submits that Malkhana In-charge of said witness Makhana Das may be mis-appropriated the said seized contrabands items from the Malkhana of the P.S. as he was custodian and In-charge of the said Malkhana of the P.S. The respondents also initiated departmental proceeding against the said S.J Makhan Das, in- charge of Milkman, but during the proceeding of the departmental proceeding said witness Makhan Das along with others were discharged from the charge of article levelled against them. But only punishment was given to the petitioner arbitrarily and illegally by the disciplinary authority as there is no witness revealed that the petitioner is involved and guilty in misappropriation of seized contrabands items and false charge of articles were levelled against the petitioner by the respondents.

[16] After submission of reply against the provisional punishment order, the respondent No.6, the Disciplinary Authority passed the final punishment order against the petitioner that punishment is awarded against the petitioner "withholding 3(three) scale increment with cumulative effect" and the petitioner submits that final punishment order is at par with the provisional punishment order issued earlier against the petitioner. But the Disciplinary Authority did not consider the representation of the petitioner against the provisional punishment order and the Disciplinary Authority did not peruse the statement of evidence of the witnesses and while passing the final punishment order he did not apply his judicial mind. So the final punishment order is bad in law and it is not justified as there is no witness in support of article of charge brought against the petitioner by the Disciplinary Authority. So the final punishment order is liable to be set aside.

[17] After receipt of the final punishment order from the respondent No.6, the petitioner submitted an appeal against the final punishment order passed by the respondent no.6 on 15.10.2019 to the

respondent No.7 i.e. Deputy Inspector General of Police, Northern Range, Kumarghat through proper channel for considering the appeal petition of the petitioner and the petitioner also prayed that suspend the execution of the impugned final punishment order and please to acquit the petitioner from all the charges levelled against him falsely. But the respondent no.7 passed the order on the appeal petition dated 15.10.2019 that the appeal petition is rejected and stand by order dated 17.12.2019.

[18] It has been averred that the Disciplinary Authority has brought the charge against the petitioner along with other staffs of Boudhjunnagar P.S. including In-charge of Malkhana of the P.S., S.I. Makhana Das, but during the departmental proceeding except the petitioner all other staffs of the P.S. were discharged from the liability of article of charges brought against them. But the Disciplinary Authority illegally and arbitrarily given punishment of the petitioner that "withholding 3(three) scale increment with cumulative effect of the petitioner and after receipt of the final punishment order from the Disciplinary Authority, the petitioner filed an appeal before the respondent no.7 for set aside/quash the said final punishment order of the petitioner. But the respondent no. 7 Appellate Authority rejected the prayer of the appeal petition of the petitioner without any reasons.

[19] The petitioner submits that without assigning any reasons, the Disciplinary Authority passed the provisional punishment order as well as final punishment order against the petitioner are not tenable in the eye of law, as such the petitioner has challenged the said punishment orders of the Disciplinary Authority against the petitioner before Your Lordship for set aside/quash/cancel the said illegal and arbitrarily punishment order passed against the petitioner and the petitioner is innocent and he is not involved in the said misappropriation of seized contrabands articles of the Boudhjunnagar P.S. while he was O/C of the P.S.

[20] Mr. D. Sarkar, learned counsel appearing for respondent has submitted that SI(UB) Prabhat Chandra Shil, Sepahijala District Police is charged for gross misconduct while working as O.C. Bodhjungnagar P.S. West Tripura had misrepresented the location of storage of seized contraband item in c/w Bodhjungnagar PS Case No 2016BJN 018, dated-20-04-2016, U/s-22(c) of NDPS Act by entering details in the Malkhana register, thereby wrongfully implying that such items were kept in P.S. Malihana, but actual the items were kept in female lockup of Bodhjungnagar PS in plain view of all P.S. staffs and by his action he did not take adequate precautions to ensure that post inventory seals and packing materials on the seized items were not tampered with and thereby revealing gross negligence on his part.

[21] While working as O.C Bodhjungnagar PS, West Tripura had removed contrabands items kept in the PS Malkhana, Bodhjungnagar PS of which he was custodian in official capacity without entering the fact in any official PS records or any information to higher authority as is clearly borne out by *ex-post facto* discovery of such action during verification by State Drug Disposal Committee on 24-11-2016 and on 14-12- 2016 and thereby his act of omission of recording such fact amounts to unbecoming of a Police officer.

[22] SI(UB) Prabhat Chandra Shil, Sepahijala District Police is charged for gross misconduct while working as O.C. Bodhjungnagar PS, West Tripura had propose to recover the expenditure of transportation of seized contraband drug in c/w Bodhjungnagar PS Case No.2016BJN 018, dated 20-04-2016, U/s-22(c) of NDPS Act to the Court by adopting dubious means of sale of seized and inventoried items instead of furnishing bills for the incurred expenditures to the Superintendent of Police for re-imbursement purpose as per appropriate accounting procedures and thereby his action amounts to use of bad judgment in office management and unprofessional conduct.

[23] It has been further contended that the statement of Shri Har Kumar Debbarma, IPS, the then Superintendent of Police (EB) while conducted enquiry, statement of Shri Nirdes Deb, the then Dy. SP (CID), statement of SI (UB) Jahangir Hossain, the then O.C. Bodhjung Nagar P.S. Naik (AB) A. B. Azam, photographer SP (CID) Office corroborated that the articles of charges No.I, II, III & IV framed against the petitioner is well established.

[24] Mr. Sarkar, learned counsel has submitted that ample opportunity was given to the petitioner in his defence to cross examine on each statement. The procedures laid down in relevant rules have been complied with. The charges are serious in nature. There can be a serious aftermath affect on other members of the working police if such activities are encouraged upon and can easily vitiate the working environment. The petitioner has been charged for gross misconduct in while working as O.C. Bodhjungnagar P.S. purposefully removed and misappropriated contraband drug seized by the police station on 20.04.2016 and kept in police station Malkhana of which he was the custodian in his official capacity as the officer in charge of the P.S. and substituted part of the seized material to mislead the State Drug Disposal Committee and other police officers at the time of handing over the charge upon district transfer, thereby revealing misappropriation and thereby showing lack of integrity and devotion to duty on his part.

[25] In view of above submissions made by the learned counsel appearing for the parties and having gone through the material evidence on record, this Court is of the opinion that to decide the matter the evidences and the article of charges need to be discussed once again. For the purpose of reference, the article of charges may be reproduced herein below:

ARTICLE OF CHARGE NO.I

SI (UB) Prabhat Chandra Sil of Unarmed Branch, Sepahijala District Police is charged for gross misconduct in that he, while working as O.C Budhjungnagar PS, West Tripura purposefully removed and

misappropriated contraband drug (band Phensedyl) seized by the PS staff on 20/04/2016 in connection with Bodhjunnagar PS case No. 2016BJN 018, dated 20/04/2016 U/s 22(c) of NDPS Act and kept in PS Malkhana of which he was the custodian in his official capacity as the Officer-in-Charge of the Police Station and substituted part of the seized material to mislead the State Drug Disposal Committee and other Police Officers at the time of handling over of charge upon District transfer, thereby revealing misappropriation and thereby showing lack of integrity and devotion to duty on his party.

ARTICLE OF CHARGE NO.II

St (UB) Prabhat Chandra Sil of Unarmed Branch, Sepahijala District Police is charged for gross misconduct in that he, while working as OC Bodhjunnagar PS, West Tripura had called upon SI(UB) Apu Das, SI(UB) Sitikanta Bardhan & SI(UB) Makhana Das all working under him and proposed that the expenditure for talang seized contraband drugs in connection with case no 2016BJN 018, dated 20/04/2016 U/s 22(c) of NDPS Act to the court for making inventory that was to be made up by seized drug itself by substituting the originals and to which two subordinate staff consented and thereby his actions amount to serious misconduct and abuse of official position through persuasion of his subordinate officers.

ARTICLE OF CHARGE NO III

SI (UB) Prabhat Chandra Sil of Unarmed Branch, Sepahijala District Police is charged for gross misconduct in that he, while working as OC Bodhjunnagar PS, West Tripura had removed contrabands items kept in the PS Malkhana, Bodhjunnagar PS which he was custodian in official capacity without entering the fact in any official PS records or any information to higher authority as is clearly borne out by ex-post facto discovery of such action during verification by State Drug Disposal Committee on 12/4/2016 and 14/12/2016 and thereby his act of omission of recording such fact amounts to unbecoming of a police officer.

ARTICLE OF CHARGE NO.IV

SI (UB) Prabhat Chandra Sil of Unarmed Branch, Sepahijala District Police is charged for gross misconduct in that he, while working as O.C Bodhjunnagar PS, West Tripura had misrepresented the location of storage of seized contraband items inc/w Bodhjunnagar P.S. Case No. 2016BJN 018, dated 20/04/2016 U/s 22(c) of NDPS Act by entering details in the Malkhana register, thereby wrongfully implying that such items were kept in PS Malkhana, but actual the items were kept in female lock up of Bodhjunnagar PS in plain view of all PS staff and by this action he did not take adequate productions to ensure that post inventory seals and packing materials on the seized items were not tampered with and thereby revealing gross negligence in duty on his part.

ARTICLE OF CHARGE NO.V

SI (UB) Prabhat Chandra Sil of Unarmed Branch, Sepahijala District Police is charged for gross misconduct in that he, while working as O.C

Bodhjungnagar PS, West Tripura had propose to recover the expenditure of transportation of seized contraband drug in c/w Bodhjungnagar P.S. Case No. 2016BJN 018, dated 20/04/2016 U/s 22(c) of NDPS Act to the Court by adopting dubious means of sale of seized and inventoried items instead of furnishing bills for the incurred expenditure to the Superintendent of Police for reimbursement purpose as per appropriate accounting procedures and thereby his action amounts to use of bad judgment in office management and unprofessional conduct.”

[26] It reveals from the record the Drug Disposal Committee [DDC, for short] checked each items and found 2100 bottles of Phensedyl were found genuine and the rest seized contraband items not genuine. The DDC after checking the seized items again kept inside the sacks and sealed it and kept inside the Malkhana without disposal as discrepancy was found by the DDC. It also reveals from the statement of Dy. SP Nirdesh Deb, presently posted as SDPO, Shantirbazar that all phensedyl bottles present in 45 jute bags/sacks and found that only 2100 bottles were found to be genuine having single layer of labeling which were of phensedyle and the rest 11,224 bottles were found with having double layer of labeling with phensedyl in the outer layer and with Eskuf in the inner label. So, a general question comes that what about the other bottles i.e. 11,224. This aspect of the case has not been dealt with by the appellate authority.

[27] In the charge No.1 it is not specific that the necessary particulars with regard to the date and time of removing and misappropriating of contraband drug. In charge No.2 it is not containing the necessary particulars with regard to date and time of calling of SI Makhan Das, SI Apu Das and SI Sritikanta Bardhan in the chamber of O/C BNJ police station for proposing them any illegal proposal.

[28] Where is the finding with regard to the change of labels has taken place during the tenure of the petitioner i.e. from April to July. It could even from July to November anytime after his transfer. That has not been discussed. Everything is in police station under his custody all along but, other staffs are also there in the police station so, during what

time according to the respondent he has taken away or has changed the labels of the bottles, what was the enquiry up onto this issue.

[29] SI Makhan Das admitted during enquiry and evidences are there to the effect that the seized contraband items were in his custody being IC PS Malkhana. DDC came to dispose the seized contrabands items while SI Jahangir Hossen was OC BJN Police station i.e. on 24.11.2016 and 14.12.2016. In cross it was asked that is there any loss from the side of the government regarding changing of the label of the seized items and to this count the answer was no loss from the side of the government. But, according to this Court the loss is to the society when thousands of bottles of narcotics are made available in the open market unauthorizedly, what steps the concerned authority has taken to recovery of all those contraband items.

[30] It is very much surprising that may be in his tenure the labeling of the bottles were changed but, the petitioner is not the only person working in that police station. So many other staffs were also present, whole station is under electronic surveillance and to this count there was no finding from the appellate authority. Who has actually committed the crime or changed the labels and what happened to the other bottles which were changed and not recovered. As the SDPO (NCC) approved to store the seized contraband items in female lockup due to scarcity of space in the original PS Malkhana. The Addl. SP (W) and SP (W) also visited PS and noticed where seized contraband items are kept. So question of misrepresentation of location of storage does not arise.

[31] Accordingly, the writ petition is disposed of by setting aside the order passed in appeal as the matter remanded back to the appellate authority since the order in appeal is a non-speaking and unreasoned order and is not dealt with the contention of the petitioner. This Court after going through the matter in its entirety expresses concern; the manner in which the respondents functioning in this case and frames the

following issues that are to be addressed by the appellate authority after going through the records while would pass the order on priority basis, thus:

- (1) It is not specific that the necessary particulars with regard to the date and time of removing and misappropriating of contraband drug.
- (2) In charge No.2 it is not containing the necessary particulars with regard to date and time of calling of SI Makhan Das, SI Apu Das and SI Sritikanta Bardhan in the chamber of O/C BNJ police station for proposing them any illegal proposal.
- (3) Where is the finding with regard to the change of labels has taken place during the tenure of the petitioner i.e. from April to July. It could even from July to November anytime after his transfer.
- (4) Everything is in police station under his custody all along but, other staffs are also there in the police station so, during what time according to the respondent he has taken away or has changed the labels of the bottles, what was the enquiry onto this issue.
- (5) The loss is to the society when thousands of bottles of narcotics are made available in the open market unauthorizedly, what steps the concerned authority has taken to recovery of all those contraband items.
- (6) What was the reason that after lapse of near about one year from the date of transfer of the petitioner the respondents initiated a departmental proceeding against the petitioner?

[32] In view of the above observations/issues, the present petition stands disposed of by remitting back the matter to the appellate authority for fresh adjudication.

In the light of the above, the instant writ petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A.Ghosh

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