

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 751 of 2023

Shri Nityananda Sarkar

---Petitioner(s)

Versus

The State of Tripura and 5 Ors.

---Respondent(s)

For Petitioner(s)	:	Mr. S. Lodh, Advocate. Mr. S. Majumder, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

19.03.2024

This is petition under Article 226 of the Constitution of India for seeking the 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, calling for the records, lying with them, and to quash/set aside the impugned Order No.32081-86/G.II(1059)-Police/12 dated 30.07.2016 and letter No.10,893/G.II(1059)-Police/09 dated 26.03.2018.*
- (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 for mandating/directing the respondents to revoke/rescind impugned Order No.32081-86/G.II(1059)-Police/12 dated 30.07.2016 and letter No.10,863/G.II(1059)-Police/09 dated 26.03.2018 forthwith and give all financial benefits, which was not given to the petitioner in furtherance of impugned Order No.32081-86/G.II(1059)-Police/12 dated 30.07.2016 and letter No.10,893/G.II(1059)-Police/09 dated 26.03.2018.*
- (iii) *Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Prohibition and/or in the nature thereof for prohibiting/injuncting the respondents to take any action against the petitioner in furtherance of the impugned order No.32081-86/G.II(1059)-Police/12 dated 30.07.2016 and letter No.10,893/G.II(1059)-Police/09 dated 26.03.2018.*
- (iv) *After hearing the parties, be pleased to make the Rules absolute in terms of Prayer i. ii & iii. above.*
- (v) *Call for the records, appertaining to this petition;*
- (vi) *Costs of and incidental to this proceeding;*
- (vii) *Any other relief(s) as this Hon'ble High Court may deem fit and proper.*

[2] It is the case of the petitioner that by issuing Memorandum dated 11.07.2012, the respondent No.5 proposed to initiate Disciplinary proceeding against the

petitioner on four charges, and asked to submit written statement. On submission of written statement, the respondent No.5, vide Order dated 02.01.2013, ordered that an inquiry would be held against the petitioner. On receipt of the Enquiry Report, the respondent No.5, vide order dated 15.10.2013, held that Charge Nos.I, II & III framed against the petitioner have been well established and Charge No.IV has not been proved beyond reasonable doubt, and proposed punishment of withholding of 03 (three) scale increments with cumulative effect. The respondent No.5 also asked the petitioner to submit representation against the proposed punishment within a period of 30 days. In furtherance thereof, the petitioner submitted his representation, and on receipt of the same, the respondent No.4, vide Memorandum No.184-88/DIGP(N/R)/PS/ KGT/15 dated 04.03.2015, imposed punishment of withholding of stopping 03 (Three) scale increment with cumulative effect, and given an opportunity for personal hearing.

[3] After hearing the petitioner, the respondent No.4 vide Order No.213-17/DIGP(N/R)/PS/KGT/15 dated 17.03.2015 passed final order modifying the punishment from withholding of stopping 03 (three) scale increment with cumulative effect to withholding of stopping 03 (Three) scale increment without cumulative effect.

[4] Thereafter, the petitioner preferred statutory appeal, challenging the Final Order dated 17.03.2015. The respondent No.2 rejected the appeal preferred by the petitioner, and without issuing any Notice, enhanced the punishment from withholding of stopping 03 (Three) scale increment without cumulative effect to withholding of stopping 03 (Three) scale increment with cumulative effect.

[5] Thereafter, the petitioner filed a review petition on 07.11.2017, but till date nothing was communicated, and hence, he has filed the writ petition being WP(C) 656 of 2020 and the same was dismissed by the order dated 17.12.2020. Challenging the said order dated 17.12.2020, the petitioner filed writ appeal and the same was registered as W.A. 84 of 2021. On 12.01.2023, the writ appeal was disposed of directing the

respondents to decide the review application filed by the petitioner on 18.11.2017 within a time frame, but when the respondents did not make any communication to the petitioner, he vide his letter dated 17.07.2023 supplied copy of the judgment passed in the writ appeal to the respondents. After receipt of the letter dated 17.07.2023, the respondents vide forwarding letter dated 18.07.2023 forwarded the letter dated 26.03.2018 whereby they intimated that the petition for review dated 14.11.2017 has no merit and the same was intimated by the respondents after 5 years 4 months. Without issuing any show- cause notice and without following due procedure the respondent no. 2, by the impugned order dated 30.07.2016 enhanced the punishment and when the same was pointed out before the authority in the review application dated 18.11.2017, the respondents did not consider the same and by letter dated 26.03.2018 the respondents intimated that the petition for review dated 14.11.2017 has no merit.

[6] Being aggrieved with the act of the respondents, the instant writ petition is filed for seeking reliefs.

[7] Heard learned counsel for the parties.

[8] To support his contention, Mr. Sankar Lodh has placed on record a judgment dated 29.05.2014 passed by this Court in *Ashok Sakar vs State of Tripura and Ors.* which has been perused and kept on record.

[9] By way of counter affidavit, it is contended by the respondents that respondents that the punishment order by the Head of the Department stands and it cannot be modified by another Disciplinary Authority/Appellate Authority holding analogous Post. Non-communication of this order does not change the facts or the principles on while the order is passed.

[10] It is case where four Articles of charges were drawn up against the petitioner for his misconduct while in service. It is apparent from the record that the petitioner has given a representation before the respondents against provisional punishment order of

stopping of increment with cumulative effect. By the impugned order dated 30.07.2016, the punishment was modified to “withholding of 03(three) increments with Cumulative effect.” The punishment given by the respondents to the petitioner for his misconduct cannot be seen leniently. Though by the final order, the respondents have found the misconduct of the petitioner as a grave nature. The appellate authority while dismissing the appeal either must confirm the original order or allow the appeal, but they modified the original order further passing punitive order which is beyond and the scope of appeal. Hence, it is liable to be set aside.

[11] Having perused the record and also having considered the rival submissions as advanced by the learned counsel for the parties, this court confirms the original impugned dated 17.03.2015 passed by the original authority “withholding of 03(three) increments without cumulative effect”. Hence, the impugned orders dated 30.07.2016 & 07.11.2017 passed by appellate authority/review authority stand set aside.

[12] With the above observation and direction, this present writ petition stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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