

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.115 of 2023

1. The State of Tripura, represented by the Commissioner & Secretary, Rural Development Department, Government of Tripura, having his office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
2. The Commissioner & Secretary, Rural Development Department, Government of Tripura, having its office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura, Pin-799006.
3. The Secretary, Rural Development Department, Government of Tripura, having his office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura, Pin-799006.
..... Appellant(s)

V E R S U S

1. Sri Bikash Bhowmik, son of Sri Bijoy Krishna Bhowmik, resident of village – Opposite road of Ramthakur Ashram, Banamalipur, P.O-Agartala, PS-East Agartala, Sub-Divison-Agarala, District-West Tripura, Pin-799001.
..... Respondent(s)
2. The Tripura Public Service Commission, represented by its Secretary, having its office at TPSC Bhawan, PO-Agartala, PS-West Agartala, Agartala, District-West Tripura, PIN-799001.
3. The Secretary, Tripura Public Service Commission, having his office at TPSC Bhawan, PO-Agartala, PS-West Agartala, Agartala, District-West Tripura, Pin-799001.
..... Proforma Respondent(s)

For Appellant(s) : Mr. S. M. Chakraborty, Advocate General,
Mr. Kohinoor N. Bhattacharyya, G.A.,
Mr. Dipankar Sarma, Addl. G.A.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Abir Baran, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. D. PURKAYASTHA**

Date of hearing and judgment : **4th March, 2025.**

Whether fit for reporting: **Yes**

Heard Mr. S. M. Chakraborty, learned Advocate General assisted by Mr. Kohinoor N. Bhattacharyya, learned Government Advocate and Mr. Dipankar Sarma, learned Additional Government Advocate for the appellants-State. Also heard Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel for the writ petitioner/respondents.

2. The learned writ Court set aside the order of dismissal from service dated 27.12.2022 (Annexure-15) and directed reinstatement of the writ petitioner with all consequential benefits. However, it also observed that considering the *prima facie* allegations of disproportionate assets against the writ petitioner, respondents were directed not to post him at his original place of posting but elsewhere in the same rank. Being aggrieved, the appellant-State is before us. In order to deal with the challenge, we propose to refer to the relevant dates and materials relating to the departmental proceeding which ended up in his dismissal from service.

3. The writ petitioner, a Junior Engineer, under the office of the District Magistrate & Collector, West Tripura, Agartala, was proceeded against under two articles of charges of grave misconduct vide memorandum dated 28.03.2015 (Annexure-2) in terms of the Rule 14 of the CCS (CC&A) Rules, 1965. The articles of charges are as under:

ARTICLE I

Shri Bikash Bhowmik, Junior Engineer of Dukli R.D Block (now under suspension) while functioning as J.E. in O/o the B.D.O. Mohanpur R.D. block had accumulated amount disproportionate to his income for which the Hon'ble Lokayukta, Tripura had, after making a thorough investigation through evidence both the oral and documentary, heard the complainant Smti Srabani Dus and the opposite party Shri Bikash Bhowmik in person against Case No. C.C. No.2 (LOK)/2012 and had been constrained to hold that the

allegations made in the complaint are substantiated. Such act of accumulation of huge amount disproportionate to income by Shri Bhowmik, J.E. (RD) is in violation of TCS Conduct Rule. The details are set-forth in Annexure-II.

ARTICLE II

Shri Bikash Bhowmik, J.E. (now under suspension), having regard to the facts & circumstances, had been alleged by the Hon'ble Lokayukta, Tripura against Case No. C.C. No.2(LOK)/2012 for committing offence under the prevention of corruption Act 1988. The act of committing offence by Shri Bhowmik, J.E. (RD) is in violation of TCS Conduct Rule. The details are set-forth in Annexure-II.

4. The statement of imputation of misconduct in support of each article of charges alleged *inter alia* as follows:

ARTICLE – I

Shri Bikash Bhowmik, Junior Engineer of Dukli R.D Block (now under suspension) while functioning as J.E. in O/o the B.D.O. Mohanpur R.D. block had accumulated amount disproportionate to his income for which the Hon'ble Lokayukta, Tripura had, after making a thorough investigation through evidence both the oral and documentary, heard the complainant Smti Srabani Das and the opposite party Shri Bikash Bhowmik in person against Case No. C.C. No.2 (LOK)/2012 and had been constrained to hold that the allegations made in the complaint are substantiated. Such act of accumulation of huge amount disproportionate to income by Shri Bhowmik, JE (RD) is in violation of TCS Conduct Rule.

According to Judgement made by the Hon'ble Lokayukta, Tripura vide Case No. C.C.No.2 (LOK)/2012, Shri Bikash Bhowmik, JE (now under suspension) had created assets during the period 1998 to March, 2012 for a sum of Rs.74,26,472/- whereas the concerned JE had a total income amounting to Rs.22,13,279/- from his salary during the period from 1998 to March 2012.

ARTICLE-II

Shri Bikash Bhowmik, J.E. (now under suspension), having regard to the facts & circumstances, had been alleged by the Hon'ble Lokayukta, Tripura against Case No.C.C. No.2(LOK)2012 for committing offence under the prevention of corruption Act 1988. The act of committing offence by Shri Bhowmik, J.E. (RD) is in violation of TCS Conduct Rule.

The Judgement passed by the Hon'ble Lokayukta, Tripura shows that Shri Bhowmik, JE(RD) had created assets during the period 1988 to March 2012 for an amount of Rs.74.26,472/- whereas he earned from salary Rs.22,13,279/- only during the period. It has been determined in the judgement that out of the aforesaid sum earned, the minimum amount for Rs.8,85,312/- can be deducted towards family expenses and therefore, his total asset should be Rs.13,27,967/- as 60% of his total income. Also it has been noted in the Judgement that the sum of Rs.74,26,472/- is vastly disproportionate to his known source of income and he committed an

offence under Section 5(1)(e) which is equivalent to Section 13(1)(e) of the Prevention of Corruption Act, 1988.

The Hon'ble Lokayukta, Tripura, through its judgement, has also recommended actions to be taken up against the concerned J.E. According to Judgement made by the Hon'ble Lokayukta, Tripura vide Case No.C.C. No.2 (LOK)/2012, an FIR against Shri Bikash Bhowmik, J.E, R.D (now under suspension) has been lodged on 23.08.2014 at Sidhai P.S. by the BDO, Mohanpur R.D Block vide letter No. F. 50(1) /BDO /MNP /LOKAYUKTA /2014/4428-29 dated 23.08.2014 and the concerned J.E., RD had been suspended vide order No.F.7(10)-DM/W/ESTT/Lokayukta/2014/7556-60 dated 02.09.2014.

5. The following list of documents was proposed to be adduced to sustain the charges:

- a. Copy of the Judgement passed by the Hon'ble Lokayukta, Tripura against Case No.C.C. No.2 (LOK)/2012 (ANNEXURE-1).
- b. Copy of letter vide No. F. 50(1)/ BDO/ MNP/ LOKAYUKTA/ 2014/4428-29 dated 23.08.2014 of the B.D.O, Mohanpur R.D. Block through which FIR was lodged (ANNEXURE-2).
- c. Copy of order meant for suspension of Shri Bikash Bhowmik, J.E. (RD) vide No.F.7(10)-DM/W/ESTT/Lokayukta/2014/7556-60 dated 02.09.2014 (ANNEXURE-3).

6. The following witnesses were proposed to be adduced to sustain the charges:

- a) Shri S. Chakraborty, Block Development Officer, Mohanpur R.D. Block, West Tripura.
- b) Shri S. K. Das, Addl. Director, S.C. Welfare Department.
- c) Shri Narayan Das.
- d) Shri Sanjib Choudhury.
- e) Shri Anupam Chakraborty.
- f) Shri Abhijit Sankar Das.
- g) Shri Niren Baran Paul.

7. The inquiry officer exonerated the writ petitioner of the charges vide his report dated 24.06.2021 (Annexure-4). The findings of the inquiry officer on both the article of charges are as under:

Point No.1.

The Accused Officer namely, Shri Bikash Bhowmik, Junior Engineer Gr. II had rendered services in the office of BDO, Salema RD Block, O/o the Executive Engineer, RD Ambassa Division; O/o BDO, Mohanpur RD Block and O/o BDO, Dukli RD Block since his

joining in Government service on 9th September, 1998 to till date. There are no any specific complaints/allegations submitted by the concerned Executive Engineer, RD Ambassa Division and concerned BDOs regarding misappropriation/defalcation of huge amount of Govt. funds in respect of those works which were entrusted to him as Implementing Officer while serving under their control & supervision.

The Presenting Officer and the Prosecution Witnesses did not exhibit any documents such as Salary Statement, Bank Statements, Bank Pass Books, Fixed Deposit Certificates, insurance Policies, Registration Certificate of vehicles, land documents etc. issued by the competent authority and duly certified by them in respect of the Accused Officer to prove that the Accused Officer was having disproportionate assets worth Rs.74,26,472/-only. Due to lack of sufficient and valid documentary evidences, the Prosecution side had failed to prove that the allegations brought against the AO by the Disciplinary Authority had been sustained/established.

The Disciplinary Authority had not included the name of the complainant namely, Smt. Srabani Das, W/o Shri Subhra Sankar Laskar, J.E. Gr. I in the list of Prosecution Witnesses in Annexure-IV of the Charge Sheet. It may be noted here that on the basis of a complaint lodged by Smt. Srabani Das with the Lokayukta regarding possession of disproportionate assets by the Accused Officer, the Hon'ble Lokayukta had passed the judgment & order on 24.01.2013 in Case No. CC No. 2 (LOK)/2012 and recommended for taking necessary action against Shri Bikash Bhowmik, JE Gr-I, regarding possession of disproportionate assets worth Rs.74,26,472/-only.

As such, there was no scope on the part of the Inquiring Authority to record the statement of the complainant namely, Smt. Srabani Das and to examine and cross-examine the complainant on what basis/grounds she had lodged her complaint with the Hon'ble Lokayukta against the Accused Officer.

The Accused Officer in his written brief of argument had also pointed out that the name of the complainant had not been included in the list of Prosecution Witnesses and as a result there was so scope to examine her in order to find out the actual truth behind such complaint against him.

In view of the facts stated above, I am of the considered opinion that the Accused Officer namely, Shri Bikash Bhowmik, JE Gr.1 had not committed any gross misconduct or misbehavior by accumulating disproportionate assets worth Rs.74,26,472/- only which attracts the Tripura Civil Services (Conduct) Rules, 1988. As such, the decision for Point No.I goes in favour of the Defence side and against the Prosecution side.

Point No. 2.

Since the decision for the Point No.I goes in favour of the Defence side i.e. AO and against the Prosecution side, the decision for Point No. 2 also goes in favour of the Defence side and against the Prosecution side. Thus, the Accused Officer had not violated Rule 3 of the Tripura Civil Services (Conduct) Rules 1988.

Viewed in the above perspective and based on materials and evidences of both the parties and their written brief of arguments, I find and hold that the Prosecution had failed to establish /sustain the Article of Charges brought against the AO. Therefore, the charges brought / framed against the Accused officer namely, Shri Bikash Bhowmik, Junior Engineer Gr.1 (under suspension), O/o the Block Development Officer, Dukli RD Block is not sustained / established and accordingly decided as found not guilty.

8. The disciplinary authority issued a disagreement note on 29.04.2022 (Annexure-5) with the observation that the inquiry officer had failed to appreciate all the terms and take judicious decision. The disciplinary proceedings are based on preponderance of probability and not only on documentary evidence. The act of the AO, Sri Bikash Bhowmik, Junior Engineer indicates that his integrity is under doubt.

9. The writ petitioner submitted his representation to the disagreement note through proper channel on 05.7.2022 (Annexure-7) *inter alia* taking a number of pleas that the charges have not been established in the

departmental proceeding as no proof of disproportionate assets have been adduced. The complainant, Smt. Sarbani Das was not even cited as a witness of the prosecution. The inquiry was undertaken on false and fake allegations. The burden of proof is always on the prosecution. The disciplinary authority did not accept the reply of the charged officer and sought concurrence of the Tripura Public Service Commission (TPSC, for short) on the proposed penalty of dismissal from service vide order dated 09.09.2022 (Annexure-8). The TPSC concurred with the proposal of the Principal Secretary, Rural Development Department, Government of Tripura. Thereafter, the penalty of dismissal from service was imposed vide order dated 15.10.2022 (Annexure-10) by the Principal Secretary, Government of Tripura (Disciplinary Authority).

This penalty was set aside vide judgment dated 22.11.2022 passed by the writ Court in WPC No.987 of 2022 (Annexure11). The Disciplinary Authority was directed to pass a fresh order.

10. The writ petitioner again made a representation to the disciplinary authority on 12.12.2022 (Annexure-13) and requested to drop the departmental proceeding. However, the disciplinary authority again passed an order of dismissal from service on 27.12.2022 (Annexure-15) *inter alia* holding as under:

"WHEREAS, in pursuance with the order passed by the Hon'ble High Court of Tripura, Shri Bikash Bhowmik. Junior Engineer Gr-I given an opportunity to present physically in hearing before the Disciplinary Authority on 09/12/2022 at 11:00 AM to explain the factual status on charges framed against him in Article-I, "Shri Bikash Bhowmik, Junior Engineer Gr-I while functioning as Junior Engineer attached to the O/o the BDO, Mohanpur RD Block has accumulated amount disproportionate to his income.....

Such act of accumulation of huge amount disproportionate to income by Shri Bikash Bhowmik, Junior Engineer Gr-I..... had created assets during the period to March, 2012 for a sum of Rs.74,26,472/- whereas the concerned JE has a total income amounting to Rs.22,13,279/- from his salary during the period from 1998 to March, 2012” and Article-II:- "Shri Bikash Bhowmik, Junior Engineer Gr-I having regard to the facts & circumstances had been alleged..... for committing offence under the prevention of corruption Act, 1998. The act of committing offence by Shri Bikash Bhowmik, Junior Engineer Gr-I is in violation of TCS Conduct Rule..... Shri Bikash Bhowmik, Junior Engineer Gr-I has created assets during the period 1998 to March, 2012 for an amount of Rs.74,26,472/-, whereas he earned from salary Rs.22,13,279/ only during the period..... out of the aforesaid sum earned, the minimum amount for Rs.8,85,312/- can be deducted towards family expenses and therefore, his total asset should be Rs.13,27,967/- as 60% of his total income. Also, it has been noted in the Judgment that the sum of Rs.74,26,472/- is vastly disproportionate to his known source of income and he committed an offence under Section 5(1)(c) which is equivalent to Section 13(1)(e) of the Prevention Corruption Act, 1988.....”

AND

WHEREAS, Shri Bikash Bhowmik, Junior Engineer Gr-I (Accused Officer) has submitted his written reply on 12/12/2022:

AND

WHEREAS, a time petition was filed and in response the Hon’ble High Court of Tripura considered the petition on 19/12/2022 with the following remarks "Direct the petitioner-respondent, Sri Bikash Bhowmik to submit representation within 7(seven) days from today. After receipt of the representation, if any, the respondent-petitioner will dispose of the representation of the petitioner-respondent within 3 (three) weeks thereafter”

AND

WHEREAS, the factual status on the reply of the Accused Officer submitted on 12/12/2022:-

The Accused Office (AO) has denied all charges framed against him and pleaded that he has not accumulated any asset beyond his known source of income. AO has also referred the findings of the Inquiry Authority which couldn't sustained/established the charges framed against the Accused Officer. He also alleged that the principle of natural justice was not followed in his case as he was not served with the concurrence advice of the TPSC to the disagreement proposal of Disciplinary Authority.

AND

WHEREAS, the salary statement of Shri Bhowmik (AO) reflects that his total income from salary is Rs.22,56,475/- during the period from 1998 to March 2012. But after assessing all relevant documents such as bank statements, post office deposits, insurance and taking into consideration rough analysis of his immovable and movable properties, it is evident that Shri Bhowmik (AO) has accumulated assets beyond his known source of income, which has been enumerated in Article-I and II of charge-sheet

NOW, THEREFORE, after giving the Accused Office an opportunity of being heard to establish the principle of natural justice and carefully analysing the written reply of the Accused Officer along with all relevant documents such as his bank statements, assessment of building plan by PWD (R&B) and other statements/documents in connection with the immovable and movable property of Accused Officer, it becomes established fact beyond doubt that the Accused Officer has accumulated assets beyond his known sources of income during the period from 1998 to March 2012.

Since Shri Bhowmik holding a public office of Junior Engineer Gr-I and any kind of such allegation of disproportionate of assets have far reaching consequences in general public at large and malign the public offices in general, there is no other option but to impose major penalty for discouraging such action and to imbibe a sense of morality among the public servant, who are doing their duty diligently and sincerely.

In view of the above, to instill confidence in the public service. I have independently applied my analytical mind, do hereby impose a major penalty under Rule-11 (ix) of CCS (CC&A) Rules 1965 i.e. "Dismissal from service which shall ordinarily be a disqualification for future employment" upon Shri Bikash Bhowmik, Junior Engineer Gr-I (Accused Officer)."

11. The writ petitioner, being aggrieved, has approached the learned writ Court in WP(C) No.96 of 2023. By the impugned judgment dated 19.07.2023, the order of penalty of dismissal from service has been set aside with a direction to reinstate the writ petitioner with all consequential benefits.

The operative part of the impugned judgment is also extracted hereunder:

“6. It is evident from the record that though an allegation has been raised that the petitioner has accumulated unaccounted wealth disproportionate to his income, but, the count of those wealth has not been given or pinpointed as to where the petitioner has accumulated it. No bank statements or property has been mentioned by the respondent authorities. Further, the respondents have not given proper reasons and passed a detailed order while imposing punishment on the petitioner herein. Even in the A.R. Srinivasan(supra), the Full Bench of Hon'ble Apex Court stated that the authorities have to pass a detailed order while imposing punishment in a Disciplinary proceeding, but the same has not been followed in the case at hand. The inquiry report since not accepted no reasons to is given indicating as to what portion of the report is not accepted. It is against Rule 15 of CCS CCA Rules.

7. In view of the above reasons, the present writ petition is allowed and the impugned Order is set aside. The petitioner is reinstated into his service with all consequential benefits. However, this Court has taken into consideration the prima facie allegations of disproportionate assets against the petitioner herein and directs the respondents that while reinstating the petitioner to his service, he

should not be posted to the original place of posting instead the petitioner should be posted elsewhere in the same rank.

8. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.”

12. On behalf of the appellant-State, the following submissions have been made:

(a) The Constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the Hon'ble Court may not exercise its power of judicial review. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

(b) The power of judicial review, in the matters of disciplinary inquiries, exercised by the departmental/ appellate authorities, discharged by Constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority.

(c) The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of

punishment. He has referred to the decisions of the Apex Court in the case of (i) ***High Court of Judicature at Bombay Versus Shashikant S. Patil and another*** reported in ***(2000) 1 SCC 416***; (ii) ***B.C. Chaturvedi Versus Union of India and others*** reported in ***(1995) 6 SCC 749***; (iii) ***Pravin Kumar Versus Union of India and others*** reported in ***(2020) 9 SCC 471***; (iv) ***State Bank of Bikaner and Jaipur Versus Nemi Chand Nalwaya*** reported in ***AIR 2011 SC 1931***.

(d) That the writ petitioner had alternative remedy available for preferring appeal before the Appellate Authority challenging the penalty order passed by the Disciplinary Authority (Secretary, RD Department). In view of notification vide no. F.5(1)-GA(AR)/2002/P-II/113, dated 11-01-2019 issued by the GA(AR) Department, Govt. of Tripura, the Appellate Authority is Chief Secretary, Govt. of Tripura for the present case of the writ petitioner. But the petitioner did not avail the route of alternative remedy for filing appeal as per Rule -23 of CCS(CCA) Rules, 1965 and instead the petitioner filed the writ petition directly against the penalty order issued by the Disciplinary Authority. Therefore, the writ petition is liable to be dismissed as the writ court should not exercise the power of judicial review under Article 226 of the Constitution of India as there is efficacious alternative remedy was available but not availed of by the writ petitioner.

13. On behalf of the writ petitioner/respondent the following submissions have been made:

(a) Even though, in the Articles of Charge, seven witnesses were cited as Prosecution Witnesses, but only three witnesses, namely, Sri Swapan Kumar Das, Senior Deputy Magistrate (Retired), Sri Sandeep Chakraborty, SDM, Kumarghat and Sri Narayan Das were examined (at Pages-70 to 71 of the Paper Book). Curiously, the complainant, Smt. Sarbani Das was not cited as a Prosecution Witness.

(b) PW-1 Sri Swapan Kumar Das, Senior Deputy Magistrate (Retired) stated that he does not know the writ petitioner, nor was he aware of the allegations levelled against him.

(c) PW-2 Sri Sandeep Chakraborty stated that he does not know as to whether the writ petitioner had acquired disproportionate assets, and without verifying the actual fact, he had lodged the complaint against the petitioner, under the direction of the superior officers.

(d) PW-3 Sri Narayan Das also stated that he does not know the petitioner, nor was he aware of the Charges levelled against him.

(e) Even though, in the List of Documents, as contained in the Articles of Charge, three documents were mentioned, but none

of the said three documents were exhibited (Page-72 of the Paper Book).

(f) Even the Salary Statement, Bank Statements, Bank Pass Books, Fixed Deposit Certificates, Insurance Policies, Registration Certificates of the vehicles of the writ petitioner was not entered into the List of Documents (Page-54 of the Paper Book), nor the said Documents were exhibited (Page 74 of the Paper Book).

(g) It is most humbly respectfully submitted that in the absence of proof of the said documents, and on the teeth of the depositions of the said witnesses, by no stretch of imagination, a case of disproportionate assets can be made out.

14. Mr. Somik Deb, learned senior counsel for the writ petitioner/respondent submits that the departmental proceeding has been initiated by the District Magistrate and Collector, West Tripura vide memorandum dated 28.03.2015 (Annexure-2) against the writ petitioner without prior approval of the concerned minister. The impugned order of punishment dated 27.12.2022 (Annexure-15) has been passed by the Principal Secretary, Rural Development Department, Government of Tripura also without prior approval of the concerned minister. Therefore, initiation of the proceedings and its culmination by the order of dismissal both suffer from absence of approval of the competent authority. He has referred to the decisions of the Apex Court in the case of (i) ***Union of India and others***

Versus B.V. Gopinath rendered in ***(2014) 1 SCC 351***; (ii) ***S.P. Malhotra Versus Punjab National Bank and others*** Reported in ***(2013) 7 SCC 251***.

The order of disagreement dated 29.04.2022 (Annexure-5) and the order of punishment dated 27.12.2022 (Annexure-15) does not refer to any evidence collected during course of the inquiry and the tentative reasons for his disagreement with the findings of the inquiry authority as mandated under Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The concurrence by the TPSC does not meet the sufficient compliance of the requirements of Rule 15(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Article 320(3)(c) of the Constitution of India. The impugned order of punishment is also unsustainable in law as it fails to record reasons to support the major penalty of dismissal from service. Learned senior counsel for the writ petitioner/respondent has referred to Article 166 of the Constitution of India and the Rules of Executive Business of the Government of the State of Tripura, 1972 (Business Rule, for short) in particular Rules 30A and 30B which relegate the power upon the competent authority to initiate disciplinary proceedings and to impose penalty upon any officers of the State Government. It is the case of the writ petitioner that it is the minister of the concerned department who was the competent authority for initiation of the departmental proceedings. Reliance is also placed upon the office memorandum dated 16.04.1969 issued by Ministry of Home Affairs, Government of India. He submits that there is nothing on record to show that any point of time, the approval of the concerned Minister, Tripura was taken,

either at the time of issuance of the initial Order of drawing of the article of charges or at the subsequent stages.

15. Learned senior counsel for the writ petitioner/respondent also submits that the order of penalty of dismissal from service is not sustainable in law. The impugned judgment, therefore, does not require any interference. There is absolutely no material on record of the inquiry proceedings to justify any findings of acquisition of disproportionate assets by the writ petitioner while serving as a junior engineer at the relevant point of time. Merely on the basis of the recommendation of the learned Lokayukta, the penalty of dismissal cannot be sustained as none of the ingredients to support the charge of acquisition of disproportionate assets have been laid before the inquiry officer, i.e. such as the gross salary of the writ petitioner earned during the subject period from the known sources. None of the details of the assets of the writ petitioner have been placed during the inquiry proceeding to substantiate the charges that these were acquired beyond his known sources of income. The inquiry officer has in categorical terms rendered findings that the presenting officer and the prosecution witnesses did not exhibit any documents such as salary statements, bank statements, bank pass books, fixed deposit certificates, insurance policies, registration certificates of the vehicles, land documents etc. issued by the competent authority and duly certified by them in respect of the accused officer to prove that he was having disproportionate assets worth Rs.74,26,472/- only. The three witnesses out of seven who appeared during inquiry proceeding completely denied any knowledge of such acquisition of property by the writ petitioner. In the

absence of any tangible proof, the learned inquiry officer rightly exonerated the writ petitioner. He submits that even in a departmental proceeding, if the charges are serious and quasi-criminal in nature, the standard of proof should be more stringent as it reflects on the integrity of the person and may also lead to criminal prosecution. The prosecution has miserably failed to establish any of the charges of such serious nature of acquisition of disproportionate assets against the petitioner. Therefore, the learned writ Court has rightly set aside the impugned judgment.

16. We have considered the submissions of the learned counsel for the parties and also taken note of the relevant materials placed from record. During course of the proceedings on the previous date, taking note of the plea raised by the writ petitioner and the State in that regard, the Secretary, Rural Development Department and the District magistrate & Collector, West Tripura were asked to appear with the relevant records of the departmental proceedings in order to properly assist the Court. The officers, namely, Sri Abhishek Singh, Secretary, RD Department, Government of Tripura, and Dr. Vishal Kumar, DM & Collector, West Tripura, are present. The Secretary, RD Department, Government of Tripura, has not disputed that the order of penalty was passed without approval of the concerned minister. It is also pointed out that when the departmental proceedings were initiated vide memorandum dated 28.03.2015, the writ petitioner was not a gazetted officer. Such proceedings were initiated by the District Magistrate & Collector, West Tripura. It is also pointed out that at the stage of issuance of the disagreement note, the concurrence of the Hon'ble Minister was taken. The Rules of

Executive Business framed under Article 166 of the Constitution of India delegate the powers of disciplinary authority for different cadres of the employees of the State Government. Absence of approval of the competent authority before issuance of the order of penalty of dismissal from service in the case of a gazetted officer which the petitioner enjoyed at the time of the passing of the dismissal order, therefore is a legal infirmity which goes to the root of the matter. [See: *Union of India & others vrs. Paul George* reported in (2014) 1 SCC 351, paragraphs-40, 41 & 52]

17. Apart from that, on scrutiny of the relevant records relating to the departmental proceeding, it transpires that none of the three prosecution witnesses, out of seven, did support the charge. No documentary evidence such as salary statement, bank statements, bank pass books, fixed deposit certificates, insurance policies, registration certificate of vehicles, land documents etc. in respect of the writ petitioner were evidenced which could show his total income during the subject period and the assets to the tune of Rs.74,26,472/- alleged to be acquired disproportionate to his known sources of income. In the wake of such lack of material evidence, the inquiry officer exonerated the writ petitioner from the charges. The disagreement note issued by the disciplinary authority thereafter does not reflect any grounds for his tentative findings differing with the report of the inquiry officer except what has been referred to hereinabove. Though the report of the Lokayukta was listed as a document under the memorandum of charges but none of the three witnesses adduced it during the inquiry proceedings.

18. Sri Narayan Das, PW-3 in his deposition stated that he did not recall whether he had appeared before the Lokayukta for deposition/ giving evidence in relation to case No. CC No.2(LAW)/2012 (Smt. Shrabani Das Versus Bikash Bhowmik).

Sri Sandip Chakraborty, PW-2 in his deposition stated that as per the judgment and order passed by the Lokayukta, he came to know that the total income from the salary in respect of the AO during the period from 1998 to March, 2012 was Rs.22,13,279/- only. However, he has also stated that he had not received any documents relating to the monthly salary of the AO for the period from 1998 to March, 2012 from DM's office, West Tripura reflecting his pay and allowances and deductions etc. showing the total salary income of Rs.22,13,279/- for the aforesaid period. He had lodged the FIR based on the instructions given to him by the higher authorities. He also could not recall whether he had issued work orders to the AO for implementation of various schemes under MGNREGA, BADP and Housing etc. when he was posted as BDO, Mohanpur RD Block. In his cross-examination he denied having conducted any verification in the Banks & Post Offices regarding any deposit of money by the AO.

Sri Swapan Kumar Das, PW-1 in his deposition clearly stated that he did not know the accused officer. He was not aware of the charges framed against him. During that material period, he was posted as Senior Deputy Magistrate, DM's Office, West Tripura District, Agartala. He had joined in the year 2011-12 and served till the year 2015-16. He has also stated that he could not recall whether he had collected any statement or information

from the AO regarding accumulation of assets (movable, immovable including bank balances) involving Rs.74,26,472/-. He did not know from what sources the AO had accumulated the total amount of assets worth Rs.74,26,472/- only while serving as Junior Engineer in different offices. He did not recall whether any statement was prepared by him or any statement was collected from any office where the AO was posted regarding total amount of Rs.22,13,279/- only being the salary/income as Junior Engineer during the period from 1998 to March, 2012.

19. Evidently the prosecution could not place incriminating materials through cogent oral as well as documentary evidence relating to the charge of acquisition of disproportionate assets during that period. Even on remand, the fresh penalty order passed by the Secretary, RD Department only records after referring to the articles of charges that his salary statement for the period from 1998 to March, 2012 shows his income as Rs.22,56,475/- but after assessing all relevant document such as bank statements, post office deposits, insurance and taking into consideration rough analysis of his immovable and movable properties, it is evident that Shri Bhomik has accumulated assets beyond his known source of income, which has been enumerated in Article I and II of charge-sheet. It further records that the accused officer has been granted an opportunity of hearing in compliance with the principles of natural justice. His written reply has also been considered along with relevant documents such as bank statements, assessment of building plan by PWD(R&B) and other statements/documents in connection with his immovable and movable property which establishes a

fact beyond doubt that the AO has accumulated assets beyond his known sources of income during the period from 1998 to March, 2012. However, these materials purportedly referred to by the disciplinary authority were not placed during the inquiry proceedings. Therefore, these findings are incorrect and beyond the records of the departmental proceeding.

20. On behalf of the appellants, reliance is placed on the case of **Shashikant S. Patil and another** (supra). The Apex Court has held that the disciplinary authority is the sole judge of facts if the enquiry has been properly conducted. If there is some legal evidence on which findings can be based then adequacy or even reliability of that evidence is not a matter to be canvassed under Article 226 of the Constitution of India.

In the present case as held above, the prosecution has failed to substantiate the charges during inquiry by way of cogent legal evidence. Therefore, Inquiry Officer had exonerated the petitioner/charged officer. The disciplinary authority has while imposing the penalty of dismissal from service sought to rely upon materials such as, bank statements, post office deposits, rough analysis of the immovable and movable properties of the charged officer without they be adduced during the inquiry proceedings. As such, the order of penalty of dismissal was based upon no legal evidence. It is not a case where the adequacy or reliability of an evidence is in question.

21. The case of **B.C. Chaturvedi** (supra) relates to the departmental proceeding on charges of acquisition of assets disproportionate to his known source of income of the charged officer. It is seen from the facts of the said

case that the inquiry officer had on the basis of the materials held the charges to be proved against the appellant. The learned Central Administrative Tribunal had appreciated the evidence and upheld the charges but converted the order of dismissal into one of compulsory retirement. In such a case, the Hon'ble Apex Court allowed the appeal of the Union of India while dismissing that of the delinquent and observed that the findings or conclusions must be based on some evidence though neither the technical rules of Evidence Act nor of proof of fact or evidence defined therein, would apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The disciplinary authority is the sole judge of facts. If the evidence and the conclusion derived by the disciplinary authority are based on findings of fact, the Court in its power of judicial review should not act as an appellate authority to reappreciate evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority has acted in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

In the present case, apparently the prosecution had failed to produce material evidence to substantiate the charge of disproportionate

assets allegedly acquired by the charged officer. Therefore, the inquiry officer had exonerated the charged officer.

The order of penalty imposed by the disciplinary authority has sought to rely upon materials which were never produced during inquiry or confronted to the delinquent officer.

22. Same principles have been reiterated by the Apex Court in the case of **Pravin Kumar** (supra) wherein the case of **B.C. Chaturvedi** referred to hereinabove has also been relied upon.

In view of the reasons recorded in the foregoing paragraphs and the discussions made hereinabove, the instant decision also does not come to the aid of the appellants as the order of dismissal from service imposed by the disciplinary authority even after remand was not based upon any materials produced during the inquiry there were no such material evidence to support such a finding.

23. The decision in the case of **Nemi Chand Nalwaya** (supra) relied upon by the appellants is also of no aid for the above reasons. In the case of **Nemi Chand Nalwaya** (supra) at paragraph-6 of the report, the Apex Court has reiterated that the Courts will not interfere with findings of fact recorded in a departmental inquiry, except where such findings are based on no evidence or where they are clearly perverse.

In the present case, the Inquiry Officer had exonerated the charged officer as the prosecution had failed to establish the charges of acquisition of disproportionate assets. The order of the disciplinary authority

has been set aside by the learned Writ Court. Upon scrutiny of the records of the departmental proceeding, this Court has come to a conclusion that the findings of the disciplinary authority and the order of dismissal were not based on any materials adduced during inquiry. In fact, the prosecution had completely failed to establish the charges. As such, the decisions relied upon by the appellants are of no help in the facts of the present case.

24. The logical inference which flows out of the discussion made hereinabove is that the respondent-employer had failed to establish the charges leveled against the writ petitioner during the disciplinary inquiry. The order of penalty also suffers from legal infirmities such as absence of sanction of the competent authority before imposition of the punishment. The learned writ Court though has not made any detail discussion on these issues but on a comprehensive review of the entirety of the materials on record, this Court does not find any basis to uphold the order of penalty rendered by the disciplinary authority i.e. the Secretary, RD Department, Government of Tripura. It may, however, be also pointed out that the writ petitioner is facing criminal proceedings for acquisition of disproportionate assets being case No. Special (PC) 01 of 2021 before the learned Special Judge, (Court No.4), West Tripura, Agartala. The appellants-State has by way of an additional affidavit filed during proceedings of this case, brought on record the order sheet of the criminal case pending before the learned Special Judge, West Tripura, Agartala. After going through the same, this Court had taken note that the charge sheet in the disproportionate assets case was filed on 23.10.2021 but till date charges have not been framed. This Court, however, refrains from

making any observations in respect of the criminal proceedings being prosecuted against the writ petitioner. Observations, if any, made by us in the present order would not influence the learned trial Court in the criminal proceedings as they are confined to testing the legality and correctness of the impugned order of penalty of dismissal from service imposed upon the writ petitioner in a departmental proceeding.

25. For all the above reasons, this Court therefore, is not inclined to interfere in the impugned judgment whereby the penalty of dismissal from service has been set aside with a direction to the respondent-employer to reinstate him with consequential benefits. However, we are of the view that the directions issued by the learned writ Court regarding his posting were uncalled for. Such a decision is left to be taken by the employer in line with settled principles of the Service Rules. This part of the impugned direction is, therefore, set aside.

26. The instant appeal is disposed of in the manner and to the extent indicated above.

As a sequel, interim order, if any, stands vacated. Pending application(s), if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ