

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No. 677 of 2024

Sri Pintu Das, son of late Jagabandhu Das, resident of Gandhighat, P.S.
West Agartala, P.O. & Sub-Division- Agartala, District- West Tripura

.....Petitioner

-VERSUS-

- 1. The State of Tripura, represented by the Principal Secretary, General Administration (AR) Department, Government of Tripura, New Capital Complex, P.O. Kunjaban, P.S.New Capital Complex, Agartala, District- West Tripura
- 2. The Secretary, General Administration (AR) Department, Government of Tripura, New Capital Complex, P.O. Kunjaban, P.S.New Capital Complex, Agartala, District- West Tripura
- 3. The Secretary, General Administration (P&T) Department, Government of Tripura, New Capital Complex, P.O. New Secretariat, P.S. New Capital Complex, Agartala, District- West Tripura
- 4. The Chief Secretary, Government of Tripura, New Capital Complex, P.O. Kunjaban, P.S. New Capital Complex, Agartala, District- West Tripura (Appellate Authority)
- 5. District Magistrate & Collector, West Tripura, Agartala
- 6. Sub Divisional Magistrate, Sadar, District- West Tripura
- 7. Commissioner of Departmental Enquiries, Secretariat Annexe, Pandit Nehru Complex, P.O. Kunjaban, Agartala, District- West Tripura
- 8. Tripura Public Service Commission, represented by its Secretary, A.K. Road, near Fire Service Chowmuhani, P.S. West Agartala, Agartala, District- West Tripura
- 9. The Secretary, Tripura Public Service Commission, A.K. Road, near Fire Service Chowmuhani, P.S. West Agartala, District- West Tripura

.....Respondents

For Petitioner (s)	:	Mr. S. Lodh, Advocate Mr. S. Majumder, Advocate
For Respondent (s)	:	Mr. SM Chakraborty, Adv. General Mr. Kohinoor N. Bhattacharjee, GA Mr. K. Pandey, Advocate
Date of hearing & delivery of judgment & order	:	09.01.2025
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

1. By means of filing this writ petition, the petitioner has prayed for following reliefs:

- “i. ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for calling for the records, lying with the respondents, for rendering substantial and conscionable justice to the petitioner, and for quashing/setting aside the impugned Order of Punishment No.F.11(1)-GA(AR)/2014/721-23, dated 18.07.2024 (Annexure- 13 supra), and the Appellate Order No.F.11(1)-GA(AR)/2014/1028-29, dated 01.10.2024 (Annexure-15 supra), and thereafter, release all the pecuniary benefits;**
- ii. ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing the respondents to revoke/rescind the impugned Order of Punishment No.F.11(1)-GA(AR)/2014/721- 23, dated 18.07.2024 (Annexure-13 supra), and the Appellate Order No.F.11(1)-GA(AR)/2014/1028-29, dated 01.10.2024 (Annexure-15 supra), and thereafter, release all the pecuniary benefits;**
- iii. CALL FOR THE RECORDS, appertaining to this petition;**
- iv. After hearing the parties, be pleased to make the RULE ABSOLUTE in terms of i. & ii. above;**
- v. COSTS of and incidental to this proceeding;**
- vi. Any other RELIEF(s) as to this Hon'ble High Court may deem fit and proper;”**

2. Short facts emanated from the records relating to the present writ petition are that, a disciplinary proceeding was initiated against the writ petitioner. In course of proceeding, altogether 5(five) numbers of Articles of Charge were framed against him. The proceeding was concluded, with order of withholding 3(three) increments with cumulative effect. The said penalty order was confirmed by the appellate authority. Being aggrieved, the present writ petitioner filed a writ petition before this Court which was registered as W.P.(C) 835 of 2021. The said petition was allowed and disposed of vide judgment and order dated 07.01.2023 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. Feeling aggrieved, the respondents-State preferred intra-court appeal. While disposing of the appeal, a Division Bench of this Court had passed following direction upon the State-respondents vide order dated 02.04.2024:

“11. 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.

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

4. Following remission, the Disciplinary Authority revisited the matter and passed an order dated 18th July, 2024 (Annexure 13 to the writ petition) whereby and where-under the disciplinary authority held that Article-IV and Article-V had been established, and imposed a major penalty of withholding 3(three) increments with cumulative effect alongwith an additional punishment of recovery of loss amount of Rs.21,600/- only from the pay of Sri Pintu Das, the petitioner herein. For convenience, the order dated 18th July, 2024, may be reproduced hereunder:

**“NO 11(1)-GA (AR)/2014/721-23
GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (AR) DEPARTMENT**

Dated, Agartala, the 18th July, 2024.

ORDER

WHEREAS, a disciplinary proceeding was drawn up against Shri Pintu Das, TCS, Ex-DCM, O/o the SDM, Sadar under Rule-14 of CCS(CC&A) Rules, 1965 vide Memo No.F.11(1)-GA(AR)/2014/624-27 dated 26-04-2014;

AND

WHEREAS, after conforming all codal formalities contained in the CCS(CC&A) Rules, 1965 a major penalty of withholding 3(three) increments with cumulative effect was imposed vide order of even number dated 15-02-2021 upon Shri Pintu Das. TCS, the then DCM, O/o the SDM, Sadar, Agartala;

AND

WHEREAS, the Accused Officer, Shri Das filed an appeal petition WP(C)/835/2021 before the Hon'ble High Court of Tripura against the order dated 15-02-2021 of the Disciplinary Authority;

AND

WHEREAS, the Hon'ble High Court of Tripura passed the judgment and order dated 07-01-2023 reducing the punishment imposed upon the Accused Officer;

AND

WHEREAS, the State Government in GA (AR) Department, preferred a Writ Appeal vide Case No. WA/108/2023 against the order dated 07-01-2023 of the Hon'ble High Court;

AND

WHEREAS, the Hon'ble Court after hearing passed a judgement and order dated 02-04-2024 with the following directions: -

"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 decision within a period of 12 (twelve) weeks from the receipt of the copy of this judgment and order"

AND

WHEREAS, in compliance of the said judgment of the Hon'ble High Court the case was reviewed in totality w.r.t the framed charges and the findings thereon;

While conducting inquiry, following all prescribed procedure and rules of natural justice, the Inquiring Authority indicated in Point No.2 that *"The defence, in its written brief of argument submitted to this court and tried to build justification for the said act of the A.O. on the grounds that the PW1 and PW2 had not verified the log book of the said hired vehicle and still brought the charges of passing of false vouchers against the A.O. - the defence has overlooked the fact that verification of log book is required to check the accuracy of the billing amount and here the charges are framed against use of false vouchers and as such log book verification cannot be the sole criteria here in ascertaining the validity of the vouchers. The defence had further overlooked the fact the misappropriation of the vehicle payment was not the issue to begin with, and hence the submission of DW2, the owner of the hired vehicle and that he had received all his payments does not absolve the A.O. of his fault in passing the vouchers, genuinity of which was doubtful on two major grounds, one, the vouchers were not submitted by the owner of the vehicle and was done by a so- called agent of the owner and in the govt. payment systems there is no role of any agent/middleman and secondly the said vouchers were submitted by Shri Subhajit Parial who was engaged as data entry operator in the office but had submitted the bills on the pretence of being the driver of the said vehicle, and both these two major grounds were fully within the knowledge of the A.O. as he was posted in the said office and was holding multiple charges there including that of the Head of Office.*

As such, the charges of passing false vouchers against hired vehicle of the O/o-SDM, Sadar by the A.O. has been established successfully by the prosecution."

Similarly, in Point No.3 of the findings, the Inquiring Authority categorically viewed that *"As it is established beyond doubt that in his letter addressed to the DM(W) dt. 26-11-2013, the A.O. had completely avoided / omitted to explain the matter/issue of Smt. Nita Das, in spite of her being the central focus of the news item in 'Ajker Fariad' against which the A.O. was offering his clarification to his authority, the same was not found und in his letter to the SDM, Sadar dt. 7-12-2013, wherein he had specifically submitted his clarifications in details about his relationship with Smt. Nita Das and as such two written submissions, made against the same news item published in 'Ajker Fariad' on 26-11-2013, by the same person, i.e., the A.O.; in one omitting the most vital information and the other submitting detailed clarification on the allegations can without doubt be treated as two dissimilar submissions, made by the same person in connection with one incident. In context of the written submission made by Shri Pintu Das, A.O. to the SDM, Sadar on 7-12-2013, for refusing the allegations brought against him by the news item of 'Ajker Fariad' dt. 26-11-2013, the one submitted by the A.O. to the DM(W) dt. 26- 11-2013, can be marked as deliberate non-disclosure of vital information to the controlling authority.*

Hence the analysis on the charges of misrepresentation of facts by the A.O. is established beyond doubt";

AND

WHEREAS, the charges in Article-IV & Article-V were established against the Accused Officer in course of inquiry. The charge referred in Article-IV relates to certification of false vouchers and Article-V deals with deliberate non-disclosure of vital information to the controlling authority by the Accused Officer. Both the established charges are of grave nature; one involving financial irregularities and the other relating to concealment of facts or rather misrepresentation of facts before the higher authority.

The matter of false certification indicates the act of corruption with a view to gain an undue advantage, which has got a pervasive impact on the efficient administration

and frustrates the very essence of good governance. Corruption has got a demoralizing effect on the honest public servants and thus warrants adoption of strict measures;

Besides, the act of concealment of facts or deliberate non-disclosure of vital information to the controlling authority is a dishonest act, with a view to deceive the authority and thus contributes to misconduct for which penalty proportionate to the nature of misconduct needs to be imposed upon the concerned;

NOW, THEREFORE, in compliance of the order of the Hon'ble High Court dated 02-04-2024, a major penalty of withholding of 3(three) increments with cumulative effect and recovery of the loss amount of Rs. 21,600/- (Rupees Twenty- one thousand Six hundred) only from the pay of Shri Pintu Das are hereby imposed.”

5. The petitioner was given an opportunity to submit representation against the said order (supra).

6. Thereafter, the petitioner preferred statutory appeal before the appellate authority. The appellate authority concurred the view of the disciplinary authority and affirmed the penalty order passed by the disciplinary authority vide Order dated 01.10.2024. The relevant portion of the appellate order may be reproduced hereunder:

“ ... Gone through the averments of the Disciplinary Authority, while re-considering the case in compliance of the Hon'ble High Court's order and drawing the inference about the penalty to be imposed upon Sri. Pintu Das. The Disciplinary Authority has categorically analyzed the charges and the findings to arrive at a decision imposing penalty, proportionate to the established charges.

I have found no infirmity in that penalty order dated 18/7/2024 and also no additional fact or evidence has been adduced from the side of the appellant.

After careful examination of all relevant aspects of the case, the Appellate Authority upholds the punishment order vide No.F.11(1)- GA(AR)/2014/721-23 dated 18-07-2024 imposed upon the appellant Shri Das.

Hence, the appeal filed by Shri Pintu Das is rejected and disposed of.”

7. On the aforesaid background facts, I have heard Mr. S. Lodh, learned counsel appearing for the petitioner. Also heard Mr. SM Chakraborty, learned Advocate General assisted by Mr. Kohinoor N. Bhattacharjee, learned GA appearing for the State-respondents and Mr. K. Pandey, learned counsel appearing for the respondents-TPSC.

8. With reference to the aforesaid facts on record, Mr. Lodh, learned counsel for the petitioner submits that the fresh penalty order passed by the disciplinary authority and upheld by the appellate authority are misconceived and cannot be sustained. According to learned counsel

appearing for the petitioner, both the disciplinary authority and the appellate authority have failed to understand the underlying direction passed by the Division Bench of this court while remitting the matter asking them to take a fresh decision as regards the quantum of punishment. Mr. Lodh, learned counsel for the petitioner has submitted that the Division Bench has not interfered with the findings of the learned Single Judge as regards setting aside the charges while maintaining that the Charge No. IV has been established. It is further submitted that in the intra-court appeal, the Division Bench only interfered with the decision of the learned Single Judge to the extent that the court has very limited power to decide about the quantum of punishment; rather, it is always better to remit the matter back to the competent authority for taking a decision about the proportionality of penalty to be imposed upon the government servant.

8.1. Mr. Lodh, learned counsel has strenuously argued that the order imposing penalty of withholding of 3(three) increments with cumulative effect alongwith additional penalty of recovery of Rs.21,600/- on the charge of causing loss to the government amounts to flouting the order passed by both learned Single Judge and the Division Bench of this Court. According to Mr. Lodh, learned counsel appearing for the petitioner, the penalty order issued by the disciplinary authority upheld by the appellate authority is contemptuous, *vis-à-vis* aptly disproportionate.

8.2. Having drawn the attention of this court to the Articles of Charge framed against the petitioner at the time of conducting the disciplinary proceeding, Mr. Lodh, learned counsel has submitted that no Article of Charge was framed against the writ petitioner alleging that he caused loss of Rs.21,600/- to the government and thus, it just proves vindictive attitude

of the respondents since the petitioner challenged the penalty order imposed by the respondents before the Court of law. It is candidly submitted that the penalty order passed against the petitioner cannot sustain and is required to be interfered with by this court.

8.3. In addition, Mr. Lodh, learned counsel has submitted that the court has ample power to decide the proportionity of penalty if it is found to be perverse and hits the conscience of the court. In support of his submission, Mr. Lodh, learned counsel has relied upon the judgment rendered in *Union of India and others vs. Managobinda Samantaray*, reported in **2022 SCC Online SC 284, para-9**. On the question of legality of recovery of money of Rs.21,600/- without framing charge, Mr. Lodh, learned counsel has relied upon the judgment rendered in *Rafiq Husain vs. Union of India and another*, reported in **2004 SCC Online Allahabad 2032**, particularly **para 14**.

9. On the other hand, Mr. Chakraborty, learned Advocate General appearing for the respondents-State has submitted that the court may pass an appropriate order considering the direction passed by the Division Bench of this Court *vis-à-vis* the impugned penalty imposed afresh by the respondents upon the petitioner. However, Mr. Chakraborty, learned Advocate General is very candid in his submission that the order passed by the disciplinary authority affirmed by the appellate authority cannot be said to be contemptuous.

10. I have considered submissions of learned counsel appearing for the parties, meticulously perused the documents and the order passed by the Division Bench of this court.

11. Having careful consideration of the order of the Division Bench, in my opinion, the court has not interfered with the findings of the learned Single Judge regarding the sustainability of the Articles of Charge framed against the writ petitioner. I have gone through the judgment and order passed by this sitting singly while allowing the writ petition. Upon examination, it comes to fore that learned Single held that out of 5(five) Articles of Charge framed against the writ petitioner, 4(four) charges have not been proved. It was categorically held that Article of Charge No. IV had been proved. Having gone through the order passed by the Division Bench in the related writ appeal, it is crystal clear that Division Bench nowhere and in no way interfered with the findings of the learned Single Judge as regards the decision that out of 5(five) Articles of Charge, 4(four) charges have not been proved. In other words, this Court having held that only Charge no.-IV has been proved reduced the penalty considering the extent of gravity of misconduct and imposed penalty, which appeared to be proportionate to me instead of remitting the matter back to the Disciplinary Authority. The order of the Division Bench made it clear that learned Single Judge ought to have remitted the matter to the authority concerned for taking a fresh decision on the quantum of penalty imposed upon the petitioner for the established Charge. According to learned Division Bench, so far I understand, the Division Bench in its direction only interfered with the judgment and order of this Court, as according to Division Bench, learned Single Judge ought not to substitute the penalty imposed by the Disciplinary Authority to take fresh decision on the quantum of penalty; to say it otherwise, direction was limited to the extent of taking a fresh decision only on quantum of punishment and that too on the “establishment

charge”. The decision of the learned Single Judge setting aside 4(four) charges out of 5(five) numbers of charges has not been interfered with. Here in my opinion, both the Disciplinary Authority and the Appellate Authority have misread or misconstrued the order of the learned Division Bench.

12. Now, coming to the merits of the penalty order passed by the Disciplinary Authority upheld by the Appellate Authority, it is emerged that both the authorities, not only maintained the previous penalty order imposed upon the petitioner earlier, but, also imposed another penalty, for the first time, by way of recovery of Rs.21,600/-, as regards the loss allegedly suffered by the government. *Ex facie*, in my opinion, the order dated 18th July, 2024 (Annexure 13 to the writ petition) passed by the Disciplinary Authority and upheld by the Appellate Authority imposing penalty of withholding of 3(three) increments with cumulative effect alongwith recovery of Rs.21,600/-, is arbitrary and discriminatory and suffers from non-application of mind. In the opinion of this court, the order of penalty, as stated *supra*, is perverse.

13. As a matter of repetition, the Disciplinary Authority in its previous order imposed a penalty of withholding of 3(three) increments with cumulative effect after he arrived at a finding that all the 5(five) Articles of Charge had been proved against the petitioner. When in a writ proceeding, the writ court held that out of 5(five) nos. of Articles of Charge, 4(four) articles of charge have not been proved and only Article of Charge no. IV has been proved, then, obviously the quantum of penalty should have been considered keeping in mind that only 1(one) Charge has been proved against the delinquent, the writ petitioner. While deciding the

quantum of punishment, it is apparent that the disciplinary authority could not visualize the true import of the decision of the court that out of 5(five) articles of charge, 4(four) charges have been set-aside and only 1(one) charge remained. So, the quantum of punishment should be proportionate to 1(one) proven charge only.

14. Without entering into the merits of the submissions as to whether the findings of the authorities is contemptuous or not, according to this court, the order of maintaining the previous punishment with an additional punishment and that too, in absence of any charge, is unauthorative and arbitrary.

15. While revisiting the Articles of Charge framed against the writ petitioner, it comes to light that in course of disciplinary proceeding, no charge was framed that the government had sustained a loss of Rs.21,600/- for the alleged misconduct of the writ petitioner. In absence of specific charge in this regard, in the opinion of this court, the punishment of recovery of Rs.21,600/- stating the alleged loss suffered by the government is arbitrary, discriminatory and violative of the well-established principles of natural justice. Since there was no charge in this respect, no inquiry was made as to whether the petitioner was responsible for the loss, allegedly sustained by the government. Accordingly, this penalty imposed upon the writ petitioner for recovery of Rs.21,600/- is unsustainable, and thus, set-aside.

16. Now, coming to the question as to whether the writ court can decide the proportionity of penalty imposed upon the government servant in a disciplinary proceeding, it is noticed as already discussed in the preceding paragraphs that the Division Bench interfered with the decision of the

learned Single Judge only to the extent of its decision as regards the proportionity of penalty, and remanded the matter back to the authorities concerned to decide the appropriate penalty keeping in mind the discussion and observations of learned Single Judge. There is no quarrel to the proposition that the writ court has very limited jurisdiction to interfere with the quantum of penalty imposed by the Disciplinary Authority. There is no manner of doubt that it is within the sole discretion and power of the decision-making authorities, once the charge of misconduct is proved. However, it is also equally true that the writ court can definitely step into where it finds that the discretionary power exercised by the authority suffers from errors of law and when the decision is found to be perverse.

[underlined for emphasis]

17. In the case of *Managobinda Samantaray(supra)*, the Hon'ble Supreme Court has categorically held that the writ court exercising its judicial power of review can examine whether the authority concerned acts as a reasonable employer, and while imposing penalty has considered all facts and circumstances, magnitude and the gravity of the misconduct. The court has ample power to consider whether there is any error in decision making process. In my opinion, *when the decision of the decision making authority appears to be perverse, suffers from non-application of mind, considered irrelevant factors/matters, and further suffers from any logic, Wednesbury's principle of reasonableness, and appears to be grossly disproportionate, the writ court will definitely intervene. Further, any unfair or arbitrary action on the part of any of the executive authorities, will tantamount to violation of Article 14 of the Constitution of India; and*

when there is violation of well-enshrined doctrine of equality, the court must step in to correct injustice.

[emphasis supplied]

18. Added to it, while deciding on a punishment, courts must ensure the penalty is proportionate and fair, taking into account the nature and gravity of the offence. In the case of ***Ved Prakash Gupta vs. M/s Delton Cable India (P) Ltd.***, reported in **1984(2) SLR 5**, a three-Judge bench of the Supreme Court, however, held that *Article 14 of the Constitution can be applied to cases of employer and employees with reference to the punishment to be awarded for misconduct, the punishment awarded must be “shockingly disproportionate”*. The Supreme Court observed at page 11 that *“we, therefore, of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him”*.

[underlined for emphasis]

In the case of ***Bhagatram vs. State of Himachal Pradesh & Ors.***, reported in **(1983) 2 SCC 442: AIR 1983 SC 453**, this principle ensures that penalties are not excessive or unfair in light of the misconduct committed. It is settled proposition of law that in a disciplinary proceeding, punishment must commensurate with the gravity of the misconduct.

[underlined for emphasis]

19. In the context of the case, it is found that the learned Single Judge as well as Division Bench of this court have held that Article of Charge No.-IV has been proved out of 5(five) nos. of Articles of Charge. In my opinion, in that case, penalty also should have been imposed on the basis of the charge established against the delinquent government servant. It

is apparent that on remission, both the Disciplinary Authority as well as the Appellate Authority have failed to visualize this aspect that quantum of punishment must not be the same when the Courts held that out of 5(five) Articles of Charge only 1(one) charge is proved. The quantum of punishment must commensurate to the magnitude or degree of misconduct. To say it otherwise, the quantum of punishment must be proportionate to the degree of misconduct. Since, on remission also the respondents failed to comply this principle, and when the pervisity is obvious on the face of the orders and records, particularly, when out of 5(five) Articles of Charge, the court held that only 1(one) charge has been proved, the quantum of punishment must be reduced. Accordingly, the penalty order dated 18th July, 2024 (Annexure 13 to the writ petition) of withholding 3(three) increments with cumulative effect alongwith penalty of recovery of Rs.21,600/- from the salary of the petitioner, passed by the Disciplinary Authority and upheld by the Appellate Authority are interfered with being not sustainable, and thus, order of punishments, stated *supra*, is accordingly modified.

20. In my opinion, considering the magnitude of misconduct, as it is held that out of 5(five) Articles of Charge, only 1(one) charge, that is, Charge No.-IV has been proved, in my opinion, withholding of 1(one) increment with cumulative effect will be equitable and proportionate. It is further made clear that if, in the meantime, any amount is recovered beyond 1(one) increment from the salary of the petitioner, it must be refunded to the salary account of the petitioner within a period of 3(three) months from the date of receipt of a copy of this order.

21. The instant writ petition stands allowed to the extent as indicated here-in-above.

Pending application(s), if any, also stands disposed off.

JUDGE

