

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.57/2024

Smt. Payel Biswas, wife of Sri Shantanu Biswas, Resident of - 1/A By lane,
near TV Tower, Milan Chakra, P.O.-A.D. Nagar, P.S.-A.D. Nagar, Sub-
Division-Agartala, District-West Tripura, PIN-799003.

..... Appellant(s).

V E R S U S

1. The Tripura Gramin Bank, represented by the Chairman, having his office
at Abhoynagar, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala,
District-West Tripura.

2. The Chairman, Tripura Gramin Bank, having his office at Abhoynagar,
P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala, District-West
Tripura.

3. The Chief Manager, Human Resource Department, Tripura Gramin Bank,
Abhoynagar, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala,
District-West Tripura.

.....Respondent(s).

For Appellant(s) : Mr. Somik Deb, Sr. Advocate,
Ms. Adwitiya Chakraborty, Advocate.

For Respondent(s) : Mr. Prabir Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Date of hearing & judgment : **09.03.2026.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

(M.S. Ramachandra Rao, C.J.)

Heard Mr. Somik Deb, learned senior counsel assisted by Ms.
Adwitiya Chakraborty, counsel for the appellant and Mr. Prabir Saha, counsel
appearing for the respondents-Tripura Gramin Bank.

2. This Writ Appeal is preferred by the appellant challenging the judgment dt.05.03.2024 of the learned Single Judge in WP(C) No.171 of 2024.

3. The appellant is an employee of the respondent No.1, Tripura Gramin Bank (for short, the Bank). When she was working as Manager (Scale-II) in the Bank, on the basis of certain incidents, which are alleged to have happened, a Charge Memo was issued to her on 09.08.2023 containing two charges which are as under:

"CHARGE 1:- *It has been seriously observed that you had violated the discipline of the bank by committing severe misbehavior dtd.22-05-2023 at TGB, HO with Chief Manager, HR Division, using unprofessional behaviour, making illogical argument and foul words regarding your transfer order dtd. 22-05-2023 which is tantamount to insubordination of Higher Authority of the Bank.*

CHARGE 2:- *It has been further seriously observed that in spite of having transfer and release order dt. 22-05-2023 in your favour from DC Bazar to RO South, you had entered in TGB DC Bazar Branch on 23-05-2023 at about 13:55 hrs and without any valid reasons you had misbehaved rudely with all the staff members of TGB DC Bazar Branch in front of customers by uttering unparliamentary words, which tantamount to disrespect and/or deflation towards the staff of the said branch, violating the discipline of the Bank."*

4. Disciplinary Enquiry was conducted through an Enquiry Officer, who then submitted a report on 20.10.2023 to the Disciplinary Authority (respondent No.2).

5. On 29.01.2024 the respondent No.2, after considering the record of the enquiry and the Enquiry Report dt.20.10.2023, passed a speaking order

stating that there was a grave lacuna and/or procedural defects in the Enquiry Report, that he is disagreeing with the Enquiry Officer's findings dt.20.10.2023 and that he is directing a de novo enquiry by vitiating the previous enquiry. For this, he quoted Clause-13 of the Vigilance Manual of the Bank permitting him to start de-novo enquiry against the appellant.

6. Thereafter the appellant was issued a show cause notice dt.29.1.2024 by respondent no.2 to show cause why such de-novo enquiry cannot be done.

7. Appellant filed WP(C) No.171 of 2024 challenging the same and 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 for directing the respondents, to transmit the records, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Orders dated 25.07.2023, 29.01.2024 & 08.02.2024 (Annexures-5, 9 & 10 respectively supra);

(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 them, to forthwith revoke/rescind the impugned Orders dated 25.07.2023, 29.01.2024 & 08.02.2024 (Annexures-5, 9 & 10 respectively supra), and thereupon, for directing them, to reinstate the petitioner in service, and consequently, grant the arrears of salary and allowances, to the petitioner, from the date of her termination till the date of actual reinstatement;

(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, shall not be issued, for restraining/prohibiting

them, from acting in any manner, in furtherance of the impugned Orders dated 25.07.2023, 29.01.2024 & 08.02.2024 (Annexures- 5, 9 & 10 respectively supra);

(iv) In the ad-Interim, and thereafter, on hearing the parties in the Interim, an Order in terms of relief (iii) supra;

(v) Call for the records appertaining to this petition;

(vi) After hearing the parties, be pleased to make the Rule Absolute in terms of i. to iv. Above.

(vii) Costs of and incidental to this writ proceeding;

(viii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper."

8. But by judgment dt.05.03.2024, learned Single Judge disposed of the same directing the appellant to submit explanation in her defence to the show-cause notice dt.29.01.2024 issued by the respondents permitting the appellant to take all objections in her defence and also place any material on record for consideration by the respondents.

9. The said order does not contain any reason assigned by the learned Single Judge why the reliefs sought by the appellant cannot be granted and simply bases the conclusion in the judgment on the submission of the counsel for the Bank that conduct of de novo enquiry is not illegal and that if an explanation is submitted by the appellant to the show-cause notice dt.29.01.2024 calling for explanation on the de novo enquiry and if the appellant were to submit an explanation, the same would be considered.

10. Aggrieved thereby, this Writ Appeal is filed by the appellant.

11. Counsel for the appellant has contended that as per the Tripura Gramin Bank (Officers and Employees) Service Regulations, 2010, the procedure which the Bank has adopted is not contemplated in Regulation 39 or 41, that the Vigilance Manual is a Manual issued by the Bank for guidance

of its Vigilance Department Officials and cannot override the Regulations mentioned above. He also contended that the reasons assigned in the speaking order dt.29.01.2024 for directing de-novo enquiry cannot be sustained. He relied on the judgments of the Constitution Bench of the Supreme Court in ***K.R. Deb v. The Collector of Central Excise, Shillong***¹ and also other judgments - ***Union of India v. K.D. Pandey & another***², ***Calcutta Municipal Corporation and others v. Dr. S. Wajid Ali and another***³, ***Canara Bank and others v. Swapan Kumar Pani and another***⁴, ***Kanailal Bera v. Union of India and others***⁵, ***Shiv Pujan Prasad (Dead) by LRs. V. State of Uttar Pradesh and another***⁶, ***Nand Kumar Verma v. State of Jharkhand and others***⁷, ***Vijay Shankar Pandey v. Union of India and another***⁸, and ***State of Uttar Pradesh through Principal Secretary, Irrigation Department, Uttar Pradesh v. Rakesh Mohan***⁹.

12. Counsel for the respondents-Bank, on the other hand, relied on the judgment of the Supreme Court in ***Union of India & others v. P. Thayagarajan***¹⁰ to support the action taken by the Bank for directing de novo enquiry in the instant case.

13. We have perused the Regulation 39 and Regulation 41 of the Regulations referred to above.

¹ 1971(2) SCC 102;

² (2002) 10 SCC 471;

³ (1993) 2 SLR 631;

⁴ (2006) 3 SCC 251;

⁵ (2007) 11 SCC 517;

⁶ (2010) 1 SCC 517;

⁷ (2012) 3 SCC 580;

⁸ (2014) 10 SCC 589;

⁹ (2020) 19 SCC 375;

¹⁰ (1999) 1 SCC 733

14. Regulation 39 mentions the Minor Penalties and the Major Penalties, which can be imposed on an employee and merely states that the penalties can only be imposed by an order in writing signed by the Competent Authority, that such order shall not be passed by the Competent Authority without a charge or charges framed in writing and given to the officer, and enquiry is held in which the officer would have reasonable opportunity to answer the charge or charges and defend himself.

15. Regulation 41 permits the Competent Authority to delegate the power to an officer, who is in a higher scale to the officer against whom the proceeding is instituted, to conduct the enquiry.

16. The Vigilance Manual, on which reliance is placed by respondents, states in paragraph-13 of "**Regular Hearing**" thereof as under:

"13. Since Enquiry Officer's report is intended to assist the Disciplinary Authority to come to a conclusion about the guilt of the CSO/CSE, the Disciplinary Authority has the authority to disagree or agree in full or in part with the findings of the Enquiry Officer on the basis of the evidences produced in the enquiry and the depositions of the witnesses of both the sides, if the Disciplinary Authority himself has not acted as the Enquiry Officer and he has agreed with the findings of the Enquiry Officer that the charges have been found to be proved, the Disciplinary Authority would advise the CSO/CSE to submit his representation on the findings of the Enquiry Officer within 15 days. (If the Enquiry Officer has found the charges not proved and the Disciplinary Authority disagrees with him, the Disciplinary Authority would pass one Speaking Order narrating therein the reasons for disagreement with the Enquiry Officer and would send a copy of the findings of the Enquiry Officer along with the Speaking Order advising the CSO/CSE to submit his

representation on the same within a period of 15 days. The Disciplinary Authority has the inherent right to remit the case for further enquiry if he considers that there are grave lacunae or procedural defects which vitiate the enquiry. Under the circumstances, the Disciplinary Authority may also "order de novo enquiry" appointing fresh Enquiry Officer/Presenting Officer to conduct the enquiry if the Disciplinary Authority reasonably believes that there has been improper application of mind on the part of either or both by Enquiry Officer/Presenting Officer in discharge of their respective duties and responsibilities. The fact that the enquiry has gone in favour of the CSO/CSE or the evidence led in the enquiry has gaps, should not be a reason for remitting the case for further enquiry. In such case, the Disciplinary Authority may disagree with the findings of the Enquiry Officer and would pass the Speaking Order. On receipt of the submission of the CSO/CSE, if tendered within the specified date, the Disciplinary Authority would suggest certain punishment commensurate with the gravity of the misconduct proved against the CSO/CSE and would seek Second Stage Advice of the CVO or CVC through the CVO."

(emphasis supplied)

17. It appears that the Vigilance Manual goes further than what is contained in the Regulations and permits a Disciplinary Authority not only to remit the case for further enquiry, if he considers that there are grave lacunae and procedural defects which vitiate the enquiry, *but also permits him to order a de novo enquiry* appointing a fresh Enquiry Officer to conduct the enquiry if the Disciplinary Authority reasonably believes that there has been improper application of mind on the part of the Enquiry Officer in discharge of his duties and responsibilities. It also states that the fact that the enquiry has gone in favour of the Charge-sheeted Officer or the evidence led in the enquiry has

gaps, should not be a reason for remitting the case for further enquiry and that in such a case, the Disciplinary Authority may disagree with the findings of the Enquiry Officer and would pass a speaking order. It also permits the Enquiry Officer or the Disciplinary Authority to suggest certain punishment commensurate with the gravity of the misconduct proved against the Charge-sheeted Officer and permits him to seek second stage advice of the Central Vigilance Organization.

18. In our opinion, the Vigilance Manual, which permits the holding of a de-novo enquiry cannot prevail over the Regulations referred to supra, which contain no such provision.

19. As pointed out by the Supreme Court in **K.R. Deb** (supra), rules such as the one contained in the Regulations of the respondents-Bank really provide only for one enquiry; but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the Disciplinary Authority may ask the Enquiry Officer to record further evidence.

But there is no provision in the Rule considered in the said judgment of the Supreme Court for completely setting aside previous enquiries on the ground that the report of the Enquiry Officer or Officers does not appeal to the Disciplinary Authority and the Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion.

The Supreme Court deprecated the practice of the Disciplinary Authority in not taking responsibility himself and held that he cannot direct

de-novo enquiry till he gets an officer to give an Enquiry Report against the delinquent employee/officer. It held that such a procedure would amount to harassing the officer/employee. The same principle was reiterated in the other judgments cited by the counsel for the appellant.

20. In the judgment cited by the counsel for the respondents-Bank, i.e. *P. Thayagarajan* (supra), the Supreme Court, however, took a different view. But in that case Rule 27 of the Central Reserve Police Force Rules, 1955 enabled the Commandant to himself hold an enquiry and record his findings and pass orders where he has power to do so and also permitted him to get enquiry conducted by any officer other than himself in which event the officer conducting the enquiry was to forward his report together with the proceedings to the Commandant, who shall record his findings and pass orders where he has power to do so.

In that case, when the Service Rules provided that evidence in the enquiry, when it is given orally has to be recorded by the officer conducting the enquiry himself or by any other officer, the said procedure was not followed and certain letters addressed to the Enquiry Officer by two witnesses were themselves treated as statements, though not recorded by the Enquiry Officer during the enquiry in the presence of the parties.

The Supreme Court, in such peculiar circumstances, held that such a procedure was in violation of the CRPF Rules, and in such a situation only setting aside the enquiry and directing a de novo enquiry might be justified. It stated:

“8. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by

the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature."

(emphasis supplied)

21. The said judgment is clearly distinguishable because in the instant case, the reasons assigned by the respondent No.2 for directing de novo enquiry do not fall in the category indicated in the judgment cited by the counsel for the respondents-Bank.

22. In paragraph-g of the speaking order dt.29.01.2024, the following has been recorded by the Disciplinary Authority as justifying the de novo enquiry:

"g. Perusing the Enquiry Findings dt.20.10.2023(received on 01.11.2023), it is revealed that the Charge-1 is not proved in spite of having sufficient materials viz.

(i) Point No. 2 as laid down in the explanation letter vide No.TGB/HO/HRD/F.1032/2023/786/23 dt.25.05.2023 (exhibited as ME-1 as per Days' proceeding dt.12.09.2023), it is revealed into the effect that

"... You have also shown unprofessional behavior with CM(HR), made illogical arguments by using foul words on 22.05.2023 at HO as reported by him..."

No findings/interpretation is being found in the Enquiry Report regarding the elimination of the allegation as made in point No.02 of the explanation letter dt.25.05.2023.

(ii) Nineteenth and Twentieth line (from the bottom) as laid down in the first page of the minutes of 2nd day(i.e. 12.09.2023) it is revealed into the effect that

"... Both MW1 and MW2 confirms to the content of letter dtd. 25.05.2023 issued by the General Manager, TGB, HR Division and on being identification the same is exhibited as ME-1..."

In spite of taking into a consideration the letter dt.25.05.2023 as ME-1, no such explanation/interpretation is being found in the enquiry report as to how the said point(i.e. point No.02) as mentioned in the letter dt.25.05.2023 issued by the General Manager was put out of sight?

(iii) Perusing the twelve and thirteenth line(from the bottom)as laid down in the first page of the minutes of 2nd day(i.e. 12.09.2023) at the time of cross examination of the MW1 of the part of CSO, it is further revealed into the effect that

"... CM(HR) asked her to comply with the Bank's Order. Her body language became aggressive and her vocal tone was very aggressive as well..."

At the time of cross examination taken by the CSO, it is admitted by the witness (MW-1) in presence of the CSO that the body language and vocal tone was aggressive. On admitting the same by the witness, no objection is raised from the CSO. Corroborating the letter dt.25.05.2023 with the evidence adduced by the MW-1, does it not indicate that the CSO violated the discipline of the Bank by severe misbehavior with her Higher Official (i.e. CM-HRD)?

(iv) While cross examination on the part of the CSO, MW-1 confirmed in tenth and eleventh line(from the bottom), into the effect that

"CSO to MW1-Did I physically violent or did I pelt stones at CM(HR) that day. MW1- No, but certain words were used which are not acceptable in a professional sitting..."

At the time of cross examination, taken by the CSO, it is further admitted by the witness(MW-1) in presence of the CSO that the CSO has used words which are not acceptable in a professional sitting. In that case, the CSO did not make any objection and nothing was given in her support. Corroborating the letter dt.25.05.2023 with the evidence adduced by the MW-1, does it not specify that the CSO violated the discipline of the Bank by using such unprofessional words to her Higher Authority which is not acceptable in a profession sitting?

AND

Whereas: Considering all the facts and circumstances evidence on record, it is revealed that there is grave lacunae and/or procedural defects, therefore, the Disciplinary Authority is hereby disagreed with the Enquiry Findings dt.20.10.2023(received on 01.11.2023) submitted by the Enquiry Officer(EO) and henceforth, it is necessary to start "de novo enquiry" by vitiating the instant proceedings thereon."

23. Having perused the speaking order dt.29.01.2024 issued by the Disciplinary Authority in the instant case and the reasons assigned in sub- paras (i), (ii), (iii) and (iv) of para-g thereof, we are of the opinion that the reasons assigned appear to be mere disagreement with the findings of the Enquiry Officer, but not a case where there has been any serious violation of procedural law like in the judgment of the Supreme Court in ***P. Thayagarajan*** (supra).

24. In such a situation, the Disciplinary Authority, if he is not in agreement with the findings of the Enquiry Officer, can undoubtedly communicate the reasons for his disagreement to the appellant, and after taking the explanation of the appellant to the same, take his own view in the matter as held by the Supreme Court in the case of ***Punjab National Bank &***

*others v. Kunj Behari Misra*¹¹, which has been reiterated in other judgments subsequently.

25. For these reasons, we are of the opinion that the speaking order dt.29.01.2024 passed by the respondent No.2 remitting the matter for a de-novo enquiry after setting aside the previous Enquiry Report, cannot be sustained. It is, accordingly, set aside. Consequently, all subsequent proceedings issued by the respondents-Bank on the basis of the speaking order dt.29.01.2024 are also set aside.

26. The matter is remitted back to the respondent No.2 to only communicate to the appellant the reasons for his disagreement with the findings of the inquiry officer within 2 weeks from today. The appellant shall offer her objections/explanation/representation against the same within 4(four) weeks of receipt of the same from the respondent No.2. The respondent No.2 shall himself then pass a reasoned order in accordance with law and communicate it to the appellant.

27. In view of the above, the order of the learned Single Judge dt. 05.03.2024 in WP(C) No.171 of 2024 is set aside and the Writ Appeal is allowed to the above extent.

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

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

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¹¹ (1998) 7 SCC 84