

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 81 of 2025

- 1. The State of Tripura,**
To be represented by the Principal Secretary, Department of Home, New Secretariat Building, New Capital Complex, Agartala West Tripura.
- 2. The Director General of Police, Tripura,**
Agartala, Revisional Authority.
- 3. The Deputy Inspector General of Police, AP (OPS-I),**
Tripura, Agartala, Appellate Authority.
- 4. The Commandant, 13th Bn, TSR (IR-IX),**
Subhash Nagar, Kanchanpur, North Tripura, Disciplinary Authority.
- 5. The AC, 13Bn TSR (IR-IX),**
Enquiry Authority.
- 6. The Inspector General of Police, AP (OPS) Tripura,**
Agartala, Revisional Authority.

.....Appellant(s)

Versus

Sri Kabir Uddin of 'F' COY, No.20005122 RFN (GD)

13 Battalion, Tripura State Rifles, (IR-IX),

S/o. Mobaswar Ali, presently residing at Vill & PO Kalachara, PS Kadamtala, Dist North Tripura.

.....Respondent(s)

For Appellant(s)

: Mr. Karnajit De, Addl. G.A.

For Respondent(s)

: Ms. Rajasree Purkayastha, Advocate

Date of hearing and delivery
of judgment and order

: 17.03.2026.

Whether fit for reporting

: No.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

[Dr. T. Amarnath Goud, J.]

[1] When the case is called, Mr. Karnajit De, learned Addl. G.A. appears for the appellants (respondents of the writ petition) and Ms. Rajasree Purkayastha, learned counsel appears on behalf of the respondent-writ petitioner (hereinafter referred to as the writ petitioner).

[2] The present appeal is directed against the judgment and order dated 16.05.2025 passed in WP(C) No.64 of 2024 whereby the learned Single Judge allowed the petition filed by the writ petitioner.

[3] The appellant-State has filed this appeal seeking the following reliefs:

“(i) Admit the appeal;

(ii) Call for the records of the Judgment & Order dated 16.05.2025 passed in WP(C) 64/2024 by the learned Single Judge;

(iii) Issue Notice;

(iv) After hearing the parties pleased to set aside the impugned Judgment and Order dated 16.05.2025 passed by the learned Single Judge and be pleased to allow the instant Writ Appeal;

(v) Pass such other order or orders as seems fit and proper having regard to the circumstances of the case.

AND

In the mean time the operative portion of the Judgment and order dated 16.05.2025 passed by the learned Single Judge may be stayed till disposal of the writ appeal.....”

[4] Factual context of the case is as under:

The writ petitioner was a TSR personnel bearing enrolment No.20005122RFN(GD) of ‘F’-COY,13th BN. TSR (IR-IX) and posted at Subhas Nagar, Kanchanpur North Tripura under the kind, control and command of the appellants herein. Since his appointment on 28.03.2000, the writ petitioner was serving his duties with sincerity, honesty, diligence with utmost satisfaction of the authorities without any blemish and stigma at any point of time. He is a married man having his wife namely, Hazira Begam who is 39 years old and three daughters namely, Yesmin Sultana (19 years), Sahanaj Aktar (17 years) and Nasrim Aktar (12 years). He is also the sole bread earner in his family and his service was the only source of his family’s livelihood. On 27.05.2019, one Smt. Khelan Bibi lodged a complaint to the appellant No.4 herein alleging that the writ petitioner had contracted marriage with her but he was not taking any care of her. On the basis of said complaint, appellant No.4 initiated departmental proceeding against the writ petitioner under Memorandum No. 8492/F.DP-NO./2019/K.U/TSR-13/ESTT/2019 as per Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Rule 40 of the Tripura State Rifles (Discipline, Control, Service Conditions, etc.), Rules 1986 for the alleged offence punishable under Section 12(1) of Tripura State Rifles Act, 1983 framing article of charge against him which are extracted hereunder:

“Article of Charge-I

That the said No.20005122 Rfn(GD) Kabir Uddin of 'F'-Coy, 13th Bn TSR (IR-IX) got married one Smt. Khelan Bibi D/O Khalek Miah of Vill: Thakcherra, PO: Mahamillan, Amarpur, Gomati Tripura without any consent and intimation to his first wife Smt. Hazira Begam on 28.01.2016 at Thakcherra. This kind of act is prejudicial to good order and discipline of the Rifles and punishable U/S 12 (1) of TSR Act, 1983.

Article of Charge-II

That the said No. 20005122 Rfn(GD) Kabir Uddin of 'F'-Coy, 13th Bn TSR (IR-IX) got married one Smt. Khelan Bibi D/O Khalek Miah of Vill: Thakcherra, PO: Mahamillan, Amarpur, Gomati Tripura without any prior permission from the authority while his first wife is still living. This kind of Act is prejudicial to good order and discipline of the Rifles and punishable U/S 12(1) of TSR Act, 1983.”

[5] Subsequently, a statement of imputation of misconduct or misbehavior on which the article of charges were framed together with a list of documents and witnesses by which the article of charges proposed to be sustained were issued against the writ petitioner. Prior to that, according to the writ petitioner, a preliminary enquiry was conducted by the authority behind the back of the writ petitioner without affording any opportunity to him.

[6] Shri R.L. Darlong, Asstt. Commandant, 13th Bn TSR (IR-IX) was appointed as 'Inquiring Authority' to inquire into the charges framed against the writ petitioner who after thorough inquiry submitted inquiry report (Annexure 4 to the writ petition) wherein the article of charges framed were proved against the writ petitioner. It is alleged by the writ petitioner that during the course of the inquiry, no official formalities were observed and no opportunity was given to the writ petitioner to defend his case properly and finally on the basis of the inquiry report, the appellant No.4 came to the finding that the alleged charges under Article of Charges I and II were proved against the writ petitioner. Thereafter, a provisional punishment order was passed on 23.08.2021 in DP No.11/2019 (Annexure 5 to the writ petition) against the writ petitioner tendering provisional major punishment of "removal from service" which shall not be a disqualification for future employment under the Government. Thereafter, the writ petitioner was given an opportunity to make written representation against the report of provisional order of punishment to which he submitted his representation to the appellant No.4 on 09.09.2021. The

appellant No.4 passed final order on 02.10.2021 reducing the major punishment of "removal from service" to "compulsory retirement" from service upon charged official. Thereafter, against the final order, the writ petitioner filed appeal before the appellate authority and the appellate authority rejected the appeal vide order dated 28.11.2021 on the ground of 30 days delay in filing such appeal from the date of receipt of said final punishment order. Being aggrieved by the said order, the writ petitioner approached before this Court by filing WP(C) No.14 of 2022 and this Court vide order dated 18.01.2022 directed the appellate authority to reconsider his appeal. Subsequently, appellant No.3 mechanically reconsidered the appeal and by order dated 30.03.2022 (Annexure 8 to the writ petition) dismissed the same upholding the findings of appellant No.4. Thereafter, the writ petitioner preferred revision petition before the appellant No.6 which was also rejected vide order dated 21.05.2022 (Annexure 10 to the writ petition).

[7] Being aggrieved, the writ petitioner again approached this Court preferring WP(C) No.695 of 2022 and this Court vide order dated 28.06.2023 (Annexure 11 to the writ petition) quashed and set aside the order dated 21.05.2022. Pursuant to the judgment passed by this Court in WP(C) No.695 of 2022, the appellant No.2 again passed a revisional order dated 11.09.2023 (Annexure 12 to the writ petition) rejecting said revisional order whereby most illegally the appellant No.2 upheld the impugned appellate order dated 30.03.2022 passed by appellant No.3. According to the writ petitioner, the entire proceeding was illegal as all the orders were passed without providing any proper legal opportunity to him and therefore, he filed WP(C) No.64 of 2024 for setting aside all the above mentioned orders passed by the concerned authorities. On consideration of the arguments placed and the documents relied upon by both sides, learned Single Judge allowed the writ petition observing as under:

"12. In the result, the writ petition filed by the petitioner is allowed. All the orders passed by the disciplinary authority, appellate authority and revisional authority are accordingly stands set aside. The matter is remanded back to the respondent No.4 i.e. the appointing authority of the petitioner to reconsider the matter of imposition of punishment upon the petitioner and thereafter to issue a fresh order of punishment to the petitioner, if necessary by calling the interested parties of the proceeding.

The entire exercise shall be completed within a period of 4(four) months from the date of passing of this judgment and order.

With this observation, the instant writ petition stands disposed of.”

[8] Being aggrieved and dissatisfied with the impugned judgment dated 16.05.2025, the appellants herein preferred the instant writ appeal by seeking the reliefs as quoted above.

[9] Mr. Karnajit De, learned Addl. G.A. for the appellants-State submits that with respect to contracting a second marriage is concerned, a government employee is governed by Rule 21 of the Tripura Civil Services (Conduct) Rules, 1988 which is applicable to the TSR personnel also and said Rule prohibits government employees from entering into a new marriage if a spouse is already living, or marrying someone who already has a living spouse and in case of exceptions Government permission is required, granted only if permissible under personal law and for valid grounds. Said Rule 21 is extracted hereunder:

“Rule - 21. Restriction regarding marriage

(1) No Government employee shall enter into, or contract, marriage with a person having a spouse living; and

(2) No Government employee having a spouse living, shall enter into, or contract, a marriage with any person;

Provided that the Government may permit a Government employee to enter into, or contract, any such marriage as is referred to in clause (1) or Clause (2) if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government employee and the other party to the marriage; and

(b) there are other grounds for, so doing;

(3) A Government employee who has married or [marries] a person other than of Indian nationality shall forthwith intimate the fact to the Government.”

[10] Mr. De, learned Addl. G.A. further submits that the writ petitioner, who has a spouse living, has not approached before the Government or his authority before contracting another marriage which was in violation of Rule 21 of the Tripura Civil Services (Conduct) Rules, 1988. Learned Addl. G.A. has relied on a decision of the Division Bench of this High Court rendered in the case of *Ghulam Nabi Shergujri vs. the United of India and another* reported in *2016 SCC OnLine Tri 259* at Paragraph No.8 of the judgment the followings were observed:

“8. The main argument raised on behalf of the petitioner is that since second marriage is permissible under the Muslim Personal Law and

furthermore, since the Government has the power to grant such permission, the conduct of the petitioner could not be treated to be misconduct and, therefore, the services could not be terminated. We are not in agreement with this submission. In case of any Government employee who has a spouse living and such person wants to enter into a second marriage which is permitted under his personal law, he must approach the Central Government or the authorities concerned with a prayer in which it should be clearly spelt out that as per his personal law he is entitled to enter into a second marriage and secondly, that such second marriage is necessary for certain reasons. It is for the Government to decide whether permission should be granted or not. It is not for the employee to decide himself without approaching the Government that he is entitled to get married a second time. This by itself is misconduct and contracting a second marriage without the permission of the Central Government, even if permissible under the personal law, clearly amounts to misconduct and, therefore, the BSF was entitled to take disciplinary action in terms of Rule 22 of the BSF Rules.”

[11] It is argued by Mr. De, learned Addl. G.A. that the article of charges framed against the writ petitioner was proved during the course of DP enquiry based on credible documentary evidence on record and even after lapse of two years from the date of issue of Memorandum and issue of final order of punishment, the writ petitioner failed to submit any kind of proof, evidence or witness to disprove those article of charges proved against him. Another point of argument advanced by learned Addl. G.A. is that the writ petitioner was asked to nominate defence assistant but he declined to nominate defence assistant despite several opportunities given to him during the enquiry. Learned Addl. G.A. further submits that the writ petitioner had participated in the hearing of the DP enquiry from the beginning till the end of such enquiry and as such he was given reasonable opportunities of being heard, and therefore, principle of natural justice was duly served in each stages of the enquiry. It is further argued by learned Addl. G.A. that in the present case the punishment of “dismissal from service” had been converted to “compulsory retirement” of the writ petitioner and the instant case is also squarely covered by the case of **Ghulam Nabi Shergujri** (*supra*). Mr. De, learned Addl. G.A. finally submits that the learned Single Judge erred in both fact and law in passing the impugned judgment and prayed for setting aside the impugned judgment passed by the learned Single Judge.

[12] On the other hand, Ms. Rajasree Purkayastha, learned counsel for the respondent submits that the quantum of punishment awarded to the writ petitioner was harsh in nature and urged before this Court for taking lenient view while doing

so, as he is the sole bread earner in his family and he has three minor daughters and it would be difficult for him to maintain his family if he is not reinstated in service. In this regard, Ms. Purkayastha, learned counsel has referred to a decision of High Court of Madhya Pradesh in case of *Hem Singh vs. Union of India; WP(C) No.1723 of 2007 decided on 21.06.2018* wherein the High Court of Madhya Pradesh has held as under:

“Not only this, in another case decided by Manipur High Court in the case of *Union of India & three others v/s Mohammad Jakir Hussain 2015 SCC Online Mani 67*, a similar view has been taken in respect of Constable of CRPF and the punishment of dismissal has been set aside.

Not only this, in the case of *Rameshwar Kumbhakar v/s State of M.P. & Another* passed in W.P. No.3816/2006 decided on 24.03.2015, again in case of second marriage during the life time of the first wife, a similar view has been taken by this Court and the punishment of dismissal from the services has been substituted to that of withholding of one increment with cumulative effect.

Resultantly, the present writ petition also stands allowed. The punishment of dismissal is substituted to that of withholding of one increment with cumulative effect. The Constable/petitioner will not be entitled for backwages, however, he will be entitled for continuity in the services and for all other consequential benefits. The respondents are also directed to reinstate the petitioner within thirty days from the date of receipt of certified copy of this order in case he has not attained the age of superannuation.”

[13] We have carefully considered the submissions of the learned counsel appearing for the parties and also meticulously gone through the records.

[14] It appears to this Court from the final order passed by appellant No.4, order of the appellate authority and order of the revisional authority that the writ petitioner during hearing of the DP was given ample opportunities of being heard. He was also given the facilities to inspect the documents in the DP file and also to keep notes of the same. The writ petitioner did not give any requisition for additional documents or defense witnesses in spite of the opportunities given to him. He was also asked to nominate defence assistant but he declined to nominate defence assistant despite several opportunities given to him during the enquiry.

[15] It is also evident that writ petitioner neither informed nor obtained any permission from his department before contracting second marriage which is in violation of Rule 21 of the Tripura Civil Services (Conduct) Rules, 1988. In the case of *Ghulam Nabi Shergujri (supra)* as relied on by learned Addl. G.A., in an

identically placed situation, followings were observed by the Division Bench of this Court:

“9. Having held so, we are clearly of the view that the punishment imposed upon the petitioner is grossly disproportionate to the misconduct committed by him. We must keep in mind the fact that the petitioner had already rendered 18 years of service before he contracted into the second marriage. He was terminated after he had completed almost 20 years of service. In the reply, there is no allegation that there was any other complaint against the petitioner. No doubt, his act of marrying a second time without seeking permission of the Government is misconduct but can it be said that this misconduct is so severe that he should be dismissed from service which would mean that he would virtually be entitled to no pensionary or other benefits.

10. The petitioner has pleaded that he was not aware of the provisions of Rule 21 of the CCS (Conduct) Rules. Ignorance of law is no excuse but at the same time, we cannot ourselves ignore the hard truth that a large number of employees are not aware of the details of the rules. Whatever be the case, the petitioner is a person who served the BSF for about 20 years and the allegation against him is that he misconducted himself by contracting a second marriage while his first spouse was living. This is not a criminal offence of bigamy because the personal law permits such conduct. Misconduct is the technical misconduct in not seeking permission of the authorities concerned. We are, therefore, of the opinion that though the misconduct of the petitioner is serious enough to warrant his non-continuation in service but it is not so serious as to warrant forfeiture of all his service benefits.

11. It is true that normally the writ Court does not interfere in matters of punishment and does not impose a punishment by itself but we are clearly of the view that this is one of those glaring cases where the punishment is totally disproportionate to the misconduct.

12. Therefore, keeping in view the facts and circumstances of the case, we feel that the interest of justice will be served if punishment of compulsory retirement is imposed upon the petitioner instead of punishment of dismissal from service. The impugned orders are modified accordingly. The petitioner shall be deemed to have been compulsorily retired from the date of his dismissal from service.

13. All the retiral and other pensionary benefits of the petitioner shall be released to him within 6 (six) months from today, failing which the petitioner shall be entitled to interest @ 12% per annum on the entire amounts w.e.f. 01.5.2016.....”

[16] The writ petitioner is a TSR personnel who has served his department for about 20 years and the allegation against him is that he violated Rule 21 of the Tripura Civil Services (Conduct) Rules, 1988 contracting a second marriage while his first spouse was living. In this regard, this Court is in complete agreement with

the observations made in the judgment passed by the learned Division Bench of this Court in *Ghulam Nabi Shergujri (supra)* to the fact that this is not a criminal offence of bigamy because the personal law of the writ petitioner permits such conduct. We are, therefore, of the opinion that though the misconduct of the writ petitioner is serious mandating his discontinuation in service but it is not so serious as to warrant forfeiture of his all service benefits. The act of second marriage without seeking permission of the Government is misconduct but it cannot be said that the misconduct is so severe in nature that he should be dismissed from service disentitling him from pensionary or other service benefits. Therefore, this Court is of view that the punishment imposed upon the writ petitioner is grossly unreasonable to the misconduct committed by him.

[17] In view of the facts and circumstances of the case, we are of the considered opinion that interest of justice will be served if instead of punishment of dismissal from service, punishment of compulsory retirement is imposed upon the writ petitioner. Resultantly, the impugned judgment passed by the learned Single Judge is set aside.

[18] As the present case is in identically placed situation to the case of *Ghulam Nabi Shergujri (supra)*, the direction given by the Division Bench of this Court in that judgment with regard to entitlement of pensionary and other service benefits needs to be applied in this case also. Therefore, this Court opines that the writ petitioner will be deemed to have been compulsorily retired from the date of his dismissal from service.

[19] The retiral and other pensionary benefits of the writ petitioner shall be released to him within 6(six) months from today, failing which the writ petitioner shall be entitled to interest @ 12% per annum on the entire amount w.e.f. 01.04.2026.

With such observation and direction, the writ appeal is disposed of.

Miscellaneous application(s), pending if any, shall also stand closed.

S. Datta Purkayastha, J.

Dr. T. Amarnath Goud, J.