

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO. 459 of 2012

Sri Shyamal Chakraborty,
son of late Sunil Chakraborty,
resident of A.D. Nagar, road No.9, Surjyapara,
P.O. A.D. Nagar, P.S. West Agartala,
District: West Tripura,
presently posted at Kailshahar District Jail,
Unokoti Tripura as a Pharmacist

.....Petitioner

- Vs -

- 1. The State of Tripura,**
represented by the Commissioner,
and Secretary to the Government of Tripura
Home (Jail) Department, New Capital Complex,
P.O. Kunjaban, Agartala, West Tripura
- 2. The Inspector General of Prisons, Tripura,**
Prisons Directorate, P.O. Dhaleswar,
Agartala, West Tripura
- 3. The I/C, Superintendent, Head of Office,**
Prisons Directorate, P.O. Dhaleswar,
Agartala, West Tripura
- 4. The Superintendent, Dharmanagar Sub-Jail,**
P.O. Dharmanagar, District: North Tripura
- 5. Sri Subodh Sarkar,**
son of late Surjya Sarkar,
the I/C, Superintendent, Head of Office,
Prisons Directorate, P.O. Dhaleswar,
Agartala, Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. R. Dutta, Advocate
For the respondents	:	Mr. B. Dutta, Advocate Ms. A.S. Lodh, Addl. G.A.
Date of hearing and delivery of judgment and order	:	15. 10.2015
Whether fit for reporting	:	NO

Judgment and Order (Oral)

Heard Mr. R. Dutta, learned counsel appearing for the petitioner as well as Mr. B. Dutta, learned counsel appearing for the respondents.

02. By means of this writ petition, the petitioner has challenged the order dated 13.01.1991, Annexure-7 to the writ petition, whereby absence of the petitioner on 06.01.1991 has been declared dies-non without break in service. Against the said order dated 13.01.1991, the petitioner filed an appeal on 23.09.1991 and the same which was duly forwarded to the Inspector General of Prisons, Tripura, Agartala by the Superintendent, Dharmanagar Sub-jail, North Tripura on 26.09.1991.

03. For long long time when the said appeal was not decided, to know the fate of the said appeal, the petitioner sought disclosure under Section 6 of the Right to Information Act, 2005. From there he collected some relevant notes prepared after study of his case. Those notes are available in the petition as Annexure-7.

04. Mr. R. Dutta, learned counsel for the petitioner has highlighted the following part of the note:

“As per our circular the pharmacist can enjoy all Govt. Holidays but they should remain in the station. It is fact that the pharmacist did not leave the station and enjoy holidays on 06.01.1991 remaining in the station as stated in his appeal. So we can't make him guilty in the charge submitted for consideration.”

05. Mr. Dutta, learned counsel for the respondents has however submitted that no final order has been passed by the Inspector General of Prisons, Tripura and as such those intra-departmental notes do not reflect the decision of the appellate authority in any manner.

Thereafter, the petitioner filed a series of representations seeking disposal of the appeal and for recalling the order of dies-non. Ultimately by the memorandum dated 03.08.2012, Annexure-H to the writ petition, one of the Superintendents of the Prison Directorate has informed him that the matter is settled and there is no scope to reopen the case and accordingly his prayer is regretted. The petitioner has questioned that decision by this writ petition. Before approaching this court, the petitioner raised the demand in the form of the notice issued by an advocate namely Mr. R. Dutta, but no positive result has yielded.

06. Mr. B. Dutta, learned counsel for the respondents has submitted that the allegation by the Superintendent, Dharmanagar Sub-jail is quite categorical. The petitioner was found to remain absent on call on 06.01.1991 as he left the station without prior permission from the said Superintendent. Being asked to reply to such allegation, the petitioner by filing a reply on 09.01.1991 has stated that he was in the station even though he had applied for the station leave permission. He was not in the jail as that was Sunday and he was entitled to enjoy the holiday.

07. Mr. R. Dutta, learned counsel has submitted that from the material itself it is established that absence of the petitioner was for the holiday. As such there cannot be any order of dies-non under FR 17 A and hence the said order warrants interference by this court.

08. Mr. B. Dutta, learned counsel however has submitted that even though the petitioner was entitled to enjoy the holiday, but he was not supposed to leave the station without sanction of the station leave permission and as such for his leaving the station, the order of

dies-non has been rightly passed. What falls for consideration for this court is simple and plain. Whether at all the petitioner was absent from his duty or not? The answer must be in the negative as that was a declared govt. Holiday. Unless a Govt. employee remains absent from the duty, no dies-non can be ordered. If the petitioner had left the station without taking the permission and that allegation is established after affording due opportunity to the petitioner, action may be taken against the petitioner, but not declaring that day as non-dies inasmuch as is not a penalty as catalogued in Section 11 of the CCS (CCA) Rules, 1965. Hence, the action of the respondents is capricious and as the impugned order has been made without relevant consideration, the impugned order dated 13.01.1991 is liable to be interfered with and set aside. Accordingly it is ordered. The respondents are directed to release the pay of that day to the petitioner. There is no question of regularisation inasmuch as 06.01.1991 was a holiday, being Sunday.

09. Accordingly, this writ petition is disposed of.

There shall be no order as to costs.

JUDGE

Moumita