

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.283 of 2009

Sri Ananta Das,
son of Sri Amulya Chandra Das,
No.97060001 SUB(GD), 2nd Bn. TSR,
resident of Vill. Ratiabri, P.S. Kumarghat,
District North Tripura

..... Petitioner

–Vs–

- 1. The State of Tripura,
represented by the Secretary,
Home Department, Govt. of Tripura, Agartala
- 2. The Director General of Police,
Govt. of Tripura, Agartala

.....Respondents

B E F O R E
THE HON’BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON’BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. P.K. Biswas, Sr. Advocate Mr. P. Majumder, Advocate Ms. C. Bhwomik, Advocate				
For the respondents	:	Mr. S. Chakraborty, Addl. G.A.				
Date of hearing	:	02.03.2015				
Date of judgment & order	:	23.03.2015				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>√</td></tr></tbody></table>	Yes	No		√
Yes	No					
	√					

JUDGMENT & ORDER

(Talapatra J.)

By means of this petition, the petitioner throws challenge to the order dated 01.08.2009 (Annexure-7 to the writ petition), issued by the Director General Police, Tripura, Agartala, the respondent No.3, dismissing the petitioner from the service with immediate effect.

2. There is no dispute that on the allegation of moral turpitude, the petitioner was proceeded on the charges, which are extracted hereunder from the memorandum dated 29.04.2008 (Annexure-1 to the writ petition):

ARTICLE-I

That the said No.97060001 Sub(GD) Ananta Das of B Coy 2nd Bn TSR while posted at A.D. Nagar Post as Coy 21C of 'B' Coy which is performing VIP Escort duties, left the said post on 15.02.2008 at about 1000 hrs without any authority, which is an act of prejudicial to good order and discipline of the Rifles under section 10(h) of the TSR Act, 1983.

ARTICLE-II

That the said No.97060001 Sub(GD) Ananta Das 'B' Coy 2nd Bn TSR while he was posted at A.D. Nagar Post as Coy 21C of 'B' Coy which is performing VIP Escort duties, left the said post without any authority on 15.02.2008 at about 1000 hrs and entered into the rented house of No.97060018 Sub(GD) Narendra Debbarma of 4th Bn TSR at A.D. Nagar, Raod No.1, M.B. Tilla (near Sebak Sangha), Agartala, outraged the modesty of Smt. Anju Debbarma (31) wife of Sri Narendra

Debbarma, physically tortured and attempted to rape her, which is an act of prejudicial to good order and discipline of the Rifles under section 10(m) of the TSR Act, 1983.

3. The petitioner, by filing an application on 02.05.2008 (Annexure-2 to the writ petition), requisitioned for supplying some documents as catalogued therein, which included the statement of the victim and the preliminary inquiry report submitted by Sri K.B. Das, Assistant Commandant, 2nd Bn. TSR. But, the competent authority, by the communication dated 14.05.2008 (Annexure-3 to the writ petition), declined to supply those copies contending that the petitioner was required at that stage to either admit or deny the charges and in due course he would get full opportunity to inspect the documents as relied. Even thereafter, the petitioner did not file any written statement of defence. The inquiry, drawn up under 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, continued to its logical end.

4. While recording the statement of the petitioner at the commencement of the inquiry proceeding, he denied the charges. At his instance, the Inquiry Officer provided him the defence assistant. After recording the statements of the

witnesses who were examined during the preliminary inquiry, the Inquiry Officer submitted his report, which contains the substance of the evidence and their analysis as well as his finding as regards the misconduct. The Inquiry Officer has returned the finding that the charge of misconduct has been proved.

5. From the inquiry report dated 15.05.2008 (Annexure-4 to the writ petition), it would further transpire that the witnesses as examined by the Presenting Officer were also cross-examined by the petitioner. It further appears that the statements recorded in the course of the preliminary inquiry were provided to the petitioner, but the report of the preliminary inquiry was not provided, save and except those statements. After the evidence was recorded, the petitioner submitted his final statement of defence urging to hold the charges not proved. It appears from the report that on appreciating the materials placed on the records of evidence, the Inquiry Officer has returned the finding, holding that the allegation of misconduct has been proved beyond doubt.

6. Thereafter by issuing the memorandum dated 15.05.2009 (Annexure-5 to the writ petition), the respondent No.2 provided the copy of the report of the Inquiry Officer to the delinquent i.e. the writ petitioner. By the said memorandum it

was also proposed that the petitioner be dismissed from the service. The petitioner was provided with opportunity to have his say on the punishment as proposed, by filing a representation within a fortnight from the day of receipt of the said memorandum dated 15.05.2009.

7. The petitioner filed an elaborate representation on 29.05.2009 (Annexure-6 to the writ petition) and has displayed his counterpoints, *inter alia*, that the versions of the victim and her husband lack credibility, the principles of natural justice has been violated by not supplying the preliminary inquiry report and also by examining one witness, namely Pijush Kanti Roy, who was not a listed witness, even though he had been examined in the course of the preliminary inquiry. According to the petitioner, the report of the Inquiry Officer is based on conjuncture and surmise and there is no legal evidence to hold that the charges as brought against the petitioner have been substantiated.

On consideration of the said report, the impugned order dated 01.08.2009 has been passed.

8. It transpires from the impugned order dated 01.08.2009 that, on taking into consideration the findings of the Inquiry Officer, the records of the evidence and also the representation filed by the petitioner, it has been held that the

petitioner was given due opportunity of defending him. Even the Disciplinary Authority, the Director General of Police, has given the opportunity of personal hearing before passing the impugned order. During hearing, the petitioner pleaded for mercy as he has got the family and children, but the Disciplinary Authority did not demonstrate any leniency as the charge against the delinquent officer was of the moral turpitude and his retention in the force would cause decay in the culture and discipline of the force.

9. Mr. P.K. Biswas, learned senior counsel appearing for the petitioner (the delinquent officer), has submitted that by denying supply of the preliminary inquiry report to the petitioner, serious prejudice has been caused and thus the reasonable opportunity of defence has been denied to the petitioner. Mr. Biswas, learned senior counsel, has later on submitted that the finding as returned by the Disciplinary Authority is based on conjecture and surmise, not on legal evidence and as such the impugned order is liable to be interfered with. However, the fact that the petitioner did not prefer any appeal against the impugned order is not in dispute and the petitioner has approached this court without preferring such statutory appeal by circumventing the scope of the challenge inasmuch as the judicial review of the order passed by the disciplinary authority after due inquiry is restricted to the test of reasonableness. It

inhibits to act as the appellate forum or to reappraise the evidence.

10. By the order dated 10.02.2015, we asked Mr. S. Chakraborty, learned Addl. Govt. Advocate to produce the entire record of the Inquiry Officer for purpose of examination, if so needed.

11. Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents, has submitted that the inquiry proceeding has been carried out in conformity to the procedural safeguards prescribed in Rule 14 of the CCS (CCA) Rules, 1965. By not supplying the report of the preliminary inquiry before the inquiry, no prejudice has been caused to the petitioner, inasmuch as, the petitioner was apprised that he would be allowed inspection of the statement of the witnesses recorded in the course of the preliminary inquiry and, accordingly, the petitioner inspected all the documents and the statements (part of the report of the preliminary inquiry). Thus it cannot be said that the petitioner has suffered any prejudice for non-supply of the report of the preliminary inquiry. Mr. S. Chakraborty, learned Addl. Govt. Advocate, has further submitted that when the Disciplinary Authority has acted on the report of the Inquiry Officer, on conforming to the due process and on hearing the delinquent officer substantively, this court may not hunt for a

fresh appraisal of the records of evidence. However, Mr. Chakraborty, learned Addl. Govt. Advocate, by producing the records of the Inquiry Officer, has submitted that the respondents do not have any reservation to lay the records, inasmuch as from the records it would eminently surface that after affording due opportunity to the petitioner, the Inquiry Officer has returned the findings for consideration by the Disciplinary Authority. Mr. Chakraborty, learned Addl. Govt. Advocate, has summarised his submission stating that there exists adequate evidence to support the finding of the Inquiry Officer.

12. In the departmental proceeding, the standard of proof is not beyond reasonable doubt, but of preponderance of probabilities. From the records of evidence, it has been probabalised that the petitioner has committed the alleged misconduct. The victim's statement in the inquiry reveals the truth and no other inference can be drawn beyond what has been drawn by the Inquiry Officer.

13. After scrutiny of the record for a very limited purpose, we are satisfied that the finding of the Inquiry Officer as affirmed by the Disciplinary Authority, does not suffer from any infirmity or vice. Thus what Mr. P.K. Biswas, learned senior counsel, has contended that this is a case of no evidence,

cannot be accepted by us and we find sufficient evidence against the petitioner. That apart, the nature of misconduct is as such that this court is persuaded not to weigh the aspect of the proportionality of the punishment so imposed by the impugned order.

14. Having held so, this writ petition stands dismissed. However, there shall be no order as to costs.

The records of the Inquiry Officer be returned to Mr. S. Chakraborty, learned Addl. Govt. Advocate.

JUDGE

CHIEF JUSTICE

ROY