

THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P(C) No. 146 of 2009

Petitioner :

Sri Ajit Debbarma,

Son of Late Dhanbabu Debbarma, resident of
Banikya Chowmohani, R. K. Nagar, P.O- Khas
Noagaon, P.S- Bodhjungnagar, Dist.-West Tripura.

By Advocate :

Mr. A. Das, Adv.

Respondents :

1. The State of Tripura,

Represented by the Secretary to the Government of
Tripura, Home Department, Agartala.

2. The Deputy Inspector General of Police,

AP (OPS), Government of Tripura, Agartala.

3. The Commandant,

2nd Battalion, Tripura State Rifles, R. K. Nagar, West
Tripura.

By Advocates :

Mr. S. M. Chakraborty, Sr. Adv.

Mr. T. D. Majumder, G. A.

Ms. B. Chakraborty, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. C. DAS

Date of hearing &
Judgment & Order : **25th February, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

By means of this petition the petitioner has challenged the order dated 16th December, 2008 whereby the appellate authority exercising revisional powers set aside the order dated 19th January, 2004 passed by the

disciplinary authority and imposed major penalty of dismissal from service upon the petitioner.

[2] The undisputed facts are that the petitioner obtained service as Constable in the Tripura State Rifles (TSR) on the basis of a scheduled tribe certificate in which he was shown to be Ajit Debbarma, son of Dhanbabu Debbarma. An inquiry was initiated against the petitioner in which it was alleged that in fact the actual name of the petitioner is Bimal Majumder and he is son of Gobinda Majumder and by caste he is a Manipuri and not a schedule tribe. Lastly it was alleged that the petitioner had submitted a false certificate showing that he had passed Class-IX from Taltala High School. It was alleged that the petitioner had committed two serious offences, (1) suppressed his actual identity (2) produced false scheduled tribe certificate. An inquiry was conducted and the Inquiry Officer held that the first two charges were proved against the petitioner but the third charge about his false educational certificate was not proved. The disciplinary authority agreed with the Inquiry Officer but went on to hold as follows:

******* I was inclined to dismiss him from service due to his misconduct and cheating to his authority. But again, if done, his family will face acute financial hardship. I have, therefore, decided to take lenient view and decided to dilute the proposed punishment.**

Punishment awarded now:

His annual increment be kept withheld for a period of 8(eight) years without cumulative effect.

Henceforth he shall not be entitled to ST facilities. He shall be treated as UR. He shall write his correct name and surname. His service book should be corrected accordingly. He is directed to execute affidavit accordingly."

There can be no manner of doubt that the penalty imposed is shockingly disproportionate to the offence. A person who obtains employment in a uniformed force by submitting false identity and false caste

certificate can never be expected to be true to his oath in a disciplined force. Despite this, the Commandant for reasons best known to him took a very lenient view. It appears that thereafter some action was taken by the police department to initiate fresh inquiry proceedings but finally on 28th August, 2007 it was decided that since the inquiry has already been held and charges have already been proved, no fresh disciplinary proceedings can be initiated. Thereafter on 19th September, 2008 the appellate authority i.e. the Deputy Inspector General of Police issued a provisional order which is also in the nature of show cause notice to the petitioner asking him to show cause why the penalty should not be enhanced to dismissal from service. The petitioner replied to the said notice. Again it would be pertinent to mention that in his reply the petitioner did not challenge the finding of the Inquiry Officer and did not deny the fact that he had obtained the job as a police constable by disclosing false identity and on the basis of the false tribal certificate but his only plea was that since he has already been punished once he cannot be punished again.

[3] In para-5 of the provisional order reference has been specifically made to Rule 47(1) of the Tripura State Rifles (Discipline, Control, Service Conditions Etc.) Rules, 1986, {for short, TSR (DCSC) Rules}. After consideration of the reply final order was passed dismissing the petitioner from service. This order is challenged before us.

[4] Mr. Das, learned counsel for the petitioner has raised two pleas before us. His first plea is that since the petitioner has been punished once he cannot be inflicted with a second punishment with regard to the same case. His second submission is that the disciplinary action against the

petitioner was initiated under the CCS (CCA) Rules and, therefore, the provisions of the TSR (DCSC) Rules cannot be invoked.

[5] As far as the first contention is concerned the same is wholly without merit. These are not separate proceedings to visit the petitioner with punishment. The authority has exercised revisional powers vested in it. Whether these powers have been rightly exercised or not, or could have been exercised at all will be decided when we decide the second issue. However, it is clear that this is not a case of inflicting a second punishment but a case of enhancing the punishment by the appellate/revisional authority.

[6] As far as second plea is concerned, from the original order passed by the Commandant, 2nd Bn. TSR on 19th January, 2004 we find that there is no reference to either the CCS (CCA) Rules or the TSR (DCSC) Rules. In the provisional order dated 19th September, 2008 reference has been made that the earlier proceedings were under the CCS (CCA) Rules, but it has also been stated that the appellate authority is exercising the powers vested in it under Sub Rule (1) of Rule 47 of the TSR (DCSC) Rules. There is a material difference between the relevant Rules. Under Rule 29(1)(v) of the CCS (CCA) Rules the appellate authority can exercise the powers of revision only within 6(six) months of the date of passing of the order proposed to be revised. Rule 47 of the TSR (DCSC) Rules contains no such limitation and is much wider in its term. It reads as follows:

"47. Revision.

(1) The State Government /Appellate Authority may call for record/records of any departmental proceedings conducted against a member of the Rifle at any time and may pass such orders/give such directions as may be necessary for ensuring proper justice or to prevent miscarriage of justice.

Provided that no order enhancing any punishment shall be made by any revising authority

unless the concerned member of the Rifles has been given a reasonable opportunity of making a representation against the enhanced punishment proposed and except after consultation with the Tripura Public Service Commission where such consultation is necessary.

(2) No proceeding for revision shall be commenced in respect of an order for which appeal lies until after the expiry of the period of limitation for an appeal or the disposal of the appeal where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it was an appeal under these rules."

[7] The main question is whether this power could be exercised or not? According to Mr. Das the power could be exercised only under Rule 29 of the CCS (CCA) Rules that too within a period of six months and not under Rule 47 of the TSR (DCSC) Rules. The TSR (DCSC) Rules has its own discipline, control and service condition rules. These have been framed in exercise of the powers vested in the State Government under Section 22 of the Tripura State Rifles Act, 1983. Any action against an employee of the TSR has to be taken under these Rules. These Rules are the rules which control the discipline, control and service of the members of the TSR. It is well settled law that merely because a wrong provision of law is mentioned does not make an action invalid. If the power to take that action can be traced to a specific provision of law the action taken can be justified. The action against the petitioner is deemed to have been taken under the TSR (DCSC) Rules.

[8] Assuming for the sake of argument that the employees of the TSR are governed by two sets of rules than also it is a well settled position of law that those rules which are more specific in nature are binding as compared to the rules which are general in nature. The specific overrules the general rules. In case the TSR Rules are not complete and are silent with

regard to certain aspects then recourse may be taken to the CCS (CCA) Rules but where something is specifically provided for under the TSR (DCSC) Rules it is the provision of the TSR (DCSC) Rules which will govern and not the CCS (CCA) Rules.

[9] As far as present case is concerned even in the provisional order specific reference was made to Rule 47 and assuming that the initial disciplinary proceedings were under the CCS (CCA) Rules, we see no impediment in the appellate or revisional authority's order taking recourse to Rule 47 of the TSR (DCSC) Rules while exercising revisional powers even if the original order had been passed under the CCS (CCA) Rules.

[10] It is lastly submitted that in terms of Rule 47 an application for revision must be dealt with in the same manner as an appeal under the Rules. This contention has been made only for the purpose of being rejected. Revisional powers can be exercised in two ways. The first is when a party invokes the revisional powers of the revising authority. If a party invokes those powers then the procedure for dealing with the appeal will apply to revision petition also. However, where the State Government or the appellant authority suo motu exercises powers of the review then there is no application for review and it is a suo motu exercise of the power of review where no limitation is prescribed and hence the action taken by the respondent was absolutely proper.

[11] We may also add that as already indicated by us above, in a disciplined uniform force there can be no sympathy shown to a person who obtains a job not only on the basis of a false caste certificate but by suppressing his own real identity and disclosing himself to be somebody else. Such a person is an impersonator who has committed a crime before he has

entered the police service. How can one expect such an employee to ever be a loyal police official? A person whose induction into the police force is based on total falsehood and criminal acts has no business of continuing in the force. Therefore, even if there be any error in the order we do not feel it is a fit case to exercise extra ordinary writ jurisdiction in favour of the petitioner.

[12] We are also constrained to observe that the Commandant who took the lenient view of the matter did not realise what impact this could have on the police force. We leave it to the Government to decide whether it wants to initiate action against the said Commandant or not, but we feel that it would be better that some action is initiated against the Commandant because his undue sympathy would demoralize the honest officers in the force.

[13] With these observations the writ petition is dismissed. No order as to costs.

Copy of this judgment be sent to the Chief Secretary, Govt. of Tripura and the Director General of Police, Tripura, Agartala for appropriate action in accordance with law.

JUDGE

CHIEF JUSTICE