IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)259 OF 2012

Sri Sanjoy Das,
son of Sri Gouranga Das,
of Kumari Tilla, P.O. Abhoynagar,
P.S. East Agartala, District : West Tripura
..... Petitioner

– Vs –

1. The State of Tripura,
represented by its Secretary Cum Commissioner,
Department of Home (Jail),
Government of Tripura,
New Capital Complex, Agartala, West Tripura

2. The Chief Secretary of the Government of Tripura,
New Capital Complex, P.O. Kunjaban, Agartala,
West Tripura (as Appellate Authority)

3. The Commissioner and Secretary to the
Government of Tripura, Secretariat Building,
New Capital Complex, P.O. Kunjaban,
Agartala, West Tripura

4. Inspector General of Prison, Central Jail,
Department of Home(Jail),
Government of Tripura, Agartala,
P.O. Dhaleswar, District : West Tripura,

5. The Superintendent of Central Jail,
Department of Home(Jail),
Government of Tripura, Agartala,
P.O. Dhaleswar, District : West 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. S. Chakraborty, Addl. G.A.

Date of hearing & order **:** 21.08.2015

Whether fit for reporting **:**

Yes	No
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Dutta, learned counsel appearing for the petitioner, as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents.

[2] The order passed in the disciplinary proceeding is the subject matter of this judicial review. By the order dated 12.01.2011, Annexure-D to the writ petition, the petitioner, namely Sri. Sanjoy Das, a Warder working in the Central Jail, Agartala, has been imposed penalty in the following terms :

> **"The pay of A.O. 6 to A.O. 11 namely Sri Subrata Saha, Head Warder, Ranjit Choudhury, No.2, Warder, Sri Pallab Bhattacharjee, Warder, Sri Ratan Sarkar, No.2 Warder, Sri Anjan Bhattacharjee, Warder & Sri Sanjoy Das, Warder will be reduced by 1(one) lower stage of pay (increment) for 1(one) year without cumulative effect and they will not get any financial benefit other than subsistence allowances paid to them during suspension period."**

[3] The petitioner has also challenged the appellate order dated 15.05.2012, Annexure-7 to the writ

petition, whereby the order dated 12.01.2011 has been affirmed holding that :

> **“After careful consideration of all relevant facts and submissions made by the appellants, the appellate authority is of the view that the petitioner has failed in performing their duties with devotion because of which a prisoner escaped from judicial custody, which is a very serious matter. The charge has been established against the petitioner along with others. The quantum of penalty imposed appear to the appellate authority to be commensurate with the nature of omission.”**

[4] On 27.04.2004 at about 6.20/6.25 am one under-trial prisoner, namely Kishore Kar escaped from the Agartala Central Jail. He was in-turned in connection with Agartala P.S. Case No.32/04 under section 326 of the IPC. Immediately an in-house inquiry was directed by the Inspector General of Police, Tripura by his order dated 27.04.2004. Pursuant to the said order dated 27.04.2004, the Superintendent, Central Jail, Agartala attached to the Prison Directorate, submitted a report on 28.04.2007, on the following day of the said escape. After briefly narrating how the escape had taken place, it has been observed :

> **“Shri Sanjay Das, Warder, has stated in his statement that he was allotted for duty at Ward No.1**

from 6.00 A.M. to 9.00 A.M. and taken over the charge from Warder Shri Sashanka Debbarma along with 114 prisoners. At about 6.20 to 6.25 A.m. during the time of distribution of food (Mary) to the prisoners at the Varandha of Ward No.1, he counted the prisoners from eastern side to western side and found one prisoner is not available in the file. Then he proceed to search near the tube well and found that one prisoner is escaping with the help of one borrak bamboo through the main perimeter wall of Ward No.6. Then and then he blasts his whistle and shouting loudly that the prisoner escaping and he rushed to the Ward No.3,4 & 5 and he asked to Warder Shri Debesh Nag who was performed duty at Ward No.3,4 & 5 to inform the Head Warder on main duty that one U.T. Prisoner is escaping and then he tried to enter the Ward No.6 but failed due to locked and then he returned to duty place. He also stated that there is no any other Warder or Head Warder near the Ward No.1. He did not hear any sound of firing from Rifle and ringing of bells from the Towers. After few minutes, the Superintendent and the Jailor visited the Ward No.1 and again counted the prisoner in presence of them and found 113 prisoners out of 114. He relieved from his duties at 9.00 A.M. after handing over the charge along with 113 prisoners to Shri Sashanka Debbarma, Warder. ”

[5] It has been further observed in the said report that for piling up of the garbage/rubbish on the western side of the wall of Ananda Bhavan, the run away prisoner could use that piling of 9 Ft. 6 inches as the 'terrace' and with the help of a borak bamboo he could cross the remaining height of the perimeter wall of the Ward No.6 which was 16 ft. in height. However, somewhere it has been written in the said report that the height of the wall was 13 ft. As the final observation, the Superintendent

Central Jail has in the one hand contended that it revealed from the statements that Shri Subrata Saha, Head Warder, Shri Sanjay Das, Shri Debesh Nag and Shri Kanu Bhattacharjee, Warders,had performed their duties properly and on the other hand he has written as under :

> **“It is my opinion that the incident has been taken place due to lack of the supervision of the Central Jail authorities and dereliction of duties of Watch and ward staff”.**

[6] By the order dated 20.10.2005 a common disciplinary proceeding was drawn up against the petitioner alongwith others. However, the petitioner was placed under suspension on 17.12.2004. The said common disciplinary proceeding commenced against the in-charge Superintendent, Sub Jailor, Head Warder and Warders who were in charge of the said Ward No.1 and in the peripheral wards. It would be apparent from the order dated 20.10.2005, Annexure-B to the writ petition, that the proceeding was taken up in terms of Rule 18 of the CCS(CCA), Rules, 1965. By the memorandum dated 18.10.2005, the following charge was framed against the persons who were involved in the said alleged dereliction

of the duty. The under noted part is the charge against the petitioner :

Article – I

"That the said Sri Alok Rn. Deb, I/C Superintendent, Sri Bani Kanti DebBarma, Jailir, Sri Madhu Mohan Kalai, Sub-Jailor (U/S), Sri Nityananda Chakraborty, Head Warder, Sri Sunii Chakraborty, Head Warder, Sri Subrata Saha, Head Warder, Warder Sarbasree Ranjit Choudhury No.2, Ratan Sarkar No.2, Anjan Bhattacharjee, Pallab Bhattacharjee and Sanjoy Das, Central Jail, Agartala now posted at kailashahar Dist, Jail, Sonamura Sub-jail, Central Jail, Sabroom Sub-Jail, Belonia Sub-Jail, Central Jail, Sonamura Sub-Jail, Dharmanagar Sub-Jail, Central Jail, Amarpur Sub-Jail and Udaipur District Jail respectively while functioning at Central Jail, Agartala During tenure of their service on 24.4.2004 and material period they acted in a manner in that Sri Alok Rn. Deb I/C Superintendent and Sri Bani Kanta Debbarma, Jailor are responsible for the culture of laxity and indiscipline within Central Jail administration, they did not take any action against the watch and ward Staff attending duty either too late or remaining absent without any intimation as result on 27.04.2004 at about 6.25 A.M. one U.T. Prisoner namely Sri. Kishore Kar S/O Lt. Dipak Kar of Barjala, Madhyapara, who admitted in Central Jail, Agartala on 18.4.2004 in connection with West Agartala P.S. Case No. 32/04 (G.R. 224/04),U/S-326 IPC and East Agartala P.S. Case No. 40/2004 (G.R. 241/04), U/S-224/04 had managed to escape from Ward No.1 by scaling partition wall in between ward No. 1 and 6 and thereafter main perimeter wall of the northern side of Central Jail and rearrested on the same day by the police and lodged in Central Jail, Agartala. They are also responsible for improper supervision of the construction work going on at ward No.6 and Ananda Bhaban of Central jail and have allowed to contractor to pile the debris behind the Ananda Bhaban and no serious effort was made by them to dispose of debris and should not go visit/round in side Jail at the time when labours are finishing their work, so that all materials/bamboo/ladder etc. Be stored in a secured place as such it became easier on the part of escapist to climb up the perimeter wall and thus escaped from Jail and also most of watch and ward staff does not report duty on time, even

before the change of duty of their guarding points. They did not take any action against unauthorized absentees of watch and ward staff wilfully and they regularized the leave of absence by ex-post-facto sanction, they failed to take action against Sri Anjan Bhattacharjee, Warder who did not report for his duty in ward No.6 on 27.4.2004 in time and came for duty after 6.30 A.M., as soon as he heard that an incident of escape had happened, he left and applied for leave.

Sri A.R. Deb, I/C Superintendent, has stated that escape was possible due to shortage of watch and ward staff but ratio of watch and ward staff and prisoner in the Central Jail was 1 :4.5 against national average is 1:7, the staff of Central Jail was better then national average and it cannot because of escape. They were acted absolutely in neglecting manner and laxity of discipline in Central Jail which provided opportunity to escape of accd. Sri Kishore Kar by scalining of partition wall in between Ananda Bhaban at ward No.6 and the perimeter wall of Northern side of Central Jail on 27.4.2004 at about 6.25 A.M.

This is a clear gross negligency of duty on the part of Sri A.R. Deb and Sri B.K. Debbarma as they did not perform their duties properly and violated the provision of rules 78,191,192,200,248,249 and 570 of Bengal Jail Code Vol-1, part 1, and rule III(1) and 2 of Tripura Civil Services(conduct) Rules,1988.
Sri Madhu Mohan Kalia, Sub-Jailor(U/S) was allotted duty from unlocking to 7.00 A.M. on 27.4.2004 but he attended jail and left before unlock of prisoner ward for his Govt. Quarters for natural call which facilities is available in the office of the Dy-Jailor/Sub-Jailor. This is a clear gross negligence of duty on the part of Sri Kalia and violated rule 191,192, 193 and 249 of Bengal Jail Code Vol-1, part I, rule 3(1) (2) of Tripura Civil Services (conduct) Rules,1988.

Sri Nityananda Chakraborty, Head Warder was in supervision duty of wards No.3,4,5 and 6 A.M. to 1 P.M. on 27.4.2004, Warder allotted duties for ward No.6 did not turn up on that period. As per provision of Jail code Sri Chakraborty should have made an alternative arrangement for performed the duty of Ward No.6. But he did not do so and thus made escape successfully. He did not also report that Warder allottd duty in ward No.6 did not report for duty. Sri Chakraborty is responsible for the escape of

accd. Krishore Kar, U.T.P. This is clear gross negligence of duty on the part of Sri Chakraborty and violated the rules 191,192,317,318,319 of Bengal Jail Code Vol-1 part 1, and rule 3(1)(2) of Tripura Civil Services (conduct)Rules, 1988.

Sri Sunil Chakraborty, Hear Warder was allotted supervision duty of ward No.1 and also kitchen from 6 A.P. to 1 P.M. on 27.4.2004 but he did not keep vigilance on prisoner as well as on duty warders. Due to negligence of his duties on 27.4.2004 at 6.25 A.M. one U.T. P. Kishore Kar escaped from ward No.1 through the pile of debris behind the Ananda Bhaban. This incident took place due to negligence of Sri Chakraborty which is goes against the rule 191,192,193,200,318 of Bengal Jail Code, Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services(conduct) Rules,1988.

Sri. Subrata Saha, Head Warder was on main duty for supervision of Watch & Ward staff and prisoners from 1.00 A.M. to 7.00 A.M. on 27.4.2004. Though he knew that the warder of ward No.6 did not report for duty yet, he should have made an alternative arrangement . But Sri Saha did not do so. Sri Saha is responsible for the escape due to his negligency of duty and violated the rule 191, 192, 193, 200, 317, 318, 319 of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services (conduct) Rules, 1988.

Sri Ranjit Choudhury No.2, warder was allotted duty at tower No.3 from 6 A.M. 9 A.M. on 27.4.2004. The spot from where the U.T.P. escaped is most nearer to tower No.3 & clearly visible. If Choudhury, Warder had been on his place and alert on his duty, he could see the U.T.P. collecting the long bamboo, place it on the perimeter wall, scaling the same & jumped over the perimeter wall and also blasting the whistle or ringing the bell at the time of escape. He was fired a bullet after 15 to 20 minutes of escape took place. So he was not present at the place of his duties and held responsible for his negligency of duty. Sri Choudhury, warder violated the rule 191, 192, 193, 200, 463(1) and 346(b) of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services(conduct) Rules,1988.

Sri Pallab Bhattacharjee, Warder was allotted duty on 27.4.2005 from 6 A.M. to 9 A.M. at Tower No.4. From the spot of escape by scaling of perimeter wall is visible. Though the blasting of first whistle came

from tower No.4 but that too was after the escape taken place. If Sri Bhattacharjee, warder had been remained alert on his duty he would be blasted the whistle and ranged the bell in time while the U.T.P. collecting the long bamboo place it to the perimeter wall scaling.

So he was not found alert on his duty at the time of escape and he is responsible for the escape. Thus he violated the rules 191,192,193,200 and 346(b) of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services (conduct) Rules, 1988.

Sri Ratan Sarkar No.2, Warder was allotted duty on 27.4.2004 from 6.00 A.M. to 9.00 P.M. in ward No.1 but he did not keep vigilance on prisoners and also he did not count the number of prisoner as a result he could not notice the escape . This is negligence of duty on the part of Sri Sarkar & he violated the rule 191,192,193,200 and 346 of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services (conduct) Rules, 1988.

Sri. Anjan Bhattacharjee, Warder was allotted duty in ward No.6 from 6.00 A.M. to 9 A.M. on 27.4.2004 from where the U.T.P. scales the perimeter wall with the help of a long bamboo but he arrived in the Central Jail after 6.30 A.M. and as soon as he heard of the incident of escape, he left and applied for leave. This is clear of negligence of duty on the part of Sri Bhattacharjee and violated the rule 191,192,193,200,345 and 434 of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services(conduct) Rules,1988.

Sri. Sanjoy Das, Warder was allotted in ward No.1 from 6.00 A.M. to 9.00 A.M. on 27.4.2004 where the U.T.P. was kept, after unlocked of the ward Sri Kishore Kar U.T.P. to slip un noticed behind Ananda Bhaban. But he did not keep petrol and vigilance on prisoners and not count the number of prisoners. This is a gross negligence of duty on the part of Sri. Das, Warder. Thus Sri Das violated the rules 191,192,193,200 and 346 of Bengal Jail Code Vol-1, part 1, and rule 3(1)(2) of Tripura Civil Services(conduct) Rules, 1988.”

[Emphasis supplied]

[7] It is apparent on the face of the Article-I that the petitioner was alleged to have failed to maintain necessary watch on the under trial prisoner who was in a bid to run away from the Central Jail. According to the said Article-I, the under trial prisoner could manage to slip unnoticed as there was lack of proper patrol and vigilance on the prisoners.

[8] The petitioner denied such allegation and as a result the disciplinary authority instituted the regular inquiry as proposed under Rule 14 of the CCS (CCA) Rules, 1965.

[9] By the enquiry report dated 30.01.2009, Annexure-C to the writ petition, the enquiry authority, the Additional Commissioner of Departmental Inquiries, Tripura has categorically observed :

> **“Point NO. (ix) &. (xi):- To meet these points, the prosecution alleged that at the relevant time when A.O. 9 & A.O. 11 were performing their duties at the ward no. 1 due to their negligency the said UTP managed to flee away from Central jail.**
>
> **Perused the evidence as well as the written brief of arguments submitted by both the parties to the proceedings. It is admitted fact that the UTP Kishore Kar was unnoticed behind the Ananda Bhavan. The A.O. 9 & A.O. 11 were direct custodian of the said**

> **UTP Sri Kishore Kar and since the said Kar managed to flee away from their grip and there is nothing to contradict it and the A.O. 9 & A.O. 11 did not make any reasonable explanation and this thing is termed as preponderance of probability which helped the prosecution to fasten both the A.Os 9 & 11 in the alleged charge. Besides, suffice it to say that if A.O. 9 & A.O. 11 being the direct custodian of the said UTP at the relevant time were being alert on their duty the incident of said UTP could have prevented. Accordingly, I don't feel impressed to the line adopted by the defence. Therefore, I find force to give the answer on these points in favour of the prosecution. And as such these points are decided in affirmative."**

[10] On the basis of the said report, the order dated 12.01.2011, was passed after affording the delinquent officers the opportunity of filing the representations. The delinquent officers including the petitioner filed their representations and after that the said order of penalty was passed. An appeal was filed by the petitioner against the said order dated 12.01.2011. As the appellate authority did not pass any order, the petitioner in the interregnum approached the Gauhati High Court by filing a writ petition, being No. WP(C) 178 of 2012, which was disposed by the order dated 25.4.2012 directing the appellate authority to dispose of the appeal within a period of one month from the date of receipt of that

order. Accordingly, the appellate authority passed the order dated 15.5.2012 on dismissing the said appeal. Being aggrieved, the petitioner has approached this Court against the order of penalty as well as the appellate order.

[11] Mr. R. Dutta, learned counsel appearing for the petitioner has submitted that there is no evidence to show that the petitioner had been negligent in his duty, rather he was very alert and the moment he noticed that one of the under trial prisoner was missing, he immediately searched for him and found that he was on the run. Immediately he raised alarm, but unfortunately the prisoner could not be booked and he managed to escape the prison. Mr. Dutta, learned Counsel referring to the inquiry report of the Superintendent, Central Jail, Annexure-A to the writ petition, has submitted that the Superintendent of the jail has clearly stated that the petitioner was not negligent in performing his duties. Further, Mr. Dutta, has submitted that from reading of the inquiry report, it would be apparent that the

petitioner cannot be held guilty of the charge inasmuch as there is complete absence of evidence.

[12] From the other side, Sri Chakaraborty, learned Addl. Govt. Advocate has submitted that the petitioner has not denied that during his duty hours the under-trial prisoner escaped from the jail and as such unless he has properly explained that how he had managed to escape from the jail despite due vigil, the petitioner has to be held guilty of the dereliction of the duty. Mr. Chakraborty, learned Addl. Govt. Advocate has thus submitted that following the standard of preponderance of probability and in absence of proper explanation by the petitioner, the finding of the inquiry committee cannot be faulted with and thus the disciplinary authority or the appellate authority has committed no wrong calling for intervention of this court. Moreover, Mr. Chakraborty, learned Addl. Govt. Advocate has submitted that a roving inquiry in the garb of judicial review of the disciplinary proceeding is always avoidable as this court cannot be turned to one, as the court of appeal.

[13] Having regard to the rival contentions as projected by the learned counsel, this court has made a barsque survey of the records produced with the writ petition and the counter affidavit. It appears from the record that at the time of inquiry by the Superintendent of Jail, the petitioner has admitted to him that during his duty hours the under-trial prisoner made the slip. However, he has explained certain things, it is no denying that the Warders are supposed to be on vigil round the clock. But in the other wards they were not found there. This explanation, according to the court is not acceptable. Moreover, in one breath he has stated that he raised the alarm and tried to inform the Head Warder, but on the other breath he has stated that the bells were not pulled on for raising the alarm and to chase the under-trial prisoner on the run. This explanation according to the court is perfurated cannot be accepted to hold that there was no evidence of his dereliction of duty.

[14] As such, this court is of the view that this is not a case where the concurrent finding that the petitioner was negligent in the duty can be interfered with. Negligence however is not entirely attributable to the petitioner, it was a failure of the entire system as it has been admitted that for piling up of the rubbishes on demolition of a certain part of the Central Jail, the escape of the under-trial prisoner was made possible. But for that the petitioner cannot get any advantage as he was on guard to keep watch on the under-trial prisoners in the Ward No.1 during his duty hours.

[15] Though the proceeding was under Rule 14 of the CCS (CCA) Rules, but ultimately it ended with the penalty as reproduced. The said penalty is no doubt a minor penalty, reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and without adversely affecting his pension.

[16] Having observed thus, this court is persuaded to hold that when someone is awarded minor penalty,

whether the pay and allowances for the suspension period can be affected by holding that that period will not be treated as on duty for purpose of release of the pay and allowances or for granting that benefit beyond the subsistence allowance? The answer must be in the negative in view of the Office Memorandum No.43/56/64-AVD, dated 22.10.1964, which has consistently been followed thereafter and subsequently by the Government of India, Department of Personal and Training vide the Memorandum No. 11012/15/85-Estt.(A), dated 03.12.1985, the same principle has been reiterated. For purpose of reference the following paragraphs from the ***Swamy's Compilation of CCS (CCA) Rules*** is extracted:

> **"The undersigned is directed to invite attention to this Department, O.M. No. 43/56/64-AVD, dated 22.10.1964, containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up a review the CCS (CCA)**

> **Rules, 1965, had suggested that in cases where a Government servant , against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B."**
>
> [Emphasis supplied]

[17] In view of that policy, which has been consistently followed throughout the country and in absence of the contrary rules framed by the state government, this court is of the view that a part of the penalty is required to be interfered with where a decision has been taken as regards the suspension period. As such, the direction that the petitioner will not get any financial benefit other than the subsistence allowance paid to him during the suspension period stands quashed. The competent authority is directed to pass the appropriate order under FR 54-B within a period of 1(one) month from the date of receipt of a copy of this order and release the pay and allowances of the period of

suspension of the petitioner minus the subsistence allowance within a reasonable period, but by any rate not beyond 3(three) months from the date of receipt of this order.

[18] With this observation and directions this writ petition stands partly allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sabyasachi B