

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.371 OF 2010

Dipak Deb,
S/O Late Digendra Kumar Deb,
East Gobindapur, Kailashahar,
P.S. Kailashahar, P.O. Kailashahar,
District-North Tripura.

..... *Petitioner*

- *Vs* -

1. The State of Tripura,
(to be represented by the
Commissioner cum Secretary,
Department of Industries and Commerce,
Government of Tripura),
Capital Complex, Agartala.

2. The Chief Secretary,
Government of Tripura,
Secretariat Building,
Capital Complex, Agartala,
P.O. Agartala,
District-West Tripura.

3. The Director,
Department of Industries and Commerce,
Government of Tripura,
Secretariat Building,
Capital Complex, Agartala,
P.O. Agartala,
District-West Tripura.

4. The Principal,
Industrial Training Institute,
Kailashahar, North Tripura,
P.O. Kailashahar.

5. The General Manager,
District Industrial Training Institute,
Kailashahar, P.O. Kailashahar,
District-North Tripura.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner

: Mr. P. Roy Barman, Advocate
Mr. K. Nath, Advocate.

For the respondents : Mr. B. Dutta, Advocate

Date of hearing and delivery
of Judgment & Order : **03.09.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. P. Roy Barman for the petitioner and learned counsel, Mr. B. Dutta for the State respondents.

2. The petitioner while was working as a Foreman under the Directorate of Industries & Commerce, Government of Tripura, posted at Industrial Training Institute(ITI), Kailashahar, a disciplinary proceeding was drawn up against the petitioner vide Memo. dated 10.01.2008(*Annexure-G* to the writ petition) by the Director of Industries & Commerce on the following article of charge:

"Article of Charge-I

That Shri Dipak Deb, Foreman attached to Industrial Training Institute, Kailashahar, North Tripura while functioning as such failed to maintain absolute integrity and devotion to duty in as such he was submitted a forged Admit Card bearing No.1372 and a forged Mark sheet bearing No.20130 dated 20-07-1978 of the Board of Secondary Education, Assam at the time of submission of offer of appointment in the post of Instructor on 27-01-1986. Knowing that these were forged and false. Shri Dipak Deb, Foreman the than

Instructor has submitted these false Certificate to the authority in support of his false claim that he had passed the High School leaving Certificate Examination, 1978 from the Board of Secondary Education, Assam. But on an enquiry with the Board of Secondary Education, Assam, it has been proved by the Deputy Secretary, Board of Secondary Education, Assam in his letter No.SEBA/TECH/BERI/1(95)/71 dated 15-03-2007 the Admit Card and the Mark Sheet are forged and not genuine. In fact, Shri Dipak Deb, Foreman also furnished a false declaration in his attestation form stating that he had passed the High School leaving Certificate Examination, 1978.

Shri Dipak Deb, Foreman himself admitted that he has submitted false and forged Admit Card and Mark sheet in black and white by his letter dated 16-06-2007.

So, Shri Dipak Deb, Foreman by his above acts exhibited lake of integrity and devotion to duty and conducted in way which is un-becoming of an employee of the Department of Industries & Commerce and there by violated the provision of Rule 3(1) of the Tripura Civil Service(Conduct) Rules, 1988 attracting severe action against him.”

3. In response to the said Memo dated 10.01.2008, the petitioner submitted his reply to the disciplinary authority and thereafter a formal inquiry was conducted under Rule 14 of the CCS(CC&A) Rules, 1965 by the Additional Commissioner of Departmental Inquiries, Government of Tripura and the inquiry officer submitted a report on 15.09.2008(*Annexure-J* to the writ

petition) holding that the charge framed against the petitioner has been proved. The disciplinary authority, thereafter in due course passed order of punishment dated 19.09.2009(*Annexure-L* to the writ petition) directing that the petitioner should be reduced to the post of Blacksmith from the post of Foreman on re-appointment in the scale of pay of ₹240-440/- since 27.01.1986 subject to revision of pay time to time. By another Memo. dated 20.11.2009 (*Annexure-M* to the writ petition), the Principal of ITI, Kailashahar, *i.e.* respondent No.4 directed that in view of the punishment an amount of ₹7,11,836/- should be recovered from the pay of the petitioner in 122 instalments.

4. By filing this writ petition the petitioner challenged the order of punishment dated 19.09.2009(*Annexure-L* to the writ petition) and Memo. dated 20.11.2009(*Annexure-M* to the writ petition) and prayed for quashing the said order and the Memorandum.

5. It is submitted by learned counsel, Mr. Roy Barman that the petitioner was initially appointed as an Instructor in the year 1986 and subsequently he was promoted to the post of Sr. Instructor and then to the post of Foreman time to time considering his excellent services rendered to the department. The disciplinary proceeding was drawn against him alleging that the admit card and mark sheet submitted by the petitioner were forged. The inquiry report submitted by the inquiry officer shows that the evidence

adduced at the time of inquiry did not prove that the admit card and mark sheet were forged, but a written brief was submitted by the presenting officer and since the written brief was not countered by the petitioner the inquiry officer held him guilty and observed that the charge has been proved based on the written brief submitted by the presenting officer. It is emphatically submitted by Mr. Roy Barman, learned counsel for the petitioner that a written brief cannot be read as an evidence and the written brief was in the form of argument submitted on behalf of presenting officer and based on that written brief, it was totally illegal on the part of the inquiry officer to hold that the charge framed against the petitioner has been proved.

6. Learned State counsel, Mr. Dutta produced the records of the disciplinary proceedings and with all his fairness submitted that along with the Memorandum dated 10.01.2008(*Annexure-G* to the writ petition) a list of 16(sixteen) documents was arrayed to prove the charge in *Annexure-III* apart from three witnesses named in *Annexure-IV*. He has submitted that those three witnesses have been examined but the material documents mentioned in Sl. Nos.11, 12 and 14 were not formally exhibited whereas those were mentioned in the written brief submitted by the presenting officer and on the basis of that written brief since was not countered by the charged officer, *i.e.* the petitioner, he was held guilty of the charge framed against him.

7. I have already reproduced hereinbefore the article of charge framed against the petitioner. As I find in *Annexure-G* the disciplinary authority listed sixteen items of documents to prove the charge and all those documents were in the records of the disciplinary proceedings. Those sixteen items of documents listed by the disciplinary authority along with the memorandum, initiating disciplinary proceedings against the petitioner, are as follows:

"1. Letter issued by the Director, Industries & Commerce to the Principal Industrial Training Institute, Kailashahar, North Tripura vide No.Pers(D)/X-24/99/13,719 dated 23-08-2006.

2. Order issued by the Director, Industries & Commerce to Shri Dipak Deb, Foreman, Industrial Training Institute, Kailashahar, North Tripura vide No.Pers(D)/X-24/99/13,720-23 dated 23-08-2006.

3. Letter dated 20-09-2006 submitted by Shri Dipak Deb, Foreman, Industrial Training Institute, Kailashahar, North Tripura.

4. Letter No.F.DI/ITI/KLS/ESTT/PERS(D)/89/98/2401-02 dated 15-09-2006 along with Xerox copy of peon book submitted by the Principal Industrial Training Institute, Kailashahar, North Tripura to the Director, Industries & Commerce.

5. Attestation form dated 27-01-1986 as submitted by Shri Dipak Deb, Accused Officer.

6. Forged Admit Card bearing No.1372 of the Board of Secondary Education, Assam.

7. Forged Mark sheet bearing No.20130 dated 20-07-1978 of the Board of Secondary Education, Assam.

8. Letter issued by the Director Industries & Commerce to the President, Board of Secondary Education, Assam for ascertaining the genuineness of the Mark sheet and the Admit card vide letter No.F.Pers(D)/X-24/99/15,813 dated 03-10-2006.

9. Letter No.F.Pers(D)/X-24/99/17,923 dated 27-11-2006 issued by the Addl. Director, Directorate of (I&C).

10. Letter No.F.Pers(D)/X-24/99/3120-21 dated 05-03-2007 issued by the Director, Industries & Commerce, Government of Tripura.

11. Letter No.SEBA/TECH/VERI/1/95/71 dated 15-03-2007 of the Deputy Secretary, Board of Secondary Education, Assam addressed to the Director(I&C).

12. Memorandum issued by the Director(I&C) to Shri Dipak Deb, Foreman, ITI, Kailashahar vide No.F.Pers(D)/X-24/99/5978-79 dated 30-04-2007.

13. Letter No.F.Pers(D)/X-24/99/7471-72 dated 06-06-2007 of the Director(I&C).

14. Reply dated 16-06-2007 submitted by Shri Dipak Deb, Foreman.

15. An allegation received in the Directorate of (I&C) on 25-04-2006.

16. An inquiry report submitted by Shri P.P. Sinha Choudhury, Addl. Director(I&C)."

8. On perusal of the report of the inquiry officer I find that while examining PWs 1 and 3, only the documents at item Nos.5, 6,

7 and 16 have been marked as Exbts.S1, S2 and S3 and rest of the documents were not exhibited. In the article of charge itself, a reply of the petitioner dated 16.06.2007 has been mentioned, wherein it is alleged that the petitioner admitted the charge of filing forged admit card and mark sheet but that reply has not been exhibited. It is quite surprising that the inquiry officer though has held that the allegation of submission of forged admit card and mark sheet has not been proved on the basis of the evidence of PWs 1 and 3 and the exhibited documents, but based on the written brief submitted by the presenting officer, he has arrived at a conclusion that the article of charge framed against the petitioner has been proved. I am quite aware of the jurisdiction of this Court in respect of judicial review of administrative action. The inquiry officer though was of the opinion that the evidence adduced at the time of inquiry was not enough to prove the charge but based on the written brief of the presenting officer wherein the documents referred in Sl. Nos.11, 12 and 14 have been mentioned, he has come to the conclusion that the article of charge has been proved.

9. Learned counsel, Mr. Roy Barman has submitted that for initial appointment in the post of Instructor, educational qualification of Class VIII pass was enough. The petitioner has submitted some admit card and mark sheet and even if those were discarded the petitioner's service should not have been disturbed. He has also submitted that the petitioner was genuinely appointed and was promoted time to time and after the punishment order was

passed he was reduced to a rank in which he did not work and further by *Annexure-M*, i.e. Memo. dated 20.11.2009 the Principal of ITI, Kailashahar directed recovery of the amount which the petitioner drawn during his genuine service. Memo. dated 20.11.2009, in my considered opinion, was absolutely unreasonable and not tenable in law. While the petitioner was in genuine service and rendered his service to the department, the pay and allowances given to him cannot be recovered. But in respect of the disciplinary proceedings, as I find, the inquiry officer was bound to remain himself confined in the evidence and a written brief cannot form a part of evidence. In that sense the report of the inquiry officer must be termed as perverse. But it is quite apparent from the face of the records that the inquiry was not conducted properly. The relevant documents though were mentioned in the list of documents arrayed with the memorandum initiating the disciplinary proceedings, were not exhibited or put in evidence giving scope to the petitioner to cross-examine and to adduce evidence to counter the same. In the proceedings, no doubt, the charged officer, i.e. the petitioner did not adduce any evidence but that does not mean that simply on the basis of the written brief he should be held guilty. Law requires that the documents on which the Court should rely must be taken to record according to the procedure prescribed by law. Rule of evidence or the procedural law as applicable to a civil suit is not required to be applied in a case of a disciplinary proceedings but the rules of natural justice shall apply which require that all materials on the basis of which a decision has to be taken should be

brought on record affording opportunity to the adverse party to counter it. In the present disciplinary proceedings though there were sixteen documents listed but those were not put in evidence to take it into consideration while deciding the article of charge.

10. In view of the discussions made above, the report of the inquiry officer and the consequent order of punishment dated 19.09.2009(*Annexure-L* to the writ petition) cannot stand and is liable to be interfered and quashed and accordingly I quash it. Memorandum dated 20.11.2009(*Annexure-M* to the writ petition) also is interfered and quashed.

11. The disciplinary proceeding is remanded back to the disciplinary authority to have a *de novo* inquiry on the basis of the article of charge already framed wherein the evidence which is already recorded may be read and further evidence may be adduced by both side, if so desire, and the petitioner, *i.e.* the charged officer will be at liberty to cross-examine the witnesses if re-examined and in the process the disciplinary authority may take on record all the documents as they may desire listed in the list of documents. The further inquiry as directed may be completed within six months from today.

12. The order of punishment though has been set aside, I am not going to pass any order to reinstate the petitioner in his

original position as of now until the inquiry afresh as directed above is completed.

13. The record of the disciplinary proceedings is returned to learned State counsel, Mr. Dutta for the State respondents.

14. With the above observation and direction the writ petition stands disposed of. No order as to costs.

JUDGE