

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 195 of 2014

Sri Tapan Malakar,
S/O Sri Bibhuti Malakar,
resident of village- Rajnagar,
P.O. Rajnagar, District- South Tripura.

.... **Petitioner.**

VERSUS

- 1. The State of Tripura,**
represented by Secretary,
to the Government of Tripura,
having its office at New Capital Complex,
P.O.- Kunjaban, Agartala, West Tripura.
- 2. The Director General of Police,**
Government of Tripura in the Home Department,
having its office at Akhaura Road,
P.O. Agartala, District- West Tripura.
- 3. The Deputy Inspector General of Police,**
Government of Tripura in the Home Department,
having its office at Akhaura Road,
P.O. Agartala, District- West Tripura.
- 4. The Superintendent of Police,**
South Tripura, having its office at Udaipur,
P.O.& P.S. R.K.Pur, District- South Tripura.

.... **Respondents**

BEFORE

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner : Mr. B.Dutta, Advocate

For State respondents : Mr. TD Majumder, GA

Date of hearing and : 12.03.2015.
delivery of judgment.

Whether fit for reporting : YES / NO

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, CJ)

The petitioner by means of this petition has challenged the Order
no. 1482/2008 dated 31.07.2008 passed by the Superintendent of Police,

South Tripura, and the appellate order dated 23.05.2009 passed by the DIG whereby the petitioner had been terminated from his service.

2. Briefly stated, the facts of the case are that disciplinary proceedings were initiated against the petitioner in respect of two charges. The first charge was that he had absented himself from duty and the second charge was that he had stolen one motorcycle. Both the charges were held to be proved by the Enquiry Officer and on the basis of that report the impugned orders were passed.

3. The main grievance of the petitioner is that he had been illegally proceeded against *ex parte* and had not been given a reasonable opportunity to defend himself. The second grievance raised by Sri Datta is that as far as the offence of theft was concerned, the petitioner was acquitted by the Chief Judicial Magistrate, South Tripura, Udaipur in case No. GR 135 of 2007 decided on 30.12.2008.

4. As far as the first issue is concerned, we are clearly of the view that the petitioner was given more than reasonable opportunity to appear before the Enquiry Officer. True it is that the initial memorandum of charges were not served upon the petitioner and were served upon his wife and, therefore, we had asked for the record to be produced before us because if that fact alone had been true then obviously the petitioner should not have been proceeded against *ex parte*. However, we find that after the memorandum of charges was served upon the wife of the petitioner, the Enquiry Officer issued notice to the petitioner to appear before him 10.09.2007 to find whether he had received the memorandum of charges and the documents annexed thereto.

5. The order dated 10.09.2007 shows that the petitioner delinquent appeared before the Enquiry Officer and admitted that he had received the of article of charges along with all the relevant papers. Therefore, this ground is not available to the petitioner.

6. We also find from the file of the Enquiry Officer that the petitioner delinquent official was issued a large number of notices and all the notices except one notice was actually served upon him. He also appeared before the Enquiry Officer on at least three occasions. He was present when the statement of one of the witnesses was recorded. It is apparent that he decided to take part in the enquiry when he felt like and disappeared when he did not feel to appear before the Enquiry Officer. Such conduct is not expected of any government official much less a member of the uniform force. Therefore, we cannot agree with the submission of Mr. Dutta that the petitioner was wrongly proceeded exparte. In this view of the matter, we are not agreeing with this opinion.

8. As far as the finding of absence from leave is concerned, that is the finding based only on the record of the police officials and, therefore, we did not intend to disturb that fact.

9. However, as far as the finding with regard to theft of the motorcycle is concerned, that will require to be reconsidered in light of the acquittal of the petitioner by the criminal court. What is the effect of this acquittal is for the Disciplinary Authority to decide in the light of the law laid down by the Apex Court in ***Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*** reported in ***(1999)3 SCC 679***; ***Indian Overseas Bank, Annasalai & Anr. Vs. P. Ganesan & Ors.***, reported in ***(2008)1 SCC 650***; ***State Bank of Hyderabad & Anr. Vs. P. Kata Rao***, reported in ***(2008) 15 SCC 657***;

Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao, reported in ***(2012)1 SCC 442*** and ***WP(C) 282 of 2013*** decided by this Court on 16.09.2013. It is for the Disciplinary Authority to decide what is the impact of the criminal case judgment in the facts of this case. Furthermore, if the Disciplinary Authority agrees with the petitioner that the second charge cannot be held to be proved in view of his acquittal by the criminal court then the punishment will also have to be considered all over again.

10. In this view of the matter, we allow this petition to the limited extent that the matter is remanded to the Disciplinary Authority who shall examine the report of the Enquiry Officer along with the judgment of acquittal passed by the criminal Court and after applying the law will decide whether the petitioner can be held guilty of the second charge. He shall also reconsider the question of penalty in the light of what we have observed here-in-after. With this observation, the writ petition is disposed of.

11. The petitioner is directed to appear before the Disciplinary Authority on 22.04.2015 along with a copy of the judgment passed by this Court.

JUDGE

CHIEF JUSTICE

Saikat