

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 199 of 2012

Sri Amar Chand Chowdhury,
S/O Lt. Mati Charan Chowdhury,
Resident of Amtali (Near Bazar),
P.O. – Amtali, P.S. Amtali,
District – West Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura,
represented by the Secretary to the
Government of Tripura in the Home Department,
Having its office at Civil Secretariat,
New Capital Complex, P.O. – Kunjaban,
P.S. East Agartala, District - West Tripura.
2. The Director General of Police,
Government of Tripura,
Having his office at Akhaura Road,
P.O. - Agartala, P.S. – West Agartala,
District – West Tripura.
3. The Deputy Inspector General of Police
Northern/Southern Ranger,
Government of Tripura having his office at
Akhaura Road, P.O. – Agartala,
P.S. – West Agartala, District – West Tripura.
4. The Superintendent of Police
West Tripura District,
Government of Tripura having his office at
Akhaura Road, P.O. – Agartala,
P.S. – West Agartala, District – West Tripura.

..... *Respondents*

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

For the Petitioner

: Mr. P.K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.
Ms. K. Debbarma, Advocate.

For the respondents : Mr. T.D. Majumder, GA.
Mr. A. Ghosh, Advocate.

Date of hearing & : 19.11.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has challenged the Order dated 22.07.2011 whereby punishment of dismissal from service was imposed upon him. He has also challenged the order dated 18.01.2012 whereby, his appeal has been dismissed.

2. Briefly stated the facts of the case are that the petitioner was appointed as Constable in the Tripura Police Service in the year 1977 and in the year 2008, he was placed under suspension because a criminal case was registered against him for possession of fake Indian currency notes. In the criminal case, the petitioner was convicted in Sessions Trial No.10 of 2010 vide judgment dated 19.07.2011 of having committed an offence punishable under Section 489 B of the IPC.

3. Though the disciplinary proceedings were initiated against the petitioner on similar charges, no inquiry was held and after his conviction in the criminal case, only on the basis of his

conviction he was dismissed from service. The petitioner filed an appeal against the judgment of conviction. This appeal was allowed by a learned Single Judge of this Court vide judgment dated 25.08.2014 and the petitioner was acquitted after setting aside the judgment of the trial Court. Thereafter, the petitioner approached the authorities for reinstatement in service and the order passed on his application reads as follows:-

"The applicant was acquitted from the case registered against him. But in Departmental Proceeding he was DISMISSED from Govt. Service. I have seeked the opinion of PHQ and the PHQ Opined that as he was already Dismissed from Govt. Service, his prayer for reinstatement is not considered

***(B.K. NAG, IPS)
Sd/- 18-03-2015
Superintendent of Police
West Tripura, Agartala."***

This order is a totally illegal order. The petitioner was not dismissed on the basis of evidence recorded in the disciplinary proceedings. He was dismissed only on the basis of the conviction recorded by the trial Court. Once that conviction has been set aside, the entire basis for his dismissal does not survive and he has to be reinstated in service.

4. We may point out that we had asked the State whether it had filed any Special Leave Petition when it had challenged the judgment of the learned Single Judge before the Apex Court. We have been informed at the bar by Mr. A. Ghosh, learned counsel that no such challenge has been made. Therefore,

the judgment of the learned Single Judge acquitting the petitioner has attained finality.

5. Disciplinary proceedings were started against the petitioner and there were two charges against him. The first charge was that he was found absent from Government duty and this amounted to dereliction of duty. The second charge was that he was in possession of fake Indian currency. In the inquiry proceedings though the first charge was found to be proved against him, the second charge was not found to be proved against him. However, the disciplinary authority basically relied upon the order of conviction and the relevant portion of the order of the disciplinary authority reads as follows:-

"I have carefully gone through the D/P file, perused the findings of E/O. However, considering the nature of offence committed by the delinquent constable, the D/P was kept in SINE-DIE till disposal of the criminal case which was registered vide West Agartala P.S. Case No.202/08 u/s 489 (B) and 489 (C) IPC as the article of charge bears similar content on which criminal case was charge sheeted and tried in the court of Law. From the Judgment passed by Hon'ble Session Judge, West Tripura Agartala dated 19.07.11 Case No. S.T. 10 of 2010, it is found that the constable C/1995 Amar Chand Chowdhury has been convicted w.e.f. 19/07/11 and sentenced him to suffer rigorous imprisonment for 7 (Seven) years and to pay a fine of Rs.25,000/- in default of payment to suffer further simple imprisonment for 01(one) year.

Since the delinquent is convicted as per verdict of the Hon'ble Court C/1995 Amar Chand Chowdhury of West Tripura District is hereby DISMISSED from service w.e.f. 19/7/11 and the period of suspension w.e.f 19/11/08(AN) to 13/10/09(AN) is treated as not on duty. He will not get anything more than whatever he had drawn during the period of his suspension w.e.f. 19/11/08 to 13/11/09(AN) as subsistence allowance."

6. It is obvious that the disciplinary authority did not apply its mind to other facts in the inquiry report and has only imposed the penalty of dismissal because of the conviction recorded by the Court. Therefore, this order cannot survive and the same has to be set aside. The same accordingly set aside.

7. However, instead of straightaway reinstating the petitioner, we direct that within two months from today, the disciplinary authority shall rehear the matter after giving hearing to the petitioner. The disciplinary authority only on the basis of the inquiry report shall decide whether any punishment is to be imposed on the petitioner and what is the punishment to be imposed. We make it clear that as far as the issue of fake currency notes is concerned that cannot be taken into consideration while considering the case of the petitioner. The disciplinary authority is directed to ensure that final order is passed latest by 28th February, 2016. The petitioner shall be deemed to be under suspension and shall be entitled to suspension allowances till fresh order is passed and he shall be paid his suspension allowances for the entire period in accordance with law.

8. The writ petition is accordingly disposed of. No costs.

JUDGE

CHIEF JUSTICE

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