

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.528 of 2011

Md. Fakar Uddin,
son of Masaullah,
resident of Khilpara, P.O. Khilpara,
P.S. R.K. Pur, District – South Tripura,
presently posted as Information &
Cultural Officer in the SDICA Office,
Udaipur, South Tripura

..... **Petitioner**

V e r s u s

- 1. The State of Tripura,**
represented by the Secretary-cum-
Commissioner, Department of
Information, Cultural Affairs and
Tourism, Government of Tripura, Civil
Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, District –
West Tripura
- 2. The Principal Secretary,**
to the Government of Tripura, GA(AR)
Department, Civil Secretariat
Complex, P.O. Kunjaban, P.S. New
Capital Complex, District – West
Tripura
- 3. The Director ,**
Department of Information, Cultural
Affairs and Tourism, Government of
Tripura, Agartala, P.S. West Agartala,
P.O. Agartala, District – West Tripura
- 4. Shri Ajoy Roy,**
Sr. Information Officer
- 5. Shri Chandan Sarkar,**
Sr. Information Officer
- 6. Shri Biswajit Deb,**
Sr. Information Officer

7. **Shri Promod Acharjee,**
Sr. Information Officer
8. **Shri Dibyendu Sekhar Datta,**
Sr. Information Officer
9. **Shri Debasish Lodh,**
Sr. Information Officer

Notice to be served upon the respondents No.4 to 9 through the Director of Information, Cultural Affairs and Tourism, Government of Tripura, Agartala, P.S. West Agartala, P.O. Agartala, District – West Tripura

..... Respondents

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioner : Mr. D.C. Roy, Advocate

For the respondents No.1,2 & 3 : Mr. S. Chakraborty, Addl. G.A
For the respondents No. 4 to 9 : Mr. A. Lodh, Advocate

Date of hearing and : **26.06.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents No.1 to 3 and Mr. A. Lodh, learned counsel appearing for the respondents No.4 to 9.

[2] Being aggrieved by the order dated 16.08.2011 which was forwarded by the memorandum dated 26.09.2011,

Annexure-7 to the writ petition, the petitioner has filed this petition for quashing the said order dated 16.08.2011. By the order dated 16.08.2011, the appellate authority interfered with the order dated 19.06.2006, Annexure-2 to the writ petition, whereby the Disciplinary Authority awarded the petitioner penalty of withholding 5(five) increments with cumulative effect in place of 6(six) increments as was proposed by the notice. The appellate authority, the Principal Secretary to the Government of Tripura, GA(AR) Department on interference has passed the order, which reads *inter alia*:

"Whereas I, therefore, reduced the penalty of withholding of 4(four) increments under Rule, 11 of CCS (CCA) Rules, 1965 to withholding of 3(three) increments without cumulative effect after examining all the relevant documents, Orders and personal hearing and by considering gravity of misconduct.

AND

Whereas I, therefore, order that the suspension period from 16.08.2000 to 03.06.2005 be treated as on duty and Md. Fakar Uddin, ICO be paid his pay & allowances. Where departmental proceedings against a suspended employee for imposition of a major penalty finally end with the imposition of a minor penalty, the suspension should be treated as wholly unjustified in terms of F.R.54B and the employee concerned should be paid full pay and allowances for the period of suspension."

[Emphasis supplied]

[3] Mr. D.C. Roy, learned counsel appearing for the petitioner has submitted that having regard to the charges levelled against the petitioner by the memorandum dated 27.01.2006, the order of penalty passed by the disciplinary authority is quite disproportionate. Even the order of the

appellate authority stands disproportionate to the misconduct. He has urged this Court to interfere with the impugned order and exonerate the petitioner from any punitive action.

[4] Both Mr. S. Chakraborty, Addl. G.A. and Mr. A. Lodh, learned counsel appearing for the respondents have in one voice submitted that this Court may not exercise its extraordinary jurisdiction by way of interference in the impugned order as proportionality of penalty falls exclusively in the domain of the disciplinary authority or the appellate authority. Whenever any penalty appears to the court disproportionate, the Court may not reduce or fine-tune it, but revert the question for consideration of the disciplinary authority or the appellate authority, whoever is relevant in the context.

[5] Having regard to the submissions made by the learned counsel appearing for the parties and in order to appreciate them when this Court scrutinized the records, what surprised this Court most is that neither the inquiry report which held the petitioner guilty of the misconduct nor the finding of the disciplinary authority as to the misconduct has been challenged. The challenge is against the order of the appellate authority. Even the memorandum containing the article of charge has not been made part of this writ petition, enabling this Court to go into the relevant materials. Same is the case with the report of the inquiry authority and the notice proposing penalty by the

disciplinary authority. The challenge is thus confined to the proportionality of the penalty. This Court after examining the impugned order finds that adequate leniency has been shown to the petitioner. Even though 3(three) increments have been withheld but those are so withheld without cumulative effect. Even the period of suspension of the petitioner has been declared to be as on duty and the petitioner will get all the financial benefits without any hold. Only for three years, the increment of the petitioner will not be released. Withholding will not have any effect of the postponement. Having regard to that aspect of the matter, this Court does not find any merit in this writ petition. Accordingly, the same is dismissed. It is needless to say that for purpose of consideration of promotion of the petitioner on expiry of 3(three) years, the order of penalty will have no negative impact.

There shall be no order as to costs.

JUDGE

Sujay