HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.860/2019

Dr. Manas Dev, S/O. Lt. Sunil Ranjan Dev, resident of Circuit House, near Bangladesh Visa Office, P.O.- Kunjaban, PIN:799006, Agartala, District: West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by the Secretary, GA (P&T) Department, Government of Tripura, PO: Secretariat, PIN:799010, New Secretariat Complex, Agartala, District: West Tripura.

2. The Secretary, GA (AR) Department, Government of Tripura, PO: Secretariat, PIN:799010, New Secretariat Complex, Agartala, District: West Tripura.

3. The Secretary, Tripura Public Service Commission, PO: Agartala, PIN:799001, District: West Tripura.

4. Sri Sanjoy Kumar Panda, IAS (Retd.) (Ex-Chief Secretary, Government of Tripura), S/o. Lt. Dhaneswar Panda, Tulasipur, Shiddeswar Sahi, Cuttak, PIN:753008, Odisha.

-----Respondent(s)

For Petitioner(s) : Mr. C.S. Sinha, Advocate,
Ms. Swarupa Chisim, Advocate.

For Respondent(s) : Mr. H. Sarkar, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment: **20th February, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the parties for final disposal of the petition.

2. Petitioner has challenged the order dated 04.05.2013 passed by the disciplinary authority and two orders dated 05.09.2013 and 16.09.2015 passed by the appellate authority.

3. Brief facts are as under:

The petitioner was served with a charge-sheet dated 25.01.2008 alleging that he had committed temporary misappropriation of Government money. He denied the charges. Departmental inquiry was conducted. Inquiry Officer submitted his report dated 23.07.2012 in which he came to the conclusion that the charges against the petitioner were not established. The disciplinary authority was the Secretary-in-charge of the concerned department. In case of the petitioner, it happened to be the Principal Secretary, General Administration (Administrative Reforms) department. The disciplinary authority disagreed with the findings of the Inquiry Officer and gave a notice of disagreement citing tentative reasons. The petitioner made representation to such notice. On 04.09.2012 the disciplinary authority made a detailed note recording that the charges were not established, there was no financial loss to the Government and, therefore, a lenient view may be taken and disciplinary proceedings be dropped. He also recorded that in another similar case of Sri Akinchan Sarkar, the Government had imposed minor punishment of censure. He, therefore, proposed that the disciplinary proceedings against the petitioner be closed. On these notings, the Chief Secretary made following remarks:

> "Preceding note refers.
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> From record, it appears that the charged officer was issued a notice of disagreement with the findings of the inquiring officer vide Memorandum dated the 23rd July 2012 (p-415/c). The factual position in respect of both the charges are required to be reexamined based on preponderance of probability keeping in view the letter of the District Welfare Officer dated the 7th June 2007 (p-397/c) and

statement of Shri Krishna Debbarma (p-399/c) in respect of the Charge-I and that the original sanction order and the authority, who is supposed to approve the change in work order, and the same has been taken in respect of Charge-II.

2. The file may be resubmitted with above clarification."

4. Thereupon the Principal Secretary proposed a penalty of censure making following observations:

"Disciplinary proceedings against Shri Manas Dev, Ex.SDM, Ambassa.

As per TR-5 No.520041, Shri Dev has deposited/refunded Rs.1.25 lakhs to the SDM, Ambassa on 20th May, 2005, whereas, the amount was personally advanced to Shri Krishna Debbarma, I.O on 02.02.2005 for execution of rubber based project at Aichaknihohor Para and Rs.1,86,500/- lakhs was advanced. Sri Debbarma has returned the unspent amount of Rs.1.25 lakhs to Shri Dev while he was working as SDM, Ambassa. Based on preponderance of probability Shri Dev has kept the amount with him for 3 ½ months which amounts to temporary defalcation of Government money.

2. Regarding diversion of Rs.3.15 lakhs of horti based scheme in respect of Kumardhan Para for jungle clearance, kutcha road, fishery tanks etc. the note was initiated by Sri Akinchan Sarkar, SDWO at the instruction of Shri Dev and Shri Sarkar was neither the DDO nor the sanctioning authority but Shri Dev was the DDO and sanctioning authority. Hence, based on the preponderance of probability, Shri Dev has diverted the fund, though no embezzlement charge was leveled against both of them in the charge sheet.

> In view of the above, it is proposed to impose minor penalty of "Censure" under CCS(CC&A) Rules, 1965."

5. The Chief Secretary agreed to such proposal. He made detailed notings to this effect on 19.12.2012. Since the petitioner belonged to Group-A service, any disciplinary order could only be passed in consultation with the Tripura Public Service Commission (TPSC, for short). The TPSC was consulted. The TPSC advised that to maintain parity with a case of one Dr. Gobinda Reang, punishment of withholding of two increments with cumulative effect be imposed. Accordingly, the Principal Secretary passed his order of punishment dated 04.05.2013, relevant portion of which reads as under:

> "WHEREAS, after considering the said written representation of Dr. Deb (A.O.) it was provisionally decided to impose a minor penalty of **CENSURE** upon the Accused Officer and the proceeding case was forwarded to the Secretary, Tripura Public Service Commission for consultation;
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> AND
>
> WHEREAS, the Secretary, TPSC vide letter **No.F.6(382)/SM/TPSC/2013** dated **11-04-13** has communicated its views to impose a minor penalty of 2(two) increments held up without cumulative effect instead of imposing a minor penalty of '**CENSURE'** upon Dr. Deb;
>
> NOW, THEREFORE, after careful consideration of all relevant aspects and after taking a lenient view in the matter, the undersigned is pleased to impose a minor penalty of withholding of 2(two) increments without cumulative effect upon Dr. Manas Dev, TCS, Ex-SDM, Ambassa, Dhalai District (now Secretary,

> Tripura Information Commission, Government of Tripura, Gurkhabasti, Agartala).
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> The suspension period of Dr. Manas Deb, TCS, Ex-SDM, Ambassa, Dhalai District (now Secretary, Tripura Information Commission, Government of Tripura, Gurkhabasti, Agartala) may be treated as on duty as per provision of Sub-Rule 3 of FR 54(B)."

6. Against the said order of punishment, the petitioner preferred appeal before the Chief Secretary, Government of Tripura which was dismissed by an order dated 05.09.2013. He preferred yet another petition which was also dismissed by an order dated 14/16.09.2015 upon which this petition is filed.

7. It is true that the petition which is filed in the year 2019 is somewhat belated. However, considering the cascading effect of the order of punishment, I have examined the issues on merits.

8. It is not in dispute that the Principal Secretary of the General Administration (AR) department was the disciplinary authority for the petitioner and the Chief Secretary the appellate authority. This emerges from a notification dated 28.09.2004 under which the Central Civil Services (Classification, Control and Appeal) (Tripura 49th amendment) Rules, 2004 were promulgated. Even the Government Advocate does not dispute this position.

9. We may recall that after the inquiry officer held that the charges were not established, the Principal Secretary as the disciplinary authority gave a notice of disagreement. However, considering the petitioner's representation he was of the opinion that the charges were not proved and, therefore, the inquiry be

dropped. He recorded this opinion in his notings dated 04.09.2012. It was the Chief Secretary who desired that the Principal Secretary should review the issue. It was thereupon that the Principal Secretary changed his opinion and suggested imposition of minor punishment of censure. This once again went before the Chief Secretary who agreed to this suggestion. The TPSC, however, insisted that punishment of withholding of two increments with cumulative effect be imposed.

10. The Principal Secretary as a disciplinary authority was required to act on his own discretion and such discretion cannot be controlled or governed by any authority even if it happened to be a higher authority in administrative hierarchy of the Government, more so when the Chief Secretary was the appellate authority. On both counts, therefore, there was a discernable error in the procedure followed in the present case. To reiterate, the disciplinary authority had to exercise his discretion independently of any outside influence and secondly the Chief Secretary as the appellate authority could not have controlled the order that the disciplinary authority would pass.

11. One possible solution to this would be to set aside the orders and allow the Principal Secretary to drop the departmental proceedings which he had in mind and thereafter allowing the Government to review such order if the reviewing authority was of the opinion that such order suffered from legal lacuna. However, the issue is an old one. No useful purpose would be served in

protracting this legal battle. I would instead put a quietus to this litigation in this petition.

12. The disciplinary authority as well as the appellate authority both were convinced that the facts of the case did not warrant any punishment harsher than censure. It was TPSC who insisted that a major punishment of withholding of two increments with cumulative effect be imposed. This was for achieving parity according to TPSC. The parity is not with a co-delinquent in whose case identical charges relating to the same incident were made. The case of Dr. Gobinda Reang was completely independent, separate and arose out of a different incident. Ordinarily, each case of disciplinary proceedings would have its own facts and nuances. It would be quite rare that two unconnected events may give rise to separate departmental inquires but facts may be identical. The recommendation for imposition of higher punishment on the ground of parity, therefore, cannot be accepted.

13. In facts of the present case, therefore, as an exceptional case, the punishment of withholding of two increments with cumulative effect is set aside, instead the punishment of censure is substituted.

14. Petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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