HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.1230/2018

Sri Sudhanghu Sarkar, S/o. Late Purnachandra Sarkar of Madhuban (Dhalai), Sonamura, P.O-Khedabari, Sepahijala, Tripura.

…… *Petitioner(s).*

Vs.

1. The State of Tripura, represented by its Chief Secretary, Department of General Administration (AR), Government of Tripura, New Capital Complex, Agartala, West Tripura.

2. The Chief Secretary, Department of General Administration (AR), Government of Tripura, New Capital Complex, Agartala, as Appellate Authority.

3. Secretary, Department of General Administration (AR), Government of Tripura, Agartala, District- West Tripura, as Disciplinary Authority.

4. Under Secretary, Department of General Administration (AR), Government of Tripura, Agartala, District-West Tripura.

…… *Respondent(s).*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For the Petitioner(s)	:	Ms. R. Purkayastha, Advocate.
For the Respondent(s)	:	Mr. D. Sharma, Addl. Govt. Adv.
Date of hearing & judgment	:	24th June, 2020.
Whether fit for reporting	:	NO.

J U D G M E N T (O R A L)

The petitioner has challenged an order dated 17.03.2017 passed by the disciplinary authority, Secretary, Govt. of Tripura as well as the

appellate order dated 09.10.2018 passed by the Governor by which the petitioner's appeal against the order of disciplinary authority came to be dismissed.

[2] Brief facts are as under:

At the relevant time, the petitioner was working as a Block Development Officer, Gournagar R. D Block. Under the petitioner's supervision various works under MGNREGA schemes were going on. The petitioner was visited with a charge sheet dated 23.10.2013 in which five separate articles of charge were levelled against the petitioner involving financial and procedural irregularities. The petitioner denied the charges and filed his defence statement dated 28.02.2014. A departmental inquiry was conducted. Inquiry Officer submitted his report dated 21.01.2015 holding that none of the charges were proved. The disciplinary authority did not agree with the findings of the Inquiry Officer and issued a notice of disagreement dated 25.07.2016 calling upon the petitioner to state why the charges should not be held to have been proved. In such notice the disciplinary authority also indicated his tentative reasons for his proposed conclusions. The petitioner made a detailed representation dated 17.8.2016 in response to the said notice. The disciplinary authority after taking into

consideration materials on record passed the impugned order on 17.03.2017 in which he held that Charge Articles-I and III were proved, rest were not proved, imposed a punishment of withholding of two increments with future effect. Against the said order, the petitioner preferred appeal. The Governor as an appellate authority dismissed such appeal by the order dated 9th October, 2018. Hence, this petition.

[3] Ms. R. Purkayastha, learned counsel has appeared for the petitioner. She took me extensively through the documents on record and raised following contentions in support of the challenge:

(a) Charge Articles-I and III in the original form were not accepted even by the disciplinary authority. The allegations of financial irregularities and defalcation of public funds was not held to have been proved. Instead, the disciplinary authority held that there were procedural irregularities and connection in both the charges. This was not part of the original charge. Thus, the charges which were held to have been proved were never part of the charge sheet. The disciplinary authority, therefore, could not have held a charge to have been proved which was never part of the charge sheet.

(b) Counsel submitted that the Delegation of Financial Powers Rules, Tripura, 2017 (hereinafter to be referred to as 'DFPRT, 2017') did not extend to the works under MGNREGA. This has been so held by this Court in a judgment in case of ***Sri Soumitra Chakma Vrs. The State of Tripura*** decided on 20th July, 2017.

(c) Counsel submitted that the disciplinary authority had obtained advice of the Tripura Public Service Commission (for short, T.P.S.C). Copy of such advice was never supplied to the petitioner enabling him to make his representation thereon. This was in breach of principles of natural justice. In this context counsel relied on Rule 15(3)(b) of CCS CCA Rules as also the decision of this Court in case of ***Soumitra Chakma***(supra).

[4] On the other hand, Mr. D. Sharma learned Additional Govt. Advocate opposed the petition contending that the disciplinary authority was not bound by the findings of the Inquiry Officer. After recording his tentative reasons of disagreement, the disciplinary authority passed the final order taking into consideration the representation of the petitioner.

The disciplinary authority has come to factual findings which are not open to challenge. The punishment imposed is commensurate with the proved charges.

[5] To resolve the disputes, we may peruse the material on record minutely. It was noted in the charge sheet that there were as many as five charges. Since even according to the disciplinary authority only part of the Article Charges-I and III were proved, we may notice only those charges which read as under:

> *"Article-I*
>
> *That, Sri Sudhangshu Sarkar, TCS-II (now under suspension), while discharging the duties as Block Development Officer, Gournagar RD Block has caused financial irregularities amounting to Rs.95,35,800/- while placing the order for purchase of Bi-clone Tea Seeds and Poly Bags during the financial year 2011-12 by not following the financial norms and without approval of the Panchayat Samity/BAC.*
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> *By doing the above acts, Sri Sudhangshu Sarkar, TCS-II, the then BDO, Gournagar has defalcated the government fund and violated Rules-3 of TCS (Conduct) Rules, 1988.*
>
> *Article-III*
>
> *That, Sri Sudhangshu Sarkar, TCS-II (now under suspension), while functioning as Block Development Officer, Gournagar RD Block has misappropriated a net amount of Rs.32,80,400/- in regard to land levelling of 2472 Nos. IAY house sites during the financial year 2010-11 against the annual target of 983 of that year.*
>
> *By doing the above acts, Sri Sudhangshu Sarkar, TCS-II, the then BDO, Gournagar (under suspension) has*

defalcated the government fund and violated the relevant provisions of TCS (Conduct) Rules, 1988."

[6] In the imputation of the Articles of Charge in connection with these charges following detailed allegations were made:

"Article-I

That the said Sri Sudhangshu Sarkar, TCS-II while functioning as BDO, Gournagar has committed the following irregularities in regards to purchase of Bi-clone tea Seeds and Poly Bags during the financial year 2011-12 without the firm resolution/minutes of the initial meeting and decision of the Panchayet Samity/BAC for tea plantation by the small growers of Gournagar R. D. Block. As per financial norms, the tender process was supposed to be approved by the Special Advisory Board(SAB), whereas a LPC was convened/floated by the BDO and confined at his own level rather than forwarding the same before the higher authority for approval. While calling the quotations/open bid for LPC, the initial requirement of tea seeds were fixed to 700 units (i.e. 20 Kgs X 700=14,000 Kgs) which itself given a indication that this purchase committee sh ould be a HPC. The composition memo of the LPC vide No. 7950-57/F.7(36)/PO(BDO)/GNR/MGNREGA /2011-12 dated 18-8-2011 that there were a nine members (including chairman) LPC committee were there and that's including two departmental members of the Tripura Tea Board and Tea Research Association (TRA). Whereas, while finalizing the LPC, the two departmental members were ignored. It is also seen that while finalizing the tender process for purchase of Bi-clone tea seeds (TS-520), there was only eligible tenderer named Sovavita Tea Seed Garden, Bhakinagar, Opp. Hotel G. D. NJP Main Road, Silliguri, West Bengal, but, he was not the 1st lowest bidder of that LPC. It may be highlighted that, as the Sovavita Tea Seed Garden, Bhakinagar, Opp. Hotel G. D, NJP Main Road, Silliguri, West Bengal ws the highest rate and being the only eligible bidder, this LPC proves or the decision/direction of the superior authority in chain could have been sought for to avoid this gross violation of financial prosperity. The charge officer by using his own

power and command compelled the staff to made payment for 895 units of tea seeds in 46 bills amounting to Rs.89,14,200/-(Rupees eighty nine lakhs fourteen thousand and two hundred only) to the firm (Sovavita Tea Seed Garden, Silliguri) in the ambit either to suppress the fact or otherwise, without, passing for by the accounts section of his office. As per official records, the office has issued supply order for 1500 units of bi-clone tea seeds to the firm, but the firm (i.e. Sovavita Tea Seed Garden, Silliguri) has physically supplied 1565 units of tea seeds to the block and the block has paid all the bills of this firm.Therefore, it is crystal clear that the BDO, Gournagar has made excess payment for Rs.6,47,400/- (Rupees six lakhs forty seven thousand and four hundred oly) to the firm to which no supply order was found issued. While issuing of suppl;y orders for Bio-clone tea seeds and poly bag etc. The BDO, has been found instructed the supplier to raise part bill for the amount not exceeding to Rs.2.00 lakhs each to suppress the facts to the superior authorities in chain or audits, which is a serious offence as per financial norms. It is observed that in regards to purchase of poly ags under this LPC, the rate of M/S. Sandeep Stores, P-44, Rabindra Sarani, Kolkata was approved by the LPC. But supply order for the required quantity of poly bags was not given to that firm and given to some other firms who have even not participated in the tendering process and even without exercising the option of the 2nd/3rd lowest eligible bidders. The details of supply order for purchasing of poly bags are as follows:

h) Champalal Traders, Kumarghat (Nnakoti) for 5000 Kgs.

i) Joy Ram Mosaic & Sanitation, Mantri Bari Road, Agartala for 5000 Kgs.

j) M/S. ML das & Sons, Kailashahar, Unakoti for 6300 Kgs.

k) M/S. Sandeep Stores, Kolkata for 16,960 Kgs.

It is also observed that the financial involvement to buy/purchase of these 33260 kgs of poly bags comes to Rs.(33260/128) 42,57,280/- (Rupees forty two lakh fifty seven thousand two hundred and eighty only). Apart from above, the financial involvement to buy/purchase of Bi-clone tea seeds of 1500 units (20kgs x 1565=31,300 kgs) was Rs.1,55,87,400/- (Rupees one crore fifty five lakhs

eighty seven thousand and four hundred only). Thus the total financial invoovement in this issue comes to Rs. 198,44,680/-(Rupees one crofe nionety eight lakhs fourty four thousand six hundred and eighty only). Besides this, the responsible officer also made all the payments without prior approval of the competent financial authority (now in this case, approval of SAB was mandatory) by ignoring the norms before obtaining the approval of the SAB was mandatory) by ignoring the norms before obtaining the approval of the SAB. The BDO, Gournagar did not correspond or apprise the District Adminisration or solicited any permission in regard to the tea plantation projects in his block until filling of complaint by one bidder, namely Sova Tea Co. Ltd., Kailashahar in September, 2011. Due to non compliance of the financial prosperity to buy these Bi-clone tea seeds and poly bags, there was a net loss of public money/defalcation/misappropriation of fund amounting to Rs.95,35,800/- (Rupees ninety five lakhs thirty five thousand and eight hundred only). And the details of which are as follows:

1565 Units x 9960 rates (i.e. the highest rate)= Rs.1,55,87,400/-
1565 Units x 5200 rates (i.e. the lowest rate)= Rs. 81,38,000/-
Therefore, the net loss to the state comes to = Rs.74,49,400/-

(Rupees seventy four lakhs forty nine thousand and four hundred only)

16960 Kgs X 128 rate	*= Rs. 21,70,880/-*
Irregular purchase from other	
Firms 16300 Kgs X 128	*=Rs.20,86,400/-*
Total purchase of poly bags	*=Rs.42,57,280/-*

Thus, Net loss of public money/misappropriation = Rs. 95,35,800/- (Rupees ninety five lakhs thirty five thousand and eight hundred only)

Thus, the said Shri Sudhanshu Sarkar, the then BDO has committed misconduct, lack of integrity and devotion to duty and therefore vilated Rule-3 of the Tripura Civil Services (Conduct) Rules, 1988.

"Article-I

That the said Sri Sudhangshu Sarkar, TCS-II while functioning as BDO, Gournagar has executed the following works under MGNREGA Scheme for which the ground reality and statistics are mismatching. It is observed that

during the year 2010-11 the blick h as been found expending a sum of Rs.56,00,280/-(Rupees fifty six lakhs two hundred and eighty only) for land levelling for 2472 nos. IAY House out of MGNREGA Scheme in the Gournagar Block, where as the IAY annual target of Gournagar for the year 2010-11 was only to 983 (i.e. normal IAY 809 and RoFR 174) and there was a clear defalcation/misappropriation of Rs.32,80,400/- (Rupees thirty two lakhs eighty thousand and four hundred only) in this issue. The details are as follows:-

2472 land levelling X 2360 cost per unit (less rate was sanctioned for some land Levelling)	*= Rs.56,00,280/-*
Less. 983 targetted house of the year X 2360 cost per unit	*=Rs.23,19,880/-*
Net amount of defalcation/misappropriation (Rupees thirty two lo lakhs eighty thousand and four hundred only)	***= Rs.32,80,400/-***

Thus, the said Shri Sudhanshu Sarkar, the then BDO has committed misconduct, lack of integrity and devotion to duty and therefore violated Rule-3 of the Tripura Civil Services (Conduct) Rules, 1988."

[7] As noted earlier, the Inquiry Officer held that none of the charges were proved. However, the disciplinary authority issued a notice of disagreement dated 25th July, 2016 in which in connection with these charges following reasons have been cited:

"(i) That the Inquiring Authority has mentioned that the part of the charge of Article-I relating to finalization of tender for procurement of Bi-clone Tea Seeds and poly-bags without the approval of SA B is not material as prosecution could not establish any ill intention on the part of the Accused Officer. But, in this case for such a large amount of supply (in monetary terms), the approval of SAB was required. It is pertinent to mention that the Accused

Officer invited tender for procuring 2(two) items, namely Bi-clone Tea Seeds and Poly-bags which was much beyond his competence. Accused Officer despite being not competent to carry out such bulk purchase, invited the tender in 2(two) bid system, but allowed opening of both the technical and the financial bids on the same day and at the same time including the financial bids of those bidders w ho did hot qualify the technical bid. However, as per the accepted norms, the financial bid of only technically qualified bidder(s) should have been open, but in the instant case both the bids were open in respect of all the tenderers. Hence, the AO has violated the procedural requirement for effecting such procurement. The argument given by the Inquiring Authority for not agreeing with breach of the DFPRT is not enough to absolve the AO of his misconduct. It is clear that the AO did not obtain the approval of the competent authority and neither followed norms before effecting supply order for such huge quantum of purchase which was beyond the powers delegated to him. The DFPRT is fundamental to all financial procedures.

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(iii) That the Inquiring Authority has mentioned in Article-III regarding, the works taken up for land levelling in respect of 2472 IAYs houses in 18 GPs under Gournagar RD Block, that these works were sanctioned by the Gram Panchayats and work-orders were issued by the Gram Panchayats only. Further, the Inquiring Authority has stated that the muster rolls for adjustment and payment were prepared and jointly signed by the Pradhan, Technical Assistant and Panchayat Secretary, and after that only the Programme Officer i.e. the Accused Officer has signed the muster rolls. The Inquiring Authority also stated that the works involved only wage payment and the wages were paid directly to the wage-seekers and there was no scope of financial misappropriation, But, fact of the matter is that the Accused Officer sanctioned land levelling works in respect of 2472 IAY houses in 2010-11, whereas the target for IAY houses during 2010-11 was only 983 houses. By no stroke of imagination, the mismatch between the target of IAY houses and land levelling works sanctioned by AO can be justified.

The argument given by the Inquiring Authority is not enough to absolve the Accused Officer of his responsibility

*to critically analyses the requirement raised by the GP before sanctioning the works as BDO is a supervisory officer. Thus, the Accused Officer has failed to perform his supervisory duties.****"*

[8] The disciplinary authority in the final order of punishment cited following reasons for holding the said Article Charges-I and III has proved.

"(i) That the Inquiring Authority has although mentioned that the part of the charge of Article-I relating to finalization of tender for procurement of Bi-clone Tea Seeds and poly-bags without the approval of SAB is not material as prosecution could not establish any ill intention on the part of the Accused Officer; but, in this case for such a large amount of supply (in monetary terms), the approval of SAB was required. It is pertinent to mention that the Accused Officer invited tender for procuring 2(two) items, viz. 14000 kg Bi-clone Tea Seeds and 25000 kg ply-bags, which was much beyond his competence. The Accused Officer despite being not competent to carry out such bulk purchase, invited the tender in 2(two) bid system, but allowed opening of both the technical and the financial bids on the same day and at the same time including the financial bids of those bidders who did not qualify the technical bid. However, as per the accepted norms, the financial bid of only technically qualified bidder(s) should have been opened, but in the instant case both the bids were opened in respect of all the tenderers. Hence, the AO has violated the procedural requirement for effecting such procurement. It is clear that the AO neither obtained the approval of the competent authority nor followed the official norms before effecting suppl order for such a huge quantum of purchase which was beyond the powers delegated to him. The DFPRT is fundamental to all financial procedures, and thus the AO is guilty of violating the extant financial norms.

(ii) That the Inquiring Authority has mentioned in his findings on Article-III regarding, the works taken up for land levelling in respect of 2472 IAYs h ouses in 18 GPs

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*under Gournagar RD Bolck, that these works were sanctioned by the Gram Panchayats and work-orders were issued by the Gram Panchayats only. Further, the Inquiring Authority has mentioned that the muster rolls for adjustment and payment were prepared and jointly signed by the Pradhan, Technical Assistant and Panchayat Secretary, and after that only the Programme Officer i.e. the Accused Officer has signed the muster rolls. The Inquiring Authority also stated that the works involved only wage payment and the wages were paid directly to the wage-seekers and there was not scope of financial misappropriation. But, the fact of the matter is that the Accused Officer sanctioned land levelling works in respect of 2472 IAY houses in 2010-11, whereas the target for IAY houses during 2010-11 was only 983 houses. By no stroke of imagination, the mismatch between the target of IAY houses and land levelling works sanctioned by the AO can be justified. The arguments given by the Inquiring Authority is not enough to absolve the Accused Officer of his responsibility to critically analyse the requirement raised by the GP before sanctioning the works as BDO is also a supervisory officer. Thus, the Accused Officer has failed to perform his supervisory duties and he is guilty on that account;******"*

[9] Perusal of the above noted materials on record which would show that in Charge Article-I it was alleged that the petitioner while working as the BDO was handling the work of purchasing seeds and poly-bags during the financial year 2011-12. For such purpose he had floated a tender. The BDO did not take approval of the higher authority before floating the tender. Further, he had opened the technical and financial bids on the same day. He had also opened the financial bids for those bidders who were not technically qualified. The allegation against the petitioner

was that in the process he had caused financial irregularities amounting to Rs.95,35,800/- while pressing the order for purchase of tea seeds and poly-bags.

[10] In the final order, the disciplinary authority held that as per accepted norms the financial bid of only technically qualified bidder should have been opened. Instead in the present case, the bids were opened in respect of all tenderers. In the process, the delinquent officer neither obtained the approval of the competent authority nor followed the established norms. It was also held that the DFPRT, 2017 was fundamental to all financial procedures which the delinquent officer not having followed, he was guilty of violating the financial norms.

[11] It can thus be seen that from the initial charge of financial irregularities of Rs.95,35,800/-, the disciplinary authority in the final analysis came to the conclusion that there were procedural lapses on part of the delinquent government officer in the process of inviting tenders and finalising the bids. Most importantly, it was held that financial bids of even technically unqualified tenderers were opened.

[12] Two things become thus clear from the final conclusions of the disciplinary authority, which are not being challenged before me. Firstly, these allegations are independent of the DFPRT, 2017. Secondly, what is held by the disciplinary authority is the part of the original charge of irregularities in awarding a contract of purchase of seeds and poly-bags. The element of financial irregularities is abandoned. Nevertheless, it cannot be stated that the procedural irregularities did not form part of the original charge. Original charge was founded on financial irregularities committed through procedural irregularities in awarding contracts. It was opened for the disciplinary authority to hold that though the element of financial irregularities is not established, the part of the charge relating to procedural irregularities was duly established.

[13] However, the same cannot be stated about Charge Article-III. Charge Article-III pertains to the allegation of misappropriation of the sum of Rs.32,80,400/- in relation to land levelling work for 2472 Indira Awaas Yojana houses during the financial year 2010-11 against the annual target of 983 houses for the said year. In the impugned order of punishment, the disciplinary authority came to the conclusion that for the said financial year there was a target of 983 houses, whereas the delinquent officer

sanctioned the land levelling work in respect of 2472 houses. Such mismatch between target and land levelling work sanctioned by the delinquent officer cannot be justified. This was never the part of the charge. Whether the delinquent officer had breached any of the rules, regulations or procedural directives in sanctioning work far in excess of the target number of units for the year was never part of the inquiry. In fact, the mismatch between the target number of units and sanctioned work was an element to demonstrate that the delinquent government servant had deliberately expanded the work in order to misappropriate Government funds. But the very foundational charge of misappropriation of the funds failed, as held by the disciplinary authority itself, there was thereafter no possibility of holding that the delinquent had nevertheless committed misconduct by sanctioning much more work than the target number of units for the year under consideration. Essentially, this was not part of the charge sheet at all and, therefore, could not have been held to have been proved against the petitioner.

[14] Additionally, I also find that the disciplinary authority obtained the advice of the T.P.S.C on the quantum of punishment and passed the final order of punishment without providing a copy of such

advice of T.P.S.C to the petitioner enabling him to make his representation thereon. This was clearly in breach of principles of natural justice and the statutory rules. The learned Single Judge of this Court in case of ***Soumitra Chakma***(supra) has elaborately dealt with this legal issue in following manner:

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> *"[17] Thus, it has been clearly held that the advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant to comply the requirement of the natural justice. The said requirement is in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule by way of elaboration incorporating the development in the service jurisprudence. The apex court has noted such development in the office memorandum dated 06.01.2014 as issued by the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training, whereby it has been clearly provided that the delinquent officer be afforded with opportunity to advance his reasons for disagreement with the advice of the UPSC. The following is the substantive part of the said memorandum dated 06.01.2014:*
>
> > *"(iii) The Charged Officer shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the Inquiry report/advice of UPSC is in his favour or not.*
> >
> > *(iv) The Disciplinary Authority shall consider the representation of the Charged Officer and take further action as prescribed in sub-rules 2(A) to (4) of Rule 15 of CCS (CCA) Rules, 1965."*
>
> *Subsequently, by the memorandum dated 05.03.2014, the Government of India has clearly directed to supply the*

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copy of the advice of the UPSC to the charged officer. The substantive part of the said memorandum dated 05.03.2014 is reproduced hereunder:

> *"The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision."*

[18] Having noticed those O.Ms, the apex court in R.P. Singh (supra) has held that both the office memoranda are not only contingent with S.K. Kapoor (supra) but also in accordance with the principle of natural justice which has espoused in M.D., ECIL vs. B. Karunakar"s, reported in (1993) 4 SCC 727. Thus, the non-supply of the advice of the TPSC to the petitioner before the final order imposing penalty was passed was a gross violation of the natural justice. This court has reiterated this principle earlier also.
*******"

[15] As held above, Charge Article-III would no longer survive. Only thing that survives against the petitioner is the conclusion of the disciplinary authority with respect to Charge Article-I as found in the impugned order dated 17.03.2017. The disciplinary authority shall, therefore, have to pass a fresh order on the question of appropriate

punishment to be imposed in such changed circumstances. For such purpose impugned order of punishment and the appellate order are set aside. While passing a fresh order, if the disciplinary authority obtains the advice of the T.P.S.C as required as per Rules, copy of such advice shall be provided to the petitioner enabling the petitioner to make his representation thereon before passing a final order of punishment. This exercise shall be completed within a period of six months from today.

[16] The petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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Dipankar