

**HIGH COURT OF TRIPURA  
A\_G\_A\_R\_T\_A\_L\_A**

**WP(C) No. 202 of 2020**

1. Sri Parendra Debbarma, S/O late Gouranga Debbarma, resident of Village- Durganagar, P.O. & P.S. Khowai, District-Khowai, Tripura.

*.....Petitioner*

**-VERSUS-**

1. The State of Tripura, represented by the Principal Secretary to the Government of Tripura, General Administration (A&R), Civil Secretariat, New Capital Complex, P.O. & P.S. New Capital Complex, Agartala, District-West Tripura, 799006.
2. The Principal Secretary to the Government of Tripura, General Administration (A&R), Civil Secretariat, New Capital Complex, P.O. & P.S. New Capital Complex, Agartala, District-West Tripura, 799006 (Disciplinary Authority).
3. Tripura Rehabilitation Plantation Corporation Limited (A Government of Tripura Undertaking) represented by its Managing Director, Palace Compound North, Agartala, West Tripura Pin-799001.
4. The Managing Director, Tripura Rehabilitation Plantation Corporation Limited (A Government of Tripura Undertaking) Palace Compound North, Agartala, West Tripura Pin-799001.
5. Deputy Manager, Tripura Rehabilitation Plantation Corporation Limited (A Government of Tripura Undertaking) North, Zone, P.O. & P.S. Kumarghat, District- Unakoti Tripura.
6. G.S. Raju, Chief Executive Officer & Project Director, Tripura Forest Environmental Improvement & Poverty Allevation Project & Additional Chief Conservator of Forest, Inquiry Authority, Gurkhabasti, P.S. New Capital Complex, District-West Tripura.

*..... Respondents.*

**B \_ E \_ F \_ O \_ R \_ E**  
**HON'BLE MR. JUSTICE ARINDAM LODH**

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For Petitioner(s) : Mr. Raju Datta, Advocate.  
For Respondent(s) : Mr. M. Debbarma, Addl. G.A.  
Mr. D. Sarkar, Advocate.  
Date of hearing : **07.05.2021**  
Date of delivery of  
judgment and order : **08.10.2021**  
Whether fit for reporting : **NO**

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**JUDGMENT & ORDER**

Heard Mr. Raju Datta, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents-State and Mr. D. Sarkar, learned counsel appearing for the respondents No. 3, 4, 5 and 6.

[2] By means of filing this writ petition, the petitioner has challenged the impugned order of penalty dated 10.01.2020, issued by the Disciplinary Authority, whereby and whereunder, the promotion of the petitioner was withheld for a period of three years and further directed for recovery of Rs.9,08,067/- [Rupees Nine Lakhs Eight Thousand Sixty Seven] i.e. 50% of the unadjusted amount of Rs.18,16,134/- [Rupees Eighteen Lakhs Sixteen Thousand One Hundred Thirty Four only].

[3] Relevant facts, in short, are that the petitioner was initially appointed as Forest Ranger under the Forest Department, Government of Tripura, in the year 1982 and on 16.06.2004 he was promoted as Sub-divisional Forest Officer, TFS, Gr.-II, under the Government of Tripura. From 13.09.2006 to 27.07.2009, the petitioner was deputed as a Deputy Manager of Tripura Rehabilitation and Plantation Corporation Ltd., [TRPC, for short], a Government of Tripura undertaking, represented by

the respondents No.3, 4 and 5 herein. During his service on deputation under TRPC, one departmental proceeding was initiated against the petitioner alleging, inter alia, that he misappropriated a sum of Rs.18,16,134/- [Rupees eighteen lakhs sixteen thousand one hundred thirty four only]. Inquiry was conducted and ultimately, the disciplinary authority i.e. the Principal Secretary, Government of Tripura, General Administration (A & R) Department, imposed punishment as stated hereinabove.

[4] It is stated that the inquiry officer conducted a joint inquiry in respect of two persons i.e. the petitioner who was an employee of the Government of Tripura and another person, namely, Sri Bhabatosh Ch. Dey, Field Officer, who was an employee of the corporation namely, TRPC. In the said inquiry, common articles of charges were framed against the petitioner as well as Sri Bhabatosh Ch. Dey. On the basis of the said inquiry report and statements of witnesses, the disciplinary authority imposed punishment to the petitioner as well as Sri Bhabatosh Ch. Dey.

[5] Being aggrieved, the petitioner has filed the present writ petition challenging the inquiry report and the impugned order of punishment dated 10.01.2020 passed by the respondent No.2, on the ground that the respondent No.2 has no *locus* to act as a disciplinary authority of the petitioner.

[6] Mr. Datta, learned counsel appearing for the petitioner has tried to persuade this Court by submitting that the departmental proceeding was not maintainable as the inquiry and the departmental proceeding was conducted jointly against two persons i.e. the petitioner and one Sri Bhabatosh Ch. Dey, who were the employees of different organizations. As per Sub-rule-1 of Rule-18 of CCS (CCA) Rules, 1965,

joint departmental proceeding and inquiry is permissible only in a case where two or more Government servants are involved. But, in the present case, one employee was from the corporation and the other was an employee of the Government of Tripura and as such, in the instant case, joint departmental proceeding and inquiry thereof, is not maintainable. According to Mr. Datta, learned counsel the entire proceeding was vitiated, as a common proceeding was conducted against both the petitioner and Sri Bhabatosh Ch. Dey, whose appointing and disciplinary authorities are different.

[7] Opposing the submissions of the learned counsel appearing for the petitioner, Mr. Sarkar, learned counsel appearing for the respondents No. 3, 4, 5 and 6 has submitted that the disciplinary proceeding was initiated against the petitioner following the relevant provisions of the CCS (CCA) Rules, 1965. The petitioner being an employee of the Government of Tripura his disciplinary authority was the Principal Secretary, Government of Tripura. Besides, Mr. Sarkar, learned counsel for the respondents contended that the petitioner in connivance with another person, namely Sri Bhabatosh Ch. Dey, had defalcated the public money, which was sanctioned for providing beneficial services to the persons brought under the scheme.

[8] In reply, Mr. Datta, learned counsel appearing for the petitioner has submitted that a bare perusal of the evidence would reveal that the inquiry was proceeded in violation of the principles of natural justice and none of the charges had been proved. Moreover, according to Mr. Datta, learned counsel for the petitioner, the prosecution had failed to adduce any evidence to substantiate the charges. According to Mr. Datta, learned counsel for the petitioner all the beneficiaries had received the money, they are entitled under the scheme.

[9] In view of the aforesaid submissions, question firstly arises whether a common proceeding could be drawn up against the petitioner, who was admittedly an employee of the Government of Tripura and Sri Bhabatosh Ch. Dey, who admittedly was an employee under the TRPCL.

[10] Before I advert to the merits of the case, I have taken note of Rule-18 of CCS (CCA) Rules, 1965. For the purpose of reference, Sub-rule-1 of Rule-18 of CCS (CCA) Rules, 1965 may be extracted hereunder:

*“Sub-rule-I. Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.”*

[11] A bare perusal of the aforesaid provision clearly reveals that common proceeding is permissible only in a case where two or more government servants are involved and liable to be punished by a single competent authority. Again, Rule-21 of the CCS (CCA) Rules, 1965, is relevant to deal with the issue in question raised by the learned counsel appearing for the petitioner. Rule-21 of the CCS (CCA) Rules, 1965 reads as under:

*“Rule-21. Provisions regarding officers borrowed from State Government, etc.,*

*(i) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as “the lending authority”) shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.*

*(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant, if the Disciplinary Authority*

*is of the opinion that any of the penalties specified in clauses (1) to (iv) of Rule-11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of the Rule-15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case, as it may deem necessary—*

*(i) Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority.*

*(ii) If the Disciplinary Authority is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule-11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action, as it may deem necessary.”*

[12] Now, it will be useful to reproduce the order dated 04.12.2010, drawing up common disciplinary proceedings against the petitioner as well as Sri Bhabatosh Ch. Dey.

No. F.11(28)-GA(AR)/09/2139-2142

GOVERNMENT OF TRIPURA

GENERAL ADMINISTRATION (AR) DEPARTMENT

Dated, Agartala the 4th December, 2010.

ORDER

**WHEREAS** the Government servants specified in the margin are jointly concerned in a disciplinary case.

**NOW, THEREFORE** in exercise of the powers conferred in Sub-Rules (1) and (2) of Rule-18 of Central Civil Services (CC&A) Rules, 1965, the undersigned hereby directs:

(1) Shri Parendra Debbarma, TFS Gr. II, Ex. Dy. Manager, TRPC Ltd., North Zone, Kumarghat now posted in the O/o the PCCF, Tripura, Agartala	(1) That the disciplinary action against the said two Government servants shall be taken in a common proceeding.
(2) Shri Bhabatosh Ch. Dey, Field Supervisor, Ex-Officer In-charge Purba Dalubari Rubber Plantation Centre of TRPC Ltd.	(2) That the undersigned shall function as Disciplinary Authority for the purpose of the Common Proceeding and shall be competent to impose any of the penalties mentioned under Rule-11 of the CCS.
	(3) That the procedure prescribed in Rule-14 and 15 shall be followed in the said proceeding.

**G.K. Rao.**

**(Principal Secretary to the Government of Tripura  
Disciplinary Authority.)**

To,

1. **Shri Parendra Debbarma, TFS Gr. II**, Ex. Dy. Manager, TRPC Ltd., North Zone, Kumarghat now posted in the O/o the PCCF Tripura, Agartala.

2. **Shri Bhabatosh Ch. Dey, Field Supervisor**, Ex-Officer In-charge, Purba Dalubari Rubber Plantation Centre of TRPC Ltd.

[13] A bare perusal of the order dated 04.12.2010 clearly reveals that the Principal Secretary to the Government of Tripura had ordered to initiate a common disciplinary proceeding against both the petitioner and Sri Bhabatosh Ch. Dey himself, he being the disciplinary authority. Admittedly, the petitioner and Sri Bhabatosh Ch. Dey belong to different organizations i.e. the former belongs to Government of Tripura and the later belongs to the TRPCL. The petitioner was an officer under the Government of Tripura serving as Sub-Divisional Forest Officer, Department of Forests, Government of Tripura and he was borrowed by the TRPCL. The petitioner, therefore, was discharging his duties on deputation under the TRPCL.

[14] As I said earlier, In view of the order of drawing up of common proceeding, an inquiry officer was appointed and after completion of inquiry, the inquiry officer submitted his report. Thereafter, the disciplinary authority i.e. the Principal Secretary, Government of Tripura, imposed punishment upon the petitioner and Sri Bhabatosh Ch. Dey as stated hereinabove. However, there cannot be any dispute that the petitioner was under disciplinary control of the State Government, whereas, Sri Bhabatosh Ch. Dey, who was under the disciplinary control of the TRPCL.

[15] In view of sub-rule-1 of Rule-18, a joint inquiry is permissible only when the employees belong to the same organization/department. More so, in view of Rule-21 of the CCS (CCA) Rules, as reproduced hereinabove, the TRPCL was the "*lending*

**authority”** which had borrowed the services of the petitioner, who was serving under the State Government.

[16] In **WP(C) No. 267 of 2003**, titled as **Sri Chandan Majumder vs. The TRTC & 3 Others**, similar question arose and while dealing with the matter, the learned Single Judge of this Court at para-10 had held that:

*“10. Apart Rule-21 of the CCS (CCA) Rules, 1965, there is no provision in the CCS (CCA) Rules, 1965 to deal with a common proceeding against a borrowed employee and an employee of the authority or undertaking which borrowed the said employee. Rule-18 of the CCS (CC&A) Rules, 1965, therefore, has no application for drawing up a common proceeding against the petitioner and the said Dilip Kumar Chowdhury. As such, drawing up of the common proceeding was without the authority since the initiation\*\*\*\*\*.”*

[17] In the case in hand, the Principal Secretary, Government of Tripura had drawn a common proceeding against his own employee, i.e. the petitioner who was borrowed by TRPCL and the employee of the TRPCL which, according to this Court, in view of the aforesaid principles drawn by the learned Single Judge of this Court in **WP(C) No. 267 of 2003**, was without any authority of law since its initiation.

[18] I have no reason to disagree with the above principle delineated by a coordinate Bench of this Court, and further to hold that the common proceeding as initiated by the Principal Secretary to the Government of Tripura was inconsistent to the provisions as contemplated under Rule-21 of the CCS (CCA) Rules, 1965.

[19] Having held so, the joint inquiry against the petitioner as well as Sri Bhabatosh Ch. Dey, is un-authoritative and illegal vitiating the entire proceedings. Accordingly, the proceeding and the penalty imposed upon the petitioner are liable to be set aside and accordingly, the impugned order of punishment dated 10.01.2020 shall stand set aside.

However, it is made clear that the competent authority of the State Government may initiate proceeding against the petitioner in accordance with law. Since I have already set aside the proceeding and the punishment thereof, on the sole issue of the competency of the disciplinary authority in initiating the joint proceeding against the petitioner alongwith another person, I do not feel it necessary to enter into the merits of other issues as raised in the present writ petition.

[20] With the aforesaid observations and directions, the instant writ petition stands allowed and disposed. Pending application(s), if any, also stands disposed.

HIGH COURT OF TRIPURA **JUDGE**

*A.Ghash*



सत्यमेव जयते