

Case No :WP(C) 0000675/2015

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Party Name : RUPAK DEB ROY Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. C. S. Sinha, learned counsel appearing for the petitioner as well as Mr. T. D. Majumder, learned Government Advocate appearing for the respondents as the respondents received the notice in advance.

Mr. Majumder, learned GA has placed also the approved para-wise comments before this Court for perusal. As the learned counsel for the parties have agreed, the matter has been taken up for final disposal inasmuch as Mr. Datta Majumder, learned GA appearing for the respondents has submitted that if the para-wise comments are taken care of, the respondents can waive the submission of the counter affidavit in this matter.

Mr. C. S. Sinha, learned counsel for the petitioner has submitted that the petitioner is holding the substantive post of Junior Physical Instructor and is presently posted at Kabiraj Tilla H.S. School. That apart, he is the Joint Secretary of the Indian Olympic Association and Honorary Secretary General of the Tripura State Olympic Association.

By the order dated 15.12.2015, Annexure-1 to the writ petition, the petitioner has been placed under suspension in contemplation of a disciplinary proceeding in exercise of the power as conferred by Sub-Rule 1 of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The petitioner has received one communication from Indian Olympic Association dated 02.12.2015, Annexure-5 to the writ petition whereby it has been notified that on 23.12.2015 at 11 a.m., a meeting of the Indian Olympic Association on the agenda mentioned there in the communication would be held at Radisson Blu Hotel at Guwahati. The petitioner applied for the Station Leave Permission to attend the said meeting on 19.12.2015 which was sent by the courier service.

On 19.12.2015, the Director, Youth Affairs and Sports, Government of Tripura has passed the following order, which is available in his communication dated 19.12.2015:

"In reference to your prayer dated 17.12.15 & 18.12.15, on the subject cited above, this is to inform that your prayers has been examined and it has been decided and ordered that you should not leave the station headquarters during your suspension period. So, your prayers are hereby regretted as per order vide No.F.6 (R-9)-DYAS/96(L-I)/14430-37 dated 15.12.2015, except recommendation of State Government standing Medical Board, AGMC on medical ground."

Mr. Sinha, learned counsel for the petitioner has submitted that on the application filed on 19.12.2015, no response as yet has been received by the petitioner. Since the meeting is slated on 23.12.2015, the petitioner had no other alternative but to approach this Court.

From the other side, Mr. T. D. Majumder, learned GA has submitted that the petition dated 19.12.2015 for granting the Station Leave Permission for attending the meeting of Indian Olympic Association to be held on 23.12.2015 has not been received by the Director, Sports & Youth Affairs. But the two prayers dated 17.12.2015 and 18.12.2015 which were received by the Office of the Director, Sports and Youth Affairs on 19.12.2015 for granting Station Leave Permission to attend the said meeting were rejected as those prayers were made on undisclosed personal affairs.

It has been categorically stated in the para-wise comments in response to para-6 of the writ petition as follows:

"Further it is also mention here that Sri Rupak Debroy, Jr. P.I. (under suspension) did not obtain any prior permission from the competent authority for holding the post of office bearer as Jt. Secretary of Indian Olympic Association and as well as the post of Hony. Secretary General of Tripura State Olympic Association which is mandatory as per G.O.-7 dated Agartala 25.10.2003 vide file No.F.7(17-2)-DYAS/Sports/99 (L-I)/4521-621 issued by the Chief Secretary, Govt. of Tripura."

As such, the respondents have denied that the petitioner has been holding any such post as that is not within their knowledge in any manner. Even the petitioner has not taken any permission in view of the order dated 25.10.2003.

Mr. Majumder, learned GA has asserted very emphatically that the disciplinary authority or the competent authority is not under any obligation to grant any leave to a Government servant who is under suspension. For this purpose, he has referred to the Note as provided below Rule 17 of the Tripura State Civil Services (Leave Rules), 1986. The said Note provides as under:

"Leave may not be granted to a Government servant under suspension."

It is also pertinent to note that the petitioner has not applied for any leave as yet. He had simply applied for Station Leave Permission.

Having regard to the circumstances as narrated above, this Court is of the view that the Note below Rule 17 of the Tripura State Civil Services (Leave Rules), 1986 is not a complete prohibition. It only curbs the right of the Government servant to seek leave which in certain circumstances if he was not under suspension could have been exercised as a matter of right. Such leave can be granted by the competent authority when a Government servant is under suspension, having regard to all circumstances including the interest of the disciplinary proceeding or any other relevant factor.

This Court after scrutiny of the para-wise comments as placed by Mr. Datta Majumder, learned GA is of the view that if the petitioner submitted an application for granting leave due to him with Station Leave Permission that may be granted to the petitioner for 3 (three) days. Accordingly, it is ordered. After filing the leave application along with the application for the station leave permission the petitioner may leave the station as the respondent No.2 has been directed to grant such leave to the petitioner with Station Leave Permission. However, it is made clear that this direction shall not in any way mean or purport that this Court is giving a seal of approval on his holding any position either in the Indian Olympic Association or in the State Olympic Association, as stated. Even this order shall not stand in the way for the respondents to take any further action against the petitioner if on scrutiny it is found that he has violated any instruction which are mandatorily to be followed by any Government servant for being associated with such organization.

With this observation and direction, this writ petition stands allowed to the extent as indicated above.

Before parting, it is made further clear that before leaving the petitioner shall submit the application for leave along with the application for Station Leave Permission, addressed to the respondent No.2, the Director, Sports & Youth Affairs, Government of Tripura, Agartala.

A copy of this order be furnished to the learned counsel for the parties.

The para-wise comments as produced by Mr. Datta Majumder, learned GA under File No.F.1(17-90)-DYAS/LA/2015 is returned.

There shall be no order as to costs.