

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C). No. 1347 of 2016

Sri Bhabatosh Chandra Dey,
son of late Bhupesh Chandra Dey,
Village & P.O. Chandipur, Kailashahar, Unakoti Tripura, Pin:799277

.....**Petitioner**

- VERSUS -

1. The State of Tripura,
to be represented by the Principal Secretary, GA (AR) Department, Govt. of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura, Pin: 799006
2. Tripura Rehabilitation and Plantation Corporation Ltd.,
a Govt. of Tripura Undertaking, represented by its Managing Director, TRPC Ltd., Pandit Neheru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, District: West Tripura, Pin: 799006
3. The Managing Director,
Tripura Rehabilitation and Plantation Corporation Ltd.,
a Govt. of Tripura Undertaking, represented by its Managing Director, TRPC Ltd., Pandit Neheru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, District: West Tripura, Pin: 799006
4. The Director,
TRP & PTG Department, Govt. of Tripura, Pandit Neheru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, District: West Tripura, Pin: 799006
5. The Principal Chief Conservator of Forest,
Govt. of Tripura, Aryanya Bhavan, Pandit Neheru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, District: West Tripura, Pin: 799006
6. The Employee Provident Fund Organization,
to be represented by Asst. PF Commissioner,o/O the Employee Provident Fund Organization, Airport Road, near Bholagiri Ashram, Gorkhabasti, P.O. Kathal Bagan, Agartala, West Tripura, Pin: 799006
7. The Regional PF Commissioner,
Sub-Regional Office, O/O the Employee Provident Fund Organization, Airport Road, near Bholagiri Ashram, Gorkhabasti, P.O. Kathal Bagan, Agartala, West Tripura, Pin: 799006
8. The Asst.PF Commissioner (Pension),
O/O the Employee Provident Fund Organization, Airport Road, near Bholagiri Ashram, Gorkhabasti, P.O. Kathal Bagan, Agartala, West Tripura, Pin: 799006

.....**Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. S. Bhattacharjee, Advocate
For the respondents No. 1,4-5 : Mr. G. S. Bhattacharjee, Advocate
For the respondent No. 2-3 : Mr. P. K. Pal, Advocate
For the respondents No.6-8 : Mr. S. Debnath, Advocate
Date of hearing & delivery
of judgment and order : **21.12.2017**
Whether fit for reporting : **NO**

Judgment and Order (Oral)

Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents No. 1, 4 and 5. Also heard Mr. P. K. Pal, learned counsel appearing for the respondents No. 2 and 3 whereas Mr. S. Debnath, learned counsel appearing for the respondents No. 6, 7 and 8.

[2] The petitioner who was working as the Field Supervisor, under the Tripura Rehabilitation Plantation Corporation Ltd., (TRPCL in short) and he has admittedly retired from the service on superannuation on attaining the age of 60 years on 30.04.2016. In this regard, there is no dispute. The grievance of the petitioner is that during his incumbency one disciplinary proceeding was drawn up by the memorandum dated 04.12.2010 (**Annexure-P/4** to the writ petition) on the following charges:

"ARTICLE-I"

That Shri Parendra Debbarma, TFS while functioning as Deputy Manager, TRPCL, North Zone, Kumarghat during 13.09.2006 to 27.07.2009 and Shri Bhabatosh Chandra Dey, Field Supervisor, while functioning as Officer-in-Charge, Purba Dalubari RPC during 26.11.2004 to 27.06.2009 were prima facie jointly involved in irregular transfer and misappropriation of funds from bank accounts of TRPCL, and the said Shri Debbarma, TFS and the said Shri Dey, Field

Supervisor are, therefore, jointly charged for misappropriation of Rs. 18,16,000/- (Rupees eighteen lakhs and sixteen thousand) of TRPCL funds for their personal gain, tampering of records with mala fide intention.

By their acts, the said Shri Debbarma and Shri Dey jointly failed to maintain absolute integrity and devotion to duties and acted in a manner unbecoming of a Government servant. Thus, Shri Debbarma and Shri Dey violated the provision of Rule 3(1) of the Tripura Civil Service (Conduct) Rules, 1988.

ARTICLE-II

That Shri Parendra Debbarma, TFS while functioning as Deputy Manager, TRPCL, North Zone, Kumarghat during 13.09.2006 to 27.07.2009 made part payment of Rs. 33,00,000/- (Rupees thirty three lakhs) contrary to specify order of the competent authority for full disbursement of the entire compensation of Rs. 51,16,314/- to four TRPCL beneficiaries.

By this act, the said Shri Debbarma failed to maintain absolute integrity and devotion of the duties and acted in a manner unbecoming of a Government servant. Thus, Shri Debbarma violate the provision of Rule 3(1) of the Tripura Civil Services (Conduct) Rules, 1988.

ARTICLE-III

That Shri Parendra Debbarma, TFS while functioning as Deputy Manager, TRPCL, North Zone, Kumarghat during 13.09.2006 to 27.07.2009 organized civil construction works without approval and expenditure sanction from the competent authority, and the said Shri Debbarma, TFS is, therefore, charged for gross financial irregularities and unauthorized expenditure thereby of Rs. 5,53,972/- (Rupees five lakhs fifty three thousand nine hundred seventy two only), arbitrary action, gross financial irregularities.

By this act, the said Shri Debbarma failed to maintain absolute integrity and devotion of the duties and acted in a manner unbecoming of a Government servant. Thus, Shri Debbarma violate the provision of Rule 3(1) of the Tripura Civil Services (Conduct) Rules, 1988.

ARTICLE-VI

That Shri Parendra Debbarma, TFS while functioning as Deputy Manager, TRPCL, North Zone, Kumarghat during 13.09.2006 to 27.07.2009 organized engagement of Supervisory Assistants on daily wages without approval and expenditure sanction from the competent authority, and the said Shri Debbarma, TFS is, therefore, charged for unauthorized expenditure thereby of Rs. 1,78,528/- (Rupees one lakh seventy eight thousand five hundred twenty eight only), gross financial irregularities.

By this act, the said Shri Debbarma failed to maintain absolute integrity and devotion of the duties and acted in a

manner unbefitting of a Government servant. Thus, Shri Debbarma violate the provision of Rule 3(1) of the Tripura Civil Services (Conduct) Rules, 1988.”

[3] From reading of the said article of charges it appears that only the Article-I is relevant for the petitioner. The said memorandum surprisingly has been issued by the Principal Secretary to the Govt. of Tripura, General Administration (AR) Department. The petitioner was not holding any civil post within the meaning of Article-311(2) of the Constitution of India as he was an employee of the Public Sector Unit called Tripura Rehabilitation and Plantation Corporation Ltd.

[4] True it is that the said Principal Secretary does not have any control over the services of the petitioner. Against him those charges were brought, as contained in Article-I. When the authority who does not have any control whether as the appointing authority or by any other means over the services of any employee can draw such disciplinary proceeding? The answer must be in the negative.

[5] When this question was projected to Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents No. 1, 4 and 5, he has fairly submitted that the said Principal Secretary does not have any authority to draw the said disciplinary proceeding against the petitioner. In view of this the disciplinary proceeding as drawn by the memorandum dated 04.12.2010 (**Annexure-P/4** to the writ petition) so far the petitioner is concerned, is absolutely without authority and illegal and it cannot stand the scrutiny of law. As such, this memorandum stands quashed so far the petitioner is concerned.

[6] For pendency of the said disciplinary proceeding, the communication dated 11.02.2016 (**Annexure- P/8** to the writ petition) had been issued by withholding the pension of the petitioner after his retirement. This is a consequential order based on an illegal proceeding drawn by the said Principal Secretary and as such, the decision contained in the said communication dated 11.02.2016 (**Annexure-P/8** to the writ petition) stands quashed.

[7] Mr. S. Bhattacharjee, learned counsel appearing for the petitioner has pointed out that earlier the Managing Director of TRPCL was creating obstruction in en-cashing one National Saving Certificate (in short NSC) for Rs. 1,000/- which was purchased by the petitioner. But in Para-18 of the reply filed by the corporation-respondents, have declared that the petitioner will be at liberty to en-cash.

[8] Mr. S. Debnath, learned counsel appearing for the respondents No. 6, 7 and 8 has submitted that the pension of the petitioner cannot be released unless the Form No. 10-D and Form -19 is properly forwarded to the EPF Commissioner. In their reply, the respondents No. 6, 7 and 8 has submitted that any amount of PF standing at the credit of a member and any benefit provided under the EPF scheme shall not be liable to attachment under any decree or by Court's order under Section-10 of the EPF & MP Act, 1952.

[9] The petitioner may be advised to submit the claim form through his ex-employer to obtain both the benefit under the Act. Since

the disciplinary proceeding has been interfered with and quashed by this Court, the respondents No. 2 and 3 are directed to send the Form No. 10-D and Form - 19 under the EFP and MP Act, 1952 within a period of one month from the day of receiving a copy of this order. On receipt of such form the respondents No. 6, 7 and 8 shall release the financial benefits including the pension to the petitioner as per entitlement within 3(three) months thereafter.

With these observations and directions, this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

A.Ghosh