

**HIGH COURT OF TRIPURA  
AGARTALA  
WP(C)No.1158 of 2018**

**Sri Rabindra Tripura,**  
son of late Joy Mangal Tripura,  
Village-Nitai Nagar, P.O. Narendra Nagar,  
P.S. Damcherra, District : North Tripura

-----Petitioner(s)

Versus

**1. The State of Tripura,**  
represented by the Secretary,  
Department of Home, Government of Tripura,  
New Capital Complex, Kunjaban, Agartala,  
P.S. NCC, District : West Tripura

**2. The Director General of Police,**  
Government of Tripura,  
Fire Brigade Chowmohani,  
West Tripura District, Agartala

**3. The Inspector General of Police,**  
(TSR-OPS), Tripura, Agartala

**4. The Commandant,**  
1<sup>st</sup> Bn., TSR (IR-III),  
Bir Bandhu Gram, Gakulnagar,  
P.S. Bishalgarh, District : Sepahijala

**5. The Inquiry Officer**  
of D.P. No.13/2006 of TSR, 1<sup>st</sup> Bn.,  
Bir Bandhu Gram, Gakulnagar,  
P.S. Bishalgarh, District : Sepahijala

----- Respondent(s)

For Petitioner(s)	:	Mr. A.K. Pal, Adv. Mr. D.C. Roy, Adv. Mr. T.K. Bhattacharya, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing	:	24.01.2020
Date of delivery of Judgment & Order	:	29.05.2020
Whether fit for reporting	:	NO

**BEFORE  
HON'BLE MR. JUSTICE S. TALAPATRA**

**Judgment & Order**

The petitioner who was working as the Rifleman (G.D.) in Tripura State Rifles, 1<sup>st</sup> Bn. has by means of this petition challenged the legality of the memorandum No.F.584/TSR-1/Pers/rt/Gen/8130 dated 06.10.2006 [Annexure-R/2 to the reply filed by the respondents] and the order of dismissal from service under No.F.V/13/06/TSR-I/RT/Estt/077-85 dated 27.01.2007 [Annexure-O to the writ petition]. The petitioner has urged further to issue a writ of mandamus directing the respondents to reinstate him in the service with all benefits from 27.01.2007, the day of dismissal.

2. At the outset, a short resume of fact, essential for adjudication of the challenge and the right of the petitioner is placed. The petitioner had joined as the Rifleman (G.D.) in Tripura State Rifles (TSR) 1<sup>st</sup> Bn. on 20.11.2001. According to the petitioner, the petitioner could not attend the duties for the following periods: (a)12.05.2006 to 20.05.2006, (b)22.05.2006 to 21.06.2006, (c)24.06.2006 to 15.07.2006, (d) 05.05.2007 to 04.06.2007 (e) 02.02.2007 to 01.04.2007 and (f) 08.05.2017 to 05.06.2017. According to the petitioner, he was admitted at Damcherra Hospital from 04.04.2012 to 06.04.2012. He was also treated at Silchar Medical College Hospital for some days from 19.02.2016. The petitioner has, however, failed to provide any particular date to

indicate the period of hospitalization which commenced, according to him from 19.02.2016. The petitioner has further contended that he was also under treatment of one Dr. Prabesh Debroy. In support of that contention, the petitioner has placed with the writ petition some illness certificates, discharge certificate and medical prescriptions [Annexures-A to J of the writ petition.] According to the petitioner, he was declared fit to join the service by Dr. P. Debroy on 09.06.2017 by issuing the certificate of fitness [Annexure-K to the writ petition]. On scrutiny of that certificate, it appears that no period of treatment or illness has been mentioned in that certificate. Even, on the said medical treatment certificate, it is not mentioned what kind of illness the petitioner was suffering from. On submitting the said certificate of illness, the petitioner attempted to join the service, but he was not allowed to join, as, in the meanwhile, the petitioner was dismissed from service precisely with effect from 27.01.2007. From the communication under No.4546/F.Pers/TSR-1/Estt/RT/2001 dated 23.06.2017, the petitioner has claimed to have gathered the knowledge of dismissal. The entire text of the said communication [Annexure-L to the writ petition] is extracted hereunder:

"Government of Tripura  
Office of the Commandant, 1st Bn. TSR, V.B. Gram, Gokulnagar,  
Bishalgarh, Sepahijala, Tripura

No.4546/F.Pers/TSR-1/Estt/RT/2001  
2017

Dated, the 23rd June,

To,  
Shri Rabindra Tripura, Ex-Rfn(GD)No.01010584  
S/C:- Lt. Joy Mangal Tripura  
Vill. Natainagar, P.O.: -Nagendranagar,

P.O. Damcherra, North Tripura,  
PIN : 799256

Subject :- Regarding for accepting joining in respect of Shri Rabindra Tripura, Ex-Rfn (GD), 1st Bn. TSR.

Reference your application dated 10.06.2017 on the subject cited above.

In this respect, it is stated that you had been dismissed from service w.e.f.27.01.2007(FN) for overstaying beyond the period of sanctioned leave for 08 months & 22 days w.e.f.06.05.2006 to 26.01.2007 vide this office letter No.DP/13/06/TSR-1/RT/Estt./0777-85 dated 27.01.2007 (Copy of your dismissal order is enclosed herewith at Annexure-'A' as ready reference.)

This is for your information. Your application along with documents submitted by you is returned herewith.

Encl:-12(twelve)Nos.

Illegible  
(Tapan Kumar Debnath)  
Commandant,  
1st Bn. Tripura State Rifles"

3. On 08.06.2018, the petitioner had filed one representation to the Director General of Police, Tripura stating that since he was undergoing protracted treatment, the departmental proceeding was held against him *ex-parte*. Thereafter, he has asserted in the said representation dated 08.06.2018 [Annexure-M to the writ petition] that *"no result of D/P enquiry was informed to me till date. Only on 23.06.2017 by a letter [Annexure-L to the writ petition] C.O., 1<sup>st</sup> Bn.TSR informed I was dismissed from service earlier but no dismissal order copy given to me though he stated that the copy is enclosed with the letter."*

In the said letter, he has also stated that he had approached the Chief Minister of the State for redressal, but still no avail. By the communication under No.4765-68/F.47(8-74)/DAP/TSR/

RSV/2018 dated 30.07.2018 [Annexure-N to the writ petition], the petitioner was informed that his representation dated 08.06.2018 for reinstatement has been rejected.

4. From a bare reading of the dismissal order dated 27.01.2007 it appears that a departmental proceeding was drawn up against the petitioner on the charge that he did not report back after enjoying two days' casual leave within the period from 06.05.2006 to 10.06.2005. Against the petitioner, the said departmental proceeding being D.P.No.13/2006 was initiated on 01.11.2006. One Kishan Kumar, Asst. Commandant was appointed as the inquiry officer. After completion of the inquiry proceeding, the said inquiry officer has submitted his findings on 16.12.2006 observing that the article of charge-I framed against the petitioner has been proved. Since, the disciplinary authority had no disagreement with the said finding, they dismissed the petitioner by the order dated 27.01.2007 with immediate effect by treating the period of absence from 06.05.2006 to 26.01.2007 as *dies non*. Since, the petitioner had been dismissed on 27.01.2007, the period of absence beyond that day, as indicated by the petitioner in this writ petition has no relevance.

5. The respondents have filed the reply and seriously contested the allegations made in the writ petition that the petitioner was never informed about the disciplinary proceeding or nor was he supplied the copy of the dismissal order [see para-4 of the writ petition]. According to the respondents, the appeal/representation

dated 08.06.2018 filed by the petitioner to the Director General of Police [the respondent No.2 herein] was rejected by the appellate authority, Deputy Inspector General of Police (TSR & OPS) by the order communicated vide the letter dated 30.07.2018 [Annexure-N to the writ petition] as there was no tenable ground. The ground assigned in the writ petition for challenging the orders as noted is that the petitioner is very young in age and he was prevented from attending the duties for serious ailments. In reply, the respondents have submitted that the dismissal order was passed on 27.01.2007 and the petitioner had submitted his representation for joining in the service on 10.06.2017 and as such, the said request could not acceded by the respondents. The respondents have quite emphatically submitted that the dismissal order dated 27.01.2007 was directly sent to the petitioner at his home address. Thereafter, the respondents have categorically asserted as follows which appears to be relevant in the context of the case:

**"It is mentioned here that a memorandum vide No.F.584/TSR-1/Pers/Gen/8130 dated 06.10.2006 along with article of charge (annexure-I,II,III & IV) were also issued to the petitioner through OC Damcherra PS which was received by the petitioner on 19.10.2006 on proper signature vide OC Damcherra PS, North Tripura Dispatched No.6734 dated 19.10.2006. But, no response has been received from the petitioner within the stipulated date. Thereafter, the then Commandant, 1<sup>st</sup> Bn. TSR (Disciplinary Authority) initiated a D.P. vide 13/2006 dated 01.11.2006 by appointing Enquiry Officer namely Shri Kishan Kumar, Asstt. Commandant, 1<sup>st</sup> Bn TSR to inquire into the charges framed against the said petitioner, 1<sup>st</sup> Bn TSR vide office order No.F.584/TSR-1/RT/Pers/ESSTT/9194 dated 01.11.2006 and a copy of this memo along with**

article of charges framed against the petitioner annexed herewith and marked as ANNEXURE-R/2.

During the course of DP enquiry, the enquiry officer issued the following 03(three) notices to the petitioner at his home address through O/C Dhamcherra PS to appear before the enquiry officer for personal hearing.

(i) On 04.11.2006, the Enquiry Officer issued 1<sup>st</sup> notice to the petitioner through Damcherra PS, vide notice No.9295 dt. 04.11.2006 to appear before the Enquiry Officer on 18.11.2006 at 1300 hrs. in the office chamber of Officer Commanding 'Adm' Coy, 1<sup>st</sup> Bn. TSR, Gokulnagar with Defence Assistant, if any. As intimated by O/C Damcherra PS vide dispatched No.7399 dated 16.11.2006, the said notice was served to the petitioner Shri Rabindra Tripura on 16.11.2006. But, the petitioner failed to appear before Enquiry Officer on 18.11.2006 at 1300 hrs. Copies of 1<sup>st</sup> notices along with type copy is annexed herewith and marked as ANNEXURE-R/3.

(ii) On 30.11.2006, the Enquiry Officer issued 2<sup>nd</sup> notice to the petitioner through O/C Damcherra PS vide R/G. No.B-0808 dated 30.11.2006 to appear before the Enquiry Officer on 07.12.2006 at 1330 hrs. along with Defence Assistant, if any in the office chamber of O/C "B" Coy Baramura Thermal Post which was served to the petitioner by O/C DMC PS as intimated by O/C Dhamcherra PS vide R/G No.7918-20 dated 07.12.2006. But, neither the petitioner did appear before the enquiry officer on 07.12.2006 at 1330 hrs nor sent any representation. Copies of 2<sup>nd</sup> notices along with type copy is annexed herewith and marked as ANNEXURE-R/4.

(iii) On 08.12.2006, the Enquiry Officer issued 3<sup>rd</sup> notice to the petitioner through O/C Damcherra PS vide Msg No.DP/13/06 dated 08.12.2006 to appear before the Enquiry Officer on 15.12.2006 at 1430 hrs. alongwith Defence Assistant, if any in the office chamber of O/C Adm-Coy,1<sup>st</sup> Bn. TSR Gokulnagar for final hearing failing which ex-parte enquiry report will be submitted to the Disciplinary Authority. The said 3<sup>rd</sup> notice was served to the petitioner by O/C Damcherra PS vide R/G No.8155 dated 17.12.2006. But the petitioner did not appear before the Enquiry Officer on 15.12.2006 at 1430 hrs. During DP enquiry, the Enquiry Officer had given ample opportunity to the petitioner to defend himself. But, the petitioner failed to avail the said opportunity. Copies of 3<sup>rd</sup> notices alongwith type copy is annexed herewith and marked as ANNEXURE-R/5.

(iv) On 19.12.2006 at 1100, the petitioner appeared before the enquiry officer without his Defence

Assistant in the Baramura Thermal Post. In the statement given by the petitioner to the Enquiry Officer that the petitioner received three notices dated 04.11.2006, 30.11.2006 & 08.12.2006, but he could not appear before the Enquiry Officer and the petitioner admitted the article of charges framed against him vide Memo NO.F.584/TSR-1/Pers/RT/Gen/8130 dated 06.10.2006. A copy of statement of the petitioner in Bengal along with English translated dated 19.12.2006 is enclosed herewith and marked as ANNEXURE-R/6.

(v) Hence, the Enquiry Officer conducted ex-parte DP enquiry and also submitted enquiry report to the then Commandant (Disciplinary Authority) on 26.12.2006. Thereafter, the Commandant, 1<sup>st</sup> Bn TSR (Disciplinary Authority) issued a Provisional order for dismissal from service to the petitioner wherein he was allowed to appear before the then Commandant, 1<sup>st</sup> Bn. TSR in person or send representation, if any within 15 days from the date of issue of provisional order. If the individual does not avail this opportunity within the stipulated time, final order will be issued accordingly vide this office order No.F.Pers/TSR-1/RT/Pers/Estt/07/0036 dated 03.01.2007. But, no response has been received from the petitioner within the stipulated date/before the issue of final order of dismissal from service. On 27.01.2007, the then Commandant, 1<sup>st</sup> Bn. TSR issued final order for dismissal from service vide this office order No.DP/13/06/TSR-1/RT/Esstt/0777-85 dated 27.01.2007. A copy of provisional order for dismissal from service dated 03.01.2007 is annexed herewith and marked as ANNEXURE-R/7.

(vi) It is mentioned here that as per his service book, the petitioner had not informed to this unit about his illness of various diseases w.e.f. 12.05.2006 to 27.01.2007."

6. In the reply, the respondents has reiterated that the illness certificate and the certificate of fitness as submitted along with the representation dated 08.06.2017 were of no assistance and hence his prayer for releasing his pay and allowances was rejected inasmuch as he was no more in the roll. In para-8 of the reply, it has been asserted by the respondents that the memorandum of charge dated 06.10.2006 with all its enclosures were served upon the petitioner



through the officer in charge, Damcherra Police Station and the petitioner received the same on 19.10.2006 by putting his signature on Damcherra P.S. dispatch No.6734 dated 19.10.2006. But the petitioner, despite his knowledge, did not come forward to dispute the allegations made therein. Thus, the inquiry officer was engaged to conduct the departmental proceeding No.13/2006 on the basis of the said memorandum of charge.

7. Having given sufficient opportunities to the petitioner, the enquiry proceeding was concluded and based on the finding, the impugned dismissal order has been passed. The petitioner filed a short rejoinder reiterating the fact that no notice from the disciplinary authority in respect of the departmental proceeding or any notice from the enquiry officer was ever received by him. Strangely enough, in para-2 of the rejoinder, the petitioner has submitted that he was on sanctioned leave as he was seriously ill, but except the admitted sanction of two days casual leave, the petitioner could not produce any record showing sanction of leave in his favour. Even the petitioner has failed to produce any record that during such long period, tentatively about 12 years the petitioner did not inform the respondents, in respect of his whereabouts. From the certificates filed by the petitioner, it appears that the petitioner was suffering from malarial fever, dyspepsia, acute amoebic dysentery, chronic Melina. Out of the period of absence from 06.02.2016 to 07.02.2016 and

04.07.2012 to 06.07.2012, the petitioner was admitted in the Damcherra Primary Health Centre.

8. Mr. A.K. Pal, learned counsel appearing for the petitioner has submitted that the petitioner has been deprived of the reasonable opportunity to defend the charge brought against him. Even the procedural fairness was not maintained. By the memorandum 06.10.2006 [Annexure-R/2] the following solitary charge was framed against the petitioner :

**"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST  
NO.01010584 RFN RABINDRA TRIPURA OF 'ADM-II' COY, 1ST BN.  
TSR.**

**ARTICLE-I**

**NO.01010584 Rfn. Rabindra Tripura of 'Adm-II ' Coy, 1st Bn. TSR while performing duty at Bishramganj, post granted 02 days CL w.e.f. 06.05.06 to 10.05.06, but did not report back for duty and still overstaying w.e.f. 06.05.06.**

**Thus, No. 01010584 Rfn. Rabindra Tripura is charged for gross misconduct."**

From the said memorandum of charge dated 06.10.2006, it surfaces that at least three notices were sent to the home address of the petitioner on 22.06.2006, 26.07.2006 and 23.08.2006 directing him to report to his duties. It is an admitted position that before 10.06.2017 the petitioner had never made any attempt to resume his duties.

9. Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has quite emphatically submitted that the procedural propriety has been scrupulously observed. Even after the finding of the enquiry officer was received, the copy of the said finding was sent

to the petitioner along with the provisional order of dismissal from service under No.F.Pers/TSR-I/RT/Pers/Estt/07/0036 dated 03.01.2007 with direction to supply one copy to the petitioner after taking his acknowledgment on the other copy. Such note has been given below the said order dated 03.01.2007 [Annexure-R/7 to the reply.] But within the stipulated time i.e. 15 days no representation as called for had been filed by the petitioner. Accordingly, the disciplinary authority, the Commandant 1<sup>st</sup> Bn. TSR, passed the final order dated 27.01.2007. Copy of the said order also served on the petitioner. However, the petitioner has refused to acknowledge such fact.

10. Mr. Debbarma, learned Addl. G.A. for benefit of this court and in terms of the direction dated 13.01.2020 has produced the record of proceeding. On scrutiny of the records, this court has discovered a note dated 25.04.2005 that despite receipt of the notice dated 05.04.2005, the petitioner had failed to appear before the disciplinary authority or file the reply. From the note dated 05.12.2005, it further appears that the petitioner did receive the provisional order but he had not signed the acknowledgement due. From the records of the inquiry officer, it is gathered from the acknowledgment report dated 17.12.2006 that the third notice issued by the inquiry officer was received by the petitioner. Similar reports dated 02.08.2006 and 28.11.2006 as available in the records demonstrate that the petitioner had received first and second notices

from the inquiry authority. The provisional order dated 07.12.2005 was received by the petitioner on 16.12.2005, relating to previous disciplinary proceeding. In another provisional order dated 29.10.2005 as issued by the Commandant 1<sup>st</sup> Bn. TSR has recorded as follows :

**"3. The undersigned perused the findings and agreed with the findings of EO. He appeared before me in request room for personal hearing and I heard him on 24.09.05. Rfn Rabindra Tripura pleas that he would never commit such mistake in future and asked for apology. He wish to join duty. Considering the above, I came to the conclusion that his joining may be accepted from the date of submission of application and to award punishment to him as under:**

**'OSL period in respect of No.01010584 Rfn. Rabindra Tripura may be treated as 'Dies Non' with break in service. His appointment will be treated as fresh from the date of submission of prayer by him.' "**

11. It appears that despite the provisional penalty order, as the outcome of the subsequent departmental proceeding, the provisional order dated 03.01.2007 [Annexure-R/7 to the writ petition] has been issued. The previous departmental inquiry was conducted on the similar charge. The petitioner having been exposed to the previous departmental inquiry and having known its consequences did not respond to the notices nor did he file any representation in the departmental inquiry under reference. It has surfaced that he has got the substantive knowledge of the memorandum of charge, report of the departmental inquiry, the provisional order of punishment and the final dismissal order. The inquiry officer has recorded one statement of the petitioner on 19.12.2006, the translation of which has been provided by the

respondents with their reply [Annexure-6]. The text of the said translation is extracted hereunder :

**"Statement of No.01010584 Rfn(GD) Rabindra  
Tripura of ADM-II Coy, 1st Bn. TSR.**

**I, No. 01010584 Rfn(GD) Rabindra Tripura of 'Adm'-II Coy saying that charge was framed against me vide Memorandum No.F.584/TSR-I/Pers/rt/Gen/8130 dt.06.10.2006 (by Annexure-I & II) is absolutely truth and I am also agree with on this charge. After received of 03(three) Nos. notices from the Enquiry Officer on 04.11.2006, 30.11.2006 and 08.12.2006 respectively, I could not attend before the Enquiry Officer. Due to some personal affair, I have attended to the E.O. at Barmura Tharman post on 19.12.2006. This is truth that I have proceeded on 02(two) days C/L w.e.f. 06.05.2006 to 10.05.2006 from Bishramganj post. Due to personal affairs, I could not join duty in due time. Therefore, if pardon me for this misconduct so that I am willing to rejoin in duty."**

The petitioner did not state anything about the said statement as recorded by the inquiry officer namely Kishan Kumar, Asst. Commandant on 19.12.2006. By the said statement, the petitioner has admitted the charges without reserving any right to dispute.

12. Having appreciated the submission of the learned counsel for the parties and on scrutiny of records, this court is of the view that the petitioner has suppressed the material facts deliberately from this court and such act on the part of a petitioner who approached this court for relief in equity is nothing short of polluting the clear stream of justice. That apart, it has been noticed that all opportunities were given to the petitioner for setting up his defence, but he had deliberately avoided his participation or placing his submission before

the competent authority. Even, the grounds taken in the representation dated 08.06.2018 [Annexure-M] and the reasons stated for his absence from duty in the statement made to the inquiry officer [Annexure-R/6 to the reply] are quite opposite and incongruous. In the representation, the petitioner has stated that he was prevented 'by serious illness' and in the statement made to the inquiry officer he has stated that 'for personal affairs' he could not join the duty after enjoying the two days' casual leave. It thus surfaces that the petitioner has not come out before this court with clean hands and as such this court is not inclined to entertain the writ petition. Moreover, there is no merit in the grounds cited for challenging the impugned orders. Accordingly, the writ petition stands dismissed.

No order as to costs.

The records produced by Mr. M. Debbarma, learned Addl. G.A. be returned under a sealed cover.

**JUDGE**

