

**HIGH COURT OF TRIPURA  
AGARTALA  
WP(C) No.372 of 2024**

**1. Sri Goutam Choudhury,**  
Son of Late Makhan Lal Choudhury,  
Resident of village- Ashram Chowmuhani, P.O-Dhaleswar,  
PS: East Agartala, Agartala, West Tripura, Pin-799007,  
aged about 58 years.

----- Petitioner

Versus

- 1. The State of Tripura,**  
Represented by the Commissioner & Secretary, General  
Administration (Personal & Training) Department,  
Government of Tripura, having his office at Secretariat Building,  
P.O: Kunjaban, PS: New Capital Complex, Sub-Division-Agartala,  
Dist: West Tripura, Pin-799006.
- 2. The Commissioner & Secretary, General Administration,**  
Administrative Reforms Department, Government of Tripura,  
having his office at Secretariat Building, PO-Kunjaban,  
PS-New Capital Complex, Sub-Division-Agartala,  
District-West Tripura, Pin- 799006.
- 3. The District Magistrate & Collector,**  
Unakoti Tripura District, having his office at Kailashahar,  
P.O & P.S- Kailashahar, District-Unakoti Tripura.
- 4. The District Magistrate & Collector,**  
North Tripura District, having his office at Dharmanagar,  
P.O & P.S- Dharmanagar, District-Udaipur Tripura.

----- Respondents

|                                         |   |                                 |
|-----------------------------------------|---|---------------------------------|
| For Petitioner(s)                       | : | Ms. Adwitya Chakraborty, Adv.   |
| For Respondent(s)                       | : | Mr. Dipankar Sarma, Addl. G. A. |
| Date of hearing                         | : | 12.09.2025                      |
| Date of delivery of<br>Judgment & Order | : | 26.09.2025                      |
| Whether fit for<br>reporting            | : | YES                             |

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order**

The petitioner has filed this writ petition seeking the following reliefs:

- i) Issue Rule, calling upon the respondents and each one of them,  
to show cause as to why a Writ of Certiorari and/or in the nature

thereof, shall not be issued, for transmitting the records, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Order dated 02.03.2024 (Annexure-19 supra);

ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to revoke/rescind the impugned Order dated 02.03.2024 (Annexure-19 supra), and thereupon, for mandating/directing them, to forthwith drop the disciplinary proceeding, initiated against the petitioner;

iii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to release the balance amount of salary & allowances, apart from the subsistence allowances, that have been withheld from him during the period of suspension, and further for granting the intervening promotion(s) that have been withheld from him, because of the pendency of the departmental proceeding, with retrospective benefit and consequential dues;

iv) Call for the records, appertaining to this writ petition;

v) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (iii) above;

vi) Costs of and incidental to this proceeding;

vii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;

**2.** Heard Learned Counsel Ms. Adwitya Chakraborty appearing on behalf of the petitioner and also heard Learned Addl. G.A., Mr. Dipankar Sarma appearing on behalf of the State-respondents.

**3.** At the time of hearing Learned Counsel for the petitioner submitted that the petitioner is holding the post of District Transport Officer, Sepahijala District and at present posted at Office of District Magistrate & Collector, Sepahijala. The District Magistrate & Collector on 15.09.2018 issued one show cause notice to the petitioner, pursuant thereto, the petitioner submitted his reply dated 17.10.2020 to the DM & Collector, Unakoti District, Kailashahar. The reply was

annexed with the petition as Annexure-1. But the District Magistrate & Collector, Unakoti District issued a memorandum on 26.08.2019 rejecting the reply dated 17.10.2018 of the petitioner. The copy of memo was annexed as Annexure-2.

Thereafter, the District Magistrate & Collector on 26.08.2019 issued a further show cause notice to the petitioner informing that no FIR was received by Pecharthal Police Station, nor a case was registered against the said Implementing Officer i.e., Kumar Raju Chakma. It was further mentioned in the said show cause notice dated 26.08.2019 that the petitioner issued a cheque bearing No.366084 dated 08.10.2014 amounting to Rs.1,00,000/-(Rupees One Lakh) to Sri Kumar Raju Chakma, TA for construction of Bharat Nirman Rajib Gandhi Seva Kendra at Nabin Cherra ADC Village on the same day, when an FIR was already lodged against Sri Kumar Raju Chakma, TA and three other staff in Pecharthal Police Station. Furthermore, while issuing the work order in favour of the Implementing Officers, it was alleged that the petitioner had not specifically indicated the name of the Supervising Officers(AEs) and thus there was no involvement of any Assistant Engineer(AE for short) who could monitor and supervise the works for proper execution as well as timely completion of the different works entrusted to the IOs. As a result, there were gross irregularities in the implementation of different works by the IOs and substandard quality of works. The copy of that show cause notice was marked as Annexure-3.

After that, according to Learned Counsel, the Principal Secretary, General Administration(Administrative Reforms) by a

memo dated 24.08.2020 informed him that an enquiry under Rule-14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965 was required to be held against the petitioner for drawing up the Articles of Charge. By the said memorandum, the petitioner was directed to submit his written statement of his defence within 15 days. The memorandum dated 24.08.2020 along with the Articles of Charge were annexed as Annexure-4. For the sake of convenience, the relevant Articles of Charge are mentioned herein below:

**STATEMENT OF ARTICLE OF CHARGE(S) FRAMED AGAINST SRI GOUTAM CHOUDHURY, THE THEN BDO, PECHARTHAL RD BLOCK, UNAKOTI DISTRICT.**

**ARTICLE-I**

That Sri Goutam Choudhury while functioning as BDO, Pecharthal RD Block during the period from 01/08/2012 to 24/02/2014 had issued the following Work Orders in favour of Sri Kumar Raju Chakma, Technical Assistant for implementation of various works under MGNREGA involving large amount of fund, although he was a contractual employee by ignoring the senior regular Junior Engineers posted in the Block without receiving full adjustments against the expenditure incurred in respect of each work taken up. As a result, there are liabilities to the tune of Rs. 35,34,627/- (Rupees thirty five lakh thirty four thousand six hundred twenty seven) against the said works which is a clear violation of the financial norms. There is a malafide intention on the part of Shri Goutam Chowdhury, TCS Gr-II for misappropriation of Govt. fund in collaboration with Sri Kumar Raju Chakma, T/A.

| Sl. No. | Name of work                                                                                                                      | Work order No. & date                                                                                              | Estimated cost  | Value of work as per re-assessment done by the team | Liability       |
|---------|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------------------------------------|-----------------|
| 1.      | Construction of single cell box culvert near the house of Sukhamoy Chakma on Laxmancerra at Nabinchera ADC Village during 2012-13 | F.17(10)/PO/PTL/MGNREGA /13-14/2966-76 dated 07-06-13                                                              | Rs. 25,42,709/- | Unspecified work done by IO.                        | Rs.19,20,490/-  |
| 2.      | Brick soling road from Sonarampara towards Govindabari (W-6) at Nabinchera ADC village during 2012-13                             | No.216802-12 dated 07-01-2013                                                                                      | Rs. 7,78,799/-  | Rs. 6,88,800/-                                      | Rs.2,60,046/-   |
| 3.      | Brick soling of road from Rasamoy Debnath's house to old Forest office at Krishnatill at D/Macharra ADC village during 2012-13    | F.17(13)/PO/PTL/MGNREGA /12-13/16185-95 dated 06-09-12                                                             | Rs. 6,53,527/-  | Rs.3,47,122 /-                                      | Rs.2,81,269/-   |
| 4.      | Construction of protection wall for traditional water body near Machmara ADC village during 2011-12                               | F.17(10)/PO/PTL/MGNREGA /11-12/10885(A) Dtd.2.3.12 & Corrigendum No.18(1)/PO/PTL/MGNREGA /12-13/1288914 dt.20.3.13 | Rs. 25,16,456/- | Rs. 10,11,056/-                                     | Rs. 10,72,822/- |
| Total   |                                                                                                                                   |                                                                                                                    |                 |                                                     | Rs. 35,34,627/- |

By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

ARTICLE-II

That Sri Goutam Choudhury, the then BDO, Pecharthal RD Block had issued the following Cheque(s) to Sri Kumar Raju Chakma, TA (Implementing Officer) involving an amount of Rs. 26,10,225/- as advance without any proper monitoring & supervision of the construction works as well as without assessing the actual progress of the works.

| Sl. No. | Name of work                                                                                                                       | Work order No. & date                                                                                                | Estimated cost (in Rs.)                                                       | Name of IO                | Advance amount issued to IO |          |                 |
|---------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|---------------------------|-----------------------------|----------|-----------------|
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | Cq. No.                     | Date     | Amount (in Rs.) |
| 1.      | Construction of single cell box culvert near the house of Sukhamoy Chakma on Laxmancerra at Nabincherra ADC Village during 2012-13 | F.17(10)/PO/PTL/MGNREGA /13-14/2966-76 dated 07-06-13                                                                | 25,42,709/-                                                                   | Sri Kumar Raju Chakma, TA | 152839                      | 13.06.13 | 150540/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 152876                      | 20.06.13 | 59000/-         |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 151241                      | 21.08.13 | 100000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 151278                      | 19.09.13 | 10000/-         |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 150800                      | 01.02.13 | 50000/-         |
| 2.      | Brick soling road from Sonarampara towards Govindabari (W-6) at Nabincherra ADC village during 2012-13                             | No.216802-12 dated 07-01-2013                                                                                        | 7,78,799/-                                                                    |                           | 152031                      | 30.03.13 | 56490/-         |
| 3.      | Brick soling road from Rasamoy Debnath's house to old Forest office at Krishnatill at D/Macharra ADC village during 2012-13        | F.17(13)/PO/PTL/MGNREGA /12-13/16,185-95 dated 06-09-12                                                              | 6,53,527/-                                                                    |                           | 129824                      | 16.10.12 | 88195/-         |
| 4.      | RCC retaining wall for traditional water body near Machmarra ADC village                                                           | F.17(10)/PO/PTL/MGNREGA /11-12/10885(A) Dtd. 2.3.12 & Corrigendum No.18(1)/PO/PTL/MGNREGA /12-13/1288914 dtd.20.3.13 | 25,16,456/-                                                                   |                           | 152079                      | 30.03.13 | 185900/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 152076                      | 20.06.13 | 150000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 151241                      | 21.08.13 | 100000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 151278                      | 19.09.13 | 40000/-         |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 366060                      | 23.12.13 | 80000/-         |
| 5.      | Construction of double cell box culvert from Dangaraibari to Panbagan under Dakshin Machmara ADC village                           | F.17(10)/PO/PTL/MGNREGA /11-12/4643-53 dated 09-12-11                                                                | 35,59,291/-                                                                   |                           | 150918                      | 15.3.13  | 100000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 129091                      | 27.9.12  | 200000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 129861                      | 15.11.12 | 165100/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 129884                      | 7.12.12  | 200000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               | 129029                    | 23.7.12                     | 100000/- |                 |
| 6.      | Construction of Pucca Irrigation Channal from the community fishery to 1st 750 mtr. At Dakshin Machmara ADC village                | F.17(10)/PO/PTL/MGNREGA /12-12/4612-621 dated 09-12-11                                                               | Rs 32,75,699/- but int work order issued in the estimated cost Rs.35,59,291/- | Sri Kumar Raju Chakma, TA | 129824                      | 16.10.12 | 100000/-        |
|         |                                                                                                                                    |                                                                                                                      |                                                                               | 150734                    | 3.1.13                      | 250000/- |                 |
|         |                                                                                                                                    |                                                                                                                      |                                                                               | 150915                    | 15.03.13                    | 100000/- |                 |
|         |                                                                                                                                    |                                                                                                                      |                                                                               | 366060                    | 23.12.13                    | 120000/- |                 |
|         |                                                                                                                                    |                                                                                                                      |                                                                               | 366084                    | 08.01.14                    | 100000/- |                 |
| 7.      | Bharat Nirman Rajib Gandhi Seva Kendra at Nabincherra ADC village                                                                  | F.17(10)/PO/PTL/MGNREGA /11-12/4153-63(A) dated 28-11-11                                                             | 10,71,929/-                                                                   | Sri Kumar Raju Chakma, TA | 129861                      | 15.11.12 | 35000/-         |
|         |                                                                                                                                    |                                                                                                                      |                                                                               |                           | 129067                      | 28.8.12  | 70000/-         |

By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RO Block has committed misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 Tripura Civil Services (Contnuct) Rules, 1988.

ARTICLE-III

That Si Goutam Choudhury, the then BDO, Pecharthal RD Block had issued aforesaid Work Orders to Sri Kumar Raju Chakma, TA for Implementation of different works which are beyond the jurisdiction of Sectors allocated to him vide Order No.F.1(8)/BDO/PTL/EST/2011/10,852-60 dated 14-10-2011 with a malafide intention.

By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and

thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

**ARTICLE-IV**

That Sri Goutam Choudhury, the then BDO, Pecharthal RD Block had issued the following Work Order(s) to Sri Kumar Raju Chakma, TA for implementation of works which were not included in the approved Annual Action Plan of the Block during the year 2012-13 and thus violating the guidelines of MGNREGA.

3. Brick soling of road from Rasamoy Debnath's house to old Forest office at Krishnatilla Dakshin Macharra ADC village during the year 2012-13.

4. Construction of Protection wall near Machmara Class XII School under Uttar Machmara ADC Village during the year 2011-12.

By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

**ARTICLE-V**

That Sri Goutam Choudhury, the then BDO, Pecharthal RD Block was directed to file FIR against 4 (four) nos. of Implementing Officers namely, Md. Lutfur Rahman, RPS, Sri Kumar Raju Chakma, TA, Sri Devabahan Chakma, VS and Sri Kakrajoy Reang, GRS vide letter No F1(29)/DUD/MGNREGA/2012-13/V2/2223-27 dated 21/12/2013 of DM & Collector, Unakoti District and accordingly Sri Goutam Choudhury, the then BDO, Pecharthal R.D. Block had also claimed that he had lodged an FIR to the Officer In-Charge, Pecharthal Police Station against the aforesaid 4 (four) Implementing Officers vide letter No.F.17(1)/PO(BDO)/PTL/MGNREGA/2013-14/11,390-99 dated, 08-01-2014 without mentioning specific defalcated amount fixed against the concerned defaulting Implementing Officers in the said F.I.R. But the Officer-in-Charge, Pecharthal Police Station had intimated vide letter No.6834 dated 30-07-2019 and lette No. 6988 dated 05-08-2019 to the present BDO, Pecharthal RD Block that no F.I.R. was received b Pecharthal Police Station nor a case was registered against the aforesaid implementing Officers. Thus the claim made by Sri Goutam Choudhury, TCS Gr. -II, the then BDO, Pecharthal RD Block that he had lodged a F.I.R. in Pecharthal Police Station is quite doubtful and misleading.

By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.

**ARTICLE-VI**

That Sri Goutam Choudhury, the then BDO, Pecharthal RD Block had issued a Cheque bearing No.366084 dated 08-01-2014 amounting to Ps. 1,00,000/- only to Sri Kumar Raju Chakma, TA for construction of the R.D. Block of the community fishery to 1<sup>st</sup> 750 mtr at Dakshin Machmara ADC village against 4 (four) nos. of Implementing Officers namely, Md. Lutfur Rahman, RPS, Sri Kumar Raju Chakma, TA Sri Devabahan Chakma, VS and Sri Kakrajoy Reang, GRS vide letter No.F.1(29)/DUD/MGNREGA/2012 13/V2/2223-27 dated 21/12/2013 with malafide intention for getting personal gain/benefit.

**By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.**

**ARTICLE-VII**

**That Sri Goutam Choudhury, the then BDO, Pecharthal RD Block while issuing the Work Orders in favour of the Implementing Officers had not specifically indicated the name of Supervising Officers (AEs) and thus there was no involvement of any A.E. who could monitor and supervise the works for proper execution as well as timely completion of the different works entrusted to the IOs. As a result, there were gross irregularities in the implementation of different works by the IOs and substandard quality of works.**

**By the above acts, Shri Goutam Choudhury, TCS, Ex-BDO, Pecharthal RD Block has committed gross misconduct, which is quite unbecoming of a Government servant and thus, he has violated the Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988.**

The petitioner thereafter submitted his written statement of defence on 14.09.2020 denying the assertions in the Articles of Charge. Copy of the reply was annexed as Annexure-5.

But thereafter, Under Secretary, General Administration(Administrative Reforms) Department, Government of Tripura issued a notice dated 22.09.2020 and directed him to appear before the Principal Secretary, General Administration(Administrative Reforms) Department to appear with all the relevant documents. Copy of the notice was annexed as Annexure-6.

Again, the Principal Secretary, General Administration(Administrative Reforms) Department issued two separate orders on 22.10.2020 and thereby appointing Sri Abhishek Chandra, IAS, Special Secretary, ICA as the Inquiring Authority to enquire into the charges framed against the petitioner and one Ranjit Das, TCS Grade-II, Under Secretary, RD Department was appointed as the Presenting Officer to present the case on behalf of the

Government before the Inquiring Authority. Copies of the orders were annexed as Annexure-7.

Thereafter, the Under Secretary, General Administration(Personnel & Training) Department issued a letter bearing No.F.23(8)-GA(P&T)/2015(P-1) dated 21.01.2021 along with a copy of notice dated 23.12.2020 issued by the Inquiring Authority with a direction to appear before the chamber of Special Secretary, ICA Department, Secretariat. The copies of the letter dated 21.01.2021 and the notice dated 23.12.2020 were annexed as Annexure-8.

Further it was submitted by Learned Counsel for the petitioner that the Inquiring Authority after completion of inquiry by order dated 10.05.2021 gave the following findings(para No.2.9 of writ petition):

**2.9.**

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**i. Article-I:-The charges as enumerated in Article-I for misappropriation of Government fund by the BDO are not substantive in nature. It is not the job of the BDO to make the estimate & execute the work which is primarily the job of Technical Assistant. The BDO, i.e., the petitioner herein has not committed any misappropriation as a government servant nor has he committed any irregularity as per the Conduct Rules in the mentioned works. The works as sanctioned have not been completed by the Technical Assistant. The petitioner was transferred on 05.02.2014 and there were no irregularities of any work done by him during his time. Thus, in Article I no charge is made out against the petitioner.**

**ii. Article-II:-It has been stated that approximately Rs.26,10,225/- in advance was given to Sri Chakma, without physical progress of works. Hence, there was no misappropriation by the BDO. The work has not been completed by Sri Chakma and for non-completion of the work, and inquiry should be conducted against Sri Chakma. It is to the credit of the petitioner that an amount, approximately Rs.9.00 lakhs was recovered from the said work, and the report was submitted by the petitioner on the negligence of the departmental works to the DM & Collector office with complete details of the money that was recovered. The BDO, i.e., the petitioner herein had recovered money to the tune of Rs.9.00 lakhs. Thus, there is no malafide intention on the part of the petitioner as he had taken steps for recovery. Thus, he is not found guilty on these charges.**

iii. Article-III:-A BDO can allocate to any Technical Assistant for implementation in any area in his jurisdiction. Hence, in doing so, the petitioner has not violated any Conduct Rules.

iv. Article-IV:- The works were sanctioned by the Panchayat & BDO, in the interest of the Block. As per report, it is almost complete & 60% of the work near Machmara Class XII School was completed during his tenure. Hence, no case is made out against the petitioner.

v. Article-V:-Even though, the formal FIR for registering the case against the IO was not done by the petitioner, but since, he had informed the OC, In-charge to impose the recovery & register a case against the IO, it may be treated as a procedure lapse and not a malafide intention on the part of the petitioner.

vi. Article-VI:- The petitioner has taken necessary steps to recover the said amount on this work and an amount of Rs.8,25,715/- has already been recovered. There was no malafide intention on the part of the petitioner. As 300 meter work was already completed & money allotted for was duly spent, there is no violation on the part of the petitioner for not dismissing Sri Chakma, for his gross errors & misconduct.

vii. Article-VII:- In the Block, there was no AE posted during the tenure of the petitioner. There have been reports on monitoring done by the Executive Engineer, RD from time to time. Thus, there is no irregularity nor any misconduct of the petitioner nor has he violated any of the Conduct Rules.

Copy of the order dated 10.05.2021 was annexed as Annexure-9.

Again Learned Counsel submitted that the District Magistrate & Collector, Unakoti District on 30.01.2014 issued a memorandum mentioning that there was a callous attitude of Sri Kumar Raju Chakma in executing the works under the Pecharthal RD Block, as such, it was ordered to terminate the service of Sri Kumar Raju Chakma and to lodge FIR against him. Copy of the memorandum was annexed as Annexure-10.

4. Learned Counsel further submitted that in pursuance of the order dated 10.05.2021(Annexure-9), the Principal Secretary, General Administration(Administrative Reforms) Department issued an order dated 28.07.2021 noting that the inquiry was not done as per Rule-14(23) of the CCS(CCA) Rules, 1965, and as such, as per Rule-15(2)

of CCS(CCA) Rules, 1965, the Disciplinary Authority disagreed with the findings of the Inquiring Authority and directed for fresh inquiry against the petitioner by appointing Sri Sriram Taranikanti, IAS, Principal Secretary, Transport Department as Inquiring Authority to enquire into the charge framed against the petitioner. Copy of the order dated 28.07.2021 was annexed as Annexure-11.

But according to Learned Counsel surprisingly again the Principal Secretary, General Administration(Administrative Reforms) Department thereafter by a further order dated 17.01.2022 appointed the Commissioner of Departmental Inquiries as Inquiring Authority to enquire into the charges framed against the petitioner. Copy of the order was annexed as Annexure-12.

After that, the Inquiring Authority issued a letter to the petitioner fixing 02.07.2022 for the purpose of inquiry into the charges framed against the petitioner. Copy of the letter dated 27.06.2022 was annexed as Annexure-13.

The Inquiring Authority recorded the Preliminary Statement of the petitioner dated 05.08.2022 which was annexed as Annexure-14.

**5.** It was further submitted by Learned Counsel that on the date fixed for hearing the Presenting Officer remained absent. The Secretary, General Administration(Administrative Reforms) Department by order dated 16.03.2023 appointed Sri Pradip Acharjee, TCS Additional Secretary, Revenue Department as the Presenting Officer. Copy of the order dated 16.03.2023 was annexed as Annexure-16.

6. Being aggrieved, thereafter the petitioner preferred a writ petition before this High Court which was marked as WP(C) No.708 of 2023 and this High Court after hearing the parties by order dated 11.12.2023 disposed of the same with the following observation:

**"[6] A bare perusal of the record and reading of Rule 15(2) of CCS(CCA) Rules, 1965 it appears to this court that the impugned order dated 28.07.2021 is passed without any reason and it is not in consonance with the Rule 15(2) of CCS (CCA) Rules, 1965 and hence the same is set aside.**

**[7] However, if the respondents desire, it is open for them to pass a speaking order within a period of one month from the date of receipt of the copy of this order. It is needless to observe that any order passed in pursuance of the order dated 28.07.2021 automatically stands dissolved.**

**[8] With the above observation and direction, this present writ petition stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed."**

Copy of the order of the High Court was annexed as Annexure-17.

7. The petitioner thereafter submitted a representation to the Principal Secretary General Administration(Administrative Reforms) Department on 14.01.2024 with a request to comply the order dated 11.12.2023 passed by this High Court. Representation was annexed as Annexure-18.

But instead of complying the order 11.12.2023, the Disciplinary Authority i.e. the Secretary, General Administration(Administrative Reforms) Department issued an order dated 02.03.2024 remitting the case under Rule 15(1) of the CCS(CCA) Rules to the Commissioner of Departmental Inquiries for further inquiry into the charges framed against the petitioner from the stage-II, i.e. (inspection of records as mentioned in Annexure-III onwards). The copy of the impugned order dated 02.03.2024 was

annexed as Annexure-19 which the petitioner has challenged before this High Court by filing this writ petition.

Learned Counsel for the petitioner at the time of hearing drawn the attention of the Court that the petitioner has got a good *prima facie* case to be interfered with by exercising the jurisdiction provided under Article 226 of the Constitution of India and urged for allowing this writ petition.

8. The Writ petition has been contested by the State-respondents by filing one counter affidavit denying the assertions of the writ petitioner in the writ petition and it was the plea of the State-respondents that as per due process of law, the order dated 02.03.2024(Annexure-19) was issued for further inquiry into the alleged Articles of charge against the petitioner and there is no scope to interfere with the same at this stage and urged for dismissal of this writ petition.

9. However, at the time of hearing, Learned Counsel for the petitioner relied upon one citation of the Hon'ble Supreme Court of India reported in **1971 (2) SCC 102 [titled as K. R. Deb Vs. The Collector of Central Excise, Shillong dated 07.04.1971]**, wherein in para No.12, the Hon'ble Apex Court observed as under:

**"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to re-consider the evidence itself and come to its own conclusion under Rule 9."**

Referring the same, Learned Counsel for the petitioner submitted that the order dated 02.03.2024 suffers from infirmity which is in violation of Rule 14(23) of CCS(CCA) Rules, 1965 and by issuing order dated 02.03.2024, the respondent authority did not comply with the mandatory provision of Rule 15(2) of CCS(CCA) Rules. Learned Counsel submitted that in view of the principle of law, there is scope for interference of the order dated 02.03.2024 by this Court by issuing writ of mandamus for cancelling the Departmental Proceeding against the petitioner.

**10.** Learned Counsel further referred another citation of the Hon'ble Apex Court reported in **(2014) 10 SCC 589 [titled as Vijay Shankar Pandey Vs. Union of India and another dated 22.09.2014]** wherein in Para No.24 and 25, Hon'ble the Apex Court further observed as under:

"24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority (multi-member)? The issue is not really whether the enquiring authority should be single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb v. CCE:(1971) 2 SCC 102, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a Sub-Inspector, Central Excise (the appellant before this Court). The enquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another enquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another enquiry officer should be appointed to inquire afresh into the charge".

**25. The Court in K.R. Deb(supra) held that: (SCC p. 105, paras 12-13)**

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the disciplinary

**authority may ask the enquiry officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the inquiring officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.**

**13. In our view the Rules do not contemplate an action such as was taken by the Collector on 13-2-1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the Rules but was harassing to the appellant. "**

**(emphasis supplied)**

**and allowed the appeal of K.R. Deb(supra)**

Referring the same, Learned Counsel drawn the attention of the Court that as per Rule 15, there is no scope for completely setting aside the previous inquiries on the ground that the report of the Inquiring Officer does not appeal to the Disciplinary Authority rather the Disciplinary Authority has enough power to reconsider the evidence itself and comes to its own conclusion under Rule 9 and Learned Counsel further referred para No.26 of the said citation wherein it was observed by Hon'ble the Apex Court as under:

**"26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognised the possibility of a further enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry."**

Referring the same, Learned Counsel for the petitioner further stated that as per normal rule there can be only one enquiry but there is possibility of further enquiry in certain circumstances enumerated therein but the disagreement of the disciplinary authority with the report submitted by the enquiring authority cannot be a ground for completely setting aside the enquiry report and ordering a second

inquiry. So, Learned Counsel urged before the Court for considering this principle in deciding this writ petition.

**11.** Learned Counsel again relied upon another citation of the Hon'ble Supreme Court of India reported in **(2011) 4 SCC 589 [titled as Union of India and others Vs. S. K. Kapoor dated 16.03.2011]** wherein in para Nos.5 and 7, Hon'ble the Apex Court observed as under:

**"5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.**

**7. In the aforesaid decision, it has been observed in SCC para 25 that "the provisions of Article 320(3)(c) of the Constitution of India are not mandatory". We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the Commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V. Patel case:(2007) 4 SCC 785, is clearly distinguishable."**

Referring the same, Learned Counsel submitted that in the case at hand since the initial report of the Inquiring Authority was not accepted by the Disciplinary Authority, so, it was the duty of the Disciplinary Authority to supply a copy of the report in advance to the petitioner for affording him an opportunity of rebuttal which was not followed in this case.

**12.** Again, Learned Counsel referred another citation of the Hon'ble Supreme Court reported in **(2006) 9 SCC 440 [titled as Lav Nigam Vs. Chairman & MD, ITI LTD. and another dated 03.04.2006]** wherein in para No.9, 10 and 11, Hon'ble the Apex Court further observed as under:

**"9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court.**

The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show-cause notices one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The writ petition was accordingly dismissed.

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In *Punjab National Bank v. Kunj Behari Misra*:(1998) 7 SCC 84, a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p. 97, para 19)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.""

Referring the same, Learned Counsel submitted that in case of disagreement, it is only after hearing the petitioner, the disciplinary authority would proceed further which was not followed in this case.

**13.** Finally, Learned Counsel for the petitioner has drawn the attention of the Court that the order dated 02.03.2024 was issued by the respondent authority in violation of the statutory rule which cannot be sustained in the eye of law and also the settled principles of law observed by the Hon'ble Apex Court in series of judgments and

finally urged for dismissal/setting aside the said order dated 02.03.2024 issued by the respondent authority by allowing this writ petition.

**14.** On the other hand, Learned Addl. G.A. for the State-respondents at the time of hearing referred one citation of the Hon'ble Supreme Court of India reported in **(2015) 1 SCC 661 [titled as State Bank of India Vs. Boa Penji dated 10.10.2014]** wherein in para Nos.9, 12 and 15, Hon'ble the Apex Court observed as under:

"9. A bare perusal of Para 23.7.2 of the Procedure for Taking Disciplinary Action makes it quite clear that once a departmental enquiry has commenced against an officer, it would be *desirable* if the enquiry officer is not changed. However, if there is a good reason for changing the enquiry officer, a change may be made but reasons for doing so should be recorded.

12. On the contrary, the first part of the said paragraph postulates the change of an enquiry officer provided reasons are given for doing so. It is clear that by no stretch of imagination can the first part of the said paragraph be read otherwise than as being directory in nature. No doubt, it is desirable that a departmental enquiry started by a particular enquiry officer should be concluded by him or her. But if there are reasons for changing the enquiry officer, there cannot be any bar in doing so.

**Conclusion**

15. In the circumstances, we set aside the judgment and order:Boa Penji v. SBI, Writ Appeal No.20(AP) of 2011, decided on 7-3-2012(Gau) passed by the High Court and hold that the first part of Para 23.7.2 of the Procedure for Taking Disciplinary Action: Award Staff is not a mandatory provision. However, we emphasise the mandatory requirement of recording reasons by the Bank for changing an enquiry officer during the continuance of a departmental enquiry against an officer. In the facts of the present appeal, the appointment of a fresh enquiry officer was inevitable. The failure of the Bank to record reasons for changing the enquiry officer did not vitiate the enquiry against Penji."

Relying upon the same, Learned Addl. G.A. has drawn the attention of the Court that in view of the aforesaid principle of law laid down by the Hon'ble Apex Court, there was no bar for conducting fresh inquiry in the present case, as such there is no merit in the writ petition filed by the present petitioner.

**15.** Learned Addl. G.A. again referred another citation of Hon'ble Supreme Court of India reported in **(1999) 1 SCC 733 [titled as Union of India and others Vs. P. Thayagarajan dated 24.11.1998]** wherein in para No.8, Hon'ble the Apex Court observed as under:

**"8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature."**

Referring the same, Learned Addl. G.A. has drawn the attention of the Court that in the given case, there was no bar in holding *de novo* inquiry, since the Disciplinary Authority was not satisfied with the findings of the Inquiring Authority.

**16.** Finally, Learned Addl. G.A. submitted that the present writ petitioner could not project any case before this Court for invoking jurisdiction under Article 226 of the Constitution of India and there was no infirmity in the order dated 02.03.2024(Annexure-19) issued by the respondent-State Authority and as such, Learned Addl. G.A. in conclusion of argument, urged for dismissal of this writ petition.

**17.** I have heard both the sides at length and perused the writ petition and the documents annexed with the writ petition and also

perused the counter affidavit filed by the respondent-State and the citations referred by Learned Counsel of both the sides. In this case, initially a Disciplinary Proceeding was initiated against the present petitioner on some Articles of Charge and accordingly Inquiring Authority was appointed and the Inquiring Authority after conclusion of inquiry found the charges not proved and gave its finding, but the Disciplinary Authority was not satisfied with the finding of the initial Inquiring Authority and ultimately appointed another person as Inquiring Authority to further inquire into the charges. In the meantime, the petitioner approached to the Hon'ble High Court and the Hon'ble High Court by order dated 11.12.2023(Annexure-17) was pleased to set aside the order dated 28.07.2021(Annexure-11) issued by the Disciplinary Authority and directed the respondent authority to pass a speaking order within a period of one month from the date of receipt of copy of order and further ordered that any order passed in pursuance of order dated 28.07.2021 will also automatically stands dissolved. After that, the petitioner submitted one representation to the respondent authority on 24.01.2024 (Annexure-18) with a request to comply the judgment dated 11.12.2023 passed by this High Court in WP(C) No.708 of 2023 and thereafter the respondent authority further remitted back the case to the Inquiring Authority i.e. the Commissioner of Departmental Inquiries for further inquire into the charges framed against the petitioner from the stage-II i.e. inspection of records as mentioned in Annexure-III onwards by order dated 02.03.2024 (Annexure-19) which has been challenged by the petitioner before this Court.

**18.** Now, here in this writ petition, this Court is to decide as to whether the order dated 02.03.2024(Annexure-19) issued by the authority can be legally sustained or not at this stage. To answer this question now let us refer the relevant Rule 15 of CCS(CCA) Rules, 1965 which are reproduced hereinbelow:

**"15. Action on the inquiry report**

**(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.**

**(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who 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 report is favourable or not the Government servant."**

On perusal of Rule 15(1), it appears that if the Disciplinary Authority is not itself the Inquiring Authority may, for reason to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provision of Rule-14 as far as the case may be. Here in the case at hand Disciplinary Authority is not the Inquiring Authority. So, the Disciplinary Authority remitted the matter to the Inquiring Authority for further inquiry and report. In this regard as already stated, this High Court, by judgment and order dated 11.12.2023 was pleased to set aside the earlier order dated 28.07.2021 i.e. Annexure-11, by which the Disciplinary Authority disagreeing with the findings of the Inquiry Authority decided for fresh inquiry against the petitioner and appointed one Sri

Sriram Tarani Kanti, the then IAS, Principal Secretary, Transport department as Inquiring Authority to inquire into the charges framed against the petitioner. In the meantime, Department issued another order dated 17.01.2022 (Annexure-12) and appointed the Commissioner of Departmental Inquiries as Inquiring Authority in partial modification of the earlier order dated 28.07.2021 but again on 02.03.2024 the Disciplinary Authority again issued another order appointing Commissioner of Departmental Inquiries for further inquiry into the charges against the petitioner in partial modification of the earlier order dated 17.01.2022 (Annexure-12).

Further, on bare perusal of aforesaid Rule-15(2) it appears that the Disciplinary Authority shall forward or cause to be forwarded a copy of report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any Article of Charge to the Government servant who shall require to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days. But on bare perusal of said order dated 17.01.2022 (Annexure-12) and subsequent order dated 02.03.2024 (Annexure-19) which is impugned before this Court, it appears that at the time of issuing the order on 02.03.2024, Rule 15(2) of the CCS(CCA) Rules, 1965 has not been complied with by the Disciplinary Authority which has caused severe prejudice to the petitioner.

**19.** In this regard, a Division Bench of this High Court in a case of **Dhiman Singha Vs. State of Tripura and Ors.** dated **22.09.2015** reported in **(2015) 2 TLR 900** in para Nos.7, 10, 11 and 12 observed as under:

"7. Sub-rule (1) of rule 15 envisages a situation where the disciplinary authority is itself not the inquiring authority. On going through the report of the Inquiry Officer, if the disciplinary authority finds that further inquiry proceedings should be held then it must record its reasons for coming to such a finding and thereafter it must remit the case to the inquiring authority for further inquiry and report the matter to the disciplinary authority. Therefore, what is contemplated under this sub-rule is a further inquiry which obviously means a continuation of the old inquiry but not a fresh or de novo inquiry. The language used is very specific that the disciplinary authority after recording its reasons in writing can remit the case to the Inquiry Officer. Remission of a case means that it must be sent back to the same authority to proceed further in accordance with law. Officers may change but the authority must remain the same. The words, 'remit' and further inquiry' leave no manner of doubt that what is contemplated under rule 15(1) is the continuation of the old inquiry by the same authority which conducted the inquiry earlier.

10. Rule 15(2) deals with a different situation. This contemplates a situation where on the evidence on record and without any further evidence being recorded the disciplinary authority is of the view that the finding recorded by the Inquiring Officer exonerating the delinquent official is against the evidence of law. In such a case, the disciplinary authority is directed to indicate and give its prima facie or tentative reasons for disagreeing with the report of the inquiring authority and then communicate the reasons to the delinquent official giving him a chance to put forth his case and answer the queries of the disciplinary authority.

11. Thereafter, the disciplinary authority is required not only to consider the inquiry report but also it's own tentative reasoning as well as the reply given by the delinquent official. After considering all three the disciplinary authority has a right to form his own opinion on the basis of the evidence. This does not envisage the holding of any fresh inquiry but only on the basis of the evidence already recorded by the Inquiring Officer the action is to be taken.

12. There is no rule which permits the disciplinary authority to start a fresh inquiry. In the present case, the disciplinary authority did not follow any of the above two options. In case the disciplinary authority was of the view that the statements of some material witnesses had not been recorded or that some material evidence had not been taken into consideration then the disciplinary authority should have recorded these reasons and then could have remitted the matter to the Inquiring Officer to carry out the further enquiry in terms of rule 15(1). This has not been done. What has been done is to order a fresh Inquiry Officer and start de novo inquiry which is not permissible under the law. The procedure followed is totally illegal. We, therefore, have no option but to set aside the entire inquiry

**proceedings and quash the order dismissing the petitioner from service."**

From the aforesaid citations, it also appears that here in the case at hand when the Disciplinary Authority was not satisfied with the findings of the initial Inquiring Authority, in that case, it was the duty of the Disciplinary Authority to indicate and give its *prima facie* or tentative reason for disagreement with the report of the Inquiring Authority and then communicate the reasons to the petitioner giving him a chance to put forth his case and answer the queries of the Disciplinary Authority which has not been followed in this present case by the Disciplinary Authority and thus it appears that the subsequent order dated 02.03.2024 suffers from infirmities and not in accordance with law and the procedure followed is totally found to be illegal and non-compliance of the provision of Rule 15(2) of CCS(CCA) Rules, 1965 for which in the considered opinion of this Court the order dated 02.03.2024 is illegal not binding upon the petitioner and the same is liable to be set aside.

**20.** In the result, the writ petition filed by the petitioner is allowed. The order dated 02.03.2024 (Annexure-19 of the writ petition) is found to be illegal, inoperative and not upon binding upon the petitioner and the same stands set aside and quashed accordingly.

With the above observations, this writ petition stands disposed of.

Pending applications(s), if any, also stands disposed of.

**JUDGE**