

GAHC040002462018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP(C)/315(AP)/2018

Shri Wangja Wangsu
S/o Late Tingkap Wangsu,
Village- Longsom
P.O/P.S- Longding
District- Londing, Arunachal Pradesh
Present addresses C/o- S.P Longding;
P.O/P.S- Longding; Dist- Longding
Arunachal Pradesh
Mobile No. 9774378088.

...PETITIONER

-VERSUS-

- 1. The State of Arunachal Pradesh**
Represented by the Commissioner (Home),
Govt. of Arunachal Pradesh.
- 2. The Director General of Police,**
Govt. of Arunachal Pradesh, PHQ,
Itanagar.
- 3. The Inspector General of Police,**
Govt. of Arunachal Pradesh, PHQ.

Itanagar.

4. **The Deputy Inspector General of Police,**
Govt. of Arunachal Pradesh, PHQ,
Itanagar.
5. **The Superintendent of Police,**
Khonsa, Dist. Tirap, Govt. of
Arunachal Pradesh.
6. **The Inquiry Officer Shri G. N. Roy,**
Dy. Superintendent of Police
C/o Superintendent of Police,
Khonsa, Dist. Tirap, Govt. of
Arunachal Pradesh.

....RESPONDENTS

WP(C)/316(AP)/2018

Shri Danfa Wangjen @ Wangsu
S/o Late Tingkap Bolam Wangsu,
Village- Wanu
P.O/P.S- Longding
District- Longding, Arunachal Pradesh
Present addresses C/o- S.P. Longding;
P.O/P.S- Longding; Dist- Longding
Arunachal Pradesh.
Mobile No. 8732868961

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C/o Superintendent of Police,
Khonsa, Dist. Tirap, Govt. of
Arunachal Pradesh.

....RESPONDENTS

Advocates for the petitioners : Mr. T. Tapak

Advocates for the respondents : Ms. G. Ete, (Addl. Govt. Adv).

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Judgment & Order: 27.05.2024

Judgment & Order(Oral)

1. The above noted writ petitions pertain to a challenge by the petitioners therein to a penalty as imposed upon them in pursuance to a common Departmental proceeding instituted against them and 6(six) others by issuance of a common memorandum of charge and also by holding of a joint Enquiry in the matter. The penalty as imposed in the matter was so issued common to all the delinquents involved in the said proceeding. Accordingly, both the above noted writ petitions are taken up for consideration by this order jointly. The present order would dispose of both the above noted writ petitions.

2. Heard Mr. T. Tapak, learned counsel for the petitioner in both the writ petitions. Also heard Ms. G. Ete, learned Additional Senior Government Advocate appearing for the respondents.

3. The petitioners in the above noted writ petitions (hereinafter referred to as the petitioners) have instituted the present proceedings presenting a challenge to an order dated 31.01.2010 issued by the disciplinary authority imposing on each of them the penalty of withholding 1(one) year increment with cumulative effect.

4. The facts as requisite for the purpose of adjudicating the issue arising in the above noted writ petitions are noticed in brief hereinbelow;

The petitioners who are constables were detailed for sentry guard duty along with 6(six) others constables at Longding Police Station. The petitioner along with 6(six) others were so engaged for sentry guard duty in respect of the accused persons who were arrested in connection with Longding P.S. Case No. 27/09, under Section 121 IPC R/W 10/13 of the UAP Act. During the period when the petitioners were so engaged, more specifically on 28.02.2010 at around 05:55 hrs, the said under-trial prisoners had managed to escape from the said lockup by taking advantage of the alleged negligence committed in the matter by the person detailed to guard them including the petitioners herein. Accordingly, on a preliminary enquiry being made in the matter and a misconduct being evident on the part of the petitioners as well as other 6(six) personnels detailed for sentry duty; the disciplinary authority vide memorandum dated 13.04.2011 proceeded to draw up Departmental proceedings against them. The Articles of Charge No. 1 as levelled against the petitioners and 6(six) other personnels pertains to a lapse committed by the delinquents involved in performing sentry guard duty at Longding Police Station. The petitioners and other persons so covered by the said Memorandum of Charge were also alleged to have not stayed back in the guard room of the Police Station after completion of their sentry duty as per roster, which was contended to have facilitated the escape of the 3(three) UTPs. The petitioners herein on receipt of the said memorandum of charge, proceeded to submit their respective replies thereto denying the

allegations so levelled against them. Being not satisfied with the replies as submitted in the matter the disciplinary authority proceeded to direct for holding of an enquiry in the matter and an Enquiry Officer came to be appointed. The petitioners duly participated in the said enquiry so held.

5. On conclusion of the enquiry, the Inquiry Officer proceeded to submit his enquiry report. The enquiry report as submitted by the Inquiry Officer was forwarded to the petitioners herein and the petitioners submitted their individual representation against the same. The disciplinary authority on considering the materials coming on record and appreciating the contentions made by the petitioner in their representation so preferred against the enquiry report, proceeded vide the order dated 31.01.2011 to impose upon the petitioners the penalty of withholding of 1(one) year increment with cumulative effect. The disciplinary authority in his said order had noticed that in the facts and circumstances involved in the matter, individual responsibility of the police personnel detailed for the guard duty not being in a position to be determined and the escape of the under-trial prisoners being found to be on account of negligence on the part of all the personnel detailed for sentry duty and also by taking a lenient view in the matter, the above noted penalty came to be imposed upon the petitioners and others involved.

6. The petitioners in the above noted writ petitions being aggrieved by the penalty as imposed upon them vide order dated 31.01.2012, had individually preferred appeals against the said order. However, the appeals as preferred by the petitioners were also rejected by the appellate authority. The appellate authority had rejected the appeal preferred by the petitioner in

WP(C)315(AP)2018 vide order dated 22.05.2013 and the appeal as preferred by the petitioner in WP(C)316(AP)2018 was so rejected by the appellate authority vide order dated 09.05.2013. The petitioners herein on being aggrieved by the penalty as imposed upon them as well as the rejection of the appeals as filed them in the matter, had instituted the present proceedings.

7. Mr. T. Tapak, learned counsel for the petitioners in both the above noted writ petitions has submitted that while it is an admitted position that the petitioners along with 6(six) others were detailed for sentry guard at Longding Police Station for guarding the under-trial prisoners kept in the police lockup therein, it was contended that the petitioners herein had discharged their duty in the manner required and that they are in no way responsible for the escape of the said under-trial prisoners from the said Police Station. Mr. Tapak by taking this Court through the allegations as levelled against the petitioners vide the memorandum of charge dated 13.04.2011 has contended that the disciplinary authority had proceeded to hold a joint proceeding in the matter and accordingly had issued a common charge to all the 8(eight) constables engaged for sentry duty. It is the contention of Mr. Tapak that the Supervising Officer who were also responsible for guarding all the under-trial prisoners, however, were not proceeded against by the respondent authorities. He has submitted that the allegations as involved in the article of charge pertains to the incident of escape of UTPs and basically the same alleges that the petitioners herein were not staying in the guard room of the Police Station and due to their absence therefrom, the 3(three) under-trial prisoners could escape from the

police lockup.

8. Mr. Tapak has submitted that the said allegation on the face of it, is perverse inasmuch as during the period the petitioners herein were detailed for the said guard duty, they used to stay in the guard room after completion of their respective sentry duty which was carried out on rotation basis amongst the 8(eight) constables engaged for the sentry duty in a group of two persons at a time. It is submitted by Mr. Tapak that in absence of proper facilities available in the Police Station, the petitioners herein were required to proceed to their respective quarters which was nearby the police station for refreshing themselves and also for attending to nature's call. It is contended by Mr. Tapak that the petitioners herein were detailed as per the duty roster to take sentry position from 6 AM to 8 AM in the morning and accordingly, they had left from the guard room at 5 AM in the morning and thereafter on refreshing themselves had returned back to the police station premises by 5:55 AM. However, on account of negligence on the part of the constables detailed for the sentry duty at night who did not properly lock up the cell wherein, the under-trial prisoners were kept, facilitated the escape of the said under-trial prisoners in the morning of 28.02.2010.

9. Mr. Tapak, the learned counsel by referring to the enquiry report has submitted that no material was brought on record to demonstrate any default on the part of the petitioners herein in discharging the duties in the matter. He has submitted that only findings recorded by the Inquiry Officer in the matter against the petitioners herein is to the effect that they did not sleep and/or stayed back in the police station guard room after completion of

their duty on the preceding night i.e on 27.02.2010 and the same was held to be in violation of the mandatory rules and procedure prescribed in this connection for the purpose of regulating discharge of sentry duties. He has further clarified that the above findings as recorded by the Inquiry Officer is a general one and the same relates to all the persons engaged for sentry duty at the relevant point of time at the said police station and is not specific to the petitioners only.

10. Mr. Tapak has submitted that basing on the said findings as recorded by the Inquiry Officer in the enquiry report, the disciplinary authority proceeded to issue the order dated 31.01.2012 imposing upon the petitioners herein the penalty of withholding of 1(one) year increment with cumulative effect. Mr. Tapak by taking this Court through the order dated 31.01.2012 has contended that the disciplinary authority had itself admitted in the said order that the materials as coming on record in the enquiry was not sufficient to fix responsibility for the escape of the 3(three) accused persons on any particular constable engaged for the sentry duty at that relevant point of time and accordingly, the escape of the said under-trial prisoners was held by the disciplinary authority to be on account of negligence on the part of all the constables detailed for the guard duty at that relevant point of time. It is the contention of the learned counsel for the petitioner that in the enquiry no material has been brought on record to demonstrate commission by the petitioners herein of any misconduct.

11. Mr. Tapak has further submitted that the petitioners have submitted detailed appeals in the matter before the appellate authority and therein had

raised an issue that they were required to proceed to their respective quarters for refreshment in the morning of 28.02.2010 only on account of the fact that there was no bathroom and/or water facilities available in the police station and accordingly, being forced by the circumstances the petitioners had moved to their respective quarters in the morning of 28.02.2010 only for the purpose of refreshing themselves so as to facilitate them to properly discharge their duties. Mr. Tapak has further referred to the normal practice followed in the matter by the constables detailed for sentry duty and has contended that at least 20% of them are permitted to go for refreshment and accordingly, it is contended that the petitioners herein being required to take up their respective duties with effect from 6 AM to 8 AM on 28.02.2010 as per the roster prepared, the petitioners had not committed any error in proceeding to their respective quarters for refreshing themselves.

12. Mr. Tapak submits that in spite of the said position being brought on record by the petitioners and the same justifying their absence in the morning of 28.02.2010 from the Police Station premises, the appellate authority by not appreciating the same in the manner required proceeded to dismiss their respective appeals, which has caused prejudice to their service interest.

13. Mr. Tapak has submitted that the disciplinary authority as well as the appellate authority had failed to appreciate the fact that the constables engaged in the matter also were required to attend nature's call and there being no adequate facilities provided for the same in the police station

premises, the requirement for attending to ones nature's call being not deniable, the disciplinary authority as well as the appellate authority ought to have factored the same while drawing conclusions on the misconduct as alleged to have been committed in the matter by the petitioners herein, as well as while deciding the quantum of the penalty now imposed upon the petitioners. Accordingly, Mr. Tapak in the above premises prays that this Court would be pleased to interfere with the penalty orders as passed by the disciplinary authority as well as the order of the appellate authority and direct the respondent authorities to re-authorise the increment now deducted from the petitioners in terms of the penalty as imposed upon them.

14. Ms. G. Ete, learned Additional Senior Government Advocate representing the respondents herein at the outset has submitted that the petitioners in their respective writ petitions, as well as in the proceedings of Departmental proceeding had not raised any grievances with regard to any denial to them of adequate opportunity to defend the allegations levelled against them. It was further submitted that the proceedings as held in the matter against the petitioners herein having been so held in the manner prescribed by following the principles of natural justice, this Court would be pleased not to sit as appellate authority and to re-evaluate the evidences coming on record in the enquiry.

15. Ms. Ete has submitted that the specific allegations against the petitioners herein was that they were responsible for the escape of the 3(three) UTPs from the Longding Police Station. Ms. Ete further submits that the article of charge as framed against the petitioners levels an allegation

that the petitioners although were required to remain in the guard room after completion of their respective duty as per the roster, the petitioners and other persons also involved in the proceedings had not stayed in the guard room after completion of their duties as per the roster and on completion of their respective duties they had proceeded to their respective quarters and used to come back to the premises of the police station only prior to their respective duty time as per the roster in place. Ms. Ete has further submitted that on account of the absence of the delinquents, including the petitioners herein from the police station after completion of their respective duty, had facilitated the escape of the 3(three) under-trial prisoners. Ms. Ete has produced the original records of the Departmental proceedings and by relying upon the statements as brought on record therein by the witnesses including the statements as made therein by the present petitioners, Ms. Ete has submitted that the plea as taken by the petitioners in the appeal as well as in the present proceedings that they were required to proceed to their respective quarters on account of non-availability of adequate facility in the premises of the police station for attending to nature's call and for refreshing themselves, were not so taken either in their written statement or in the statement as made by them in the enquiry proceedings. As such, Ms. Ete submits that the said issue now raised by the petitioners are all after thoughts and the same has got no relevance. Ms. Ete by taking this Court to the enquiry report has submitted that the conclusions as reached therein by the Inquiry Officer are all based on materials coming on record in the enquiry and as such the same does not warrant any interference.

16. Ms. Ete further submits that the disciplinary authority had taken into

consideration all relevant aspects including the aspect that the materials brought on record were not sufficient to fix the responsibility on any particular personnel detailed for sentry duty at the relevant point of time and accordingly, it was concluded by the disciplinary authority that basing on the materials coming on record in the enquiry the escape of the under-trial prisoners was on account of the negligence on the part all the guards so detailed and it being considered to be a shared responsibility and by taking a lenient view in the matter, the penalty was so imposed upon the delinquents including the petitioners herein.

17. Ms. Ete has further submitted that given the nature of allegations levelled against the petitioners herein, the penalty as imposed upon them cannot be held to be one not commensurating to the allegations and the said penalty is also supported by the materials coming on record in the enquiry and accordingly does not call for any interference.

18. Heard the learned counsel for the parties and also perused the materials brought on record.

19. At the outset, it is to be noticed that the petitioners in the above 2(two) writ petitions along with 6(six) others were detailed for sentry duty on rotation basis in Longding Police Station for guarding the 3(three) under-trial prisoners, kept in custody therein. On 28.02.2010, the said under trial prisoners at around 5:55 AM had managed to escape from the custody which had led to the issuance of the memorandum of the charge dated 13.04.2011

to the petitioners herein and 6(six) other constables who were so detailed for the sentry duty.

20. The Article of charge as framed against the petitioners and the said 6(six) other personnels being relevant are extracted herein below: -

“I. ANNEXURE-1

ARTICLE-1

That Const. Danfa Wangjen, Ct. Tachak Wangpan, Ct. Latwang Wotey, CL. Tana Roja, Ct. Nani Grayu, Ct. Sanju Uli, Ct. Yamto Noshi and Ct. Wangja Wangsu of PS Longding were detailed on 27/02/2010 at 0800 hrs to 28/02/2010 upto 0800 hrs for performing sentry guard duty of Longding PS. While 2(two) Conts. Tachak Wangpan and Ct. Latwang Wotey were performing sentry guard duty at a time and others should stay at guard room of PS but they were not present. As a result, 3(three) UTPs namely Tolong Wangpan, Panthak Wangsu alias Puman Wangsu and Honkai Wangsu manage to escape from the Police custody on 28/02/10 at 0600 hrs by hitting Ct. Latwang Wotey, APP with a G.I pipe due to negligence of their duties. This act on the part of CT. Danfa Wangjen, CL Tachak Wangppan, CL Sangju Uli, Ci. Yanto Noshi and CT. Wangia Wangsu amount to gross misconduct/negligence and dereliction of the duty and they are liable to proceeded under Rule 7 of (D & A) Rule 1999.”

21. It is to be noted that at this stage, that a joint proceeding was initiated in the matter against all the 8(eight) delinquents, including the petitioners, so included in the said memorandum of charge.

22. A perusal of the article of charge No. 1 as framed in the matter vide memorandum dated 13.04.2011 would reveal that the allegation levelled against the delinquents so involved and who were detailed for performing the sentry duty was that they were required to stay at the guard room of the Police Station but were not present therein, resulting in the 3(three) UTPs

kept in custody in the lockup of the said police station to escape at around 6 AM of 28.02.2010 by assaulting one of the constables on sentry duty at the relevant point of time and accordingly, it was alleged that the said escape of the under-trial prisoners was so facilitated on account of the negligence and dereliction of duty on the part of the petitioners herein and also the other 6(six) delinquents detailed for the said duty. As noticed the allegations against the petitioners is that they were required to stay in the guard room of the police station but they were not present therein after completion of their respective duty as per the roster. The petitioners had submitted their respective written statements in the matter and therein had only stated that they had proceeded to their respective quarters for the purpose of refreshment/attending to nature's calls at around 5 AM of 27.02.2010 and had returned before their allotted duty time i.e., from 6 AM onwards and as such they having performed the allotted duty. It is contended that on 27.02.2010 with the effect from 2 PM to 6 PM and from 11 PM to 12 PM they had performed sentry duty and after having slept in the police station guard room, they had moved to their respective quarters only at 5 AM of 28.02.2010 for refreshing themselves as well as for attending the nature's call and accordingly, the petitioners herein had denied the allegations so levelled against them vide the article of charge No. 1 in the said memorandum of charge dated 13.04.2011.

23. The disciplinary authority not being satisfied with the reply has submitted in the matter by the petitioners, had directed for a joint enquiry in the matter. The Inquiry Officer appointed had entered into the proceeding

and thereafter on conclusion of the enquiry, submitted his enquiry report in the matter by holding the charge levelled against the petitioners and the other persons involved to be proved.

24. The Inquiry Officer in his enquiry report had recorded findings to the effect that the escape of the UTPs was on account of negligence of all the personnels detailed for guard duty including the petitioners herein. The Inquiry Officer basing on the evidences coming on record had also recorded a finding to the effect that all the constables detailed for sentry duty did not sleep and/or stayed back in the police station guard room after their duty and the same was held to reflect carelessness and negligence on the part of all the personnels so detailed for sentry duty at the police station. It was concluded that given the antecedents and activities of the UTPs who were at the relevant point of time kept in custody in the said police station, the petitioners and the other personnels detailed for sentry duty in the said police station, if had continued to remain in the police station guard room after their duty period, it would have resulted in a situation wherein, the said UTPs could have been captured and/or their escape would have been impossible. The Inquiry Officer has further recorded a finding to the effect that as per the procedure mandated all the personnels detailed for the sentry duty should not leave the police station at the same time in the morning which would result in a situation of only the personnel who were performing sentry duty as per roster at the said point of time, remaining in guard in the police station.

25. A copy of the said enquiry report was furnished to the petitioners herein and the petitioners submitted their representations against the same. A perusal of the representation as submitted by the petitioners herein would reveal that they had only taken a plea therein that they had slept in the guard room at the night hours after their duty period and had only moved to their respective quarters at around 5 AM so as to refresh themselves and had rejoined their duties which was supposed to begin with effect from 6 AM of 28.02.2019. However, it was contended by the petitioners that on account of the fact that the lock of the UTPs cell was not properly locked, the UTPs managed to come out of the cell and on opening of the outer door of the said police station, they managed to escape after injuring one of the constable's detailed for the sentry duty.

26. The disciplinary authority thereafter considered the enquiry report and also upon appreciating the representation as submitted by the petitioners against the same, proceeded to vide the order dated 31.01.2012 to impose upon the petitioners herein and the other personnels named therein the penalty of withholding of 1(one) year increment with cumulative effect. The disciplinary authority on perusal of the material coming on record had recorded a conclusion in the order dated 31.01.2012 to the effect that it was difficult to establish whether there was any connivence on the part of the charged officials or negligence in having left the UTPs cell door unlocked. However, the disciplinary authority recorded a categorical finding that to the effect the personnel involved were not present in the guard room. The disciplinary authority further had recorded a finding to the effect that the

guard room is situated between the cell of UTPs and outer corridor door, which was locked and that presence of personnel in the guard room would have revealed that the cell wherein the UTPs were kept was not locked.

27. The disciplinary authority further by holding that basing on the materials brought on record, it being not possible to fix individual responsibility in the matter on any of the delinquents involved in the proceedings, and that the guarding duty being a shared responsibility and there being a requirement of the personnels detailed for such sentry duty to be present in the guard room, and also by taking lenient view in the matters, proceeded to impose the penalty of withholding of 1(one) year increment with cumulative effect upon the petitioners and other delinquents involved.

28. It is seen that the petitioners herein not being satisfied by the penalty as imposed upon them vide the order dated 31.01.2012, had preferred an appeal against the same and in the said appeal it was for the first time brought on record that the petitioners had left the guard room to their respective quarters at around 5AM of 28.02.2010 only for refreshment, inasmuch as there was no water or bathroom facilities available in the police station. It is to be noted that this plea was never taken by the petitioners herein in their written statements made against the memorandum dated 13.04.2011 or in the representation so submitted by them against the enquiry report. Such a plea is also not found to have been taken in the statement as made by the petitioners in the enquiry. However, the appellate authority on consideration of the matter proceeded to reject the appeal as

preferred by the petitioners herein.

29. The discussion as made herein above, raises an issue as to whether the petitioners after completion of their respective duties as per roster continued to remain in the guard room of the said police station or had left the same for their respective quarters. For the said purpose, this Court has perused the statements of the prosecution witnesses in the enquiry and therefrom, it is revealed that one T. Wangsu an Inspector who had deposed as a prosecution witness, had categorically stated that during the time when the UTPs had escaped from the cell of the said police station, the personnels detailed for guard duty other than the persons actually performing the duty, were not available in the police station. The petitioners were accorded an opportunity to cross-examine the said T. Wangsu, however, they refused to cross-examine the said witness. One of the co-delinquent constable Tachak Wangpan in his statement had stated that after completion of his duty at around 06:00 hrs, he had gone to attend nature's call in the police station premises itself and thereafter he had proceeded to hoist the unit flag at the police station and suddenly there was a lot of sound and then he saw 3(three) UTPs escaping from the lockup and he had chased them and apprehended one of the UTPs involved who was brought back to the police station lockup. The statement of the said Tachak Wangpan is noted for the purpose that the said statement reveals that in the said police station premises there were bathroom facilities available.

30. This Court has also perused the statements of the petitioners herein

i.e., Shri Wangja Wangsu & Shri Danfa Wangjen @ Wangsuu and on perusal of the said statements it is not found that they had also stated that they were required to proceed to their respective quarters for refreshing themselves and also for attending nature's call on account of lack of facilities for the same in the premises of the police station.

31. At this stage, it is relevant to refer to the statement of constable Nani Grayu also a delinquent in the matter, wherein he had stated that at around 05:45 hrs he along with constable Tana Roja, constable Sanju Uli and constable Yamto Noshi (all delinquents) had also left the police station premises to the police barrack for refreshment. The statement of constable Nani Grayu and the statement of the petitioners herein as made in the said enquiry proceedings reveals that barring 2(two) personnels who were at that point of time performing sentry duty, all other delinquents, including the petitioners, had proceeded in the morning hours to their respective quarters for refreshing themselves. Thereafter, the petitioner herein in WP(C) 316 (AP) 2018 had come back to the police station to perform his duty at around 5:55 AM and it is at that relevant point of time when the said UTPs had on opening of the outer door escaped from the lockup. The statements as made by the delinquents in the said enquiry reveals that at the time when the outer door of the said police station was opened there were only 2(two) personnels present i.e., the petitioner in WP(C)316(AP)2018 and constable Latwang Wotey. It is also to be noted that at that relevant point of time, constable Tachak Wangpan was hoisting the unit flag, accordingly, at the relevant point of time only 3(three) constables out of 8(eight) so detailed

were present in the police station premises and accordingly, the conclusion as reached by the Inquiry Officer and the disciplinary authority that the absence of others including one of the petitioners herein had facilitated the escape of the said UTPs from the police station premises, is a plausible one.

32. The deposition of the prosecution witnesses in the enquiry having reflected that the personnel detailed for sentry duty, on completion of their duties had not slept in the guard room and also the statements of the petitioners and other delinquents so made in the enquiry which reflected that barring 2(two) delinquents performing sentry duty in the morning of 28.02.2010, all others had in the morning proceeded for their respective quarters/police barrack for refreshment, establishes the misconduct as alleged against them. Accordingly, it is to be held that the allegation as levelled against the petitioners and other delinquents vide the memorandum of the charge dated 13.04.2011 must be held to have been established.

33. At this stage, it is required to take note of the statement made by the petitioners in the appeal as well as subsequent representation as preferred by them in the matter wherein, they have contended that as per the normal practice that only 20% of the personnel engaged for sentry duty can go for refreshment and accordingly, justified their act of proceeding to their respective quarters for a refreshing themselves. The said statement, if considered in the light of the deposition as brought on record in the enquiry proceedings including the deposition of the delinquents involved in the matter, it is seen that it is not only the petitioners herein who had proceeded

to their respective quarters, 4(four) other delinquents had also at around the same time proceeded to their respective quarters/police barrack for refreshing themselves. It is seen that 6(six) of the detailed sentry duties constables had proceeded for refreshing themselves at the same time which admittedly shows lack of cohesion between them and also reflects the negligence committed by them in the matter. Accordingly, the conclusion that the allegation as levelled against the petitioners being held to be established in the proceedings by the disciplinary authority, cannot be held to a erroneous conclusion.

34. In view of the said position and the petitioners having not justified their absence from the police guard room after completion of their duties in the enquiry so held, the conclusions reached by the Inquiry Officer cannot held to be erroneous. The disciplinary authority having considered all relevant aspects and having arrived at a conclusion with regard to the negligence committed in the matter by the delinquents involved, including the present petitioners, the penalty as imposed upon the petitioners vide the order dated 31.01.2012 cannot be held to be one not commensurating to the misconduct proved against them in the matter.

35. The petitioners have not either in the proceedings held against them or in the present proceedings brought on record any contention to the effect that they were denied a fair opportunity to defend the allegations as levelled against them. The disciplinary authority on appreciating the materials as brought on record in the enquiry and after discussing the available and the

admissible evidence, had come to a conclusion with regard to the allegations levelled against the petitioners as well as the quantum penalty imposed upon them and as such, it is not open to this Court to re-appreciate the evidence in exercise of its powers under Article 226 of the Constitution of India. Further, this High Court in exercise of its power under Article 226 of the Constitution of India would not venture to examine the proportionality of a punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority having come to conclusion basing on the materials with regards to the negligence on the part of the petitioners herein, such findings are not permissible to be interfered with by this Court in absence of any allegations that the petitioners were not extended due opportunity to defend the allegations as levelled against them in the proceedings.

36. At this stage, it is to be noted that the disciplinary authority had imposed the penalty upon the petitioners vide order dated 31.01.2012 and the appeal as preferred by the petitioners in the matter was disposed of the appellate authority vide order dated 09.05.2013 and 22.05.2013. However, the instant proceedings were instituted before this Court in respect of WP(C)No.315(AP)2018 and WP(C)No.316(AP)2018, only on 28.06.2018 i.e., after a lapse of around 5(five) years. The petitioners in the writ petitions have not explained the delay so occasioning in instituting the present proceedings. It is settled law that the delay in institution of the proceedings challenging disciplinary action, in absence of a cogent ground for explaining the delay brought on record, it is open for the Court to reject such writ

petitions at the threshold itself on the ground of such delay and latches. However, arguments having been advanced in the present proceedings by the parties on merits, this Court had proceeded to consider the issue arising in the present proceedings on merits. However, it is to be noted that above noted writ petitions are also liable to be dismissed on the ground of delay and latches.

37. In view of the above conclusion, this Court is of the considered view that the penalty as imposed upon the petitioners herein is proportionate to the mis-conduct as proved against them in the enquiry and the same does not call for any interference from this Court. Accordingly, the disciplinary authority's order dated 31.01.2012 and the order of the appellate authority dated 09.05.2023 and 22.05.2013 does not call for any interference.

38. The writ petitions being WP(C)315(AP)2018 with WP(C)316(AP)2018 are held to be devoid of any merit and accordingly the said writ petitions stand dismissed. However, there would be no order as to costs.

39. The original records as produced by Ms. G. Ete, learned Additional Senior Government Advocate, be returned forthwith.

JUDGE

Comparing Assistant