

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.64 of 2024

Sri Kabir Uddin of 'F'-COY, No.20005122 RFN(GD),
13 Battalion, Tripura State Rifles (IR-IX), S/O. Mobaswar Ali,
Presently residing at-Vill. & P.O.:Kalachara,
P.S.- Kadamtala, District-North Tripura.

.....Petitioner(s)

Versus

- 1. The State of Tripura**, represented by the Principal Secretary, Department of Home, New Secretariat Building, New Capital Complex, Agartala, West Tripura.
- 2. The Director General of Police**, Tripura, Agartala, Revisional Authority.
- 3. The Deputy Inspector General of Police**, AP(OPS-I), Tripura, Agartala, Appellate Authority.
- 4. The Commandant**, 13th Bn. TSR(IR-IX), Subhas Nagar, Kanchanpur, North Tripura, Disciplinary Authority.
- 5. The AC**, 13th Bn TSR (IR-IX), Enquiry Authority.
- 6. The Inspector General of Police**, AP (OPS), Tripura, Agartala, Revisional Authority.

----Respondent(s)

For Petitioner(s)	:	Ms. Rajasree Purkayastha, Adv.
For Respondent(s)	:	Mr. Karnajit De, Addl. GA
Date of hearing	:	07.05.2025
Date of delivery of Judgment & Order	:	16.05.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

The petitioner has filed the present 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 there-of, shall not be issued, for quashing/setting aside the impugned revisional order vide No. 9647-52(4)/F.Pers/KU/ Appeal/IGP(TSR)/22 dated 11.09.2023 (Annexure-12) passed by the Director General of Police, Tripura, Agartala, Respondent No.2 whereby the Respondent

No. 2 has most illegally rejected the revision thereby upholding the impugned appellate order vide No.2260-64/F.Pers/ KU/ Appeal/ DIGP(AP&OPS) /21 dated 30.03.2022 (Annexure-8) passed by the Respondent No.3 upholding the impugned order, of Compulsory retirement of the petitioner, dated 02.10.2021 passed by the Disciplinary authority i.e. the Respondent No.4 and further be pleased enough to quash the impugned Enquiry Report dated 31.07.2021 submitted by the Respondent No.5.

II) ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why Writ of Mandamus, and/or in the nature, shall not be issued, for mandating/directing the respondents, Respondent No.2 in particular to recall the impugned order dated 11.09.2023 (Annexure-12) issued by the Respondent No.2 and discharge/ acquit the petitioner from all charges and re-instate him in his service, fair ends of justice.

III) CALL FOR THE RECORDS appertaining to this petition;

IV) After hearing the parties, be pleased to make the RULE ABSOLUTE in terms of i and ii above;

V) COSTS of and incidental to this proceeding;

VI) Any other RELIEF(S) as to this Hon'ble High Court may deem fit and proper;"

2. Heard Learned Counsel, Ms. Rajasree Purkayastha appearing on behalf of the petitioner. Also heard Learned Addl. GA, Mr. Karnajit De appearing on behalf of the State-respondents.

3. Before coming to the conclusion, let us discuss about the facts of the present petition filed by the petitioner.

3.1. The petitioner was a TSR personnel bearing enrolment No.20005122 Rfn(GD) of 'F'-Coy, 13th Bn. TSR (IR-IX) and posted at Subhas Nagar, Kanchanpur, North Tripura under the kind control and command of the respondents. He was appointed on 28.03.2000 and since his appointment he was discharging his duties sincerely, honestly, diligently with utmost satisfaction of the authorities without any blemish and stigma at any point of time. The petitioner is a married man having his wife namely Hazira Begam (39 years) and 3 (three) daughters namely Yesmin Sultana (19 years), Sahanaj Aktar

(17 years) and Nasrim Aktar (12 years). The petitioner is the only bread earner in his family and his service was the only means of their livelihood.

3.2. One Smt. Khelan Bibi, D/o Khalek Miah of Vill Thakcherra, P.O. Mahamilan, Amarpur, Gomati Tripura lodged a complaint on 27.05.2019 to respondent No.4 alleging *inter alia* that the petitioner had entered into marriage with her and the petitioner was not taking any care of said Khelan Bibi after their marriage. On the basis of the said complaint, the respondent No.4 initiated a departmental proceeding against the petitioner vide Memorandum No. 8492/F.DP-No./2019/K.U/TSR-13/ESTT/2019 dated 18.10.2019 as per Rule-14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1905 (for short, 'CCS(CC&A) Rules') read with Rule-40 of Tripura State Rifles (Discipline, Control, Service Conditions, etc.) Rules, 1986 for the alleged offense punishable under Section 12(1) of Tripura State Rifles Act, 1983 (for short, 'TSR Act, 1983') comprising the following article of charges (*Annexure-1* to the writ petition):

"Article of Charge-I

That the said No.20005122 Rfn(GD) Kabir Uddin of 'F'-Coy, 13th Bn TSR (IR-IX) got married one Smt. Khelan Bibi D/O Khalek Miah of Vill: Thakcherra, PO: Mahamillan, Amarpur, Gomati Tripura without any consent and intimation to his first wife Smt. Hazira Begam on 28.01.2016 at Thakcherra. This kind of act is prejudicial to good order and discipline of the Rifles and punishable U/S 12 (1) of TSR Act, 1983.

Article of Charge-II

That the said No. 20005122 Rfn(GD) Kabir Uddin of 'F'-Coy, 13th Bn TSR (IR-IX) got married one Smt. Khelan Bibi D/O Khalek Miah of Vill: Thakcherra, PO: Mahamillan, Amarpur, Gomati Tripura without any prior permission from the authority while his first wife is still living. This kind of Act is prejudicial to good order and discipline of the Rifles and punishable U/S 12(1) of TSR Act, 1983."

Further, a statement of imputation of misconduct or misbehavior on which the article of charges were framed together with a list of documents and witnesses by which the article of charges proposed to be sustained were issued against the present petitioner.

Prior to that, according to the petitioner, a preliminary enquiry was conducted by the authority behind the back of the petitioner without affording an opportunity to him(*Annexure-2* to the writ petition).

3.3. After receipt of the alleged article of charges, the petitioner submitted his written statement of defence (*Annexure-3* to the writ petition).

3.4. Shri Robert L. Darlong, Asstt. Commandant, 13th Bn TSR (IR-IX) was appointed as 'Inquiring Authority' to inquire into the charges framed against the petitioner vide office order No.8742/F.DP-No.11/2019/K.U/TSR-13/ESTT/2019 dated 02.11.2019 and No. 20004003 Sub (GD) Dipak Ranjan Das was also appointed as 'Presenting Officer' vide order No.8743/F.DP-No.11/2019/K.U/TSR-13/ESTT/2019 dated 02.11.2019. The Inquiry Officer Shri Robert L. Darlong, Asstt. Commandant conducted the inquiry and submitted an inquiry report to respondent No.4.

3.5. According to the petitioner, in course of the inquiry, no official formalities were observed and no opportunity was given to the petitioner to defend his case properly and finally on the basis of the inquiry report, the respondent No.4 came to the finding that the alleged charges under Article of Charges I and II were proved against the petitioner. Copy of inquiry report dated 31.07.2021 is annexed as *Annexure-4* to the writ petition.

On the basis of the inquiry report, the respondent No.4 passed provisional order of punishment on 23.08.2021 in DP No.11/2019 against the petitioner proposing provisional major punishment of "removal from service which shall not be a disqualification for future employment under the Government"(Annexure-5 to the writ petition).

3.6. The petitioner had given an opportunity to make a written representation against the report of provisional order of punishment which according to petitioner was a mechanical one without any reasoning and the same has no legs to stand in the eye of law. However, after receiving the provisional order of punishment the petitioner again submitted his written Representation (Annexure-6 to the writ petition) but thereafter, the respondent No.4 passed final order on 02.10.2021 in connection with DP No.11/2019 and by the final order the major punishment of "removal from service" of the petitioner had been reduced to "compulsory retirement from service upon the charged official"(Annexure-7 to the writ petition).

3.7. The final order was passed on 02.10.2021 and the copy was supplied to the petitioner on 03.10.2021. Thereafter, the petitioner preferred appeal on 03.11.2021. The appellate authority by the impugned order dated 28.11.2021 rejected the appeal on the ground that the petitioner failed to prefer the appeal within 30 days from the date of receipt of the copy of final punishment order. Being aggrieved with the said order, the petitioner preferred a writ petition before this Court which was numbered as WP(C) No.14 of 2022. This Court vide order dated 18.01.2022 directed the appellate authority to reconsider the appeal and accordingly, the respondent No.3

reconsidered the appeal preferred by the petitioner and by order dated 30.03.2022 dismissed the same upholding the findings of respondent No.4 (*Annexure-8* to the writ petition). Thereafter, being aggrieved, the petitioner again preferred revision petition before respondent No.6 but by order dated 21.05.2022, the revision petition was also dismissed/rejected by respondent No.2 (*Annexures-9 and 10* to the writ petition).

According to the petitioner, the revisional order dated 21.05.2022 was passed by one Sri Soumitra Dhar, Inspector General of Police who has previously dismissed the appeal preferred by the petitioner by the impugned order dated 28.11.2021 as Deputy Inspector General of Police thereby rejecting the appeal on the ground that the petitioner had failed to prefer appeal within 30 days.

3.8. Again, the petitioner being aggrieved approached this Court by filing another writ petition bearing WP(C) No.695 of 2022 and this Court vide judgment and order dated 28.06.2023 quashed and set aside the impugned revision order dated 21.05.2022(*Annexure-11* to the writ petition). In pursuance of the judgment and order passed by this Court, again the respondent No.2 passed impugned revisional order dated 11.09.2023 whereby according to the petitioner, the respondent No.2 most illegally uphold the impugned appellate order dated 30.03.2022 (*Annexure-12* to the writ petition). According to the petitioner, the entire proceeding was bad in law since all the orders were passed without affording any proper legal opportunity to the petitioner. So, the petitioner by filing this writ petition urged for setting aside all the orders passed by the authorities and accordingly sought reliefs as stated above.

4. On the other hand, the State-respondents contested the case by filing counter affidavit denying the assertions made by the petitioner in the writ petition. In para Nos.5 to 13, the State-respondents have made the following assertions:

"5. That, with regard to statements made in paragraph of the 2.2 writ petition, I say that, it is fact that a complaint petition dated 27.05.2019 was received from Smt. Khelan Bibi D/O-Khalek Miah of village: Thakcherra, PS: Birganj, Dist:-Gomati, Tripura on 03.06.2019 wherein it is stated that while Rfn(GD) Kabir Uddin was posted in 5th Bn TSR, he entered into marriage with the complainant Smt. Khelan Bibi on 28.01.2016 and they have lived together as husband and wife. It is also stated that she is claiming family maintenance from her husband i.e, the Petitioner.

Thereafter, this office scrutinized the service book of the petitioner Rfn(GD) Kabir Uddin where it was found that the name of Mrs. Hazira Begam was recorded in his service book as the wife of the Petitioner. Hence, this office had conducted a preliminary enquiry into the matter by appointing Preliminary Enquiry Officer to Sub(GD) Kanan Sinha of 13th Bn TSR(IR-IX) vide order No.4684/F.01(81)/TSR-13/Estt/Vol-II/2016 dated 11.06.2019.

Accordingly, Sub(GD) Kanan Sinha had conducted preliminary enquiry against the petitioner and had recorded statements and adduced documents like marriage certificate, Aadhar Card and photo copy of 'Kabin Nama Patra' and submitted the enquiry report to this office on 01.10.2019 along with relevant documents wherein prima-facie charge was established that the petitioner had married with Smt. Khelan Bibi without any information and without consent of his first wife Smt. Hazira Begam (as per service book) and also without intimation to his authority which is gross misconduct on the part of the petitioner which is punishable as per section-12(1) of TSR Act, 1983 and also violation of the provisions of CCS (CCA) Rules, 1965.

Copy of the complaint petition dated 03.06.2019 is annexed herewith and marked as Annexure R/1.

Copy of vide order No.4684/F.01(81)/TSR-13/Estt/Vol-II/2016 dated 11.06.2019 is annexed hereto and marked as Annexure R/2.

Copy of the enquiry report is annexed hereto and marked as Annexure R/3.

6. That, with regard to statements made in paragraph 2.3 of the writ petition, I say that, it is fact that on the basis of the complaint received from Smt. Khelan Bibi against the petitioner, Sub(GD) Kanan Sinha of 13th Bn TSR was deputed to conduct a preliminary enquiry against the Petitioner.

Accordingly, Sub(GD) Kanan Sinha had conducted preliminary enquiry against Rfn(GD) Kabir Uddin and recorded statements and adduced documents like marriage certificate, Aadhar Card and photo copy of 'Kabin Nama Patra' and submitted the enquiry report to this office on 01.10.2019. along with relevant documentary evidences wherein prima-facie charge was established that Rfn(GD) Kabir Uddin had married with Smt. Khelan Bibi without any information and consent of his first wife Smt. Hazira Begam (as per service book) which is gross misconduct on the part of No.20005122 Rfn(GD) Kabir Uddin as per TSR Act, 1983.

During the course of preliminary enquiry, on 28.06.2019, Sub(GD) Kanan Sinha has enquired the genuineness of marriage certificate vide No.MRC/2016/02717 dated 30.08.2016 in respect of Rfn(GD) Kabir Uddin from the SDM, Amarpur, Gomati Tripura. The SDM, Amarpur, Gomati, Tripura vide letter No.F.9 (12)/SDM/AMP/MRG/ SFC/ 2019/Vol No.2/1328 dated 08.08.2019 has intimated that the marriage certificate of Md. Kabir Uddin S/O- Mobeswar Ali of Kalachara and Mrs. Khelan Bibi D/O- Mr. Khalek Miha, M/O-Fatema Begam, Village- Thakchara, Amarpur, Gomati District was issued from SDM Office, Amarpur vide letter No.MRC/2016/02717 dated 30.08.2016.

On the basis of preliminary enquiry report submitted by Sub(GD) Kanan Sinha, a Articles of Charges Memorandum vide No.8492/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 18.10.2019 along with necessary annexure-I,II,III & IV were issued to the petitioner and the same was acknowledged by the charged official on 21.10.2019 with proper signature.

In the said Memo, the petitioner was directed to submit a written statement of his defence and also to state whether he would desire to be heard in person within 10 days of the receipt of the Memo dated-18.10.2019. On receipt of the said Memo, the charged official i.e, the Petitioner had submitted his written statement of defence on 29.10.2019 stating that Smt. Khelan Bibi along with her family members has conspired against him and he had not married Smt. Khelan Bibi. He had denied the article of charge-I & II leveled against him. The written statement of defence dated 29.10.2019 was not considered by the Disciplinary Authority.

Thereafter, Shri Robert L. Darlong, AC, 13th Bn TSR was appointed as 'Inquiring Authority' to inquire into the charged framed against the Petitioner vide order No.8742/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 02.11.2019 and No.20004003 Sub (GD) Dipak Ranjan Das, 13th Bn TSR was appointed as 'Presenting Officer' vide order No.8743/F.Dp No.11/2019/K.U/TSR-13/Estt/2019 dt.02.11.2019.

During the course of enquiry, the inquiry officer Shri Robert L. Darlong, Asstt. Commandant had conducted the DP enquiry, observing all formalities and giving reasonable opportunities to the charged official No20005122 Rfn(GD) Kabir Uddin from time

to time to defend the charges framed against him and completed the enquiry. The petitioner had participated in the instant enquiry right from 1st day of hearing to till the last day of hearing. During the course of enquiry of the instant DP, the charged official Rfn(GD) Kabir Uddin was asked to nominate Defence Assistant but declined to nominate Defence Assistant despite several opportunities given to him. Principle of natural justice has been duly observed in each stages of this enquiry. Finally, the inquiry officer Shri Robert L. Darlong, AC, 13th Bn TSR has submitted his findings on 31.07.2021 after completion of the enquiry stating that the article of charges-I & II framed against him have been 'proved'.

Copy of vide letter No.F.9 (12)/SDM/AMP/MRG/SFC/2019/Vol No.2/1328 dated 08.08.2019 alongwith certificate for marriage issued by SDM, Amarpur are annexed herewith and marked as Annexure R/4.

Copy of the Memorandum vide No.8492/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 18.10.2019 is annexed hereto and marked as Annexure R/5.

Copy of the vide order No.8742/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 02.11.2019 is annexed hereto and marked as Annexure R/6.

Copy of the vide order No.8743/F.Dp No.11/2019/K.U/TSR-13/ Estt/2019 dt.02.11.2019 is annexed hereto and marked as Annexure R/7.

Copy of the enquiry report is annexed hereto and marked as Annexure R/8.

7. That, with regard to para 2.4 of the Writ Petition, I say that, it is fact that on receipt of the Memo vide No.8492/F.DP No.11/2019/K.U/TSR-13/Estt/ 2019 dated 18.10.2019, the charged official No.20005122 Rfn(GD) Kabir Uddin has submitted his written statement of defence on 29.10.2019 stating that Smt. Khelan Bibi alongwith her family members has conspired against him and he had not married Smt. Khelan Bibi. He had denied the article of charge-I & II leveled against him. The charges had been framed against the Charged Official Rfn(GD) Kabir Uddin based on Preliminary enquiry Report on which is Prima-facie charge of the fact of 2nd marriage with the complainant Mrs. Khelan Bibi was established. Therefore, the charges were not concocted and baseless. The written statement of defence dated 29.10.2019 was not considered to the Disciplinary Authority.

8. That, with regard to para 2.5, I say that, it is fact that, Shri Robert L. Darlong, AC, 13th Bn TSR was appointed as 'Inquiring Authority' to inquire into the charged framed against the charged official vide order No.8742/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 02.11.2019 and No.20004003 Sub (GD) Dipak Ranjan Das, 13th Bn TSR was appointed as 'Presenting Officer' vide order

No.8743/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dt.02.11.2019.

9. That, with regard to para 2.6, I say that, the fact is that,

(i) During the course of enquiry of the DP all legal formalities was duly been observed by the inquiry officer Shri Robert L. Darlong, AC, 13th Bn TSR.

(ii) Charged Official Rfn(GD) Kabir Uddin was given ample opportunity to participate actively in the DP. He had signed in all the Daily order sheet of the DP enquiry which means that he had participated in the enquiry.

(iii) He was asked to nominate Defence Assistant to assist him in the DP enquiry but he declined. A copy of letter dated-02.01.2020, written statement declining to appoint defence assistant of the petitioner and order sheet dated-12.01.2020 are annexed hereto and marked as Annexure R/9.

(iv) All documents which the charged official had sought been provided with acknowledgment receipt.

(v) Ample scope was given for cross examination of witnesses in all the stages but only one witness was cross examined by the charged official. He declined to cross examine in all other witnesses.

(vi) It is not fact the enquiry was one sided and ex-parte. It is evident from the enquiry report and evidences/documents attached with the enquiry report that enquiry was fair and principle of natural justice was extended to the charged official during the DP proceeding.

(vii) It is not fact that charged official was not allowed to participate actively in the enquiry. It is evident from the enquiry report and documents bearing signatures of the charged official that ample reasonable opportunity of being heard was given to the petitioner.

After completion of the enquiry, the inquiry officer Shri Robert L. Darlong, AC, 13th Bn TSR had submitted his findings of the enquiry stating that the article of charges-I & II framed against him have been 'proved'. There is no lapse in the process of the instant DP. Principle of natural justice has been observed in each stages of this DP proceeding. Therefore, the findings of Inquiry Officer is proper and legally tenable as per documentary evidences on records.

As per documentary evidences on records, the charged official Rfn(GD) Kabir Uddin conducted a second marriage with Mrs. Khelan Bibi on 28.01.2016 contacted without consent of his 1st wife while the 1st wife was still alive and 2nd marriage was solemnized without any permission of his competent authority which is violation of Rule-21(1)(2) of TCS(Conduct) Rules, 1988 read with section-11(n) of TSR Act, 1983 and punishable under section-12(1) of TSR Act, 1983.

10. That, with regard to para 2.7 of the writ petition, I say that, it is fact that, after careful examination of the findings of the enquiry officer and evidences on records, the Disciplinary Authority concurred with the findings of the Inquiry Officer and accordingly, proposes imposition of major punishment of "Removal from Service" vide order No.9166/F.DP No.11/2019/K.U/ TSR-13/ Estt/ 2019 dated 23.08.2021 (upon the petitioner No.20005122 Ex-Rfn(GD) Kabir Uddin. The petitioner was given opportunities for making representation, if any, against the provisional punishment order or to appear in person before the Disciplinary Authority within 15(fifteen) days from the date of receipt of the provisional punishment order.

It is not fact that the Inquiry Authority did not appreciate the oral & documentary evidence adduced by the petitioner. The fact is that the charged official Rfn(GD) Kabir Uddin had submitted a mutual compromise letter signed by Mrs. Khelan Bibi(complainant) to the Commandant, 13th Bn TSR and received on 02.07.2021 in which it is stated that the complaint submitted by the complainant Mrs. Khelan Bibi against Rfn(GD) Kabir Uddin(charged official) has been mutually compromised. But mere compromise between offender and victim does not negate occurrence of the misconduct committed by the Petitioner which was already committed in 2016. Therefore, the contention of the petitioner to set aside / quash the provisional punishment due to compromise between both parties order dated 23.08.2021 is found not justified.

Copy of the vide order No.9166/F.DP No.11/ 2019/ K.U/ TSR-13 /Estt /2019 dated 23.08.2021 is annexed hereto and marked as Annexure R/10.

Copy of the mutual compromise letter signed by Mrs. Khelan Bibi is annexed hereto and marked as Annexure R/11.

11. That, with regard to para 2.8 of the writ petition, I say that, it is fact that after receiving provisional punishment order dated 23.08.2021, the petitioner Rfn(GD) Kabir Uddin had submitted a representation dated 09.09.2021 to the Disciplinary Authority i.e. Commandant, 13th Bn TSR that he prayed to consider his submission and requested to recall the provisional order of punishment dated 23.08.2021 and further prayed for fully exemption from the charges levelled against him. During the course of enquiry, the charged official Rfn(GD) Kabir Uddin has been asked to nominate Defence Assistant but he declined despite of opportunities given to him. The charged official was given the opportunities to inspect the documents in the DP file. The charged official had not given any requisition for additional documents or defence witnesses in spite of being given the opportunity to do so. During the course of final hearing of the DP enquiry, the charged official Rfn(GD) Kabir Uddin had stated that he was given all reasonable opportunities in the course of the proceedings and also stated that he had no claims or objections. The Inquiry Officer conducted hearing of all witnesses & recorded their statements in presence of P.O (Presenting Officer) & C.O (Charged

Official) on different dates, and cross examination of witnesses were done by the charged official Rfn(GD) Kabir Uddin. Copies of Statement of witnesses recorded in the hearing were supplied to the charged official Rfn (GD) Kabir Uddin duly which were signed by him. No any lapse was found in the process of the DP enquiry. Principle of natural justice has been duly observed in each stages of this enquiry.

The charged official Rfn(GD) Kabir Uddin has submitted a mutual compromise letter signed by Mrs. Khelan Bibi (complainant) to the Commandant, 13th Bn TSR and received on 02.07.2021 in which it is written that the complaint submitted by complainant Mrs. Khelan Bibi against Rfn(GD) Kabir Uddin (charged Official) has been mutually compromised. However, misconduct by the charged official had already occurred in 2016 for which the DP was a initiated and enquired into. Without occurrence of any incident of misconduct, there is no question of mutual compromise by both parties. And it is well settled law that mere compromise between the two parties does not negate the occurrence of misconduct he had already committed. The act of accused Ex-Rfn(GD) Kabir Uddin amounts to gross misconduct and violation of CCS(CCA) Rules-1965 and also Rule-21(1)(2) of TCS(Conduct) Rules-1988.

Further, on 11.09.2021, the petitioner Rfn(GD) Kabir Uddin has also submitted an Affidavit duly signed by Khelan Bibi vide serial No.653/9/2021 dated 10.09.2021 which was duly Notarized wherein Mrs. Khelan Bibi had stated that the complaint was lodged due to misunderstanding and wished not to proceed further. By which it is clearly understood that misconduct was committed.

The DP was initiated for violation of provision of Rule of CCS(CCA) Rules-1965 for misconduct committed by the petitioner Ex-Rfn(GD) Kabir Uddin. It is immaterial whether the complainant Mrs. Khelan Bibi is interested or not interested to proceed further. It is a Departmental Enquiry and once it is proved that misconduct was committed, punishment must be imposed upon the delinquent.

On 12.09.2021, Smt. Hazira Begam wife of Rfn(GD) Kabir Uddin has submitted an application praying to retain her husband Rfn(GD) Kabir Uddin in TSR service. Finally, after careful examination of the case and considering all the aspects, in exercise of the power conferred under section-12(1)(h) of TSR Act, 1983, keeping in view of his children's future and family economic condition, the Disciplinary Authority i.e. Commandant, 13th Bn TSR had reduced the proposed major punishment of 'Removal from service" which shall not be a disqualification for future employment under the Government to 'Compulsory Retirement" from service upon Charged Official No.20005122 Rfn(GD) Kabir Uddin of 'F'Coy, 13th Bn TSR vide order No.11203/F.DP No.11/2019/ K.U/ TSR-13/ Estt/ 2019 dated 02.10.2021.

The contention of the petitioner Rfn(GD) Kabir Uddin is false and concocted beyond content of the fact and without evidences on records.

Copy of the representation dated 09.09.2021 is annexed hereto and marked as Annexure R/12.

Photocopies of the statement of witnesses is annexed hereto and marked as Annexure R/13.

Copies of the daily order is annexed hereto and marked as Annexure R/14.

Copy of the letter of Smt. Hazira Begam wife of Rfn(GD) Kabir Uddin is annexed hereto and marked as Annexure R/15

12. That, with regard to para 2.9 of the writ petition, I say that, final order of punishment vide No.11203/F.DP No.11/2019/K.U/TSR-13/Estt/2019 dated 02.10.2021 issued by the Disciplinary Authority upon the petitioner Rfn(GD) Kabir Uddin was based on witnesses and documentary evidences of marriage certificate issued by SDM, Amarpur and Kabin Nama signed by Ex-Rfn(GD) Kabir Uddin and Mrs. Khelan Bibi in presence of 02 witnesses as per Muslim customs. The witnesses had deposed during the course of DP proceeding and documentary evidences were collected by the Inquiry Officer.

It is also mention that on 29.06.2021, the petitioner Ex-Rfn(GD) Kabir Uddin brought and submitted one compromised letter in plain paper signed by the complainant Mrs.Khelan Bibi wherein the complainant Mrs. Khelan Bibi stated that Ex-Rfn(GD) Kabir Uddin and herself entered into mutual compromise on the case and she is willing to withdraw her complaint. Such petition by the complainant preponderance misconducts which were mentioned in the Article of charges. Had there not been any occurrence of misconduct, there is no question of mutual compromise between both the parties time and again.

Therefore, the contention of the petitioner is concocted and baseless which is not acceptable as per statement of witnesses and documentary evidences on records. Had he not been contacted into marriage with Mrs. Khelan Bibi on 28.01.2016, why he should brought a mutual compromised from the complainant Mrs. Khelan Bibi on 29.06.2021 and also submitted an Affidavit duly signed by Khelan Bibi vide serial No.653/9/2021 dated 10.09.2021 which was duly Notarized before the Notary public, Udaipur, Gomati Tripura on 10.09.2021 wherein it is stated that she had by misunderstanding lodged complaint against Ex-Rfn(GD) Kabir Uddin. She also stated that she is no more interested to proceed with the complaint. Because, she had settled the matter with the charged official mutually.

Now, the question is about documentary evidences of second marriage contacted by Ex-Rfn(GD) Kabir Uddin with Mrs. Khelan Bibi and the same was solemnized by signing 'Kabin Nama' and marriage certificate of both Ex-Rfn(GD) Kabir Uddin and Mrs. Khelan Bibi was issued by SDM, Amarpur. In the DP

inquiry all witnesses and evidences established that Ex-Rfn(GD) Kabir Uddin contacted second marriage with Mrs. Khelan Bibi in the year 2016 while his first wife was still living and without her consent. It is also established that Ex-Rfn(GD) Kabir Uddin solemnized the second marriage with Mrs. Khelan Bibi without permission of his Disciplinary Authority.

Finally, after careful examination of the case and considering all the aspects, in exercise of the power conferred under section-12(1)(h) of TSR Act, 1983, keeping in view of his children's future and family economic condition, the Disciplinary Authority i.e, Commandant, 13th Bn TSR had reduced the proposed major punishment of 'Removal from service" to 'Compulsory Retirement" from service upon the Charged Official No.20005122 Rfn(GD) Kabir Uddin of 'F'Coy, 13th Bn TSR vide order No.11203/F.DP No.11/ 2019/ K.U/ TSR-13/ Estt/ 2019 dated 02.10.2021.

Therefore, contention of the accused Ex-Rfn(GD) Kabir Uddin has no merits for consideration.

13. That, with regard to para 2.10, I say that, It is fact that Ex-Rfn(GD), Kabir Uddin of 13th Bn TSR preferred an appeal petition dated 03.11.2021 to the Appellate Authority(i.e. DIG, AP(Ops-I), Tripura against the final order of compulsory retirement from service issued by the Commandant, 13th Bn TSR vide No.11203/F.DP.No.11/2019/K.U/TSR-13/Estt/2019 dated 02.10.2021 for setting aside & quash the final order dated 02.10.2021 passed by the Commandant, 13th Bn TSR and to re-instate him in TSR service. But, he failed to submit his appeal petition within the stipulated period of 30 days time against the punishment order. He had submitted his appeal petition after 31 days. Accordingly, the Appellate Authority had regretted the said appeal vide order No.10529-33/Appeal/KU/DIGP, AP(Ops)/2021 dated 28.11.2021 as per the provision laid-down in Rules-46(3) of TSR(DCSC etc.) Rules, 1986.

On being aggrieved with the above appeal order dated 28/11/2021, Ex-Rfn(GD) Kabir Uddin, 13th Bn TSR has filed a writ petition vide No. WP(C) 14 of 2022 before the Hon'ble High Court of Tripura against the above appeal order for condonation of his delay in submission of appeal. Accordingly, Hon'ble High Court has passed a judgment & order dated 18/01/2022 that "This Court draws interference that the Appellate Authority did not invoke the jurisdiction as conferred by the proviso to Rule-46(3) of the said rule and did mechanically dismiss the appeal for being barred by limitation. The appeal is filed by the petitioner along with the application for condoning delay are remanded to the Appellate Authority for due consideration and for doing substantive justice". Copy of above judgment order dated 18.01.2022 has been received from AIGP (Crime) Tripura vide No.443/R.16/ PHQ/LC/2022 dated 25.02.2022 and same has been sent to the Appellate Authority (i.e. DIGP, AP(Ops-I), Tripura with request to take necessary action on the judgment order dated 18.01.2022 passed by the Hon'ble High Court of Tripura vide this office letter

No.3242-44/F.DP No.11/19/K.U/TSR-13/Estt/2019 dated 07.03.2022.

As per direction of the Hon'ble High Court, the Appellate Authority has considered condonation of delay in submission of appeal by Ex-Rfn(GD) Kabir Uddin, 13th Bn TSR and appeal petition dated 03.11.2021 submitted by him was entertained. Considering the facts & evidences on records, the Appellate Authority upheld the punishment of 'Compulsory retirement from service' passed by the Commandant, 13th Bn TSR vide order No.11203/F.DP No.11/2019/KU/TSR-13/Estt/2019 dated 02.10.2021 to Ex-Rfn(GD) Kabir Uddin, 13th Bn TSR. The appeal petition submitted by Ex-Rfn(GD) Kabir Uddin, 13th Bn TSR stands disposed off. The petitioner is at liberty to appeal before the Reviewing Authority, if he is not satisfied with this order vide DIGP, AP (Ops-I) order No.2260-64/F.Pers/KU/Appeal/DIGP (AP & OPS)/21 dated 30.03.2022.

Copy of the order No.10529-33/Appeal/KU/DIGP, AP(Ops)/ 2021 dated 28.11.2021 is annexed hereto and marked as Annexure R/16.

Copy of the order vide DIGP, AP (Ops-I) order No.2260-64/F.Pers/KU/Appeal/DIGP (AP&OPS)/21 dated 30.03.2022 is annexed hereto and marked as Annexure R/17."

Finally, the State-respondents by filing their counter affidavit prayed for dismissal of the writ petition.

5. At the time of hearing, Learned Counsel for the petitioner has drawn the attention of this Court that the punishment imposed upon the petitioner was very much disproportionate and the respondent authorities without affording any reasonable opportunities as required by law has most arbitrarily imposed punishment upon the petitioner which violated the principles of natural justice. Further, referring Annexure-14, a copy of the application submitted by one Khelan Bibi being the alleged second wife of the petitioner addressing to the Commandant, 13th Bn TSR, Subashnagar, Kanchanpur, North Tripura supported by a copy of affidavit, Learned Counsel for the petitioner further drawn the attention of this Court that in spite of filing the application no

lenient view was taken by the respondent authority and the authority passed the impugned order which was finally upheld by the appellate authority as well as by the revisional authority for which the interference of the Court is required. Learned Counsel, Ms. Purkayastha again submitted that since the petitioner is a Mohammedan personnel so as per the Mohammedan law, he is permitted to marry 4(four) ladies but the authority concerned without considering the factual aspects imposed disproportionate punishment which needs to be interfered with. Learned Counsel in support of her contention also relied upon one citation of the Hon'ble High Court of Madhya Pradesh in **WP(C) No.1723/2007[titled as Hem Singh vs. Union of India dated 21 June, 2018]** wherein the High Court of Madhya Pradesh in the last para has observed as under:

"Not only this, in another case decided by Manipur High Court in the case of Union of India & three others v/s Mohammad Jakir Hussain 2015 SCC Online Mani 67, a similar view has been taken in respect of Constable of CRPF and the punishment of dismissal has been set aside.

Not only this, in the case of Rameshwar Kumbhakar v/s State of M.P. & Another passed in W.P. No.3816/2006 decided on 24.03.2015, again in case of second marriage during the life time of the first wife, a similar view has been taken by this Court and the punishment of dismissal from the services has been substituted to that of withholding of one increment with cumulative effect.

Resultantly, the present writ petition also stands allowed. The punishment of dismissal is substituted to that of withholding of one increment with cumulative effect. The Constable/petitioner will not be entitled for backwages, however, he will be entitled for continuity in the services and for all other consequential benefits. The respondents are also directed to reinstate the petitioner within thirty days from the date of receipt of certified copy of this order in case he has not attained the age of superannuation."

Referring the same, Learned Counsel submitted that since the punishment imposed was disproportionate so, for the sake of justice the interference of the Court is required to quash/set aside the impugned orders and to convert the punishment of major penalties to minor penalties.

6. On the other hand, Learned Addl. GA appearing on behalf of the State-respondents first of all has drawn the attention of this Court to Annexure-R/1 i.e. the initial complaint lodged by one Khelan Bibi to the Commandant of 13th Bn TSR wherein she alleged that when the petitioner was posted at Amarpur and attached to 5th Bn TSR, he married said Khelan Bibi. On the basis of that complaint preliminary enquiry was conducted, article of charges were framed, departmental proceeding started and finally the respondent No.4 imposed major penalties upon the petitioner. Learned Addl. GA has further drawn the attention of this Court referring Rule 21 of TCS Rules, 1988 wherein the following provision is made:

"21. Restriction regarding marriage

(1) No Government employee shall enter into, or contract, marriage with a person having a spouse living; and

(2) No Government employee having a spouse living, shall enter into, or contract, a marriage with any person;

Provided that the Government may permit a Government employee to enter into, or contract, any such marriage as is referred to in clause (1) or Clause (2) if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government employee and the other party to the marriage; and

(b) there are other grounds for, so doing;

(3) A Government employee who has married or marries a person other than of Indian nationality

shall forthwith intimate the fact to the Government."

Referring the same, Learned Addl. GA submitted that there was no evidence on record that before conducting marriage with said Khelan Bibi, the present petitioner obtained permission from the authority concerned. So, the penalty was rightly imposed upon the petitioner by the authority being a member of the disciplined force. Learned Addl. GA has further drawn the attention of this Court that the conduct of the petitioner also violates Section 12 of the TSR Act, 1983. The relevant portion of Section 12 of the TSR Act, 1983 provides as under:

"12. Departmental Punishments.

(1) The Commandant or any other authority as may be prescribed, may, subject to any rules made under this Act, impose on a member of the rifles one or more of the following punishments for disobedience, negligence in duty, remissness in the discharge of any duty or other misconduct which is prejudicial to good order and discipline of the Rifles, that is to say:-

Minor Punishments:

- (a) deprivation of acting or officiating rank;**
- (b) fine of any amount not exceeding one month's pay and allowances;**
- (c) confinement to quarters or camp for a term not exceeding twenty eight days;**
- (d) confinement in quarters guard for not more than twenty eight days with or without punishment drill or extra guard or fatigue or other duty;**
- (e) removal from any office of distinction or special emolument in the Rifles;**
- (f) censure or severe censure;**

Major Punishments:

- (g) reduction in substantive rank;**
- (h) compulsory retirement;**
- (i) removal from service which shall not be a disqualification for future employment under the Government;**
- (j) dismissal:**

Provided that punishment specified in clause (d) shall not be imposed on any member of the Rifles who is of or above the rank of a Lance Naik:"

Learned Addl. GA again drawn the attention of this Court that in view of the provision of the TSR Act, 1983 there was no illegality or infirmity conducted by the authority of the present petitioner. So, legally there is no scope to interfere with the findings of the disciplinary authority, appellate authority and the revisional authority. Learned Addl. GA also referred Annexure-R/4 i.e. the communication of SDM Amarpur, Gomati District to Subedar (GD) Kanan Sinha, PEO, 13th Bn TSR (IR-IX) wherein the SDM Amarpur forwarded a copy of certificate of marriage of the petitioner with said Khelan Bibi. Learned Addl. GA in course of hearing also submitted that during the entire proceeding nowhere the present petitioner disputed or denied his marriage with said Khelan Bibi and during the entire proceeding nowhere the petitioner took the plea that his marriage with his first wife namely Hazira Begam was dissolved at any point of time as per the Mohameddan law through any Court of Justice. So, practically there was no suitable ground of defence on the part of the petitioner in response to the proceedings drawn up against him to prove his innocence. Learned Addl. GA has also drawn the attention of this Court referring para No.22 of the counter affidavit wherein it was mentioned that in course of the proceeding the petitioner (A.O) himself admitted and stated that he was given all the opportunities in course of the proceedings and he had no claim or objection. In support of his contention, Learned Addl. GA also relied upon one

citation of the Hon'ble Supreme Court of India reported in **(2009) 8 SCC 310**[titled as **State of Uttar Pradesh & Anr. v. Man Mohan Nath Sinha & Anr. decided on 17th August, 2009**] wherein in para No.15 Hon'ble the Apex Court observed as under:

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

Learned Addl. GA further relied upon another citation of the Hon'ble Supreme Court of India reported in **(2021) 3 SCC 806**[titled as **Boloram Bordoloi v. Lakhimi Gaolia Bank & Ors. decided on 8th February, 2021**] wherein in para No.11, Hon'ble the Apex Court observed as under:

"11. We are of the view that the judgment of this Court in ECIL [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] is not helpful to the case of the appellant. Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10-12-2005, the Board's decision is communicated vide order dated 21-12-2005 in Ref. No. LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that the orders [Boloram Bordoloi v. Lakhmi Gaolia Bank Writ Appeal No. 361 of 2008, order dated 3-4-2009 (Gau)] , [Boloram Bordoloi v. Lakhimi Gaolia Bank, WP (C) No. 219 of 2006, order dated 8-6-2007 (Gau)] impugned are devoid of reasons."

Referring the same, Learned Addl. GA further submitted that there is very least scope on the part of the Court to interfere with the findings of the disciplinary authority as because legally there is very little scope to re-assess or re-appreciate the evidence on record and furthermore, the petitioner himself failed to show any rebuttable evidence on record to disprove the fact of marriage with said Khelan Bibi. Moreso, the certificate issued by SDM Amarpur itself shows that the petitioner got married with said Khelan Bibi and during the entire course of proceedings nowhere the petitioner has challenged the said fact. The petitioner also did not take any effort to nullify the said certificate of marriage dated 30.08.2016 issued by the SDM Amarpur and as such, Learned Addl. GA in summing up urged for dismissal of the writ petition.

7. I have heard detailed argument of both the sides at length and perused the documents relied upon by the petitioner which were annexed with the writ petition and also the documents relied upon by the State-respondents annexed with the counter affidavit.

8. After hearing both the sides, it appears that the petitioner was a TSR personnel and initially he was posted at Kanchanpur. He was appointed on 28.03.2000. Later on he was posted at Amarpur and was attached to 5th Bn TSR where he got married with said Khelan Bibi and resumed conjugal life. The certificate of marriage issued by SDM Amarpur dated 30.08.2016 also confirms the said fact. It is also on record that the petitioner has got his first wife and three daughters and during subsistence of

his marriage with Hazira Begam, he married said Khelan Bibi. However, from the submission of Learned Counsel for the petitioner and also from the documents relied upon by the petitioner nowhere it is found that the petitioner before conducting marriage with said Khelan Bibi ever took any permission from his authority or the government regarding performance of his second marriage with said Khelan Bibi which contravenes Rule 21 of the TCS Rules, 1988 and provision of Section 12 of the TSR Act, 1983. I have also perused the citation referred by Learned Counsel for the petitioner of the Hon'ble High court of Madhya Pradesh. The fact of that case is different from the facts of the present case. As such, the spirit of the said judgment cannot be applied in the instant writ petition.

9. On the other hand, I have also gone through the citations referred by Learned Addl. GA at the time of hearing of arguments. It is settled position of law that there is very little scope on the part of this Court to interfere with the findings of the departmental authorities in a departmental proceeding. If there are any serious irregularities or illegalities, in that case only the Court can interfere.

Here, in the given case after hearing both the sides nowhere I find that the proceeding initiated by the Departmental authority was illegal, inoperative and not binding upon the petitioner. So, on the face of record it appears that the petitioner has failed to satisfy this Court to interfere with the punishment imposed by the respondent No.4 upon the petitioner but at the

same time as a Court of Justice it is also necessary to see whether the punishment imposed by respondent No.4 was justified or not.

10. In course of hearing of argument, Learned Counsel for the petitioner submitted that considering the imputation, the punishment imposed upon him was harsh and disproportionate which caused serious prejudice to the petitioner and the same also violated the principles of natural justice. On the other hand, Learned Addl. GA opposed the same.

11. In this regard, I would like to refer one citation of Division Bench of this Court reported in **2016 SCC OnLine Tri 259[titled as Ghulam Nabi Shergujri v. The Union of India & Anr. decided on 4th April, 2016]** wherein in para Nos.6 to 12 this High Court observed as under:

"6. As far as contracting a second marriage during service is concerned, that is governed by Rule 21 of the Central Civil Services (Conduct) Rules, 1964 which are applicable to the BSF also and this rule reads as follows : -

"21. Restrictions regarding marriages-

(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of India

Nationality shall forthwith intimate the fact to the Government.”

7. Sub-rule (2) of Rule 21 clearly provides that no Government servant, having a spouse living, shall enter into, or contract, a marriage with any person. The proviso to this rule like the proviso to Rule 7 of the BSF Rules also empowers the Central Government to permit a Government servant to enter into, or contract a second marriage, if it is satisfied that such marriage is permissible under the personal law and there are grounds for entering into the second marriage.

8. The main argument raised on behalf of the petitioner is that since second marriage is permissible under the Muslim Personal Law and furthermore, since the Government has the power to grant such permission, the conduct of the petitioner could not be treated to be misconduct and, therefore, the services could not be terminated. We are not in agreement with this submission. In case of any Government employee who has a spouse living and such person wants to enter into a second marriage which is permitted under his personal law, he must approach the Central Government or the authorities concerned with a prayer in which it should be clearly spelt out that as per his personal law he is entitled to enter into a second marriage and secondly, that such second marriage is necessary for certain reasons. It is for the Government to decide whether permission should be granted or not. It is not for the employee to decide himself without approaching the Government that he is entitled to get married a second time. This by itself is misconduct and contracting a second marriage without the permission of the Central Government, even if permissible under the personal law, clearly amounts to misconduct and, therefore, the BSF was entitled to take disciplinary action in terms of Rule 22 of the BSF Rules.

9. Having held so, we are clearly of the view that the punishment imposed upon the petitioner is grossly disproportionate to the misconduct committed by him. We must keep in mind the fact that the petitioner had already rendered 18 years of service before he contracted into the second marriage. He was terminated after he had completed almost 20 years of service. In the reply, there is no allegation that there was any other complaint against the petitioner. No doubt, his act of marrying a second time without seeking permission of the Government is misconduct but can it be said that this misconduct is so severe that he should be dismissed from service which would mean that he would virtually be entitled to no pensionary or other benefits.

10. The petitioner has pleaded that he was not aware of the provisions of Rule 21 of the CCS (Conduct) Rules. Ignorance of law is no excuse but at the same time, we cannot ourselves ignore the hard truth that a large number of employees are not aware of the details of the rules. Whatever be the case, the petitioner is a person who served the BSF for about 20 years and the allegation against him is

that he misconducted himself by contracting a second marriage while his first spouse was living. This is not a criminal offence of bigamy because the personal law permits such conduct. Misconduct is the technical misconduct in not seeking permission of the authorities concerned. We are, therefore, of the opinion that though the misconduct of the petitioner is serious enough to warrant his non-continuation in service but it is not so serious as to warrant forfeiture of all his service benefits.

11. It is true that normally the writ Court does not interfere in matters of punishment and does not impose a punishment by itself but we are clearly of the view that this is one of those glaring cases where the punishment is totally disproportionate to the misconduct.

12. Therefore, keeping in view the facts and circumstances of the case, we feel that the interest of justice will be served if punishment of compulsory retirement is imposed upon the petitioner instead of punishment of dismissal from service. The impugned orders are modified accordingly. The petitioner shall be deemed to have been compulsorily retired from the date of his dismissal from service."

In the said case this Court converted the punishment of "dismissal from service" to punishment of "compulsory retirement". Here, in the instant case, the punishment of "compulsory retirement" is imposed upon the petitioner which in my considered view was not proper. At the same time on perusal of the counter affidavit and the annexed documents submitted with the counter affidavit, specifically Annexure-R/11 it appears that the respondent authority at the time of imposition of punishment did not consider the same. Admittedly, second marriage is permissible under the Muslim Mohammedan personal law. Here, in the case at hand there is no other evidence on record that in discharging duties the petitioner conducted any other misconduct which was detrimental to the interest of the department and furthermore the punishment was imposed after rendering almost 20 years of sincere service in the department by the petitioner. But since the present petitioner is

a government servant so he is definitely guided by Rule 21 of the TCS Rules, 1988 and in this case, the petitioner suppressed the fact of his second marriage with the department and before conducting marriage he did not obtain any permission from the authority. Thus, he has committed misconduct. However, if he is sent to compulsory retirement, in that case definitely the punishment would cause severe hardship to him and his entire family.

Situated thus, it appears to this Court that since the punishment imposed upon him appears to be disproportionate so the matter be remanded back to the authority concerned to reconsider the matter in respect of imposition of punishment considering the facts and circumstances of the case and also considering the representation submitted by said Khelan Bibi i.e. Annexure-14 (Annexure-R/11 relied upon by the respondents).

12. In the result, the writ petition filed by the petitioner is allowed. All the orders passed by the disciplinary authority, appellate authority and revisional authority are accordingly stands set aside. The matter is remanded back to the respondent No.4 i.e. the appointing authority of the petitioner to reconsider the matter of imposition of punishment upon the petitioner and thereafter to issue a fresh order of punishment to the petitioner, if necessary by calling the interested parties of the proceeding.

The entire exercise shall be completed within a period of 4(four) months from the date of passing of this judgment and order.

With this observation, the instant writ petition stands disposed of.

Pending application(s), if any, also stands disposed.

JUDGE



Snigdha

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