

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.113/2023

1. The State of Tripura, represented by the Commissioner & Secretary, Home Department, Government of Tripura having its office at Civil Secretariat Complex, P.O.-Kunjaban, P.S.-NCC, Sub-Division-Agartala, District-West Tripura.
2. The Director General of Police, Government of Tripura, having its office at Fire Brigade Chowmuhani, Agartala, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura.
3. The Deputy Inspector General of Police (AP & Ops), Tripura State Rifles, Government of Tripura, having its office at Srinagar, Near TV Tower, P.O. & P.S.-A.D. Nagar, District-West Tripura.
4. The Commandant, 12th Battalion Tripura State Rifles (IR-VIII) (Disciplinary Authority), having its office at Chakmaghat, P.O. & P.S.-Teliamura, District-Khowai Tripura, Pin-799205.
5. The Assistant Commandant, (Inquiry Officer of 12th Bn. TSR (IR-VIII) DP No.01/19), 12th Battalion Tripura State Rifles (IR-VIII), having its office at Chakmaghat, P.O. & P.S.-Teliamura, District-Khowai Tripura, Pin-799205.

..... Appellant (s).

V E R S U S

Sri Pradip Roy, son of Sri Narayan Chandra Roy, resident of village-Rajnagar, P.O.-Samarendra Gonj, P.S.-Manu Bazar, Sub-Division-Sabroom, District-South Tripura, Pin-799156.

..... Respondent(s).

For Appellant (s)	: Mr. Mangal Debbarma, Addl. G.A.
For Respondent(s)	: Mr. Somik Deb, Sr. Advocate, Mr. Pannalal Debbarma, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment: **28th January, 2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the appellants-State and Mr. Somik Deb, learned senior

counsel assisted by Mr. Pannalal Debbarma, learned counsel appearing for the writ petitioner/respondent.

2. The present writ appeal has been preferred by the State being aggrieved by the judgment and order dated 16.05.2023 passed in WP(C) No.833 of 2021 whereby the learned Writ Court has set aside the order of dismissal dated 25.11.2019 affirmed in appeal and revision vide orders dated 07.04.2020 and 26.03.2021 respectively and held the writ petitioner entitled to all consequential benefits.

3. Learned senior counsel for the respondent has at the outset submitted that the impugned judgment does not require interference on the additional ground that the petitioner has also been acquitted of the same nature of charges in relation to the same incidence. It is submitted that the petitioner had been acquitted of the charges under Sections 457/323/506/34 of the IPC vide judgment dated 18.01.2023 rendered in case No. PRC(WP) 06 of 2020 by the Court of learned Chief Judicial Magistrate, Khowai District, Khowai as the prosecution had failed to produce evidence to support the charges. The operative part of the judgment is quoted hereunder:

"17. Having travelled through the prosecution evidence if we scrutinise the same we would find it apparent that except the statement of the PW-5 there is nothing in the prosecution evidence to connect the present accused persons with the charge of causing hurt to Sri Jagadish Prashad Chawra. I am in agreement with the Ld. defence counsel that evidence of the PW-5 with regard to alleged assault to Sri Jagadish Prashad Chawra is hearsay which cannot be regarded as legal evidence. Evidence of medical expert is not substantive and is mere corroborative in nature only. In absence of any direct or circumstantial evidence showing or suggesting involvement of the present accused persons with the alleged assault to Sri Jagadish Prashad Chawra we cannot, merely basing on evidence of medical expert attribute anything to the accused persons. Discussion of the prosecution evidence in its totality gives the only inference that prosecution case is wanting in evidence to support the charges.

ORDER

18. On the basis of the above findings I acquit the accused persons Sri Bipul Ranjan De, Sri Pradip Roy, Sri Kamal Paul, Sri Raju Dhar, Sri Maheswar Das & Sri Satyabrata Sinha of the charges under sections 457/323/506/34 of the IPC and set them at liberty.

19. Accused persons and their surety(s) are also discharged from the liability of the bail-bond executed by them, except the ones furnished under section 437A, Cr.P.C."

4. The learned Writ Court has also taken note of the judgment of acquittal dated 18.01.2023 passed by the learned Chief Judicial Magistrate, Khowai District, Khowai in case No. PRC(WP) 06 of 2020. However, the learned Writ Court had set aside the impugned orders of dismissal on different grounds and held him entitled to all the consequential benefits. The learned Court found fault in the manner in which the departmental proceedings were conducted against the petitioner.

The respondent-State was aggrieved by quashing of the order of dismissal and has preferred the instant appeal, *inter alia*, on a number of grounds.

5. Grounds advanced by Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the appellants-State, on which the conclusion and decision of the learned Writ Court are challenged:

(i) The impugned judgment & order passed by the learned Single Judge was non-application of mind which suffers from mis-reading of the entire facts and issues of the case. Therefore, impugned judgment & order passed by the learned Single Judge is illegal, unwarranted, non-est and is liable to be set aside and reversed.

(ii) The learned Single Judge has passed the order only on the basis of statements made by the victim Rfn (GD) Jagadish Prasad Chawra,

without appreciating other prosecution witnesses. The statement of victim who stated in short (in English translation from Hindi) is that on 11.05.2019 at round 10.00 PM to 10.30 PM when he was sleeping in his room, suddenly Hav. Kamal Paul, NK Maheswar Das, NK Satyabrata Sinha, Hav. Raju Dhar and Nb/Sub Bipul Ranjan De entered his room by breaking the door and covered his face with cloth and started beating him with lathi, danda and rod and tried to kill him. He screamed and asked them why they are beating him. Nb/Sub Bipul Ranjan Dey answered "maar dega bhaag ja Dao Se Maru". Then he ran away from his room in fear. Despite shouting no one came out to help him. Then he ran towards MT Gate near sentry E/F Tek Bahadur Silal but Hav. Raju Dhar and Nb/Sub Bipul Ranjan De started chasing him there also and beat him near MT Gate and threatened to kill him. Then he saw Nb/Sub Pradip Roy and went towards him and fell on his knees to save him but, he also abused in words and kicked him with his leg. Therefrom he ran towards office gate and feigning sentry, he went outside the office gate where he took some rest for his safety in nearby jungle. Again, he saw that they were still searching for him and then he slowly ran towards CRPF Camp and there he narrated about the incident to CRPF Camp sentry, they offered him for drinking water but he was not allowed to enter inside the CRPF camp. From there he went towards SDM Teliamura Office and slept there at night in a bench nearby a shop. In the morning at around 06.00 AM he returned to his room and found that they were still searching him. Then he called CO for 3 to 4 times, but his call was not received by CO. By this time due to unbearable pain, he rushed to Govt. hospital, Teliamura and took first aid treatment. From there due to extreme pain, he left for his home.

(iii) From the statement of Rfn. (GD) Bhojveer Singh Chouhan, it appears that on 12.05.2019 at about 0900-1000 hrs, he had a telephonic conversation with the victim Rfn (GD) Jagdish Prasad Chawra where the victim told him that Nb/Sub (GD) Pradip Roy, Nb/Sub (GD) Bipul Ranjan De, Hav(GD) Kamal Paul, Hav(GD) Raju Dhar, Hav(GD) Babul Ghosh, NK(GD) Satyabrata Singha and NK(GD) Maheshwar Das jointly entered into his room and started beating him without any causes.

(iv) Learned Single Judge failed to appreciate that Tek Bahadur Silal was the eye witness who had seen the continuing part-scene of the incident which happened with the victim. On the subsequent day, the victim discussed over phone with Rfn. (GD) Bhojveer Singh Chouhan, by which he disclosed that Nb/Sub (GD) Pradip Roy(the petitioner/respondent herein), Nb/Sub (GD) Bipul Ranjan De, Hav(GD) Kamal Paul, Hav(GD) Raju Dhar, Hav(GD) Babul Ghosh, NK(GD) Satyabrata Singha and NK(GD) Maheshwar Das jointly committed physical assault upon the victim and having been found corroboration of evidence, they have been awarded punishment by the Disciplinary Authority.

(v) The learned Single Judge has failed to appreciate that the statement made by the victim was corroborated by other prosecution witnesses, in particular, the statement of E/F(carpenter) Sri Tek Bahadur Silal, Rfn. (GD) Bhojveer Singh Chouhan and E/F (Ward boy) Ravi Kumar as stated hereinabove, who stated during recording of evidence by the Inquiring Officer that they made their statements about the incident while the preliminary enquiry was conducted by Sri Shyamal Debbarma, AC on 10.06.2019.

(vi) The learned Single Judge has failed to appreciate that the scope of judicial review with respect to the departmental proceedings is limited. The Hon'ble Supreme Court, in numbers of cases has observed about the scope of judicial review with respect to the departmental proceedings to be very limited. In the case of *Indian Oil Corpn. Ltd. vs. Ashok Kumar Arora [(1997) 3 SCC 72]* the Court has held that, the High Court is not to exercise the powers of appellate court/authority in the cases of departmental enquiries. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct. There is a catena of judgments of the Court which had settled the law on this topic, like *State of A.P. vs. S. Sree Rama Rao [(1964) 3 SCR 25]*, *State of A.P. vs. Chitra Venkata Rao [(1975) 2 SCC 557]*, *Corpn. of the City of Nagpur vs. Ramchandra [(1981) 2 SCC 714]* and *Nelson Motis vs. Union of India [(1992) 4 SCC 711]*.

(vii) Two different standards are set forth for these two kinds of proceedings. In criminal proceedings, guilt of the accused person is to be proved beyond reasonable doubt, whereas in a disciplinary proceedings it is based upon preponderance of probabilities. It is obvious that when the criminal act itself is the source of misconduct in a disciplinary proceedings and where the criminal case is ended with the acquittal of the accused, it is wise to yield the disciplinary proceedings. But here also the Hon'ble Apex Court has put a mark of partition between-'*beyond doubt*' and '*benefit of doubt*'. If the

acquittal was due to benefit of doubt, the disciplinary proceedings may be conducted and if there is sufficient evidence the penalty may be imposed.

6. Mr. Somik Deb, learned senior counsel assisted by Mr. Pannalal Debbarma, learned counsel appearing for the writ petitioner, has sought to defend the impugned judgment on, *inter alia*, also on the ground that when the writ petitioner faced departmental proceedings for the same and identical set of charges as that in the criminal prosecution for the same incidence and that the common set of witnesses were produced during departmental proceedings and that though the number of witnesses during the criminal proceedings were even more but since the criminal court has passed the order of acquittal on merits, the penalty imposed upon the petitioner on the same set of charges and evidence should not be allowed to sustain. It is also submitted that the present appeal is a continuation of the writ proceedings and as such, the hands of this Court are not fettered by the grounds or reasonings rendered by the learned Writ Court if on ultimate analysis the impugned judgment can be upheld on the basis of independent reasoning by this Court. Learned senior counsel for the petitioners has relied upon the judgments rendered by the Apex Court on this issue in the case of ***G.M. Tank vrs. State of Gujarat and others*** reported in ***(2006) 5 SCC 446*** and in the case of ***Ram Lal vrs. State of Rajasthan and others*** reported in ***(2024) 1 SCC 175*** (paragraphs-1 to 8, 12 to 34).

7. It is the case of the writ petitioner that on account of acquittal of the writ petitioner of the criminal charges, the penalty of dismissal imposed on same set of charges and evidence on the basis of departmental proceedings should not be allowed to sustain. Learned senior counsel for the writ petitioner

has laboured to substantiate this proposition by referring to the charges and the evidence adduced both in the departmental proceedings and in the criminal trial by the prosecution. It is submitted that in such circumstances while exercising the powers of judicial review, this Court can grant redress if it concludes that allowing the findings in the disciplinary proceedings to stand would be unjust, unfair and oppressive. The Apex Court has also observed that expressions like "benefit of doubt" and "honourably acquitted" used in judgments are not to be understood as magic incantations. A Court of law will not be carried away by the mere use of such terminology. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used. If the judgment of acquittal is examined in that light by this Court, it would certainly show that the prosecution has despite adducing a number of witnesses in its favour including medical witness failed to substantiate the charges. As such, the charges have been held to be not proved beyond shadow of reasonable doubt. In such an event, this Court would be well within its power to uphold the judgment of the learned Writ Court on independent considerations other than the reasonings which are persuaded by the learned Writ Court as it is the interest of justice which is uppermost to be subserved.

8. Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the appellants-State, has reiterated the grounds taken in appeal which have been referred to in some detail hereinabove. However, he does not dispute that the findings of the learned Writ Court are not based upon the judgment of acquittal rendered in the case of the writ petitioner though it was delivered on 18.01.2023 and placed before the learned Writ Court.

On being specifically asked, learned counsel for the appellants-State has not been able to dispel the contention of the writ petitioner that the criminal prosecution was initiated on the basis of the same incidence by the complainant and the nature of allegations are same and similar in both the disciplinary proceedings and the criminal case. Learned counsel for the appellants-State does not dispute that the learned Criminal Court has rendered a finding of acquittal as the prosecution had failed to substantiate the charges despite production of 12 witnesses including the medical witnesses. He has also placed the provisions of the Tripura State Rifles Act, 1983, as amended. However, there is no provision of review in the Act in case the delinquent employee is acquitted of same or similar nature of charges by the Criminal Court. Learned counsel for the State also is not able to countenance the submission of the writ petitioner that this Court in exercise of powers of judicial review at this appellate stage can review the findings and the order of penalty rendered in the departmental proceedings on the basis of the acquittal of the delinquent employee/writ petitioner in the criminal trial based on same set of charges and same evidence.

9. In the above conspectus of facts and circumstances and the grounds urged by the learned counsel for the appellant and the writ petitioner/private respondent, we have conferred anxious consideration to the question at hand as to whether the findings of the learned Writ Court are vulnerable to be set aside in appeal on independent reasonings by this Court taking into consideration that the writ petitioner has been acquitted of the identical charges in the criminal case and on the same set of evidence rather more adduced by the prosecution during criminal trial. In order to appreciate

the aforesaid issue, we may at the outset refer to the legal position as has been reiterated by the Apex Court in a recent judgment rendered in the case of **Ram Lal** (supra) where the Apex Court had also referred to the decision in the case of **G.M. Tank** (supra) relied upon by the writ petitioner. The position in law as rendered at paragraphs-10 to 12 and 25, 28, 29 and 30 are being extracted hereunder as they are illuminating for this Court in the facts and circumstances of the present case:

"10. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the disciplinary authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. (See *SBI v. A.G.D. Reddy* [*SBI v. A.G.D. Reddy*, (2023) 14 SCC 391 : 2023 SCC OnLine SC 1064 : 2023 INSC 766] .) As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the disciplinary authority have ignored material evidence and if it so finds, the courts are not powerless to interfere. (See *United Bank of India v. Biswanath Bhattacharjee* [*United Bank of India v. Biswanath Bhattacharjee*, (2022) 13 SCC 329 : (2023) 2 SCC (L&S) 705 : 2022 INSC 117] .)

11. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See *State of T.N. v. S. Samuthiram* [*State of T.N. v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] .)

12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. (See *G.M. Tank v. State of Gujarat* [*G.M. Tank v. State of Gujarat*, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] , *State Bank of Hyderabad v. P. Kata Rao* [*State Bank of Hyderabad v. P. Kata Rao*, (2008) 15 SCC 657 : (2009) 2 SCC (L&S) 489] and *S. Samuthiram* [*State of T.N. v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] .)

25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW 2, PW 3, PW 6, PW 9 and PW 13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his

marksheet and he, by making alteration in his date of birth to reflect the same as 24-4-1972 in place of 21-4-1974, and obtained recruitment to the post of Constable.

28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” — in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see *Vijayee Singh v. State of U.P.* [*Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).

30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in *G.M. Tank* [*G.M. Tank v. State of Gujarat*, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] ."

10. In order to appreciate the issue at hand in the background of the aforesaid legal position, the chronology of relevant list of dates and events as are placed from the pleadings on record leading up to the passing of the impugned judgment dated 16.05.2023 are briefly encapsulated hereunder:

"Chronological events of facts

21.05.2019: The writ petitioner was placed under Suspension on contemplation of a Disciplinary Proceeding against him, as per Order of the Commandant, 12th Bn TSR.

28.05.2019: On the basis of certain allegations, alleged to have occurred on 11.05.2019, on account of alleged use of criminal force & assault, upon Rfn (GD) Jagdish Prasad Chawra, the Subedar Major of the Battalion, namely, Sub(GD) Sujit Singha lodged a complaint, before the Officer-in-Charge, Teliamura Police Station, Khowai Tripura, pursuant whereeto, an FIR bearing

registration No. TLM PS Case No.28/2019 was registered, against the petitioner and some others, under Sections 448/307/325/34 of the IPC.

23.06.2019:- A Departmental Proceeding vide DP No 03/2019 was initiated against 06 (six) TSR personnel including the writ petitioner, alleging to have committed physical assault upon Rfn Jagadish Prasad Chawrah on 11.05.2019, on the basis of a Preliminary Inquiry Report conducted by Shri Shyamal Debbarma, Assistant Commandant.

21.08.2019: During the Inquiry proceeding, Shri Ajay Kumar Das, Assistant Commandant (the Inquiry Officer) had repulsed the request of the writ petitioner, urging for supply of some important documents including the CD/Video (Prosecution Document Sl. No. 9 of the List of Documents, appended with the Articles of Charge), on the basis whereof, the Article of Charge was framed. The same was never provided to the writ petitioner.

20.09.2019:- The writ petitioner submitted his consolidated Statement of Defence before the Inquiry Officer, denying all the allegations made by the Prosecution during the Inquiry.

30.09.2019: The Investigating Officer of Teliamura Police Station who was investigating the case vide FIR No. 28/2019, submitted Charge Sheet u/s 457/323/507/34 IPC, against all the accused persons including the writ petitioner, before the Ld. Chief Judicial Magistrate, Khowai, Tripura.

17.10.2019:- Shri Ajay Kumar Das, Assistant Commandant (the Inquiry Officer), submitted his Inquiry Report before the Commandant, 12th Bn TSR (i.e., the Disciplinary Authority).

22.10.2019:- Shri Jitendra Debbarma, Commandant, 12th Bn TSR, being the Disciplinary Authority issued Provisional Punishment Order, for imposing the major penalty of "Dismissal from service" upon the writ petitioner.

05.11.2019: The writ petitioner submitted Representation, before the Disciplinary Authority alleging unjust, unfair, non-appreciation of evidence and lack of opportunities provided during the Inquiry.

25.11.2019:- Shri Jitendra Debbarma, Commandant, 12th Bn TSR, being the Disciplinary Authority, issued Final Punishment Order, thereby imposing the major penalty of "Dismissal from service" upon the writ petitioner.

12.02.2020:- Being aggrieved by the said Final Punishment Order, issued by the Commandant, 12th Bn TSR, the writ petitioner filed a Writ Petition, marked as WP(C) No. 1384 of 2019, before this High Court. The same was withdrawn with liberty for availing the alternative remedy of departmental Appeal.

09.03.2020:- Accordingly, assailing the Final Punishment Order dated 25.11.2019, the writ petitioner preferred a departmental Appeal, before the Appellate Authority, i.e., the Deputy Inspector General of Police (AP & OPS).

07.04.2020:- The said Appellate Authority passed an Order, thereby rejecting the said Appeal, preferred by the writ petitioner.

14.05.2020: The writ petitioner thereafter presented a Revision Petition assailing the Final Punishment Order dated 25.11.2019 & the Appellate Order dated 07.04.2020, before the Revisional Authority, i.e., the Secretary, Home Department, Government of Tripura.

23.07.2020:- Since, no response was received from the Revisional Authority in connection with the said Revision Petition dated 14.05.2020, the writ petitioner submitted a Prayer, requesting the said Authority to make an early decision in connection with the same.

08.01.2021:- Even then, since no communication was received from the Revisional Authority, the writ petitioner filed another Writ Petition, marked as WP(C) No. 831 of 2020, before this Hon'ble High Court. The said case was disposed of, directing the Revisional Authority to dispose the Revision Petition within 3 months.

26.03.2021: The Director General of Police, Government of Tripura issued an Order, thereby rejecting the Revision Petition, presented by the writ petitioner.

18.11.2021:-Thereafter, assailing the Final Punishment Order dated 25.11.2019, the Appellate Order dated 07.04.2020 & the Revisional Order dated 26.03.2021, and praying for his reinstatement alongwith all consequential benefits, the writ petitioner filed the connected Writ Petition, marked as WP(C) No. 833 of 2021, before this High Court.

18.01.2023: In the connected Criminal Trial, marked as Case No.PRC(WP)06 of 2020, the Ld. Chief Judicial Magistrate, Khowai Tripura passed a Judgement, thereby acquitting the writ petitioner and the other accused persons from all the charges.

16.05.2023:- By a Judgment & Order (Oral), the Ld. Single Judge of this Court allowed the Writ Petition [i.e., WP(C) No. 833 of 2021], thereby quashing/setting aside all the impugned Orders, and directed grant of all the consequential benefits to the Writ Petitioner, within a period of 3 months from the date of receipt thereof.

29.08.2023:- Feeling aggrieved thereagainst, the State Respondents have preferred the instant Writ Appeal."

11. The writ petitioner was proceeded in D.P. No.03/2019 for the only Article of Charges on the basis of statement of imputation, the gist of which is indicated hereunder:

"Article-1

That on 11-05-2019 at about 2230 hrs No.97020017 Naib Subedar(GD) Bipul Ranjan De of 'Adm' Coy., No.91010597 Naib Subedar(GD) Pradip Roy, 'Adm' Coy., No.97050103 Havildar(GD) Kamal Paul of 'Adm' Coy., No.96030950 Havildar(GD) Raju Dhar of 'Adm' Coy., No.97040557 Naik(GD) Maheswar Das of 'Adm' Coy. and No.96030801 Naik(GD) Satyabrata Sinha of Adm. Coy, all 12th Bn TSR (IR-VIII) conjointly uses criminal force, commits an assault upon No.03100546 Rfn(GD) Jagdish Prasad Chawrah, 'Adm' Coy, 12th Bn TSR (IR-VIII) which amounts to gross misconducts and thereby punishable under Section 12(1) of TSR Act, 1983.

Statement of imputation

That on 11-05-2019 at about 2230 hrs No.97020017 Naib Subedar(GD) Bipul Ranjan De of 'Adm' Coy., No.91010597 Naib Subedar(GD) Pradip Roy, 'Adm' Coy., No.97050103 Havildar(GD) Kamal Paul of 'Adm' Coy., No.96030950 Havildar(GD) Raju Dhar of 'Adm' Coy., No.97040557 Naik(GD) Maheswar Das of 'Adm' Coy. and No.96030801 Naik(GD) Satyabrata Sinha of Adm. Coy, all 12th Bn TSR (IR-VIII) conjointly uses criminal force, commits an assault upon No.03100546 Rfn(GD) Jagdish Prasad Chawrah, 'Adm' Coy, 12th Bn TSR (IR-VIII). The matter has been established from the enquiry report dated 11-06-2019

submitted by Shri Shyamal Debbarma, AC, 12th Bn TSR (IR-VIII) which amounts to gross misconducts and thereby punishable under Section 12(1) of TSR Act, 1983."

12. On the other hand, the writ petitioner faced criminal proceedings under Sections 457/323/507/34 of the IPC in PRC (WP) 06/2020 on the charges of causing hurt upon Rfn. Jagadish Prasad Chawrah and of intimidating him criminally. In the criminal case, apart from the writ petitioner Pradip Roy, 5(five) other accused persons namely, (i) Nb/Sub. Bipul Ranjan De, (ii) Hav. Kamal Paul, (iii) Hav. Raju Dhar, (iv) Nk. Maheswar Das, and (v) Nk. Satyabrata Sinha also faced same charges. In the departmental proceedings, the prosecution produced 5(five) witnesses namely, (i) Havilder Babul Ghosh as PW-1 (PW-3 in the criminal case), (ii) Rifleman Bhojveer Singh Chauhan as PW-2 (PW-5 in the criminal case), (iii) EF Tek Bahadur Silal as PW-3 (PW-8 in the criminal case), (iv) EF Ravi Kumar as PW-4 (PW-4 in the criminal case), and (v) Rifleman Jagadish Prasad Chawrah, the victim (CSW-2 of FIR). He did not turn up in the criminal case.

13. In the criminal case, a total of 12(twelve) witnesses were examined including the 5(five) named above who are as follows:

- (i) PW-1-Sri Sujit Singha;
- (ii) PW-2-Sri Raju Das;
- (iii) PW-3-Sri Babul Ghosh;
- (iv) PW-4-Sri Ravi Kumar;
- (v) PW-5-Sri Bhojveer Singh Chauhan;
- (vi) PW-6-Ct. Laxman Ch. Das;
- (vii) PW-7-Sri Swapan Debbarma;
- (viii) PW-8-Sri Tek Bahadur Silal;
- (ix) PW-9-Sri Shyamal Debbarma;
- (x) PW-10-Dr. Bindiya Debbarma;
- (xi) PW-11-Sri Ashok Kate;
- (xii) PW-12-Sri Sumanta Bhattacharjee.

The following exhibits were adduced on behalf of the prosecution:

- (i) Exhibit P/1 : The ejahar.
- (ii) Exhibit P/1(a) : Signature of PW-1 on the ejahar.
- (iii) Exhibit P/2 : Signatures of PW-1 in the seizure list.
- (iv) Exhibit P/2(a) : Signatures of PW-2 in seizure list.
- (v) Exhibit P/3 : Signatures of PW-6 in the seizure list.
- (vi) Exhibit P/4 & 5 : FIR registration note & Prescribed FIR form.
- (vii) Exhibit P/6 : Injury report of Jagadish Prashad Chawra.
- (viii) Exhibit P/7 & 7(a) : Sketch map of the P.O. & index.
- (ix) Exhibit P/8 & 8(a) : Sketch map of the P.O. & index.
- (x) Exhibit P/9 & 9(a) : Seizure list of CD and signature of the I.O.
- (xi) Exhibit P/10 : Sketch map of the P.O.

14. The learned trial Court had after discussion on the evidence on record rendered the following findings:

"7. Before we go into the rival arguments let us have a look at the prosecution evidence on record.

8. The PW-1 Sri Sujit Singha is Assistant Commandant of the TSR 12 Bn. who lodged the FIR. He deposed that on the basis of video posts of Jagadish Prashad Chawra he came across in Many, 2019 in social media he lodged FIR against the accused persons. In cross-examination he said that prior to coming of the video to his notice he did not have any information about the incident, that he did not have any interaction with the victim after the FIR, that CD in which he downloaded the video clip was not subjected to forensic examination, that the victim did not make any report of the alleged incident to any person of the battalion.

9. The PW-2 Sri Raju Das is a Rifleman of the same battalion who is only a seizure witness with respect to seizure of a CD cassette in which viral video clips of the victim was downloaded. So also the PW-6 Constable Laxman Ch. Das. The PW-3 Sri Babul Ghosh is Havildar of the battalion and he showed his total ignorance about the incident of this case. The PW-7 Dy. SP Swapan Debbarma is the FIR registering officer who only assigned the case for investigation.

10. The PW-4 Sri Ravi Kumar deposed that on 11.05.2019 he was posted as Ward Boy at 12 Bn. of TSR and was performing his duties at the sentry post No. 3 of the battalion. At around 10-30/11-00 p.m. Jagadish Prashad Chawra came to him in ordinary course and after having usual talk he left. After about 5 minutes accused Amar Paul, Bupul Ranjan De and Raju Dhar came to him and inquired if any one had come to him.

In cross-examination he said that accused Amar Paul, Bupul Ranjan De and Raju Dhar were his senior officers and they used to look after the disciplinary aspect of the battalion, that after talk with him Jagadish Prashad Chawra went outside the battalion camp, that after about month of 11.05.2019 Jagadish Prashad Chawra had come to the battalion and had talk with him also. However, by confronting the PW-4 with his police statement the defence thought the cross-examination of the I.O. proved the omission of the fact of coming of the accused persons Amar Paul, Bupul Ranjan De and Raju Dhar to him after leaving of Jagadish Prashad Chawra.

11. The PW-5 Sri Bhojveer Singh Chauhan is a Rifleman of the 12 Bn. of the TSR. He deposed that in the morning of 12.05.2019 at round 10-00 a.m. Jagadish Prashad Chawra called him over phone and told him that in the previous night he was assaulted by Bipul Rn. Dey, Kamal Paul, Raju Dhar, Maheswar Das, Satyabrata Sinha with wooden planks and lathi at this barrack. He further deposed that then in the night of 12.05.2019 said accused persons also assaulted him in the barrack with lathi and wooden plank. Then when he ran towards the road one of the accused persons struck on his head and he became unconscious. He also stated that reporting such incident he had lodged an FIR against the said accused persons.

In cross-examination he said that there were around 200-250 TSR personnel at the battalion at the relevant point of time, that he had good relation with Jagadish Prashad Chawra. He denied the suggestion that he and Jagadish Prashad Chawra used to commit breach of discipline in the battalion and as the accused persons tried to enforce discipline both of them became angry against them. However, he admitted the fact that in his statement to police he did not disclose anything regarding assault to him by the accused persons.

12. The PW-8 Sri Tek Bahadur Silal is another TSR personnel posted at the same battalion. He deposed that on 11.05.2019 at around 10-45 p.m. Jagadish Prashad Chawra came to the entry gate where he was performing sentry duty. He did not allow Jagadish Chawra to go out and after 3-4 minutes accused Bipul De who was Nayeb Subedar came there and asked Chawra to mend himself and then Chawra went back.

In cross-examination he said that Jagadish Prashad Chawra was drunk at the time of his visit and that on the following day Jagadish Prashad Chawra left battalion camp unauthorisely.

13. The PW-9 Sri Shyamal Debbarma is another TSR personnel who was posted at the 12 battalion on the relevant point of time deposed did not divulge anything regarding questions before us, rather narrated a story divorced from the contest of this case. However, in cross-examination he stated that Jagadish Prashad Chawra did not report him anything about any assault to him.

14. The PW-11 Sri Ashoke Kate is a constable of CRPF. He deposed that in the night of 11.05.2019 at around 11-00 p.m. when he was on sentry duty at 71 Bn. of CRPF one person had come to him who identified him as TSR jawan and asked to save him telling that he was being beaten. Since the man was unable to show identity card the PW-11 asked him to go.

15. PW-10 Dr. Bindiya Debbarma in her evidence deposed that on 12.05.2019 Jagadish Prashad Chawra was brought to Teliamura hospital by TSR staffs for medical check up having history of physical assault in the night of 11.05.2019 at around 10-00 p.m. She further deposed that Chawra had abrasions over his back, abdomen and a bruise over left arm which were 12 to 24 hours old and that the same were consistent with history of physical assault.

16. The PW-12 Inspector Sumanta Bhattacharjee is the investigating officer of the case. He deposed as to the facts touching the course of investigation only.

17. Having travelled through the prosecution evidence if we scrutinise the same we would find it apparent that except the statement of the PW-5 there is nothing in the prosecution evidence to connect the present accused persons with the charge of causing hurt to Sri Jagadish Prashad Chawra. I am in agreement with the Ld. defence counsel that evidence of the PW-5 with regard to alleged assault to Sri Jagadish Prashad Chawra is

hearsay which cannot be regarded as legal evidence. Evidence of medical expert is not substantive and is mere corroborative in nature only. In absence of any direct or circumstantial evidence showing or suggesting involvement of the present accused persons with the alleged assault to Sri Jagadish Prashad Chawra we cannot, merely basing on evidence of medical expert attribute anything to the accused persons. Discussion of the prosecution evidence in its totality gives the only inference that prosecution case is wanting in evidence to support the charges.

ORDER

18. On the basis of the above findings I acquit the accused persons Sri Bipul Ranjan De, Sri Pradip Roy, Sri Kamal Paul, Sri Raju Dhar, Sri Maheswar Das & Sri Satyabrata Sinha of the charges under sections 457/323/506/34 of the IPC and set them at liberty.

19. Accused persons and their surety(s) are also discharged from the liability of the bail-bond executed by them, except the ones furnished under section 437A, Cr.P.C."

15. After a careful analysis of the charges in departmental proceedings and in the criminal case, it is but evident that the delinquent was proceeded on identical charges in both the departmental proceedings and the criminal case in relation to the same incidence of assault on Rifleman Jagdish Prasad Chawrah. The evidence adduced in the departmental proceedings are common to those in criminal case. In fact, in the criminal case, the prosecution has adduced other witnesses including medical witnesses to substantiate the charges. The prosecution, however, failed to establish the charges on the basis of examination of 12 witnesses and a number of documentary evidence in the nature of exhibits adduced during trial.

16. The principle of law in such circumstances as rendered by the Apex Court in the case of **Ram Lal** (supra) commends that if the charges in the departmental enquiry and the Criminal Court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension and if the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the

prosecution evidence and the prosecution miserably failed to prove the charges, it can grant redress in certain circumstances. This Court would be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive.

The Apex Court has also placed reliance upon the decisions of *G.M. Tank* (supra), *State Bank of Hyderabad vrs. P. Kata Rao* reported in (2008) 15 SCC 657 and that of *State of Tamil Nadu vrs. S. Samuthiram* reported in (2013) 1 SCC 598.

17. We have examined the substance of the judgment of acquittal rendered in the criminal case. On an objective reading of the discussion on evidence and other materials recorded by the learned trial Court, it is evident that the accused persons have been acquitted not on account of the fact that the prosecution had not been able to produce any evidence to substantiate its charges but despite adducing 12 number of witnesses and other documentary evidence in the form of exhibits and also medical witnesses, had failed to substantiate the charges beyond reasonable doubt. Learned Criminal Court categorically observed that there was no direct or circumstantial evidence showing or suggesting implication of the accused persons in the alleged incident of assault.

18. Though the learned Writ Court has been persuaded by different set of reasonings as regards the conduct of the departmental proceedings but this Court on independent consideration and for the reasoning recorded hereinabove does not find any cogent reason to interfere in the findings of the learned Writ Court so far as the impugned penalty orders having been set aside. The

operative directions of the learned Writ Court, therefore, do not require any interference by this Court in appeal, of course for independent reasons. However, we are inclined to modify the consequential reliefs granted in favour of the writ petitioner. The employer has been denied the benefit of the services of the writ petitioner on account of such criminal charges for a considerable period of time. Therefore, while reinstating him in service with consequential seniority and benefits of pay revision with notional fixation for the period he remained out of service, unless he is suffering any other punishment in any departmental proceedings other than the present one, we are of the considered opinion that the writ petitioner would be entitled to only 50% of the back wages instead of full back wages granted by the learned Writ Court. The directions of the Writ Court as regards consequential benefits are modified to the extent indicated hereinabove.

19. In the facts and circumstances and for the reasons discussed above, the Writ appeal stands dismissed. It is informed that the writ petitioner has not been reinstated in service because of an interim order passed in the present appeal. In those circumstances, the respondents would reinstate the writ petitioner within a period of 8(eight) weeks from the date of receipt of copy of this order.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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