

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.114/2023

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

1. Sri Bipul Ranjan De, son of Late Ashutosh De, resident of village-Padmerpar, P.O.-Paitur Bazar, P.S.-Kailashahar, Sub-Division-Kailashahar, District-Unakoti Tripura, Pin-799279.
2. Sri Kamal Paul, son of Sri Harabandhu Paul, resident of village and P.O.-Kamal Nagar, P.S.-Sonamura, Sub-Division-Sepahijala, District-Sepahijala Tripura, Pin-799131.
3. Sri Raju Dhar, son of Late Monoranjana Dhar, resident of Village-Dalura, P.O.-Khayerpur, P.S.-Budhjungnagar, Sub-Division-Agartala, District-West Tripura, Pin-799008.
4. Sri Maheswar Das, son of Late Manindra Kumar Das, resident of village-Uttar Kumarghat, P.O., P.S. & Sub-Division-Kumarghat, District-Unakoti, Tripura, Pin-799264.
5. Sri Satyabrata Sinha, son of Sri Rabindra Kumar Sinha, resident of village-R.K. Pur, P.O.-Narendranagar, P.S.-Damchera, District-North Tripura, Pin-799256.

..... 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 petitioners/respondents.

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.832 of 2021 whereby the learned Writ Court has set aside the order of dismissal dated 25.11.2019 as upheld in appeal and revision vide orders dated 27.03.2020 and 26.03.2021 respectively and held that the writ petitioners are entitled to all the consequential benefits.

3. Learned Senior Counsel for the respondents has at the outset tried to bring to the notice of this court a development which has occurred after passing of the impugned judgment on 16.05.2023. The petitioners had been acquitted of the charges under Sections 452/325/307/380/34 of the IPC vide judgment dated 20.05.2024 rendered in case No. ST(T-2) 03 of 2021 by the Court of learned Assistant Sessions Judge, Khowai, Tripura as the prosecution had failed to produce evidence to support the charges.

4. The learned Writ Court, however, at the time of passing the judgment on the basis of the materials and pleadings on record was of the opinion that rejection of the inquiry report and calling for a fresh inquiry without proper reasons was not warranted. The learned Writ Court, therefore, drew an inference that it was an arbitrary exercise of power and hence, the entire proceedings was conducted in a premeditated manner. Principles of natural justice was violated. Therefore, the impugned orders were set aside and petitioners were held entitled to all the consequential benefits. The respondent-State being aggrieved by quashing of the order of dismissal 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 suffers from non-reading of the inter departmental communication letter dated 27th May, 2019 issued by the IGP(TSR & OPs). 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 failed to appreciate that inter departmental communication letter dated 27th May, 2019 was issued by the IGP (TSR & OPs) with reference to enquiry conducted by the DIG(AP) as per direction of IGP(TSR) on 20th May, 2019 who submitted his report on 24th May, 2019. Another preliminary enquiry report was submitted by the Adjutant/Asstt. Commandant on 17th May, 2019 which was rejected.

Thereafter, a statement was submitted by the Adjutant/Asstt. Commandant on 22nd May, 2019 about his earlier report submitted on 17th May, 2019.

(iii) The learned Single Judge has failed to appreciate that the inter departmental communication letter dated 27th May, 2019 issued by the IGP(TSR & OPs) was in two parts, one is to conduct a fresh enquiry into the matter detailing an officer other than Adjutant, 12th Bn. TSR against 7 suspended staffs including the 5 accused persons, i.e., the petitioners herein for assaulting Rfn.(GD) Bhojveer Singh Chouhan and another is to initiate DP against the 5 suspended FIR named accused persons, i.e., the petitioners herein for being in unauthorized absence from Bn. HQr after suspension.

(iv) The learned Single Judge has failed to appreciate that accordingly, three departmental proceedings have been initiated against the petitioners, one is DP No. 01 of 2019 for physical assault on Rfn (GD) Bhojveer Singh Chouhan against the 7 (seven) AOs including the five petitioners and the another is DP No. 02 of 2019 for unauthorized absence against the five petitioners only. Departmental proceedings bearing DP No. 03 of 2019 was related to another incident which happened on Rifleman (GD) Jagadish Prasad Chawra of 12th Bn. TSR who was physically assaulted on 11th May, 2019 by Nb/Sub Pradip Roy and five other jawans, namely Nb/Sub Bipul Ranjan De, Kamal Paul, Raju Dhar, both are Havildar (GD) and two other NK (GD) namely, Maheswar Das and Satyabrata Sinha under same TSR Battalion.

(v) The learned Single Judge has failed to appreciate that if the inter departmental communication letter dated 27th May, 2019 issued by the IGP(TSR & OPs) is set aside, in that event the second DP bearing DP No. 02 of 2019 would also be liable to be set aside though 3rd DP is not related with

the inter departmental communication letter dated 27th May, 2019 issued by the IGP(TSR & OPs).

(vi) The learned Single Judge has also failed to appreciate that the inter departmental communication letter dated 27th May, 2019 was issued by the IGP (TSR & OPs) at the very initial stage, just after procuring reports, communicated to conduct a fresh enquiry on the subject matter declining the initial preliminary report submitted by the Adjutant and the initiation of proposed departmental enquiry issued by the Commandant. This inter departmental communication cannot be said to be purportedly issued as arbitrary exercise of power by the respondents. It is a communication in between the inter-departmental authority for referring to unearth the actual incident of violence within the concerned TSR battalion.

(vii) The learned Single Judge has failed to appreciate that based on the said communication dated 27th May, 2019, another DP bearing No. 02 of 2019 for unauthorized absence against the five petitioners was conducted following all prescribed procedures and principles of natural justice, concluded the departmental proceedings on 22nd November, 2019 and awarded minor penalty of severe censure under the provisions of TSR Act, 1983 and 41 days unauthorized absence has been treated as Dies-non without break in service against all five petitioner-respondents herein.

(viii) The learned Single Judge has failed to appreciate the Rule 14(5) of the CCS(CCA) Rules, 1965, which prescribes that the disciplinary authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry officer for the purpose. It is the privilege of the disciplinary authority to accept the preliminary enquiry report or to reject it if it

appears to be dissatisfactory. The Hon'ble Supreme Court in ***Krishna Chandra Tandon vs Union of India [AIR 1974 SC 1589]*** has held that preliminary enquiry is a inter communication between the officers preliminary to the holding of enquiry, to find prima facie grounds for holding disciplinary enquiry. In the judicial review, it is to be checked whether full opportunity was given to the Petitioner to defend him at every stage or not. If it was given, the rejection of preliminary enquiry report without showing reason cannot be a cogent ground for quashing the entire proceedings. Preliminary enquiry report is not a result of any formal enquiry against the petitioners.

(ix) The learned Single Judge has failed to appreciate that the criminal case bearing No. ST (T-2) 03 of 2021 arisen out of TLM PS case No. 23/2019 u/s 307/325/380/34 IPC is also pending for adjudication before the learned court of Asstt. Session Judge, Khowai Tripura against all the petitioner-respondents herein.

6. However, when the matter has been argued before us, Mr. Somik Deb, learned senior counsel assisted by Mr. Pannalal Debbarma, learned counsel appearing for the writ petitioners, has sought to defend the impugned judgment on, *inter alia*, a novel ground that the writ petitioners faced departmental proceedings for the same and identical set of charges as that in the criminal prosecution for the same incidence. That the common set of witnesses were produced during departmental proceedings and though the number of witnesses during the criminal proceedings were more but since the criminal court has passed the order of acquittal on merits, the penalty imposed upon the petitioners on the same set of charges and evidence should not be allowed to sustain. It is 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 petitioners that on account of acquittal of the writ petitioners of the criminal charges, it would be a travesty of justice if the penalty of dismissal imposed on same set of charges and evidence on the basis of departmental proceedings is allowed to sustain. Learned senior counsel for the writ petitioners 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 submits that the judgment of acquittal dated 20.05.2024 was rendered after pronouncement of the impugned judgment by the learned Writ Court. Therefore, its reasonings are not persuaded by the finding of acquittal rendered by the Criminal Court.

On being specifically asked, learned counsel for the appellants-State has not been able to dispel the contention of the writ petitioners 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 14 witnesses including the medical witnesses. He has 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 employees are 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 petitioners 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 employees/writ petitioners 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 petitioners/private respondents, 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 petitioners have 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 petitioners. 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 view 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 judgment in criminal case [S.T.(T-2) 03 of 2021] dated 20.05.2024 are briefly encapsulated hereunder:

"Chronological events of facts

17.05.2019:-As directed by the Commandant, 12th Bn TSR, Shri Shyamal Debbarma, Assistant Commandant had conducted a Preliminary Inquiry, and recorded statements of witnesses, regarding an alleged physical assault (alleged to have been occurred on 12.05.2019) upon Rin Bhojveer Singh Chauhan.

19.05.2019:- On the basis of the Preliminary Inquiry Report and the statements of witnesses, a Departmental Proceeding vide DP No. 01/2019 was initiated against the writ petitioners.

19.05.2019:- On contemplation thereof, the writ petitioners were placed under suspension.

20.05.2019:- On the same facts and circumstances of the alleged incident (which was the subject matter of the Departmental Proceeding), one Shri Randhir Singh Chauhan (brother of Rfn Bhojveer Singh Chauhan) lodged an FIR with the Teliamura Police Station vide TLM PS Case No.23/2019, under Sections 307/325/380/34 of the Indian Penal Code.

15.06.2019:-The said Departmental Proceeding (as initiated vide the Memorandum dated 19.05.2019) was dropped, but reason thereof was not mentioned by the Disciplinary Authority. It was only noted that the Revisional Authority had directed to do so as per an Order dated 27.05.2019.

23.06.2019:- Another Preliminary Inquiry was conducted by Shri Hamsarai Reang, Assistant Commandant, who submitted his Report to the Commandant, 12th Bn TSR on 12.06.2019, before the dropping the initial Departmental Proceeding. On the basis of the said Preliminary Inquiry Report dated 12.06.2019, a fresh Departmental Proceeding vide DP No. 01/2019 was initiated, against the writ petitioners.

21.08.2019: During Inquiry proceedings, Shri Ajay Kumar Das, Assistant Commandant (i.e., the Inquiry Officer) repulsed the request of the writ petitioners for supply of some important/crucial documents.

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

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 "Dismissal from service" upon the writ petitioners.

05.11.2019: The writ petitioners 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 punishment of "Dismissal from service" upon the writ petitioners.

12.02.2020:- Being aggrieved by the said Final Punishment Order, issued by the Commandant, 12th Bn TSR, the writ petitioners had filed a Writ Petition, marked as WP(C) No. 1385 of 2019, before this High Court. The same was withdrawn with liberty for availing the alternative remedy of departmental Appeal.

20.02.2020:- The writ petitioners again prayed before the Commandant, 12th Bn TSR (i.e., the Disciplinary Authority), for supplying the documents viz. Preliminary Inquiry Report along with statements recorded during the initial Preliminary Inquiry conducted by Shri Shyamal Debbarma, Assistant Commandant on 17.05.2019, but, according to petitioners, the same did not evoke any response.

09.03.2020: In terms of the liberty so granted, assailing the Final Punishment Order dated 25.11.2019, the writ petitioners preferred a Departmental Appeal, before the Appellate Authority, i.e., the Deputy Inspector General of Police (AP & OPS).

27.03.2020:- The said Appellate Authority rejected the said Appeal, preferred by the writ petitioners.

27.03.2020: The Commandant, 12th Bn TSR (i.e., the Disciplinary Authority) rejected the said Prayer dated 20.02.2020, as made by the writ petitioners for supplying some crucial documents.

15.05.2020:-The writ petitioners had thereafter presented Revision Petition against the Final Punishment Order dated 25.11.2019 & the Appellate Order dated 27.03.2020, before the Revisional Authority, against the order of dismissal from service.

25.06.2020:-The Investigating Officer of Teliamura Police Station FIR No. 23/2019, submitted Charge Sheet u/s 452/325/307/380/34 IPC, against the writ petitioners, before the Ld. Chief Judicial Magistrate, Khowai, Tripura on 25/06/2020.

22.07.2020:- Since, no response was received from the Revisional Authority in connection with the said Revision Petition dated 15.05.2020, the writ petitioners 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 petitioners filed another Writ Petition, marked as WP(C) No. 830 of 2020, before this High Court. The said case was disposed of directing the Revisional Authority to dispose the said 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 petitioners.

18.11.2021:- Thereafter, assailing the Final Punishment Order dated 25.11.2019, the Appellate Order dated 27.03.2020 & the Revision Order dated 26.03.2021, and praying for their reinstatement in service with all consequential benefits, the writ petitioners filed the Writ Petition, WP(C) No. 832 of 2021, before the Single Bench of this High Court.

16.05.2023:- By a Judgment & Order (Oral), the Single Bench of this Court allowed the Writ Petition [i.e., WP(C) No. 832 of 2021], thereby quashing/ setting aside all the impugned Orders, and directed grant of all the consequential benefits to the writ petitioners, 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 before this Court.

20.05.2024:- In the connected Criminal Trial, marked as Case No.ST(T-2)03 of 2021, the Ld. Assistant Sessions Judge, Khowai Tripura passed a Judgement, thereby acquitting the writ petitioners from all the charges."

11. The writ petitioners were proceeded in D.P. No.01/2019 for the only Article of Charges on the basis of statement of imputation, the gist of which is indicated hereunder:

"Article-1

That on 12-05-2019 at 2200 hrs No.97020017 Naib Subedar (GD) Bipul Ranjan De of 'Adm' Coy., No.91010597 Naib Subedar (GD) Pradip Roy of '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 in connivance with No.01071050 Rfn(GD) Bhusan Datta of 'A' Coy, all 12th Bn TSR (IR-VIII) uses criminal force, commits an assault, breaks into the room and damages property of No.06110931 Rfn(GD) Bhojveer Singh Chauhan, 'F' Coy (now attached with Unit M.I. Room), 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 12-05-2019 at 2200 hrs No.97020017 Naib Subedar (GD) Bipul Ranjan De of 'Adm' Coy., No.91010597 Naib Subedar (GD) Pradip Roy of '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 in connivance with No.01071050 Rfn(GD) Bhusan Datta of 'A' Coy, all 12th Bn TSR (IR-VIII) uses criminal force, commits an assault, breaks into the room and damages property of No.06110931 Rfn(GD) Bhojveer Singh Chauhan, 'F' Coy (now attached with Unit M.I. Room), 12th Bn TSR (IR-VIII). The matter has been established from the enquiry report dated 15-06-2019 submitted by Shri Hamsarai Reang, 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 petitioners faced criminal trial in ST(T-2)03/21 under Sections 452/325/307/380/34 of the IPC on the charges of committing illegal trespass into the living barrack of the victim namely Rfn. Bhojveer Singh Chauhan by breaking the door with common intention, voluntarily causing grievous hurt upon him and damaging his personal property and stealing away his mobile phone and wallet. In the departmental proceedings, the prosecution produced 8(eight) witnesses namely, (i) Shri Shyamal Debbarma, AC, as PW-1 (PW-8 in the criminal case), (ii) Havildar Babul Ghosh as PW-2 (PW-11 in the criminal case), (iii) Havildar Purna Kr. Chakma as PW-3 (PW-7 in the criminal case), (iv) Rifleman Bhojveer Singh Chauhan, the victim, as PW-4 (PW-3 in the criminal case), (v) EF Tek Bahadur Silal as PW-5 (CSW-7 of FIR), (vi) EF Ravi Kumar as PW-6 (CSW-8 of FIR), (vii) EF Shaik Abdul Kader as PW-7 (CSW-13 of FIR), and (viii) Rifleman Shashi Bhusan Tiwari as PW-8. He did not turn up in the criminal case.

13. In the criminal case, a total of 14(fourteen) witnesses were examined, including the 7(seven) out of 8 (eight) named above, who are as follows:

- (i) PW-1-Shri Pradip Deb;
- (ii) PW-2-Shri Nihar Debbarma;
- (iii) PW-3-Shri Bhojveer Singh Chauhan;
- (iv) PW-4-Shri Randheer Singh Chauhan;
- (v) PW-5-Shri Sumanta Chakma;
- (vi) PW-6- Dr. Bindiya Debbarma;
- (vii) PW-7-Shri Purna Kumar Chakma;
- (viii) PW-8-Shri Shyamal Debbarma;
- (ix) PW-9-Dr. Rakesh Majumder;
- (x) PW-10-Shri Laxmanjoy Reang;
- (xi) PW-11-Shri Babul Ghosh;
- (xii) PW-12-Shri Rati Ranjan Debnath;
- (xiii) PW-13-Shri Sumanta Bhattacharjee; &
- (xiv) PW-14-Dr. Ashim Dey.

The following exhibits were adduced on behalf of the prosecution:

- (i) Exbt.1: Signature of PW 1 in the seizure list dated 21.05.2019.
- (ii) Exbt.2: Signature of PW 2 in the seizure list dated 21.05.2019.
- (iii) Exbt.3: Signature of PW 3 in the seizure list.
- (iv) Exbt.4: Signature of PW 4 in the written FIR.
- (v) Exbt.5: Signature of PW 5 in the seizure list dated 12.08.2019.
- (vi) Exbt.6(as a whole):Injury report of the victim prepared by PW 6.
- (vii) Exbt.7(as a whole):Another injury report of the victim prepared by PW 6.
- (viii) Exbts.6/1 to 6/4:Signatures of PW 6 in the injury report.
- (ix) Exbts.7/1 to 7/4:Signatures of PW 6 in the injury report.
- (x) Exbt.8(as a whole):Injury report of the victim dated 01.06.2019 prepared by PW 9.
- (xi) Exbt.8/1: Signature of PW 9 in the injury report.
- (xii) Exbts.9, 10 and 11: Hand sketch maps with separate indexes of three different P.O.s prepared by PW 13.
- (xiii) Exbt.12:Seizure list dated 21.05.2019 prepared by PW 13.
- (xiv) Exbt.13: Another seizure list dated 21.05.2019 prepared by PW 13.
- (xv) Exbt.14: Final medical report of the victim prepared by the medical board including PW 14.
- (xvi) Exbts.14/1: Signatures of PW 14 in the final medical report.
- (xvii) Exbt.11: Injury report of Smti. Gita Debnath prepared by PW 13.
- (xviii)Exbts.11/1 & 11/2:Signatures of PW 13 in the injury report.

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

"14. From the evidence of the victim cum PW-3 it appears that on 12.05.2019 at about 10 pm, the accused persons namely Bipul Dey, Raju Dhar, Kamal Paul, Maheshwar Das and Satyabrata Singha made attack upon him. According to the PW-3 the accused persons dragged him to a certain distance and assaulted him. As a result of this assault he became unconscious and he regained his sense in Medical Inspection Room. PW-3 further deposed that on the following day he was taken to Teliamura Hospital by havildar Purna Chakma. But in his deposition the havildar Purna Chakma deposed that on the alleged night of incident PW-3 came to his room and informed that he was assaulted by some persons. But at that time the victim did not disclose the names of the accused persons. It appears that at the alleged time of incident the victim and the accused persons were posted in the camp of 12th Bn TSR, Chakmaghat. But it is not clear to this court why the victim did not disclose the names of the accused persons to his colleague Purna Chakma, soon after the alleged incident. It also appears that the victim did not inform

the adjutant of 12th Bn TSR or the attending doctor of Teliamura Hospital about the alleged incident of assault on 13.05.2019. It is apparent from the evidence on record that on the following day of the alleged incident, the victim went to Teliamura but on that day the victim did not file any FIR against the accused persons. It also appears that before 20.05.2019, no TSR official had filed an FIR against the accused persons. PW-4 was not the eye witness of the alleged incident. At the time of deposition PW-4 stated that, after the alleged incident the victim sent one video about the alleged incident to him. But during cross examination PW-4 admitted that he did not hand over the video to the police while he visited police station for lodging of FIR. PW-4 also stated that he had not stated this fact to the IO and he did not mention this fact in his FIR. In present case, one plastic pipe, one iron rod, one wooden piece, one bamboo stick, one black colour trunk and one small lock were seized by the IO on 21.05.2019 from 12th Bn TSR headquarter complex. But the seizure witnesses in their cross examination stated that the IO did not put any special identification mark in the seized articles. They added that they did not put their signatures in the seized articles. It is not clear to this court whether the seized plastic pipe, iron rod or bamboo stick were used in assaulting the victim or not. In his deposition the victims stated that, as a result of the assault of the accused persons he became unconscious and he regain his sense in Medical Inspection Room. It is apparent from the evidence on record that the records in relation to any kind of treatment in Medical Inspection room or sending a patient to hospital through MI room is maintained by the in-charge of Medical Inspection room. But there is nothing in the evidence on record to show that the documents related with the treatment of the victim on 12.05.2019 in Medical Inspection room was handed over to the police by the In charge of Medical Inspection room of 12th Bn TSR. At the time of deposition PW-3 stated that he had stated to the IO that on the alleged night of incident the accused Satyabrata Singha entered into his room and broke the electric bulb. PW-3 also deposed that, he had stated to the IO that the accused persons dragged him to a certain distance and hit him in his head with a Lathi and because of which he lost his sense and fell down on the ground. Thereafter he regained his sense in Medical Inspection room. But during cross examination, PW-13 cum IO admitted that the victim did not state the aforesaid statement to him. So if the version of PW-13 is likely to be believed than the version of PW-3 becomes doubtful. Apart from this, the injury report marked as Exbt.6/1 contradicts the aforesaid version of the victim in relation to his injuries. The version of PW-3 is not free from major contradiction.

15. From the evidence of PW-1 and PW-2 it appears that in the month of May 2019, they were posted in the camp of 12th BN TSR at Chakmaghat. PW-10 was a TSR Personnel and on the alleged night of incident he was admitted as a patient in the Hospital of 12th BN TSR at Chakmaghat. But they did not say anything incriminating against the accused persons. From the evidence of PW-11 it appears that on 13.05.2019 he was posted in the camp of 12th BN TSR at Chakmaghat. In the morning he came to know the Bhojveer Singh Chouhan fell sick accordingly he made a report. But he did not say anything incriminating against the accused persons. From the evidence of PW-8 it appears that in the morning of 13.05.2019 he came to know the victim Bhojveer Singh Chouhan fell sick and he made necessary arrangement of shifting of the victim to Teliamura SD Hospital. PW-8 also admitted that he did not see any incident of scuffling in the TSR Camp on the alleged night of incident. It is apparent from the evidence on record that there are many barrack rooms available in TSR Camp of 12th BN TSR at Chakmaghat. Many TSR personnel were posted in the said camp. But the prosecution side could not produce any independent witness who had seen that the accused persons in furtherance of there common intention on 12.05.2019 at about 10 pm had entered in the room of the victim with an

intent to kill him and caused grievous hurt to the victim namely Bhojveer Singh Chouhan.

16. Section 380 of IPC relates to an aggravated form of theft that is, theft in a dwelling house, tent or vessel. In present case the prosecution side has examined 14 witnesses. But no witness had stated that the accused persons had committed theft of any article of Bhojveer Singh Chouhan from the living barrack of TSR Camp.

17. On perusal of the FIR it appears that the alleged incident occurred in the night of 12.05.2019. But the FIR was lodged on 20.05.2019. The reasons for delay in lodging the FIR, was not mentioned in the printed form of FIR. Ld Defence counsel strongly argued that delay in lodging the FIR is fatal in this case and that can be ignored. In the case of **Ram Chandra Das @ Ramu VS. State of Tripura** reported in **(2014) 1 TRIPURA LAW REPORTS 503**, Hon'ble High Court of Tripura was pleased enough to observe that *"the object of insisting upon prompt lodging of the FIR is to obtain early information regarding the circumstances in which the crime was committed. Delay in lodging FIR quite often results the embellishment, exaggeration and afterthought. Because of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in with the introduction of coloured version, exaggerated version or concocted story."* From the evidence on record, it appears that in present case the prosecution side could not give a satisfactory and plausible explanation of delay in lodging the FIR.

18. Accordingly in view of the grounds mentioned in above it is apparent that there are several lacunae in prosecution story which are not explain and cast serious doubt on the prosecution story rendering it not worthy of belief.

19. Under the above facts and circumstances, I found that the prosecution side has failed to establish the charges leveled against the accused persons beyond reasonable shadow of doubt and as such the accused persons are fit to be acquitted of this case. Hence, the points for determination are also answered in the negative against the prosecution.

DECISION

20. Considering the evidence on record and also after hearing the arguments of both the sides, I hold that the prosecution side has failed to prove the case beyond the shadow of all reasonable doubts and hence the present case is decided in favour of the defence.

21. In the result, the accused persons namely Bipul Ranjan Dey, Raju Dhar, Kamal Paul, Maheshwar Das and Satyabrata Singha are acquitted of the charges of the offence as punishable u/s 452/325/307/380/34 of IPC as leveled against them in connection with this case and they are set at liberty.

22. Their surety is also discharged from the liability of his bail bond.

23. The seized articles, if any, be disposed of as per law after the expiry of period of limitation or period of appeal or revision.

24. This case is thus disposed of on contest.

25. The aggrieved party may prefer appeal against this judgment before the next appellate court.

26. Enter the result in the relevant trial register.

27. Given under the hand and seal of this court on this 22nd day of May, 2024."

15. After a careful analysis of the charges in departmental proceedings and in the criminal case, it is but evident that the delinquents were proceeded on identical charges in both the departmental proceedings and the criminal case in relation to the same incidence of assault on Rifleman Bhojveer Singh Chauhan. 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 14 witnesses and a number of documentary evidence in the nature of exhibits adduced during trial. The informant Randheer Singh Chauhan, brother of the victim Bhojveer Singh Chauhan appeared and deposed as PW-4.

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 14 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. In fact, on the analysis of the statement of the victim Shri Bhojveer Singh Chauhan (PW-3) read with the deposition of PW-7, Sri Purna Kr. Chakma, whom the victim had met soon after, the learned Court found that the victim had not disclosed the names of the accused persons to him though they were posted in the camp of 12th Bn TSR, Chakmaghat. The victim had not informed the adjutant of the 12th Bn TSR or the attending doctor of Teliamura Hospital about the alleged incidence of assault on 13.05.2019. It was only after 8(eight) days of the incidence that on 20.05.2019 the FIR was instituted by his brother Randhir Singh Chouhan. No TSR official had filed any FIR against the accused persons. In such circumstances, when the allegations of a co-employee of the writ petitioners relating to serious charges of assault and criminal trespass have failed to pass the test of proof before a Criminal Court, a major penalty of dismissal from service of the delinquent employees, i.e. the writ petitioners in a departmental proceedings based on same set of charges and evidence would be wholly unjust, unfair and oppressive in the eye of law.

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 petitioners. The writ petitioners had faced criminal prosecution not at the behest of the employer but by a colleague or a third party. However, the employer has been denied the benefit of the services of the writ petitioners on account of such criminal charges for a considerable period of time. Therefore, while reinstating them in service with consequential seniority and benefits of pay revision with notional fixation for the period they remained out of service, unless individual writ petitioners are suffering any other punishment in any departmental proceeding other than the present one, we are of the considered opinion that the writ petitioners 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 petitioners have not been reinstated in service because of an interim order obtained in the present appeal. In those circumstances, the respondents would reinstate the writ

petitioners 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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