

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.394 OF 2009

1. Sri Subash Debbarma,
S/O Sri Jagadish Debbarma,
R/O Village Gouranga Tilla,
P.S. Kalyanpur, Khowai,
District-West Tripura.

2. Sri Puspa Mohan Jamatia,
S/O Sri Debamohan Jamatia
R/O Dewanbari,
P.S. Killa, Udaipur,
District-South Tripura.

..... *Petitioner s*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary to the
Government of Tripura,
Home Department,
Agartala.

2. The Director General of Police,
Government of Tripura,
Agartala.

3. The D.I.G. of Police,
(A.P. & Ops), Government of Tripura,
Agartala, West Tripura.

4. The Commandant,
2nd Bn. Tripura State Rifles,
R.K. Nagar, P.O. Khas Noagaon,
West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the petitioners	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. K. Debbarma, Advocate Ms. B. Chakraborty, Advocate.
For the respondents	:	Mr. G.S. Bhattacharji, Advocate

Date of hearing : 07.01.2015

Date of delivery of
Judgment & order : 21.01.2015

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER

(S.C. Das, J)

By filing this writ petition under *Article 226* of the Constitution of India the petitioners prayed for *setting aside* and/or *quashing* Memorandum dated 24.06.2009(*Annexure-5* to the writ petition) under which the petitioners have been dismissed from service and also challenged Memorandum dated 06.11.2009 (*Annexure-8* to the writ petition) under which appeal preferred by the petitioner before the Deputy Inspector General of Police against the order of disciplinary authority was dismissed and also prayed for reinstating them in the service of Tripura State Rifles(for short, TSR) with all benefits.

2. We have heard learned senior counsel, Mr. S.M. Chakraborty for the petitioners and learned counsel, Mr. G.S. Bhattacharji for the State respondents.

3. A common disciplinary proceedings vide D.P. No.19/2008/TSR-2/Estt/11203-04 dated 12.11.2008(*Annexure-1* to the writ petition) had been initiated against the petitioners by respondent No.4, the disciplinary authority, on the following *articles of charge:-*

"CHARGE-I

No.92020660 Hav(GD) Puspa Mohan Jamatia and No.03100318 Rfn(GD) Subash Debbarma of 'A' Coy, 2nd Bn TSR is charged for gross misconduct to the effect that while they were deployed at Gajapara post unauthorisedly left from the post on 14-09-2008 at about 2035 hrs and returned back at 0230 hrs on 15-09-2008 thus remain absent for 6(six) hours.

CHARGE-II

No.92020660 Hav(GD) Puspa Mohan Jamatia and No.03100318 Rfn(GD) Subash Debbarma during unauthorised absence on 14-09-2008 visited Gajapara village which is most extremist infested area and thereby taking avoidable risk of exposing themselves to extremist violence.

CHARGE-III

No.92020660 Hav(GD) Puspa Mohan Jamatia and No.03100318 Rfn(GD) Subash Debbarma have entered in the house of one Smt. Anita Debbarma w/o Late Pradip Debbarma of Gajapara village on 14-09-2008 night with ill motive which landed in an un-towards incident with civilian people who have gharaoud them and detained them in the village. This has tarnished the image of TSR and earned a bad name of this unit troops."

- 4.** Memorandum dated 12.11.2008 initiating the disciplinary proceedings, along with the articles of charge(Annexure-1), statement of imputation of misconduct or

misbehaviour(*Annexure-2*) in support of *articles of charge*, the list of documents(*Annexure-3*) and the list of witnesses(*Annexure-4*) were duly served upon the petitioners and the petitioners submitted their written statement of defence within ten days as required under the Memo. dated 12.11.2008 and since they denied charge No.III an inquiry was directed and Sri Tapas Deb, Assistant Commandant of TSR was appointed as Inquiry Officer and the Inquiry Officer in the course of inquiry recorded the evidence and thereafter on 27.04.2009 submitted report to the disciplinary authority.

5. The disciplinary authority considering the inquiry report and the materials collected during inquiry on 20.05.2009 issued a provisional dismissal order(*Annexure-2* to the writ petition) and served the same on the petitioners along with a copy of the inquiry report and thereafter the petitioners submitted their written objection against the provisional order and considering that written objection, the disciplinary authority passed final order on 24.06.2009(*Annexure-5* to the writ petition) and dismissed the petitioners from service.

6. Aggrieved, the petitioners preferred appeal to the appellate authority, *i.e.* Deputy Inspector General of Police and the appellate authority by order dated 06.11.2009 upheld the order of the disciplinary authority and dismissed the appeal and hence the

present writ petition is filed by the petitioners challenging the order of the disciplinary authority and the appellate authority.

7. It is contended by the petitioners that while the disciplinary proceeding was initiated against the petitioners, an inquiry was directed appointing Sri Tapas Deb, Assistant Commandant of TSR, but no Presenting Officer was appointed as prescribed under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short, *CCS (CC&A) Rules*] and hence the disciplinary proceeding was vitiated for not following the rules.

7.1. It is also contended by the petitioners that no opportunity was afforded to the petitioners to appoint a defence assistant and that there was no opportunity to cross-examine the witnesses of the prosecution, i.e. the disciplinary authority and no scope was also given to adduce defence evidence.

7.2. Further it is contended that the copy of the inquiry report was not supplied to the petitioners after the inquiry was concluded by the inquiring authority and so the legal rights of the petitioners were curtailed.

7.3. The procedure which was supposed to be followed by the inquiring authority was not followed properly as per rules and so the disciplinary proceeding has been vitiated. No scope was given to the delinquent petitioners to adequately defend themselves

and so the order of punishment inflicted by the disciplinary authority and affirmed by the appellate authority cannot stand in the eye of law and is liable to be interfered and set aside.

8. The respondents contended that a common disciplinary proceeding was initiated for gross misconduct on the part of the petitioners that they being the members of a disciplined force committed gross misconduct by way of going out of the TSR camp without permission from their authority in a desperate and clandestine manner and that the disciplinary proceeding was initiated according to rules and all opportunities as prescribed by rules were afforded to the petitioners to take all defence. The petitioners did not avail the scope of appointing a defence assistant to conduct their case, rather they have taken a stand of conducting their case of their own and that they were given the opportunity to defend themselves in all possible manner.

It is also contended that the inquiry report was not separately sent to the petitioners after it was submitted to the disciplinary authority by the inquiry officer but the copy of the inquiry report was sent along with the provisional order of punishment asking the petitioners to give their response and so the petitioners cannot say that their legal rights were infringed in any manner. Disciplinary proceeding was conducted according to rules and based on proper evidence the petitioners were found guilty of gross misconduct and accordingly punishment has been imposed

which may not be interfered by this Court in exercise of the power of judicial review.

9. As per order of this Court learned counsel of the respondents produced the records of the inquiry proceedings for examination by this Court since all relevant materials including the statements of witnesses were not produced by the petitioners in the writ petition.

9.1. We have meticulously gone through the records of the disciplinary proceedings commonly initiated against both the petitioners.

9.2. On perusal of the records of the disciplinary proceedings we find that on receipt of Memorandum dated 12.11.2008(Memorandum under which the disciplinary proceeding was initiated), both the petitioners submitted their written statements of defence and both the original statements are found at page 73 and 74 of the records wherein the petitioner, Subash Debbarma stated that on 14.09.2008 he along with other petitioner, Puspa Mohan Jamatia went to the house of Smt. Anita Debbarma but he did not misbehave with Anita Debbarma. A false allegation has been made out of conspiracy against him. He also stated that without permission he went out of the camp for which he admits his guilt and he is ready to take punishment for the same. He also stated that he will not do so in future and therefore he sought mercy of the authority since he is the sole bread earner

of the family and that his family members will suffer if he is subjected to any punishment.

9.3. Petitioner, Puspa Mohan Jamatia in his statement of defence stated that he received the Memorandum of *articles of charge* and after examining all those papers, he stated that on 14.09.2008, while he was attached with Gajapara TSR camp, he was absent in the camp for some special reason for which he prayed for mercy. He also stated that whatever punishment may be given for his absence he will abide by it. He further stated that regarding charge No.III that they entered in the house of Smt. Anita Debbarma, he stated that it was a false allegation and that he did not enter into the house of Anita Debbarma with any ill motive and that the charge is baseless.

10. It is an admitted position that both the petitioners were attached with Gajapara TSR camp and at that time petitioner, Subash Debbarma was working as Rifleman and petitioner, Puspa Mohan Jamatia was working as a Havildar of TSR.

11. It is submitted by learned senior counsel, Mr. Chakraborty that the disciplinary authority did not appoint any presenting officer and the inquiry officer himself discharged the duties of a presenting officer and so the disciplinary proceeding has been vitiated.

11.1. Learned counsel, Mr. Bhattacharji for the respondents submitted that there is no legal compulsion that in each and every

case a presenting officer should be appointed. The inquiry officer can himself conduct the inquiry within the ambit of the Memorandum under which the proceeding was initiated. So there is nothing wrong in not appointing a presenting officer.

11.2. It is an admitted position that no presenting officer was appointed by the disciplinary authority when the inquiry was initiated and Sri Tapas Deb, Assistant Commandant was appointed as the inquiry officer.

11.3. Rule 14(5)(c) of the CCS(CC&A) Rules prescribes thus:-

"Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

11.4. The above provision makes it abundantly clear that appointment of a presenting officer is optional to the disciplinary authority and there is nothing mandatory that unless a presenting officer is appointed the inquiry proceedings shall vitiate.

11.5. Sub-rule(19) of Rule 14 also makes it further clear that appointment of a presenting officer to present the case on behalf of the disciplinary authority is absolutely optional and there is nothing mandatory that a presenting officer must be appointed and otherwise the disciplinary proceeding would be vitiated.

11.6. Sub-rule(19) of Rule 14 of the CCS(CC&A) Rules reads as follows:-

"The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written briefs of their respective case, if they so desire."

11.7. In the present disciplinary proceedings no presenting officer was appointed by the disciplinary authority. Sri Tapas Deb, Assistant Commandant was appointed as Inquiry Officer and he was asked to inquire into the charges as per Memo. dated 12.11.2008.

11.8. *Annexure-1* to the Memo., dated 12.11.2008 is the *articles of charge*, *Annexure-2* is the Memorandum of imputation, *Annexure-3* is the list of documents and *Annexure-4* is the list of witnesses. On examination of the records of the disciplinary proceedings we find that the inquiry officer conducted the disciplinary proceedings within the ambit of Memo. dated 12.11.2008 and only examined those witnesses listed by the disciplinary authority in *Annexure-4* to the Memo. and there was no initiative taken by the inquiry officer to put in evidence or record anything new and therefore we find nothing to arrive at a conclusion that the inquiry officer did not conduct the inquiry independently and/or conducted the inquiry in a biased or partisan manner.

11.9. Further on perusal of the records of the inquiry proceedings we find that after conclusion of the inquiry, the inquiry officer submitted his report to the disciplinary authority and thereafter the disciplinary authority passed a provisional order of punishment and communicated it to the petitioners along with a copy of the inquiry report and thereafter the petitioners submitted their representation against the provisional order proposing dismissal from service. Nowhere in their said representation, the petitioners even make a whisper that they were prejudiced in any manner for any act of the inquiry officer and/or for not appointing a present officer. While no allegation was raised against the inquiry officer at any point of time of the inquiry, the argument that non-appointment of a presenting officer vitiated the proceedings has no leg to stand.

12. The next argument advanced by learned senior counsel, Mr. Chakraborty is that the petitioners were deprived of the opportunity of engaging a defence assistant to conduct their case and hence the disciplinary proceedings vitiated.

12.1. Learned counsel, Mr. Bhattacharji for the respondents submitted that the petitioners declined to avail the opportunity of engaging a defence assistant of their choice, rather they took the opportunity of conducting their case by themselves and so there is no point of any deprivation of the rights of the petitioners.

12.2. On perusal of the records of the disciplinary proceedings, we find that the inquiring authority and the disciplinary authority maintained day to day order sheet in the course of conducting the inquiry/proceedings. Order dated 21.01.2009 shows that the petitioners declined to engage any defence assistant and they stated that they will defend their case by themselves as no defence assistant was found by them. On perusal of the records we also find at page 82 and 83 of the records of the disciplinary proceedings that both the petitioners in writing stated that they did not get any defence assistant to conduct the case on their behalf and that they agreed to defend their case by themselves. Both the statements were dated on 21.01.2009.

12.3. It is, therefore evident that the petitioners declined to avail the services of any defence assistant and that they voluntarily took the responsibility of conducting the proceedings by themselves without any assistance of a defence assistant. The contention raised in the writ petition, therefore is baseless and contrary to record. It is clear that the petitioners have taken false plea that the opportunity of defence assistant was not provided to them.

13. Learned senior counsel, Mr. Chakraborty also submitted that no scope of cross-examination of the witnesses of prosecution was given and no scope of adducing of defence evidence was also given to the petitioners and so the disciplinary proceedings vitiated.

13.1. Learned counsel, Mr. Bhattacharji for the respondents has submitted that all scopes of cross-examination of the witnesses were afforded to the petitioners and it is a false plea taken by the petitioners.

13.2. On perusal of the records of the disciplinary proceedings, i.e. the order sheets, we find in the order dated 04.02.2009 that on that day 11 witnesses were examined and both the charged officers declined to cross-examine the witnesses. Order dated 12.02.2009 shows that on that day six witnesses were examined and the petitioners declined to cross-examine the witnesses. Order dated 07.04.2009 shows that on that day two witnesses were examined and the petitioners declined to cross-examine the witnesses.

13.3. The statements of witnesses recorded by the inquiry officer in the course of conducting the disciplinary proceedings are found at page 91 to 109. On perusal of the statements, we find that on the date of examination of those witnesses both the petitioners were personally present and they signed all the statements of witnesses recorded in the course of inquiry. The inquiry officer clearly recorded that the cross-examination was allowed but both the charged officers declined to cross-examine the witnesses. It is therefore misleading rather a false statement, the petitioners made that they were not afforded any opportunity to cross-examine the witnesses. They have signed all the statements of witnesses and received copies of the statements. Even they did not enclose those

copies of statements along with their writ petition to show fairness on their part. Therefore, this argument of learned senior counsel of the petitioners has no merit at all and we have no hesitation to reject such baseless argument of the learned counsel of the petitioner.

13.4. Order sheet maintained in the disciplinary proceedings, further shows that after recording of evidence of the disciplinary authority was over, the petitioners were asked to submit their final defence statement and they were also asked to name any additional document or witness in their defence. Order dated 14.04.2009 clearly reflects it. Pursuant to that order, the petitioners submitted their final defence statement in writing which are found at page 110 and 111 of the record. The petitioner, Puspa Mohan Jamatia in his final statement of defence stated that he has earlier also submitted his defence statement and that on 14.08.2008 he went out of the camp without permission for which he prayed for mercy and further stated that charge No.3 that they entered into the house of Anita Debbarma with an ulterior motive was false. Smti. Anita Debbarma initiated a false allegation out of conspiracy. The petitioner, Subash Debbarma in his final statement of defence stated that on 14.08.2008 he went out of the TSR camp without permission and for that fault he was ready to accept any punishment but he was not involved in any offence and the allegation made by Anita Debbarma was quite false and it was made out of conspiracy.

13.5. Even in their final defence statements, the petitioners did not raise any point that they were willing to either examine themselves as witnesses or to adduce any other evidence in support of their defence. The order sheets and the final defence statements therefore are clear that the petitioners never made any approach to adduce any defence evidence by way of examining themselves or by way of examining other witnesses and in the writ petition they have taken a false plea that they have not been given opportunity of adducing any defence evidence.

14. Learned senior counsel, Mr. Chakraborty further submitted in the course of hearing that after the inquiry was completed by the inquiry officer, the report was submitted to the disciplinary authority but the inquiry officer sent no such copy of the report to the petitioners for their knowledge and so the rights of the petitioners were infringed.

14.1. Learned counsel, Mr. Bhattacharji has submitted that after the inquiry was concluded no copy of report was sent to the petitioners by the inquiry officer but after considering the inquiry report when the disciplinary authority passed a provisional order of punishment, that provisional order of punishment along with the inquiry report were sent to the petitioners. That statement has been clearly made in para 10 of the counter affidavit which has not been disputed by the petitioners by filing any rejoinder affidavit.

14.2. *Rule 14 of the CCS(CC&A) Rules* does not prescribe any provision that the inquiry officer was under compulsion to send a copy of the inquiry report to the delinquent. According to the provision of Sub-rule(23) of Rule 14 of the Rules, if the inquiry is conducted by the inquiring authority other than the disciplinary authority, the inquiring authority was supposed to submit the report to the disciplinary authority in the manner as prescribed in the said rules. There is no stipulation that a copy of the report, the inquiring authority and/or the inquiry officer was bound to send to the charged officer.

14.3. Sub-rule(2) of Rule 15 of the *CCS(CC&A) Rules* prescribes thus:-

"2. The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

14.4. The above Rule stipulates that the disciplinary authority shall forward a copy of the report of the inquiry to the Government

servant concerned along with the action taken by the disciplinary authority.

14.5. Here in this case, the disciplinary authority, *i.e.* the respondent No.4 after considering the inquiry report, passed a provisional order of punishment and sent the provisional order to the petitioners, *i.e.* the delinquents along with a copy of the inquiry report. Therefore, we find no violation of any provision of the relevant law and this argument also merits no consideration at all.

15. It is submitted by learned senior counsel, Mr. Chakraborty that the punishment given by the disciplinary authority is not based on legal evidence and that the punishment is disproportionate to the offence alleged and on that ground alone this Court is vested with plenary power to interfere in the order of punishment.

15.1. Learned counsel, Mr. Bhattacharji for the respondents submitted that there is enough evidence on record on the basis of which the decision has been taken by the disciplinary authority and no interference is called for.

15.2. On perusal of the records of the disciplinary proceedings, we find that a preliminary enquiry was conducted before the disciplinary proceeding was initiated against the petitioners and the statements of all the witnesses who have been examined at the time of enquiry were recorded but those statements have not been exhibited. The disciplinary proceedings

stand on the statement of witnesses recorded by the inquiry officer in presence of both the delinquents, *i.e.* the petitioners.

15.3. We have gone through the statements of those 19 witnesses. Out of them 13 witnesses were TSR personnel and they were colleagues of the petitioners. Six witnesses were residents of Gajapara where the alleged incident of charge No.III occurred. So, the evidence were collected both for un-authorized absence from the camp as well for alleged misconduct in the house of Anita Debbarma. It is clearly admitted by both the delinquents/petitioners that they were unauthorized absent from the TSR camp on the alleged date and time.

Let us now have a glimpse to the evidence recorded during inquiry.

The statement of witness Rifleman Bijay Kumar Noatia shows that on 14.09.2008 at about 8.30 pm he was on duty in the southern side sentry post of Gajapara TSR camp from 8.30 pm to 10.30 pm and within ten minutes of his on duty, Havildar Puspa Mohan Jamnatia and Rifleman Subash Debbarma went out of the TSR camp defying his protest and left towards Gajapara Basti. They told that they will come back soon.

The statement of witness Havildar Bhabesh Debbarma shows that on 14.09.2009 at about 9.30 pm they got an information that Puspa Mohan Jamatia was detained at Gajapara Basti and at once with the permission of the camp in-charge, a "*stand to call*" of all TSR personnel of the camp was given and it

was found that Havildar Puspa Mohan Jamatia and Rifleman Subash Debbarma were absent from the camp. Thereafter, they went to Gajapara and learnt that Subash Debbarma entered into the house of Anita Debbarma of Gajapara and tried to commit illicit act and the people of the locality *gherowed* them and Subash Debbarma somehow fled away but Puspa Mohan Jamatia was detained by the local people and thereafter with a negotiation with local elders Puspa Mohan Jamatia was brought back.

The witness, Rifleman Susanda Reang stated that on 14.09.2008 at Gajapara TSR camp he was on guard duty and at about 10.30 pm a "*stand to call*" was given and it was found that Subash Debbarma and Puspa Mohan Jamatia were absent from the camp.

The witness LNK Bikash Chandra Roy in his statement stated that on 14.09.2008 he was in the post of guard commander of Gajapra camp and at about 9.30 pm/9.45 pm, one local man came to the camp and informed that Puspa Mohan Jamatia was detained in the village and Subash Debbarma fled away. He at once reported the incident to camp in-charge and a "*stand to call*" was given and it was found that Subash Debbarma and Puspa Mohan Jamatia were absent from the camp.

The witness, Rifleman Biralal Jamatia in his statement stated that on 14.09.2009 he was working at Gajapara TSR camp and a "*stand to call*" was given and it was found that Subash Debbarma and Puspa Mohan Jamatia were absent from the camp.

The witness, Rifleman Mela Chandra Debbarma stated that on 14.09.2008 he was on guard duty at Gajapara camp and at about 10/10.30 pm some people came to the camp and informed that Puspa Mohan was detained at Gajapra and at that time a "*stand to call*" was given in the camp wherein it was found that Subash Debbarma and Puspa Mohan Jamatia were absent from the camp.

The witness Litan Roy stated that on 14.09.2008 he was on duty in the front sentry guard and at about 9.30 pm some villagers came to the camp and reported that Puspa Mohan was detained in the village and a "*stand to call*" was given in the camp and it was found that Subash Debbarma and Puspa Mohan Jamatia were absent from the camp.

The witnesses, Rifleman Shibu Prasad Goswami, Rifleman Laxman Singh Bisht, Rifleman Jayanta Sarkar and Rifleman Siraj Miah also stated in the same tune.

The witness Rifleman Rati Ranjan Tripura stated that on 14.09.2008 he was also in guard duty in the TSR camp at Gajapara and at about 9.30 pm a "*stand to call*" was given in the camp wherein it was found that Subash Debbarma and Puspa Mohan Jamatia were absent. They were subsequently recovered from the village and were produced to the TSR camp.

The witness, Rifleman Sanjay Kumar Mahapatra also stated in the same tune.

15.4. Now let us see the statement of the civilian witnesses those who were residents of Gajapara where both the delinquents, *i.e* the petitioners went and it is alleged that they entered in the house of Anita Debbarma and alleged to have committed illicit act with Anita Debbarma.

The witness Smt. Anita Debbarma in her statement stated that on 14.09.2008, a Sunday the jawans of Gajapara camp, namely Subash Debbarma and Puspa Mohan Jamatia came to her house at about 9.00 pm and asked her as to whether she had country made liquor. When she told that she had no country made liquor they asked her whether she was ready to sell any cock. When she told that she had no cock to sell Subash Debbarma asked her for a glass of water. After taking the water he was standing in the room and at that time Puspa Mohan Jamatia was standing outside the house. Thereafter Subash forcefully started scuffling with her and tried to commit illicit act with her. Her aunt Nabalaxmi Debbarma in the meantime came to her house and on seeing her Subash fled away. Puspa Mohan was detained by the local people. Regarding the incident she instituted a criminal case in the P.S.

The witness, Basuram Debbarma stated that he was the village headman of Gajapara village. On 14.09.2008 he heard hue and cry in his neighbouring house and went there. He found a person of TSR camp, namely Puspa Mohan Jamatia was standing and thereafter from Anita Debbarma he came to learn that Subash Debbarma forcefully tried to commit illicit act with her and

thereafter fled away. Subsequently, with the consent of Anita they mitigated the incident.

The witness, Nahush Debbarma stated that on 14.09.2008 at about 9.30 pm hearing hue and cry towards the house of Anita Debbarma he went to that house. Reaching in that house he learnt that Subash Debbarma, a TSR jawan allegedly tried to commit illicit act with Anita Debbarma. Other TSR jawan, namely Puspa Mohan Jamatia was present there and he questioned Puspa Mohan Jamatia about the incident. Thereafter some officers of TSR came from Gajapara camp and the matter was mitigated in the presence of village headmen and the chairman, etc.

The witness, Bijoy Debbarma stated that he was the village chairman of Tuisamungkari village committee. On 14.09.2008 hearing hue and cry towards the house of Anita Debbarma he went there and found a TSR jawan, namely Puspa Mohan Jamatia was detained by the people and he came to learn that another jawan Subash Debbarma tried to commit illicit act with Anita Debbarma and when Nabalaxmi arrived at the spot Subash Debbarma fled away. Subsequent thereto with the consent of Anita Debbarma the matter was compromised and they signed the compromise letter.

The witness, Smti. Nabalaxmi Debbarma in her statement stated that on 14.09.2008 at about 9.30 pm she went to the house of Anita Debbarma to return a cattle head. She called with the name of Anita but was getting no response. Thereafter she

entered in the hut of Anita and heard the sound. When she asked Anita she told that one TSR jawan namely Subash Debbarma gagged her mouth with a cloth and was trying to commit illicit act with her and therefore she could not give response to her call. Thereafter, on her cry neighbours came. At the time of occurrence Puspa Mohan Jamatia was standing outside. Subsequently, the incident was compromised.

15.5. The above evidence recorded during inquiry makes it abundantly clear that both the petitioners went out of the camp at night time without any permission of the camp in-charge desperately and clandestinely. They went to Gajapara village and entered in the house of Anita Debbarma and asked for supplying them country made liquor and when Anita told that country made liquor was not available, they asked for a cock but when Anita declined that she had no cock, Puspa Mohan went outside the hut and Subash Debbarma entered in the hut with a pretext of a glass of water and Anita offered him a glass of water and after taking the glass of water Subash Debbarma caught Anita, scuffled with her, gagged her mouth and tried to commit illicit act. It is, therefore, apparent from the evidence collected during inquiry that both the delinquents went out of the TSR camp unauthorizedly, desperately and clandestinely without permission of the camp in-charge and though it is stated that Puspa Mohan Jamatia was standing outside the hut but he did not restrain Subash Debbarma in committing the illicit act, rather he was standing outside the hut and was detained by the villagers but Subash Debbarma somehow fled away from the

spot. Immediately, it was reported to the camp. A roll call was given in the camp and all the TSR jawans who are colleagues of the petitioners stated that both the petitioners were absent from the camp on that relevant point of time and it is also in the evidence on record that both the TSR jawans, i.e. Puspa Mohan Jamatia and Subash Debbarma were recovered from the village. It is also in the evidence on record that a criminal case was instituted by Anita Debbarma and the case was subsequently compromised at the instance of village headmen, chairman of the village, etc. Such compromise does not absolve the gravity of offence in any manner. Therefore, there is overwhelming evidence to arrive at a conclusion by the disciplinary authority for the alleged misconduct on the part of the petitioners.

16. This Court is not required to sit as an appellate authority and to re-appreciate the evidence with meticulous scrutiny as is done in criminal cases. This Court is also not required to substitute its own view over the view taken by the disciplinary authority unless it is found that the decision taken by the disciplinary authority is based on no evidence or that the failure of justice has occasioned because of any other reasons apparent on the face of the record.

The power of judicial review of the decision of a domestic Tribunal is very limited. Such judicial review is possible only when the principles of natural justice has been violated i.e. the opportunities, which ought to be given to the delinquent, as per

rules, were not given or that the decision of the domestic Tribunal was based on no evidence and that the punishment inflicted is shocking to the judicial conscience. If there is no glaring violation of principles of natural justice and there is some evidence to support the decision taken by the disciplinary authority, the Court or Tribunal cannot sit as a matter of appeal to re-appreciate the evidence and to substitute the finding of the disciplinary authority with its own findings.

17. In the present case, the allegation is that both the delinquent petitioners being members of a disciplined force while was posted in a TSR camp located in an extremist infested area desperately and clandestinely went out of the camp without permission of the camp in-charge and entered into the village and in course thereof one of them alleged to have molested a village woman and the other was standing outside the house who was detained by the villagers and subsequently they were recovered by the TSR officials. Such act on the part of a member of the disciplined force is highly detrimental to the conduct, discipline and morale of the force and considering all these aspects while the disciplinary authority has taken a stand, we think this Court shall not take a contrary view in the matter of punishment.

18. Learned senior counsel, Mr. Chakraborty has contended that the allegation against the petitioners cannot be termed as a serious misconduct.

18.1. The word, '*misconduct*' has not been defined in the Conduct Rules. The *Tripura Civil Service (Conduct) Rules, 1988* prescribes in Rule 3 that:-

"Every Government employee shall at all times –

- (i) maintain absolute integrity;*
- (ii) maintain devotion to duty and*
- (iii) Do nothing which is unbecoming of a Government employee."*

18.2. The same language is used in other Civil Service Conduct Rules including the Central Civil Service Conduct Rules. Therefore, the word, '*misconduct*' is a generic term and means "*to conduct amiss to mismanage, wrong or improper conduct; bad behaviour; unlawful behaviour or conduct*". It includes *malfeasance, misdemeanor, delinquency and offence*. It is the intentional doing of something which doer knows to be wrong or which he does recklessly not caring what the result may be.

18.3. In ***Black's Law Dictionary***, the word, "*misconduct*" is defined as a transgression of some established and definite rule of action, a *forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, a misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness*.

18.4. A Government servant is governed under a code of conduct. The importance of his conduct and character is the prime essential in relating to the public dealings. Contrary to this, the *misconduct, inefficiency, negligence, indiscipline, corruption, etc.* on the part of the Government servants shaken the position of the Government in the smooth running of the administration. The *misconduct* is, therefore, a wide expression which is not defined in any enactment, but it can be inferred where there are gross intentional violation of law and acts which are prohibited by law. What amounts to *misconduct* is a matter which depends in the circumstances of each and every case. A number of decisions of various Courts in India have expressed the term '*misconduct*' in different aspects of the facts and circumstances. In the given facts of this case, while the conduct of the petitioners is detrimental to the discharge of duties of a public servant of his status, definitely, it was not a proper conduct on the part of the petitioners in course of his service. Being responsible officers of the Department, they were supposed to obey the rules and discipline of the Department, but their conduct was contrary to what they ought to be.

18.5. The expression, '*conduct*' has a second meaning which includes his character, discipline, integrity, decency, efficiency to duty, a conduct befitting to the position and morality etc. in the matter of private and public employment.

18.6. In the case of ***Union of India v. J. Ahmed*** reported in ***1978 SC 1028***, the Apex Court, while summarizing the meaning of “misconduct”, held—

“(a) Blameworthy conduct of Government servant;

(b) Lack of efficiency, lack of intelligence and farsightedness and indecisiveness of the Government servant;

(c) Lack of devotion of duty;

(d) Gross or habitual negligence in performance of duties.”

18.7. P. Ramanath Aiyars law Lexicon defines ‘misconduct’ thus:-

“The term “misconduct” implies a wrongful intention, and not a mere error of judgment. “Misconduct” is not necessarily the same thing as conduct involving moral turpitude. The word “misconduct” is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is construed. “Misconduct” literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness an abuse of discretion under an indefinite law. Misconduct is a

forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

18.8. Thus, it could be seen that the word, "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct, but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

18.9. We may now summarize what amounts to *misconduct*, thus:-

(i) An act or conduct prejudicial or likely to be prejudicial to the interest or reputation of the master.

(ii) An act or conduct inconsistent or incompatible with the due or faithful discharge of his duty to his master.

- (iii) An act or conduct making it unsafe for the employer to retain him in service.*
- (iv) An act or conduct of the employee so grossly immoral that he cannot be trusted;*
- (v) An act or conduct of the employee which renders it difficult to rely on the faithfulness of the employee.*
- (vi) An act or conduct of the employee opening before him temptations for not discharging his duties properly;*
- (vii) An abusive act or an act disturbing the peace at the place of employment;*
- (viii) Insulting or in subordination calculated to be incompatible with the continuance of the relationship of the master and servant;*
- (ix) Habitual negligence in respect of his duties; and*
- (x) An act of neglect, even though isolated, which tends to cause serious consequences.*
- (xi) An attitude of indifference to duty.*

All the aforesaid acts/omissions amounts to misconduct and would warrant dismissal of an employee from service.

18.10. Under the given facts and circumstances, we cannot agree with the submission of learned senior counsel, Mr. Chakraborty. The alleged act of the petitioners being members of

disciplined force telling upon their conduct highly detrimental to the services of a disciplined force and therefore while such misconduct has been proved with overwhelming evidence on record we find no justification at all to interfere in the punishment awarded by the disciplinary authority. The punishment order is well reasoned and based on evidence and materials on record and therefore we find no reason to interfere in the order of punishment.

19. Before parting with the case record we are constrained to observe that the petitioners are not in clean hands while approaching this Court. They, suppressed the material facts in the writ petition, deliberately. They also suppressed the fact that they declined to engage any defence assistant and declined to cross-examine the witnesses. For such false statement they cannot get any relief in the writ case.

20. The writ petition, therefore is dismissed with cost of ₹2,000/-(rupees two thousand).

21. Return the records of disciplinary proceedings to the counsel of the State respondents.

JUDGE

CHIEF JUSTICE

