

Tripura High Court

Md. Rafik Uddin vs The State Of Tripura on 23 May, 2022

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HIGH COURT OF TRIPURA

AGARTALA

WA No. 65 of 2018

Md. Rafik Uddin,
son of Taka Miah, resident of North Charilam,
P.S. Bishalgarh, District- Sepahijala, Tripura.

----- Appellant(s)

Versus

1. The State of Tripura,
represented by the Commissioner/Secretary,
Department of Home, Government of Tripura,
New Secretariat, New Capital Complex, Agartala,
West Tripura- 799006.
2. The Inspector General of Police (TSR & OPS),
Police Headquarter, Tripura, Agartala-799001.
3. The Deputy Inspector General of Police,
(Adm. & Trg), A.D. Nagar, Agartala.
4. The Commandant, 7 Bn. TSR (IR-VI),
Jampuijala, Headquarter, Sepahijala, Tripura, 799102.
5. The Director General of Police,
Police Headquarter, Agartala, Tripura-799001.

----- Respondent(s)

For Appellant(s) : Mr. P.K. Biswas, Sr. Advocate.

Mr. P. Majumder, Advocate.

For Respondent(s)	:	Mr. D. Sharma, Addl. G.A.
Date of Hearing	:	23rd March, 2022.
Date of Pronouncement	:	23rd May, 2022.
Whether fit for reporting	:	YES

_B_E_F_O_R_E_

HONBLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY

HONBLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

This appeal arises from the judgment and order dated 10.08.2018 passed by the learned Single Judge in WP(C) No.456 of 2014 whereby, petition filed by the appellant under Article 226 of the Constitution seeking WA No. 65/2018 Page - 2 of 23 reinstatement in service in view of his acquittal from the criminal case was dismissed.

[2] Appellant was a Rifleman in the 7th Bn. of Tripura State Rifles (TSR for short). In the year 2004, when he was posted in the 7th Bn., TSR in its Tripura Engineering College Camp at Jirania, a complaint was lodged against him on 09.09.2004 by Subedar Bhanu Debnath of the 9th Bn., TSR with the Officer In-Charge of Jirania Police Station alleging, inter alia that on 04.09.2004, Rifleman, Rakesh Roy informed him that two magazines of SLR along with 40 rounds of ammunitions were stolen from his custody. Despite search, the ammunition could not be recovered. According to the complainant, on 08.09.2004, appellant, Rafik Uddin told Rakesh Roy that he would be able to bring two magazines with 40 rounds of ammunitions from Bangladesh, if he was paid a sum of Rs.20,000/-. After negotiation they settled the amount at Rs.15,000/-. Rakesh Roy allegedly paid Rs.14,000/- to the appellant in the morning of 09.09.2004 assuring that balance amount of Rs.1,000/- would be paid by him to the appellant after recovery and delivery of the ammunitions to him. Appellant assured Rakesh Roy that he would bring the same by 5 O'clock in the afternoon of 09.09.2004. [3] Based on the said FIR of Subedar Bhanu Debnath, Jirania Police Station case No.50/2004 under Section 380 and 411 IPC and Section 25(1)(a) of the Arms Act was registered against the appellant. The Investigating Officer along with his accompanying police staff set up an ambush and the appellant was apprehended from near the auto-stand WA No. 65/2018 Page - 3 of 23 outside Tripura Engineering College Campus at Jirania. Allegedly, two magazines with 36 rounds of ammunitions were recovered from his possession. He was arrested and brought to the police station where he was subjected to interrogation. After interrogation, he made a disclosure statement leading to recovery of a sum of Rs.12,000/- in cash from his home.

[4] After investigation, a charge-sheet was laid against the appellant. His case was tried by the learned Additional Chief Judicial Magistrate and after full trial, the appellant was convicted and sentenced for having committed offence punishable under Section 411 IPC and Section 25(1)(a) of the Arms Act by judgment and order dated 28.11.2006 passed by the learned Additional Chief Judicial Magistrate, West Tripura in case No. GR 586 of 2004.

[5] In appeal, the Sessions Judge, West Tripura, Agartala, by his judgment and order dated 19.05.2007 in Criminal Appeal No.55(4) of 2006 held that none of the charges was proved against the appellant. Accordingly, the learned Sessions Judge set aside his conviction and sentence and directed for refund of the currency allegedly seized from his possession to the appellant. The State preferred appeal against the judgment of his acquittal in the High Court. This Court by judgment and order dated 02.06.2014 passed in Criminal Appeal No.70/2008 dismissed the said appeal against acquittal.

WA No. 65/2018 Page - 4 of 23 [6] Prior to that, after the FIR was lodged and investigation was in progress, the Commandant, 7th Bn., TSR by memorandum dated 7th March, 2005 initiated Departmental Proceedings against the appellant. The charges set out against the appellant were in the following terms:

"I. Rfn Rafik Uddin is charged for gross misconduct for maintaining links with Bangladesh Arms smugglers as disclosed confidentially by him to some other TSR personnel on 08.09.04 even with the assurance to procure 02(two) SLR Magazines and 40 live SLR rounds to replenish 02(two) Magazines with 40 rounds of SLR

belonging to No.01070573 Rfn (GD) Rakesh Roy of C/7th Bn TSR which were found lost/stolen in the intervening night of 03/04 September 2004 from the barrack of T.E.C Complex, II. Rfn Rafik Uddin is charged for gross misconduct in that he had compelled No.01070573 Rfn (GD) Rakesh Roy of C/7th Bn TSR to pay Rs.14,000/- Rupees fourteen thousand only) on 09.09.04 morning in their barrack as a secret deal for return of the 02(two) SLR Magazines and 40 live 7.62 mm SLR rounds which he had assured to do so by utilizing his links with Arms and Ammunition smugglers of Bangladesh.

III. Rfn Rafik Uddin is charged for gross misconduct in that he had threatened No.01070573 Rfn (GD) Rakesh Roy of C/7 th Bn TSR, in course of secret deal in their barrack with dire consequences even to the extent of endangering his life on 08.09.04 evening if the secret deal between themselves regarding payment and return of arms and ammunition was leaked out to others.

IV. Rfn Rafik Uddin is charged for misconduct in that on 09.09.04 he was permitted out-pass on his request by Comp I/C from 0945 hrs to 1700 hrs but he did not report back in time for duty without any authority.

V. Rfn Rafik Uddin is charged for gross misconduct in that while not on duty on 09.09.04 at about 1725 hrs, he was found with illegal possession of 36 live rounds loaded in the 02(two) SLR Magazines at Jirania College Chowmohani. These all acts are prejudicial to good order and discipline of the Rifles and attract the provision of 12(1) of Tripura State Rifles Act, 1983."

[7] After conducting a disciplinary inquiry, Shri Bimalangshu Das, Deputy Commandant, 7th Bn., TSR (I.R.-VI) submitted enquiry report on 17.03.2006. Appellant was held to be guilty of Article of Charge No.V. With regard to the said Article of Charge (charge No.V), the Inquiry Officer in his report stated as under:

WA No. 65/2018 Page - 5 of 23 "During enquiry from the statement of Prosecution Witnesses the article of Charge No.V has been proved against Rfn Rafik Uddin that 36 live rounds with 2 Nos. of SLR magazines were recovered by Officer of Jirania Police Station, on 09-09-04 at about 1600 hrs/1615 hrs in presence of witnesses from the possession of Rfn Rafik Uddin. He was also not able to show any valid document for possessing of 36 rounds of ammunitions and 2 magazines of SLR and as such he was prosecuted in c/w Jirania P.S. case No.50/2004 U/S 380/411 IPC read with section 25(1)(a) of the Arms Act. The case is now subjudice"

[8] The Inquiry Officer held that the other four charges could not be proved against the appellant.

[9] On 28.11.2006, the Trial Court (Addl. CJM, Agartala) found the appellant guilty of offence punishable under Sections 411 IPC and 25(1)(a) of the Arms Act and he was sentenced for those offences. On 21.02.2007, the Disciplinary Authority relying on the enquiry report and the conviction and sentence awarded to the appellant in the criminal case, issued provisional punishment order to

the appellant asking him to show reasons as to why the penalty of dismissal from service shall not be imposed on him. Thereafter, the Disciplinary Authority after consideration of the reply of the appellant dismissed him from service by issuing the final order dated 24.03.2007.

[10] Meanwhile, the appellant challenged the judgment and order of his conviction and sentence passed by the Trial Court in appeal before the Sessions Judge of West Tripura and as stated, the learned Sessions Judge by his judgment and order dated 19.05.2007 in Criminal Appeal No.55/2006 set aside the judgment of the Trial Court and acquitted the appellant. WA No. 65/2018 Page - 6 of 23 [11] In view of his acquittal from Court, appellant preferred departmental appeal before the Deputy Inspector General of Police. The Deputy Inspector General of Police, AP (Administration and Training) by order dated 11.12.2007 rejected the said appeal on the ground that the appellate Court acquitted him on technical grounds and he preferred the departmental appeal beyond the limitation period of 30 days provided under Sub-Rule (3) of Rule 46 of the TSR (Discipline, Control, Service Conditions etc.) Rules, 1986. The appellant filed another appeal on 10.01.2008 to the Inspector General of Police (TSR and OPS), Tripura which was also rejected by the Inspector General of Police by his order dated 14.02.2008. [12] The appellant then approached this Court by filing WP(C) No.456/2014 seeking following reliefs:

"(I) To issue RULE NISI calling upon the respondents to show cause as to why a writ of certiorari should not be issued quashing, cancelling and/or setting aside the Final Order of punishment dated 24/03/2007(Annexure-2) passed in D.P. 03/2005 by the Commandant, 7th Bn TSR (IR-VI) dismissing the petitioner from service and also for treating the period of suspension as dies-non; and also for quashing/cancelling and/or setting aside the order dated 11/12/2007 passed by the DIG of police AP (Adm & Trg) rejecting the appeal and also for quashing/cancelling and/or setting aside Order of dismissal passed by the Commandant dated 24/3/2007 and also for quashing/cancelling and/or setting aside the order dated 14/02/2008 passed by the IGP (TSR & OPs) affirming the final order of dismissal and rejecting the appeal of the petitioner.

(II) As to why a writ of mandamus should not be issued directing the respondents to reinstate the petitioner in service and to pay him all pecuniary and other service benefits treating him as if he was not dismissed from service.

(III) As to why any other writ or writs or direction should not be issued by this Honble Court to grant complete and adequate relief to the petitioner."

[13] The appellant challenged the penalty of his dismissal from service in the writ petition mainly on the following grounds: WA No. 65/2018 Page - 7 of 23 [i] The charge on the basis of which he was dismissed from service and the charge which was tried by the Court were same and the vital witnesses who were examined in departmental proceedings were the same witnesses who were examined during the trial of the case in Court.

[ii] The disciplinary authority did not act independent of the criminal case. Penalty of dismissal from service was ordered on the basis of his conviction in the criminal case.

[iii] Since the departmental inquiry and the criminal case was instituted against the petitioner based on the same set of facts and evidence, in view of his acquittal in the criminal case by the appellate Court, the penalty imposed on him in the Disciplinary Proceeding was not sustainable.

[14] Counsel appearing for the petitioner relied on the following judgments of the Apex Court in the course of his arguments before the learned Single Judge:

(i) G.M. Tank vs. State of Gujarat and others reported in (2006) 5 SCC 446.

(ii) Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC 679.

[15] Appearing for the petitioner his counsel argued before the learned Single Judge that the Disciplinary Authority for imposing penalty of dismissal on the petitioner was persuaded by the judgment and order of WA No. 65/2018 Page - 8 of 23 conviction and sentence dated 28.11.2006 passed by the Trial Court in case No. G.R. 586 of 2004 which was subsequently set aside in appeal by the learned Sessions Judge, West Tripura, Agartala in Criminal Appeal No. 55(a) of 2006 finding the petitioner not guilty and acquitting him of the charges. Even the State-appeal filed against the acquittal order passed by the learned Sessions Judge was also dismissed by this High Court by order dated 02.06.2014 in Criminal Appeal 70 of 2008. Counsel, therefore, contended before the learned Single Judge that in view of these circumstances, penalty of dismissal from service imposed on the petitioner was not sustainable and the same deserved to be quashed and set aside. [16] By filing counter affidavit, the State-respondents pleaded before the learned Single Judge that the entire departmental inquiry was conducted against the appellant (writ petitioner) in accordance with Rule 14 of the CCS (CCA) Rules, 1965 and the standard of proof required in a departmental inquiry is preponderance of probability which is completely different from the standard of proof required in a criminal trial. Counsel contended that acquittal of the petitioner in the criminal case would not absolve him from the charge of his misconduct in the discharge of his official duty and the finding of the Inquiry Officer holding the petitioner guilty in reference to charge No.V was based on evidence which was produced in the course of the disciplinary inquiry and in absence of any perversity in the finding of the Inquiry Officer, mere acquittal of the appellant in a criminal case would not come to his rescue. WA No. 65/2018 Page - 9 of 23 [17] State-counsel argued before the learned Single Judge that fair opportunity of hearing was provided to the appellant (writ petitioner) during the departmental inquiry and no allegation was brought by the appellant that the principles of natural justice were not followed during such inquiry against him. The State-counsel argued that this Court cannot sit on the findings of the Inquiry Authority as well as the action taken by the Disciplinary Authority as an appellate authority. This Court can interfere with the findings of the Disciplinary Authority only if it is shown that there was violation of the principles of natural justice in the course of departmental inquiry or the action taken by the Disciplinary Authority, if allowed to sustain, would cause gross miscarriage of justice. To nourish his contention, the State-counsel relied on the following decisions of the Apex Court:

(i) Deputy Inspector General of Police vs. S.

Samuthiram reported in (2013) 1 SCC 598.

(ii) State of West Bengal and others vs. Sankar Ghosh

reported in (2014) 3 SCC 610.

(iii) Divisional Controller, Karnataka State Road

Transportation Corporation vs. M.G. Vittal Rao reported in (2012) 1 SCC 442.

[18] Having appreciated the facts and circumstances of the case and the submissions made by the counsel of the parties, the learned Single Judge held that the departmental inquiry was held strictly in accordance with the rules and in the said departmental inquiry it came to be established WA No. 65/2018 Page - 10 of 23 against the appellant that he held illegal possession of 36 live round loaded in 2 SLR magazines and he was not officially authorized to carry the ammunitions. Learned Single Judge further held that the enquiry report was duly furnished to the appellant and he was thus afforded with opportunity to submit his written representation. The Disciplinary Authority after appreciating the evidence independently and considering the representation submitted by the appellant, imposed the penalty of dismissal on the appellant. Learned Single Judge was of the view that since there was no violation of the principles of natural justice in the course of departmental inquiry and the Disciplinary Authority held the appellant guilty to charge No.V on appreciation of evidence recorded in the departmental inquiry without being influenced by the judgment of the Criminal Court, there was no wrong in the order passed by the Disciplinary Authority. Relying on the decision of the Apex Court in the case of Southern Railway Officers Association and another vs. Union of India and others reported in (2009) 9 SCC 24, the learned Single Judge held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed in the course of Disciplinary Proceedings and on the basis of finding recorded in the departmental inquiry, punishment can be inflicted upon the delinquent officer, even if he had been acquitted of the criminal charge.

[19] Relying further on the decision of the Apex Court in Divisional Controller, Karnataka State Road Transportation Corporation vs. WA No. 65/2018 Page - 11 of 23 M.G. Vittal Rao reported in (2012) 1 SCC 442, the learned Single Judge held that even though few witnesses who were examined in the departmental inquiry were also the prosecution witnesses in the criminal trial, the dismissal of the appellant from service in the present case is not based on his conviction in the criminal case and therefore, his subsequent acquittal from the criminal charge cannot be of any benefit to him. The learned Single Judge held that in the instant case, departmental inquiry has been held independently regardless of the criminal proceedings and therefore, acquittal of the appellant in the criminal proceedings would be of no assistance to him. Having observed thus, the learned Single Judge declined to interfere with the findings of the Disciplinary Authority and dismissed the writ petition. The concluding observations of the learned Single Judge are as under:

"[20] In the absence of any provision in the service rules for reinstatement, if an employee is acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement and reason is obvious that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. At the same time strict burden of proof required to establish guilt is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

[21] Even after acquittal in a criminal case, departmental proceedings as being canvassed by the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Another, reported in (1999) 3 SCC 679. For purpose of reference the relevant part is extracted hereunder:

"19. The propositions which the petitioner wanted to canvass placing reliance on the judgment in Capt. M. Paul Anthony case read as follows:

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(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in

case he is found guilty, administration may get rid of him at the earliest."

[22] In the instant case, the disciplinary enquiry was independently held and based on the statement of witness recorded in the course of enquiry and the documentary evidence came on record, the finding of guilt was recorded by the inquiry officer in confirmation by the disciplinary authority holding him guilty and it is not the case of the petitioner that fair opportunity of hearing was not afforded to him or there was a violation of principles of natural justice or compliance of the procedure prescribed under the Rules, 1965 has not been followed. As this Court is not sitting in the court of appeal and if there is no fault in the decision making process which has been adopted by the respondents in the course of enquiry based on the piece of evidence, the charge No. 5 held proved against him indeed is a gross misconduct which has been made a basis of inflicting penalty of dismissal upon the petitioner delinquent, mere acquittal in the criminal case may not be of any assistance to the petitioner in absolving from the misconduct which has been committed by him in discharge of official duties.

[23] I find no manifest error or procedural defect or perversity in the finding which has been recorded during the course of disciplinary proceedings which may call for interference of this Court inflicted punishment on the delinquent petitioner and that WA No. 65/2018 Page - 13 of 23 acquittal in the criminal proceedings by the court of appeal may not be of any assistance to the petitioner in seeking reinstatement in the given facts and circumstances of this case, as prayed for. Consequently, the writ petition being devoid of merit stands dismissed. No cost."

[20] Heard Mr. P.K. Biswas, learned senior advocate appearing along with Mr. P. Majumder, learned advocate for the appellant. Heard Mr. D. Sharma, learned Additional G.A. representing the State-respondents. [21] It is contended by Mr. Biswas, learned senior advocate that charge was framed (charge No.V) against the appellant in the departmental inquiry on the same set of facts on which charge was framed against him in the criminal trial and the star witnesses in the criminal trial were the same witnesses who were examined in the departmental inquiry. Counsel contends that even though the appellant was held guilty and convicted by the Trial Court, the Sessions Judge as well as the High Court in appeal acquitted him on full appreciation of evidence and not on any technical ground. Therefore, his acquittal on merit in the criminal case has an impact on the result of the Disciplinary Proceedings against him. Counsel has contended that the Disciplinary Authority in the final order of dismissal dated 24.03.2007 has clearly mentioned that the judgment of the Trial Court passed in G.R. 586 of 2004 has been considered by the Disciplinary Authority in arriving at the conclusion with regard to the penalty to be imposed on the appellant. Counsel contends that it is therefore clear that action of the Disciplinary Authority was not independent of the findings of the criminal Court. Counsel further argued that Manindra Debnath, S.I. of WA No. 65/2018 Page - 14 of 23 Police of Amtali Police Station, Dharendra Debnath, Asstt. Commandant of 7th Bn. TSR, Bhanu Debnath of 2nd Bn. TSR, Rakesh Roy of the 9th Bn. TSR, Keshab Nath of the 9th Bn. TSR, Ratan Das, a Rifleman of 9th Bn. TSR, Bheru Singh Ningwal of the 9th Bn. TSR and Pawan Kumar Panwar, a Rifleman of the 7th Bn. TSR were the witnesses on the basis of whose evidence, the enquiry report dated 17.03.2006 was filed by Bimalangshu Das, Deputy Commandant of 7th Bn. TSR

in the Departmental Inquiry. Among them, except Dhirendra Debnath, all others were also witnesses in the criminal case and after complete re-assessment of their evidence, the learned Sessions Judge (appellate Court) acquitted the appellant of the criminal charges which was also affirmed by the High Court. Counsel contends that in these circumstances, the dismissal order of the appellant should be quashed and consequently, the appellant should be reinstated in services. Having relied on the decision of the Apex Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC 679, counsel of the petitioner argued that since facts were same in the criminal case as well as in departmental inquiry and same witnesses were examined in both the cases and after complete re- assessment of evidence by the Sessions Judge as well as the High Court, the entire prosecution case was thrown out and the appellant was acquitted, it would be unfair to sustain the findings of the Disciplinary Authority pursuant to the departmental inquiry held against the appellant on WA No. 65/2018 Page - 15 of 23 a similar charge. Counsel has relied on paragraph 34 of the judgment in the case of Capt. M. Paul Anthony (supra) which reads as under:

".....34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellants residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand....."

[22] Counsel has also relied on a later decision of the Apex Court in the case of Deputy Inspector General of Police vs. S. Samuthiram reported in (2013) 1 SCC 598 and S. Bhaskar Reddy and another vs. Superintendent of Police and another reported in (2015) 2 SCC 365 in support of his contention that if accused is acquitted on full assessment of evidence, such acquittal would have an impact on the departmental inquiry against the accused. Counsel contended that the appellant was implicated in a false charge maliciously and therefore, he should be reinstated in service after setting aside the order of his dismissal. [23] Mr. D. Sharma, learned counsel appearing for the State-respondents on the other hand contends that appellant was charged with WA No. 65/2018 Page - 16 of 23 unauthorized possession of arms which amounted to gross misconduct and serious breach of discipline, unbecoming of a member of the Armed Force. The charge having been proved in a

departmental inquiry held against him after due compliance with the principles of natural justice, there is no ground to interfere with the findings of the Disciplinary Authority. Counsel contends that in such situation, his acquittal in the criminal case will have no impact on the result of the departmental inquiry. In support of his contention, Mr. Sharma, learned State-counsel has relied on the decision of the Apex Court in *Shashi Bhushan Prashad vs. Inspector General, Central Industrial Security Force and others* reported in (2019) 7 SCC 797 wherein, the Apex Court has held that acquittal from a criminal charge does not ipso facto absolve the liability of the delinquent official under the disciplinary jurisdiction of the authority. Counsel has referred to paragraph 19 of the judgment which is as under:

"19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of preponderance of probability. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court....."

WA No. 65/2018 Page - 17 of 23 [24] Mr. Sharma, learned State-counsel further contends that High Court cannot sit in judgment on the merits of the decision of the Disciplinary Authority. Counsel contends that unless there is violation of the principles of natural justice or that the order of the Disciplinary Authority is patently perverse and arbitrary, High Court cannot disturb the findings of the Disciplinary Authority after re-appreciation of evidence as a Court of appeal. [25] Relying further on the decision of the supreme Court in the case of *Southern Railway Officers Association and another (supra)*, Mr. Sharma, learned Addl. G.A. has vehemently contended that the Apex Court has succinctly held that acquittal in a criminal case by itself cannot be a ground for interfering with the order of punishment imposed by the Disciplinary Authority because it is well settled that order of dismissal can be passed in a departmental inquiry even if the accused officer has been acquitted of the criminal charge. Mr. Sharma, learned Addl. G.A., therefore, submits that there is no merit in the appeal and the same should be dismissed.

[26] We have examined the facts and circumstances of the case and considered the submissions of the counsel representing the parties. [27] Indisputably, the disciplinary proceedings against the appellant commenced with the issuance of memorandum No.202/TSR-7/Estt./DP- 03/05/2420

dated 07.03.2005 which contained the following 5 charges against the appellant:

WA No. 65/2018 Page - 18 of 23 "Article of Charge No.I. No. 01070706 Rfn (GD) Rafik Uddin of C Coy, 7th Bn TSR while deployed with A Coy, 9th Bn TSR at 7th Bn TSR HQ located at Tripura Engineering College, Barjala is charged for gross misconduct in that while he was not on duty on 09-09-2004 he was arrested by Jirania P.S. Staff for illegal possession of 36 live rounds loaded in the 02(two) SLR Magazines at Jirania College Chowmuhani, which is prejudicial to good order and discipline of the Rifles and attracts the provision of 12(1) of Tripura State Rifles Act, 1983. Article of Charge No.II. No.01070706 Rfn (GD) Rafik Uddin is charged for gross misconduct in that he had maintained links with arms and ammunition smugglers of Bangladesh as admitted by him to some other TSR personnel which is prejudicial to good order and discipline of the Rifles and attracts the provision of 12(1) of Tripura State Rifles Act, 1983.

Article of Charge No.III. No.01070706 Rfn (GD) Rafik Uddin is charged for gross misconduct in that he had compelled No.01070573 Rfn (GD) Rakesh Roy of C Coy, 7th Bn TSR, to pay Rs. 14,000/- (Rupees fourteen thousand only) as a secret deal for return of the 02(Two) SLR Magazines and 40 live 7.62mm SLR rounds which he had assured to do so by utilizing his connection with arms and ammunition smugglers of Bangladesh, which is prejudicial to good order and discipline of the Rifles and attracts the provision of 12(1) of Tripura State Rifles, 1983. Article of Charge No.IV. No.01070706 Rfn (GD) Rafik Uddin is charged for gross misconduct in that he had threatened No.01070573 Rfn (GD) Rakesh Roy of C Coy, 7th Bn TSR, with dire consequences even in endangering his life if the secret deal between themselves regarding payment and return of arms and ammunition is leaked out to others, which is prejudicial to good order and discipline of the Rifles and attracts the provision of 12(1) of Tripura State Rifles, 1983. Article of Charge No. V. No.01070706 Rfn (GD) Rafik Uddin is also charged for gross misconduct in that on 09-09-04 (AN) he was caught red-handed with 02(two) SLR Magazines and 36 live 7.62 mm SLR rounds from his illegal possession by Jirania P.S. Staff followed by recovery of Rs.14,000/- (Rupees fourteen thousand only) from his house located at Uttar Charilam (Aralia) which is prejudicial to good order and discipline of the Rifles and attracts the provision of 12(1) of Tripura State Rifles, 1983."

[28] Obviously, the appellant denied all those charges in the written statement of defence submitted by him. Thereafter, the inquiry was held by Shri Bimalangshu Das [Deputy Commandant, 7th Bn. TSR (I.R.- VI)] who submitted the enquiry report on 17.03.2006. The enquiry report would clearly demonstrate that the first four charges were not proved against the WA No. 65/2018 Page - 19 of 23 appellant and according to the Inquiry Officer, the 5th charge that 36 live rounds loaded in 2 SLR magazine were recovered from the unauthorized possession of the appellant by an officer of Jirania Police Station on 09.09.2014 in presence of witnesses was proved against the appellant. [29] The Disciplinary Authority having accepted the said enquiry report initially issued provisional order dated 21.02.2007 proposing penalty of dismissal from service. After the appellant submitted his reply, the Disciplinary Authority issued final order dated 24.03.2007 imposing penalty of dismissal from service. From a careful perusal of the final order issued by the Disciplinary Authority (respondents herein), it has surfaced that the said Disciplinary Authority relied on two documents viz. the enquiry report and the judgment of the Trial Court convicting and sentencing the appellant in case No. GR.586/2004 and on the basis of those documents, the Disciplinary Authority came to

the conclusion that the appellant had committed misconduct which attracted the offence defined under Section 11(n) of TSR Act 1983 punishable under Section 12(1) of TSR Act, 1983. The fact that the Disciplinary Authority (respondents herein) relied on the enquiry report and the judgment of the Trial Court is evident from the following paragraphs of the final order of dismissal dated 24.03.2007:

"NOW THEREFORE after considering the record of enquiry and facts and circumstances of the case and the Judgment of the Ld. Court (Case No. GR 586/04, The State of Tripura Vs Frn Rafik Uddin, accused) delivered on 28-11- 06, the undersigned has come to the conclusion that Rfn Rafik Uddin has committed misconduct which attracts Section 11(n) of TSR Act, 1983 punishable under Section 12(1) of TSR Act, 1983.

The delinquent had no license or documents in retaining stolen arms and ammunition. Therefore, in the criminal case registered against him the Ld. Court convicted the delinquent for committing the offence U/S 25(1)(a) of Arms Act WA No. 65/2018 Page - 20 of 23 as this offence is natural consequence of the committing offence U/S 411 IPC of the instant case. The Ld. Addl. Chief Judicial Magistrate, West Tripura has sentenced the delinquent to suffer RI for 02(two) years and also pay a fine of Rs.2000/- (Rupees two thousand) only i.e. to suffer simple imprisonment for 01(one) month for his commission of offence U/S 411 IPC. Both sentences should run consecutively.

The Ld. Court has also ordered that fine money once realized be given to the victim Rfn Rakesh Roy as compensation and the seized money Rs.12,000/- (Rs. Twelve thousand) only be also given to the victim Rfn Rakesh Roy after expiry of appeal period and so on."

[Emphasis supplied by us] [30] Evidently, the 5th charge in the disciplinary proceedings against the appellant was exactly the same in the criminal trial in case No.586/2004 in which the appellant was convicted and sentenced under Section 411 IPC and 25(1)(a) of the Arms Act. Trial Court believed that 36 live rounds in 2 SLR magazine were recovered from the unauthorized possession of the appellant which were stolen property and the appellant had retained the said property having reason to believe that the same were stolen property. [31] The Sessions Judge discarded the findings on the ground that the ammunitions allegedly seized from the possession of the appellant could not be proved to be the same property which was allegedly stolen from the camp because, there was no distinctive mark on the said property for identification and offence under the Arms Act was not proved because, prosecution could not convincingly prove that the ammunition which was produced at the trial as seized property was actually seized from the possession of the appellant. While hearing the appeal in Criminal Appeal No.70/2008 against the order of the Sessions Judge it was observed by this Court that the whole recovery was a total farce. In paragraph 8 of the WA No. 65/2018 Page - 21 of 23 judgment dated 02.06.2014 passed in CRL. A. 70 of 2008, this Court held as under:

".....8. Most importantly this witness did not seal the recovered goods at the time of recovery. What has been produced in Court are only the magazines and round of ammunition. Neither the newspaper nor the plastic packet in which the said ammunition was said to have been concealed have been produced in Court. Not only

that, no attempt has been made to link the ammunition which was allegedly stolen and no identifying marks were noted on the ammunition. No identifying marks were even put on the ammunition so that it could be identified to be the same ammunition at a later stage. The whole recovery is a total farce. PW-4 has not at all supported the recovery. PW-5 is admittedly a chance witness and by the time he came to the scene of occurrence the accused had already been arrested and the alleged sealed ammunition was in a plastic packet in his hand. Once the Investigating Officer was arranging an ambush party to recover ammunition then he should have arranged the witnesses prior to the occurrence. There should have been two independent and respectable persons of the area where the search was to be conducted in terms of section 100(4) of Cr.P.C The Investigating Officer did not offer the search of his person to the accused. The entire search and seizure procedure is totally illegal and no reliance can be placed on the same....."

[Emphasis supplied by us] [32] As stated above, except one or two witnesses, all the vital witnesses examined in the criminal case were the same witnesses who were examined by the Inquiry Officer during the departmental inquiry. The set of facts are also exactly same in both the cases. The findings of the Trial Court in the criminal case has been discarded by the Sessions Judge as well as by this Court. Another significant aspect of this case is that the genesis of the charges against the appellant was rooted in the fact that he had link with smugglers of arms and ammunitions of Bangladesh and therefore, when his colleague Rakesh Roy lost his ammunitions, the appellant promised to import and supply similar ammunitions to him from Bangladesh for a sum of Rs.15,000/- and he also accepted Rs.14,000/- from Rakesh Roy and threatened him with dire consequences in case the said fact was divulged to anyone else. All these charges were brought against the appellant by the WA No. 65/2018 Page - 22 of 23 Disciplinary Authority under charges I, II, III & IV which were discarded by the Disciplinary Officer as not proved. In such factual context the charge that arms and ammunitions were seized from his unauthorized possession is completely untenable.

[33] There is no doubt that the standard of proof required in a disciplinary proceeding is different from the standard required in a criminal case. In departmental proceedings, the standard of proof required is one of preponderance of the probabilities but in a criminal case, the charge has to be proved beyond reasonable doubt. But in the instant case, it is abundantly clear that the departmental inquiry as well as the criminal case against the appellant are based on same set of facts and evidence. The witnesses in both the cases were almost common. Most importantly, the Disciplinary Authority did not act independently regardless of the findings of the criminal Court. Apparently it relied on the judgment and order of conviction and sentence of the trial Court for awarding punishment of dismissal from service on the appellant and the said judgment of the trial Court was set aside by the Sessions Judge as well as by the High Court on merit with a specific finding that seizure of ammunitions from the possession of the appellant was not proved.

[34] In view of these facts and circumstances and the law laid down in the judgments cited to supra, we are not persuaded to uphold the impugned order of the Disciplinary Authority. Therefore, the judgment of the learned Single Judge is interfered with and set aside. Consequently the WA No. 65/2018 Page - 23 of 23 final order dated 24.03.2007 passed by the Disciplinary Authority imposing penalty of dismissal from service on the appellant is also set aside. [35] Since the appellant belongs to a disciplined force and he is out of service since 24.03.2007, we are not inclined to direct his reinstatement in service along with consequential benefits including back wages as prayed for. In the context of the totality of the facts and circumstances of the given case, we direct that the appellant be given pensionary benefits including the arrears of pension. For the intervening period during which he was out of service, he would be treated to have been in service notionally without any pay and back wages.

[36] The respondents are directed to provide the benefit to the appellant by issuing appropriate order in terms of the direction of this Court within a period of 4 (four) months from today.

The department's file shall be returned forthwith through the learned Government Advocate.

In terms of the above, the appeal stands allowed and disposed of. Pending application(s) if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

Sabyasachi G.

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