

**(2003) 07 GAU CK 0033**

**Gauhati High Court (Itanagar Bench)**

**Case No:** Writ Petition (C) No. 68 (AP) of 2001

Tage Habung

APPELLANT

Vs

State of Arunachal Pradesh and  
Others

RESPONDENT

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**Date of Decision:** July 24, 2003

**Acts Referred:**

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14(5), 14(8)
- Constitution of India, 1950 - Article 226

**Citation:** (2003) 3 GLR 657 : (2009) 3 GLT 86

**Hon'ble Judges:** I.A. Ansari, J

**Bench:** Single Bench

**Advocate:** T. Michi, for the Appellant; B.L. Singh, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

I.A. Ansari, J.

This case strengthens the common belief that by collusion or otherwise, howsoever hard one tries to suppress, manipulate or mutilate the truth, yet truth has its strange ways of surfacing. If the truth surfaces, it will be unjust and improper to ignore the truth and be lenient to the person, who has tried hard to suppress the truth.

2. The petitioner, who is an inspector of police in Arunachal Pradesh Police Force, has approached this Court, with the help of the present application made under Article 226 of the Constitution of India, seeking issuance of appropriate writ(s) setting aside and quashing the impugned order, dated 6.10.1997 (Annexure 1 to the writ petition) issued by the respondent No. 3, namely, the Inspector General of Police, PHQ, Arunachal Pradesh, whereby penalty of reduction of three stages for a period of three years with cumulative effect has been imposed on the petitioner

following a departmental proceeding drawn against him and the order dated 14.5.1999 (Annexure J to the writ petition) passed by the respondent No. 2, namely, the Commissioner and Secretary (Home), Govt. of Arunachal Pradesh, whereby petitioner's appeal against the said order imposing penalty was turned down.

3. In a nutshell, the facts and various stages leading to this writ petition may be set out as follows :

(i) By a memorandum, dated 10.5.1996 (Annexure F to the writ petition) respondent No. 3 initiated a disciplinary proceeding under the CCS (CCA) Rules, 1965, read with Section 7 of the Police Act, 1861, against the petitioner directing him to show cause against the Article of Charge, which read as under :

"That Inspector T. Habung (u/s) of PHQ security cell Itanagar, on 27.1.1996, physically assaulted H/C (Dvr) K. Kalita of Fire Station Itanagar without any provocation and as a result, H/C (Dvr) K. Kalita sustained serious injury on his person and later on, he was admitted in R.K. Mission hospital and undergone an emergency operation on 28.1.1996. The act of voluntarily causing grievous injury to HC(Dvr) of the same department amounts to gross misconduct, high handedness and conduct unbecoming of a member of disciplined police force. Hence, Inspr. T. Habung (u/s) is liable to be departmentally proceeded under Rule 14 of the CCS (CC&A) Rules, 1965.

(ii) The Statement of imputation of misconduct in support of the Article of Charge framed against the petitioner read as under :

"That on 27.1.1996, fireman Tayer Shakti of PS Itanagar had received an information regarding his son's illness. Accordingly F/M T. Shakti along with Jeep No. ARZ-1277 driven by H/C K. Kalita went to Ganga to meet his brother to ask for some money to go the Pasighat. While they were returning from Akash deep Market, the vehicle met with an accident with one Gypsy No. AR-01-2008 and the matter was settled by them by agreeing to repair the Gypsy at their cost. But in the meantime Inspr. T. Habung appeared at the spot and started beating driver K. Kalita. On medical examination, the doctor referred HC(dvr) K. Kalita for USG examination apprehending serious internal injuries. On 28.1.96, he was admitted in R.K. Mission Hospital and underwent an emergency operation to repair his damaged intestine.

During the enquiry, it is found that Shri T. Habung Inspr. of Police has assaulted a driver of fire service and caused serious injuries almost endangering the life of the said driver and hence the charge."

(iii) The petitioner, on 26.10.1996, submitted his written statement (Annexure F1 to the writ petition) in his defence, his case being, briefly stated, thus : On 27.1.1996, the petitioner along with his nephew, Shri Mudang Bagang, had gone for a social visit to his friend Shri Hage Pilya's home, at Niti Vihar, at about 1930 hrs. At about 2030 hrs, the petitioner received a phone call from his house that Shri Bamin Hinda and his family had come to his house. After about ten minutes, the petitioner along

with his nephew left Niti Vihar for his home at H Sector. On the way at NH-52 after crossing Akash Deep and before reaching the tria-junction of old PHQ, the petitioner saw a vehicle coming at full speed in a zig-zag manner from R.K. Mission Hospital side. The petitioner slowed down his vehicle, but the said vehicle coming from the opposite direction reached the petitioner's vehicle and the petitioner had to drive his vehicle to a road-side drain to save himself and in the process, the shock absorber of the petitioner's vehicle got damaged. When the petitioner looked back, he saw that the said vehicle had a head-on collision with another vehicle, which was also proceedings towards Ganga. Somehow, the petitioner, then, drove out his vehicle from the drain by using special gear and drove his vehicle to the place of the accident located at a distance of about fifty meters. The petitioner got down from his vehicle and found the driver of the Fire Brigade vehicle was still in his driving seat. The petitioner did not see anybody with him. The petitioner asked the driver, whom he had not recognised, as to why did he drive his vehicle in such a way. The driver told the petitioner that it was his mistake and asked the petitioner to forgive him and saying this much, the driver got down from his vehicle. The petitioner could, at that point of time, notice that the said driver was under influence of some drugs. The petitioner also noticed the registration number of the vehicle as Jeep No. ARZ-1277 belonging to fire brigade and Gypsy No. AR-01-2008, which was driven by one Shri Mili Nikte. The petitioner shouted at fire brigade driver saying what would have happened if he had not driven his vehicle to the drain. After this, the petitioner left the spot and went to a shop from where he made telephone call to the police station and talked with SI J. Taggu and asked him to come to the place of accident immediately and, then, the petitioner left for his house as his friend was waiting at his home. On the following day, i.e., on 28.1.1996, early in the morning, the petitioner received a phone call from Inspector B.B. Gohain asking him about the accident and also informing the petitioner that driver H.C. K. Kalita, was seriously lying at R.K. Mission Hospital. The petitioner, immediately, rushed to the hospital and found H.C. Kalita just operated. The petitioner asked him as to who had caused him so much injury and HC Kalita told the petitioner that two persons had beaten him before the petitioner came to the spot. This statement of HC Kalita was heard by two fire brigade staffs, who were standing near the bed of Kalita. Then, someone informed the petitioner that doctors had asked not to speak to HC Kalita. The petitioner, then, left for his home.

(iv) In course of time, respondent No. 4, namely, Shri JS Sidhu, Commandant, 2nd Bn., BHQ, was appointed as Enquiry Officer in the disciplinary proceeding drawn against the petitioner. After holding the enquiry, Enquiry Officer submitted his report to the effect that the accusations made against the petitioner stood proved despite the fact that the injured, namely, H.C. (driver) K. Kalita and one eye witness, namely, Constable Mille Nikte, had not completely supported their earlier versions recorded at the time of preliminary enquiry. The respondent No. 3, upon hearing the petitioner, accepted the findings of the Enquiry Officer and served a notice,

dated 30.6.1997 (Annexure H to the writ petition), directing the petitioner to show cause as to why penalty of reduction of three stages for a period of three years with cumulative effect shall not be imposed on the petitioner. On receiving the notice, the petitioner submitted his representation, dated 3.6.1997 (Annexure H1 to the writ petition). The disciplinary authority, however, vide order, dated 16.10.1997 (Annexure 1 to the writ petition), imposed the penalty as indicated hereinabove, whereupon the petitioner preferred an appeal, but the same was also turned down by the respondent No. 2 vide order, dated 14.5.1999 (Annexure J1). Hence, the petitioner has, now, approached this Court seeking reliefs as indicated hereinbefore, his case being, briefly stated, thus : On 27.1.1996, when the petitioner was returning home driving his vehicle, he saw near a tria-junction at Ganga, a Jeep belonging to Fire Brigade coming towards him at high speed from the opposite direction. The petitioner drove his vehicle towards a drain located at his left side to save the vehicle from being dashed against by the Jeep. After crossing the petitioner's vehicle, the Jeep dashed against a Gypsy at a distance of about 50 meters. The petitioner went to the place of accident and found the driver of the Jeep, namely, HC K. Kalita under the influence of liquor. The petitioner, accordingly, informed Itanagar PS and GD Entry No. 1108 was made. On the following day, i.e., on 28.1.1996, the petitioner came to know that the driver of the Jeep had been admitted at R.K. Mission Hospital in a serious condition, where he had undergone an operation and Itanagar PS case No. 04/96 u/s 341/325 IPC had been registered against the petitioner on the basis of false accusations made in an FIR (Annexure B to the writ petition). The case, so registered, ultimately, ended with filing of charge-sheet against the petitioner u/s 341/325 IPC. However, in the trial Court, the petitioner was acquitted by the trial Court by order, dated 28.6.1996. When the criminal proceeding was so pending, a departmental proceeding was initiated against the petitioner. This was highly prejudicial to the defence of the petitioner. Even though the trial ended in acquittal of the accused-petitioner, departmental proceeding was continued and though the injured and one of the eye witnesses did not support the accusations made in the Article of Charge framed against the petitioner, the Enquiry Officer held the petitioner guilty of the charge on the basis of the statement given by the informant of the case, namely, Fire Man Tayer Shakti. No Presenting Officer was appointed in the disciplinary proceeding and the Enquiry Officer, therefore, acted as a Presenting Officer too. The petitioner was also not provided with any defence assistance. The Enquiry Officer incorrectly held the petitioner guilty of the charge despite the fact that the injured as well as the driver of the Gypsy, which was involved in the accident, had stated clearly that they had not seen the petitioner assaulting H.C. K. Kalita and the Medical Officer had opined that the injuries found on the victim, i.e., K. Kalita could have been caused due to accident. The petitioner made his representation against the enquiry report, but the same was turned down. The penalty imposed on the petitioner is too harsh. The petitioner has been working with all sincerity and devotion to the utmost satisfaction of the authorities concerned.

4. The respondents have contested this case by filing affidavit-in-opposition, their case being, in brief, thus : The enquiry conducted was just and fair and no illegality was committed in conducting the enquiry and/or imposing penalty inasmuch as contrary to what the petitioner has claimed, the petitioner has committed gross misconduct on a number of occasions and he also stands punished following various departmental enquiries. The criminal case against the petitioner had commenced on the strength of the FIR lodged by the driver of the Gypsy, which had dashed against the Jeep, driven by the injured K. Kalita. HC (driver) K. Kalita was mercilessly beaten by the petitioner at the very place of accident so much so that he had to be admitted in R.K. Mission Hospital and operated on the very night of the accident. The Fireman, Tayer Shakti, then, lodged a written complaint, vide Annexure B, that when he was returning to fire station with a Jeep driven by K. Kalita, the same collided with a Gypsy, the petitioner came to the place of accident and badly assaulted K. Kalita and that after a few minutes, police party arrived there and injured K. Kalita was admitted into R.K. Mission Hospital. The findings of the enquiry were based on the materials on record and hence, the same were accepted after according due hearing, in this regard, to the petitioner.

5. I have perused the materials on record. I have heard Mr. T. Michi, learned counsel for the petitioner, and Mr. B.L. Singh, learned Sr. Govt. Advocate, appearing on behalf of the respondents.

6. Presenting the case on behalf of the petitioner, Mr. Michi has submitted that when a criminal proceeding was pending, disciplinary proceeding ought not to have been initiated against the petitioner. This apart, the disciplinary proceeding ought to have been dropped, contends Mr. Michi, when the criminal case lodged against the petitioner ended in acquittal. In support of his plea, Mr. Michi has placed reliance on Capt. [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), and [State of Rajasthan Vs. B.K. Meena and others](#),

7. It is also submitted by Mr. Michi that since the Presenting Officer was not appointed in the present case, the Enquiry Officer functioned as a Presenting Officer too. This was, according to Mr. Michi, in gross violation of the provisions of Rule 14 of the CCS (CCA) Rules.

8. It is pointed out by Mr. Michi that no defence assistance was provided to the petitioner and this was another violation of Rule 14 and, hence, findings arrived at such an enquiry can be given, according to Mr. Michi, no credence at all. It is also pointed out by Mr. Michi that even at the enquiry held against the petitioner, the injured had clearly stated that he had not been beaten by the petitioner. The injured was also supported, points out Mr. Michi, by Mille Nikte, who was the driver of the Gypsy, which had collided against the Jeep, which was being driven by the injured and yet the Enquiry Officer found the petitioner guilty of the charge basing his findings on the testimony of the informant alone. Such a finding of guilt, arrived at by the Enquiry Officer, is, submits Mr. Michi, wholly perverse and untenable in law,

but this aspect of the matter has been ignored by the disciplinary authority and also by the appellate authority. Such approach of the authorities concerned has caused, contends Mr. Michi, serious miscarriage of justice.

9. Lastly, Mr. Michi contends that the penalty imposed on the petitioner is too harsh and the same also deserves to be interfered with.

10. Controverting the above submissions made on behalf of the petitioner, Mr. B.L. Singh, learned Sr. Govt. Advocate, has submitted that the petitioner never applied for appointment of any defence assistant and, hence, no defence assistant was provided to him. Mr. Singh also submits that appointment of Presenting Officer is not essential in every departmental enquiry and since in the case at hand, no allegation is made that the Enquiry Officer acted with any bias against the petitioner, the omission to appoint Presenting Officer may not be held to have vitiated the enquiry.

11. It is further submitted by Mr. Singh that there is nothing in law that if any injured and/or an eye witness turns hostile, the guilt of the accused-petitioner cannot be proved with the help of evidence of other eye witnesses. In the case at hand, points out Mr. Singh, though the injured and also one of the eye witnesses to the occurrence had retracted their earlier versions, the fact remains that the informant was, admittedly, an eye witness, who had supported the charge, and the Enquiry Officer found no reason to disbelieve the informant. Hence, this finding of the Enquiry Officer can not be described, according to Mr. Singh, as perverse and the respondents concerned, thus, have committed, contend Mr. Singh, no illegality in accepting the same.

12. As regards the penalty imposed on the petitioner, learned Sr. Govt. Advocate has submitted that the petitioner is incurable inasmuch as he has been punished in the past too following various disciplinary proceedings and in the case at hand, penalty imposed shows that the petitioner has been leniently dealt with. Hence, the penalty also may not be interfered with; so submits learned Sr. Govt. Advocate.

13. Let me, now, deal with the rival submissions made before me on behalf of the parties.

14. There is no dispute before me that since the petitioner was a Constable in Arunachal Pradesh Police Force and faced disciplinary proceeding, which could have entailed major penalty of dismissal from service, the disciplinary proceeding, held against the petitioner, was governed by the provisions of CCS (CCA) Rules, 1965. There is also no dispute before me that since the penalty of dismissal from service imposed on the petitioner is a major penalty, the same could not have been imposed without following the procedure laid down in Rule 14 of the CCS (CCA) Rules. It may be pointed out that Rule 14 is nothing, but a set of requirements, which are to be observed by the disciplinary authority for the purpose of ensuring that the principles of natural justice are not denied or violated before condemning a

Government servant. It is under Clause (c) of Sub Rule (5) of Rule 14 that a disciplinary authority appoints Presenting Officer. For the sake of brevity, Clause (c) is quoted hereinbelow :

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, be 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.

15. A careful reading of Rule 14(5)(c) shows that a disciplinary authority itself may hold inquiry into any article of charge or it may appoint an Inquiring Authority for holding inquiry into any article of charge and in either of the two cases, so indicated, the disciplinary authority may, by an order, appoint a Government servant or a legal practitioner to present the case on behalf of the disciplinary authority in support of the articles of charge and the Government servant or legal practitioner, so appointed, shall be known as the Presenting Officer. It transpires from the word "may", used in Clause (c) of Sub-rule (5) of Rule 14, that it is not mandatory on the part of the disciplinary authority to appoint Presenting Officer in every disciplinary proceeding. Far from this, the appointment of a Presenting Officer is at the option of the disciplinary authority and hence, finding of a disciplinary proceeding cannot be interfered with merely on the ground that no Presenting Officer was appointed. However, if the omission to appoint Presenting Officer causes any prejudice to a delinquent on account of the manner in which an inquiry is conducted, the non-appointment of Presenting Officer may constrain the Court to interfere with the findings reached on the conclusion of such an inquiry.

16. In the case at hand, no Presenting Officer was, admittedly, appointed. Though it has been alleged by the petitioner that the Inquiry Officer had acted as Presenting Officer and also as a Judge, it is of paramount importance to note that when the petitioner received a copy of the inquiry report, he made his representation against the same, but he nowhere complained that non-appointment of a Presenting Officer had caused any prejudice to him.

17. Situated thus, I have no option but to hold that omission to appoint Presenting Officer did not, in the present case, cause any prejudice to the petitioner.

18. Coming to the grievance of the petitioner that no defence assistance was provided to him, it needs to be noted that it is Rule 14(8)(a), which contains provisions for appointment of defence assistant for a delinquent, who faces disciplinary proceeding under the CCS & CCA Rules, 1965, Rule 14(8)(a) reads as follows:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place, where the inquiry is held, to present the case on his behalf, but may not engage a legal

practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority, having regard to the circumstances of the case, so permits :

Provided that the Government servant may take the assistance of any other Government servant posted at any other station if the Inquiry Authority, having regard to the circumstances of the case and for reasons to be recorded in writing, so permits.

19. A bare reading of Rule 14(8)(a) clearly shows that it is on the request made by a delinquent that the Disciplinary Authority and/or Inquiring Authority, as the case may be, appoint defence assistant. There is nothing in the materials on record to show that the petitioner had made any request to the Disciplinary Authority or to the Inquiring Authority to appoint any Government servant or to allow him (i.e., the petitioner) to engage any legal practitioner for the purpose of obtaining assistance in defending himself in the disciplinary proceeding. This apart, to a pointed query made by this Court, Mr. T. Michi, learned counsel for the petitioner, has candidly conceded that no such request was made by the petitioner in writing.

20. Considering the matter in its entirety, I am firmly of the view that it was not essential, in the facts and circumstances of the case, to appoint any Government servant and/or permit the petitioner to engage any legal practitioner to assist the petitioner and that such non-appointment did not cause any prejudice to the petitioner.

21. Now, turning to the plea of the petitioner that during the pendency of the criminal proceeding, the departmental enquiry ought not to have been commenced, it is important to note that in the case at hand, when the disciplinary proceeding was initiated against the petitioner and he was directed to show cause against the Article of Charge aforementioned, the petitioner had not sought for stay of the departmental proceeding nor had he contended that in view of the pendency of the criminal proceeding, his defence, in the departmental proceeding, would be seriously prejudiced. In such a situation, it is difficult to assume that the pendency of the criminal investigation had any bearing on the departmental proceeding especially, when the initiation or commencement of the same was not objected to by the petitioner himself.

22. In the case of B.K. Meena (supra) relied upon by Mr, Michi, the Apex Court has, while dealing with the above aspect of matter, laid down as follows :

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be

enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced," This ground has, however, been, hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability", "desirability" or "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor, which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceeding is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of

such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed." (emphasis is added)

23. In the case at hand, what is essential to note is that the petitioner did not really face any trial inasmuch as after the submission of charge-sheet, the case was compromised by the petitioner and the injured and following this compromise, the learned trial court acquitted the accused-petitioner .

24. From a careful reading of what have been laid down in N B Menna (supra), it clearly emerges that there is no hard and fast rule that a disciplinary proceeding must be stayed till the criminal proceeding lodged on the same set of facts comes to an end. The decision to stay or not to stay a disciplinary proceeding depends on the facts of each given case. Normally, it is only in such cases, which involve complicated questions of fact and law that disciplinary proceeding should be stayed, one of the reasons for not, ordinarily, staying disciplinary proceeding being that the disciplinary proceeding should not be unduly delayed and the interest of the delinquent also lies in prompt conclusion of the disciplinary proceeding. Moreover, it is undesirable, as observed in BK Mina (supra), that persons accused of serious misdemeanour should be allowed to continue to hold office awaiting conclusion of criminal proceeding inasmuch as such a course will only serve the guilty and dishonest. The stay of the disciplinary proceeding should not be as a matter of course. Another reason for not staying disciplinary proceeding is that the approach and objective of disciplinary proceeding vis-a-vis criminal proceeding are altogether distinct and different, particularly, because the standard of proof in both the cases differ. The Apex Court has, thus, laid great emphasis in BK Mina (supra) that disciplinary proceeding shall not be, normally, stayed as a matter of course.

25. In the case at hand, apart from the fact that the petitioner had made no request for staying of the disciplinary proceeding indicating thereby that he had no apprehension that continuation of such a proceeding would have any adverse affect or bearing on his defence in the criminal trial, the trial, in fact, ended in his acquittal before the disciplinary proceeding effectively commenced.

26. From the law laid down in B.K. Meena (supra), it is clear that "desirability", "advisability" or "propriety" of not proceeding with a departmental enquiry has to be determined on the basis of the facts and circumstances of each case. In the case at hand, interest of the petitioner did not suffer inasmuch as the criminal

proceeding ended in acquittal of the petitioner. As far as disciplinary proceeding was concerned, the same was allowed to continue, because the petitioner never, if I may reiterate, raised any objection thereto.

27. Situated thus, I do not find that merely because of the fact that the criminal investigation was pending, the initiation of the disciplinary proceeding was incorrect or illegal. This apart, as reflected from the enquiry report, the hearing in the enquiry was initiated against the petitioner on 29.6.1996, whereas the case alleged against the petitioner had already ended in acquittal on 28.6.1996. Hence, the disciplinary proceeding effectively commenced after acquittal of the accused-petitioner in the criminal case. Thus, the mere fact that the criminal investigation relating to the same facts, which became the subject matter of the charge in the departmental proceeding, was pending, initiation of the disciplinary proceeding cannot be held to be illegal and/or unfair, particularly, when no prejudice is alleged to have been caused or is shown to have been caused to the petitioner.

28. In the case of Capt. M. Paul Anthony (*supra*), what is essential to note is that apart from the fact that in this case, the disciplinary proceeding as well as the criminal proceeding were based on the same facts, the employee stood acquitted by the trial Court, which had rejected the prosecutions case as unbelievable. Situated thus, the Apex Court in this case laid down as follows ;

"There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as, enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case.

While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

Conclusions which are deducible from various decisions of the Supreme Court on this point are as follows ; (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 criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case, (iii) whether the nature of 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 the 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) factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that 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 pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is 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.

In the present case, criminal and departmental proceedings were based on identical set of facts, namely, raid conducted at the appellant's residence and recovery of incriminating articles therefrom. Findings recorded by the Enquiry Officer indicate that charges against the appellant were sought to be proved by police officers and Panch witnesses who had raided the appellant's house and had affected the recovery. They were the only witnesses examined by the Enquiry Officer who by relying upon their statements, came to 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 entire evidence, came to a conclusion that no search was conducted nor was any recovery made from the appellant's residence. The appellant was acquitted by throwing out the whole case of the prosecution. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the findings that the "raid and recovery at his residence were not proved, it would be unjust, unfair and rather oppressive to allow the findings at the ex parte departmental proceedings, to stand.

The facts and evidence in departmental as well as in criminal proceedings were the same without their being any iota of difference. The distinction which is usually drawn between departmental and criminal proceedings on the basis of approach and burden of proof, would not be applicable to the instant case." (emphasis is added)

29. From a close reading of the above observations in Capt M. Paul Anthony (supra), it is clear that it was a peculiar case in which the Court had rejected the evidence adduced by the prosecution as wholly unbelievable and thus the evidence adduced by the witnesses was wholly dis-believed. In the case at hand, there is no finding of any criminal proceeding to show that the statement of the witnesses, which the enquiry officer had relied upon, had been discarded by the criminal Court as untrue, false or unbelievable. Far from this, no trial, in fact, took place to determine the veracity or otherwise of the evidence of the witnesses inasmuch as the trial, at its very commencement, ended on account of the compromise entered into by the

parties.

30. In short, in the case at hand, no evidence was recorded at the time of trial against the petitioner. The trial Court did not give any finding, whereby it can be said that evidence of any of the witnesses was disbelieved or rejected as untrue or false by the trial Court. In such a situation, to the facts of the case at hand, the question of Capt. M. Paul Anthony (*supra*) cannot be applied.

31. Coming to the findings of the enquiry, I find that the informant, i.e., Tayer Shakti, Fireman, stated as follows :

"On 27.1.1996 I received an information from Pasighat through WT message that my child seriously sick and admitted in Pasighat hospital. On receipt of information I reported to FSO and requested him to detail one vehicle as I was to collect money from my brother who is staying in Akash Deep market. Accordingly FSO detailed fire service jeep along with HC Driver K. Kalita. When we reached at the house of my brother and found no body was present at home. After that we left the place for fire station, Itanagar.

While we were going towards fire service station, Itanagar and after crossing the Akashdeep market at just near the Abotani building our vehicle met an accident with gypsy. After accident I got down from the vehicle and approached the owner of the gypsy who was driving the vehicle. After discussion with Mille Nikte we settled the accident as it was of minor nature. While we were discussing at that time Inspector Tage Habung came near the Jeep and pulled the driver H.C. K. Kalita and given blow twice and when he fell down Inspector Tage Habung give some kicks in the stomach of H.C. Kalita. After Tage Habung left the place but driver Kalita could not get up at his own. Then I helped him and made him to sit on the jeep's seat. After 15-20 minutes Police party reached the spot and simultaneously Fire Station staff also reached the spot. On arrival of the police H.C. driver K. Kalita was sent to Hospital for medical examination. Then I along with F.S. staff and police returned to fire station. After that I again went in search of money in foot from some relatives of mine.

I returned to the barrack late night at about 0650 hrs. I came to know that H.C. (driver) Kalita is serious and admitted in the Hospital where he was operated."

32. I have carefully scrutinised the cross-examination of the informant, Taycr Shakti, at the hands of the petitioner, but I do not find anything was elicited from his cross-examination to show that what he had stated were untrue or false.

33. In the above backdrop, when I look into the statement of the injured, namely, K. Kalita, I find that this witness has stated thus :

"I do hereby states that on 27.01.1996 while I was coming towards F.S. Itanagar from Akashdeep market in vehicle ARZ-1277 (F.S. Jeep). I was driving the vehicle when I reached near Abotani building my vehicle met an accident with one Civil

Gypsy. During the accident, I pressed forward and the steering of the vehicle pressed my stomach. After that I became senseless and who took me to the hospital, I do not know. After medical treatment, I returned to F.S. Barrack along with police and Fire Service staff. During the night, I was again admitted to the hospital due to severe pain, where I was operated later on."

34. The records of the enquiry further reveals as follows :

"QUESTION BY ENQUIRY OFFICER TO H.C. DVR. K. KALITA

Q. Whether Inspector Tage Habung assaulted or beaten you?

Ans. I do not know.

Q. In your statement during the preliminary enquiry you informed that Inspector Tage Habung assaulted or beaten you and now you are saying you do not know. Why?

Ans. I do not know who beaten me as I was senseless.

Q. Are you sure some body beaten you?

Ans. Yes, somebody beaten me but I do not know who was that man.

Q. Have you seen Inspector Tage Habung at the spot of accident?

Ans. Yes I had seen him at the place of accident.

Q. If you seen Inspector Habung at the place of accident. What he was doing there?

Ans. I do not know what he was doing there but I had seen him.

Q. Whether Inspector Tage Habung told you something regarding the accident or driving of vehicle ?

Ans. I do not know what he said or told me. Question by Enquiry Officer to Inspector Tage Habung

Q. Do you wish to cross-examine the prosecution witness H.C. (driver) K. Kalita examined against you?

Ans. No.

Q. Do you agree with the statement of HC (dvr) K. Kalita and accept it correct?

Ans. Yes.

Q. Do you want to make any statement at this stage? Ans. No. " (emphasis is added)

35. Close on the heels of the statement of K. Kalita, Shri Mille Nikte has stated as follows :

"I am to state that on 27.1.1996 at about 8.50 pm while I was going to my home from Bank Tiniali in my vehicle No. AR-01-2008 which was driven by me. When I reached near Abotani house building I saw one vehicle coming from opposite side and that too on the wrong side. As the vehicle was coming on the side and I apprehending that it will hit my vehicle as there was no space on the left side of the road. So I slowed down the vehicle but in the meantime the vehicle came out and hit my vehicle and damaged my headlight and bumper. After the accident took place one Shri Tayer Shakti got down from the vehicle and approached to settle down the matter. The damage was very minor and Tayer Shakti told me that they will repair the vehicle. I agreed as the damage was minor and I know Shri Tayer Shakti from school days.

While we were at the accident spot then Inspector Tage Habung came there and I saw Inspector Tage Habung was abusing the driver of Fire station vehicle No. ARZ-1277. After Inspector Tage Habung went to Abotani house and phoned to police station. Then he returned to the spot and told that police will be coming for enquiry and left the place. On arrival of police and fire service staff at the spot and when the matter was settled I also went to my residence."

36. The records further reveals as follows :

"QUESTION BY ENQUIRY OFFICER TO SHIR MILLE NIKTE

Q. In your earlier statement which was recorded by O.C. P.S. Itanagar on 28.1.1996 and duly signed by you on which you had stated that Inspr. Tage Habung appeared at the spot of accident and assaulted the driver of vehicle No. ARA-1277. What are the facts ?

Ans. I do not know about beating but I heard Inspr. Tage Habung was abusing the driver.

QUESTION BY ENQUIRY OFFICER TO INSPECTOR TAGE HABUNG

Q. Do you wish to cross-examine the prosecution witness Shri Milli Nikte against you?

Ans. Yes.

Q. Do you agree with the statement of Shri Milli Nikte and accept it correct?

Ans. Yes.

Q. Do you want to make any statement at this stage? Ans. No. " (emphasis is added)

37. While considering the findings of the Enquiry Officer, it is imperative to note that the High Court, while exercising jurisdiction under Article 226, does not sit as an appellate Court to determine the correctness of the findings arrived at by the Enquiry Officer in a disciplinary proceeding. The question, therefore, of re-appreciation of the materials on record by the High Court in a case, such as the

present one, does not arise at all. The High Court can interfere with the findings arrived at by an Enquiry Officer if the findings are perverse i.e. without any evidence or wholly against the weight of the evidence on record and/or the same have been arrived by ignoring the principles of law causing thereby miscarriage of justice.

38. In the case at hand, while the injured and one of the eye witnesses, namely, Mille Nikte supported to some extent the petitioner's case that he had not beaten and/or injured K. Kalita, the fact remains that another eye witness, namely, Tayer Shakti, who had lodged the F.I.R., stood by his previous statement that the petitioner had beaten K. Kalita so mercilessly that the latter had to undergo emergency operation at R.K. Mission Hospital.

39. The fact that the petitioner was present at the place of occurrence and had abused K. Kalita has been admitted even by Mille Nikte in the departmental enquiry. This apart, the injured admitted at the enquiry that he had been beaten by someone. This admission, when considered in the light of the statement-in-defence filed by the petitioner in the disciplinary proceeding, shows that according to the petitioner, the injured had reported to him that two persons had beaten him (injured) at the spot. This, in turn, shows that Shri Kalita was, admittedly, beaten at the place of accident. The identity of the assailant was the disputed fact. In this regard, petitioner's early reaction, as reflected by his statement-in-defence, was that the injured was alone at the time of the accident, whereas Tayer Shakti was, as established by the statement of the injured himself, present alongwith the injured at the place of accident. In such circumstances, was not illogical, on the part of the Enquiry Officer, to infer that the very foundation of the petitioner's case lied in half-truth and untruth.

40. Situated thus, the Enquiry Officer was free to rely on the statement of Tayer Shakti and disbelieve the statement of K. Kalita. In the case, at hand, the Enquiry Officer relied on the statement of Tayer Shakti and since he found the statement of this witness reliable and trustworthy and also supported by Mille Nikte in some material aspects, the Enquiry Officer reached the conclusion that Tayer Shakti had stated the truth and the materials on record were sufficient to hold that the accused had beaten, as alleged, K. Kalita. Such finding, reached by an Enquiry Officer, cannot be said to be without any cogent material and/ or wholly contrary to the materials on record. At the time of hearing, nothing could be pointed out, on behalf of the petitioner before me, to show that the Enquiry Officer ought not to have believed the statement of Tayer Shakti despite corroboration received by him in some material aspects from the statement of Mille Nikte as well as K. Kalita himself. particularly, when he was beaten by someone, though he did not claim to have seen the person, who had beaten him.

41. Because of what have been discussed above, I find that the findings of the Enquiry Officer did not suffer from any irregularity or illegality.

42. Situated thus, the disciplinary authority committed no error of law in accepting the findings of the Enquiry Officer and in dealing with the charge framed against the petitioner. Similarly, the appellate authority, namely, respondent No. 4 can also not be held to have committed any error in not interfering with the findings reached by the Enquiry Officer against the petitioner and in accepting the findings and affirming the conclusions reached by the disciplinary authority, namely, respondent No. 3.

43. Turning to the question of severity of the penalty, it is important to bear in mind that the petitioner belongs to Arunachal Pradesh Police Force and as a member of the force and because of the rank that he holds, his behaviour/conduct has to be exemplary for others. In the case at band, however, the petitioner had behaved in a most cruel and beastly manner and in the face of the gross misconduct that he had so committed, the penalty imposed on the petitioner cannot be said to be harsh and/or severe.

44. In the result arid for the reasons discussed above, I do not find any merit in this writ petition. The petition, therefore, fails and the impugned orders are maintained.

45. This writ petition accordingly stands dismissed.

46. No order as to costs.