
(1999) 10 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 1580 of 1990

Rajkumar Sarmah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Army Act, 1950 — Section 2(1), 34, 35, 36, 37
Army Rules, 1954 — Rule 22, 23, 24, 25
Assam Rifles Act, 1941 — Section 10(4), 6, 7, 8, 9
Constitution of India, 1950 — Article 14, 226, 33

Citation : (2000) 1 GLT 49

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : R.K. Sarmah, for the Appellant; P.N. Choudhury, C.G.S.C., for the Respondent

Judgement

A.K. Patnaik, J.—The Petitioner initially joined Short Service Commission of Indian Army and was released from the Short Service Commission of Indian Army in May, 1973. After release from short Service Commission of the Indian Army, the Petitioner was appointed as Assistant Commandant in the Assam Rifles by notification dated 11.12.73 issued by the Secretary (Home), Arunachal Pradesh Administration, Shillong. On such appointment, the Petitioner served as Assistant Commandant of Assam Rifles and thereafter he was promoted to the post of Deputy Commandant of Assam Rifles in the year 1984. On 22.3.85, the Petitioner was informed by a notice that an investigation will be conducted against him in respect of alleged lapses on his part and on 23.5.85, 29.7.85, 22.12.85 and 11.1.86 preliminary enquiry was held against him wherein summary evidence was recorded. On completion of summary evidence, the Petitioner was served with a charge-sheet dated 28.11.86 issued by the Commandant, 11 Assam Rifles. In the said charge-sheet, six charges were levelled against the Petitioner and it was indicated that the charges would be tried by a General Court Martial as the Petitioner was subjected to the provisions

of Army Act, 1950 as per notification SRO 318 dated 6.12.62 issued u/s 4(1) of the Army Act, 1950. By the said SRO 318 dated 6.12.62, the Government of India had issued a notification under Sub-section (1) of Section 4 of the Army Act, 1950 to the effect that the said Act would apply to every unit of Assam Rifles being a force raised and maintained in India under the authority of the Central Government and that all the provisions of the said Army Act, 1950, except those specified in Part-A of the Schedule to the said notification and subject to the modification set forth in Part-B of the said Schedule, when attached to or acting with any body of the regular army. In the said notification it was further stipulated that the operation of Sections 6, 7, 8 and 9 of the Assam Rifles Act, 1941, shall remain suspended while the said notification remained in force. The General Court Martial was thus held in accordance with the Army Act, 1950 and the Army Rules, 1954 and at the conclusion of the trial the Court held the Petitioner guilty of some of the charges and by order dated 29.12.86 the Petitioner was imposed with sentence of dismissal from service subject to confirmation. The sentence was thereafter confirmed by the confirming authority on 30.1.88 and on 22.2.88, the Director General of Assam Rifles issued a notification dismissing the Petitioner from service with effect from 30.1.88. Aggrieved, the Petitioner sent an appeal petition dated 18.4.88 against the findings and sentence of the Court Martial to the Government of India, Ministry of Defence, New Delhi. But by letter dated 16.3.89, the Petitioner was informed that the said appeal petition was considered by the Central Government and rejected. The Petitioner then moved the Central Administrative Tribunal, Guwahati Bench in OA No. 191/87 for appropriate relief. But by judgment and order dated 16.8.90, the Central Administrative Tribunal, Guwahati Bench, held that the said Tribunal had no jurisdiction to entertain the application and that the records pertaining to the Petitioner be delivered to him for presentation before appropriate forum. The Petitioner then filed the present writ petition under Article 226 of the Constitution praying for quashing the findings and the sentence imposed by the General Court Martial by order dated 29.12.86 and the order of dismissal dated 22.2.86 as well as appellate order dated 16.3.89 passed by the Government of India, Ministry of Defence, New Delhi. The Petitioner has also prayed in the present writ petition that the notification SRO 318 dated 6.12.62 issued u/s 4 of the Army Act, 1950, be struck down as illegal and ultra vires the Constitution. Finally, the Petitioner has prayed that the Respondents should be directed to reinstate the Petitioner with all service benefits.

2. At the hearing, Sri R.K. Sarmah, Petitioner-in-person, contended that since he was a member of the Assam Rifles and holding a civilian Central Government post, the provisions of the Assam Rifles Act, 1941, the Central Civil Services (Conduct) Rules, 1964 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were applicable to him and that the provisions of the Army Act, 1950 and the Army Rules, 1954, were not applicable to him and, therefore, the entire proceedings of General Court Martial against him were without jurisdiction. He further pointed out that u/s 4 of the Army Act, 1950, the Central

Government may by notification apply all or any of the provisions of the said Act to the Assam Rifles but such application of the provision of the Army Act, 1950, can only be for a specific and temporary period. In the instant case, the notification SRO 318 dated 6.12.62 was issued by the Central Government u/s 4 of the Army Act, 1950, applying the provisions of the Army Act to the Assam Rifles because of the Chinese aggression in India in 1962. But since the said Chinese aggression was over long since, the said notification can no longer continue to apply to the Assam Rifles to the prejudice of the members of the Assam Rifles. According to the Petitioner, the notification SRO 318 dated 6.12.62 was ultra vires the Constitution and Section 4 of the Army Act, 1950.

3. In reply to the aforesaid submission, Mr. P.N. Choudhury, CGSC, contended relying on the averments made in paragraph-6 of the affidavit-in-opposition of the Respondents that the Petitioner was a member of the Assam Rifles which is a force raised and maintained by the Central Government and he would have been governed by the Assam Rifles Act, 1941 and not by the provisions of the Army Act, 1950 and the Army Rules, 1954 except when his unit was attached to or acting with a body of the regular Army. But the Central Government by notification SRO 318 dated 6.12.62 u/s 4 of the Army Act, 1950, has applied the provisions of the Army Act to every unit of the Assam Rifles when attached to or acting with any body of the regular Army subject to exception and modification as illustrated in Part-A and Part-B, respectively of the Schedule to the said notification. This has been done to ensure that the unit of the Assam Rifles when attached to the Army is exclusively subjected to the Army Act for the purpose of discipline. By the said notification, the specific provisions of the Assam Rifles Act, 1941 have also been specifically suspended. The said notification has not been cancelled as yet and hence the provisions of the Army Act, 1950 and the Army Rules, 1954 are applicable to the Petitioner as his unit of the Assam Rifles has been attached to the Army and the provisions of the Assam Rifles Act, 1941 mentioned in the said notification are not applicable to the Petitioner. Mr. Choudhury further relied on the contentions made in the said paragraph-6 of the affidavit-in-opposition of the Respondents that Section 4 of the Army Act, 1950 does not stipulate that the notification issued thereafter can be issued only for a specific period of time and, therefore, continuity of the said notification SRO 318 dated 6.12.62 till date does not make the notification ultra vires the provisions of Section 4(1) of the Army Act, 1950.

4. Section 4 of the Army Act, 1950, is extracted herein below:

4. Application of act to certain forces under Central Government - (1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this act to any force raised and maintained in India under the authority of that Government, and suspend the operation of any other enactment for the time being applicable to said force.

(2) The provisions of this act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to

this act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this act under Clause (1) of Sub-section (1) of Section 2.

(4) While any of the provisions of this act apply to the said force, the Central Government may by notification, direct by what authority and jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

A reading of Sub-section (1) of Section 4 of the Army Act, 1950, quoted above would show that the Central Government may, by notification, apply, with or without modifications, all or any of the provisions of the said act to any force raised and maintained in India under the authority of the Central Government and suspend the operation of any other enactment "for the time being" applicable to the said force. Sub-section (2) of Section 4 of the said act quoted above provides that the provisions of the said act so applied shall also have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to the said act holding in the regular army the same equivalent rank as the aforesaid persons hold "for the time being" in the said force. The expression "for the time being" means as per the Chambers 20th Century Dictionary "at the present time or the actual time in question". It, therefore, does not mean for a "specific period" as contended by the Petitioner. What is intended by Sub-sections (1) and (2) of Section 4 of the Army Act, 1950, is that during the time when the provisions of the Army Act, 1950, are made applicable by the Central Government to any force, the provisions of any other enactment applicable to the said force will remain suspended as indicated in the notification issued u/s 4 of the said act. Thus the contention of the Petitioner that the provisions of the Assam Rifles Act, 1941, are applicable to the Assam Rifles of which the Petitioner is a member can only be suspended for a specific period and that the provisions of the Army Act, 1950 can only be made applicable to the Assam Rifles only for a specific period is not correct. The impugned notification SRO 318 dated 6.12.62 issued by the Central Government u/s 4 of the act, therefore, cannot be held ultra vires Section 4 of the Army Act, 1950.

5. Coming now to the contention of the Petitioner that the notification SRO 318 dated 6.12.62 is ultravires the Constitution, the Petitioner's case is that the members of the Assam Rifles hold civilian post under the Central Government and, therefore, are governed by the Central Civil Services (Conduct) Rules, 1964 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and that the notification u/s 4 of the Army Act, 1950 in so far as it applies the provisions of the Army Act to the Assam Rifles is violative of Article 14 of the Constitution. In *R. Viswan and Others Vs. Union of India (UOI) and Others*, a similar contention was raised by the members of GREF and the Supreme Court

rejected the said contention for inter alia reason that the provisions of the Army Act, 1950, and the Army Rules, 1954, as applied to the members of GREF are protected by Article 33 against invalidation on the ground of violation of Article 14 of the Constitution. Article 33 of the Constitution provides that Parliament may, by law, determine to what extent any of the rights conferred by Part-in shall, in their application to, the members of the Armed Forces, or the members of the Forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The Army Act, 1950, including Section 4 of the said Act made by the Parliament, therefore, cannot be challenged on the ground that it violates the rights of the members of the Assam Rifles such as the Petitioner under Article 14 of Part-III of the Constitution. The impugned notification SRO 318 dated 6.12.62 has been issued under the said Section 4 of the Army Act, 1950 and is not ultra vires the Section 4 of the said Act. The said notification, therefore, cannot be held to be ultra vires Article 14 of the Constitution.

6. It was next contended by the Petitioner that Sub-section (4) of Section 10 of the Assam Rifles Act, 1941, has not been suspended by the notification SRO 318 dated 6.12.62 and is, therefore, still applicable to the members of the Assam Rifles. He submitted that the said Sub-section (4) of Section 10 provides that any legal proceeding which may lawfully be brought against a Commandant, Assistant Commandant or rifleman for anything done or intended to be done under the act can only be commenced within three months after the act complained of was committed. He argued that since the acts of the Petitioner in respect of which charge-sheet was issued were more than three months old, the proceedings for General Court Martial against the Petitioner were barred by time under the said Sub-section (4) of Section 10 of the Assam Rifles Act, 1941.

7. Sub-section (4) of Section 10 of the Assam Rifles Act, 1941, on which reliance has been placed by the Petitioner is quoted herein below:

10. Privileges of, and protection for acts done by, Commandant, Assistant Commandant, etc.:

(4) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding (whether Civil or Criminal) which may lawfully be brought against a Commandant, Assistant Commandant or rifleman for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this act or the orders or rules made thereunder, shall be commenced within three months after the act complained of was committed and not otherwise, and notice in writing of such proceeding and of the cause thereof shall be given, where the Defendant is a rifleman, to his superior officer, and in other cases, to the Defendant, at least one month before the commencement of such proceeding.

A plain reading of the said Section would show that it bars a Civil or Criminal

proceeding against a Commandant, Assistant Commandant or rifleman for anything done or intended to be done under the powers conferred by or in pursuance of any provision of the said act or orders or rules after lapse of three months from the date the act complained of was committed. The said Sub-section (4) of Section 10 of the Assam Rifles act, 1941, therefore, does not apply to disciplinary proceedings or proceedings for General Court Martial against a Commandant, Assistant Commandant or rifleman for any misconduct or offence. This would be further clear from the opening words of Sub-section (4) of Section 10 of the Assam Rifles Act, 1941, to the effect that notwithstanding anything contained in "any other law" for the time being in force. Sub-section (4) of Section 10 of the Assam Rifles Act, 1941, will therefore not apply to legal proceedings under the Assam Rifles Act, 1941, or the Army Act, 1950, made applicable to an unit of Assam Rifles by a notification of the Central Government u/s 4 of the Army Act, 1950. Since the proceedings of General Court Martial are proceedings under the Army Act, 1950, as made applicable to the unit of Assam Rifles and was not a proceeding under "any other law" for the time being in force, the said proceedings were not barred by time under Sub-section (4) of Section 10 of the Assam Rifles Act, 1941.

8. It was next submitted by the Petitioner that the first four charges in the charge-sheet dated 28.11.85 had already been investigated earlier by the authorities and after such investigation and trial, the Petitioner was only given a warning and was subjected to close watch for a period of 60 days by order dated 23.3.85 passed by the Commandant. 11 Assam Rifles and thus the Petitioner could not be subjected to a fresh trial in respect of the said four charges in the charge-sheet dated 28.11.85. This contention of the Petitioner raised in paragraph-8 of the writ petition, however, has been answered in paragraph-4 of the affidavit-in-opposition filed by the Respondents. It has been stated therein that the Petitioner was never tried and administered warning on the first four charges before he was tried by the General Court Martial and that the Petitioner was only given a warning for initiating adverse Annual Confidential Report by the said order of the Commandant, 11 Assam Rifles, in accordance with the procedure laid down in paragraph-55 of the Army Order No. 10/S/83.

9. Special Army Order No, 10/S/83 contain the instructions for rendering confidential report for officers issued by the Military Secretary's Branch. Paragraph-55 of the said Special Army Order No. 10/S/83 is to be the following effect.

55. Before an adverse Report is initiated, the following will be ensured:

(a) The officer will be warned in writing of all his short-comings which are intended to be reflected in the adverse Report.

(b) The written warning as in (a) above will specifically mention that the same has been issued for the purpose of initiating an Adverse Report.

(c) The next Higher Headquarters will be informed of the fact that the officer has

been warned. A copy of the warning letter also accompany the Adverse Report, if and when initiated.

(d) The officer will be given a period of 60 days to show improvement.

It is clear from the aforesaid paragraph-55 of the Special Army Order No. 10/S/83 that a written warning is to be issued to the officer concerned informing him of his short-comings which is intended to be reflected in the Adverse Report before initiating an Adverse Report and the Officer would be given a period of 60 days time to show improvement. Thus, the warning that was given to the Petitioner was only for the purpose of initiating an Adverse Report and for the purpose of giving him 60 days time to show improvement. The contention of the Petitioner that the written warning was issued after investigation and trial in respect of the first four charges in the charge-sheet dated 28.11.85 is not correct.

10. The Petitioner vehemently argued that at the preliminary hearing when the summary evidence was recorded, the provisions of rules 22, 23 and 24 of the Army Rules, 1954 as well as Army Order 70/84 were not strictly followed. In this context, he pointed out that the Army Order 70/84 prescribed a form which was required to be filled up by the Commanding Officer at the time of hearing of a charge against a person subjected to Army Act, 1950, but the said form was not duly filled up by the Commanding Officer. He further submitted that no opportunity was given to the Petitioner to cross-examine the witnesses produced against him and that the witnesses examined were not independent witnesses. Mr. P.N. Choudhury, learned Counsel for the Respondents, on the other hand, relied on the averments made in affidavit-in-opposition filed on behalf of the Respondents and submitted that all care were taken to comply with the procedure laid down in rules 22.23 and 24 of the Army Rules, 1954, and that due opportunity was given to the Petitioner to cross-examine the witnesses produced against him. He further argued that in any case since the Petitioner has been dismissed from service pursuant to findings recorded by the General Court Martial which took place after preliminary hearing, the preliminary hearing is of no relevance for deciding this case.

11. On perusal of the records of the said preliminary hearing produced before the Court, I find that the procedure as laid down in Rules 22, 23 and 24 of the Army Rules, 1954, relating to hearing of charges, for taking summary evidence and for remanding of the accused has been substantially complied with. I further find from the records that the form in Appendix-A to the Army Order 70/84 for recording proceedings before the Commanding Officer under Rule 22 of the Army Rules, 1954, have been duly filled up by the Commanding Officer in respect of preliminary hearing on the charges. The said proceedings for the preliminary hearing have not only been signed by the Commanding Officer but have been signed by two other officers in whose presence the proceedings were held. I further find from the said proceedings that the Petitioner has even cross-examined some of the witnesses. Thus, it is difficult to hold that the Petitioner was not given due opportunity to cross-examine the witnesses and that the

procedure laid down in rules 22,23 and 24 of the Army Rules, 1954, have not been complied with. In any case, as has been held by the Supreme Court in *G.S. Sodhi v. Union of India* AIR 1991 SC 161, cited by Mr. Choudhury, learned Counsel for the Respondents, the entire proceedings contemplated under Rule 22 to 25 are only preliminary and it is meant for the purpose of Commanding Officer satisfying himself whether Court Martial should be ordered or not and if there are some minor irregularities they do not, in any way, affect the proceedings in General Court Martial during which a regular trial was conducted. In the instant case, since after the preliminary hearing and recording of summary evidence, General Court Martial in respect of the charges against the Petitioner was in fact ordered and after regular trial in the said General Court Martial, the Petitioner has been found guilty and has been punished by way of dismissal from service, minor irregularities, if any, in the preliminary hearing held against the Petitioner will not vitiate the said trial of the Petitioner in the General Court Martial and the findings of guilt recorded after such trial by the General Court Martial and the punishment imposed on the Petitioner on the basis of such findings.

12. The Petitioner next submitted that in the General Court Martial, he was not given due opportunity to defend himself, inasmuch as, he was not allowed to inspect documents and materials against him. The defence witnesses who were to be produced by him were interfered with by the prosecution. All the prosecution witnesses were present when a particular prosecution witnesses was examined contrary to Rules and procedure that other prosecution witnesses should not remain present when one prosecution witness is being examined. In the affidavit-in-opposition filed by the Respondents, however, it has been stated in paragraph 11 that defence was given maximum latitude and full opportunity at every stage of the trial by the General Court Martial and the proceedings of the General Court Martial were conducted in a fair and impartial manner in accordance with the provisions of the Army Act, 1950 and rules made thereunder. It has been further stated that the General Court Martial did not proceed without a defence counsel and the General Court Martial was adjourned on 2nd September, 1986 to 6th September, 1986 and on 6th September, 1986 to 9th September, 1986 in order to make it possible for the defence counsel to attend the trial and the trial proceeded only after the defence counsel was present in the Court, I have perused the proceedings and records of the General Court Martial produced before the Court and after perusal of the same, it is difficult to hold that due opportunity was not given to the Petitioner to defend himself in the proceedings before the General Court Martial.

13. The Petitioner then argued that the Presiding Officer of the General Court Martial was biased as he had earlier processed the entire case against the Petitioner as the Commanding Officer of the battalion. In paragraph-8 of the affidavit-in-opposition, on the other hand, it has been stated that the proceeding of the General Court Martial was conducted by Col. S.K. Autshi, who came to Headquarter 5 Mtn Bde on posting on 27.11.86 by which date the whole pre-trial proceedings had already been processed and finalised and he was never involved

in the proceedings of the case. It has been particularly stated in the said paragraph that at no stage whatsoever Col. S.K. Autshi applied his mind in the instant case as Deputy Cdr. 5 Mtn Bde nor did he carry out any investigation nor any inquiry in the case. Hence the contention of the Petitioner that the Presiding Officer of the General Court Martial was biased is mis-conceived.

14. Finally, the Petitioner relying on paragraph 26 of the writ petition argued that assuming that the Petitioner was guilty of the first, second, third and fourth charges, the punishment of dismissal against the Petitioner was too harsh and disproportionate to the alleged offence and, therefore, should be quashed. Mr. P.N. Choudhury, learned Counsel for the Respondents, on the other hand, submitted that the quantum of punishment is within the discretion of the Court Martial and in support of his said contention cited the decision of the Supreme Court in the case of *Sardar Singh v. Union of India* AIR 1992 SC 417. He also relied on the decision of the Supreme Court in the case of *Union of India and others Vs. J.S. Brar*, for his submission that the High Court should not interfere with the findings and sentences rendered by the General Court Martial as confirmed by the Chief of the Army Staff.

15. In *Union of India v. G.S. Brar* (supra), the question as to whether the punishment was disproportionate to the offence for which the delinquent officer had been found guilty does not appear to have been raised and instead the delinquent officer had raised various other contentions challenging the findings of guilt recorded by the General Court Martial. Hence the said decision is of no assistance to the Respondents on the question as to whether the punishment that has been imposed against the Petitioner is disproportionate to the offence for which the Petitioner has been found guilty. In *Sardar Singh v. Union of India* (supra), on the other hand, this question was directly raised and on interpretation of the provisions of the Army Act, 1950, the Supreme Court held:

It can be seen that Sections 71(a) to 71(e) and S.71 (k) provide for extreme punishments and are severe in nature. Sections 71(f) to 71(j) and Section 71(i) provide for comparatively lesser punishments. Section 72 of the act is the next relevant Section which reads as under:

72. Alternative punishments awardable by Court-martial - subject to the provisions of this act, a Court-martial may, on convicting a person subject to this act of any of the offences specified in Sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said Sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in Section 71, regard being had to the nature and degree of the offence.

(Emphasis supplied)

?? ?? ?? ?? ?? ?? ?? ?but in awarding the punishment the Court-martial has to keep in view the spirit behind Section 72 of the act and it has to give due regard to the nature and degree of the offence. It can be seen that Section 63 provide for awarding any of the lesser punishments enumerated in Section 71 of the act.

In view of these provisions of law and having regard to the nature and degree of the offence, we are firmly of the view that the punishments awarded to the Appellant namely, three months RI and dismissal from service are severe and are also violative of Section 72.

Section 71(e) of the Army Act, 1950 provides for the punishment of dismissal from service and as per the aforesaid decision of the Supreme Court it is an extreme punishment and is severe in nature. In the aforesaid decision of the Supreme Court, it was further settled that in awarding the punishments, the Court-martial has to keep in view the spirit behind Section 72 of the Army Act, 1950 that it has to give due regard to the nature and degree of offence.

16. In the instant case, from the proceedings of General Court Martial it appears that the Petitioner has been found not guilty of fifth and sixth charges but guilty of first, second, third and fourth charges. The said first second, third and fourth charges against the Petitioner as indicated in the charge-sheet, a copy of which has been annexed to the writ petition as Annexure-2, are as follows:

First charge Army Act Section 63: An act prejudicial to good order and military discipline.

In that he, at field, on 31 Oct, 84 while being the Officer Commanding "A" Coy. 11 Assam Rifles on receipt of signal No. 0 2140 dated 31 Oct 84 from Tac HQ 11 Assam Rifles directing Coy Vdrs to visit fwd posts immediately to check alertness and report all OK did not himself visit the fwd post but improperly detailed JC-111310 Sub GS Panthi, the Senior JCO of the Coy for the task.

Second charge Army Act Section 45 : Being an Officer behaving in a manner unbecoming his position and the character expected of him. In that he, at field, between the period 14 Oct 84 to 30 Nov 84 drew reactions for personal consumption for Rs. 930.37 (Rupees Nine hundred thirty and paise thirty seven) only from the Quartermaster "A" Coy but did not pay for the same.

Third Charge Army Act Section 57(a) : In a Tour Diary made by him knowingly making a false statement. In that he,

at field, on 17 Dec 84 while being the Officer Commanding "A" Coy in his Tour Diary stated that he left Manigong on 20 Oct 84 for Tadadege Well knowing the said statement to be false.

Fourth Charge Army Act Section 57(a) : In a Tour Diary made by him knowingly making a false statement.

In that he,

at field, on 7.1.85, while

being the Officer Commanding "A" Coy in his Tour Diary stated that he left Manigong on 26 Nov 84 for sheet well knowing the said statement to be false.

The aforesaid four charges against the Petitioner have been established in the

General Court Martial and the Petitioner was liable to punishment. But having regard to the nature and degree of the offences established against the Petitioner, the extreme and severe punishment of dismissal from service was violative of the provisions of Section 72 of the Army Act, 1950. In this context, I would like to refer to the "statement as to character and particulars of service of accused" which finds place in the records of the General Court Martial produced before the Court and has been marked as Exhibit-"SS". The said statement has been furnished by Colonel Commandant 11 Assam Rifles and is dated 29th December 1986. In paragraph 2 of the said statement, it has been stated: "Irrespective of this trial, the accused's general character is exemplary". Thus the general character of the Petitioner was certified by the authorities of the Assam Rifles as exemplary irrespective of the trial in the General Court Martial and yet he was awarded the extreme and severe punishment of dismissal from service. In the peculiar facts and circumstances of the case, therefore, I quash the impugned order of dismissal.

17. Since the power to impose punishment is vested not in the Court but in the Court-Martial u/s 72 of the Army Act, 1950, the matter will now be sent back to the Court-Martial for awarding any punishment lesser than dismissal from service as the Court-Martial may deem fit and proper having regard to the nature and degree of the offence. Considering, however, the fact that the Petitioner has been found guilty of indiscipline by the Court-Martial and as a result of the impugned order of dismissal the Petitioner has remained out of service, I am not inclined to award any salary and allowances to the Petitioner for the period when the Petitioner remained out of service. The Petitioner will be reinstated in service within 3 (three) months from today and will be paid his salary on such reinstatement and I hope and trust that Court-Martial will dispose of the matter afresh as early as possible preferably within the said period of 3 (three) months.

18. The writ petition is disposed of with the aforesaid discretions. However, considering facts and circumstances of the case, the parties shall bear their own costs.