

**(2014) 01 TP CK 0011**  
**In the Tripura High Court**  
**Case No : Writ Petition (C) 516 of 2010**

**Sri Tapan Chandra Das, Executive Engineer, Public Works Department  
(DWS) Vs State of Tripura**

---

**Date of Decision :** 10-01-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2014) 01 TP CK 0011

**Hon'ble Judges :** S.C. Das, J

**Bench :** Single Bench

**Advocate :** D.K. Biswas and Mr. S.S. Debnath, for the Appellant; A.S. Lodh, A.G.A., for the Respondent

**Final Decision :** Dismissed

---

## Judgement

S.C. Das, J.—By filing this writ petition under Article 226 of the Constitution of India, the petitioner sought for the following relief:- In the above circumstances it is most respectfully prayed that your Lordships would be pleased to admit the writ petition and after hearing the Respondents issue an appropriate writ or Command declaring the Proceeding initiated by Memo. Dated 16-3-2006 (Annexure-1) illegal, void and non existent; And a command to the Respondents to treat the Petitioner's service without any penalty and accordingly extend all service benefits immediately.

Heard learned counsel, Mr. D.K. Biswas for the petitioner and learned Additional GA, Ms. A.S. Lodh for the State respondents.

2. The case of the petitioner, in short, is that he joined Tripura Engineering Service on 04.09.1985 and was posted as Assistant Engineer and thereafter, on 22.05.1993, he was promoted to the post of Executive Engineer on ad-hoc basis. While working as Executive Engineer, he had to proceed on leave at different spell on making proper application under compelling circumstances. On 16.03.2006, the Disciplinary Authority (respondent No. 2) by a Memo dated 16.03.2006 initiated a disciplinary proceeding against him alleging that he was un-authorizedly absent from duties for the period from 09.08.2001 to

18.08.2006 (for 10 days) and again from 16.04.2002 to 31.05.2002 (for 46 days) and further from 01.06.2002 to till initiation of the proceeding i.e. on 15.03.2006 (for about 4 years). The disciplinary proceeding was initiated on 16.03.2006 and the inquiry officer submitted report on 24.01.2009 holding that the petitioner was guilty of gross misconduct, and that he remained unauthorized absent for the period from 09.08.2001 to 18.08.2001 for 10 days and 16.04.2002 to 31.05.2002 for 46 days and that while proceeding on leave, he did not hand over the charges of his office to his successor and thereby, committed gross misconduct. For the period from 01.06.2002 to 15.03.2006 though proceeding was initiated, but he was not found guilty of that charge and that period of absence was adjusted against his medical leave and extra-ordinary leave.

The Disciplinary Authority considering the report submitted by the inquiry officer held him guilty and declared the period of 10 days from 09.08.2001 to 18.08.2001 and 46 days from 09.04.2002 to 31.05.2002 as "Dies Non", which will neither count on service nor be counted as break in service and also punished him of withholding of one increment of pay, which is next due without any cumulative effect.

The petitioner preferred an appeal before the Appellate Authority, but the appeal was dismissed.

Hence, this writ petition challenging the order of punishment on the ground of maintainability alleging that the disciplinary proceeding itself was not maintainable in view of the fact that the allegations made does not constitute the basic ingredients of misconduct and further that there was malice in fact, which can be inferred from the attending circumstances of the disciplinary proceeding since the prayer of the petitioner for changing the inquiry officer was rejected and that the inquiry officer himself gathered certain information and recorded it in the disciplinary proceeding to hold the petitioner guilty of the charge.

3. The case of the respondents, in short, is that the petitioner absented himself from duty throwing an application of leave for the period from 09.08.2001 to 18.08.2001 and left the office before the leave was sanctioned by the appropriate authority. Again he enjoyed 43 days leave and thereafter, made a prayer to extend the leave for a further period of 46 days from 16.04.2002 to 31.05.2002, but his prayer for extension of leave was not considered in exigencies of public works, whereas, the petitioner though was asked to join the service remained deliberately absent and thereby, committed gross misconduct. He also did not hand over the charges to his successor while was going on leave and thereby misconduct himself in the discharge of his official duty. From 01.06.2002 to 15.03.2006 he continuously remained un-authorizedly absent from duty, but subsequently, that period of leave was adjusted granting him half pay leave with effect from 01.06.2002 to 30.04.2003 (334 days) on medical ground and extraordinary leave with effect from 01.05.2003 to 28.02.2006 (1035 days) on medical ground. It is further stated that the petitioner often used

to remain absent without any authority and therefore, the disciplinary proceeding was initiated against the petitioner and he was rightly found guilty of the charges framed against him. Already a lenient view has been taken by the Disciplinary Authority in respect of punishment and since there is documentary evidence that the petitioner was deliberately absent from duties un-authorizedly, he does not deserve any lenient consideration and while exercising the power of judicial review, this court need not interfere in the order passed by the Disciplinary Authority.

4. Learned counsel, Mr. D.K. Biswas, appearing for the petitioner argued that the petitioner after making proper application for granting leave, under compelling circumstances was absent from duty which do not constitute willful absence from duty and therefore, such absence from duty though without authority, do not constitute misconduct since the allegation of un-authorized absence is not supported by any fact that the absence was willful.

It is also contended by learned counsel, Mr. Biswas that mere allegation that the petitioner was un-authorized absent cannot be the basis of drawing a disciplinary proceeding for gross misconduct and therefore, the disciplinary proceeding itself is not maintainable.

5. On the contrary, learned Addl. GA, Ms. Lodh has submitted that indisputably, the petitioner was un-authorized absent from duty. For the period from 09.08.2001 to 18.08.2001, he remained absent from duty making an application without bothering as to whether his leave was granted or not and again for the period from 06.04.2002 to 31.05.2002, he applied for extension of leave, but that was rejected and he was directed to join immediately, but he did not obey the direction of the Disciplinary Authority and remained absent. Such conduct of the petitioner was sufficient to hold that he was guilty of misconduct. Whether it was willful or not is to be inferred from the facts and circumstances and the petitioner adduced no evidence to show that he was in a compelling situation to remain absent and to go away from duty. Therefore, the disciplinary proceeding was maintainable and the punishment given was justified.

6. This is a writ petition filed by the petitioner challenging the verdict of the Disciplinary Authority affirmed by the Appellate Authority. It is a basic law that a writ petition is to contain the pleadings with supporting evidence. The petitioner challenged the maintainability of the disciplinary proceeding, but in support thereof, no evidence is annexed. Even the statement of the petitioner given at the time of disciplinary proceeding has not been annexed. His leave applications or any other prayer made by him during the period of alleged absence from duty also not annexed. Under such circumstances, it is very difficult to decide the issues raised by learned counsel, Mr. Biswas on behalf of the petitioner.

Learned Additional GA, was asked to produce the records of the disciplinary proceeding and accordingly, the record has been placed. Photo copies of all the documents reflected in the inquiry report of the I.O. has been found on record,

but except the statement of one P.W. namely, Pradobh Lal Roy, no other statement of witnesses recorded during inquiry by the I.O., is found on record.

However, this writ petition is to be decided on the basis of the materials placed before the Court and this Court cannot ask the parties to adduce further evidence in support of their contention.

7. The disciplinary proceeding initiated against the petitioner on the following article of charge:--

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI T.C. DAS, EXECUTIVE ENGINEER, O/O THE SUPERINTENDING ENGINEER, PHE, CIRCLE-II, AMBASSA.

#### ARTICLE OF CHARGE

That Sri T.C. Das, Executive Engineer, O/O the Superintending Engineer, PHE Circle-II, Ambassa failed to maintain absolute integrity and devotion to duty on that he had been absenting himself from duties for 10(ten) days from 09-08-2001 to 18-08-2001, for 46 (forty six) days, from 16-04-2002 to 31-05-2002 and from 01-06-2002 till date quite unauthorisedly.

The unauthorized absence of the aforesaid Sri T.C. Das, Executive Engineer for the above mentioned spells has been an act of gross misconduct quite unbecoming of a government servant and by such unauthorized absence Sri Das violated Rule-3(1) of the Tripura Civil Services (Conduct) Rules, 1988.

8. The Disciplinary Authority issued Memo dated 16.03.2006, which contained the Article of Charge reproduced above, the statement of imputations, the list of documents and the list of witnesses.

9. The Article of Charge contains three allegations:--

i) The petitioner absented from duty un-authorizedly from 09.08.2001 to 18.8.2001 - 10 days

ii) From 16.04.2002 to 31.02.2002 - 46 days

iii) From 01.06.2002 to till date (15.03.2006).

There was no charge framed on the allegation for not handing over of charge by the petitioner. In the statement of imputations, it has been alleged that while going on leave, the petitioner did not hand over his charges. The inquiring officer, in course of inquiry, formulated four points for decision. Those are:--

#### 6. POINTS FOR DECISION

Point No.(i):--Whether Sri T.C. Das, A.O. was unauthorizedly absent for 10 days from 9-8-01 to 18-8-01.

Point No.(ii):--Whether Sri T.C. Das, A.O. on being sanctioned earned leave for 10 days w.e.f. 20-9-01 to 29-9-01 vide office order No. F.1-157/SE/PHE-

II/1933-36 dated 13.9.01 availed earned leave against aforesaid sanction order without handing over his charge.

Point No.(iii):--Whether Sri T.C. Das, A.O. was unauthorizedly absent for 46 days from 16-4-02 to 31-5-02 and from 1-6-02 till date i.e. 15-3-06, date of framing of charge sheet.

Point No.(iv):--Whether by such acts as mentioned above, Sri T.C. Das, A.O. failed to maintain absolute integrity and devotion to duty and such acts of Sri T.C. Das, A.O. are unbecoming of a government servant violating rule-3(1) of the Tripura Civil Services (Conduct) Rules, 1988.

10. It appears, the inquiry officer formulated point No. (ii) above mentioned, de hors the charges framed against the petitioner and so, the finding of point No. (ii) ought to have been rejected by the Disciplinary Authority and would not have taken cognizance on such finding and would not have arrived at a conclusion of guilt of the petitioner.

The Article of Charge should contain the basic allegations against the delinquent officer. The inquiry officer is to give his finding only on those Article of Charges and not beyond that. Even if, there is something stated in the Memorandum of imputations beyond the Article of Charges, those imputations cannot be a foundation for guilty finding of a delinquent and consequently any punishment on such allegation cannot sustain.

11. It is an undisputed fact that the petitioner was absent from duty from 09.08.2001 to 18.08.2001 for 10 days and his prayer for granting leave was not allowed. The petitioner failed to produce any scrap of paper on record as to why he absented himself from duty though his leave was not granted by the authority for the said period. Thereafter, the petitioner was granted 43 days Earned Leave and he applied for extension of leave with effect from 16.04.2002 to 31.05.2002 (46 days). That extension was not allowed by the authority and he was asked to join the duties, but he did not do so. On perusal of Exbt. S1 series, which is found in the record of the proceeding, it appears that the leave of 10 days, as aforesaid, was not granted by the appropriate authority and the subsequent extension of leave for 46 days was also not granted by the authority. The petitioner also relied on seven items of documents, which contains his leave applications for the aforesaid two spell and for the third spell from 01.06.2002 to 15.03.2006. Exbt. D1 shows that the leave for 10 days and 46 days were sought on the ground of family affairs. The leave for the period from 01.06.2002 to 15.03.2006 was sought on the ground of family affairs and medical ground. There is no evidence in the record as to why the petitioner absented himself for 10 days though the leave was not granted and again while his prayer for extension of leave was refused, why he did not join the duties during the period from 16.04.2002 to 31.05.2002. This subsequent period of about 4 years has been adjusted on medical ground as against medical leave and extraordinary leave.

12. Now the question is whether such absence from duty amounts to misconduct on the part of a public servant.

Learned counsel, Mr. Biswas referred Rule 24 of The Tripura State Civil Services (Leave) Rules, 1986, which reads as follows:--

24. Absence after expiry of leave.

(1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

13. In course of argument, he has also referred F.R. 17 and 17-A, which reads as follows:--

F.R. 17.(1) Subject to any exceptions specifically made in these rules and to the provision of Sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(2) The date from, which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

F.R.17-A. Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence -

(i) In the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;

(ii) In the case of other employees as a result of action in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of the competent authority; and

(iii) In the case of an individual employee, remaining absent unauthorizedly or deserting the post,

Shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in

departmental examinations, for which a minimum period of continuous service is required.

14. Learned counsel, Mr. Biswas put emphasis on the word "willful" contemplated in Sub-rule (2) of Rule 24 and it is his submission that unless it is elaborately stated in the Article of Charge that the petitioner willfully remained unauthorizedly absent, the proceeding itself is not maintainable.

Admittedly, the word "willful" has not been mentioned in the Article of Charge, but it is candidly mentioned that the petitioner was unauthorizedly absent from duty. Whether the petitioner was willfully absent or not is a matter to be stated by the petitioner alone. The respondent-Disciplinary Authority cannot say whether it was willful or un-willful. Burden lies on the petitioner to prove that the absence was not willful, but was under a compelling situation. That burden cannot be shifted on the shoulder of the Disciplinary Authority. So, I find no merit in the argument of learned counsel, Mr. Biswas on that score that the disciplinary proceeding itself was not maintainable for not stating the fact in the charge that the petitioner was unauthorizedly absent willfully.

15. Now let us see whether such un-authorized absence from duty amounts to misconduct or not.

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

Every Government employee shall at all times -

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

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

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

A Government servant is governed under a code of conduct. The importance of his conduct and character is the prime essential in relating to the public dealings. Contrary to this, the misconduct, inefficiency, negligence, indiscipline, corruption

etc. on the part of the Government servants shaken the position of the Government in the smooth running of the administration. The misconduct is, therefore, a wide expression which is not defined in any enactment, but it can be inferred where there are gross intentional violation of law and acts which are prohibited by law.

What amounts to misconduct is a matter which depends in the circumstances of each and every case. A number of decisions of various Courts in India have expressed the term "misconduct" in different aspects of the facts and circumstances. In the given facts of this case, while the conduct of the petitioner is detrimental to the discharge of duties of a public servant of his status, definitely, it was not a proper conduct on the part of the petitioner in course of his service. Being a responsible gazetted officer of the Department, he was supposed to obey the rules and discipline of the Department, but his conduct was contrary to what he ought to be.

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

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

- (a) Blameworthy conduct of Government servant;
- (b) Lack of efficiency, lack of intelligence and farsightedness and indecisiveness of the Government servant;
- (c) Lack of devotion of duty;
- (d) Gross or habitual negligence in performance of duties.

16. P. Ramanath Aiyars law Lexicon defines "misconduct" thus:--

The term "misconduct" implies a wrongful intention, and not a mere error of judgment. "Misconduct" is not necessarily the same thing as conduct involving moral turpitude. The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is construed. "Misconduct" literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; and carelessness, negligence and un-skillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness an abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

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

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

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

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

18. Leave cannot be claimed as a matter of right. Absence without leave is a serious act of indiscipline. Leave is granted to meet the personal/family exigencies of an employee. An employee cannot claim an unfettered right to remain absent from duty clandestinely, though prayer for leave not granted by the authority. Under compelling situation, if an employee remains on leave, he

has to justify it to the satisfaction of the authority. If an employee remains on leave or abundance his duty at his own whims and caprice he is bound to come within the mischief of misconduct. In the case at hand, the petitioner made an application for leave and/or for extension of leave on the ground of family affairs, but before the grant of leave, he absented clandestinely from duty and again before grant of extension of leave he remained absent and even after reminder for his joining the duties, he did not join and remained absent. Such act of the petitioner definitely constitute misconduct on his part. Whether it was willful or un-willful was supposed to be proved by the petitioner, but there is nothing on record to show that he was not willful in absenting from duty.

19. The next contention on behalf of the petitioner, raised by learned counsel, Mr. Biswas is that there was malice in the action of the Disciplinary Authority as well as inquiring Authority. Allegation of malice is to be proved with sufficient evidence in support thereof. A mere allegation of malice is of no consequence in a disciplinary proceeding. The petitioner contended that no confidence was raised against the inquiring authority, but that was refused.

I have carefully considered the materials placed on record and in my considered opinion, the no confidence raised against the Inquiring Authority by the petitioner was based on no sound material. Therefore, the superior authority rightly rejected the prayer of no confidence. The second contention raised was that the Inquiring Authority in his report mentioned that he himself has inquired about the superannuation of P.W. 1 and he was satisfied that P.W. 1 retired on 31.08.2002. The finding which is objected is in Para 8 of the report, which reads as follows:--

8. Sri T.C. Das, A.O. has mentioned in his written brief of argument that since Sri P.L. Roy (PW-1) has deposed that his date of retirement is 31-8-01 the documents exhibited by the prosecution, signed by Sri P.L. Roy of date later than this have no evidential value. But the same was confirmed by me from the Public Works Department, Govt. of Tripura and it was found that the date of superannuation of Sri P.L. Roy (PW-1) is 31-8-2002 and copy of seniority list published vide Memo, dated 23-8-1985 is marked and exhibited as Exbt. 1/1 by me. Thus, I hold that date of retirement of Sri P.L. Roy (PW-1) as recorded in his deposition as 31-8-01 is typographic mistake and his actual date of retirement is 31-8-2002.

20. A bare reading of the above, makes it clear that regarding superannuation of P.W. 1, the inquiry officer made a comment. The inquiry officer was supposed to act as an umpire in a disciplinary proceeding. He should not have based on his own impression of a fact which was not brought on record by the contesting parties. However, on going through the contents of Para 8, I find that he has simply examined a copy of seniority list and observed that P.W. 1 retired on 31.08.2002. For this observation of the inquiry officer, I find no reason at all to arrive at a conclusion that the inquiry officer was biased and that there was any malice in the process of inquiry. This ground also fall short of consideration for

obvious reasons. It is abundantly clear that the petitioner un-authorizedly remained absent from 09.08.2001 to 18.08.2001 (10) days and again from 16.04.2002 to 31.05.2002 (46 days). He was also absent from duty from 01.06.2002 till 15.03.2006 and for that period also, disciplinary proceeding was drawn, but since it was on medical ground, he was given medical leave and extraordinary leave and that period was adjusted. It shows that from the year 2001 to March, 2006, the petitioner was absent from duty at different spell without authority. Under such circumstances, the Disciplinary Authority was bound to proceed against the delinquent officer and I find, nothing wrong in the proceeding initiated as well as punishment inflicted on the petitioner. The Disciplinary Authority has only ordered that the period of absence of those two spell should be treated as dies-non without break in service and that one increment shall withheld from his pay without cumulative effect. The punishment does not appear to be disproportionate to the offence alleged and hence, I find no reason at all to interfere in the finding of the Disciplinary Authority. It is a settled law that this Court is not required to sit as an Appellate Authority and to re-appreciate the evidence with meticulous scrutiny as is done in criminal cases. This Court is also not required to substitute its own view, for the view taken by the Disciplinary Authority unless, it is found that the decision taken by the Disciplinary Authority is based on no evidence or that a failure of justice has occasioned because of any other reason apparent on the face of the record.

21. Learned counsel, Mr. Biswas in support of his contention relied on the decision of the Apex Court in the case of Praveen Bhatia Vs. Union of India (UOI) and Others, In that reported case, the Supreme Court found it appropriate to elaborate the word "misconduct" and in Para 8 of the judgment, the court has observed:--

8. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

In that reported case, the Supreme Court in Para 15 of the judgment has further held that:--

15. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the Court can direct re-consideration or in an appropriate case to

certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases.

This decision in the facts and circumstances, in my considered opinion, is in no way help the case of the petitioner.

22. In the case of State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, the Apex Court had the occasion to examine as to what extent the negligence in duty constitute misconduct. The Court has held:- It would be difficult to draw any analogy from the facts of case relied upon by the respondent. It also has however been observed that negligence in duty may amount to misconduct in certain cases where consequences may be directly attributed to the negligence of the delinquent resulting in heavy losses. The nature of charges in the present case is different which cannot be said to be mere omission on his part or it may be attributed to lack of competence or inaptitude etc. Apart from other charges it was directly attributed to the respondent that he had made changes in the alignment of long section approved by the Chief Engineer without sanction from the competent authority as a result of which the length of canal itself was much increased involving heavy expenditure. Relevant provisions of the Manual have been quoted in the charges to indicate that the respondent was not authorized to make changes. The approved alignment was rendered infructuous. It all relates to the factual aspect of the matter. Apparently it is not open to the respondent to raise these pleas now at this stage.

In view of the discussions made above, the writ petition is dismissed, but in the circumstances, parties are directed to bear their own cost.