

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 6th September, 2011
Judgment Delivered On: 16th September, 2011

+ W.P.(C) 5518/2011

EX.CONST.KRISHAN KUMAR Petitioner
Through: Ms.Rekha Palli, Advocate and
Ms.Amrita Prakash, Advocate.

versus

UOI & ORS. Respondents
Through: Mr.Sachin Datta, Advocate and
Mr.Abhimanyu Kumar, Advocate
with Mr.Ashok Tikku, Deputy
Commandant, CISF.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. For the security of Sh.S.S.Libra, Member of Parliament, a Central Industrial Security Force Outpost was established outside his residence at village Libra in Punjab. 14 Force personnel were deputed under the command of SI Sanat Hasda. He was the senior-most officer. The other members of the Unit were HC Amar Singh, HC Gurnam Singh, HC Parmatma Rai, Ct.Tej Singh, Ct.Parvez Ahmed, Ct.Krishan Kumar, Ct.Desai Kiran, Ct.Santosh Kumar, Ct.Shish Ram,

Ct.Shahabad Khan, Ct.Ram Sarup, Ct.Sapan Singh and Ct.Lakhbir Kumar.

2. On 3.3.2010 SI Sanat Hasda, Ct.Sapan Singh and Ct.Shahbad Khan accompanied Shri S.S.Libra to New Delhi for his personal security and SI Sanat Hasda claimed to have received information on his mobile phone from HC Amar Singh that an AK-47 rifle bearing Butt No.151 issued in the name of the petitioner was missing from the Outpost and that he gave orders to conduct an extensive search to locate the rifle which could not be found in spite of intensive search and thus the matter was reported to the Commandant of the Unit. On 8.3.2010, upon information given by Ct.Shish Ram, the rifle was recovered from inside a dry well in the village Libra.

3. It is natural that the incident was investigated and indeed we would have been surprised if it was not investigated for the reason an AK-47 rifle has to be kept in proper custody by force personnel to whom it is issued and not that the rifle can be played around as akin to a toy. The department investigated the matter and during investigation which was conducted by Dy.Commandant Ashok Tikku statements of various persons were recorded as also the duty deployment register, arms and ammunition issue register and other registers pertaining to the post personnel leaving the post were looked into and were seized.

4. It is the case of the department that the preliminary inquiry conducted by DC Ashok Tikku revealed, as per statement of Ct.Tej Singh that he saw the rifle lying abandoned on petitioner's bed and since he was angry with

the petitioner he picked up the rifle and threw it outside the boundary wall of the outpost. As per HC Parmatma Rai the petitioner told him on 3.3.2010 that his rifle was missing which information he tried to pass on to SI Sanat Hasda over the telephone but could not contact him and later on HC Amar Singh claimed to have been able to make a contact with SI Sanat Hasda and information passed on to him of the rifle being missing. The duty register showed white fluid being used to erase existing writing pertaining to duties performed by the petitioner and since the duty has to be performed with an arm, the relevance thereof is to show that the AK-47 rifle in question was with the petitioner till it was lost on 3.3.2010. The mobile phone call details of 3 telephones were procured. Mobile phone number of SI Santa Hasda being 9370553713, that of the petitioner being 9541423060 and that of HC Parmatma Rai being 9023412395 were obtained from the service provider which included the particulars of the tower location as and when a call was made or received through the said telephones. The call details received showed that the petitioner had on 28.2.2010 at 19:53:32 hours made a call to a number which was routed through the mobile tower near Kaushal Nursing Home in Rajpura (Punjab). By 21:14:26 hours the mobile phone had been used to make a call routed through the mobile tower at Bhagwan Nagar Colony, Pipli (Kurukshetra) Haryana. At 21:48:08 hours said phone was used to make a call routed through the mobile tower at Samna Bahu Nilokheri (Haryana). The call details further revealed that on 2.3.2010 at 17:36:13 hours a call was made through the said mobile phone routed through a mobile tower at Patel

Nagar, Kurukshetra (Haryana); at 18:57:54 hours a call was made through said number routed through a mobile tower at Palika Vihar, Ambala (Haryana). At 21:23:45 hours a call was made through said mobile phone which was routed through a tower at Mohan Pur, Ludhiana, Punjab. Needless to state the incriminating value of the said call details was the absence of the petitioner from the outpost on 28.2.2010 and 2.3.2010. The statement of the cook at the mess of the outpost Cook Deepak was recorded as per which the petitioner had not taken meals at the mess from the night of 28.2.2010 till 2.3.2010. Thus, evidence surfaced of petitioner's absence from the outpost from the evening of 28.2.2010 till he returned in the evening of 2.3.2010. There was no record of the petitioner having entrusted the AK-47 rifle to his immediate superior officer which had to be one of three head constables at the outpost and we may note that inchoate evidence surfaced that it was HC Parmatma Rai to whom the weapon had to be entrusted. It was prima facie apparent that all force personnel had colluded to hide the truth and probably the rifle went missing not on 3.3.2010 but earlier and in any case information was available of the same being missing on 3.3.2010 and not 4.3.2010 for the reason the call details of the telephone of HC Parmatma Rai and SI Sanat Hasda spoke to each other on 3.3.2010 at 21:30:25 hours and the claim of HC Parmatma Rai that he could not contact SI Sanat Hasda in spite of he having tried to do so was false. The statements of the force personnel that the petitioner had remained on duty on all the three days i.e. 28.2.2010, 1.3.2010 and 2.3.2010 was prima facie found to be false and this suggested a collusion amongst all.

5. All 14 personnel were charge sheeted and we highlight that the nature of charge differed from person to person.

6. The charge sheet dated 14.4.2010 issued to the petitioner listed only one article of charge as under:-

“That CISF No.961400620 Constable (GD) Krishan Kumar of CISF Unit, SSG, Greater Noida, (UP) while deployed on duty at Libra out post (Distt: Ludhiana, Punjab), Member of Parliament, Lok Sabha, failed to ensure proper safety and security of the said weapon and left the duty post on 28.02.2010 keeping his weapon unattended on his bed. As a result, AK-47 rifle bearing Butt No.151 issued to the said Constable was found missing on 28.02.2010. He reported at the duty post on 03.03.2010 and intimated the facts about missing of his weapon, AK-47 rifle to HC (GD) P.Rai at about 2045 hrs. on 03.03.2010. The said weapon was subsequently, found on 08.3.2010 in a Dry Well at village Libra. Such serious acts on his part tantamount to gross act of indiscipline, dereliction of duty, unbecoming of a member of the Disciplined Armed Force like CISF. Hence, the charge.”

7. Why no joint inquiry was conducted, when queried by us, from learned counsel for the respondent was responded to by informing us that there is no rule in the CISF Rules which permits a joint inquiry.

8. A perusal of the charge would reveal that it has 2 distinct limbs thereto. First is the charge of having left the duty outpost on 28.2.2010 and reporting back on 3.3.2010. The second is of leaving the AK-47 rifle bearing Butt No.151 unattended on the bed and as a result thereof the rifle being

found missing but subsequently recovered from a dry well on 8.3.2010.

9. We must highlight that the charge should have been of not having left the duty post but of having left the duty post in an unauthorized manner, for the reason unless the rules prohibit a person from leaving a duty post without intimation or permission, there is nothing wrong for a person to leave the duty post while not on actual duty. We are highlighting so for the reason we are noticing loose and laconic charge sheets issued by CISF and one reason for the same, as told to us is that CISF does not have a proper legal department. We note that in our Court CISF is represented by Assistant Commandant Abdus Salam who acts as the Pairvi Officer and has been so acting in this Court for the last 1½ years and as told to us he is not from the legal department but has been attached with the litigation cell as he has a degree in law. We hope and expect Director General CISF to look into the matter and strengthen the legal department by obtaining the sanction of the Cadre Controlling Ministry to create appropriate posts.

10. We need to further highlight that a charge needed to be framed against the petitioner of having colluded to make interpolations in the duty register for the reason using white fluid existing entries were tampered with on the dates 1.3.2010 and 2.3.2010 and all of them pertained to petitioner being shown on duty.

11. Be that as it may, the inquiry proceeded on the sole charge, having two limbs as afore explained.

12. Dy.Comdt. G.C.Chattopadhyay was detailed as the Inquiry Officer. At the departmental inquiry, the prosecution

examined 8 witnesses and no defence evidence was produced by the petitioner.

13. DC Ashok Tikku PW-1 who conducted the preliminary inquiry deposed that on 4.3.2010 the Commandant of the Unit informed him that an AK-47 Rifle bearing Butt No.151 issued to the petitioner was missing from SSG Libra Outpost. He was deputed to enquire into the incident and to search the missing rifle and he began his investigation on 4.3.2010. Upon perusal of the Arms and Ammunition Register, it transpired that AK-47 Rifle bearing Butt No.151 was issued to the petitioner, as recorded on pages 26 & 27 of the register PW-1/Ex.P-1. It further transpired that on 28.2.2010, after performing first shift duty, the petitioner went missing from the camp. That in the statement PW-1/Ex.P-2 dated 11.3.2010 recorded by him and as made by Ct.Tej Singh it stands recorded that the petitioner remained absent from the camp from 28.2.2010 to 02.3.2010 leaving his rifle unattended on his bed and as per the statement PW-1/Ex.P-3 of private cook Deepak Kumar, the petitioner had not taken food from the mess from 28.2.2010 to 2.3.2010. Further, the mobile phone calls and tower location details PW-1/Ex.P-4 taken from telephone exchange for the mobile numbers belonging to the petitioner, given by him during the enquiry, revealed that the petitioner was at Haryana from 28.2.2010 at about 18:53:02 hours to 2.3.2010 at about 21:23:45 hours. The missing Rifle was found in a dry well near Libra Outpost and an FIR PW-1/Ex.P-5, in this regard was lodged at the Sadar Khanna Police Station, Ludhiana. That in order to show that the petitioner was on duty on 1.03.2010 and 2.3.2010 manipulations were made

in the duty deployment register dated 1.03.2010 as well as 2.3.2010 PW-1/Ex.P-6 by applying fluid over a few entries and inserting name of the petitioner therein.

14. On being cross-examined by the petitioner, he clarified that on earlier occasions fluid was used to make changes in the duty deployment register in regards to the duties assigned, but clarified that in the register pertaining to the dates 1.3.2010 and 2.3.2010, fluid was applied to insert name of the petitioner next to Escort Duty and Night Shift Duty.

15. It is apparent from the statement of PW-1 that in view of the fact that there was tell-tale evidence of petitioner making or receiving telephone calls from his mobile number during the day time and in particular the evening of 28.2.2010 and 2.3.2010, entries were so made in the duty register after applying fluid on the existing entries and over writing thereon to show that the petitioner performed duties in the night or as an Escort.

16. SI (Exe.) Sanat Hasda PW-2 deposed that on 3.3.2010 morning he left the Libra Camp and accompanied Sh.S.S.Libra up to New Delhi. On 4.3.2010 at about 08:00 hours he received information from HC Amar Singh that one AK-47 rifle was missing since previous night. He directed HC Amar Singh to check properly and report to him. At about 10:00 hours, HC Amar Singh informed him that the rifle could not be traced. He telephonically informed the Commandant of the unit about the incident and after briefing the DIG at Gr.Noida camp, he left for Libra Outpost. At the outpost he engaged all personnel to search for the missing rifle. On 5.3.2010 an FIR was lodged with the local

police reporting a missing AK-47 rifle. On 8.3.2010 upon receiving information from Ct.Shish Ram that an AK-47 rifle was lying inside a well in the Libra village, he went to the spot with other CISF personnel and on reaching, sent Driver Gaikward inside the well who confirmed that AK-47 Bearing Butt No.151 was lying inside the well. He immediately informed DC Ashok Tikku and in the presence of Local Police, the Rifle was brought out of the well.

17. On being declared hostile and cross-examined by the Presenting Officer, he stated that the AK-47 rifle bearing butt No.151 was issued in the name of the petitioner. As per orders given by him, all personnel were to keep their weapons with them as there was no *Kote* (a place to keep the weapons) at the outpost. During Preliminary Enquiry all personnel had deposited their mobile phones with DC Ashok Tikku. Mobile No.9541423060 was not issued to the petitioner by the department but it could be his private number. That the petitioner was present in the camp on 28.3.2010 and on 1.3.2010, on which day he performed Escort Duty and also on 2.3.2010, on which day he performed watcher cum night PSO duty with Golka pistol Butt No.212. He further stated that HC P.Rai marked duties of personnel and for the purpose of assigning correct duties; he used fluid on the Duty Deployment Register. In reply to the telephone exchange details showing presence of petitioner's mobile in Haryana, he stated that Shri. S.S.Libra often toured in areas near Haryana and he was not in the outpost on 1.3.2010 from 08:30 AM to 06:30 PM and on 2.3.2010 from 08:30 AM to 06:30 PM.

18. HC Amar Singh PW-3 deposed that his statement given during Preliminary Enquiry be taken as his deposition for the departmental Inquiry. At the Preliminary Enquiry he stated that on 3.3.2010 at about 20:45 Hours the petitioner came to him and reported that his rifle was missing. He immediately directed all post personnel to assemble and tallied their weapons from the issue register whereupon it transpired that AK-47 bearing Butt No.151 issued to the petitioner was missing. Attempts were made to search the rifle but it could not be found. On 4.3.2010 at about 8:00 hours he reported the matter to SI Sanat Hasda and asked him to check weapons of personnel present with him and as per his orders they conducted a further search of the Libra outpost area but the rifle could not be found which was reported to SI Sanat Hasda at about 10:00 hours. On 8.3.2010 at about 17:30 hours information was received that during a search operation a weapon was found lying in a well. He along with other personnel reached the spot where driver Gaikwad was sent inside the well and it was confirmed that the weapon was an AK-47 Rifle bearing Butt No.151 which was then recovered from the well in the presence of local police and taken to the camp.

19. On being cross-examined by the Presenting Officer after being declared hostile, he stated that DC Ashok Tikku at Libra Outpost conducted an enquiry into the matter during which mobile phone numbers of the unit personnel were recorded by Ct.Pratap Singh and as per the list PW-3/Ex.P-1, mobile number 9541423060 was in the name of the petitioner. No outsider entered the outpost on 28.2.2010. He saw petitioner perform 'A' Shift duty on

28.2.2010 at 12:55 hours; Escort duty on 1.3.2010 at 08:30 Hours and night watcher duty on 2.3.2010. That on 1.3.2010 petitioner had his AK-47 rifle with him on duty. He stated he had no knowledge as to how petitioner's mobile phone details and its corresponding tower location details indicated its presence at Haryana.

20. HC P.Rai PW-4 deposed that his statement given during Preliminary Enquiry be taken as his deposition for the departmental Inquiry. At the Preliminary Enquiry he stated that at about 20:45 Hours the petitioner came to him and reported about his rifle missing from his locker. He went along with the petitioner to check for the weapon in the Almirah where petitioner's rifle bearing Butt no.151 was not found. He ordered for a Fall-in of all post personnel and tallied their weapons with the register and found that AK-47 bearing Butt No.151 issued to the petitioner was missing. Attempts were made to search the rifle but it could not be found. HC Amar Singh reported about matter to SI Sanat Hasda over the telephone who was in New Delhi at the time and following his directions conducted another search operation to find the rifle but without any success. The search went on for a few days. He corroborated PW-3 to the extent that the rifle was recovered on 08.03.2010 at about 17:45 hours from a well in the village in the presence of local police.

21. On being declared hostile, he was cross-examined by the Presenting Officer upon which he stated that during preliminary enquiry Ct.Pratap Singh noted mobile numbers of post personnel as told by them. That the petitioner was present at the outpost from 28.2.2010 to 2.3.2010 and he

had performed escort duty with his AK-47 rifle on 1.3.2010. As per orders, personnel kept weapons with themselves however there was a locker in one of the rooms at the outpost wherein some personnel kept their weapons and he had the key to that locker. As per orders of SI Sanat Hasda he used to mark duties to post personnel. He admitted having made changes in the Duty Deployment Register of 1.3.2010, 2.3.2010 and 3.3.2010 by applying fluid and inserting name of the petitioner therein. He clarified that many times changes were made in the register by applying fluid for adjusting duties as there is a shortage of personnel at the outpost. On 3.3.2010 at night an Escort vehicle was called to the outpost as a precaution if there be a need to travel in search of the weapon but it was sent back.

22. Ct.Tej Singh PW-5 deposed that on 3.3.2010 at about 21:00 hours he came to know that rifle bearing Butt No.151 belonging to the petitioner was missing and that he along with other personnel had tried to search the rifle but could not find it. He further stated that the statement shown to be made by him during Preliminary Enquiry is false, as his signatures were obtained on blank papers by DC Ashok Tikku on the pretext that it was being done pursuant to orders by the Inspector General. That along with 2 other personnel he was sent to the police station upon the assurance that only a few questions will be asked regarding the missing rifle and the FIR lodged in that respect, but at the police station he was arrested in connection with the FIR.

23. He too was declared hostile and cross-examined by the presenting officer upon which he stated that during

enquiry conducted by DC Ashok Tikku mobile number of Libra outpost personnel were noted. Petitioner's name is recorded next to mobile no. 9541423060 in the list prepared during the enquiry. That the petitioner had performed Escort Duty on 1.3.2010 and 'B' shift duty on 2.3.2010. He stated that since he did not have any higher authority's telephone number he could not inform anybody about being misled to sign blank papers by DC Ashok Tikku and that since all post personnel were engaged in searching for the rifle he did not report the matter to any personnel either.

24. SI G.S.Chaudhry PW-6 deposed that as per directions of senior officers he extracted call details and tower location details of Mobile Phone no.9370553713 PW-6/Ex.P-1, which belonged to SI Sanat Hasda which revealed that he made a call to mobile no. 9023412395, which belonged to HC P.Rai as per PW-3/Ex.P-1, on 3.3.2010 at 21:30:25 hours at which time, as per tower location, he was in Punjab. On 4.3.2010 at 4:47:23 hours and 6:25:07 hours calls were made from Sanat Hasda's mobile phone to mobile phone of HC P.Rai at which time Sanat Hasda was in Haryana and Delhi respectively.

25. Balbir Singh PW-7 deposed that his statement given during Preliminary Enquiry be taken as his deposition for the departmental Inquiry; wherein he stated that he used to supply escort vehicle on hire basis to CISF and that on 3.3.2010 at about 12PM he supplied a vehicle driven by Darshan Singh to the Libra outpost which was taken to Delhi to drop of some officers.

26. Darshan Singh PW-8 deposed that his statement given during Preliminary Enquiry be taken as his deposition for the

departmental Inquiry. At the Preliminary Enquiry he stated that he was the driver of the escort duty vehicle that carried SI Sanat Hasda to Delhi on 3.3.2010. On being cross-examined by the petitioner, he clarified that along with SI Sanat Hasda he left from the Libra outpost at about 1 PM on 3.3.2010.

27. The petitioner opted not to make any oral statement in defence and since he desired to give his statement in writing, the Inquiry Officer acceded to the request and took on record a written statement filed before him by the petitioner in which the petitioner stated that on 1.3.2010 after returning from Escort duty at about 18:30 Hours he took the key of the Almirah where rifles were usually kept, from HC P.Rai and kept his AK-47 rifle bearing Butt No.151 therein. On 2.3.2010 he performed PSO duty with a pistol. On 3.3.2010 when he opened the Almirah to take out his rifle for duty, he found that the rifle was missing. He reported the matter to HC P.Rai who after searching the Almirah and the room, conducted a fall in and checked weapons of all post personnel but his rifle could not be found. On 4.3.2010 HC P.Rai contacted SI Sanat Hasda and reported about the missing rifle. On 8.3.2010 pursuant to an information received, his rifle was recovered from inside a well in the village with the help of local police.

28. Relevant would it be to note that the petitioner attached photocopies of General Diary dated 27.2.2010 to 2.3.2010, duty deployment chart dated 28.2.2010 to 2.3.2010 and attendance of mess diet for February 2010 along with his defence statement. However, he did not tender any of these documents in his statement because of

which these documents were not taken into consideration by the Inquiry Officer, an act which is ex facie wrong for the reason the written statement in defence was permitted to be filed in lieu of petitioner making an oral statement.

29. The Inquiry Officer submitted a report dated 16.7.2010 and with reference to the mobile call details highlighted therein petitioner being absent from the outpost on 28.2.2010 and 2.3.2010 and with reference to the statement PW-1/Ex.P-3 of private cook Deepak Kumar which was proved as having been recorded by PW-1 DC Ashok Tikku held that it was apparent that the petitioner had not taken meals at the outpost from the evening of 28.2.2010 till the evening of 2.3.2010 and this established his unauthorized absence from the unit lines. Upon proof of petitioner being absent and not on duty and there being no evidence that the petitioner had secured the security of the AK-47 rifle by putting the same inside that trunk, key whereof was with HC Parmatma Rai, had contributed, by way of negligence, to the rifle being picked up and thrown by Ct.Tej Singh, who in spite of having turned hostile was disbelieved of his having nothing to do with the rifle and his statement PW-1/Ex.P-2 recorded by DC Ashok Tikku PW-1 was found to be the correct version. Needless to state it was opined that contrivance was resorted to by interpolating the duty register.

30. Supplying the Inquiry Report to the petitioner to enable him to respond thereto and receiving the response and considering the same; concurring with the findings returned by the Inquiry Officer, penalty of removal from service was inflicted upon the petitioner by the

Commandant of the Unit to which the petitioner was attached as per order dated 21.8.2010 against which appeal and revision filed were rejected on 28.9.2010 and 15.3.2011 respectively.

31. At the hearing of the writ petition it was urged that the statement PW-1/Ex.P-3 of private cook Deepak Kumar purportedly recorded by DC Ashok Tikku PW-1 during preliminary inquiry could not be considered in evidence inasmuch as private cook Deepak Kumar was not examined as a witness. Since the inquiry officer had relied upon the said statement, it was urged that the report of the Inquiry Officer was vitiated.

32. Agreeing with the submission advanced that in the absence of private cook Deepak Kumar being not examined and not available for cross examination and the statement not being of a kind which would be *res gestae* evidence, the same could not be relied upon, but we disagree with the conclusion sought to be drawn by learned counsel for the petitioner for the reason after removing the said statement as admissible evidence, we still have evidence in the form of the mobile phone details, in respect whereof we have made *prima facie* observations in para 4 hereinabove and now, in view of the evidence led and proof of the mobile phone call details, we accord our concurrence to the incriminating evidence which has surfaced and the weight thereof being petitioner's absence from the duty outpost from 19:53:32 hours on 28.2.2010 and his being roaming around in Haryana and present in Nilokheri, a township at a distance of at least 3 hours journey from the duty outpost at Libra as also petitioner being roaming around in Kurukshetra,

Ambala and Ludhiana on 2.3.2010. Thus, even if we were to remove the evidentiary worth of private cook Deepak Kumar's statement PW-1/Ex.P-3 we still have sufficient evidence against the petitioner and thus the taint in the report of the Inquiry Officer does not vitiate the same i.e. the wound is not sufficient to bleed the inquiry report to death.

33. From the testimony of HC Parmatma Rai PW-4 we have proof that at the outpost there was no place secured to deposit the weapon issued to a force personnel during the hours the force personnel was not on duty and the substitute was a trunk kept at the outpost, key whereof was with HC Parmatma Rai. The weapon issued had to be kept in the trunk. It is apparent that the petitioner never kept the AK-47 Rifle in the trunk for the reason HC Parmatma Rai has not deposed that the petitioner had taken the key of the trunk from him to keep the rifle. The act of the petitioner in telling HC Parmatma Rai to give him the key so that he could retrieve the AK-47 rifle and none being found therein is obviously a device to create a smokescreen as if the AK-47 rifle was kept in the trunk. Only if HC Parmatma Rai had said that on a previous day the petitioner took the key of the trunk from him telling him that he required the key to keep the AK-47 rifle issued to him in the trunk could we have understood the relevance of the petitioner, on a subsequent day, requesting for the key to be handed over to him so that he could retrieve the AK-47 Rifle. The nail in the coffin of the lie webbed by the petitioner is the fact that as per him he always remained at the duty outpost and never left the same. Where was then the question of his

keeping the AK-47 Rifle in the trunk, key whereof was with HC Parmatma Rai.

34. There is tell-tale evidence against the petitioner and we do not dissect the nitty gritty thereof inasmuch as we remind ourselves and the reader of our decision that our decision relates not to our appellate but to our supervisory jurisdiction and pertaining to domestic inquiries our job is to see whether the procedures of the law were followed and there is fairness in the inquiry and relating to evidence our job would be to see whether it is a case of no evidence or it is a case where inadmissible evidence has been admitted or admissible evidence excluded in the inquiry report or by the disciplinary authority. Indeed, we have found one taint of inadmissible evidence being considered i.e. the statement PW-1/Ex.P-3 of private cook Deepak Kumar which we have excluded as evidence and yet reach the same conclusion.

35. We are excluding to debate upon the issue whether HC Parmatma Rai had spoken to SI Sanat Hasda on 3.3.2010 or could not do so as claimed by HC Parmatma Rai for the reason, qua the charge against the petitioner the same is irrelevant. The debate would be relevant qua HC Parmatma Rai for if it is true that he spoke to SI Sanat Hasda on 3.3.2010 it would be relevant that he did not pass on the relevant information of the AK-47 Rifle being found missing.

36. Before bringing the curtains down on the sordid drama, in addition to the words of counsel to the Director General CISF pertaining to strengthening the legal department of CISF as per para 9 hereinabove, we regretfully bring to the notice of the Director General CISF that the instant case brings out a serious lacuna in the

procedures followed by CISF to secure the arms issued to the force personnel at duty outpost. No room or a container was earmarked under a specific order to keep in secure custody firearms issued to the force personnel at the duty outpost at Libra. An ad hoc solution was resorted to by keeping a trunk with key in custody of HC Parmatma Rai. No procedures were followed to maintain a register and enter therein the safe custody of weapons by the force personnel at the outpost. As told to us during hearing of the writ petition the force personnel perform duties by rotation spanning 3 to 6 hours at a stretch and we see no reason why during the remainder period when the force personnel is not performing actual duties he should not be required to keep in safe custody the firearm issued to him. We were told that when they sleep or enter ablutions, the force personnel keep the arms by their side and this we find to be a very dangerous practice for the reason: Reap as you sow, guides us that given a work environment which is specious invites callousness and negligence.

37. On the issue of the proportionality of the sentence imposed it was urged that Ct.Sapan Singh, Ct.Shahbad Khan, Ct.Ram Swaroop and Ct.Lakhvir Kumar were inflicted with the penalty of reduction to lower stage of pay for a period of 3 years with cumulative effect and that the petitioner was inflicted a higher punishment.

38. The argument ignores that the charge against said 4 officers was of hiding the truth and lying about petitioner being present at the duty outpost. It is apparent that the charge against the 4 was of a much lower degree of culpability. The petitioner not only abandoned the duty

outpost without any authority, he colluded to fudge the duty register with the active assistance of HC Parmatma Rai and SI Sanat Hasda and his collusion is apparent as he is the beneficiary of the interpolations. While leaving the duty post he did not ensure safe custody of the AK-47 Rifle issued to him. He merrily loitered around Punjab and Haryana and due to his negligence the weapon was thrown inside the well. As force personnel who carry arms the petitioner knew that an AK-47 Rifle is a lethal weapon and God forbid if it reached wrong hands, the consequences would have been disastrous. The petitioner cannot claim any parity on the issue of sentence with the said 4 force personnel. There is another qualitative difference in the case of the petitioner and the said 4 force personnel. After initial resistance, all confessed to their guilt before the Commandant and keeping in view that the four repented after admitting their guilt and that a lessor degree of wrong was committed by them, a lessor penalty was levied upon them.

39. We find no merit in the writ petition and dismiss the same.

40. We direct that a copy of our decision be placed before DG CISF, so that he can look into the deficiencies in the CISF which have surfaced in the instant case and in particular would consider strengthening the legal department so that properly drafted charge sheets can be issued and better court assistance rendered through legally trained persons and not by resorting to ad-hoc arrangements by deputing Pairvi Officers with no legal background. Further, with respect to securing arms issued to force personnel at duty outposts a proper procedure be prescribed and record be

maintained with respect to the arms and ammunitions issued to CISF force personnel.

41. Since the petitioner has lost his job we refrain from imposing costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

SEPTEMBER 16, 2011
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