

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.471 of 2021

Sri Surajit Chakraborty,
S/O Lt. Sukumar Chakraborty,
Resident of A.D. Nagar, Road no.1,
P.O. & P.S.- A.D. Nagar,
District- West Tripura

....Petitioner(s)

Versus

1. The State of Tripura

represented by the Secretary, Food, Civil Supplies & Consumer Affairs, Govt. of Tripura, New Capital Complex, P.S.- New Capital Complex, District- West Tripura, Pin- 799010.

2. The Secretary

Director Food, Civil Supplies & Consumer Affairs, Govt. of Tripura, New Capital Complex, P.S.- New Capital complex, Dist.- West Tripura, Pin- 799010

3. Additional Secretary & Director

Director Food, Civil Supplies & Consumer Affairs, Govt. of Tripura, Pandit Nehru complex, Gorkhabasti, Agartala, District- West Tripura

4. Sub-Divisional Magistrate

Sepahijala District, Sonamura, P.S.- Sonamura, Tripura.

....Respondent(s)

For the Petitioner(s)	:	Mr. D. R. Chowdhury, Sr. Advocate Mr. S. Sarkar, Advocate
For the Respondent(s)	:	Mr. D. Sarma, Addl. G.A. Mr. S. Saha, Advocate
Date of hearing and Delivery of Judgment & Order	:	04/08/2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. along with Mr. S. Saha, learned counsel appearing for the respondents-State.

2. Briefly stated, while the petitioner was serving as store in-charge of Boxanagar Government Food Go-down , Sonamura from 19.03.2010 to 12.12.2011, the respondents through the DCM along with one Inspector of Food, posted at Boxanagar, Sonamura inspected the said Food Go-down on 12.12.2011 to verify the stock of rice for the period from 19.03.2010 to 12.12.2011.

2.1. It is the case of the respondents that during verification they found shortage of 84341.640 Kgs of Gr. 'A' raw rice i.e. shortage of 1.86%, which is beyond the permissible limit of 0.5% during one year. The Food Inspector through SDM has submitted the inspection report to the Director, Food, Civil Supplies & Consumer affairs, Govt. of Tripura. On receipt of the said report, a departmental proceeding was contemplated and show-cause notice was issued upon the petitioner. Petitioner submitted reply. Being not satisfied with the said reply, a disciplinary proceeding was initiated against the petitioner.

2.2. The statement of article of charge framed against the petitioner by the inquiring authority dated 25.04.2018 may be re-produced hereunder:-

"2. STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI LITAN DAS (SIC.), JR. STORE KEEPER IS REPRODUCED BELOW:

"That Sri Surajit Chakraborti while discharging the duties of Go-down in-charge (Jr. Store-Keeper) of Boxanagar Govt. Food Go-down , Sonamura Sub-Division under Sipahijala district during the period from 19.03.2010 to 12.12.2011 exhibited gross dereliction of duty, absolute carelessness, lack of integrity and devotion to duty entrusted upon him by way of not maintaining the books of accounts and other records properly thereof in the manner prescribed/instructed by the competent Authority which is unbecoming on the part of a government servant and amounts to gross misconduct. By resorting to such activities with evil intention to derive personal benefit, said Sri Chakraborty misappropriated 84341.640 kgs. Gr. 'A' Raw Rice, money value of which comes to Rs. 8,72,937/- (Rupees eight lacs seventy two thousand nine hundred thirty seven) only.

These sorts of activities on the part of said Shri Surajit Chakraborty, the then Go-down in-charge (Jr. Store-Keeper) of

Boxanagar Govt. Good Go-down is unbecoming on the part of a Govt. employee and violation of Rule-3 of Tripura Civil Services (Conduct) Rules, 1988 and attract action thereof under central civil services (Classification, Control & Appeal) Rules, 1965”.

The inquiring authority on consideration of the evidence and materials introduced by the prosecution i.e. the department concerned came to a finding that *“the prosecution could not successfully bring home the charge imputed against the AO, and as such, the same cannot be sustained. Therefore the AO is found to be not guilty.”*

2.3. Thereafter, the disciplinary authority issued a memorandum dated 30.05.2018 (Annexure-IV to the writ petition) asking the petitioner ***“to Show Cause as to why the value of shortage amounting to Rs. 8,72,937/- (Rupees eight lakh seventy-two thousand nine hundred thirty-seven) only would not be recovered from his salary including taking other actions as per law”***

2.4. The petitioner submitted reply to the said show cause notice. However, the disciplinary authority under order dated 26.10.2018 (Annexure-V to the writ petition) imposed the following punishment:-

“8. However, after considering all the facts and circumstances, I take a considered and lenient view of the case and decide to impose a minor penalty upon the A.O as provided in Rule 11 of the C.C.S (C.C. & A) Rules, 1965 and order as follows:-

(i) Recovery of the amount of pecuniary loss to the tune of Rs.6,38,277/- (Rupees six lakh thirty-eight thousand two hundred seventy-seven) only by allowing 0.5% shortage (in place of Rs.8,72,937/-), in monthly installment @1/3rd of his basic pay from the month of December, 2018 payable in January, 2019 from said Sri Surajit Chakraborty, Jr. Store Keeper. The monthly recovery amount needs to be credited/ transferred to the Cash Credit Account like Sale Proceeds every month till full recovery.

(ii) Withholding of minimum 1(one) periodical future increment of Sri Surajit Chakraborty, Jr. Store-Keeper that would fall due after passing of this order for 1(one) year without cumulative effect.

9. *This order shall be recorded in the concerned **Service Book** of A.O. in red Ink and his pay and allowances may be regularized as per TSCS(RP) Rules, 2017, if any pending, as per procedure.*

10. *However, this order will take effect after expiry of due appeal time.”*

2.5. Against the said order dated 26.10.2018 of the disciplinary authority, the petitioner preferred statutory appeal to the Secretary to the Government of Tripura (appellate authority), Food, Civil Supplies & Consumers Affairs Department. The appellate authority on consideration of the findings of the disciplinary authority had upheld and affirmed the order of penalty passed by the disciplinary authority.

2.6. Being aggrieved by and dissatisfied with the said impugned orders of penalty passed by the disciplinary authority as well as the appellate authority, the petitioner has approached this court by means of filing the present petition under Article 226 of Constitution of India to invoke its power of judicial review.

3. Mr. Chowdhury, learned senior counsel for the petitioner has drawn my attention to the report of the inquiring authority and has submitted that the disciplinary authority without appreciating the findings of the inquiring authority has arbitrarily imposed the penalty as stated here-in-above which has also been affirmed by the appellate authority. Mr. Chowdhury, learned senior counsel has submitted that no physical verification of the stock was conducted by the investigating team which will be evident from the evidence of PW1, PW2 and PW3.

4. On the other hand, Mr. Sarma, learned Addl. G.A. appearing for the respondents-State has submitted that the disciplinary authority rightly came to a finding that there is shortage of 1.86% of raw rice during the tenure of service of the petitioner as store in-charge of Boxanagar Government Food Go-down . Mr. Sarma, learned Addl. G.A has relied upon the statements made at para-12 and 13 of the counter-affidavit filed by the respondents. Para-12 and 13 of the counter-affidavit may be re-produced here-in-below:-

“12. That, with respect to **paragraphs 14 to 15**, I say that, as per physical verification report of Boxonagar Government Food Go-down for the period from 19-03-2010 to 12-12-2011, shortage of 84,341.640 kgs. Gr. A Raw Rice was detected. Detection of said shortage was also affirmed, since 5(five) Nos Stock Adjustment Vouchers (SAVs) had been issued by the petitioner, being the Store-Keeper (Store-in-Charge) of the go-down for adjustment of shortage of 84,341.640 kgs. Gr. A Rice. The percentage of above said shortage was found to be 1.86%, considering the total transacted quantity of 4,27,081.425 kgs. Gr. A Raw Rice during the material period, which is beyond the permissible limit of 0.5%. The standing guideline of the Department is that "in normal case shortage not exceeding 0.5% may only be taken into consideration if the particular consignment remains in store for a period not less than one year".

Moreover, a specific comment of the Verifying Officer is found in the respective verification report that proper records in respect of Bin Card, Bin Card Register etc. had not been maintained by the petitioner. It is pertinent to mention that maintaining of Bin Card for stack wise stock of Rice is mandatory on the part of the Store Keeper (Store In-Charge), since the Bin Card indicates the History of the Stock of rice of particular stack i.e. mainly by which, storing period of stock of rice can be ascertained. Herein, as per verification report of the Boxonagar Government Food Go-down for the period from 19-03-2010 to 12-12-2011, it appears that the petitioner did not maintain BIN Card, which indicates his ill intension and violation of the order of the Director, FCS & CA (Respondent No.-03). It is to be mentioned that based on Bin Card report, period of storage of rice in the go-down can be ascertained and accordingly, if any shortage detected, it can be justified as per guideline, "in normal case shortage not exceeding 0.5% may only be taken into consideration if the particular consignment remain in store for a period not less than one year". Since, the petitioner did not maintain BIN CARD hence, he cannot get relief from the penalty of recovery of Rs. 6,38,277/- imposed by the Disciplinary Authority for abnormal shortage of rice.

It is pertinent to mention that to avoid damage of rice for long time storage in the go-down, a Departmental guideline vide Memorandum No.F.5-2(2)-DF/2005 dated. April 23,2005 is in force, wherein, it says that FIFO (First in First out) system should be followed in the go-down so that no old stock remains lying in the go-downs for a long time. In the instant case, if the petitioner had followed the above said FIFO system, there would not have been abnormal shortage of rice in the go-down during his tenure.

Moreover, the Verifying Officer recorded his comments in the said SAVS that it is 'Abnormal shortage, hence not justifiable' during the verification. Hence, Order dated 26.10.2018 as passed by the Disciplinary Authority against the petitioner is not illegal and arbitrarily, rather, it is based on certain grounds of facts and documents. The shortage of PDS rice worth of Rs.8,72,937/- is

attributed to the misconduct of the petitioner, which cannot be denied under any normal circumstances. Despite that, the Disciplinary Authority in considering and allowing 0.5% shortage, reduced the recovery amount of pecuniary loss and ordered recovery of Rs.6,38,277/- (Rupees six lakh thirty-eight thousand two hundred seventy-seven) only in place of Rs.8,72,937/-.

13. That, with respect to **paragraph 16**, I say that, the statement of the petitioner made in this para 16 that the periodical verification of the Boxonagar Government Food Go-down had not been made for several long years is not true. As per practice, the physical verification of go-down is being conducted sequence wise. In the instant case, physical verification of Boxonagar Government Food Go-down was conducted for the period from 19-03-2010 to 12-12-2011 that is 24 to say that earlier verification of the said go-down was completed up to the day immediately preceding the period considered by the instant verification. Further, during the physical verification, basically, quantity of shortage of commodities is being calculated in following manner;

1	2	3	4	5
Taking into account the Opening balance of commodities as it stand as per respective Stock register on the date the verification is being undertaken.	Taking into account the total quantity of commodities received as per respective stock register/ Tally Book during the period of verification.	Taking into account the total quantity of stock of commodities as it stand as per respective stock register Column (1+2)	Taking into account the total quantity despatched/d elivered during the period of verification as per respective stock register/Tally Book	Balance quantity as it stand as per respective stock register (Column (3-4))

In the above manner, after ascertaining the balance, quantity of respective commodities as per stock register, physical stock of respective commodities is being cent percent weighted under the supervision of respective verifying officer. Thereafter, both the balance quantity of commodities (StockBook balance and physical balance) are being compared and accordingly, shortage or excess quantity, as the case may be, is being ascertained.

Herein, as per verification report, abnormal shortage was detected to the tune of 84,341.640 kgs. Rice worth Rs.8,72,937/-. But, as per Departmental guideline, after considering and allowing 0.5% admissible shortage on the total transacted quantity during the material period, penalty amount was reduced to Rs.6,38,277/- from Rs.8,72,937/- upon Sri Surajit Chakrabartty, Jr. Storekeeper (Store In-Charge), which was a reasonable and justified decision of the Disciplinary Authority (Director, Food, Civil Supplies & Consumer Affairs, Respondent No.-3).

Apart from the above, Food Go-downs are generally roofed with GCI sheet and it cannot be the reason for abnormal shortage as detected during the physical verification. As per standing practice, on receiving report from the storekeeper of go-down in any go-down related matter, the same is being 16/20 attended by the respective authority and necessary measures are also taken accordingly. Moreover, Vide Memorandum No.F.5- 2(2)-DF/2005 dated. April 23,2005, it says that FIFO (First in First out) system should be followed in the go-down so that no old stock remains lying in the go-downs for a long time. In the instant case, if the petitioner had followed the above said FIFO system, there would not have been such quantity of abnormal shortage of rice in the go-down during his tenure. Therefore, pleas as stated by the petitioner in this Para are only lame excuse of the petitioner to hide his guilt. In the instant case, shortage is found to be 1.86%, which was beyond permissible limit of 0.5% and could not be justified. It is a clear case of misappropriation of the government stock by the petitioner.”

5. I have given my thoughtful consideration to the submissions and statements made by the respondents in the counter-affidavit as quoted here-in-above.

6. At the outset, I should say, it is settled proposition of law that the scope of exercising the power of judicial review under Article 226 of the Constitution of India is very limited. This court can only interfere with the findings of the disciplinary authority as well as the appellate authority, if the penalty imposed upon the delinquent is based on no evidence or there is procedural violation causing substantial prejudice to the delinquent-employee, or there is violation of principles of natural justice.

7. On careful consideration of the findings of the inquiring authority and the grounds for disagreement as surfaced in the memorandum dated 30.05.2018, issued by the disciplinary authority, in my opinion, the penalty imposed by the respondents to the petitioner is based on no evidence and the

findings of the disciplinary authority as well as the appellate authority suffer from serious infirmities and perversity.

8. It transpires that PW1, Krishnadhan Sarkar categorically stated that during the tenure of service of the petitioner in the said Go-down , i.e., w.e.f. 19.03.2010 to 12.12.2011, he had inspected the said Go-down on various occasions and during his inspection he could not detect any shortage of rice.

PW2, Pankaj Chakraborty, SDM Sonamura is only a forwarding authority and he had only forwarded the report, which was submitted by PW1.

PW3, Tapash Kumar Sinha in his cross-examination during the course of proceeding had admitted that physical verification was meant to verify the stock of the said Go-down and not of documents. He also could not state if the verification was a periodical one or it was any special verification. PW3 also could not recollect if during the verification the labourers had raised any bill as their wages for weighing and handling. There is no evidence that PW3 had interacted with the petitioner. PW3 has further categorically stated that he could not recollect on the basis of which documents he had tallied the physical stock of rice.

9. The inquiring authority came to a finding that from Exbt. S/1(series) whereby the verification officer (PW3) in his 22 points inspection report had submitted that the receipt and dispatch tally book, gunny bag register were properly maintained. It was also found that abnormal shortage was detected from the SAVs. According to Exbt. S/2(series), it is relevant to mention here that in absence of bin card/ bin card register, it is hardly possible to ascertain the actual percentage of shortage occur in a particular Go-down during the particular period. The inquiring authority further found that even the stock book register was not furnished during the proceeding.

10. I do not find any reason as to why the prosecution did not produce the stock book. Further, neither bin card nor bin card register was produced before the inquiring authority during the course of proceeding. This amounts to

suppression of material facts, which, it produced, would have been a probable cause to hold the charged officer, i.e., the petitioner herein guilty of committing the alleged misconduct. I find no error in the findings of the inquiring authority that from the statement of PW3, it appears that inspection was of the stock and not of the documents which is sufficient to dislodge the charge framed against the petitioner. More importantly, I find that PW1 has categorically stated in his statement that no shortage was detected during his inspection for the relevant period.

11. Thus, I am in agreement with the findings of the inquiring authority that the prosecution had not taken any endeavour to produce the bin card/ bin card register to substantiate the allegations imputed against the AO. On consideration of the findings of the disciplinary authority as surfaced in the memorandum dated 30.05.2018, I find that the disciplinary authority only went upon the report of the inspection committee without considering the materials as discussed in the preceding paragraphs. Both the disciplinary authority and the appellate authority arbitrarily came to a finding that the petitioner was responsible for shortage of 1.86% of raw rice from the Go-down.

12. In the light of above, I have no other alternative but to arrive at a finding that the present case is a case based on no evidence and the findings of the disciplinary authority as well as appellate authority suffer from serious infirmities and perversity and accordingly, the writ petition stands allowed.

In the result, the penalty imposed by the disciplinary authority and upheld by the appellate authority is hereby set aside and quashed.

JUDGE