THE HIGH COURT OF TRIPURA
AGARTALA

WP(C). No. 357 of 2011

Sri Pradip Datta,
son of late Shyma Kanta Datta,
resident of Office Tilla, P.O. Dharmanagar,
District - North Tripura

………Petitioner

V E R S U S

1. The State of Tripura,
represented by the Secretary cum Commissioner,
Food, Civil Supplies and Consumer Affairs Department,
Govt. of Tripura, Pandit Nehru Complex,
Gurkhabasti, P.O. Agartala, Dist. West Tripura

2. The Director, Food, Civil Supplies and
Consumer Affairs Department,
Govt. of Tripura, Pandit Nehru Complex,
Gurkhabasti, P.O. Agartala, Dist. West Tripura

3. The Sub Divisional Magistrate,
Food, Civil Supplies and Consumer Affairs,
P.O. Dharmanagar, North Tripura

……….Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. A. Bhowmik, Advocate
For the respondent	:	Mr. S. Chakraborty, Addl.G.A.
Date of hearing	:	04.06.2015
Date of delivery of judgment & order	:	**16.06.2015**
Whether fit for reporting	:	**No**

Judgment & Order

By means of this writ petition the petitioner has challenged the final order dated 07.04.2010 under No. F.2-6(2)-ESTT/DF/2007/9236-39, Annexure-E to the writ petition, whereby the petitioner has been awarded penalty of recovery of the purported pecuniary loss to the tune of Rs. 78,004/- by deduction in monthly instalments or at a time at the option of the petitioner and the order of the appellate authority dated 08.06.2010, delivered in the case No. 1153/INQ/Food.2007/Appeal, Annexure-G to the writ petition, by which the appeal preferred by the petitioner against the final order dated 07.04.2010 has been dismissed. In addition to the penalty given by the Disciplinary Authority it has been also directed by the appellate authority that since the petitioner committed similar type of offence for the second time, as it appears from the records, he should not be given any charge at least for 2(two) years in any food go-down from the date of the issue of that order i.e. 08.06.2010.

[2] The undisputed fact as surfaced in the writ petitioner is that pursuant to the physical verification report dated 14.09.06, Annexure-A to the writ petition, the petitioner was preceded

departmentally by issuing the Memorandum No. F.2-6(2)-DF/2007 dated 09.02.07, Annexure-B to the writ petition on the following article of charge:

> **That, Shri Pradip Dutta, Jr. Store-Keeper while in the charge of Dalugaon Govt. Food go-down, Kailashahar Sub Division in North Tripura District during the period of from 02.01.02 to 26.06.05 exhibited gross dereliction of duty, absolute carelessness, lack of integrity and devotion to duty entrusted with 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 malafide intention to derive personal benefit, said Shri Pradip Datta, Jr. Store-Keeper misappropriated 7971.035kg rice & 612.260 kg Sugar, money value of which comes to Rs. 78,004/- (Rupees Seventy-eight thousand four) only.**
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> **These sorts of activities on the part of said Shri Pradip Datta, Jr. Store-Keeper of Dalugaon Govt. Food go-down, Kailashahar Sub Division in North Tripura District attract Rule 3 of Tripura Civil Services (Conduct) Rules, 1988 and action thereof under Central Civil Services (Classification, Control & Appeal) Rules, 1965".**
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> **The statement of imputation of misconduct or misbehavior has been more elaborately described in the Annexure-2 to the said Memorandum dated 09.02.07. The petitioner has denied the charge by filing the statement of defence dated 22.08.07, Annexure- C to the writ petition, whereby, though he has admitted the shortage but denied any misappropriation negligence or dereliction. The matter was referred to for inquiry to the Additional Commissioner for departmental inquiry who commenced inquiry under Case NO. 1153/INQ/Food.2007. He has further submitted the finding of the inquiry dated 30.12.08 to the Disciplinary Authority, the Director of Food, Civil Supplies and Consumer Affairs Department, Govt. of Tripura, as the petitioner at the relevant point of time was working as the Jr. Store-Keeper in the Dalugaon Govt. Food go-down, Kailashahar Sub Division in North Tripura District.**

[3] On appreciating the oral and documentary evidence, the Addl. Commissioner for Inquiries by the report dated 30.12.08, Annexure-D to the writ petition, has formulated 3 (three) points for his decision. Those points are as under:

> **(I) Whether the Accused Officer, during the period from 02.01.02 to 26.06.05 with a malafide intention to derive his personal benefit, misappropriated 7971.035kg rice & 612.260 kg Sugar, money value of which comes to Rs. 78,004/- (Rupees Seventy-eight thousand four)?**
>
> **(II) Whether the Accused Officer misled the authority to derive his personal benefits by not maintaining the book of accounts and other relevant records like BIN Cards, BIN Card register, SAVs register with a malafide intention?**
>
> **(III) Whether the Accused Officer has violated the Provision of Tripura Civil Services (Conduct) Rules, 1988?**

[4] To have the findings of the Addl. Commissioner for Departmental Inquiry on those points the paragraph 7 of his report is entirely reproduced hereunder:

> **7. ANALYSIS AND ASSESSMENT OF EVIDENCE AND FINDINGS**
>
> **Point No. 1: To meet this point, PW-1 has stated in his deposition that he conducted physical verification of Dalugaon Govt. Food Go-down for the period 02.01.02 to 26.06.05 and submitted a report in pro-forma 'A' and 'B' along with 19 Nos. SAVs issued by Sri Pradip Dutta (A.O) and he figured those items as Exbt.S/1 series. PW-1 has further stated that during his verification there was shortage of food grains which he reflected in his report.**
>
> **In cross, PW-1, has admitted that he did not pass any comments in those SAVs of Exbt. S/1 series and he has also admitted that during his verification no picture appeared before him about the damage condition of the concerned food go-down.**

PW-4, has stated in his deposition that being the then SDM, Kailashahar, he passed his comments in those SAVs in Exbt. S/1 series. And it is admitted by him in cross that he passed his comments on the basis of the report of the verifying officer.

PW-2, being the then Inspector Food, Kailashahar assisted the PW-1, while conducting physical verification of the concerned go-down and as witnesses he put his signature in Exbt. S/1 series.

In cross, it is admitted by him that the remarks column of pro-forma 'A' & 'B' in Exbt. S/1 series were filled up as dictated by the Verifying Officer. He also field up the item NO. 22 as Exbt. S/1 series as per dictation of the verifying officer and he has seen those SAVs prepared by the A.O and he prepared the comments of the verifying officer in those SAVs of Exbt. S/1 series as dictated by the Verifying Officer. PW-2 has further admitted that he submitted Inspection report (Exbt. D/1) of the concerned go-down on 25.09.01.

PW-3 has identified the memo of the Director, Food & Civil Supplies dated 14.03.1989 as Exbt S/2 and memorandum dated 24.05.1996 of the same quarter as Exbt S/3 and letter dated 26.11.1996 of the same quarter of Exbt. S/4 and he also identified the Exbt. S/1 series as well as the forwarding letter (Exbt.S/5). But in cross he has stated that he had not any personal knowledge about the facts and circumstances of this case.

On the other hand, PW-4 has deposed that he was not in a position to say when the repairing work of the concerned go-down was commenced and completed. But it is admitted that during his tenure, he found that dalugaon food go-down warranted repairing and the repairing work of the concerned go-down was taken up and completed by the PWD, Kailashahar Division. In cross, PW-4 has admitted that there was damaged of sub-standard due to damage of floor of the concerned go-down.

DW-3 has stated like the tune of DW-1 and DW-2 has stated that due to damaged condition of the concerned food go-down, the materials of the concerned go-down was shifted to Gourgaon food go-down and till completion of repairing of the Dalugaon food go-down, the transaction of the said go-down was running from Gournagar food go-down. In cross, DW-2 has admitted that he cannot remember when the repairing of the Dalugaon go-down was finished as well as when the transaction of Dalugaon food go-down was shifted from Gournagar go-down to the Dalugaon food go-down and he also admitted that no

commodities was return to the Dalugaon food go-down from the Gournagar food go-down after finishing the repairing work of Dalugaon food go-down. DW-1 being the A.O. has adduced some documentary evidence as Exbt. D/2, D/3, D/4, D/5, D/6, D/7, D/8 & D/9 (most of the contents of the exhibited documents are not visible). <u>In addition, DW-1 has stated in his deposition that when he was putting his signature in the verification report the Verifying Officer had written "Yes" against the column NO. 18 and after that the Verifying Officer in his absence had written "No" by cutting "Yes" against the column No. 18 of the report.</u>

Perused the above deposition and exhibited visible documents as well as the written brief of argument submitted by the parties to the proceedings. <u>It is true that the Verifying Officer (PW1) stepped into the witness box for giving his deposition and at that time defence had no occasion to cross examine him against the column No. 18 of the report of the Verifying Officer whether the Verifying Officer about his remark inspected inserted in the column No. 18. But I find that the defence remained silent during the cross examination of the Verifying Officer (PW-1). Therefore, the deposition of the DW-1 to safe-guard the allegation against the column No. 18 of the report of the Verifying Officer appears to be unconvincing and unreliable</u>. It is also true that some good numbers of exhibited documents on behalf of the defence are not visible. Some of the documents exhibited on behalf of the defence indicate that the floor of the concerned food go-down was damaged and building of the concerned go-down was placed under repair and during repair of the concerned go-down, the transaction of the said go-down was shifted to Gournagar food go-down.

Now let a chance see whether due to such condition of the go-down the shortage shown by the Accused Oficer in the SAVs was justified. <u>But the verification report in pro-forma 'A' & 'B' as well as the SAVs (Exbt. S/1 series) go to show that the Accused Officer had shown excessive shortage beyond the standing circular of the Food Department against 9 Nos. of SAVs out of 19 prepared by him and shortage against the rest 10 Nos. SAVs is within the tolerance limit. Therefore, shortage adjusted against 9 Nos. SAVs has to be accepted as normal loss in view of the bad condition of floor of the concerned go-down. Accordingly, I find no force to give the answer on this point in favour of the prosecution. Therefore, this point is decided in negative</u>.

<u>Point No. II:</u> To meet this point, the prosecution refers the verification report of the Verifying Officer

> **which indicates that BIN Card has not been maintained properly by the Accused Officer and as well as the SAVs has not been issued as per norms. On the other hand the defence could not rebut the said report of the Verifying Officer. Accordingly, I find force to give the answer on this point in favour of the prosecution. Therefore, this point is answered in affirmative.**
>
> **<u>Point No. III:</u> In view of the discussion, and decision arrived at in the aforesaid points, I find force to give the answer on this point partly in favour of the prosecution. Therefore, this point is also decided in affirmative.**
>
> **Viewed in the above perspective, I find and held that the prosecution has partly established the article of charge against the A.O. Therefore, the A.O. viz. Sri Pradip Dutta, Jr. Store-Keeper is found guilty for violation of provision Rule 3 of Tripura Civil Service (Conduct) Rules 1988.**

[Emphasis supplied]

[5] In no uncertain terms, the Addl. Commissioner for Departmental Inquiries has returned the findings that the verification report in pro-forma 'A' & 'B' as well as the SAVs (Exbt. S/1 series) stand to show that the Accused Officer had shown excessive shortage beyond the standing circular of the Food Department against 9 Nos. of SAVs, out of 19 prepared by him and the shortage against the rest 10 Nos. SAVs was within the tolerance limit. Therefore, the shortage adjusted against 9 Nos. SAVs has to be accepted as normal loss in view of the bad condition of floor of the concerned go-down. Accordingly, he has observed that he did not find any force to give the answer on that point in favour of the prosecution. Therefore, the point No. 1 had been decided in the negative.

[6] Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that the finding returned by the Addl. Commissioner for Departmental Inquiries against the point No. 2 is misreading of the record as from the verification report it would be apparent that the Sub-Divisional Megistrate who carried out the physical verification of the Dalugaon Govt. Food go-down, Kailashahar Sub Division in North Tripura District for the period of from 02.01.02 to 26.06.05 has observed against the column No. 13 that the books of accounts and other relevant records like BIN Cards, BIN Card register, SAV register, of furniture etc. Stationary articles register have been maintained properly. But in the column No. 18, the change from 'yes' to 'no' is the result of interpolation. For reference the relevant entries as it stand in the physical verification report are extracted hereunder:

> **13. Whether books of accounts viz stock book/ Ganny bags Register/Bin Card/ Bin Card Register/SAV register/Register of furniture etc./Stationary Articles Register have been maintained properly: Yes**
>
> **** ***** ***** *****
>
> **18. Whether Bin Card has been maintained properly showing commencement of a particular stack of foodgrains and its disposal: No**

[7] Mr. Bhowmik, learned counsel appearing for the petitioner has submitted that despite that the finding recorded in the verification report by the verifying officer to that effect, it has

been observed by the Addl. Commissioner for the Departmental Inquiry that books of account as well as the SAVs have not been maintained or issued as per the norms. The defence could not rebut the said report. Based on such finding de-horse the record, the Addl. Commissioner for Departmental Inquires has answered that point No. 2 in the affirmative.

[8] According to Mr. Bhowmik, learned counsel for the petitioner, the finding that the petitioner has violated the provision of Section 3(1) of the Tripura Civil Service (Conduct) Rules, 1988 cannot as well be sustained. He has succinctly submitted that based on the said report, the Disciplinary Authority as well as the Appellate Authority could not have affirmed the order of penalty or passed the said stigmatic direction.

[9] From the other hand, Mr. S. Chakraborty, learned Addl. G.A., appearing for the respondents has submitted that, that was not the first time that the petitioner had committed such misconduct. On the earlier occasion also he was found guilty of the charge for shortage of 3880 kgs Rice, 72 kgs Sugar and 386 kgs iodized salt worth Rs. 35,836/- on due inquiry and the penalty was imposed to recover the entire amount from him by the Disciplinary Authority. Subsequently that penalty was reduced to

Rs. 25,950/- by the Appellate Authority vide order No. F.2-6(7)-DF/2002 dated 31.05.07.

[10] He has further submitted that the verifying officer has stated in his 22-point inspection report that the petitioner did not maintain SAVs and Bin Cards and Bin Card Register. That report was countersigned by the respondent No. 3. SAVs are issued by the concerned go-down-in-charge while shortage is detected by him. The petitioner showed incorrect percentage of shortage in SAVs to mislead the verifying officer as well as the Govt. with ill motive. He did not maintain Bin Card and Bin Card Register for which the actual duration of transaction of particular consignment could not ascertained properly viz, whether the stock stored in the go-down was for a period not less than 1(one) year or not.

[11] Further, it has been stated by him that no shortage is allowed automatically or normally. It is always a matter of consideration subject to other pre-conditions such as, maintenance of statutory go-down records, specially the maintenance of Bin Card and Bin Card Register etc. 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 only. He has further submitted that on due scrutiny the

appellate authority did not find any infirmity in the order awarding the penalty on the petitioner.

[12] Hence, the appellate authority dismissed the appeal with a observation that the petitioner shall not be given charge of any food go-down in the next two years.

[13] It appears from the record that by the Memorandum No. F.2 (65)-SDM/DMN/FP-09/891-96, dated 2.11.10, Annexure-I, the petitioner was shifted from the charge of the food go-down at Dologaon. However, by the order under No. F.7(15)-SDM/DMN/FP/94/322/24 dated 29.06.10 it has been directed that sum of Rs. 3,000/- shall be deducted from the salary of the petitioner in 25 instalments and each instalment would be equal, whereas 26th instalment would be for Rs. 3,004/- for making good of the total loss which has been assessed at Rs. 78,004/-.On scrutiny of the records what has surprised this Court is that the Disciplinary Authority, the Director of Food, Civil Supplies has observed in the impugned order dated 07.04.10 as under:

> **After examination of witnesses and facts on records ect., the Inquiring Authority came to the conclusion vide his findings dated 30.12.08 that the charge brought against the A.O., Sri Pradip Dutta, Jr. Store Keeper was proved since the A.O., mis-led the authority to derive his personal benefits by not maintaining the books of accounts and other relevant records like Bin Card, Bin Card Register, SAVs register with a malafide intention and the A.O. was found guilty of the charge for violation of the provision of**

> **Rule 3(1) of Tripura Civil Service (Conduct) Rules, 1988.**

[14] Based on the said observation the following penalty has been imposed on the petitioner by the said final order:

> **Recovery of the amount of pecuniary loss to the tune of Rs. 78,004/- (rupees seventy thousand four) only by deduction in monthly installments at the rate of Rs. 3,000/- (Rupees three thousand) of his basic pay from the month of May, 2010 or in one installment from said Sri. Pradip Dutta. If it is paid at time, by Sri Pradip Dutta, Jr. Store Keeper, the said amount shall be deposited by a Demand Draft in favour of " the Director of Food, Civil Supplies & Consumer Affairs, Tripura, Agartala" and in case of monthly recovery, the amount need to be credited transferred to the cash credit Account like Sale Proceeds every month full recovery.**

[15] However, before passing such order, the Disciplinary Authority, afforded the petitioner opportunity of making the representation against the report of the Addl. Commissioner for Departmental Inquiries. The petitioner had submitted the representation. The said observation of the Disciplinary Authority as reproduced from the order dated 07.04.10 does not reflect the finding of the Addl. Commissioner for departmental Inquiries.

[16] Without disagreeing with the finding of the Addl. Commissioner for Departmental Inquires, whether such finding can be returned, as the disagreement with the finding of inquiry entails a right to the delinquent officer to make his representation, Evidence is the sheet-anchor in this writ petition.

[17] The order dated 07.04.2010 was challenged by the petitioner by filing the appeal before the Commissioner-cum-Secretary, Food, Civil Supplies and Consumer Affairs Department, Government of Tripura by giving vivid details how the shortage occasioned. In the column No. '18' of the verification report, he has further submitted that 'No' has been inserted by manipulating the report. However, the concerned verifying officer was not cross examined in this regard by the petitioner.

[18] For introduction of that aspect the petitioner as DW-1 has stated in his deposition that when he put his signature in the verification report, the verifying officer had written "Yes" against the column No. 18 and after that the verifying officer in his absence might have written "No" by cutting "Yes" against column No. 18 of the report. It has therefore been observed in the report of the Addl. Commissioner for the Departmental Inquiries that no cross examination of PW-1 the verifying officer on that aspect of the matter was carried out in defence of the petitioner by way of the cross examination of PW-1. The Appellate Authority by the order dated 08.06.10 dismissed the appeal without finding any infirmity in the order. But in addition, a direction has been passed by the appellate authority which is as under:

> **"Since the Appellant has committed similar type of offences for the second time, as it appears from records available before me, he should not be given any charge at least 2(two) years in any food go-down from the date of issue of this order".**

[19] If the point No. 1 as formulated by the Addl. Commissioner for Departmental Inquiries is answered in the negative, that how can it be held that the article of charge as reproduced has been proved? The article of charge is very categorical. It states that the petitioner while was in-Charge of the Dalugaon Food go-down, Kailashahar Sub-division during the period from 02.01.02 to 26.06.05 exhibited gross dereliction of duty, absolute carelessness, lack of integrity and devotion to duty entrusted with 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 and by resorting to such activities with malafide intention to derive personal benefit, the petitioner who was serving at the relevant time as the Jr. Store Keeper misappropriated 7971.035 kg. Rice and 612.260 kg Sugar, money value of which comes to Rs. 78,004/-only.

[20] This charge has 2 (two) distinct parts. One is for gross dereliction of duty, absolute carelessness, lack of integrity and

devotion to duty entrusted with 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 the later is by resorting to such activities with malafide intention to derive personal benefit, the petitioner has committed gross misconduct. Whether has the first part been established by way of evidence? If the answer becomes negative, the second part is bound to fall through.

[21] Mr. Bhowmik, learned counsel, has shown from the physical verification report that on the face of it appears that such misconduct could not be proved based on the physical verification report. Mr. S. Chakraborty, learned Add. G.A. did not place any other records to show that Annexure-A, the physical verification report is not in the full form. Most significantly, he did not provide any explanation how to collate the observation in the Column Nos. 13 and 18.

[22] In the column No.13 it has been clearly observed that the books of accounts viz. stock book/gunny bags register/Bin card/ Bin Card register/SAV register/ register of furniture etc./stationary articles register have been properly maintained,

whereas in the column No. 18 a contrary view has been expressed without explanation. It is apparent on the face of the records that against the column No. 18 'Yes' has been cut or penned through for 'No' and it has become extremely incongruent to the observation at the column No. 13. Hence, the allegation of subsequent change appears probable and acceptable.

[23] Thus, this Court is of the view, that the first part of the charge could not be proved in terms of the preponderance of probability and accordingly, such finding has been clearly recorded in the inquiry report, accepted without disagreement by the Disciplinary Authority. Thus, the second part of the charge as indicated cannot survive. Hence, the impugned order dated 07.04.10 Annexure-E to the writ petition is liable to be interfered with and accordingly it is interfered, inasmuch as without expressing disagreement with the report of the Addl. Commissioner for Departmental Inquiries, such order is entirely un-called for. By giving a stamp of approval, the appellate authority has committed the same illegality and thus, the order dated 08.06.2010 is as well liable to be interfered with. Accordingly, it is ordered. But this Court is not inclined to interfere with the direction that the petitioner should not be given any charge at least for 2 (two) years in any food go-down because the

matter of posting entirely remains in the domain of the executive. However, the said direction shall not be treated as stigmatic for the above reasons.

[24] With this observation and direction this writ petition is allowed to the extent as indicated above. If any sum has been recovered from the petitioner by this time, that amount shall be refunded to the petitioner within a period of 3 (three) months from the date when the petitioner shall submit a copy of this order to the Director of Food, Civil Supplies and Consumer Affairs, Government of Tripura, Agartala.

[25] There shall be no order as to costs.

JUDGE

A. Ghosh