

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.34 of 2015

W.P.(C) No. 199 of 2015

In W.P.(C) No.34 of 2015

Petitioner:

No.87700831, Anup Pati,

son of late Narayan Chandra Pati,
permanent resident of Natundihi, P.O.
Beliaberah, P.S. Beliaberah, Sub-Division
– Jhargram, District – Medinipur West,
State – West Bengal, PIN – 721517,

-presently residing at CPWD, GPRA
Colony, Gandhigram, Quarter No. Type
II/C7, P.O. Gandhigram, P.S.
Narsingarh, West Tripura, PIN – 799012
and holding the post of Head Constable
of 28 Bn. BSF, Raiganj, North Bengal,
presently attached with the Head
Quarters, 158 Bn. BSF at Salbagan.

By Advocate :

Mr. Somik Deb, Advocate

- V E R S U S -

Respondents:

- 1. The Union of India,**
represented by the Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi
- 2. The Director General,**
Border Security Force having his
office at Block 10, CGO Complex,
Lodhi Road, New Delhi -110003
- 3. The Inspector General,**
FTR, HQ, TRA, Salbagan

4. The Commandant 158 Bn. BSF,
Fatikcherra, Tripura

5. The Commandant 28 Bn. BSF

By Advocate :

Mr. A. Roy Barman, C.G.C.

Date of hearing : 07.08.2015

In W.P.(C) No.199 of 2015

Petitioner:

No.98098054, CT/GD Arun Kumar Sarangi,
son of Sri Adeitya Kumar Sarangi,
permanent resident of village – Sango
Gadeipur, P.O. Bhurunga, via –
Sujanpur, Tahsil – Bari, P.S. Binjhar Pur,
District – Jajpur, Odisha, PIN 755017,
posted in 194 Bn. BSF, Dabla, Jaisalmer
Rajasthan,

-now attached with HQ 29 Bn. BSF,
Salbagan, Agartala, West Tripura, PIN
799012

By Advocate :

Mr. Somik Deb, Advocate

-V E R S U S-

Respondents:

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi

2. The Director General,
Border Security Force having his
office at Block 10, CGO Complex,
Lodhi Road, New Delhi -110003

3. The Inspector General,
FTR, HQ, TRA, Salbagan

4. The Commandant 29th BSF,

5. The Commandant, 194 Bn. BSF

By Advocate :

Mr. A. Roy Barma, C.G.C.

Date of hearing : 03.09.2015

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of delivery of
Judgment and order : **08.12.2015**

Whether fit for reporting : **No**

JUDGMENT & ORDER

Both these writ petitions being W.P.(C) No.34 of 2015 filed by Sri Anup Pati and W.P.(C) No. 199 of 2015 filed by Sri Arun Kumar Sarangi are taken up together for disposal by a common judgment, inasmuch as, both the petitioners were proceeded against by the same court of inquiry and on the basis of the recommendation made by the said court of inquiry, the disciplinary action, by the order dated 03.12.2014, Annexure-P/3 to the writ petition and the order dated 03.01.2015, Annexure-P/4 to the writ petition in W.P.(C) No.34 of 2015 and by the order dated 09.12.2014, Annexure-P/3 to the writ petition and the order dated 28.05.2015, Annexure-P/4 to the writ petition in W.P.(C) No.199 of 2015, directing recovery of substantial amount for making the loss as occasioned for their misconduct.

[2] The petitioner in W.P.(C) No.34 of 2015 has been working as the Head Constable and at the relevant time he was attached to 24 Bn. of the BSF and presently is attached to 28 Bn. of the BSF, whereas the petitioner in W.P.(C) 199 of 2015 had been working as the Constable posted in 194 Bn. of the BSF and at present attached to 29 Bn. of the BSF. Both the petitioners were engaged to perform the duty of liquor NCO of the liquor stores, FTR HQ BSF, Tripura. The petitioner, namely Sri Anup Pati performed his duty from November, 2004 to 27.04.2010 whereas the petitioner, namely Sri Arun Kumar Sarangi performed his duty there from 2006 to 2010 as the Assistant to Liquor NCO. A staff court of inquiry following the three additional staff courts of inquiries were assembled. On investigation by those court of inquiries, it was found that during the tenure of the petitioners misappropriation in the liquor fund amounting to Rs.14,05,546.90 took place. The staff court of inquiry recommended for recovery of 50% of the misappropriated amount of Rs.14,05,546.90 from the petitioner, namely Anup Pati and his assistant, the other petitioner namely, Arun Kumar Sarangi in equal share. Remaining 50% of the amount was decided to be borne by the force. By the communication made to the Commandant, 28/194 Bn. BSF on 03.12.2014, the DIG/PSO for Inspector General of the BSF had directed that:

"Since No.877008392 HC Anup Pati and No.98098054 CT. Arun Kumar Sarangi are presently posted in 28 & 194 Bn. BSF

respectively and their pay is being drawn by your units, it is requested to recover Rs.3,51,383.73 from each in suitable instalments from their pay and allowances and deposit into Liquor Fund account No.10723619673 of this HQ. Photocopies of opinion & recommendation of the Court and FHQ BSF (Pers Dte Confdl Section) S/No.R/3175 dtd 17 Sept 2004 are also enclosed herewith for ready reference."

[3] The order dated 03.12.2014 is the principal order directing recovery from the petitioners. The orders dated 03.01.2015 and 28.05.2015 are the respective communications to the concerned Commandants for recovery on the basis of the said order dated 03.12.2014. In both the writ petitions, the orders dated 03.12.2014 and the respective communications dated 03.01.2015 and 28.05.2015, Annexure-3 & 4 respectively in the writ petitions, have been challenged in these writ petitions on the ground that principles of natural justice have been denied to the petitioners. There was no proof of assignment or the entrustment in the liquor stores, FTR HQ BSF, Tripura. Even the petitioners were not supplied with any document whatsoever. That apart, it has been asserted in the writ petitions that copies of the orders forming the basis for recovery were not furnished to the petitioners. For non-supply, the petitioners have been deprived of valuable right of representing against.

[4] Mr. Somik Deb, learned counsel appearing for the petitioners has submitted that unless the copy of the report of the staff court of inquiry along with the recommendations are furnished to the petitioners, the petitioners would not be in

a position to have their say in this respect. That apart, Mr. Deb, learned counsel has also contended that the report of the staff court of inquiry is the basis for disciplinary action but no final order can be passed on the basis of the report and the recommendation. Despite that the respondent who passed the impugned orders has done exactly the same. Mr. Deb, learned counsel appearing for the petitioners has strongly urged before this Court that the petitioners were not given any opportunity to inspect the documents relied in the staff court of inquiry nor was they asked to make their representation in response to the report filed by the staff court of inquiry recommending strict disciplinary action.

[5] By filing the affidavit-in-opposition, the respondents have stated that the petitioners were found blameworthy for misappropriating the liquor funds of FTR, HQ BSF, Tripura while they were performing their duties of the liquor NCO, by a court of inquiry duly constituted under BSF Act and Rules. It has been asserted that the petitioner, namely Anup Pati handed over charge to HC, Hanuman Singh on 28.04.2010 and HC, Hanuman Singh handed the charge of HC, S. Bhattacharji on 29.04.2010. In the course of handing/taking of the charge of the FTR liquor store, some irregularities in the sale and accounting of liquor were reported IG, BSF, Tripura, FTR detailed a Board of Officers, constituted of very senior officers, to ascertain the factual position. The said Board of

Officers submitted the report showing the irregularities in sale and accounting of liquor to the extent of Rs.10,04,678.95. Thereafter, one Sri Bhagaban Singh, Commandant, 102 Bn. BSF was directed to conduct a staff court of inquiry to investigate the circumstances under which irregularities were reported in the liquor store, FTR. During that time, the petitioners levelled seniors allegations against some senior officers of that period. To inquire into those allegations, by the letter dated 08.10.2010, one S. Ramaswai, IG (PSO), HQ, Special DG (EC) had directed to conduct a comprehensive personal inquiry into the allegation made by the petitioner, Sri Anup Pati. Till that personal inquiry is completed, the staff court inquiry was suspended. The said personal inquiry was terminated on submission of a report dated 20.10.2010, Annexeure-R/3 to the affidavit-in-opposition. The said report had suggested some administrative measures but those were not in any manner linked to the alleged misappropriation of the liquor fund. On 19.11.2010, one Nanda Kishore, IG, IPS, North Bengal FTR was directed to conduct a staff court of inquiry into the circumstances under which irregularities had taken place in the FTR liquor store and the Liquor Store of Tripura Frontier. In the meanwhile, internal audit was carried out for the same period and from the audit report dated 07.01.2011 it transpired that a sum of Rs.14,28,517.78 was deficit and the said audit report recommended for recovery of the said amount. In the audit report both the petitioners were found

blameworthy. There were certain discrepancies in the observations of the staff court of inquiry proceedings and to streamline those, an additional staff court of inquiry on 21.01.2012 was directed and accordingly the said special staff court of inquiry was assembled and they completed their investigation on 20.09.2014 when the report dated 14.02.2012 by the additional staff court of inquiry was submitted holding inter-alia:

(i) For misappropriation of Liquor Store worth Rs.14,05,546.90 while working as Liquor NCO.

(ii) For fudging of records Liquor Stores and Fund including fake signatures of Officers on various occasions on Monthly Liquor Summary, Stick ledgers etc.

(iii) For unauthorisely stopping the entry in the stock register FTR 'Q' Liquor Store from Sept 2009 onwards and also hiding this register from the eyes of Officers and SOs.

(iv) For keeping the keys of Liquor stores with him after duty hours unauthorisely and non-depositing in the Quarter Guard daily with proper sealing of stores.

[6] The said staff court of inquiry has also recommended recovery for 50% of the misappropriated amount from the petitioners and further disciplinary action for falsifying and altering official documents to defraud. Accordingly, the order dated 04.11.2014, Annexure-10 to the affidavit in opposition, which has been referred as the order dated 03.12.2014, Annexure-P/3 to the writ petitions. Date of the order if recorded correctly after tallying with the order would be 04.11.2014, Annexure-P/3 to the writ petition, being Annexure-10 to the affidavit in opposition. The other impugned

orders, Annexure-P/4 to the writ petitions are the consequential orders for implementing the order of recovery.

[7] Mr. A. Roy Barman, learned C.G.C. appearing for the respondents has produced the entire records for purpose of appreciation by this Court.

[8] On perusal of the records, it appears that manifold recommendations had been made. Not only against the petitioners, but also against the other officials who did not perform their duty properly, action was suggested. Their lapse in discharging their duties, either in supervising the activities of the liquor store or to direct the petitioners to strictly adhere to the general instructions of handling the Government finance the entire rot could take place. It is further transpired that both the petitioners participated in the staff court of inquiry throughout the entire proceeding. They were asked to cross-examine the witnesses. In some cases, the petitioner, namely Anup Pati had cross-examined the witnesses and in most of the cases they declined to cross-examine the witnesses or to produce any document or witness in their defence. The recording officer of the court of inquiry has recorded their conduct in the proceeding vividly and on those were duly signed by the member of the court of inquiry. As such, it cannot be stated that they were not given any opportunity to cross-examine the witnesses and to submit any document in the proceeding. Even, no bias has been attributed against the

members of the court of inquiry. Even after culmination of general records of the witnesses and production of the documents, all the persons who were proceeded against were asked to make the statement or to produce any document or witness in their defence. Some of the persons who were dealt otherwise, made the statement but no such statement was made by the petitioners. In the proceeding records, the petitioner, namely Sri Anup Pati has been shown as witness No.8 (W-8) (RC). From page Nos.147-161, his statement is available. In reply to the question No.19, crux of which was that on 29.09.2009 Rs.7,97,118/- was not transferred to any stock ledger. The petitioner, Anup Pati has stated that he did it intentionally with a fear that if any officer happened to check the liquor store, the shortage would be exposed. Almost the similar answer was given in response to the question No.20, which was related to a sum of Rs.3,60,910/-. He had categorically stated that the statements were recorded correctly.

So far the statements of other writ petitioner, namely Arun Kumar Sarangi is concerned, he has been examined as witness No. 14 (W-14) (RC). He has admitted in response to the question No.11 that DIG, Procurement when wanted to procure more liquor from vendors, the sufficient liquor was available as per the stock ledger but actually the liquor was deficient. He has admitted that he never informed

even the petitioner in W.P.(C) No.34 of 2015, namely Anup Pati for shortage of liquor worth of Rs.7,00,000/- despite his knowledge. In response to the question No.13 he has admitted that he was not able to show the sale of liquor for the money which was with him. He has also admitted how he manipulated the records of the transactions along with the other writ petitioner, namely Anup Pati. All these statements were in addition, after they were recalled in the additional staff court of inquiry. There was clear compliance of Rule 173(8) of BSF Rules and the petitioner, Anup Pati has categorically stated in the compliance certificate that he has been afforded an opportunity to know all that, which has been stated against, but he declined to make any comment. Even he declined to cross-examine the witnesses who stated against them. He also declined to give any statement, produce any document or witness in his defence. Similar compliance certificate was given by the other petitioner, namely Arun Kumar Sarangi. Those compliance certificate of the petitioners are available at page Nos.195-197 of the proceeding records.

[9] Mr. A. Roy Barman, learned C.G.C. has submitted that the proceeding has been carried out in strict compliance of Chapter XIV of the Border Security Force Rules, 1969. Rule 173 of the said rules has been strictly complied. The petitioners were given all opportunities to know what has been stated against them, cross-examine any witnesses who

had given evidence against them, make a statement and call witnesses in his defence but the petitioners did not adduce any evidence or raise any objection against any part of the procedure, rather they had admitted their misconduct. He has further stated that the competent authority has taken a lenient view. Mr. Roy Barman, learned C.G.C. has referred a decision of the apex court in **Union of India and others vs. Sanjoy Jethi and another**, reported in **(2013) 16 SCC 116** contending that the principle of natural justice is not a strait jacket formula. In the said report, the apex court has reiterated the principle as enunciated in **State vs. N.S. Ganeswaran**, reported in **(2013) 3 SCC 594**, where it has been observed as under:

"12. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enquiry/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. [vide Jankinath Sarangi vs. State of Orissa : (1969) 3 SCC 392, State of U.P. vs. Shatrughan Lal : (1998) 6 SCC 651, State of A.P. vs. Thakkidiram Reddy : (1998) 6 SCC 554 and Debotosh Pal Choudhury vs. Punjab National Bank: (2002) 8 SCC 68]"

[10] Finally, Mr. Roy Barman, learned C.G.C. has contended that there is no averment as to the prejudice in a specified manner, to say least of the infraction of law. As such, plea of injustice is entirely unsustainable.

[11] Having regard to the records so produced as well as the submission made by the learned counsel for the parties, this Court is of the considered opinion that in the writ petitions, the petitioners have deliberately suppressed their accepting and signing of the certificate as to compliance of Rule 173(8) of the BSF Rules, 1969. They have even not given any illustration how they are prejudiced. It appears that the additional staff court of inquiry was conducted in strict compliance of Chapter XIV of the said Rules. Adequate opportunity was afforded to the petitioners to have their say but they declined. Now by filing a writ petition they cannot blame the respondents. Nowhere, there is any murmur in the entire writ petitions that the petitioners were coerced to sign that compliance certificate. As stated, the substantial part of the misconduct has been admitted by the petitioners in their own words which are available on the records. In consequence thereof, the writ petitions, being bereft of merit, stand dismissed leaving the parties to bear their own cost.

The records as produced be returned under the sealed cover.

Interim orders staying the recovery stand vacated.

JUDGE

Sujay