

**IN THE HIGH COURT OF TRIPURA  
AGARTALA**

**W.P.(C) NO. 86 OF 2003**

Sri Mrinal Kanti Sarkar  
Son of Sri Mohini Mohan Sarkar  
Resident of Khowai (Durganagar)  
P.S. Khowai, District – South Tripura.

..... Petitioner

**– Vs –**

1. The State of Tripura.  
Notice to be served upon the Commissioner/  
Secretary to the Government of Tripura  
Department of Food & Civil Supplies,  
Agartala.
2. The Director  
Food & Civil Supplies,  
Government of Tripura.  
Agartala.

.....Respondents

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

For the petitioner	:	Mr. K.N. Bhattacharjee, Sr. Advocate Mr. S. Acharjee, Advocate.				
For the respondents	:	Mr. A. Ghosh, Advocate.				
Date of hearing	:	29.05.2013				
Date of delivery judgment & order	:	31.07.2013				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td> </td><td> </td></tr></table>	YES	NO		
YES	NO					

**JUDGMENT & ORDER**

The petitioner once the Store Keeper and in-charge of Damcherra Government Food Godown during the period from 08.02.1991 to 31.12.1994 has been imputed with misconduct by the Memorandum No. 2-5(9)-DF/98 dated 09.04.1998 with the following article of charges:

**"ARTICLE OF CHARGE-I**

**That the said Sri Mrinal Kanti Sarkar, while in the charge Damcherra Govt. Food Godown under Dharmanagar Sub-Division now in Kanchapur Sub-Division during the period from 08.02.91 to 31.12.94 except the period from 06.08.91 to 02.09.91, 09.10.91 to 19.02.92 & 07.02.91 to 16.08.91 exhibited gross dereliction to duties, absolute carelessness, lack of integrity and devotion to duties entrusted upon him by way of not maintaining the books of accounts and other records thereof in the manner prescribed/instructed by the competent authority which is unbecoming of Govt. Servant and amounts to misconduct or misbehaviour. By restoring to such activity with evil intention to derive personal benefit said Sri Mrinal Kanti Sarkar misappropriated 21055.70 kgs of rice, 169.500 kgs of levy sugar and 63.500 kgs of iodised salt money valued of which comes to Rs.1,12,509.37 (Rupee one lakh twelve thousand five hundred nine and paise thirty seven) only.**

**This attracts Rule -3 Tripura Civil Services (conduct) Rules, 1988 and action thereof under Central Civil Services (classification/control & appeal) Rule, 1965."**

- 2.** The petitioner has denied the said allegation of gross dereliction of duties, absolute carelessness, lack of integrity or devotion to duties. The shortage as indicated elaborately in Annexure-2 to the said memorandum dated 09.04.1998, Annexure-1 to the writ petition according to him, cannot be attributed to him. He also has denied that he has misappropriated 21055.70 kgs of rice, 169.500 kgs of levy sugar and 63.500 kgs of iodised salt, valued at Rs.1,12,509.37 to derive personal benefit. On denying the said allegation the petitioner has stated that for the dilapidated condition of Damcherra Govt. Food Godown and for heavy rat troubles the said shortage occurred. He has also contended that much before determination of the so called shortage, he

had approached the higher authorities on numerous occasions for taking appropriate measure to improve the godown infrastructure as well as the storage. But unfortunately no action whatsoever was taken by the superior authorities and for such action the said shortage had resulted gradually.

**3.** On the face of such denial of the imputation of misconduct (*Annexure-1 & 2 of the memorandum dated 09.04.1998*) the inquiry by the Additional Commissioner, Department of Inquiries, Government of Tripura had been directed vide No. F.658/ING.8. The said Inquiring Authority had submitted the inquiry report on 15.02.2000 holding that :

**"From the above it has been very clear that the condition of the godown was very bad and there was scope of damage of foodgrains of jangle rats, rain water etc. Side by side Sri. S.C. Das, Accounts Officer in his report in Ex-P/2 series has observed that the store keeper was all along negligent in maintaining books of accounts and other records properly. For example 2(two) nos. of stock Books were opened for cormca raw rice for the same year in 1992-93. While there were blank pages in Book No.1, 3(three) nos. of stock Books were opened for C.H. rice for the same year i.e. 1992-93 while there were blank pages in Book No.2 which in most irregular. In maintaining Book of Accounts, 2(two) nos of Stock Books were opened for iodised salt for the year 1992-93 while there was a huge no. of blank pages in Book No.1. The store keeper did not issue SAV for some shortage. In some cases SACs have been issued but without any date.**

**The defence has proved that there was scope for damage of foodgrains causing shortage. But in respect of C.R. rice Book No. 1,1993-94 page No.1 and in respect C.B. rice in Book No.1, 1993-94(page No.7) shortage has been very high and without justification, in respect of S.F.B. rice though shortage has been very high it has been stated in inspection note stock was not lifted by the local people causing long storage in the Godown and damage.**

**In respect of maintaining Book of Accounts the A.O. has been very negligent as evident from Ex-P/2. The A.O. did not issue SAV in all cases.**

**So the charge brought against the A.O. is partly sustained."**

**4.** From the Annexure-2 to the Memorandum dated 09.04.1998 it is evident that the petitioner did not maintain the books of account and other

relevant papers like the bin card register and SAV with fraudulent intention to mislead the authority in determining the loss caused to the Government for purpose of deriving his personal benefit and thereby exhibited lack of integrity, devotion to duties and violation of the instruction of the competent/superior authority, which is unbecoming of a Government servant. The said allegation is relatable to that part of the article of charge which speaks of the gross dereliction to the duties, absolute carelessness, lack of integrity and devotion to duties entrusted to him by way of not maintaining the books of account and other records thereof in the manner prescribed/instructed by the competent authority, which is unbecoming of a Government servant and amounts to misconduct and misbehaviour. Such act on the part of the Govt. Servant as indicated is within the purview of Rule - 3 of Tripura Civil Services (Conduct) Rules, 1988.

**5.** From the reading of the articles of charge as extracted it would be apparent that the charge is segmented in two different parts:

- (i) the shortage of the fodgrains during the period from 08.02.1991 to 31.12.1994.**
- (ii) non maintaining the books of account and other records in the manner as prescribed/instructed by the competent authority.**

**6.** The inquiry report even though did not reflect very definitely which part of the charge has been proved in the inquiry but form the cumulative reading it surfaces that non maintenance of accounts and other records has been definitely proved and that has been linked to the shortage which is according to the inquiring authority is of very high degree and without justification. The petitioner has not alleged of infraction of the procedural

safeguards rather he has questioned the legality of the order dated 01.04.2000 as passed by the Disciplinary Authority, the respondent No.2 herein. By the said order dated 03.03.2000 (Annexure-3 to the writ petition) the Disciplinary Authority has held that the charge brought against the petitioner is partly sustained and, therefore, he proposed the penalty of recovery of Rs.56,254.68 (say Rs. 56,255/- ) (Rupees fifty six thousand two hundred fifty five ) only being 50% of the pecuniary loss i.e. Rs.1,12,509.37 (Rupees one lakh twelve thousand five hundred nine and thirty seven paise), as sustained by the Government, from the salary of the petitioner in instalments. The petitioner was asked to represent against such proposal, if any.

**7.** Accordingly, the petitioner filed his representation on 24.03.2000 (*Annexure-4 to the writ petition*) contending that from the findings of the Inquiring Authority it has been established that the prosecution has failed to prove that the petitioner has not maintained books of account and other relevant papers with fraudulent intention or to mislead the authority. Thus, he asserted that he has failed to apprehend why the said recovery has been proposed. He urged for exoneration from the charge.

**8.** The Disciplinary Authority by the order dated 01.04.2000 (*Annexure-5 to the writ petition*) has confirmed the proposed penalty directing the recovery of Rs.56,225/- by monthly instalments of Rs.1,000/- from the salary of the petitioner commencing from the salary bill of April, 2000 till the recovery is complete.

**9.** Being aggrieved thereof, the petitioner preferred an appeal under Rule 23(II) of the CCS (CCA) Rules, 1965 to the Secretary to the Government of Tripura, Food and Civil Supplied Department, the appellate authority for setting aside the order of the Disciplinary Authority dated 01.04.2000. The said order, however, as it appears from the record was communicated under reference No.F.2-6(9)-DF/98 dated 3.04.2000. Since the appellate authority had not disposed the appeal, the petitioner approached this Court by filing a petition under Article 226 of the Constitution of India being W.P.(C) 361 of 2000. The said petition was disposed of by the order dated 11.08.2000 directing the appellate authority to dispose the appeal along with the stay petition within a period of one month from the date of order after giving due opportunity to the petitioner of hearing, if necessary and till such date the proposed recovery was suspended.

**10.** In the wake of the said order dated 11.08.2000, the appellate authority on due consideration dismissed the appeal by the order dated 11.02.2003 (*Annexure-9 to the writ petition*) holding that:

**"(i) The appellant-petitioner has not introduced anything new in his appeal compared to what had already been examined by the Inquiring Authority vide the findings dated 15.-02-2000 in Departmental Proceeding case No.658/INQ/98. I find that the Disciplinary Authority has also examined the entire matter as the store-keeper had raised the similar issues even then and had arrived at reasoned order dated 03-04-2000.**

**(ii) In his argument, the appellant-petitioner mentioned the minor discrepancy in the incumbency of Damcherra Food Godown. Even if his claim is accepted, the basic fact of shortages emanating from his failure to maintain requisite books of accounts in the prescribed manner as established by the Inquiring Authority can't be denied. Moreover, the records indicate that all the shortages occurred during his incumbency except shortages of Rs.1507.87/- only (for 276.5 kgs. of S.F.B. Rice under SAV No.1 dated 25-01-1993 and 63.5 kgs. of I/Salt under SAV no. Nil dated 24-09-1991.**

**(iii) His claim regarding shortages that may have occurred prior to his taking over the charge of Damcherra Food Godown needs action**

**separately by the Director, FCS & CA along with fixation of responsibility and Director, FCS & CA is advised accordingly to proceed further as per rules.**

**(iv) In fact, the establishment of the fact that the appellant-petitioner did not maintain the records properly indicates his ulterior motive. He has claimed that the shortages occurred due to the deplorable condition of the godown. This claim is totally baseless, as any man of reasonable prudence will know that even though the foodstock may get damaged but it cannot disappear into thin air."**

**11.** Based thereon the appellate authority held that the petitioner has committed gross dereliction of duties and demonstrated lack of integrity and lack of devotion to the duty. Therefore, he does not find any reason to disagree with the impugned order passed by the Disciplinary Authority.

**12.** Being aggrieved by the order dated 01.04.2000 (Annexure-5 to the writ petition) referred in the writ petition as order dated 03.04.2000 and the order dated 11.02.1003 (Annexure-9 to the writ petition) passed by the appellate authority the petitioner has approached this Court for judicial review. The petitioner has questioned the order dated 03.04.2000 and has urged for exoneration from the charge as set out in the Memorandum dated 09.04.1998 (Annexure-1 to the writ petition).

**13.** The respondents by filing a composite counter affidavit have denied any infirmity in the impugned orders and contended further that the impugned orders are well considered and adequately reasoned by weighing preponderance of the evidence.

**14.** Mr. K. N. Bhattacharjee, learned senior counsel appearing for the petitioner has strenuously argued that the inquiry report (Annexure-2 to the writ petition) has established that the shortage that occurred is for the condition of the storage and for heavy rat troubles. Thus the finding on the

charge brought against the petitioner is preposterous and as corollary cannot be sustained. He has further contended that from the Exbt.P/2 series (the letter written by the petitioner) to the superior authority would amply demonstrate that despite the petitioner's best care, the infrastructure of storage could not be improved and as consequence whereof, the shortage of the foodgrains and other materials had been registered for which the petitioner cannot be departmentally proceeded. Moreover, there is no element to prove that during the incumbency of the petitioner the shortage as reflected in the article of charge had taken place. In view of this, the impugned order as passed by the Disciplinary Authority is entirely unwarranted. Apart that, he has further contended that the appellate authority has failed to consider the parameters of Rule 27(ii) of the CCS (CCA) Rules, 1965 while disposing of the appeal and as such the appellate order dated 11.02.2003 (Annexure-9 to the writ petition) suffers from serious non application of mind.

**15.** From the other side, Mr. A. Ghosh, learned State counsel appearing for the respondents has meticulously submitted that the ambit and scope of the judicial review is circumscribed unless it is demonstrated that the departmental proceeding suffers from the denial of the reasonable opportunities or the safeguards as provided under Rule 14 or 15 of the CCS (CCA) Rules, 1965 or the findings are based on no evidence or from infraction, the High Court would not exercise its power as conferred by Article 226 of the Constitution of India. Mr. A. Ghosh, learned State counsel has further submitted that from scrutiny of the records it would surface that even the petitioner has not alleged that he was deprived of the reasonable

opportunities or the safeguards as provided by the statute. Apart that, the Inquiry Report has recorded the evidence in an elaborate manner and the report which surveyed the period from 08.02.1991 to 31.12.1994 has been duly admitted in the proceeding as Exbt. P/4 by PW-5. The finding has been based thereon. The adequacy of evidence as emanated from such document in particular has not been put under challenge either in the representation or by rebuttal evidence. The plea of inadequacy of the infrastructure or of heavy rat troubles has been addressed with sufficiency and with sufficient reasons the evidence has been analyzed. Thus the impugned orders according to Mr. A. Ghosh, learned State counsel do not suffer from any infirmity or called for interference at all.

**16.** On meticulous scrutiny of the records as placed in the writ petition, this Court finds that the findings of the Disciplinary Authority and as well as of the appellate authority as based on the inquiry report do not suffer from any infirmity, warranting interference from this Court.

**17.** On the face of the records no case has been established by the petitioner to show that the adverse findings against him have been returned without any evidence. This Court is not supposed to substitute the finding of the Inquiring Authority based on which the Disciplinary Authority has passed the impugned order converting it as the Court of appeals. It appears that the appellate authority has considered every aspects as raised in the appeal as well as the parameters as delineated in Rule 27 of the CCS (CCA) Rules, 1965 and thereafter, passed the impugned order dated 11.02.2003 (*Annexure-9 to the writ petition*). The order dated 17.03.2003 passed in C.M. Appl. No. 103 of 2003 arising from W.P.(C) No. 86 of 2003 is hereby vacated and in terms

thereof, the petitioner is directed to refund Rs.56,225/- in terms of the order dated 01.04.2000 (Annexure-5 to the writ petition) with interest @7% from the date of the said order as this Court has passed the order of stay on the following terms:

**"Upon hearing I think it appropriate to stay the impugned order of recovery of Rs.56,225/- from the petitioner till disposal of the writ petition, but in case, the petitioner fails, the entire amount is to be paid with 7% interest from the date of the impugned order of recovery and I grant stay accordingly."**

As such this Court finds no merit in the writ petition and accordingly, this petition stands dismissed. However, there shall be no order as to costs.

**JUDGE**