



GAHC010076872023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2000/2023

RAMESH KUMAR PUNIA
S/O LATE SH. SHRICHAND PUNI, PRESENTLY SERVING AS DEPAUTY
COMMANDANT, IN 33RD BN ITBP PRESENTLY LOCATED AT GAMES
VILLAGE, P.S.-BASISTHA, KAMRUP (M), ASSAM, PIN-781028

VERSUS

THE UNION OF INDIA AND 8 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI-110003

2:THE DIRECTOR GENERAL
DIRECTORATE GENERAL
ITBP
BLOCK 2
CGO COMPLEX
NEW DELHI-110002

3:THE ADDITIONAL DIRECTOR GENERAL
EASTERN COMMAND HEADQUARTERS ITBP
BSNL BUILDING
DHARAPUR
GUWAHATI (ASSAM) 781017

4:THE CHIEF VIGILANCE OFFICER
INSPECTOR GENERAL
ITBP
BLOCK 2



CGO COMPLEX
NEW DELHI-110003

5:THE INSPECTOR GENERAL NORTH WESTERN FRONTIER
ITBP
MINISTRY OF HOME AFFAIRS
C/O 56 APO
POST-CHUGLAM SHAHAR JAIL ROAD
LEH LADAKH (UT)
PIN-194101

6:THE DY. INSPECTOR GENERAL (TEZPUR SECTOR)
ITBP
MINISTRY OF HOME AFFAIRS
RANGAMATI
P.O.-BIHAGURI
SONITPUR (ASSAM) 784001

7:THE DY. INSPECTOR GENERAL (PERS.) ITBP
MINISTRY OF HOME AFFAIRS
BLOCK 2
CGO COMPLEX
NEW DELHI-110003

8:THE COMMANDANT 33 BATTALION
ITBP
BLOCK A-14
6TH FLOOR
GAMES VILLAGE
GUWAHATI
PIN-781028

9:THE COMMANDANT AND PRESIDING OFFICER (COURT OF INQUIRY)
37 BN.
C/O 56 A.P.O.
POST-CHUGLAM SHAHAR
JAIL ROAD
LEH
LADAKH (U.T.) PIN-19410

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : DY.S.G.I.



Date: 15.03.2024

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT AND ORDER(CAV)

1. Heard Mr. R Mazumdar, learned counsel for the petitioner. Also heard Ms. B Sarma, learned CGC appearing on behalf of respondent Union of India.

2. The present writ petition is filed assailing that a de-novo enquiry against the petitioner on the same set of facts and same witnesses has been initiated inasmuch as in an earlier enquiry the petitioner was exonerated from the said charge. From the material available on record and from the pleadings of the parties certain important facts, which are necessary for determination of the issues involved are summarised below:

I. While the petitioner was posted at 05 battalion of ITBP, Leh, Ladakh as Deputy Commandant, on 22.06.2022, one anonymous complaint was lodged against the petitioner to the effect that the petitioner had sold 25 barrels of 'kerosene oils' in the open market by transporting the said kerosene oil from Murgo Out Post to Syok Out Post in a Government vehicle bearing No. CH 01 G 8326. An enquiry was conducted and after the enquiry, the presiding officer opined that alleged act of transporting the 25 barrels of kerosene oil was impossible, given the terrain and climatic condition of Leh, Ladakh in the month of February when it receives the maximum snowfall and

the petitioner was thus exonerated.

II. Such an enquiry report was not accepted by the convening authority and the same was returned to the presiding officer of court of enquiry by a letter dated 22.12.2020 pointing out certain lapses and seeking clarifications.

III. Thereafter the presiding officer of the court of enquiry by its communication dated 31.03.2021 addressed to the DIG (PERS), intimated the clarification sought for.

IV. The clarifications were made to the following effect:

- a. There is excessive snowfall in the month of February in the Leh area and therefore a vehicle cannot carry a load of 25 barrels of kerosene oil with 10/15 force personal from Murgo Outpost to Syok Outpost as alleged in the anonymous complaint.
- b. The enquiry officer himself attempted to load 25 nos. of anti barrels on a vehicle and it was found not to be possible.
- c. Therefore, the anonymous complaint was baseless.

V. While the matter was rested at that stage, on 21.03.2023, the petitioner was served with a communication issued by Commandant, 37 battalion cum presiding officer of a de-novo court of enquiry asking the petitioner to appear before the court of enquiry on 25.03.2023.

VI. The aforesaid communication dated 21.03.2023 is a

summon/ notice for cross-examination of the petitioner and some other during court of enquiry at 5 battalion.

VII. The communication further reflects that an enquiry was directed on 12.01.2023 by the Inspector General, North-eastern Frontier Head Quarter to enquire into the theft/ misappropriation of 25 barrels of kerosene oil from 5 battalions at Murgu Outpost.

VIII. Such communication was received by the petitioner on 27.03.2023 i.e. after the date fixed for appearance of the petitioner on 25.03.2023.

IX. Thereafter, the petitioner preferred a representation before the court of enquiry on 28.03.2023. Though such copy of the representation is not annexed with the writ petition however a statement has been made that the petitioner has requested for a copy of the complaint lodged against him by any officer or to give him a copy of any anonymous complaint along with a copy of the previous copy of enquiry report. A statement has also been made that the petitioner further requested for 15 days time from date of supply of the aforesaid document to place his defence.

X. On 31.03.2023, the commandant in response to the representation filed by the petitioner directed the petitioner to remain present before the court of enquiry from 07.04.2023 to 10.04.2023 and in the event the officer does not report, the report of the enquiry will be submitted to the IG, North-Western

Frontier without the statement of the officer.

XI. This court while issuing notice of motion under its order dated 06.04.2023 stayed the further proceedings of the second court of enquiry initiated vide order No. 21 dated 12.01.2023. Subsequently by different orders, this court extended such an order of stay.

3. Mr. R Mazumdar, learned counsel for the petitioner while questioning the legality and validity of the initiation of the second proceeding argues the following:

I. As on the same set of allegations, after a due enquiry, it was concluded that the anonymous allegation is baseless, the action of the respondent now initiating another court of enquiry regarding the same incident on the basis of same anonymous complaint is barred by law.

II. The Union of India and the Central Vigilance Commission way back in the year 2013-14 had directed that no action would be taken on anonymous / pseudonymous complaints by ministries / departments and organizations. On the basis of such policy decision, the Additional Director General, Eastern Command HQ, ITBP had already issued an Office Memorandum dated 30.01.2023, whereby it was directed that no action is required to be taken on the basis of anonymous complaint and rather on the identification, such person, involved in generating such anonymous complaint should be proceeded in accordance with law. Therefore, the

enquiry initiated on the basis of anonymous complaint ought not to have been entertained by the respondents and therefore, such action is illegal on the face of it.

III. The actions of the respondents are also violative of the principle of natural justice in as much as the prayer made by the petitioner through his representation dated 28.03.2023 seeking the material on the basis of which he was sought to be proceeded with, has been rejected without any rhymes and reasons. Accordingly, Mr. Mazumdar concludes that the impugned proceeding is liable to be interfered in exercise of this Court's power of judicial review.

4. Per contra, Ms. B Sarma, learned CGC relying on the affidavit in opposition filed by the respondents argues the followings:

I. The writ petition should not be entertained by this Court for want of territorial jurisdiction inasmuch as the impugned proceeding has been initiated at New Delhi and the alleged theft was committed while the petitioner was posted at Leh, Ladakh. Therefore, all the causes of actions either wholly or in part are beyond the territorial jurisdiction of this Court and therefore the present writ petition should be dismissed for want of territorial jurisdiction. In support of her contention, she relies on the decision of the Honble Apex Court rendered in ***Sarabjit Kaur Vs Union of India and Ors.*** reported in ***AIR 2000 SC 3637.***

II. On merit of the contention of the writ petitioner, Ms.

B Sarma, learned counsel argues that the court of enquiry has been ordered to ascertain as to whether there was a theft/ misappropriation of kerosene oil. The court of enquiry has been initiated under Rule 174 of the ITBPF Rules, 1994 and the proceeding is in conformity with the Rule 8(I) and (II) of the Rules, 1994. Therefore the petitioner shall be given all opportunity of hearing, not only in terms of the aforesaid rules but also in terms of other rules prescribed under the Rules, 1994. Reasonable opportunities also be provided to the petitioner to defend his case during the course of enquiry and therefore the present writ petition is premature and liable to be dismissed inasmuch as no right of the petitioner has been infringed and mere initiation of an court of enquiry does not infringe the right of any one.

5. Replying to such argument Mr. Mazumdar argues that as the petitioner has long been transferred after completion of the first Court of enquiry and he is presently posted under the jurisdiction of this Court and the respondents are having their offices herein and the notice has been served at a place within the jurisdiction of this Court, this Court shall have jurisdiction to entertain this writ petition in as much as the jurisdiction of initiate the second enquiry is under challenge. Right of the petitioner in terms of policy decision of the Ministry of Home Affairs not to have enquiry in terms of anonymous complaint is also a subject matter of the petition and therefore, this Court shall have jurisdiction.

6. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Perused the records of

court of enquiry.

7. The first issue which needs to be answered is whether this Court lacks territorial jurisdiction to proceed with the writ petition and therefore, the writ petition is liable to be dismissed. From the record it is seen that while the petitioner was working under DIGP (PERS), North Eastern Frontier Head Quarter, Ladakh the first enquiry was concluded and a report was submitted by the Commandant/ presiding officer of the said head quarter. However, at the relevant point of time when the petitioner was asked to appear for cross examination, the petitioner was posted as Deputy Commandant, 33 Battalion, ITBP at Basistha, Guwahati. The challenge made in the petition is not only the summon but also assertion of his right under the policy of Union of India not to have enquiry on the basis of anonymous complaint inasmuch as, according to the petitioner on the basis of anonymous allegation no enquiry can be initiated. A cause of action arises when there is a proof that a duty existed towards the plaintiff but the plaintiff failed to procure it, for its breach. In the case in hand, the allegation is that the employer has a duty not to initiate an enquiry on the basis of anonymous complaint and not to initiate enquiry twice on the same set of allegation, when in the first enquiry the petitioner was exonerated. Thus, the petitioner challenges the entire proceeding. That being the position and for the reason that an action of the Union of India in the Ministry of Home Affairs is under challenge, and the respondents are having offices within jurisdiction of this Court, part of cause of action has arisen at New Delhi, Leh and Guwahati, this court shall have jurisdiction to entertain the present writ petition. The petitioner is also

posted within the jurisdiction of this Court, the respondents are having their offices herein Guwahati and therefore, it shall be in the convenience of the parties this Court should entertain the present writ petition. For the reason discussed hereinabove, more particularly considering the "subject matter of the challenge", this Court is of the opinion that this Court will have jurisdiction to entertain the present writ petition inasmuch as the alleged breach of right of the petitioner cannot be related only to the place of enquiry.

8. It is very clear and admitted that an anonymous complaint was lodged to the effect that the petitioner had sold 25 barrels of kerosene oil in the open market which was transported by Government Vehicle from Murgo Outpost to Syok Outpost. The presiding officer after taking evidence and completion of enquiry submitted a report concluding that anonymous complaint was baseless. Subsequently, when clarification was sought, the presiding officer clarified the fact and reiterated its stand.

9. The record produced by the learned CGC is a record pertaining to "**Court of Enquiry to investigate and collect evidence in respect of circumstance under which 25 barrels of kerosene oil has been misappropriated/ stolen from the Murgo BOP of 05 Battalion and sold in the local market**". Thus, the enquiry relates to the same incident wherein already an enquiry was conducted and a report submitted.

10. Terms of reference relating to the present enquiry as discernible from record are quoted hereinbelow:

“(I) Whether there was theft/ misappropriation of K-Oil at Murgo BOP on or around 14.02.2022.

(II) Whether there is any discrepancy/ tampering etc. in the K-Oil Stock register at Murgo BOP, during the relevant period.

If any discrepancy, tempering, shortage, etc, supra is proved, identify the person(s) responsible for the same and quantify the loss to the Govt. Exchequer.”

11. Thus, it is clear from the terms of reference that the present enquiry is a court of enquiry to investigate and collect evidence relating to alleged theft of kerosene.

12. Rule 175 of Rules, 1994 provides that a court of enquiry may be held to investigate into any disciplinary matter or any other matter of importance. Rule 175 (2)(c) provides for power to hold court of enquiry in all financial irregularities, losses, theft and misappropriation of public and force property.

13. Chapter VIII of the Rule 1994 deals with charges on matters antecedent to trial. Such chapter prescribes the manner of framing charges, validity of charge-sheet, amendment of charge, convening of general and petty force court, composition of force court, duties of such court etc. Rules 65 under Chapter VIII provides for preparation of defence by the accused, Rules 66 provides for summoning of defence witness etc.

14. Chapter IX provides for procedure for general and petty force court. Such chapter also provides procedures for accused right to object the charges, provision of bail, pleading of charges, acceptance of guilty,

procedure when not pleaded guilty, adducing additional witnesses and withdrawal of witnesses, examination of witnesses etc. Rule 92 prescribes for calling or recalling of witnesses by court. It also provides for procedure for raising defence, examination of defence witness etc.

15. Chapter X provides for procedure of force court and incidental matter. Chapter XI provides for summary force court which also includes similar procedure as that of Chapter VIII. Chapter XIV provides for court of enquiry and its composition, procedure.

16. In terms of the Rules 1994, more particularly under the Chapters as discussed herein above, the stage of examination of witnesses in a Court of enquiry is preceded by framing of charges etc. It is also well settled that under the scheme of ITBPF Rules, 1994 a punishment / penalty cannot be imposed except without the procedure mandated in the Rules'1994, more particularly as prescribed under Chapters VII, VIII, IX, X read with Chapter XIV of the Rules, 1994.

17. As discussed hereinabove, whenever a person/ member of ITBPF is charged he may be proceeded under court of enquiry or through force court. Court of Enquiry may be held for disciplinary purpose or for investigation to any important matter. In all the cases there is a procedure of framing charge and giving opportunity of hearing to an accused/ charged employee and there is procedure of giving such a charged employee to lead defence evidence in his support.

18. No material has been placed on record that the petitioner is charged as accused in the impugned court of enquiry. Adherence of

none of the procedures as discussed herein above is discernible involving the present petitioner. It is also not clear whether the petitioner is a defence witness and being summoned in terms of Rule 66 of the Rules, 1994. Rather, the reference to the Court of Enquiry reflects that it is a Court of Enquiry for investigation and to collect evidence.

19. That being the position, the petitioner cannot be treated as an accused in the ongoing Court of Enquiry proceeding, even if the contention of the respondent that earlier enquiry was not a Court of Enquiry is accepted. The fact also remains that the petitioners presence is required as witness in terms of the summon and in terms of the communication 21.03.2023, though it is not clear for whom he has been asked to be an witness and depose

20. Another aspect of the matter is that the petitioner has filed a representation dated 28.03.2023 raising certain issues and seeking a copy of the complaint. Such representation is also required to be addressed and disposed of by the employer being a model employer, more particularly in a given fact that admittedly in an earlier enquiry the Presiding Officer exonerated the petitioner.

21. Therefore, it is held that the authority under ITBPF may issue a fresh summon to the petitioner for his deposition as witness pertaining to the investigation, however, he cannot be treated as a charged officer/ accused in the present court of enquiry proceeding nor any penalty/ punishment can be imposed by way of present proceeding for the reason as discussed hereinabove, more particularly for the reason that the present enquiry cannot be treated as a court of enquiry held for the



purpose of imposing penalty, though same can be an enquiry to investigate a matter of importance as provided under Rule 175.

22. So far relating to the representation preferred by the petitioner on 28.03.2023, the employer of the petitioner is duty bound being a model employer to consider the grievances raised in the said representation and therefore, it is also directed that the respondent, more particularly the presenting officer of the court of enquiry shall consider and dispose of the same within a period of six weeks from receipt of certified copy of this order.

23. In the aforesaid term, this writ petition stands disposed of.

JUDGE

Comparing Assistant