

NATIONAL HUMAN RIGHTS COMMISSION  
(LAW DIVISION)  
MANAV ADHIKAR BHAWAN, BLOCK-C, G.P.O. COMPLEX,  
INA, NEW DELHI- 110023

Dated 05/03/2014

Case No. 7/23/4/2011-PF/DB-II

7 MAR 2014

To

✓ SHRI SUHAS CHAKMA, DIRECTOR  
NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE,  
C-3/441-C, JANAKPURI,  
DELHI.

Sir/Madam,

With reference to your complaint dated 28/01/2011, I am directed to say that the matter was considered by the Commission on 05/02/2014. The Commission has made the following directions.

*"In response to the recommendations of the Commission, the NoK of the deceased has been paid the monetary relief as recommended by the Commission and proof of payment has also been sent to the Commission.*

*Since the recommendation of the Commission has been complied with, the case is closed"*

This is for your information.

Yours faithfully,

  
ASSISTANT REGISTRAR(LAW)

Copy to:

Smt. Hosaneyara Begam,  
Village – Durgapur  
PS – Sonamura  
Distt. – West Tripura,

# National Human Rights Commission

New Delhi, India

## Case Details of File Number: 7/23/4/2011-PF

Diary Number	19073
Name of the Complainant	SUHAS CHAKMA, DIRECTOR
Address	NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE, C-3/441-C, JANAKPURI, WEST DELHI, DELHI
Name of the Victim	ABDUL HAQUE
Address	AS ABOVE WEST DELHI, DELHI
Place of Incident	DURGAPUR VILLAGE NEAR INDO-BAN WEST TRIPURA, TRIPURA
Date of Incident	1/27/2011

In response to the Commission's proceedings of the 1st May 2013, in which it had recommended that the Ministry of Home Affairs pay Rs. 5 lakhs as relief for the next of kin of the late Abdul Haque, who was killed by BSF Constable VK Mishra on the 27th January 2011, in District West Tripura, it has received a note submitted by the BSF, through the Ministry, in which it has been asked to reconsider its recommendation. The Commission finds that the BSF has largely reiterated points it had made in its first report, including the claim that the late Abdul Haque was a cattle smuggler. The Commission notes in passing that the list which the BSF had received from its Bangladeshi counterpart includes his name among those described as "Indian ganja, phensedyl, liquor smugglers"; he seems to have dealt in other contraband, not in cattle. However, as the Commission has explained in its earlier proceedings, whether Abdul Haque was a smuggler or not is irrelevant to the circumstances of his killing. On these, the BSF has simply repeated the account given by the Constable, which the Commission has already considered. It has not explained how a man who had been encircled by five men, allegedly armed with sticks and daos, escaped without any injury. Simply to claim that he was trained, as the BSF now does, does not answer the question. If he was so trained as to escape all injury, it could, in fact, then be argued that he need not have fired at his assailants. The BSF has dismissed the claim that this man had gone to the river for a bath, arguing that he could not have meant to bathe in the river at 6.30 AM on a cold January morning. Since the BSF must know that villagers do not have the option of a hot bath in a closed bathroom, this is an insensitive jibe. The inquest recorded that a "gamcha", used by villagers as towels, was tied around his wound. That would be circumstantial evidence that he had indeed gone to the river for a bath. The Commission had pointed out that if the constable had fired when he was surrounded by five men, who were attacking him with sticks and daos, and were therefore within touching distance, the entry wound should have had at least tattooing around it. The BSF have argued that gunshot residue was perhaps not detected because, in the cold weather, the victim was wearing several layers of clothing. The entry wound was on the arm. The inquest showed that the victim had on a "woollen full sleeves sweater, full sleeves shirt and half-ganji". Therefore the bullet would have had to penetrate two layers of clothing, but some gunshot residue should still have been present around the entry wound. Its total absence makes it highly unlikely that Abdul Haque was within touching distance of the Constable when he was shot. The BSF has claimed that Abdul Haque's accomplices fled across the river with him. If so, his clothes should have been soaked. The postmortem report shows that the body was delivered to the hospital at 8.45 am, which means that the inquest was conducted before then, and therefore within two hours after the incident. The inquest does not record that the clothes were wet. On why its patrol did not pursue the smugglers or open fire even in the air to stop them, the BSF claims that there was dense fog around, under the cover of which they escaped, and it would have been improper for the Constable to have fired blindly at them. The Commission notes, however, that in the same attempted explanation, the BSF claims that its men could see the Bangladesh smugglers who had gathered on the other side of the border and therefore did not want to pursue Abdul Haque's accomplices. The BSF is therefore arguing that its patrol was able to see men who were at a distance, not those who were at hand. The Commission does not see any argument presented by the BSF that justifies a reconsideration of its recommendation. It

### Direction issued by the Commission

therefore again recommends to the Ministry of Home Affairs that Rs. 5 lakhs be paid as relief to the next of kin of the late Abdul Haque. A report on the action taken will be expected by the 26th September, 2013. Put up on the 3rd October, 2013.

Action Taken

Status On 8/12/2013

Additional Information Called for (Dated 7/17/2013 )

Response from concerned authority is awaited.

Note: For further details kindly contact National Human Rights Commission, Copernicus Marg, New Delhi, PIN 110001 Tel.No. 23385368 Fax No. 23384863 E-Mail: covdnhrc@sub.nic.in

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