

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 31.1.2001

1. O.A. No. 256/98

S.B. Chatterji, Signal Inspector Tech. (Retd.), Northern Railway, DRM Office, Jodhpur, son of Shri L.N. Chatterji, resident of Plot No. 2, Man Mahal Colony, Air Force Road, Jodhpur.

... Petitioner.

versus

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Signal and Telecommunication Engineer, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Jodhpur.
4. Senior Divisional Personnel officer, Northern Railway, Divisional Railway Manager's Office, Jodhpur.
5. The Divisional Signal and Telecommunication Engineer, Northern Railway, Divisional Railway Manager's Office, Jodhpur.
6. Shri D.N. Gandhi, Ex-DSTE, Jodhpur, at present Dy. CSTE (Const.), Tilak Bridge, New Delhi, Northern Railway.

... Respondents.



2. C.P. No. 06/1998

in

O.A. No. 246/1990

with

3. M.A. No. 200/2000

in

C.P. No. 06/1998

S.B. Chatterji, Signal Inspector Tech. (Retd.), Northern Railway, DRM Office, son of Shri L.N. Chatterji, resident of Plot No. 2, Man Mahal Colony, Air Force Road, Jodhpur.

... Petitioner.

versus

1. Shri S.P. Mehta, General Manager, Northern Railway, Baroda House, New Delhi.
2. Shri Dilip Vyas, Ex-Divisional Personnel Officer, Northern Railway, Jodhpur, presently S.P.O., New Delhi - Through: Chief Personnel Officer, Northern Railway, Baroda House, New Delhi.
3. Shri Puran Lal, Chief Signal and Telecommunication Engineer, Northern Railway, Baroda House, New Delhi.
4. Shri B.S. Kapoor, Divisional Railway Manager, Northern Railway, Jodhpur.
5. Shri Tarun Prakash, Ex-Divisional Signal and Telecom Engg., Northern Railway, Jodhpur - Through : Chief Signal and Telecommunication Engineer, Northern Railway, Baroda House, New Delhi.

... Respondents.

Applicant present in person.

Mr. S.S. Vyas, Counsel for the respondents Nos. 1 to 5.

None is present for the respondent No. 6 in O.A.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

Though the Original Application and the Contempt Petition alongwith the connected M.A. are posted for admission, but they are pertaining to the year 1998, we took up these matters for final disposal, with the consent of both the parties.

2. Heard the applicant in person and the learned counsel for the respondents.

3. The present O.A. is filed challenging the impugned orders vide Annexure A/1 and A/2, by which he was directed to mark his attendance in the presence of the Officer Incharge of the department. The applicant also has challenged Annexure A/3, the attendance register. The impugned

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order at Annexure A/4 is the order passed in pursuance of the directions issued by this Tribunal vide order dated 4.9.96 in O.A. No. 246/90, which was earlier filed by the applicant himself. He has also challenged Annexure A/5, the endorsement given to him that his earlier representation has been considered as per direction of this Tribunal dated 4.9.96, and there was nothing to be added. All these orders, the applicant sought for quashing. He also prays for a direction to the respondents to decide his representation vide Annexure A/14, and there may be a further direction to pay the emoluments from 20.6.88 to 9.8.90 with compound interest @ 18% per annum, and the applicant may also be awarded compensation of Rs. 5 lacs for the harassment caused to him and his family members. There should be a further direction to refix his pensionary benefits etc. accordingly.



4. We think it appropriate to note immediately that the present O.A. has arisen as a consequence of the directions issued by this Tribunal in an earlier O.A. No. 246/90 filed by the applicant vide judgement/order dated 4.9.96. The earlier O.A. No. 246/90 related to the similar reliefs, the applicant prayed for before this Tribunal. After hearing both the parties, in the earlier O.A. this Tribunal has formulated the issue as under:-

"2. It is not necessary to go into the series of controversial issues (A/1, A/11, A/13, A/22 and A/23) raised in this O.A., since the applicant has already retired by attaining superannuation on 28.02.91. Even as per applicant, who argued the case vehemently in person, the surviving issue now is whether the respondents are justified in treating the period of unauthorised absence from 20.6.88 to 9.8.90 as Leave Without Pay without offering an opportunity of hearing to the applicant. The main plank of the applicant's case is that he has been attending the office in the said period of two years regularly and hence marking that period as leave without pay (LWP, for short) constitutes a "punishment". Respondents have violated the principles of natural justice by refusing an opportunity of hearing to him to explain his case....."

5. On consideration of the entire case, and on being of the opinion that the applicant should be given proper opportunity to prove his case, the Tribunal passed the following order:-

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- " (i) The matter shall stand remitted to respondent Railways.
- (ii) The applicant shall be given an opportunity to establish his claim of being present on duty for the relevant period with unimpeachable evidences. Alternatively, the respondents shall consider regularisation of the period against leave due, leave with half pay, leave with half average pay, leave without pay etc., in that order and determine pay and allowances payable, if any, with prior notice to the applicant. The applicant shall be informed of the position with a reasoned order.
- (iii) The respondents shall comply with the orders aforementioned within a period of four months from the date of receipt of a copy of this order.
14. The O.A. is disposed of as aforesaid. There shall be no order as to costs."

6. From the above order, it is clear that the respondents were directed to give the applicant an opportunity to establish his claim of being present on duty during the period 20.6.88 to 9.8.90. Alternatively, the respondents were directed to consider regularisation of the said period against leave due, leave with half pay, leave with half average pay, leave without pay, etc. in that order and determine pay and allowances payable, if any, with prior notice to the applicant, and a reasoned order may be passed. In pursuance of the said order, the respondents issued a notice to the applicant to be present with unimpeachable evidence, and accordingly, the applicant filed a representation dated 12/21.2.97 alongwith two affidavits of ~~Shri~~ Shri Shiv Ram Sharma, Head Clerk (retired), and Shri Bhanwar Singh, Cypher Operator (retired), in order to show that the applicant attended his duties between 20.6.88 to 9.8.90. On consideration of these affidavits, the respondents passed the impugned order dated 17.09.97 vide Annexure A/4. The applicant has now challenged this order alongwith other orders. So far as the orders vide Annexures A/1 dated 15.06.88 and A/2 dated 20.06.88 are concerned, we have perused those orders and found that they are the instructions by the applicant's superiors to mark his attendance in the presence of his superior, i.e., officer incharge of the departemnt, under whom the applicant was working. Annexure A/1 states



to his residence that the applicant was taking the attendance register after marking his attendance, without counter signature of the Branch Officer/Officer Incharge. Therefore, the applicant was directed to mark his attendance in the presence of the Branch Officer/Officer Incharge. It appears that challenging this order as being without jurisdiction, the applicant preferred a representation before the Divisional Signal and Telecommunication Engineer, Northern Railway, Jodhpur, who considered his representation and issued further instructions, which reads as under:-

"No. 348-SIG-52/SB/63
Dated : 20.6.88

Sh. S.B. Chatterji
SI Tech./JU

Sub: Attendance Register

Ref: This office letter No. 348-SIG/52/SBC/61
dated 15.6.88.

In spite of clear instructions given in the above referred letter, you have not submitted your attendance register to the undersigned.

From today onwards, a new attendance register has been opened and placed in the chamber of the undersigned, you are advised to mark your attendance in the morning and evening daily in the above register. The register will be available on all working days in the chamber of the undersigned.

The above instructions must be adhered to properly, failing which, you will be treated as 'absent from duty'.

This has been done as per the directions of the Hqrs.

Sd/-
(D.N. Gandhi)
Divl. Sig. & Telecom. Engr.,
Northern Railway, Jodhpur "



7. It is the case of the department that the applicant, being a Union leader since last 30 years, was not attending the office work and he was only marking his attendance without discharging any duty, and when it was brought to the notice of the person incharge of the department, he issued the above instructions. Though this order was also challenged amongst other orders in the earlier O.A., this Tribunal thought fit not to quash those orders. In our opinion, in order to keep discipline in the department, the superior officer incharge of the branch, was directed

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the applicant to mark the attendance in his presence, and these orders cannot be challenged as being without jurisdiction. Moreover, these are the orders passed in the year 1988, and they cannot be permitted to challenge after nearly 12 years. In fact, the period of limitation is only one year from the date of the order aggrieved by the applicant. By the time, the applicant filed an earlier O.A. No. 246/90, the period of one year was over and accordingly, the claim to challenge that order was barred by time. Since the applicant contended that some of the documents he had filed in earlier O.A. No. 246/90, we called for the entire records even pertaining to the O.A. No. 246/90. The impugned order vide Annexure A/1 in this O.A. was challenged in the said O.A. as Annexure A/9 and the Annexure A/2 in this O.A. was challenged as Annexure A/11 in the previous O.A. These orders amongst other orders, this Tribunal thought fit not to quash them. Para 2 of the said order in OA No. 246/90, specifically stated that it was not necessary to go into the controversy regarding A/9, A/11, A/19 etc. Therefore, the prayer of the applicant to quash Annexure A/1 and A/2, is liable to be rejected. Moreover, what is required in pursuance of the directions issued in O.A. No. 246/90, which were extracted above, was only to give sufficient opportunity to the applicant to establish that he was present on duty for the relevant period with an unimpeachable evidence and nothing more. In pursuance of the directions issued by this Tribunal in the said O.A, a notice was given to the applicant to establish that he was present and attended the office from 20.06.88 to 09.08.90. One such notice, the applicant himself has filed vide Annexure A/10. For Annexure A/10, the applicant gave a reply vide Annexure A/11 dated 3.7.97, which reads as under:-

To:

The D.S.T.E/JU
N. Rly.

Sub: Treating the period from 20.6.98 to 9.8.90 as duty.

Ref: Your letter No. 348-Sig/121/SBC/O.A. No.
246/90 dt. 24.6.97.

....



Sir,

This is for your kind information that I had already submitted my evidences before Shri Jit Singh Ex. DSTE/JU alongwith two affidavits of staff, who were present on duty at the relevent time along with my letter No. SBC/Pay + Pension/X-1 dt. 12/21.2.97. The unimpeachable evidences are on record and DSTE/ finalised the same on 17.4.97 on that basis as on record.

Kindly issue orders in my favour as there was no order from Headquarters office for changing the procedure of attendance in violation of previous orders of DPO, DRM/JU., N. Rly.

Sd/--
(S.B. Chatterji)
Retd. SI (Tech.)/JU."

From the above letter of the applicant himself, it is clear that the applicant produced two affidavits, stating that they are unimpeachable evidences on record, and the necessary orders may be issued in his favour. Accordingly, the respondents have issued impugned order vide Annexure A/4 dated 17.9.97. Therefore, we have to see whether Annexure A/4 is in compliance of the directions of this Tribunal vide judgement/order dated 4.9.96 in O.A. No. 246/90.



8. The two affidavits, which the applicant has filed, namely, the affidavits of Shri Bhanwar Singh and Shri Shiv Ram Sharma, ~~before~~ the respondents ~~xxxxxx~~ considered them and refused to accept those affidavits, stating that those affidavits from the retired persons were not acceptable. Moreover, according to them, they were either on casual leave or on duty elsewhere, therefore, their averments made in those affidavits could not be believed. However, we also perused those affidavits filed in this OA vide Annexures A/7 and A/8. From the reading of those affidavits, we find that Shri Bhanwar Singh, stated as follows:-

"(1) That I have worked as Cypher Operator in DRM Office Jodhpur till my retirement on 30.11.94.

(2) That I know Shree S.B. Chatterji S.I. (Technical) personally, who was working in S&T Branch, DRM Office, N. Rly., Jodhpur, during the period from January, 1988 to February, 1991, till his retirement.

(3) That being his close friend, we used to take tea together during lunch break. That Shri S.B. Chatterji, S.I. (Technical) used to be present in front of S&T Branch during the period from

20/06/1988 to 09/08/1990 during office hours. I used to see him regularly, while I was on duty."

We have also seen the affidavit of Shri Shivram Sharma, who stated as under:-

"(1) That I retired as Head Clerk, Commercial General Section, DRM Office, Northern Railway, Jodhpur, on 31.08.92, till such time I was the Divisional Secretary, URMU, Jodhpur Division, of which Shri S.B. Chatterji S.I. (Tech.) was the Divisional Treasurer.

(2) That the issue of his duty was highlighted by the Union at all levels of Negotiating Machinery. In the Union capacity, I was aware of his case.

(3) That during the period of my coming to office and going off from duty Shri S.B. Chatterji was noticed sitting on the bench outside S&T Branch office and in the evening he used to accompany me for his Honorary services to the Union from the DRM Office to URMU Union office, Station Road, Jodhpur, complaining in the Union capacity about non-permitting him to duty during the alleged period of absence."



Admittedly, these were the persons, who had retired and they had no stake in swearing an affidavit in favour of the applicant. Assuming that the affidavits are true, at the most they could say that they noticed the applicant sitting on the bench outside the S&T Branch office, and they used to go with him for the tea or to attend the Union activities in the evening. They said that this was the position from 20.06.88 to 09.08.90. From this, it follows that the applicant, being a Union leader, opted to stay back on duty, for the reasons best known to him. According to us, reason was obvious. He did not want to obey the directions of his superiors vide Annexures A/1 and A/4 for marking his attendance before the Divisional Signal & Telecom Engineer, who was the incharge of the branch. The applicant admittedly, was a subordinate to him, and he was not attending his duty, contending that this office had no power or authority to direct him to mark his attendance in his presence in the chamber. From both the orders at Annexure A/1 and A/2, we find that the applicant maintained his own attendance register, and after marking his attendance, he used to take the same to his residence. This kind of an act of the applicant was impermissible under any system. It is the duty of everyone to mark the attendance register under the

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control of his superior, and no one can be permitted to take the attendance register with him at home. Therefore, in those circumstances only, the applicant was directed to mark his attendance in the presence of Divisional Signal & Telecom Engineer, Northern Railway, Jodhpur, in his chamber, and the applicant did not obey those orders on his erroneous impression that those orders were without jurisdiction. Accordingly, he did not discharge any duties as Signal Inspector (Tech) during the period in question. From these circumstances we have noted above, it is clear the applicant himself absented from duties, and his present contention that he was prohibited from discharging his duties, is an incorrect statement. In fact, the applicant after having filed Annexure A/2, has suppressed the subsequent direction dated 30.8.88, which has been filed by the respondents vide Annexure R/2. The said letter reads as under:-



NORTHERN RAILWAY

No. 348-SIG-52/SB/87

Dt. 30.08.88

Sh. S.B. Chatterji
SI Tech./JU

- Ref: i) Your representation to DRM/JU vide No. SB/X/D-23 dated 23.08.88.
ii) Your another appeal addressed to DRM/JU Sh. OP Vohra vide No. SBC/x/X-17 dated 17.8.88.
iii) Your appeal addressed to DRM/JU vide No. SB/P/X-7 dated 7.7.88.

The above representation and appeals were put up to DRM/JU who has passed the following orders for your guidance and immediate necessary action:-

Orders of DRM/JU

"I have gone through the appeal of Shri S.B. Chatterjee, SI/Technical. I find from the file that there is a duty list which has been given to him. I also find that he is not performing his duties as he does not come to office. So, there is no harm to keep a check on him. DSTE has ordered him to mark attendance in his presence. He should mark attendance and carry out his duties. I would also like to see the duties performed by him every-day. He should maintain a diary of the work done daily which should be put up to me every week through DSTE. Union should also be informed that he is not doing any work and taking advantage of being a Union office bearer. He, being an S.I./Technical, works directly under DSTE."

[Handwritten signature]

10. From the above order, it is clear that the applicant's representation was considered and the order dated 30.8.88 (Annexure R/2) was passed, stating that there is a duty list given to the applicant, and the applicant has not performed his duties and he did not come to the office. As such, there was no harm to keep a check on the applicant, and the applicant was rightly directed to mark his attendance in the presence of Divisional Signal & Telecom Engineer, Northern Railway, Jodhpur. The appellate authority also wanted to see the nature of the duties performed by the applicant by directing him to maintain a diary of the work done daily, and the same should be submitted once in a week to the appellate authority and the Union also should be informed that the applicant was not doing any work and was taking advantage as Union office bearer. It is not the case of the applicant either in the present application or in any of his representation, nor the witnesses whose affidavits were filed, stated that the applicant performed his duty and submitted his daily work report to the superior every week. It is not the case of the applicant that he submitted such diary at all. It appears that so many reminders were issued to discharge the duties entrusted to him. We think it appropriate to extract Annexure R/3 dated 2.8.89, one of the letters issued to him as under:-



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NORTHERN RAILWAY

No. 348-SIG/52/SB/113
Dt. 2.8.89

Sh. S.B. Chatterji
SI Tech/JU
Railway Bungalow No. L-79/B) (By regd post/ack due
Railway Store Road
Jodhpur

Ref: This office letter Nos;
1. 348-SIG/52/SB/99 dt. 16.3.89
2. 348-SIG/52/SB/101 dt. 20.4.89

3. 348-SIG/52/SB/103 dt. 2.5.89
4. 348-SIG/52/SB/105 dt. 19.5.89
5. 348-SIG/52/SB/106 dt. 2.6.89
6. 348-SIG/52/SB/107 dt. 19.6.89
7. 348-SIG/52/SB/108 dt. 3.7.89
8. 348-SIG/52/SB/109 dt. 17.7.89

As per records available in this office, you are on unauthorised absence since 20.6.88. Inspite of above letters calling upon you, to join duty, you did not do so.

This office is unable to charge your salary so long as you remain on unauthorised absence. Therefore, you are advised to perform your duty in the Test Room & Control Office, Jodhpur, forthwith. This is in your own interest."

11. These orders vide Annexures R/2 and R/3, the applicant has not challenged before any higher authority, and these orders have become final. From these orders also, it is further clear that the applicant did not attend his duties right from 20.06.88 to 09.08.90. Except the affidavits of S/shri Bhanwar Singh and Shivram Sharma, he did not produce any evidence inspite of the opportunities given to him vide order of this Tribunal dated 4.9.96 in O.A. No. 246/90. The applicant in Annexure A/11 dated 3.7.97, states that those affidavits were unimpeachable evidences, according to him. Having considered those affidavits, as we have stated above, the applicant has failed to prove that he attended his duties during that relevant period. Vide Annexure R/1 dated 24.9.87, the applicant was entrusted with certain duties, like to take signal failure position of the entire division, scrutinize, investigate and to discuss with Divisional Signal & Telecom Engineer, Jodhpur, and he should note weekly failure report and preparation and checking of all signalling estimates, he should check the information regarding material for maintenance etc. It is not the case of the applicant that he discharged these duties by submitting weekly report, in pursuance of the directions issued by the superiors vide Annexures R/2 and R/3. However, on consideration of the material on record, the respondents vide Annexure A/4 dated 17.9.97 have treated his absence as C.L., Leave with Average Pay etc., as per his entitlement according to the rules. They passed a separate detailed order vide Annexure A/9, as directed by this Tribunal vide judgement/order dated 4.9.96 in OA 246/90.



[Handwritten signature]

12. The applicant also filed two more affidavits sworn to by S/Shri Inder Mal Mathur and Moinuddin Qazi vide Annexure A/12. These affidavits were not filed before the respondents prior to passing of the impugned orders. Therefore, it is difficult for us to consider these affidavits at this stage. However, looking to these affidavits, we find that they simply stated that they noticed the applicant sitting outside at the bench of the S&T Branch. Though they stated that the superior officer prohibited to take any letter from him by the S&T Branch, and there was no order from the General Manager regarding making his attendance in presence of the Divisional Signal & Telecom Engineer. As we have already stated above, sitting outside the office casually sometimes does not tantamount to attending the office and discharging the duties. A public servant has to perform his duties to the satisfaction of the superiors, and in fact, that is the service, the tax payer of this Country expects from an employee. The applicant being incharge of the maintenance of the signal section, was required to discharge the important duty, to see that the signals properly operate, and consequently, there is no accident, causing loss of human lives and property. Though we are not expected to go into the findings of the respondents, even then the ~~applicant~~ applicant was arguing the case ^{himself} as a party in person, we took all pain to go through the entire records of the earlier OA and also the entire records in the present O.A., and ultimately found that the impugned orders do not call for any interference. The Annexure A/5 is only a consequence of Annexure A/4, and the same also does not call for any interference. In the result, the applicant is not entitled to any other reliefs, as prayed for in the application. Vide Annexures A/4 and A/9, the period of absence of the applicant from 20.6.88 to 9.8.90 has been accordingly determined, as per the leave entitlement etc. On the basis of the impugned orders, if the pensionary benefits of the applicant is required to be revised, the authority shall do so immediately.



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13. The applicant has filed a separate Contempt Petition No. 6/98, complaining the disobedience of the order of this Tribunal dated 4.9.96 in OA No. 246/90. In the said Contempt Petition, he has filed one M.A. No. 200/2000, to call for certain files from the respondents. But in the Contempt Petition, what we have to see is only to find out whether the order of this Tribunal dated 4.9.96 in OA No. 246/90 has been complied with or not. As we have stated above, in compliance of the above directions of this Tribunal, the respondents have passed the impugned order vide Annexure A/4 dated 17.9.97, after giving him an opportunity of hearing to produce his evidence, and as stated above, the applicant has produced two affidavits as unimpeachable evidences, and by disbelieving the same, the impugned order Annexure A/4 has been passed. In this view of the matter, the directions of this Tribunal dated 4.9.96 in OA No. 296/90, has been complied with. However, there is a delay in compliance of that order, and we think it appropriate to condone such delay. Accordingly, we do not find any merit in the Contempt Petition. The Contempt Petition is not intended to make any further enquiry into the matter, therefore, we think it appropriate to reject the M.A. No. 200/2000 in C.P. No. 6/98 also.

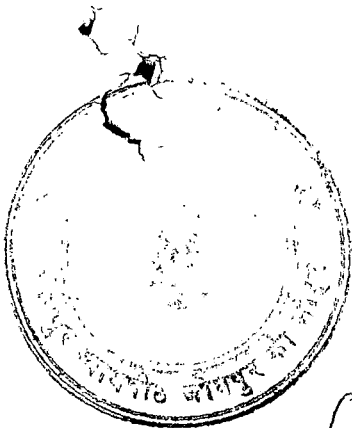


14. Though the applicant relied upon the judgement of Hon'ble Supreme Court, reported in AIR 1979 SC 1328 [Hoshnak Singh vs. Union of India & Ors.], but after going through the said judgement, we find that the said judgement does not apply to the facts of the present case. In that case, the principle of res judicata was discussed and such issue is not involved in this case at all. However, the applicant also contended that one more opportunity should have been given to the applicant immediately before passing the impugned orders. But in pursuance of the directions of this Tribunal dated 4.9.96 in OA No. 246/90, the applicant was given an opportunity, and in pursuance of that directions only he furnished, as we have stated above, two affidavits in support of his case and also requested the authorities vide Annexure A/11, to pass appropriate orders. Accordingly, the authority passed the impugned order at Annexure A/4 dated 17.9.97. In these circumstances, the principles of natural justice

have also been complied with. As such, we find that there is neither any disobedience of the order of this Tribunal dated 4.9.96, passed in O.A. No. 246/90 nor any merit in the present application.

15. For the above reasons, we pass the order as under:-

"The O.A. No. 256/98, C.P. No. 6/98 and the M.A. No. 200/2000, are hereby dismissed. However, on the basis of the impugned orders at Annexure A/4 dated 17.09.97 and Annexure A/9 dated 17.04.97, if the pension of the applicant requires to be modified and revised, the same shall be done within a period of three months from the date of receipt of a copy of this order. No costs."



Gopal Singh
(GOPAL SINGH)
Adm. Member

B.S. Raikote
(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.

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Szechling
19/2/2007

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G. J. J. J.
8-2-2007

Part II and III destroyed
in my presence on 20.3.07
under the supervision of
section officer () as per
order dated 19/2/07

Section officer (Record)