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44

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 196/2000

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SECTION OFFICER (Judl.)

# In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 196/2000 OF 199

Applicant(s) Sri Komsam Khomei Singh

Respondent(s) Union of India and o/s.

Advocate for Applicant(s) In person.

Advocate for Respondent(s) C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
<p>THIS APPLICATION IS                      FORGOTTEN TO BE                      FILED IN THE                      REGISTERED OFFICE                      ON 11.7.2000                      58348                      16.6.2000</p> <p><i>[Signature]</i>                      nkm</p>	<p>11.7.00</p>	<p>Present: Hon'ble Mr S. Biswas,                      Administrative Member</p> <p>The applicant is not present.                      Post on 10.8.00 for admission.</p> <p>Member(A)</p>
<p>Note: The application                      is received by post.</p> <p><i>[Signature]</i></p>	<p>10.8.00</p>	<p>There is no Bench. Adm                      19.9.00</p> <p><i>[Signature]</i></p>
<p><i>[Signature]</i></p>	<p>19.9.00</p>	<p>Present : The Hon'ble Mr D.N.Choudhury,                      Vice-Chairman.</p> <p>Issue notice to show cause as to                      why this application shall not be                      admitted. Returnable by 1.11.2000.                      List on 1.11.2000 for admission.</p> <p>Vice-Chairman</p>

20/9/2000

Notice prepared. one requisite short. Sent to D/S. for issuing the respondent No. 2. vide D/No 1928/B dtd 20/9/00.

1.11.00

Applicant Sri K.K.Singh is absent. Office to inform the applicant for taking necessary steps and about the next date accordingly. List on 1.12.2000.

Vice-Chairman

Ar  
20/9/2000.

copy committed to factor in 10/11/00

(1) Service report are still awaited.

trd

(2) No. wls has been filed.

1.12.00

The applicant who present his case in person is absent today also. Mr. S. Sarma, at my request agreed to take up the case of the applicant. List the matter for admission on 11.12.2000. Office to serve a set of application to Mr. S. Sarma within this week.

Vice-Chairman

By  
30.11.2000

Legend copy  
Kishorin Inam  
Atrava.  
7/12/2000

Notice duly served on Respondent No 2.

In  
9/12

trd

11.12.00

Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman and Hon'ble Mr. M. P. Singh, Administrative Member.

Three weeks time is allowed to the respondents to file reply to the show cause.

List on 5.1.2001 for show cause and admission.

Member

Vice-Chairman

13-12-2000

Arith Affidavit has been filed by the respondents No 1-2.

mk

5.1.01

Written statement has already been filed, by the respondents. The case is ready for hearing.

List on 9.4.01 for hearing.

Vice-Chairman

By

wls filed on behalf of the respondent No. 1 & 2.

By  
4.9.2001

mk

9.4.

There is no D.B today the case is adjourned to 1.5.2001.

mk  
A.K. Singh  
9.4.

Notes of the Registry	Date	Order of the Tribunal
<p><u>20.6.2001</u></p> <p>Copy of the Judgment has been sent to the D/Sec for issuing the same to the Applicant as well as to the L/Adm for the Resp.</p> <p>ds</p>	<p>1.5.2001</p>	<p>list is along with OA 388/99,</p> <p>9/10 A125 15</p>

Notes of the Registry	Date	Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL? GUWAHATI BENCH  
( AT IMPHAL )

Original Application No. 196 of 2000.

Date of Decision : The 28th Day of May, 2001.

The Hon'ble Mr Justice Ashok Agarwal, Chairman

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Konsam Khomei Singh,  
Assistant Engineer (Retired)  
Sougaizam Leikai, Moirangkhom, Imphal,  
P.O. Imphal, Dist. Imphal West,  
Manipur.

... Applicant

By Advocate Sri S.Sarma appearing as  
Amicus Curiae.

Versus -

1. Union of India  
represented by Secretary,  
Ministry of Urban Development,  
Govt. of India,  
New Delhi-110011.

2. The Director General of Works,  
C.P.W.D. (Vigilance Unit)  
Room No. 132, A-Wing,  
Nirman Bhawan, New Delhi-110011.


... Respondents.

By Sri A. Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

Ashok Agarwal. J. (Chairman)

The applicant during the relevant period of 1983 was working as Assistant Engineer in Central Public Works Department, Manipur Central Division. While working as such he had got executed a work of C/O 2 Nos type 4 quarters at C.A. Imphal including internal sanitary and W/S installations. The aforesaid works were carried from 22.3.1983 onwards. The applicant was transferred from the aforesaid post in November 1984. He finally retired on superannuation on 28.2.1994. A few days prior to his superannuation he was served with a charge sheet of 24.2.1994 in relation to events which had taken place way back in 1983 with the following articles of charge:



"Article I

That during the aforesaid period and while functioning in the aforesaid office, the said Sri K.K.Singh, failed to ensure maintenance of cement register in proper shape.

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Sri K.K.Singh, failed in exercising his weekly checks on the balance of cement in cement register.

Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Sri K.K.Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

Article IV

That during the aforesaid period and while functioning in the aforesaid office, the said Sri K.K.Singh, failed to propose full recovery of the materials issued in each R.A.Bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

Article V

That during the aforesaid period and while functioning in the aforesaid office, the said Sri K.K.Singh, failed to get balance materials returned from the contractors. Sri K.K.Singh, also failed to report the matter about removal of departmental store by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Sri K.K.Singh, A.E, the Government had incurred a loss of Rs.48,957.30.

Sri K.K.Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS (Conduct) Rules, 1964."

2. After the applicant was served with the aforesaid charge-sheet, the aforesaid disciplinary proceedings were impugned by the applicant by instituting O.A.No.388 of 1999 on grounds, inter alia that the same were liable to be set aside on the grounds of mala fides and undue delay and laches. Pending the said O.A., disciplinary proceedings were continued. The Inquiry

Officer by his findings of 27.10.1998 has found Article I as proved and Articles II to IV as partially proved. The Disciplinary Authority by the impugned order of 5.5.2000, on the basis of the recommendations of the U.P.S.C. of 6.4.2000 has imposed a penalty of reduction of 10% pension for a period of 5 years. Whereas, the Inquiry Officer had found Articles II to IV as partially proved, the U.P.S.C. in its recommendations has found all the charges including Articles II to IV as fully proved. The aforesaid recommendations of the U.P.S.C. has been accepted by the Disciplinary Authority while imposing the aforesaid penalty. In other words, whereas the Inquiry Officer has found Articles II to IV as partially proved, the Disciplinary Authority has found them as proved while imposing the aforesaid order of penalty and this, the Disciplinary Authority has done without putting the applicant to notice and without affording him an opportunity to show cause against the proposed findings on Articles II to IV. This is the first lacuna to be found in the present disciplinary proceedings.

3. As is clear from the facts narrated hereinabove, the events which are made the subject matter of the disciplinary proceedings are alleged to have taken place way back in 1983. The applicant has been transferred from the post he held in November 1984 and the present disciplinary proceedings are sought to be initiated in 1994, i.e. after almost a lapse of ten years and that too a few days prior to the applicant's retirement on superannuation.

4. The gravament of the charge levelled against the applicant is his failure to maintain properly the Cement Register. The duty of maintaining the same, it is conceded, is that of the Junior Engineer. The applicant was merely supposed to supervise the functioning of the Junior Engineer.

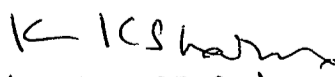
The.....




The Junior Engineer is not charge sheeted. The original Register which was supposed to have been maintained at the relevant time, it is the contention of the applicant, was never produced before the Inquiry Officer. What was produced was an entirely different Register. Without entering into this controversy as also the controversy regarding the non supply of the relevant documents, which were relied upon in the enquiry, it is enough to set aside the impugned order of penalty on both the following grounds, namely, that the disciplinary proceedings smack of mala fides on account of the same having been initiated after long delay and that too at the fag end of the applicant's career, just at the time of his retirement. The order is liable to be set aside on the further ground that whereas the Inquiry Officer had held Articles II to IV as partially proved, the disciplinary authority has proceeded to impose the impugned order of penalty on the basis of the aforesaid charges being duly proved and this had been done without following the due principles of natural justice, namely, by putting the applicant to notice by giving him an opportunity to show cause.

5. For the foregoing reasons the present O.A. succeeds. The impugned order of penalty imposed upon the applicant by the Disciplinary Authority of 5.5.2000 is quashed and set aside. The applicant will now become entitled to receive consequential benefits, namely, 10% of his pension, which has been cut on the basis of the aforesaid order of the Disciplinary Authority.

The respondents will pay the counsel for the applicant, who has appeared as amicus curiae, cost quantified at Rs.5000/- (Rupees five thousand only).

  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

  
( ASHOK AGARWAL )  
CHAIRMAN

BEFORE THE ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNAL'S ACT, 1985.

ORIGINAL APPLICATION NO. 196 OF 2000.

Shri Konsam Khomei Singh

-VS-

...Applicant.

1. Union of India, represented by  
Secretary, Ministry of Urban  
Development, Govt. of India,  
Nirman Bhawan, New Delhi-110011.
  2. The Director of General of Works,  
C.P.W.D. (Vigilance Unit) Room No.  
132, A-Wing, Nirman Bhawan,  
New Delhi-110011.
- ...Respondents.

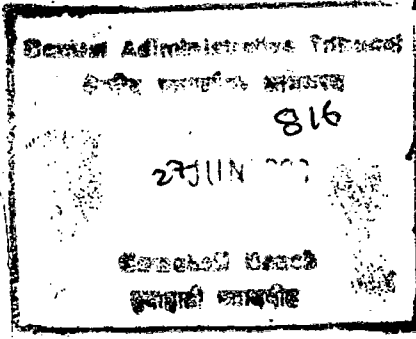
I N D E X

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	Annexure-A/4 (True copy of the Order of Penalty dt. 5-5-2000)	95 - 100

Signature of the Applicant.

*(K.K. Singh)*

For use in Tribunal's Office.



*So(J)*

*94  
18/6/00*

*Received 4 (form)  
Copies only by #103/6.  
vs  
27/6/2000*

*[Signature]*  
*27/6/2000*

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Date of filing  
or,  
Date of receipt  
by post, Registration  
No.

Signature for Registrar.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :  
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 194 OF 2000

Shri Konsam Khomei Singh, A. E. (Retired),  
Sougaijam Leikai, Moirangkhom, Imphal,  
P.O. Imphal, District Imphal West,  
Manipur and last employed as A. E(C),  
C.P.W.D., Nirman Bhawan, New Delhi.

...Applicant.

-VS-

1. The Union of India,  
represented by Secretary Ministry  
of Urban Development, Govt. of  
India, Nirman Bhawan, New Delhi-110011.
2. The Director General of Works,  
C.P.W.D. (Vigilence Unit) Room No. 132,  
A-Wing, Nirman Bhawan, New Delhi-110011.

...Respondents

DETAILS OF APPLICATION :

1. PARTICULARS OF THE ORDER AGAINST WHICH THE  
APPLICATION IS MADE :

The applicant filed the present appli-  
cation against the order No. C-13012/4/99-AVI  
dt. 05/05/2000 issued by the Under Secretary  
to the Govt. of India; Ministry of Urban Deve-  
lopment New Delhi.

*Sub 76*

Contd....2/-

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the administrative Tribunals Act, 1985 inasmuch as the order against which this application is filed is issued only on 05/05/2000.

4. FACTS OF THE CASE :

A) During the year 1982, 1983 and 1984 i.e. upto the month of November 1984, the applicant was posted as Assistant Engineer (Civil) in the CPWD, Manipur Central Division, Imphal, Manipur. Thereafter, he was transferred and posted at different places in India and he retired from service on 28-2-94 (A.N) on superannuation while he was posted at Delhi in the grade of A.E(C) Under the Director Central of Works, C.P.W.D., Govt. of ~~Manipur~~ India.

B) While the applicant was about to retire from service i.e. on 23/24-2-94, the Director General of Works, C.P.W.D (Vigilance Unit), Govt. of India issued a Memorandum of Charges under Memorandum No. 13/11/88-VSI dt. 23/24-2-94 containing 5 charges against the applicant. The Articles of charges as contained in the Memorandum are as follows:

*[Handwritten signature]*

Contd...3/-

ARTICLE I:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. K. Singh failed to ensure maintenance of Cement register in proper shape.

ARTICLE II:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. K. Singh failed in exercising his weekly checks on the balance of cement in cement register.

ARTICLE III:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K. K. Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which in finally resulted in loss to the Government.

ARTICLE IV:

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri K. K. Singh, failed to propose full recovery of the materials issued in each R. A. Bill even though he did not indicated in the bills that certain items involving use of cement and steel were left unmeasured.

ARTICLE V:

That, during the aforesaid period and while functioning in the aforesaid office, the said Shri K. K. Singh failed to get balance materials returned from the contractor. Shri K. K. Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers on account of these lapses on the part of Shri K. K. Singh A. E., the Government had incurred a loss of Rs. 48,957.30

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(C) That, from perusal of the charges leveled against the applicant it is clearly seen that all the charges relates to the execution of a work of "C/O 2 Nos type 4 quarters at C.A. Imphal" including internal sanitary and W/S installations from 28-3-83 onwards.

In this regard it is pertinent to State that the said contract work was not completed during the tenure of the applicant inasmuch as he was transferred and posted out of the Manipur Central Division, Imphal during the month of November 1984; and as such the final bills etc. was passed after his departure by the concern authorities of the said Manipur Central Division, C.P.W.D., Imphal.

(D) That, since the matter relates to the execution of work which took place in the year 1983 in respect of the matter concerning the C.P.W.D., Manipur Central Division, Imphal and since the Memorendum of charges was issued only on 23/24-2-94 while the applicant was serving at Delhi, the applicant was unable to remember or recollect the incidence or the related duties performed by him as an Asstt. Engineer (Civil) in respect of the execution of the related work, he requested the Respondent No. 2 on 3-3-94 for furnishing or supplying the defence records mentioned in the application followed by many reminder for enabling him to prepare an effective reply as per records maintained at the office of the Executive Engineer C.P.W.D., Manipur Central Division, Imphal. However the Respondents failed to supply any of the said defence records and on the other hand the superintending Engineer (Vigilence) vide its letter No. 13/11/88-VSI dt. 26-4-94, 19-10-94, 16-12-94, 25-1-95 etc. directed the applicant to submit his written

*Handwritten signature*

statement of defence either by accepting or denying the charges made in the Memorandum of charges dt. 23/24-2-94 without supplying the defence records. 14

Thus, the applicant was forced to submit a written statement of defence on 15-2-95 without supplying the defence records basing solely on his memory in respect of a matter which took place during the year 1983-84.

(E) That; thereafter, vide order No. 1/5/94-VSII/i dt. 15-3-95 issued by the Director General of Works, C.P.W.D., appointed one Sh. Anant Ram, SE (Inquiry) as Inquiry Officer. Thereafter vide another order dt. 13-12-95 one R.D. Aggarwal, S.E. (Inquiry) was appointed to be the Enquiry Officer.

(F) That, the prosecution produced only one witness and his statement was recorded as P.W. No. 1. During the Course of the trial. The presenting officer Produce seven Listed documents in favour of the prosecution which were marked as Ext. P-1 to P-7 and 13 defence documents which were marked as D1 to D13.

(G) That, in the course of the hearing the applicant submitted his final brief on 25-6-98 as the enquiry continued for many years. In the final brief the petitioner stated that the document marked Ex. P-5 (cement Register) and Ex-P-4 (Hinderance and MAS A/C register) are not original documents but fabricated ones on the following grounds:-

(i) Cement Register (Exh-P-5) is not one which was issued by Executive Engineer, MCE I to Sub-Division and in turn Sub-Division issued to Junior Engineer for use as it is not signed by Executive Engineer, M.C.D. I or Assistant Engineer (C.O) or by any authority whatsoever.

*Subject*

- (ii) It was neither page numbered nor have issued number of Division Office and Sub-Division Office. PK
- (iii) C.O. was test checking the cement register which was issued by Executive Engineer, MCD-I and re-issuing to Junior Engineer by Sub-Division (C.O.) but this register has no signature of Assistant Engineer/Executive Engineer for test checking.
- (iv) The test checking of Cement register is established from the fact, when C.O. on test checking found shortage, asked the contractor for the same with copy to Executive Engineer, M.C.D.I. and Junior Engineer Vide his No. 23(3)/83-MCD-I/741 dt. 24-9-83 (Exh-D-1) Page 27 of File No. 54(170)/MOD-82 (Photostate Enclosed) Put fabricated register Exhibit P-5 does not have my (CO's) signature of test checking and remarks made there on by C.O.
- (v) Fabrication of Exh. P-5 (Cement register) is also established from the quantities of cement shown in R/A bills and balances shown in the fabricated register which does not tallies as under ;
- (vi) The fabrication of Exh. P-5 is further established from the fact that contractor's initial were missing from 2nd page i.e. 13-3-94 to end.
4. That, as per the materials on record the prosecution was unable to proof any of the charges levelling against the applicant. However, the Enquiry Officer without considering the materials on record and also without taking into consideration the submissions made by the applicant as contained in the final brief dt.

*Handwritten signature*

Contd...7/-

25-6-98 submitted a report of enquiry on 27-10-98 to the Respondent No.2, stating that the charged under Article No.1 is proved and other charges are partially proved. Thereafter the Respondent No.2 vide his letter under File No.1/5/94-VSII dt.2-12-98 furnished the applicant a copy of the Report of the Enquiry officer No.SE(Enq.)/5/95 dt.27-10-98 with a statement that the disciplinary authority will take a suitable decision after considering the report and that if the applicant wish to make any representation he may do so in writing to the Disciplinary Authority within 15 days of the receipt of the letter.

A true copy of the said forwarding letter dt.2-12-98 is annexed herewith and marked as Annexure-A/1.

A true copy of the Report of Enquiry officer dt.18-10-98 is annexed herewith and marked as Annexure-A/2.

5. That, the applicant received the Report of the Enquiry Officer dt.2-12-98 through post only on 10-12-98 and thereafter he submitted a Representation against the Report of the Enquiry Officer on 19-12-98, by speeded post stating that the finding of the Enquiry Officer are all perverse and not supported by any material documents and that the Enquiry Officer failed to appreciate the entire evidence on record over and above failure on the part of the Enquiry Officer to follow the procedural requirements and prayed for setting aside the report.

A true copy of the representation dt. 19-12-98 is annexed herewith and marked as Annexure-A/3.

*Handwritten signature*

6. That, since the Respondents failed to take action upon the representation made by the applicant, a case being O.A.No. 386 of 1999 was filed before the CAT, Gauhati Bench for quashing the entire proceedings of the Enquiry and the same is pending. However, during the pendency of the application, the Respondent No. 1 passed an order on 05-05-2000 ( the impugned order) by inflicting a penalty of 10% cut in pension for a period of five years against the applicant.

A true copy of the order of penalty dt. 05-05-2000 is annexed herewith and marked as Annexure-A/4.

7. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS:

A) For that the enquiry relates to state matters inasmuch as the charges were in respect of the execution of work done in the year 1983 and the enquiry was initiated only on 23/24-02-94 and as such the impugned order is not maintainable.

B) For that the report of the enquiry is not supported by any material document and as such the impugned order is not maintainable.

C) For that the Respondant No. 1 failed to exercise its power judiciously in passing the impugned order and as such the impugned order is liable to be set aside.

D) For that it is the duty of the disciplinary authority to see whether the report of enquiry is based on evidence. But in the instant case the Respondant No. 1 failed to verify the records and as such the impugned order is liable to be set aside.

*[Handwritten signature]*

Contd....9/-

- E) For that the Respondant No.1 failed to consider the representation submitted by the applicant against the report of enquiry and as such the impugned order is void and liable to be set aside.
- F) For that no Departmental Enquiry can be initiated against an employee/retired employee in respect of the matter which took place more than 10 years ago and as such the impugned order is vitiated in the eye of law.
- G) For that the enquiry and its report is ~~is~~ against the decision of the CAT, Chandigarh Bench rendered in Tarlok Singh V. Union of India reported in 1989 (9) ATC 491 and also the decision rendered by the CAT, Ahmedabad Bench in M.M. Qureshi V. Union of India reported in 1989(9) ATC 500 and P.L Khandetwal V. Union of India reported in 1989(9) ATC 509.
- H) For that the penalty imposed against the applicant is too harsh in as much as the work was completed after his transfer and the final Bills, Final Test Checking etc. were done by other officials who was posted in his place and no proceeding is drawn against any of the employees who are responsible for the due execution of the work.
- I) For that the report of the enquiry is too vague and perverse and not supported by any material documents. However, the Respondant No.1 accepted the report without verifying the records, Hence the impugned penalty is not maintainable.
- J) For that there are many other good and sufficient grounds for setting aside the impugned order of penalty.

*Amal B*

K) For that the impugned order is also amounts to sub-Judice in as much as the matter is in issue before the CAT, Cauhati Bench in O.A. No. 388 of 1999-

8. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules inasmuch as he submitted the representation dt. 19-12-98 against the Report of the Enquiry Officer dt. 2-12-98 for setting aside the report and also reminder representations dt. 05-04-99 and 14-05-99 (Annexures-A/3, A/4 & A/5 respectively) requesting for closer of the Enquiry. At the same time, the impugned order was issued by the Respondant No. 1 in the name of the President of India for which no appeal is provided under the CCS (CCA) Rules 1965.

9. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant further declares that he had already filed O.A. No. 388/99 before this Tribunal and the same is pending.

10. RELIEF SOUGHT :

In view of the facts mentioned in para No. 6 above, the applicant prays for the following reliefs :-

- (1) An order for quashing the impugned order of penalty dt. 5-5-2000.
- (2) A direction or order directing the Respondents to release the retiral benefits of the applicant within one month with interest.
- (3) Any other relief or reliefs as the Hon'ble Tribunal deems fit and appropriate.
- (4) Cost of litigation.

*Handwritten signature*

11. INTERIM ORDER, IF ANY PRAYED FOR :

In the interim it is prayed that the impugned order dt.05-05-2000 in Annexure-A/4 be stayed during the pendency of the petition.

12. The application is sent herewith by Registered post. The petitioner is a poor retired Govt. employee and he has no means of engaging an advocate for conducting his case at Guwahati. Hence an advocate may kindly be appointed for conducting the case from the expence of the Central Govt.

13. PARTICULARS OF BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE :

- (1) I. P. O.
- (2) Dated 16/6/2000
- (3) NO. 24. 583457

14. LIST OF ENCLOSURES :

As indicated in the index.

*[Handwritten signature]*

V E R I F I C A T I O N

I, Shri Konsam Khomei Singh, aged about 63 yrs, retired A.E.(C), C.P.W.D., resident of Sougaijam Leikai, Moirangkhom, Imphal, do hereby verify that the contents of Para Nos. 1 to 3 are true to my personal knowledge and Para Nos. 4 to 9 regarding legal matters are believed to be true on legal advice and that I have not suppressed any material fact.


Date : 16.6.2000.

Place : Imphal.

To

The Registrar.

SIGNATURE OF THE APPLICANT.

  
(K. K. Singh)

13

Annexure - A-1  
ANNEXURE - A-1  
24

By Regd. AD.

File No. 1/5/94-VSII  
Govt. Of India  
Directorate General of Works  
CPWD(Vigilance Unit)  
Room No. 132, 'A' Wing

Nirman Bhavan, New Delhi  
Dated: 2 /12/98

To

Shri Konsam Khomel Singh,  
A.E.(Retd.),  
Sougajam Teikai,  
Moirangkhom,  
Imphal - 795001.

Sub: Deptt. Inquiry against Shri K.K.Singh, AE(C)Retd.

I am directed to enclose herewith the report of the Inquiry Officer received under his No. SE(Inq.)/5/95 , dated 27th Oct.,98. The disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter.

Encl. Inquiry Report.

*(Signature)*  
(M.C.Bansal)  
01/12/98  
Engineer Officer(D)/P.O.

Copy to:-(By Regd. AD)

1. Shri K.K.Singh, A.E.(Retd.), Khasra No. 76, Bakarwala Mor, Near Bakarwala Village, P.O. Mundka, New Delhi-110041.

2. ~~P.O. file.~~

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Suren Narsingh  
Advocate.

Engineer Officer(D)/P.O.

No.SE(Inquiries)/5/95  
Superintending Engineer(Inquiry)  
Central Public Works Department  
Nirman.Bhawan, New Delhi-110011

Sub: Departmental inquiry into the charges framed against  
Sh.K.K.Singh, AE(C)Retd. under Rule 14 of CCS  
(CCA)Rules,1965.

Introduction

The Director General of Works, Central P.W.D., New Delhi appointed Sh.Anant Ram, SE(Inquiry) as Inquiry Officer to inquire into the charges framed against Sh.K.K.Singh,AE(C) Retd.under Rule 14 of CCS(CCA)Rules,1965 vide his office order No.1/5/94-VSII/i dated 15.3.95.

On transfer of Sh.Anant Ram, the Director General of Works, CPWD, New Delhi appointed the undersigned as Inquiry Officer vide office order No.1/5/94-VS-2 dated 13.12.95.

The Director General of Works, CPWD, New Delhi appointed Sh. Hardipender Singh, EO(D)I, Vigilance Unit, CPWD, New Delhi as Presenting Officer vide office order No.1/5/94-VS-2/ii dated 15.3.95.

On transfer of Sh.Hardipender Singh, the Director General of Works, CPWD, New Delhi appointed Sh.M.C.Bansal, EO(D)I, Vigilance Unit, CPWD, New Delhi as Presenting Officer vide office order No.1/5/94-VS-2 dated 5.8.96.

The preliminary hearing was held on 8.5.95 and regular hearings were held on 12.3.96, 6.3.97, 7.8.97, 16.10.97, 12.12.97, 28.1.98, 17.2.98 & 1.4.98.

The PO produced seven listed documents which were marked as P1 to P7 and taken on record. The PO also produced 13 defence documents which were marked as D1 to D13 and taken on record.

The PO produced one prosecution witness and his evidence was taken as PW1. The CO also produced one defence witness and his evidence was taken as DW1. The CO also offered himself as his own

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Suresh Nao Reddy  
Advocate.

Both the PO and CO submitted their final briefs.

### Article of Charges

That the said Shri K.K.Singh, while functioning as Assistant Engineer in Manipur Central Sub-Divn., under Manipur Central Division, CPWD, Imphal, got executed the work of 'C/o 2 Nos. Type IV Qtrs. At C.A. Imphal, including internal sanitary and W/s installations from 28.3.83 onwards during which he committed serious irregularities as follows:-

#### Article I:-

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K.Singh, failed to ensure maintenance of cement register in proper shape.

#### Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K.Singh, failed in exercising his weekly checks on the balance of cement in cement register.

#### Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K.Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

#### Article IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K.Singh, failed to propose full recovery of the materials issued in each R.A.bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

#### Article V

That during the aforesaid period and while functioning in the

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returned from the contractor. Shri K.K.Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Shri K.K.Singh, A.E., the Government had incurred a loss of Rs. 48,957.30.

The PO in his final brief dated 8.9.98 intimated as follows:

**P.O. Briefs (Article-I)**

PW 1 (Shri K.V.CH Rama Rao) in his examination in chief deposed that as per para 14 of Section 27 of CPWD Manual Vol.II, a register should be maintained at the site of each work to minimise the chances of pilferage of cement from the site of work and the register should contain columns as shown in Appendix 18, the pages of register should be machine numbered and each page initialled by Executive Engineer. The PW 1 deposed that the columns in EX. P5 i.e cement register does not confirm to the columns given in Appendix 18 in CPWD Manual Vol.II. The PW 1 in answer to question no. 1 put by the I.O informed that if the cement register is not maintained by J.E. in proper shape in that event the AE should have pointed out. In answer to question no. 2 he deposed that the materials at site are the responsibility of JE as well as AE and if the registers are not maintained properly by the JE, the AE should have pointed out and got them rectified.

The DW 1 (Shri V.P.Singh) during his examination in chief deposed that the registers for work to be utilised under different contracts were being issued by the division office for which a separate register was kept by the Head Clerk who was issuing such registers and making the entry for record under EE's signature. He further deposed that he has seen EX- P5 and confirmed that the said cement register was not issued by the Division Office. During cross examination under question no. 1, DW 1 deposed that he did not know the reasons for non issue of the said register by the Head Clerk of the Division, however, he also deposed that this practice of issuing the register from division was existing when he took over the charge of Manipur Central division. Under question no. 2, the DW 1 deposed that as per rules given in CPWD Manual Vol.II it was the duty of the AE to maintain this register, however, at Manipur this was not the practice when DW-1 joined. The DW 1 under question no. 4 deposed that it was the violation of the rules.

The DW 2 (Shri KK Singh) deposed that the register under EX P5 has not been issued by him though he identified the signatures of JE. Shri

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Advocate.

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I.A.Majumdar which are available in the registers . He also confirmed of having conversant with the initials of JE and the contractor under answer to question no. 2 during his cross examination as well as he confirmed of having identified the signature of JE and contractor under answer to question no. 3 . He informed of having received the photo copies of the registered documents on 2.9.97 in compliance of his requisition dated 14.8.97 under answer to question no, 4 during cross examination . Under answer to question no. 6 the DW 2 deposed that he did not point out doubt about the authenticity of Ex.- P4 and Ex.- P5 in particular i.e about these two registers . He also deposed that he did not write any letter in this regard after 2.9.97 i.e. the date when he received the copy of listed documents after he had inspected them in original.

In view of the above, charge under article 1 stand proved.


**P.O. briefs (Article-II)**

The PW 1 (Shri K.V. CH. Rama Rao) during his examination in chief deposed that the Ex P5 has not been checked even once by the AE /Executive Engineer though the cement Godown and registers are required to be checked by SDO/EE in charge of the work at least weekly or fortnightly respectively in case of works at the Headquarters of the SDO/EE as per para 14 of Section 27 of CPWD Manual Vol.II. He further deposed that the perusal of Ex P1 and name of work suggests itself that the work was located at civil airport at Imphal which was Headquarter of AE/EE

The DW 1(Shri VP Singh), during his cross examination under question no. 3 also deposed that the provisions of para 14 under section 27 of CPWD Manual Vol.II, 1972 Edition, which prescribes checking of cement Godown and register by the SDO weekly/fortnightly , have not been followed by the AE in Ex. P5 even once right from 22.9.83 till 30.10.84 , though as per rules, AE was required to check these . He also deposed under question no. 4 that it was in violation of rules.

Under Question No. 3 put by the L/O. to PW 1(Shri K.V.CH. Rama Rao) he deposed that the CO has not checked the register even once though the work continued from 22.9.83 till 31.10.84 as per EX P5.

In view of above the charge under article II stands proved.



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Advocate.

P.O.Briefs (Article-III)

The PW 1(Shri K.V. CH. Rama Rao) by refering to Ex.- P2 (12 indents except indent No. 950103, dt. 13.9.84 , which is signed by some K.C.Singha) and para 6 of Section 27 of CPWD Manual Vol. II deposed that to safeguard and prevent such invisible losses to the Govt., it is essential that issues to contractors should be regulated and restricted to actual requirement. He further deposed that in about two months advance of anticipated requirement and about 5 to 10% above the such requirement the materials can be issued to the contractor. He also deposed that by reading provisions of para 6 under section 27 of CPWD Manual Vol.II , Ex.- P3 and Ex.- P2 , it is informed that the provisions of CPWD Manual Vol.II were not followed by the CO.

The PW 1 further deposed that as per Ex P3/4, page 14/19 , total cement was issued for a quantity of 30.50 MT. whereas theoretical requirement was 18.066 MT indicating that an excess of 12.434 MT. Cement was issued. By reading the final bill with Ex.-P5 it is seen that cement was not available and it may have been removed from site.

PW 1 further deposed that as per Ex P2 (page 1/24) (page 2/24) , on 22.9.83 the quantity of 0.550 MT. of mild steel was issued and on perusal of the bill it is seen that mild steel was not consumed upto 30.3.84(P3/2, page 7/11).

The PW 1 further deposed that as per Ex P3 / 3 read with indent nos. 596292, 924275, 924278,924261 and 924268 , 4.95 MT. of mild steel was issued up to 24.8.84 whereas 1.490 MT. of mild steel was actually consumed indicating that balance was with the custody of contractor.

The PW 1 further deposed that total of 7.95 MT. of mild steel was issued as per Ex. P3/4 (Page 12/19, 15/19 alongwith EX. P2) and total actual consumption of mild steel was 1.997 MT., leaving an excess of issue of 5.953 mt. of mild steel with contractor. As per page 56 of Ex. P1 a quantity of 5.50 MT. of mild steel was stipulated whereas 7.950 was actually issued which was in excess of stipulated quantity . The CO did not follow provisions of para 9A of Section 27 of CPWD Manual Vol. II 1972 Edition. The PW 1 further deposed that as per Ex P3/3 , page 5/9 (also refer page 3/24 and 4/24 of Ex P2) i.e. upto 24.8.84 quantity of 0.710MT. of tor steel was issued to the contractor whereas 0.041 MT of tor steel was actually consumed . He deposed that the CO did not follow

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Advocate.

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the Manual Vol. II provisions as well provisions under para 10.3.6 and para 10.3.7 of CPWA Code.

Under question No. 4 put by the I.O., the PW 1 also deposed that if there is any shortage of materials he should have intimated to the Executive Engineer, immediately in the first instance. He also deposed under question no. 5 put by the I.O that indents were neither approved nor signed by the Executive Engineer.

Under answer to question no. 8, DW 1 (Shri V.P. Singh) deposed that the AE should not have issued the materials to the contractor in excess of anticipated actual requirement during insurgency. He also further deposed under question no. 9 that the progress was almost negligible, that is why so many works were rescinded.

The DW 2 (Shri KK Singh) in his answer to question no. 10 informed that he did not remember as to in whose custody the indent book was to be kept. Regarding preparation of monthly account of indents, the DW 2 under his answer to question no. 12 replied that he did not remember. Under answer to question No. 14 the DW 2 deposed that the progress of work was slow because of insurgency and work also started late. In answer to question no. 16 as to why did he issue Govt. Materials in too much excess of the anticipated actual requirement when the progress of work was slow, the DW 2 replied that he will have to see the records, however, some times the materials availability was scarce and the material was got issued in piecemeal with the approval of Executive Engineer. In reply to question no. 7 as to and how much advance of the anticipated requirement, the materials should be issued to the contractor and in excess of how much anticipated requirement, the DW 2 could not give any answer and pleaded his ignorance. EX D9 to D 13 did not relate to work under question.

In view of above charge under article III stand proved.

P.O. Briefs (Article-IV)

The PW (Shri K.V. CH. Rama Rao) by referring Ex P3/2 page 8/11) deposed that the CO had signed it on 30.3.84. The theoretical consumption of cement up 30.3.84 was 11.15 Mt. Whereas recovery for 11.40 M.T., of cement was proposed against actually consumed 16.85 Mt of cement up 30.3.84 as per Ex P5 on page 2. Ex P3 /2 does not

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Advocate.

indicate any reason which may have been recorded by the CO about non recovery of quantity of cement i.e. 5.4 M.T.

By referring page 6/9 of EX.- P3/3 alongwith page 5/9 the PW 1 informed that as per theoretical consumption, 17.03 M.T., of cement was consumed upto 24.8.84, recovery for 19.40 M.T., of cement was proposed by CO whereas total quantity of 28 MT of cement was issued to the contractor and the balance in the EX P5 as on 24.8.84 was 'NIL' from 23.7.84 onwards. No reasons were found indicated by CO on the body of EX P3/3 (Page 6/9) about non recovery of cement for quantity of 8.6 M.T., of cement.

The PW 1 by referring to EX P3/4 (page 14/19) informed that total cement was issued for a quantity of 13.50 M.T., against the theoretical requirement of 18.066 M.T., indicating that an excess of 12.434 M.T., of cement was issued. The balance materials was not available at site.

The PW 1 (Shri K.V. CH. Rama Rao) deposed that upto 24.8.84 the date of signature of CO i.e EX P3/3, page 5/9 and 7/9) 4.95 M.T., of mild steel was issued whereas 1.490 Mt. of mild steel was actually consumed indicating that balance with the custody of contractor and making a proposal for recovery of 2 M.T., of steel and indicating a wrong figure of total issue of mild steel 2.952 M.T., in the bill. The PW 1 further deposed that provisions of para 10.3.6 and 10.3.7 CPWA Code as well provisions of para 6 and 9 under section 27 of CPWD Manual Vol.II were not followed by the CO. He also deposed that by reading EX P3/1, 3/2 and 3/3 with the respective provisions of Manual that the CO should have proposed the recovery for the materials issued to the contractor from the first bill which was paid to the contractor after issue of such materials.

Under answer to question no. 6 put by the I.O., PW1 on the question as to who is responsible for recovery of materials which was issued to the contractor deposed that even though the responsibility lies with the Division Office, the proposal for recovery of cost of materials issued to the contractor should come from sub division office. The PW 1 on the issue of recovery under question no. 10 also replied that though the AE followed the practice in vogue yet he violated the manual provisions for which he should have brought the matter on record and obtained the concurrence of Executive Engineer.

In view of the above depositions, on the record of inquiry along with related records the charge under article IV stand proved against the C.O.

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Advocate.

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Shri K.K.Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS Conduct Rules, 1964.

P.O. Briefs. (Article-V)

The PW 1 (Shri K.V. CH. Rama Rao) informed that Exb. P 6 which is dated 4.4.1984 issued by the Executive Engineer addressed to Shri K K Singh, directing them to return the surplus materials to the stores so that the same can be utilised for other works. As per the record of the inquiry, the CO did not take any action for return of surplus materials in the light of Ex P 6. As per page 12/19 of EX P3/4 PW-1 deposed that the materials which was in excess of actual consumption were not available and therefore these are detailed under Heads of double recovery. The PW 1 by referring EX D 3 (page 1/21) deposed that the final bill of contractor was adjusted indicating a debit of Rs. 1,72,350/- against the original contractor meaning thereby that the amount was not recovered for shortages of materials from the original contractor. As per the records of inquiry the CO did not inform his superiors / police authorities about the shortages in materials during currency / contract in his cumbency.

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The PW 1 under his answer to question no. 4 put by the IO deposed that if there was any shortage of materials the CO should have intimated to the Executive Engineer immediately in the first instance. Under answer to question No. 13 the PW1 deposed that in this case materials were found short ultimately indicating that these were pilfered. Under answer to question no. 14 the PW 1 deposed that the JE and AE are the representatives of Executive Engineer at site and so the AE should have ensured that the intimation has gone to the Executive Engineer about shortage of materials and complaint also should have been lodged with the police for the shortage of materials.

The DW-1, also deposed that Sh. Hari Das, the successor of the CO while finalising the bill had submitted report about shortages of materials.

In view of the above the charge under article-V stands proved.

Conclusion:- All the charges against the CO stands substantiated.

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The CO in his final brief dated 25.6.98 intimated as follows:

In response to daily order sheet dt. 1.4.98, the brief from P.O. is received by me on 13.5.98. Accordingly I am submitting my brief to the charges framed by the Director General of Works C.P.W.D., New Delhi who issued Memorandum No. 13/11/88-VSI dated 23/24-2-94 as under:

The issuance of Memorandum No. 13/11/88-VSI dated 23/24.2.94 just 4 days prior to my retirement is not sustainable in law being defective, bad in law and against the principal of natural justice, malafide, deliberate on the following grounds:

1. It is time barred as it is for alleged happenings occurred in 1983-84 as held in the case of (1) M.M. Quraishi Vs. Union of India and others (1989) 9 ATC 500 (Allahabad Branch) and (2) P.L. Khandelwal Vs. Union of India and others (1989) 9 ATC 509 ATR 1989(1) CAT 402 (Abstract attached). Page 1

It was held that inordinate delay of 5 years vitiates Departmental proceedings. In my case it was held after 9 years and thus time barred.

2. Director General of Works/PO failed to see that C.O. was incharge of work upto 10/84 and transferred in 11/84. Alleged loss to Government occurred on 30.11.85 i.e. in someone else incumbancy.

3. The work was in progress at the time C.O. was transferred in 11/84 as is proved from measurements recorded on 14.9.84 and 5.11.84 at pages 26 to 30 of MB 532 (Ex. D 2/2)

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Advocate.

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4. The Article of chargess I to V are based on violation of CPWD Mannual Vol. II. No where Director Geeral of Works ever issued orders that it is mandatory for every officer/official to follow it strictly. Even CPWD Manual Vol. I, II, III itself never states that these are mandatory books to be followed. It is also proved from the fact that it is not mandatory to be followed as CPWD Mannuals Vol. I, II and III includes references to different rules and regulations from F.R., S.R., GFR, CPWA Code, CPWD Code, Treasury Rules, CCS (CC&A) rules, Pension Rules, TA rules, Leave rules, delegation of powers and so on but no action by quoting CPWD Mannuals Paras, for these items are valid for e.g. (1) No pension can be sanctioned quoting CPWD Manual Vol. I, but can be sanctioned quoting specific pension rules (ii) No survey report can be sanctioned quoting CPWD Manual Vol. II but under CPWD Code. No disciplinary proceedings can be taken quoting CPWD Manual Vol. I but under CCS (CC&A) rules. No pay can be fixed quoting CPWD Mannual but under relevant rules of F.R. & S.R. or Government of India specific orders and so on. There are hundreds of such examples.

According to preface of CPWD Mannuals, books are for general guidance only. <sup>those</sup> Thus no article of charges based on violation of CPWD Mannual is valid and are bad in law and beyond any authority and are to be rejected outrightly. (Preface of Mannal Vol. II attached)

Page 2

Moreover, the Director General of Works/PO has never stated in the charge memo or during proceedings which specific orders/instructions/rules and regulations are violated by C.O.

5. Further article of charges are based on cement register Exh. P-5 and P-4 (Hinderance and MAS a/c register) which were not original documents but fabricated ones. I.O. and P.O. was informed by CO vide his letter dt. 21.6.95 (copy enclosed) to the effect thast P.O. was not having original documents and asked for original documents.

Page 14

6. The fabrication of Exh. P-5 is established from the below noted facts:

- (i) Cement Register (Exh. P-5) is not one which was issued by Executive Engineer, MCD I to Sub Division and in turn Sub Division issued to Junior Engineer for use as it is not signed by Executive Engineer, M.C.D. I or Assistant Engineer (C.O.) or by any authority whatsoever.

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Advocate.

- (iii) C.O. was test checking the cement register which was issued by Executive Engineer, MCD I and re-issuing to Junior Engineer by Sub Division (C.O.) but this register has no signature of Assistant Engineer/Executive Engineer for testing. *Checking*
- (iv) The ~~testing~~ <sup>Checking</sup> of cement register is established from the fact, when C.O. on ~~testing~~ <sup>Checking</sup> found shortage, asked the contractor for the same with copy to Executive Engineer, M.C.D. I and Junior Engineer vide his No. 23(3)/83 - MCD I/741 dt. 24.9.83 (Exh. D-1) Page 27 of File No. 54(170)/MCD - 82 (Photostat enclosed) but fabricated register Exhibit P-5, does not have my (CO's) signature of ~~testing~~ <sup>Checking</sup> and remarks made there on by C.O. *Checking*
- (v) Fabrication of Exh. P-5 (cement register) is also established from the quantities of cement shown in R/A bills and balances shown in the fabricated register which does not tallies as under:
  - (a) Ex. P-3/1, Ist R.A. Bill submitted on 3.11.83

According to theoretical consumption statement of cement (Ex. P.3/1) attached to bill, 10 M.T. cement was issued 8.023 MT (without wastage) was ~~issued~~ and balance cement was in safe custody of contractor, but Exh. P-5 shows a balance of 32 bags (b) Again according to Exh. P-3/3 theoretical consumption statement of cement 16.215 M.T. (without wastage) of cement was used against the total issue of 28 M.T. of cement. Balance quantity of 28 (-) 16.215 = 11.785 M.T. of cement was in the custody of contractor as on 18.8.84 as per certificate of cement consumption statement attached with 3rd R/A Bill (Exh. P-3/3), but Ex. P-5 shows nil balance on 23.7.84 to 26.10.84. Moreover work was in progress from 23.7.84 to Oct. 84 when C.O. was transferred as measurements were also recorded in 9/84 and 11/84 as explained in para 3 above (Exh. D-2/2 Page 26 to 30 of MB 532. It proves beyond any doubt that (Exh. P-5 cement register) now produced is a fabricated one.

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Advocate

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(vi) The fabrication of Exh. P-5 is further established from the fact that contractor's initials were missing from 2nd page i.e. 13.3.84 to end. 12

7. In accordance with CCS (CC&A) rules and as held a number of times that CO be supplied with the additional documents directly/indirectly linked with the articles of charges so that C.O. would get full justice. It is regretted that Director General of Works/PO failed to produce the additional documents directly/linked with articles of charges since 12/91 till date as explained below to deprive the CO to furnish his defence or to plead before I.O. on the basis of defence document. This act of Director General of Works/PO is bad in law, against the provisions of constitution, against rules, orders and court's decisions from time to time and also depriving natural justice to C.O. 34

- (i) Explanation called for vide No. 13/11/88-VSI dt. 4.12.91.
- (ii) Records/documents for reply asked for on 7.1.92, 25.2.92. None made available till date.
- (iii) Reply sent on memory on 4.4.92 (copy enclosed) which he read part of this brief.
- (iv) Superintending Engineer (Vigilance) was satisfied with the reply as no more communications were received thereafter till date.
- (v) After two years, 4 days prior to retirement Director General of Works issued Memorandum charging C.O. with 5 articles of charges vide Memo No. 13/11/88-VSI dt. 23/24.2.94 based on violation of CPWD Manual but Director General of Works never issued any orders that CPWD Manual are mandatory books to be followed strictly.
- (vi) Defence Records asked for on 3.3.94 followed by reminders not made available till date.
- (vii) No record was supplied but the Superintending Engineer Vigilance insisted Vide No. 13/11/88-VSI dt. 26.4.94, 19.10.94, 16.12.94 and finally on 25.1.95 (copies enclosed) to accept or deny the charges without submitting written statement of defence as per Para 2 of Memorandum No. 13/11/88-VSI dt. 23/24.2.94 and that too without

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Advocate

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producing defence documents in violation of constitution provisions.

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(viii) CO was forced to submit reply without defence document on 15.2.95 again on memory (copy enclosed) indicating God knows how many years will be taken by Director General of Works/PO to make available defence record, which is proved correct. This reply may also be read with this brief. Page 3 to 5A

(ix) Defence record are available with Executive Engineer, MCD I who admitted vide his No. 9(2)/MCD I/96/235 dt. 22.1.96 (copy supplied during hearing held on 12.3.96 by the I.O.) that the record is very exhaustive and large and also asked to have more essential record in first instance. Page 24

(x) Modified curtailed list of defence documents was supplied to I.O. and PO vide CO letter dt. 14.3.96 which was sent to Executive Engineer, MCD I vide I.O. No. SE/Inquiries/5/95 dt. 29.3.96 copies endorsed to PO and CO but these are not made available till date. I.O. again asked Executive Engineer MCD I to send record vide his No. SE/Inquiries/XI/5/95 dt. 21.6.96 asking him to send non availability certificate through Chief Engineer concerned, if not available but no such certificate is furnished by him.

(xi) I.O. is fully aware that P.O. is unable to produce the defence documents as per numerous correspondence made by I.O. and C.O.

(xii) P.O. vide his No. 1/5/94-VS II dt. 12/14.2.97 stated "It appeared that no further documents can be received from the custodians of the documents and asked for regular hearing of the case". Thus practically no defence documents were made available.

8. According to Annexure I attached to PO letter 1.5.94-VS II dt. 12/14.2.97, Report of Assistant Engineer, Details of left over material, letter asking the contractor to return materials, Division and Sub Division registers, are not available.

MAS Account not maintained. Cement register sent to Superintending Engineer, Assam Central Circle

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and not available. Whereas one cement register (Exh. P-5) is always available with P.O. since (Prior to 12/91) as it is always shown to C.O. Thus it proved that there are two cement registers, one which sent to Superintending Engineer, Assam Central Circle, "not yet received back" and 2nd taken over by Vigilance from the Division prior to 12/91 and produced as Exh. P-5. Executive Engineer, MCD I further confirmed vide his No. 5(1)/MCD I/96/2810 dt. 28.10.96, item No. 2 on page 2 "Cement Register was sent to Superintending Engineer, Assam Central Circle but not yet been received back" and also confirmed by PO vide his No. 1/5/94-VS II dt. 12/14.2.97 when P.O. is also having another cement register which he produced as Exh. P-5, proving thereby that in fact PO is dealing with two cement registers one with him as Exh. P-5 and other with Superintending Engineer, Assam Central Circle as stated above.

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9. In view of the above submissions, none of the article of charges can be proved and also not proved on the othr hand, the C.O. was harrassed and put to suffer. Had the CO been provided full defence documents, the PO case be thrown to winds. Ont he other hand C.O. was suffering for years as P.O. is unable to produce the defence documents asked for since early 1991.

It is requested that all the charges be dropped outrightly as unproved, malafide, baseless, deliberately framed to harass the C.O. who retired on 28.2.94 and suffering punishment since 1.3.94 when charge sheet served on him based on violation of CPWD Mannual instructions, fabricated cement register (Exh. P-5) and alleged loss to Government occurred on 30.11.85 when C.O. was not at all incharge of work.

The C.O. has to agree to proceeding as the P.O. is ~~is~~ unable to produce any of main defence documents though these are available with Executive Engineer MCD I, who from time to time admitted the availability of documents but shown his inability to send on one ground or other since February'92 till date as is evident from correspondence between I.O., P.O., C.O. with Executive Engineer, M.C.D.-I.

Thus it is proved beyond any iota of doubt that Director General of Works/P.O.'s whole case as ~~per~~ <sup>per</sup> charge Memo No. 13/11/88-VSI dt. 23/24.2.94, based on false document and misinterpretation of CPWD Mannuals, to be followed, as mandatory without specifying the exact rule/orders which C.O. had not followed. Moreover, CO was not incharge of the Sub Division from 11/84 onward whereas the work was rescinded on 30.11.85 and alleged loss to Government was occurred during the period, Shri M.K. Haridas was incharge of

TRUE COPY  
Suren Nanda,  
Advocate.

*Suren*

Accordingly the charge sheet is to be <sup>drafted</sup> drafted as not proved as based on wrong assumption that CPWD Manual are mandatory books to be followed and on fabricated cement register (Exh. P-5) and also the C.O. was not in charge of work when alleged removal of material occurred after 10/84 without exact date when these were removed and on the other hand Exh. P-5 (fabricated) shows that material was consumed on work itself and not removed.

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However reply to each Article of charge in view of P.O. brief and as per facts is given below, and above submissions will be part of my reply (brief) to each article of charges as under:

Article I

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh failed to ensure maintenance of cement register in proper shape.

The P.O. produced witness Shri K.V. Ch. Rama Rao as PW-I. It is not on record as to why he was called as witness as he retired as Executive Engineer, Appropriate Authority, I.T. Department, Madras and prior to this he was Executive Engineer (Vigilance) from 16.12.93 to 14.11.94. Thus he was neither the Executive Engineer of Works Incharge, nor he was the investigating officer as investigation were started in 1988 and explanation were called for in 12/91 and also was not eye witness. Thus his evidence has no legal importance as he was not related with the case. He deposed as per charge sheet which can be done by any CPWD Officer.

According to Annexure II, the contractor abandoned the work sometime after 10/84 and also removed excess materials issued from Store (After 10/84 exact date not mentioned in charge memo).

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Suresh Narain  
Advocate.

The D.W.2 Shri K.K. Singh deposed that he was transferred from Sub Division in 11/84. He further deposed that cement register and hinderance register produced as P-5 and P-4 are not the ones which he got issued from the Division and re-issued to the Junior Engineer and were in use. D.W.I, Shri V.P. Singh, then Executive Engineer MCD Division deposed that different register for use on contract works were issued by the Divisional Officer for which a register is maintained by Head Clerk. He further confirmed that Ex. P-5, cement register, is not the one which was issued by the Division Office. He further confirmed that P-4

Suresh Narain

Pgs 25 and 26 indicating MAS Account does not bear signature of any officer. Ex. P-4 was also not issued by Division office.

23/01

P.O. failed to produce the Divisional office and Sub Division office register for issue of different registers. DW I further confirmed in reply to Q.No. 1 that the registers were issued from Division Office during his period and also prior to his joining the Division.

The charge sheet is further based on not following different paras and sections of CPWD Manual Vol. II, 1972 Edition. It is respectfully submitted that Preface of Manual Vol. II be referred to, according to it the CPWD Manual is for guidance but any action is to be taken under relevant rules/orders/instructions etc. For example no material/building can be surveyed out (written off) quoting CPWD Manual II Para and Section but could be done under PWD Code as Accounts office does not recognise it. Simialrly instructions in CPWD Manual are given for, sanction of leave, pension, disciplinary proceedings, medical reimbursement, execution of work etc. etc. but no pension, leave, medical reimbursement, rescinding of work etc. etc. can be sanctioned/ordered quoting CPWD Manual as no authority recognise it but can be sanctioned under specific rules pertaining to pension, leave (CCS & CC&A) rules, medical rules and so on. Thus P.O. contention that following instructions of Manuals is mandatory, is wrong, denied and even Manual itself does not recognise it as a reference book. P.O. no where has stated that what particular instructions/orders were violated by C.O.

Further different actions such as accord of A/A and E/S, Technical Sanction of estimates award of works, write off of building (Survey report) etc. etc. are to be done under relevant rules such as delegation of powers, orders issued under Accounts Series, Works Series, Contract series, PWD Code, CPWA Code, treasury rules, etc.

P.O. also failed to point out in what respect the alleged fabricated cement register (not original one which was issued by Divisional officer to CO and in turn by CO to Junior Engineer) is not in accordance with para 14 of Section 27 of CPWD Manual Vol. II 1972. However, comparing the columns of the alleged (fabricated) register, it is seen that almost all columns of appendix 18 are there as in the were but Sl. Nos. differed.

The C.O. has intimated I.O. Shri. Anant Ram and P.O. vide his letter dt. 21.6.95 that P.O. was not having original documents.

Copy attached Page 14-15

TRUE COPY  
Suresh Naomias  
Advocate.

Fabricated  
Cement Register  
Ex. P-5

*[Signature]*

Thus it is proved that the registers produced as P.4 and P.5 are not the ones which were issued by CO to Junior Engineer (but is fabricated one and that too has columns as per CPWD Manual Vol. II).

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In view of the fact that the register now produced by P.O. was not the register issued to Junior Engineer by CO and further the columns are almost as per Appendix 18 of Manual Vol. II the charge is not proved at all. In this regard also refer to my letter No. 23(3)/83-MCSDI/741 dt. 24.9.83 (available in file at Page 27) (Photostat attached). According to it CO checked the cement and steel at site and reported the shortage to Ex. Eng. The register in which these were test checked is not produced but some other register produced showing none of testing carried out by C.O.

From the above submissions and considering that the columns are tallying with columns as per CPWD Manual Vol. II Appendix 18, the charge is not proved at all.

### Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed in exercising his weekly checks on the balance of cement in cement register.

The P.O. allegation that CO has not followed instructions of CPWD Manual Vol. II and never test checked the cement register are not based on facts. Firstly the cement register now produced is not the one which C.O. issued to J.E. and was in use upto the period C.O. was incharge of work. The submissions under Article 1 as well as detailed submissions are also applicable, which may be considered alongwith this submissions. A perusal of my letter No. 23(3)/83-MCD I/741 dt. 24.9.83 (Page 27 of File Exh. D-1) - photostat attached, reveals and proved beyond doubt that CO was test checking the cement and other material and shortages were also pointed out. Had no test check was carried out, it was not possible to point out shortages in cement and other material.

Page 16

The PO failed to produce the record and Sub Division file where in correspondence was made about shortage and checking of cement/other material were carried as well as cement register where I gave

**TRUE COPY**  
Suren Nandan  
Advocate.

*(Signature)* Dawa

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remarks about shortage after testing at site.

The CO deposed as DW-2 that he used to test check cement and steel at site. He test checked the material in the register which was issued by him to Junior Engineer and was in used and referred to in R.A. Bills upto his transfer from Sub Division in 11/84 but register now produced is fabricated one as explained in Article 1 and other detailed submission on Pages 1 to 7 above.

From the above submissions and in view of the fact that original register was not produced and from C.O. letter No. 23(3)/83-MCD/741 dt. 24.9.83 (Page 27 of File Exh. D-1) reporting shortage of cement/other material to Executive Engineer, it is established that C.O. was test checking the cement register and as such allegation of P.O. that C.O. was not test checking the cement is false and denied. Page 16

Thus it is proved beyond any iota of doubt that C.O. was ~~thus~~ excercising the test checking of material and thus charge is not proved at all.

### Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

In this regard refer to the subissions ade under Article I and II and detailed submissions in Pages 1 to 7 above and also my reply to explanation and charge sheet memo attached). The work has to be executed as per agreement and specifications. Page 3 to 9

It may please be seen that C.O. was incharge of work upto 10/84 and was transferred from the Sub Division in 11/84 after proposing 3rd R.A. payment on 17.7.84 when the work was in progress. Shri MK. Haridass took over from C.O. in 11/84 and work was rescinded on 30.11.85 vide letter No. 54(170)/MCD/85/2936 dt. 30.11.85 CP 48-49 File 54(170)/MCD/85/2936 (Exh. D-1) with the direction that work executed would be measured on 17.12.85. Thus work was in progress and rescinded after one year of transfer of CO when Shri Hari Dass, Assistant Engineer was incharge. Please refer to

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Sunder N. N. S. Advocate.  
Dawa

Executive Engineer, MCD, Imphal letter No. 54(170)/87/MCD/649 dt. 24.3.88 (Exh. D-8) wherein he stated in para 4 "the quantities issued as evident from the indentwise details attached is quite normal required for such a work. But contractor all of a sudden removed the material and abandoned the work. The quantity issued was complete as per requirement of the work".

The contractor was asked to return excess material viz. 1) Cement - 12.434 M.T. 2) Mild Steel - 5.953 M.T. 3) Tor Steel - 0.665 M.T. on 16.12.87 vide No. 54(170)/87-MCD/8444 dt. 16.12.87 (Exh. D-4) i.e. after two years of rescinding the work. No details are furnished about taking over of left over material and record of measurements at the time of rescinding. Even no material was issued to contractor about non availability of material at site, and also removal of material by contractor. However, cement register (fabricated one) Exh. P-5 shows consumption of cement of 590 bags against issue of 610 bags. Thus according to Exh. P-5 no cement was removed but charge sheet memo alleged it was removed and thus contradictory to each other.

Shri V.P. Singh, D.W.-I deposed that 30 to 40 works were rescinded after obtaining the factual report from concerned Assistant Engineer. Further at the time of rescinding of works, necessary orders for measurements were issued to the Assistant Engineer.

From the perusal of Exh. P-2 different indents (original copy on which Executive Engineer passed orders are not produced by PO). It is observed that CO was proposing issue of material in piece meal as per actual requirement at site. The full work was not measured for, which is evident from MB 532 Page 26 to 30, the work involving use of cement and steel were measured on 4.9.84 and 5.11.84 at Page 26 to 30 of MB 532 (Exh. D-2/2) as it was carried out after 17.7.84, steel work carried from time to time were also not measured.

Shri M.K. Haridass, Assistant Engineer incharge vide his letter No. 23(3)/85-MCSD-1/263 dt. 11.7.85 enclosing a copy of contractor letter dated 15.4.85 in response to Executive Engineer letter No. 54(170)/MCD-85/829 dt. 9.4.85 (Available in Bill No. 54(170)/MCD-85 - Exhibit D-1 - copy attached) intimating that work was not re-started. The contractor fell sick due to nerve pain and cannot move freely.

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Suresh Narain,  
Advocate.

Page 17/18

*(Signature)*

The contractor asked for payment of brick work items which was carried out at a great loss implying that work executed after 7/84 was yet to be measured and paid, involving use of cement and steel. It is also seen that final bill was not 100% checked as there were mistake in calculations as well for example:

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MB 532 Page 16 - Stirrup quantities

$$\begin{array}{l} 2 \times 7 = 14 \\ 2 \times 7 = 14 \\ \hline 14 \times 0.75 = 10.50 \text{ kg.} \end{array}$$

Whereas it should be 28 x 0.75 = 21 kg.

MB 532 Page 26

Quantity of 1:5:10 7.165 cum

"Remarks of Assistant Engineer dt. 9.12.85

"Not to be paid since 1:5:10 is defective and not to required level".

It is surprising how this hidden item which was executed after payment of 3rd R.A. Bill in 9/84 was declared after rescinding of work on 30.11.85, *after more* execution and immediately after rescinding but left over material and work carried out was not measured.

*than one year of*

Thus it is established that work was in progress after submission of 3rd R.A. Bill. The items involving use of cement and steel in the work was not measured fully. P.O. asked Executive Engineer M.C.D. I vide his letter dt. 16.10.96 to send original copies of indent on which Executive Engineer/Assistant Engineer issued orders. These were not sent till date. It is said that work was abandoned after 10/84. Thus the work was abandoned when Shri M.K. Haridass was incharge of work and rescinded after one year of C.O.'s transfer. Thus whatever action is to be taken for safeguarding the material after abandoning/rescinding of work is for Shri M.K. Dass, Assistant Engineer incharge and Junior Engineer and not C.O.

**TRUE COPY**  
Suresh N. Joshi  
Advocate.

The contention of P.O. that material is issued for in excess of requirement is false and denied. P.O. based allegation of charge on indents Exh. P-2 (12 nos.). A careful study of these indents will reveal that the material was indented in very small quantities. The position of material as per agreement and that of issue is as under:

*Suresh N. Joshi*

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Material	Quantity as per agreement Exh. P-1	Quantity as issued Exh.P-2
1. Cement	46 M.T.	10 M.T. on 22.9.83 Exh.P.2/1
	2 M.T.	2.1.84 Exh.P-2/2
	1 M.T.	15.2.84 Exh. P-2/3
	5 M.T.	13.3.84 Exh.P-2/6
	5 M.T.	25.4.84 Exh. P-2/8
	5 M.T.	1.6.84 ExhP-2/9
	<u>2.5 M.T.</u> 30.5.84	27.10.84 Exh.P-2/12
2. Tor Steel	5.50 M.T.	0.140 MT 2.1.84 Exh.P-2/2
	0.100 M.T.	18.5.84 Exh.P-2/5
	0.470 M.T. <u>0.770 MT</u>	5.7.84 Exh. P-2/10
3. Mild Steel	5.50 M.T.	0.55 MT 22.9.83 Exh. P-2/1
	1.02 M.T.	12.5.84 Exh. P-2/4
	2.00 M.T.	18.5.84 Exh. P-2/5
	0.70 M.T.	9.7.84 Exh. P-2/7
	0.05 M.T.	25.4.84 (Exh. P-2/8)
	<u>4.32 M.T.</u> (3.00 M.T.	11.10.84 Exh. P-2/11) Not got issued by C.O.

**TRUE COPY**  
Suresh N. Nair  
Advocate.

Thus it is seen that no material in bulk was issued to contractor at a time. Further against 46 M.T. of cement only 30.5 M.T. was issued spread over a period of 13 months and that too in 7 lots.

Against 5.50 M.T. of tor steel, only 0.770 M.T. were issued in 7 months in 3 lots.

Against 5.50 M.T. of Mild steel only 4.32 M.T. were issued in 5 lots in 10 months.

contd...

*(Signature)*

This proves that no material was issued in bulk as alleged but in very small quantities as per actual requirement at site.

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The questions put by I.O. to PW-1 may also be referred to.

P.O. based his brief on the deposition of PW-1 (which is illegal as he was not eye witness, or incharge of Division or investigating officer, thus not related to case in any way).

Further the alleged loss to government occurred on 30.11.85 while Shri M.K. Dass was Assistant Engineer incharge of work as C.O. was incharge upto 10/84.

According to CPWA Code Para 10.3.4 "all materials required for issue to a contractor should be made over to him as soon as are received." According to para 10.7.7 and 10.7.8 of CPWA Code it is the duty and responsibility of Divisional Accountant to see that balances in contractors ledger does not remain outstanding for long time. According to CPWA Code Para 10.5.21, Divisional Officers are responsible for keeping a strict watch over the balances under the suspense account of contractors for prompt adjustment by recovery.

D.W. 2 deposed that material were indented as and when required and after its consumption at site.

P.O. failed to produce original copies of indent on which Executive Engineer passed orders for issue of material, as well as register maintained for the purpose which will reveal as to how further material was issued with Executive Engineer's authority when material was already available as alleged by P.O. However, according to D.W.-2 further material was indented after the one already issued is consumed.

Moreover Exh. P-3/4 (read with Exh. D-3) which is final bill passed on 17.2.88 vide TE/MCD/AB/2-88 dt. 2.2.88 whereas C.O. was transferred in 11/84 reveals that work to the tune of Rs. 1,96,902 (-) 68,745 = Rs. 1,28,157/- was executed in this agreement. Thus material issued are for less than required.

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Suresh Narain  
Advocate.

D. W. a

P.W.-I deposed in last para on Page 2 that if such material is issued in bulk, there is inherent risk of pilferage and in his opinion issue be restricted to actual requirement of two months plus 5 to 10%. In this case the work is required to be completed within 4 months time and material issued as explained above is vary on lessor side considering the work in progress. According to PW-1 deposition the whole material as provided in the agreement is to be issued in two lots as the period of execution is 4 months whereas the C.O. has issued the material in 11 lots and that too for not full quantity.

The account of work executed upto date as per final bill vide Bill No. 174 dt. 17.10.87 and that after 7.84 till 11.85 when the work was rescinded is as under: as per page 10 of Exh. P-3/4.

	<u>Gross upto date</u>	<u>Since Previous bill</u>
	1,96,903	1,28,157
Less: Already paid in 3rd R.A. Bill vide C.V. No. 33 dated 9/84	68,745	-
	<u>1,28,157</u>	<u>1,28,157</u>

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Suresh Narain  
Advocate.

It is learnt that this fact was upheld by Arbitrator and court as well.

The quantities executed by the contractor after 7/84 were ordered to be measured at the time of rescinding the work on 30.11.85 and as deposed by D.W.-I that work already executed were got measured. It is not understood as to why the quantity of work already executed and also quantity of the balance work got executed from other Agency was not produced by P.O.

Inspite of repeated request by C.O. to P.O. and also reported as not available by Executive Engineer MCD 1 and P.O. vide their letter No. 5(1)/MCD 1/96/2810 dt. 28.10.96 and No. 1/5/94-VS II dt. 12/14.2.97. Further the quantities of the bills were not 100% checked as mistakes in calculations were found and a few of them are explained above.

*Sawad*

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Thus it is proved that no material was issued in excess of requirements as admitted by Executive Engineer, M.C.D. I (Exh. D-8) and above submission that work executed after 7/84 till transfer of C.O. and even thereafter were not measured and paid for as well as till the date of rescinding of work on 30.11.85 as final bill was passed in 2/88 showing work executed after 3rd R.A. Bill for Rs. 1,28,157/- (Exh. P-3/4. It is also learnt that it was also admitted by Department before Arbitration and Court. Thus the charge is not proved at all.

Article No. 4

That during the aforesaid period and why<sup>ed</sup> functioning in the aforesaid office the said Shri K.K. Singh, failed to propose full recovery of the materials issued in each R.A. Bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

The submission in the brief and also against Article I to III above be referred in this regard.

In this regard it has already been established above that Exh. P-5 (Cement register) and Exh. P-4 produced are fabricated ones and cannot be relied upon.

According to certificate given on theoretical statements attached with P-3/1, 1st R.A. Bill and also P-3/3, 3rd R.A. bill the balance quantities of material viz. cement and steel are in safe custody of contractor. It was admitted by Executive Engineer M.C.D. I while making running payments, last being in 9/84 (Exh. P-3/3).

The fabrication of Exh. P-5 is established by the entries which did not correspond with the entries of Running A/c bills as already explained above (i.e. mentioned in as well as against reply to Article I, II and III of charges). The deposition of PW-1 who is not related to the work, as neither he is incharge of work nor is investigating officer and also his disposition is based on fabricated document Exh. P-4, Exh. P-5 and also not on original copies of indents.

The P.W.I disposition that balance material were not available at site is wrong as he had never stated that he visited the site, yet deposited that balance material was not available at site.

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Surrendered  
Advocate

Bawa

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Theoretical consumption statement attached to Exh. P-3/1 and Exh. P-3/3 certified that balance material was at site in safe custody of contractor. It will also implies to para 2 of brief.

A

It was also agreed and prevailing practice in CPWD and also in accordance with para 10.3.7 of CPWA Code to avoid hardship to the contractors, the recovery to be effected gradually as the material issued to the contractor are actually consumed/used on the work executed and as per theoretical consumption, the recovery is effected for which Executive Engineer is responsible. If P.O.'s contention as per charge sheet is accepted, every Assistant Engineer, Executive Engineer and Junior Engineer in almost every work is to be charge sheeted for this lapse. I failed to understand as to why it is essential in this work only and not in other works carried out in CPWD, known to every officer of CPWD.

In this case Assistant Engineer has only proposed and final order for recovery were made by Executive Engineer who took upon himself full responsibility in accordance with CPWA Code, Treasury rules and also departmental instructions.

It is also for Executive Engineer to issue notice to return the unused material and fixed place where it is to be returned as per Clause 10 of Agreement "Any such Stores/material remaining unused shall be returned to the Engineer in charge at a place directed by him, if by a notice by him, he shall so required..." No such notice is given to contractor even after resinding the work on 30.11.85 but asked to return cement 12.434 MT, Mild Steel 5.953 MT and Tor Steel 0.665 M.T. on 16.12.87 (Exh. D-4) and also asked him (contractor) to deposit Rs. 50,620/- being work got executed at his risk and cost.

It is not out of place to add that P.O. knew that the Arbitration case was pending in the Division, which was dealt in File No. 54/170/Arb/92 MCD as per P.O. letter No. 1/5/94-VS II dt. 8.11.96 (copy enclosed) with copy to I.O. and C.O. and asked him (Executive Engineer, MCD I) to check up and made record available. The Arbitration award was already published vide Case No. TKM/ARB/CAL/NEZ/9 dt. 30.8.93 by Shri T.K. Misra, this fact is deliberately not disclosed by P.O. or Executive Engineer MCD I as a study of award will throw all articles of charges to wind.

Page 19-20

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Swaran N. S. Advocate.

Dawa

According to para 4 of this letter cement register was sent to Superintending Engineer, Assam. It is thus established that there are two cement registers of this work, one with Superintending Engineer, Assam (as per Executive Engineer MCD I letter No. 5(1) MCD-1/96/2810 dt. 28.10.96 item No. 2 on page 2. According to it "Cement register was sent to Superintending Engineer, Assam Central Circle, but not yet been received back") whereas the cement register produced as Exh. P-5 is with the Vigilance Unit prior to 4.12.91 till 28.1.98 when it is deposited with I.O. as Exh. P-5 as is evident from their letter No. 13(11)/88-VS I dt. 4.12.91 (copy enclosed).

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Page 21, 22

P.O. has also failed to intimate the result of Arbitration proceedings as it is now learnt that the Arbitration case had already been decided in 1993 in favour of Contractor upholding that contractor had executed the work as per 4th and final bill amounts to Rs. 1,96,903/-. No double rate recovery of material is allowed and Department had to bear cost as well as interest thereon and also had to make payment for work done from 7/84 to date of rescinding i.e. 30.11.85. The amount of work done has been accepted for Rs. 1,96,902/-. This award demolishes all the P.O. contentions as well. The P.O. deliberately not pointed out the fact that Arbitration proceedings were over and award published and accepted by the Department.

Non production of record by Executive Engineer MCD I is deliberate as it will expose them.

It is further submitted (as explained above) that the C.O. has proposed proportionate recovery of material actually consumed and according to theoretical calculations, keeping in view that balance material was lying at site in safe custody of contractor, has not violated any orders/ instructions of the Department. Thus the allegations of P.O. as per charge memo is not proved.

Article - V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to get balance materials from the contractor. Shri K.K. Singh also failed to report the matter about removal of Department Stores by the Contractor to the police as well as to his higher

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Sunder Nandan  
Advocate.

*Bawa*

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officers. On account of these lapses on the part of Shri K.K. Singh, Assistant Engineer, the Government had incurred a loss of Rs. 48,957.30. 51

The submissions made in the body of reply and also against Article I to IV be read in this regard.

P.W.-I deposed that no action was taken on Ex. P-6 by CO is false and malafide. When PW-1 has deposed about Ex. P-6 letter No. 65/8/MCD/84/540 dt. 4.4.84 which is issued to all Assistant Engineers of the Division. According to Para 2 of it Government material which are not required for the work or are surplus to the requirement should immediately be returned to the stock and so on...." The correspondence made there on are not produced. Even Sub Division file asked as defence document not produced. Your kind attention is invited to Ex. D-8 (Dated 28.3.88) Para 4 the quantities of material issued to contractor is quite normal required for such a work. But the contractor all of a sudden removed the material and abandoned the work. Thus it is proved that there was no surplus material which was requited to be taken over from the contractor. P.O. had failed to intimate when the material was removed as it was not removed till 9/84 when 3rd R.A. Bill was paid and work was in progress. Further C.O. was incharge of Sub Division upto 10/84 and transferred in 11/84. The article of charges as per charge memo dt. 23/24.2.94 admitted that material was removed after 10/84. Thus P.O. admitted that material was removed when C.O. was not incharge of work. Thus if any material was removed it was after rescinding of work as Assistant Engineer incharge (Shri M.K. Haridas) on 11.7.85 vide his No. 23(3) 85-MCSD-1/268 dt. 11.7.85 (File 54 (1.70) Exh. D-1) (copy enclosed) reported that contractor had failed to restart the work, upholding thast material were available at site otherwise he (M.K. Haridas) would have reported that material was removed. Thus it was proved that no material was removed during the period, I (CO) was incharge of work.

According to D-9 i.e. Superintending Engineer Assam Central Circle letter No. 54(346)/AC/CS/85 dt. 18.4.85 Para 1-3 " you should also intimate the arrangements which were made by you between the time decision was taken to rescind the contract and contract was rescinded and material accounted for."

Thus it is clear beyond any iota of doubt that a large number of works were under rescinding process and whatever action is to be taken is for Sh. M.K. Haridas who was Assistant Engineer incharge since

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Sunder Narayan  
Advocate.

Page  
17-18

Sawa

11/84 and work was rescinded on 30.11.85. Action taken on Superintending Engineer's letter dt. 18.4.85 by Shri M.K. Haridas is not known to CO.

It is also evident from D-11 and D-13 that whenever a work was rescinded, orders were issued for record of measurements for work already executed and taking over of balance quantity of material lying at site. In casse contractor did not come forward a board of three officers were made for the same.

Although the rescinding of work was made when Shri M.K. Haridas was incharge of work i.e. on 30.11.85 as C.O. was transferred in 11/84 but P.O. had failed to produce any document showing that measurements of work already executed were either recorded or any board of office were formed to take over the material lying at site which is said to be removed as done in other cases.

The action as alleged to have not been taken by C.O. to report to police etc. does not arise as C.O. was not incharge of work after 11/84 and work was in progress when C.O. was transferred as explained earlier as measurements for works involving used cement and steel were recorded in 9/84 and 11/84 in MB 532 Page 26 to 30 (Exh. D-2/2). The deposition of PW-1 as per brief at Page 7 is false as the CO was not incharge of the work after 10/84.

P.O. has wrongly stated DW-1 in this regard. DW-1 stated "I do not remember whether Shri Hari dass, the then Assistant Engineer incharge of work submitted any report regarding shortage of material before finalising the work. However, at the time of finalising the bill he submitted report about shortage of material." Even PO has not produced this report and Executive Engineer MCD I stated no report is available. This implies that no report of shortages of material was ever submitted from the date of abadonment of work which must be after 11/84 to rescinding of work and from rescinding of work on 30.11.85 to 17.2.88 (Exh. D-III). It was also be seen that this T.O.E. was signed by Divisional Accountant on 17.2.88 and was also prepared on 17.2.88 but was adjusted vide TE No. MCD/AB/2/88 on 2.2.88 which is wrong.

From the above submission no charge is proved against the CO as CO was incharge of work upto 10/84

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and all happening as alleged occurred after 11/84 when Shri M.K.Haridas was Assistant Engineer in charge of work.

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C.O. had not caused by loss to Government.

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In view of the above, none of the charges are proved against C.O.

To sum up in brevity the below noted points in addition to above be kept in mind while giving findings as these submissions established that none of Article of charges I to V is proved.

1) The P.O. failed to produce defence documents which can be deliberate as explained above since January, 1992 to date. *Also refer Exh. D-7*

2) The P.O. has produced fabricated document Exh. P-5, Exh. P-4 (cement register, hinderance, MAS A/c register) which was proved to be fabricated by the C.O. in his submissions and also established that it was not the registers which C.O. got issued from the Division Office and in turn issued to Junior Engineer and were in use when he (CO) was incharge of Sub Division.

i) This fabricated cement register (Exh. P-5) is available with P.O. prior to 4.12.91 till 28.1.98 when it was handed over to I.O. (as Exh. P-5) at Madras as explained above.

ii) The Ex. Engineer MCD I vide No. 5(1)/MCD 1/96/2810 dt. 28.10.96 (copy enclosed) stated to PO that cement register of work was sent to Superintending Engineer, Assam Central Circle but not yet received back, implying that there were two cement registers for this particular work one with Superintending Engineering, Assam Central Circle and 2nd one which is a fabricated one with P.O. and PO produced it as Exh. P-5 and also showing to CO since 4.12.91 as listed below.

Page 28/30

3) The columns of Ex. P-5 fabricated cement register, said to be not as per CPWD Manual Vol. II Section 27 Para 14. But a careful comparison will reveal that all the columns as per para 14 section 27 of C.P.W.D. Manual

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Advocate.

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Vol. II are in the fabricated cement register (Exh. P-5) which is not original one. P.O. also failed to pin point the irregularity in his memo of charges, or during the proceedings or in his brief.

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4) C.O. has informed I.O. and P.O. that as early as 21.6.95 that P.O. was not having original documents and asked for the same which were not made available till date.

5) Preface of CPWD Mannual Vol. I, II and III will establish that these are for general guidance and not reference book as no action quoting them as authority can be taken, as explained at different stages during the submissions above. Photostat of preface of CPWD Mannual Vol. II attached.

Page 2

6) That during CO's incumbancy which is upto 10/84 as he was transferred in 11/84 from Sub Division and as established from R/A Bills as Ex. P-3/1, P-3/II, and P-3/III that balance material was lying at site in safe custody of contractor as per certificate recorded on theoretical consumption statements attached therewith.

The work was rescinded on 30.11.85 while C.O. was incharge upto 10/84 as he was transferred from Sub Division in 11/84.

8) Work executed btween 7/84 to 30.11.85 as ordered to be measured were not measured as it was certified by Executive Engineer MCD I thast no such measurements are available vide Para 1(d) of his No. 5(1)/MCD-I/96/2810 dt. 28.8.96 to P.O. and copy to I.O. Only final bill of rescinded work was sent which was 4th and Final Bill Exh. P-3/4 Pages 1 to 10. The work executed was for Rs. 1,96,902/- and work executed upto 3rd R.A. Bill was 68,745/-. Thus work executed after 3rd R/A bill till it is rescinded was Rs. 1,28,157/-.

Page 28-30

9) P.O. intimated that there was Arbitration pending in this regard. It is learnt that Arbitration was already over and Department accepted the award some where in 1993, admits that work carried out upto 23.7.84 was in the

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order of Rs. 89,134/- but 3rd R/A bill passed for Rs. 68,745/-. Thus admitting work was not fully measured upto 23.7.84 and a number of items were yet to be measured. P.O. has deliberately kept all these informations to himself to deprive the C.O. of natural justice and to keep I.O. in the dark as the award if produced will negate the whole disciplinary proceedings. It might be the reason as to why P.O. remain satisfied with the explanation submitted by C.O. for two years.

CONCLUSION:

ARTICLE I: Not proved as no discrepancy in the columns are pointed out. Moreover Exh. P-5 (cement register) is a fabricated one.

ARTICLE II Not proved as C.O. was test checking the cement in the cement register issued by Divisional office and in turn to Junior Engineer by C.O. But PO produced fabricated cement register as Exh. P-5. Also this is established from C.O. Letter No. 23(3)/83/MCD1/741 dt. 24.9.83 confirming test checking of cement.

Page 16

ARTICLE III Not proved as no material was issued in bulk in advance. Actually material was issued in very small quantities in 11 indents. The work was in progress till CO was transferred from Sub Division in 11/84.

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11/11/84

ARTICLE IV Not proved. C.O. as per practice proposed proportionate recovery for items of work paid. Certain items of works were not included in the 3rd R/A bill as Executive Engineer, MCD I as claimant admitted in Arbitration that actual work done upto 3rd RA Bill was for Rs. 89,134/- and not Rs. 68,745/- as passed in 3rd R.A. Ex. Engineer MCD vide his letter dt. 28.3.88 admitted that quantities issued were quite normal for this work (Exh. D-8).

ARTICLE V Not proved. No material was recovered

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from Site till CO was incharge of Sub Division upto 10/.84. The material was removed from site sometime after 10/84 as stated in Memo No. 13/11/88-VSI dt. 23/24.2.94. Moreover, according to Exh. D-8 Para 2 the exact quantities of different materials which have either been removed by the contractor or used in excess in the work. <sup>was measured</sup> Thus Executive Engineer MCD is not certain whether the materials were removed or used in excess of requirement. Thus if any material was removed it was during the incumbancy of Shri M.K. Haridas who took over the charge in 11/84 and work was rescinded on 30.11.85.

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India. It is expected that such disciplinary action has to be taken at least expeditiously and not after so much unexplained delay.

In the instant case, it cannot be said that the action was taken expeditiously. The explanation rendered in this case does not inspire any confidence. It is to be noted that the action is taken against the petitioner at the sag end of his retirement. From the circumstances and the manner in which the respondents dealt with the matter, it cannot be said that this is an expeditious manner of conducting enquiries. We have no doubt in holding that inordinate delay in commencing the enquiry in the instant case has resulted in oppression to the petitioner.

(B) Mere irregular or erroneous exercise of quasi-judicial functions does not amount to misconduct

The petitioner is being subjected to departmental enquiry for the actions taken by him while discharging quasi-judicial functions and unless there are clear allegations or the charge of corruption or any involvement in any corrupt practice for personal gains or otherwise, the mere allegation that the petitioner assumed jurisdiction in the cases and passed the orders without proper scrutiny and investigation cannot constitute a misconduct, as these are the quasi-judicial functions discharged by the officers and thus not amenable to the disciplinary jurisdiction of the respondents.

In the present case, the petitioner's orders which are admittedly of a quasi-judicial nature and are subject to proceedings in appeal or revision are sought to be made a cause, basis or occasion for disciplinary proceedings for alleged misconduct resulting in loss of revenue after unconscionable delay in framing charges, on the eve of his retirement, without the statement of imputations or the charges framed showing in any manner how the alleged misconduct is separate and separable from the exercise of quasi-judicial functions. The mere fact that the petitioner made assessment of cases or such cases were taken up for assessment without entering them in the register and without following the procedure or sequence prescribed for it, does not show that the circumstances of the imputed charges are separate or separable from the exercise of quasi-judicial decisions. To allow such disciplinary proceedings to be started in such circumstances, especially after such a

period of delay as in this case would be to condone a practice which would introduce scope for fear which would gravely jeopardise the independence, impartiality and objectivity without which quasi-judicial functions cannot be exercised. No doubt officers who exercise quasi-judicial functions cannot claim immunity from disciplinary proceedings against them for misconduct or corruption but before deciding upon starting such proceedings careful thought should be given whether the imputations relate to distinct or independent circumstances and are clear and grave. If this is not done the distinction between culpable misconduct and interference with exercise of independent judgment will be blurred and not only the cause of justice but even the administrative efficiency will be badly affected.

In this view of the matter the disciplinary proceedings have to be quashed.

[ M.N. Qureshi v. Union of India and others, (1989) 9 ATC 500 (Ahmedabad Bench). ]

[ Similar view is taken in P.L. Khandelwal v. Union of India and others, (1989) 9 ATC 509: ATR 1989 (1) CAT 402. ]

Termination of service of even a temporary official appointed on Sports quota not justified, on the ground of lukewarm performance in sports events

The applicant was appointed on 31-10-1986, as Inspectress of Central Excise, temporarily against the five per cent quota earmarked for meritorious sports persons. However, on 28-4-1988, she was served with a notice of termination of services. The reason for terminating her services was attributed to her not taking part in certain events and her lukewarm performance in certain other events. Hence the present petition challenging her termination of services.

Held: much ado is seen to have been made on the lukewarm performance of the applicant in sports events at Bangalore and at Madras. We are bemused by the argument that the applicant should have come out with flying colours in the events in which she participated or was required to participate, and that if she failed to do so, she would be liable to be terminated. Manifestly, this is like drawing the long bow and does not appear to be the true intent and object.

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Advocate.

in Beas Construction Board way back in 1973 and he was declared as quasi-permanent with effect from 26-8-1976. Thereafter he worked in the said post up to 1985, when he was relieved from the said post so as to join the new post in the Civil Construction Wing of the All India Radio as Junior Engineer. It is thus manifest that the appointment of the applicant in the Beas Construction Board was on regular basis. Even though his appointment was to a temporary post, by no stretch of reasoning, it can be termed as *ad hoc*, stop gap or even purely temporary. The law is now well-settled that appointments on regular basis can be made even to temporary posts provided they are of long duration. In other words, a temporary post can be held in a substantive capacity. As observed by the Supreme Court in *G.K. Dudani v. S.D. Sharma*, 1986 SCC (L & S) 622, the position that temporary post can be held in substantive capacity is now firmly established.

It may also be observed that under letter, dated 6-2-1969, of the Ministry of Home Affairs Government of India, the service rendered by an official who has been declared as surplus does not count for seniority on redeployment, inasmuch as he is treated as a new entrant in the department where he is redeployed. The rationale behind the said letter obviously is that on redeployment, a new entrant in the department should not disturb seniority of existing members of the service by stealing a march over them. However, by the same reasoning, he cannot be debarred from being eligible for promotion to the higher post provided, of course, he satisfies the eligibility criteria. Seniority and promotion are two distinct and independent aspect in service jurisprudence. Quite often, junior officers become eligible for promotion, whereas the officers senior to them do not. Many service rules specifically provide for such contingency by enabling the senior officers who are otherwise not eligible for promotion under the relevant service rules to be considered for promotion along with their juniors. We find support for the view we have taken from a decision of the Supreme Court in *Sharadendu Bhushan v. Nagpur University*, AIR 1988 SC 335.

In the present case, therefore, merely because the past service rendered by the applicant as Junior Engineer/Sectional Officer in Beas Construction Board cannot be computed for determining seniority in the new department, it can

certainly be counted as qualifying service for eligibility for promotion to the post of Assistant Engineer.

[ *Tarlok Singh v. Union of India and others*, (1989) 9 ATC 491 (Chandigarh Bench). ]

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(A) Disciplinary proceedings must be taken expeditiously -- Inordinate delay of 5 years vitiates departmental proceedings

The applicant was an Income Tax Officer due to retire on 31-8-1988. He was sought to be subjected to a departmental enquiry under Order, dated 27-4-1988, for the 'quasi-judicial' work done by him as Income Tax Officer in the year 1983. He objected to the proceedings on two grounds: firstly, that he had acted in a judicial capacity while dealing with the cases of the Income Tax assesses concerned and as such he was not amenable to the disciplinary jurisdiction. Secondly, that the disciplinary enquiry commenced against him was liable to be quashed as it had been commenced after inordinate delay of 5 years.

Held: admittedly, the subject-matter of the disciplinary enquiry relates to the actions taken by the petitioner while discharging quasi-judicial functions in the year 1983 and the charges, dated 27-4-1988, have been served upon the petitioner nearly after five years. No material whatsoever has been placed on record to support the version of the respondent that the delay was caused as the matter had to be referred to the higher authorities (including Vigilance) for consideration and further scrutiny of the cases. Suffice it to say, that mere reference to dates of internal communications, the content of which is not disclosed cannot cover up the fact of inordinate delay of nearly five years.

It is true, that the question whether or not the State Government, in a given case, is guilty of inordinate delay, vitiating the departmental proceedings, must necessarily depend on the facts and circumstances of the case. The gap between the date of the alleged misconduct and the commencement of the enquiry by the Government has to be explained satisfactorily. The commencement of an expeditious departmental inquiry and its completion, like expeditious disposal of criminal case is primarily in the interest of the department and the delinquent and a mandate of Article 21 of the Constitution of

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Advocate.

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Publication has been split up into three (3) Parts. Part I contains Chapter I—IV/Sections 1—49 ; Part II contains Chapter V—VIII/Sections 50—58 and Part III contains Appendices. To keep continuity with the 1972-Edition, the arrangements, sections and Sections have been kept intact and followed.

This has been possible because of the guidance and assistance which the author received from Senior Officers of various disciplines viz. Engineering, Architecture, Rules, Law, Audit, Finance and Accounts in the Central Government.

The author dutifully acknowledges the personal debt of gratitude to Sh. N.S.L. Rao, former Director General (Works), who has been deeply grateful to Sh. G.S. Rao, Director General (Works), C.P.W.D. for the gracious FOREWORD and the cooperation and management in this humble endeavour.

The author shall feel extremely thankful for suggestions (including amendments) to improve the Publication.

August, 1983

K.K. KHAN

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Advocate.

### PREFACE TO THE 1972-EDITION

1. I feel privileged to release the 1972 Edition of the Central P.W.D. Manual Volume II, which is an important technical publication for the guidance of our officers engaged on the execution of works.

2. The earlier 1970 Edition was in the form of a draft Manual and the present Edition is definitely an improvement over the earlier one.

3. Efforts have been made to incorporate the latest orders and developments in relation to the various topics which this Manual seeks to embrace. Apart from the Central P.W.D., there are many other Central Government Departments and Organisations, who have adopted our P.W. pattern and system of Accounting and Procedures. As such, the publication of this volume of the Manual should be an asset not only to our Departmental staff but also to others falling in our line. I am sure that this Manual will be very well received by all concerned.

4. I would like to express my appreciation of the efforts put in by S/Shri R.K. Agrawal, F.O. (E-in-C), P.S. Saxena, A., and H.A. Bablani, Divisional Accountant and various other officers in the difficult task of its revision, compilation, corrections and effecting improvements.

5. The Government and Departmental Orders, issued from time to time and also the rules and regulations in the various codes from which the authority for what is mentioned in the Manual has been derived have been quoted in the Manual. The readers of the Manual are advised to take authority from the actual orders of the Govt. of India or Engineer-in-Chief, P.W.D. as may be issued from time to time.

NEW DELHI  
February, 1972

O. MUTHACHEN  
Engineer-in-Chief

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*(Signature)*

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Dated 15-2-95 35

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To,

Shri B. Majumdar,  
Superintending Engineer (Vig.),  
Directorate General of Works,  
C.P.W.D. (Vigilance Unit),  
Nirman Bhawan,  
NEW DELHI.

Sub: Departmental Inquiry against Shri K. K. Singh,  
Asstt. Engineer (C) Retd., C.P.W.D.

Dear Sir,

In response to your letter No. 1/1/94-VS II dated 25.1.1995, directing me to inspect the listed documents on 9-2-1995. In this regard your kind attention is invited to your letter No. 13/11/88-VSI Dt. 4.12.91 calling my explanation for a work whose date of start was 12.4.83 and completion 11.8.83, i.e. after 8 years of its happenings. I requested you to furnish me connected records of that period to refresh my memory so that a comprehensive explanation be submitted. You were kind enough to direct Executive Engineer, Manipur Central Division, Imphal, vide your No. 13/11/88-VSI dt. 13.1.92 to make available the record. But during the last three years, record was not made available to me. He (Executive Engineer, Manipur Central Divn. No. 1), was supplied the list of documents required vide my letter dated 25.2.92 with copy to you, followed by reminders. On your insistence, I have submitted my explanation on my failing memory in general terms vide my letter ~~No. 3229~~ Dt. 7.4.92. It is safely concluded that you were fully satisfied with the reply as no further reference was received from your end. After two years of my submission of explanation, I applied for Vigilance Clearance Certificate in 1994, as I was retiring on 28.2.1994. Instead of issuing the Vigilance Clearance Certificate, you served charge sheet on me on 24.2.1994, just 4 days left to retire. I failed to understand as to why your satisfaction of my reply vanished after an inordinate lapse of two years. Since then, i.e. 24.2.94

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Suresh Nandan  
Advocate.

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onward, I am requesting you to make me available the record to furnish a written statement of defence to charges as envisaged in Para 2 of your Memorandum of charges dated 24.2.94. Now you are insisting that I should deny or accept the charges as per para 3 of your Memorandum Dt. 24.2.94 and other paras are irrelevant at this stage, as no detailed and elaborate statement of defence is necessary at this stage. It is thus clear that you want to process the case without my reply or production of record which you could not be able to supply me for three years. God knows after appointing the Inquiry Officer, how many years you will take to supply the same, keeping inquiry in suspended state, for years to deprive me of my pensionary benefits, which are reduced with passage of time, as commutation value goes on decreasing with increasing age.

For the sake of natural justice,,I again request you to supply me the records asked vide my letter Dt. 21.3.94.

I have examined the listed documents, all of which are not original ones. But some are copies, which will not serve any purpose.

I hereby deny all the charges levelled against me and should be heard in person alongwith my Defence Assistant. My explanation vide my letter Dt. 7.4.92 be considered as part reply to the charges in absence of the record.

The following points may please be kept in mind while further processing the Memorandum of charges :-

1. I have clearly stated that ~~proportionate~~ proportionate recovery of material was made from the Contractor;
2. The material was lying in MAS A/c at site with the Jr. Engineer, who is incharge. If I am to be held responsible for pilferage of Govt. material as per accounts of Jr.Engineer, Ex.Engineer and other superiors are also equally responsible.

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Suresh N. Sawade  
Advocate.

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- 3. When the bill is passed for payment by the Ex. Engineer, then, he is fully responsible for all that is included in the bill.
- 4. Cement register was maintained by Junior Engineer and its columns are as per the prescribed form of Cement Issue Register as Appendix 18 of C.P.W.D. Manual Vol.II and also have same additional columns; the register is maintained as per practice in the Division itself.
- 5. The work was not recinded during my tenure. Hence the question of taking back material lying at site at time of rescinding the work by me does not arise at all.
- 6. According to final bill, full recovery of material was made, so the questich of loss does not arise.

The case has been delayed inordinately for over 8 years. It was held in the case of M.M.Quereshi V/s Union of India and others (1989) 9 ATC 500 (Ahmedabad Bench) and P.L. Khandelwal V/s Union of India and others (1989) 9 ATC 509 ATR 1989 (1) CAT 402, that inordinate delay of 5 years vititates departmental proceedings. In view of this, no Departmental proceedings can be held after expiry of more than 8 years.

I, therefore, request you to look into the matter impartially and do justice to me by (withdrawing) dropping the charges and to restore my pensionary benefits at the earliest.

Thanking you,

Yours faithfully,

( K. K. SINGH )  
 Asstt.Engineer (Retd.)  
 C/o Rev.A.Khapudang,  
 St.John's Church Compound,  
 House No.404, Mehrauli,  
 NEW DELHI - 110 030

**TRUE COPY**  
 Suren Nishita  
 Advocate.

Copy of letter  
 dt. 7-4-92

*(Signature)*



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for the Executive Engineer and not by Asstt. Engineer. The contractor had acknowledged the full quantity as per USR and amount debited to contractors account by the Divisional Office and taken into contracts ledger by Divisional staff under the signature of the Divisional Accountant and Executive Engineer as required under CPWD Accounts code.

Whatever the action was required on the part of Asstt. Engineer was taken by me and matter was reported to the Executive Engineer. It is for the Executive Engineer to take further action. Moreover the agreement contract is between Executive Engineer and Contractors.

Further, the contractor was executing a number of works in the Division itself as such there was no possibility of loss to Govt. and amount of one work can be recovered from the other works or Security Deposits of other amounts available.

c) The allegation of issue of indents for cement and steel in excess of requirement by me is totally false and incorrect. A look in the indents and material issued from time to time will prove beyond doubt that the material was issued in piece meal according to the requirement of work at site. After the 3rd R.A. bill paid by Divisional Office on 13.9.84. The material issued to the contractor was cement 2.50 Mt and steel 3.00 MT only, which was required for the bonafide use of work.

It is needless to add that no indent can be issued by A.E. but indents are signed and issued by the Executive Engineer. In case as it is presumed by you now that the requirement was in excess than required at site, the Executive Engineer will curtail the quantities. But on the other hand the contractor showed down the progress of work as the scope of work changed resulting ultimately in rescinding the work. It is for the Executive Engineer while rescinding the work to look into the aspects of the case and to take appropriate action where necessary as the contract is/was between the Executive Engineer and contractor.

Moreover the contract agreement does not provide issue of material in piece meal but quantity required is stipulated only.

d) As explained above, it is to state that the work under the control of Sub-Division were scattered over an area as far off as 200 Km in difficult areas. Moreover there was insurgency and people are/were afraid of even going out. There were more than 10 works under the Sub-Division. Thus it was humanly impossible to exercise weekly or fortnightly checks of cement in cement register for each work, which were scattered over an area of 200 Km.

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Advocate.

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It was the duty of Divisional Officer to see that weekly/fortnightly checks are/were carried out by the Asstt. Engineer at Headquarters and outside whenever he visits sites at out station. The Divisional Officer never objected to and never pointed out that cement checks were not carried out. Even Auditor, Accountant and Executive Engineer never pointed out of non exercising of these tests, implying that they were fully satisfied about the procedure in vogue at that time, higher officers who inspected the works never pointed out as these are humanly as well as otherwise not possible, feasible in an area full of insurgency and risk of life was always there.

e) The indents for MS and Tor were issued in piece meal as per site requirements and considering the scope of works. Please refer to (c) above where I had explained that indents were signed by the Executive Engineer who was/is empowered to issue indents. No A.E. can sign the indents, if he (AE) at all signed it, it will be rejected by the Stores. So whatever quantity was indented for was well within the knowledge /approval of the Executive Engineer, who was satisfied about the requirement and signed the indents, which were submitted by the Asstt. Engineer.

f) The recovery of material issued to the contractor had to be made in the first payment but it was also agreed to that to avoid hardship to the contractor, the recovery to be effected gradually as the material issued to the contractor are actually consumed/used on the work executed and as per theoretical consumption the recovery is effected. This practice is/was in use prior to me and even is now in vogue throughout CPWD. Even, Audit or any other authority had not objected to it.

AE only proposes the recovery but Ex.Engineer actually passed the bill, make the payment and also effect the recoveries.

Thus I have acted as per practice in vogue then and is also continuing even now every where in CPWD.

This is also in accordance with the provisions of CPWD Accounts Code in a number of paras and sub-paras, which allowed recovery to be effected in piece meal according to the consumption. It is needless to add here, if the stipulated quantity of contract is issued in piece meal to the contractor, then, the Department had to make site store for storage of material and to keep chowkidars round the clock for watch and ward of the Govt. material, resulting in heavy expenses to the Govt.

g) As far as I remember the work was not rescinded when I was in charge of the Division. However the full amount of material issued were detailed and accounted for in the books such as contracted ledger etc. The recovery was to be

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Advocate

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done by the Divisional office.

Your attention is also invited to para 10(a), Section 27 of CPWD Manual Vol.II, Issue of material to the contractors (1972 edition page 219) returns of surplus materials.

According to it, Govt. does not under take to take over from contractors, whether before or after the completion or determination of contracts, surplus material which were issued to them and charged to their accounts.

Thus in the absence of any specific instructions from the Executive Engineer, no material already issued and booked can be taken back. I never got any instructions for taking over the material from the contractor after rescinding the work of the Executive Engineer. Moreover the material at site Account is maintained by the Junior Engineer under the Asstt. Engineer and under the overall control of the Executive Engineer.

h) The contract is/was between the contractor and Executive Engineer. I had informed the Executive Engineer for alleged shortages. It is for the Executive Engineer to lodge report with the Police, if necessary or to take further action as deemed fit or ordered me to lodge report but as for as I think, no such action was taken by Executive Engineer.

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Satish Narain  
Advocate.

It is not out of place to add that the report to Police is lodged when there was a theft. In this case no theft was occurred but it was considered/presumed that material was snort but the contractor had acknowledged receipt of full quantity of material and amount was debited in full. So no action is on the part of me as I am not competent to lodge report with the Police for alleged shortage. My duty was to report to the Executive Engineer which I have done.

I hope your goodself will be fully satisfied about my above reply without record in a general way and clear me as I have acted as required and if at all there were short comings, it was on the part of Executive Engineer and not me.

I keep the right to modify/alter and review the reply after going through the full record/documents or any additional matter cropped up.

Thanking you,

Yours faithfully,

( K.K. SINGH )

*(Signature)* awa

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Government of India,  
Directorate Genl. of Works,  
Central Public Works Department,  
Vigilance Unit, Nirman Bhavan,  
New Delhi - 110 011.

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No.13/11/88-VSI

New Delhi, the 26 April 1994

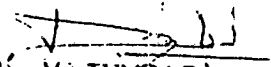
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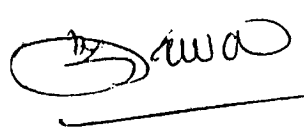
Sh.K.K.Singh,  
Ctr. No. 536-A,  
Sector 3,  
R.K.Puram,  
New Delhi - 110 022.

Please refer to your letter No. Nil dated 21.3.94. The records that are available in this Unit and based on which the charges are proposed to be proved were already shown to you at the time of calling of your explanation at preliminary stage. It should be possible for you to deny or accept the charges on this basis.

You may send your requisition for more records subsequently for your detailed submission if so required.

TRUE COPY  
Suresh Narain  
Advocate.

  
(B. MAJUMDAR)  
Superintending Engineer(Vig.)



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रजिस्टर्ड ए.डी.

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गोपनीय

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(11)

Kepty sent  
on 2/12/94  
under Regd. A/D. 3/12/94  
4961

संख्या:- 1/5x94-वी.एस.-2  
भारत सरकार  
निर्माण महानिदेशालय  
केन्द्रीय लोक निर्माण विभाग  
। सतर्कता. एकक ।

नई दिल्ली, दिनांक 19-10-94

कार्यालय ज्ञापन

विषय:- श्री के.के.सिंह, सहायक इंजीनियर।सि.। सेवानिवृत्त के विरुद्ध विभागीय कारवाई ।

-----0-----

उपर्युक्त विषय पर आपका ध्यान इस कार्यालय के पत्र संख्या 13/11/88-वी.एस.-1 दिनांक 26-4-94 फोटो प्रति संलग्न है। की ओर दिलाया जाता है जिसमें आपसे अनुरोध किया गया था कि आप आरोप पत्र दिनांक 24-2-94 में लगाये गये आरोपों को इस स्तर पर केवल स्वीकार या इंकार करें। परन्तु आपका कोई भी पत्र इस कार्यालय में अभी तक नहीं पहुँचा है। कृपया इसे तुरन्त भिजवाये अन्यथा नियमानुसार कारवाई शुरू कर दी जायेगी।

संलग्नक:- उपरोक्त वर्णित पत्र की फोटो प्रति

M. L. S.  
। हरदीपेन्द्र सिंह ।  
इंजीनियर अधिकारी।अ.ब.।-।

सेवा में,

श्री के.के.सिंह,  
सहायक इंजीनियर।सेवानिवृत्त।  
कवाटर नं. 536-ए फ्लैट-3  
आर.के.पुरम  
नई दिल्ली-22

TRUE COPY  
Suresh Nanda  
Advocate.

Suresh Nanda

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Regd. A.N.  
Confidential

No. 1/5/94-VS.II  
Directorate General of Works  
Central Public Works Department  
( Vigilance Unit )

139 (12)

\*\*\*\*\*

New Delhi, dated the 16th Dec., 1994

OFFICE MEMORANDUM

Subject:- Departmental inquiry against Shri K.K.Singh, Asstt. Engineer (C) Retd.

With reference to your letter No. NIL dated 2/12/94 on the above mentioned subject, your attention is drawn to this office letter No. 13/11/88-VSI dated 26-4-94 ( copy enclosed ) wherein you have been requested to accept or deny the charges levelled against you vide chargesheet dated 24-2-94, at this stage. But the same is still awaited. Please convey the same immediately otherwise the proceedings will be started as per Rules.

Encl : As mentioned above.

*16/12/94*  
( Hardipender Singh )  
Engineer Officer (D) I.

To

Shri K.K. Singh,  
Asstt. Engineer (Retired),  
C/O Revd. A. Khapudang,  
St. John's Church Compound,  
House No. 404, Mehrauli,  
New Delhi-110030.

TRUE COPY  
Suresh Narain  
Advocate.

*Suresh Narain*

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Confidential  
Regd. A.D.

No. 1/1/94-VS.II  
Directorate General of Works  
Central Public Works Department  
( Vigilance Unit )

\*\*\*\*\*

New Delhi, dated the 25 Jan., 1995

TO

Shri K.K. Singh,  
Asstt. Engineer (Retd.),  
C/o Revd. A. Khapudang,  
St. John's Church Compound,  
House No. 404, Mehrauli,  
New Delhi-110030.

Subject:- Departmental inquiry against Shri K.K. Singh, Asstt. Engineer (C) Retd., CPWD.

---

Sir,

Kindly refer to your Regd. A.D. Letter bearing No. NIL dated 4-1-1995 regarding above noted subject. Your kind attention is drawn to Rule 14(4) of Central Civil Services (Classification, Control & Appeal) Rules, 1965 according to which a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents & witnesses by which each article of charges is proposed to be sustained, have already been delivered to you vide Memo. No. 13/11/88-VS.I dated 24-2-1994 and you were required to submit within 10 days of the receipt of the said Memo. a written statement of your defence and to state whether you were desired to be heard in person. ~~As~~ A very detailed and elaborate statement of defence may not be necessary at this stage but only an opportunity has been given regarding admission or denial of your guilt. For admitting or denying the guilt no inspection of documents is necessary. However, if so desired you may inspect the listed documents in the office of Engineer Officer (D) I, C.P.W.D., Vigilance Unit, Nirman Bhawan, New Delhi on 9-2-1995 at 11-30 hrs. Please note that in case your written statement of defence and the statement whether you desire to be heard in person is not received within 10 days thereafter, the same will be taken as denial of articles of charges on your part and further necessary action will be taken as per rules.

**INR COPY**  
Sunder  
Advocate

You may please note that the departmental proceedings instituted against you before your retirement from Govt. service are deemed to be proceedings under Rule 9(2) (a) of CCS (Pension) Rules, 1972 after your final retirement on 28-2-1994 and shall be continued and concluded in the same manner.

yours faithfully

*(Signature)*  
(B. Majumdar)  
Suptd. Engineer (Vig.)

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(14)  
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REGD. A.D.

To

Shri Anant Ram  
Superintending Engineer (Inq.)  
CPWD  
Nirman Bhawan  
New Delhi

Sub.: Departmental inquiry against Shri K.K. Singh, Retired  
Addl. Engineer

---

Ref.: Shri Harpinder Singh, Engineer Officer (D)/I/PO letter  
No. 1/5/94-VSS 11 dated 31.5.1995 received on 20.6.1995

---

Dear Sir,

Kindly refer to my letter dated 23.5.1995 in which I submitted list of additional documents required for preparation of my defence along with name of witness. In this letter I have given my address C/o V.N. Bakshi, A-196, Suraj Mal Vihar, Delhi-110 092.

The Presenting Officer is not having the original documents with him till 12.5.1995 or even till now not arranged. He deliberately sent the letter to old address inspite of asking him to send it C/o V.N. Bakshi, A-196, Suraj Mal Vihar, Delhi-110 092 vide my letter dated 23.5.1995.

Although I have informed during my first visit that my defence Asstt. is V.N. Bakshi, A-196, Suraj Mal Vihar, Delhi-92. In view of his objection I hereby state that my defence Asstt. is V.N. Bakshi, A-196, Suraj Mal Vihar, Delhi-110 092. He is retired Superintendent of CPWD which may please be noted and allowed.

I again confirm the contents of my letter dated 12.5.1995 (not 12.3.1995) as true. Till this date Shri Harpinder Singh has not supplied me photostat copies of documents as promised.

This is for your information and further necessary action for doing justice to me.

Thanking you,

Yours faithfully,

11-01-1995

(K.K. SINGH)  
C/o V.N. Bakshi  
A-196, Suraj Mal Vihar  
Delhi-110 092

Copy forwarded to Shri Harpinder Singh,  
Engineer Officer (D)/I/PO,  
CPWD, Nirman Bhawan, New Delhi  
with reference to his

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*Sawa*

**TRUE COPY**  
Sawa Nandan  
Advocate.

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Letter No. 1/5/94-VSS II dated 31.5.1995 received on 20.6.1995. The contents of my letter dated 12.5.1995 (not 12.3.1995) are again confirmed as true.

He is again requested to ensure that original documents are shown and copies thereof be supplied. As already intimated the letters be sent at the address A-196, Suraj Mal Vihar, Delhi-110 092.

S.D. 21-6-95

(K.K. SINGH)  
C/o V.N. Bakshi  
A-196, Suraj Mal Vihar  
Delhi-110 092

TRUE COPY  
Arun Nair  
Advocate.

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Govt. of India,  
Central Public Works Department.

No. 25(5)/85-MOSD-1/7/11

Dated: Imphal 24-9-85

To

Shri S. Ibocheuba Singh,  
Govt. Contractor,  
Meirangkham Makha,  
Thekchen Lalkai,  
Imphal.

Subj: - Constn. of 2 Nos. T/IV Qrs. for C.A.D. at Tulihal, Imphal.  
Agreement No. 27/SE/KE/MCD/82-85.

Dear Sir,

W/o No - 54 (170) / M.C.D. - 82 / 628 dt. 28-3-83

It is to inform you that the cement Godown built by you for storing the cement for above work is not as per standard specification of CPWD. This has been inspected by the undersigned on 24-9-85 and found, there is every possibility of damaging the same by rain water. A chawkidar staying in the same store for which ~~existing~~ double locking arrangement could not made.

On verification it is, found that cement 150 bags & a few quantities of 12mm M.S. and 8mm M.S. are lying at your store, although vide Indent No. B/596292 dt. 22-9-85 materials issued, cement 200 bags 12mm M.S. 500 kg and 8mm M.S. 50 kg.

I would request you to kindly erect proper cement store, enabling double locking arrangement keeping separate arrangement for your chawkidar. The materials stored in else where from the mentioned store be brought to site before starting any cement work.

This may be treated as most important.

Yours faithfully,

Assistant Engineer,  
Manipur Central Sub-Divn. No. I,  
C.P.W.D., Imphal.

Copy to:-

1. The Executive Engineer, Manipur Central Division, CPWD, Imphal for favour of information please.
2. Shri I.A. Masundar, JE concerned, he should report as soon as the materials brought back & get inspected by the undersigned before starting cement work.

TRUE COPY  
C. Masundar  
Assistant Engineer

*[Signature]*  
ASSISTANT ENGINEER

*[Handwritten initials]*

*[Handwritten signature]*

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CENTRAL PUBLIC WORKS DEPARTMENT.

No. 23(3)/85-MCSD-I/205

Dated, Imphal 11.7.85

(17)

TO  
The Executive Engineer,  
Manipur Central Division,  
C.P.W.D., Imphal.

Sub:-Construction of 2 Nos.Type IV Quarters at  
C.A., Tulihal . . .

Agency:-Shri S.Ibochouba Singh,

Agreement No.27/SE/EE/MCD/82-83.

Ref:- Your No.54(170)MCD-35/829 Dt.3.4.85.

This is to inform that in reply to the above cited letter the contractor had requested for 15 days more time for restarting the work vide his letter No.Nil Dt.15.4.85.

Inspite of his promise, the contractor has failed to start the work till date even after this office Registered letter No. 23(3)/85-MCSD-I/163 Dt.7.6.85 addressed to the contractor and copy endorsed to you.

It is therefore requested that the contractor be served with notice under clause 3 and the work be rescinded, since the contractor does not seem to be interested in taking up the work.

Encl:- Contractor letter in Original  
(Dy. No.1603 Dt.26.4.85) & S.E's letter  
Dt.18.4.85 ( in Original).

*put up check notice to EE*

*M.K. Haridas*  
(M.K. Haridas),  
Assistant Engineer,  
Manipur Central Sub-Divn No.I,  
C.P.W.D., Imphal.

**TRUE COPY**  
*Wachin*  
Advocate.

*By* *AWC*



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Confidential  
REGD. A.D.

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No.1/5/94-VSII  
Government of India  
Directorate General of Works  
Central Public Works Department  
(Vigilance Unit) Nirman Bhavan  
\*\*\*\*\*

New Delhi, dated the 8th November, 1996.

To

Shri Anupam Aggarwal,  
EE, CPWD,  
Manipur Central Division No.1,  
Tulihal Airport,  
Imphal-795140.

Subject:-D.E. against Shri K.K.Singh, AE(C) and Shri  
I.A.Mazumdar, JE(C), CPWD.  
Reference:Your letter No.5(1)/MCD-1/96/2816 dated 28.8.96.  
\*\*\*\*\*

Certain documents were received vide your letter referred above in connection with above case.

1. You were requested vide this Unit letter No.1/5/94-VSII dated 24.9.96 to send the concerned MB of the final bill prepared in the above case. The concerned MBs have not been sent by you. It is unimaginable that measurements books of the rescinded work are not available with you.
2. You were requested vide this unit letter of even No. dated 16.10.96 to send original indents related with the case over which issue orders were given by the EE/AE. You were also informed that the original copies can be found from the JE Store/Store-keeper. But it is unfortunate that still these indents have not been made available by you.

In your letter dated 28.8.96 referred above, you have mentioned under para b, c, d, e & f of list of defence documents that these are not found in file or details not known or are not available. It is to inform you that in this case an arbitration reference was made and the arbitration case was pending in your Dvn. which was dealt under file No.54(170)/ARB/92-MCDI of your office. You are requested to check up the records available with arbitration/court case if any and send the record at Sl.No.(b) to (f) as pointed out earlier immediately. The concerned sub-division file should also be made available from the records of the arbitration for this work. In case the sub-divisional file is not available as mentioned by you in your letter dated 28.8.96 under para 5, you may take out the concerned letter as pointed out to you from the general file or miscellaneous file of sub-division and send

TRUE COPY  
Sankar Das  
Advocate

*(Signature)*

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those letters to this unit.

4. In your letter dated 28.8.96 under para 2 you have mentioned that MAS Account register has not been maintained in this work and cement register was sent to DE, Assam. It is pointed out that MAS Account register and cement register as mentioned in SE(Inqs.) letter dated 29.3.96 were not asked for a particular work but MAS and cement register of the works (other works) during his (Sh.K.K.Singh) posting in the sub-division in the period in question were asked. You are requested to send concerned registers of different other works immediately.
5. In your letter dated 28.8.96 under "Details to be supplied without record" you have not supplied any of the three informations requested from you.
  - i) It is not possible that no works were executed in the sub-division whereas you were requested to send list of works executed in sub-division (not of particular contractor).
  - ii) You have replied that no other work done by the contractor. Does it mean that this was the first and last work of the contractor in your division?
  - iii) You have mentioned that the sub-division was attached with the division at Imphal but you have not given the details of jurisdiction of the sub-division and the distance of the jurisdiction from the Hqs.

You are, therefore, requested to send all the records as mentioned above as well as the information above immediately.

(M.C.BANSAL)  
Engineer Officer(D)I/P.O.

- Copy to:
1. Shri R.D. Aggarwal, SE(Inqs.), CPWD, Nirman Bhavan, New Delhi for information.
  2. Shri Upendra Malik, SE, CPWD, Silchar Central Circle, Malugram Mela Road, Silchar-2.
  3. Shri K.K. Singh, C/o Bihari Lal Dogra, M/s. Prem Brothers, G-15, Udyog Nagar, Peera Garhi, New Delhi.
  4. P.O. file.

(M.C.BANSAL) 11/86  
Engineer Officer(D)I/P.O.

TRUE COPY  
Suren Das  
Advocate.

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CONFIDENTIAL

No.13/11/88-VSI  
Government of India  
Central Public Works Department  
(Vigilance Unit)

....

New Delhi, dated 4 - 12.91

M E M O R A N D U M

Shri K.K.Singh was Assistant Engineer under Manipur Central Division CPWD Imphal and was incharge of the following work from 12.4.83 onward.

1. Name of Work; C/O 2 Nos. Type IV Qrs. at C.A. Imphal including internal sanitary and W/S installations.
2. Agreement No.27/SE/EE/MCD/82-83
3. Agency; Shri S.Ibochouba Singh
4. Estimated cost; Rs.1,54,333.00
5. Tendered amount; Rs.2,62,160.00
6. Time allowed; 4 months
7. Stipulated date of commencement; 12.4.83
8. Stipulated date of completion; 11.8.83
9. Work rescinded.

During his incumbancy, he has committed following irregularities:-

- TRUE COPY**  
Suren Nandan  
Advocate.
- a) He has failed to issue cement register in proper shape.
  - b) He has failed to take action on 24.9.83 when he noticed the less quantity of cement and steel at site which was issued against indent No.B-596292/C.MD dated 21.9.83.
  - c) He has signed the indents for cement and steel in excess of the requirement after 2nd and 3rd RA bills.
  - d) He has failed in exercising his weekly checks on the balances of cement, in cement register.
  - e) He has signed the indents for 7.95 MT for mild steel against the stipulated quantity of 5.50 MT.
  - f) He has failed to propose full recovery of the materials issued in each RA bill and has not indicated in the bill that certain items involving use of cement, have left unmeasured.
- Suren*

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The details are as under:-

<u>Cement</u>	1st RA bill	2nd RA bill	3rd RA bill
Issued	10.0 MT	18.0 MT	28.0 MT
Recovered	8.40 MT	11.4 MT	19.4 MT
Balance	1.60 MT	6.60 MT	8.60 MT
<u>Mild Steel</u>			
Issued	0.55 MT	0.55 MT	4.95 MT
Recovered	-	-	2.0 MT
Balance	0.55 MT	0.55 MT	2.95 MT
<u>Tor Steel</u>			
Issued	-	0.14 MT	0.71 MT
Recovered	-	-	0.10 MT
Balance	-	0.14 MT	0.61 MT

g) He has failed to get balance material returned from the contractor.

h) He has failed to report the matter to police authorities as well as to his higher officers about removal of departmental stores by the contractor.

Shri K.K.Singh, Assistant Engineer is, therefore, directed to explain the above lapses on his part within 15 days of receipt of this letter failing which it will be presumed that he has nothing to say and action, as deemed fit, shall be taken against him.

(A.K.Bhatnagar)  
Superintending Engineer(V)

Shri K.K.Singh  
Assistant Engineer  
PWD Division No. X  
Delhi Administration  
130, ...  
...

TRUE COPY  
Suren Nanda  
Advocate.

Dawa

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Regd. A. D.

To

The Director General of Works  
C.P.W.D.  
Nirman Bhawan  
New Delhi.

Ref: Your Memorandum No. 13/11/88-VSI dt. 23.2.94/  
24.2.94.

Sir,

Kindly refer to my letter dt. 21.3.94, in which I have asked for making to me available certain records to enable me to recollect my memory and to submit reply to your Memorandum under reference.

You are again requested to supply me the records for furnishing the reply as no one can remember the details of different works under execution after a gap of about ten years. This is more important as I have been charge sheeted for alleged lapses in procedure after 10 years of its happenings.

Thanking you,

Yours faithfully,

(K. K. SINGH)

**TRUE COPY**  
Suresh Agarwal  
Advocate.

*(Signature)*  
Dawa

9/2) MCD 1196/235 dt. 22-1-96 70. 24 81/7 56  
GOVERNMENT OF INDIA  
CENTRAL PUBLIC WORKS DEPTT.

MANIPUR CENTRAL DIVISION - I. TULIHAL AIRPORT IMPHAL - 795140

ref no. S(2)/4100-1/96/2344

dt. 22/1/96

to

The Superintending Engineer (Inquiry)  
Vigilance Unit, C.P.W.D.,  
Nirman Bhawan, New Delhi.

sub : Submission of Documents required in the :  
Departmental inquiry into the charges framed against Sh K.K. Singh,  
AE(C), C.P.W.D. under Rule 14 of the C.C.S. (CC&A) Rules, 1965.

ref : Your letter No. SE(Inquiries)/5/951/ Dated 14-12-95

Sir,

The documents requisitioned in connection with the above mentioned inquiry are very exhaustive and large, being practically the entire record of the Division for the period from 18<sup>8</sup>/<sub>81</sub> to 30<sup>1</sup>/<sub>87</sub>. While efforts are being made to put the same together for onward transmission to the Presenting Officer, it is submitted that this division is severely understaffed and is working in extremely adverse circumstances in Manipur, where Law and Order is disturbed. It is therefore requested that the records which are more essential may please be sought first and such a list may please be supplied to this office. It is also requested that the possibility of conducting the relevant part of the Inquiry at Imphal may also please be considered.

seems difficult - ?

to be discussed early

awa  
TRUE COPY  
Saver copy to

Anupam Agarwal  
19/1/96

(ANUPAM AGARWAL)  
EXECUTIVE ENGINEER

- 1 The Superintending Engineer, Silchar Central Circle, C.P.W.D., Silchar for information and necessary action, with a copy of the letter referred.
- 2 Sh Hardipender Singh, EO (D) I, Vigilance Unit, C.P.W.D., Nirman Bhawan, New Delhi for information.

S.E. (Inquiries) C.P.W.D.  
Dy. No. ... 68 ...  
Dated ... 24/1/96 ...

EXECUTIVE ENGINEER *awa*

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Recd. A.D.

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To

Shri Hardipendar Singh,  
Engineer Officer, I,  
Govt. of India,  
Directorate of Works,  
C.P.W.D. (Vigilance Unit)  
Nirman Bhavan,  
New Delhi

Sub: Shri K.K. Singh, Asstt. Engineer (C) -  
(Rtd.) Departmental Action.

Ref: Your letter No. 1/5/94.V.S.2 Dated 19.10.94.

Sir,

You are requested to correspond with me in English as I have little learning of Hindi and failed to understand it. No photostat copy is attached with your letter under reference. I again request you to make me available the record asked by me to enable me to reply to the charges as it is very old case and nothing can be remembered in detail.

Thanking you,

Yours faithfully,

*[Signature]*  
2/12/94

(K.K. SINGH)

C/O Revd. A. Khapudang  
St. John's Church Compound  
House No. 404 Mehrouli  
New Delhi-110030.

Dated: 2/12/94.

S/c

TRUE COPY  
Suren Naomis  
Advocate.

*[Signature]* Dawa

To

Sh. Hardiponder Singh  
Engineer Officer (D) I,  
Directorate General of Works  
Central Public Works Department  
(Vigilance unit)  
Nirman Bhawan,  
New Delhi.

No. 5117/26.11.11

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Sub: Department inquiry against Shri K.K.Singh,  
Asstt. Engineer (C) Retd.

Ref: Your No. 1/5/94-VS.II dated 16/12/1994.

Dear Sir,

You have desired that at this stage I shall accept or deny the charges levelled vide charge sheet dated 24.2.94. According to para 2 of the Memorandum No.13/11/88-VS I dt. 23/24-2-94 written statement of defence is to be submitted. And according to para 3 of the said memorandum each article of charge is specifically admitted or denied.

In case para 2 of the said Memorandum is not required to be complied with, I request you to get it deleted from the Memorandum. It is also to inform you that inquiry under Rule 14 of the Central Civil Services (Classification, Control and appeal) Rules 1965 can be made for those Govt. Employees who are serving. But I was made to retire on 28.2.94. Thus the Memorandum is to be revised accordingly as applicable to retired Govt. Employees.

Had fully record be shown to me at the time of call of explanation and I replied accordingly, I am sure the charge sheet should not be issued.

It is not out of place to add that you have called for the explanation of assumed misconduct on 4-12-91 for the happenings occurred in 1982-83 i.e. after 8 years of its happening. The reply was furnished from my fade memory on 7.4.92 in the absence of record and you have issued the

TRUE COPY  
S. N. Vasudeva  
Advocate

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Memorandum of charge sheet on 24.2.94 just four days left for my retirement which speaks the hollowness of the allegation as I applied for Vigilance clearance certificate so that the Pensionary benefits be drawn by me. The issues of Memorandum just when only 4 days of service left is with the sole aim of depriving me of my dues and is bad in law and against the natural law of justice.

At the end, I request you to make all the records available as asked for by me vide my letter dated 21.3.94 to enable me to reply to para 2 and 3 of the Memorandum of charge sheet issued under your No.13/11/88-VS.I dated 23/24-2-94.

Thanking you,

Yours faithfully

*K.K. Singh*  
(K.K. SINGH) 4/1/95

Asstt.Engineer (Retired)  
C/o Revd. A.Khapudang,  
St.John's church compound,  
House No.404, Mehrauli,  
New Delhi-110030.

*S/c*

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Suren Nandan  
Advocate.

Copy forwarded to Sh. K.K.Madan, Director General of Works, CPWD, NirmanBhawan, New Delhi with reference to his Memorandum No.13/11/88-VS.I dated 23/24-2-94 with the request to direct his Vigilance unit to make available the records which is not being made available for more than 3 years by them to enable me to reply to charge sheet.

*K.K. Singh*  
(K.K. SINGH)

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Regd No AD No 5195 dt. 4.1.95

*Suren Nandan*

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CONFIDENTIAL  
GOVERNMENT OF INDIA  
CENTRAL PUBLIC WORKS DEPT

MANIPUR CENTRAL DIVISION - I, TULIHAI ADJUNCT OFFICE - 790140

ref 5(1)/MCD-I/96/291C at 28/8/96

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to  
Sh M C Bansal  
Presenting Officer,  
ED (D) I Vigilance Unit,  
C.P.W.D.,  
Nirman Bhawan, New Delhi.

- 1. Subj: Submission of Documents required in the Departmental inquiry into the charges framed against Sh K.K. Singh, AE(C), C.P.W.D. under Rule 14 of the C.C.S. (CCA) Rules, 1965.  
rel: Your letters No. 1/5/94-VSII dt 12.1.96  
No. 1/5/94-VSII dt 10.6.96  
No. 1/5/94-VSII dt 24.7.96
- 2. Departmental inquiry into the charges framed against Sh I A Bhasini, JE(C), C.P.W.D. under Rule 14 of the C.C.S. (CCA) Rules, 1965.  
rel: Your letters No. 1/5/94-VSII dt 12.1.96  
No. 1/5/94-VSII dt 10.6.96  
No. 1/5/94-VSII dt 24.7.96

I am enclosing herewith the following documents required under the inquiries referred to in subject above.

- 1. for departmental inquiry into the charges framed against Sh K.K. Singh, AE(C), C.P.W.D. under Rule 14 of the C.C.S. (CCA) Rules, 1965.

LIST OF DEFENCE DOCUMENTS

- 1. a letter under which the work in question was rescinded;
- A letter of rescission is placed in the file 54(110)P 1 to p 109 (1000) enclosed.
- b Report of AE and notice issued to the contractor: not found in the file.
- c Details of left over materials taken over at the time of rescinding the work: details not known.
- d Details of measurements recorded on rescinding the work: not available; only final bill of the rescinded work is available and is enclosed (18 sheets) with IE No. MCD/AB/2-89.
- e Letters asking the contractor to return the material: no such letter is available.

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Shri N. A. E. Advocate (D)

Pl. Check whether all the enclosures are enclosed. It is for on the part of SO(VSII) after discussion of 05/8/96

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...taken against the contractor for recovery of dues...  
...in the final bill (see above).  
...of such works with their final bill.

1. Cement Registers of the work during his posting in the said  
division for the period in question:  
It has been found that M/S B/C has not been maintained for the work  
(refurb 102 for the file 54(170)). Cement register was sent to SE/Assam  
Central Circle but has not yet been received back.

2. Copies of indents placed for cement/steel by the executive engineer/AE on  
the stores for the period in question:  
Indents furnished under it below as supplied by the AE, MCSD I:

3. File containing instructions issued from time to time during the period in  
question and copy of my report to Executive Engineer for action against the  
contractor for shortage of materials and action taken thereon:  
All the correspondence has been made from file 54(170) which is enclosed.

4. Correspondence and accounts files to works of the Division and Sub-division  
pertain to contract and correspondence.  
For the division the file is 54(170). There is no specific file in the sub-  
division pertaining to the work.

5. Division and Sub-division register for the issue of different register:  
Register for issue of registers for the division and sub-division is not  
available.

6. final bill for the work and rescinded work with connected records and  
NIT:  
final bill for the work enclosed.

DETAILS TO BE SUPPLIED WITHOUT RECORD

1. list of works executed in the Sub-Division/Division during posting in  
the Division.  
no works executed in the sub-division
2. List of works executed by the contractor along with security deposit and  
the amount withheld.  
No other works done by the contractor.

3. Details of jurisdiction of the Sub-division with distance from the head-  
quarters.  
The sub-division was attached with the division at Imphal.

4. departmental inquiry into the charges framed against Shri A Majumdar,  
JE(O), S.C.P.M.D. under Rule 14 of the C.C.S. (CCA) Rules, 1965.

5. Original (copies of the following indents :  
quadruplicate (original) copies (original copies have been forwarded with  
monthly accounts to PAO office ) of the following indents enclosed:  
cont'd...3

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- 1. B-924292 dt. 21.9.83
- 2. B-924452 dt. 9.12.83
- 3. B-924486 dt. 29.1.84
- 4. B-924261 dt. 7.04.84
- 5. B-924275 dt. 11.5.84
- 6. B-924278 dt. 16.5.84
- 7. B-924295 dt. 24.7.84
- 8. B-924294 dt. 31.5.84
- 9. B-924260 dt. 24.4.84
- 10. B-950115 dt. 25.10.84
- 11. B-950103 dt. 13.9.84

The AE, MCSO I has reported that the full bunch of indents for 3/84 and 4/84 has been located and indent No. B924251 dt 12.3.84 is not available therein.

2. Summary of indents prepared by the JE/store as covering for the period 9/83 to 10/84  
As per record, during the period summary of indents was not being prepared.

3. Sub-divisional Indent Register for the period 9/83 to 10/84 :  
is not available.

4. Correspondence file of the work C/O 2 Nos\* Type IV Qtrs. at C.A. Imphal :  
copies of following letters from file 25(7)/MCSO1 are enclosed :  
No 3444 dt 16.12.87  
No 3455 dt 17.12.87  
No 1109 dt 17.12.87  
No 649 dt 28.3.88

There is no specific correspondence file for the work.  
The receipt of the records may please be acknowledged.

encl :  
A,B,C(11 indents),D(4 letters)

*Anupam Agarwal*  
(ANUPAM AGARWAL)  
EXECUTIVE ENGINEER 28.9.96

copy to :

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- 1. Sh R D Aggarwal, S E (Inquiry), Vigilance Unit, C.P.W.D., Nirman Bhawan, New Delhi. with ref to your letters
- No. SE(Inquiries)/13/94/2 dated 13.12.95
- No. SE(Inquiries)/5/95/1 dated 14-12.95
- No. SE(Inquiries)/13/94 dated 18.01.96
- No. SE(Inquiries)/5/95 dated 29.03.96
- No. SE(Inquiries)/13/94 dated 30.04.96
- No. SE(Inquiries)/5/95 dated 21.06.96
- No. SE(Inquiries)/5/95 dated 14.08.96

My letter 13/94/1-3 dt 22.8.95 has not been cont'd. 4

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Advocate.

*Anupam*

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Assessment of Evidence

Article-I

The CO in his final brief dated 25.6.987 has brought out as follows:-

i) Sh.K.V.Ch.Rama Rao was called as prosecution witness who retired as EE, Appropriate Authority, I.T., Madras and prior to that he was EE (Vig) from 16.12.93 to 14.11.94. He was neither the EE incharge of works nor he was the investigating officer. He was also not an eye witness and he was not related with the case.

ii) As per annexure-II, the contractor abandoned the work sometime after 10/84 and also removed excess materials issued from store. DWII deposed that he was transferred from the sub.dn. in 11/84.

iii) Sh.V.P.Singh, the then EE, MCD (DWI) deposed that registers at Exb.P4 and Exb.P5 are not the same which were issued by the divisional office. DWI confirmed that different registers for use on contract works were issued by the divisional office for which a register is maintained by head clerk. PO however failed to produce the divisional office and sub. divisional office register for issue of different registers.

iv) EE, MCD-I confirmed vide his letter No.5(1) MCDI/2810/ dated 28.8.96, item No.2 on page 2 cement register was sent to SE, Assam Central Circle but not yet been received back and also confirmed by PO vide his No.1/5/94-VS2 dated 12/14.2.97. When PO is also having another cement register which he produced as Exb.P5 proving thereby that in fact PO is dealing with two cement registers one with him at Exb.P5 and other with SE, Assam Central Circle as stated above.

v) PO also failed to point out in what respect the alleged fabricated cement register (not original one) which was issued by Divisional office to CO and in turn by CO to JE) is not in accordance with para 14 of Section 27 of CPWD manual vol.II, 1972 Edition. On comparing the columns of the alleged (fabricated) register it is seen that almost all columns of appendix 18 are there in the fabricated cement register at Exb.P5 but only serial numbers differed. The CO also intimated IO and PO vide his letter dated 21.6.95 (annexure-I) that PO was not having original documents.

vi) Preface of CPWD manual vol.I, II & III will establish that these are for general guidance and not reference book as no action quoting them as

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authority can be taken, as explained at different stages during the submission.

Parawise comments are offered as follows:-

i) Sh.K.V.Ch.Rama Rao has been called as a prosecution witness, as he was the investigating officer in the case and the charge sheet served on the CO was finalised during his period. The name of Sh.K.V.ch.Rama Rao appears in annexure-IV of the charge memo and hence in order.

ii) As admitted by the CO in para V(a) page 3 of his final brief, there was difference in qty. of cement available at site as per Exb.P5 and quantity of cement as per theoretical calculations in Exb.P3/1. p3/3 and p3/4 even during the tenure of CO.

iii) Sh.V.P.Singh the then EE, MCD (DWI) confirmed that different registers for use on contract works were issued by the divisional office for which a register is maintained by head clerk. DWI also deposed that Exb.P5 and Exb.P4 are not the same which were issued by divisional office. In this connection it is pointed out that it cannot be confirmed at this stage in the absence of register for issue of registers said to be maintained by Head clerk as to whether any register was issued by the divisional office for the work under consideration. If however as per the practice in the MCD all registers were issued by the divisional office, then it is to be explained by CO as to why the original registers so issued by the divisional office have not been used.

iv) Regarding the authenticity of the cement register at Exb.P5, a letter was addressed by this office on 8.9.98 to EO(D)I (Available at annexure-I). The EO(D)I, CPWD Vigilance, confirmed vide his letter No.1/5/94-VS2 dt. 8.9.98 that the cement register and site order book were received by the Vigilance Unit sent by SE, Assam Central Circle vide his office letter No.54(643)/ACC/CS/dated 26/27.10.88 (Annexure-II). The PO further intimated that CO in his list of defence documents had asked cement registers of various other works being executed by him at the relevant period. This particular cement register was not asked by CO as defence documents since it was already available with Vigilance Unit. In view of what PO explained above, the register available at Exb.P5 has been considered as authentic.

v) Regarding as to in what respect the alleged fabricated register (Exb.P5) is not in accordance with appendix 18, para 4, Section 27 of CPWD manual II and columns are the same and only the S.No. differed, it

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was intimidated by PW1 that cement register does not confirm to the columns given in appendix 18 of CPWD manual vol.II. PW1 further deposed that if cement register is not maintained by JE in proper shape in that event, the AE should have pointed out and got them rectified. Sh. K.K.Singh, DWII while answering Q.No.6 during cross examination however confirmed that he had written a letter in general to PO/IO and also confirmed that he had not pointed out doubt about the authenticity of two registers at Exb.P5 & P4.

vi) Though CPWD manual vol.II & III are the books for general guidance but the same are to be followed in the absence of any other book giving detailed rules and regulations.

Based on the evidence before me the charges in Article-I levied against the CO are proved.

Article-II

The CO in his final brief has brought out as follows:-

i) The cement register now produced at Exb.P5 is not the one which CO issued to JE and was in use upto the period CO was in charge of work. A perusal of letter at page 27 of Exb.D1 reveals and proved beyond doubt that CO was test checking the cement and other materials and shortages were also pointed out.

ii) PO failed to produce the records and sub division file wherein correspondence was made about the shortage and checking of cement/other material were carried as well as cement register where I gave remarks about shortage after test checking at site.

iii) The cement register now produced is fabricated one as explained in Article-I above and other detailed and submission on pages 1 to 7 of briefs.

iv) The cement register at Exb.P5 has no signatures of AE/EE for test checking. The test checking is established from the fact, when CO on test checking found shortage, asked the contractor for the same with copy to EE and JE vide No.23(3)/83-MCDI/741 dated 24.9.83 (page 27 of Exb.D1) but the fabricated register at Exb.P5 does not have signatures of the AE and remarks made there on by CO. The fabrication of Exb.P5 is further established from the fact that contractor's initials were missing

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Advocate.

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from 2nd page i.e. 13.3.84 to end. The availability of cement also does not tally with theoretical calculations as may be seen from chart below:

Exb.	Qty. of cement issued	Cement consumed as per theoretical calculation (without wastage)	Balance as per theoretical Calculation	Actual balance in the register
P3/1	10 MT	8.023 MT	say 40 bags	32 bags
P3/3	28 MT	16.215MT	say 236 bags	Nil from 23.7.84 to 26.10.84.

Moreover work was in progress from 23.7.84 to October 84 and measurements were also recorded in 9/84 and 11/84 (Exb.D2/2 page 26 to 30 of MB 532). It proves beyond any doubt that cement register at Exb.D5 now produced is a fabricated one.

Observations

i) PW1 during his examination-in-chief deposed that the cement register at Exb.P5 has not been checked even once by the AE/EE though the cement godown and registers are required to be checked by SDO/EE in charge of work at least weekly or fortnightly respectively in case of works at the head quarters as per provisions of para 14 of section 27 of CPWD Mnaual vol.II.

ii & iii) The authenticity of cement register at Exb.P5 has been proved in para vii of article-I above. The authenticity of the cement register has also been admitted by the CO vide para 4 of CO's letter dated 15.2.95 (para 4 page 5 of letters attached with CO's final brief).

iv) The CO wrote one letter to contractor initially on 24.9.83 and since then there is no letter from the CO pointing out any discrepancy/shortage in cement/steel. It might be possible that CO checked cement/steel and wrote a letter to the contractor on 24.9.83 itself and did not bother himself to record the same in cement register. The non-signing of the cement register by the contractor frompage 2 onwards till end and non-checking of the cement register by AE are to be explained by the CO. The CO vide para (d) of his letter dated 3.4.92 addressed to Sh.A.K.Bhatnagar,SE(V), admitted that weekly/fortnightly checks were never pointed out by Auditor/DA/EE and they were fully satisfied about the procedure in vogue at that time. Against Ist RA bill, the balance of cement as per theoretical

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calculations and as per actual balance in the cement register tallies if 5% wastage taken in the theoretical calculations is accounted for.

However the balance of 172 bags (28.00-19.40)x20 as per theoretical calculations of 3rd RA bill does not tally at all. This shows either some work has been left out unmeasured or the cement register has not been maintained properly and the certificate given on the body of the theoretical consumption statement is false. The final bill at Exb.P3/4 shows double recovery of 12.434 MT cement which tallies with the Exb.P5 available on record. This also shows that the contractor started removing materials during the progress of work itself which is clear from the following details:

At the end of 3rd RA bill	Total issue = 28.00MT
Cement consumed as per TC	= 1703 MT
Qty. of cement recovered	= 19.40 MT
Balance at site as per TC	= 28.00-19.40=8.60MT
	say 172 bags.
Actual balance at site as on 28.8.84	= Nil

(It shows 172 bags were removed by the contractor from site upto 3rd RA bill as no bag of cement is available at site as per Exb.P5). The CO in para (b) of his letter dated 7.4.92 addressed to SE(V) admitted that material brought at site was less than the quantities issued from the store. If CO had not pointed to the divisional officer, it would never come out as full quantity as per issue was taken over by the contractor and as per USR and entered into MAS account register by JE.

Based on the evidence before me it is seen that the AE had checked the cement & had conveyed the result of his checking to the contractor through letter under intimation to the EE, but failed to check the balances at site in cement register. Thus the charge is proved partially.

Article-III

The CO in his final brief has brought out as follows:-

The contention of PO that material is issued far in excess of requirement is false and denied. A careful study of the indents at Exb.P2 will reveal that the material was indented in very small quantities as may be seen from details given below:

Sl.No.	Description of material	Qty. as per agt. at Exb.P1	Qty. issued as per Exb.P2
1.	Cement	46.00MT	10MT on 22.9.83 Exbn.P2/1

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2MT on 2.1.84 Exb.P2/2,  
 1MT on 15.2.84 Exb.P2/3  
 5MT on 13.3.84 Exb.P2/6  
 5MT on 25.4.84 Exb.P2/8  
 5MT on 1.6.84 Exb.P2/9  
 2.5MT on 27.10.84 Exb.P2/12

Total 46.00MT

30.5 MT in 7 lots

2. Tor-Steel 5.50MT

0.140MT on 2.1.84 Exb.P2/2  
 0.100MT on 18.5.84 Exb.P2/5  
 0.470 MT on 5.7.84 Exb.P2/10.

Total 5.50MT

0.710MT in 3 lots

3. Mild steel 5.50MT

0.55MT on 22.9.83 Exb.P2/1  
 1.02MT on 12.5.84 Exb.P2/4  
 2.00MT on 18.5.84 Exb.P2/5  
 0.70 MT on 9.7.84 Exb.P2/7  
 0.05MT on 25.4.84 Exb.P2/6

Total 5.50MT

4.32 MT in 5 lots upto

11.10.84

From the above it may be seen that no material in bulk was issued to contractor at a time. No material has been issued more than the stipulated quantity in agmt. as may be seen from below:-

Sl.No.	Descriptio of material	Qty. stipulated in agt.	Qty. issued		
			in period of	in no. of lots	total issued
1.	Cement	46MT	13 months	7 lots	30.50MT
2.	Tor steel	5.50MT	07 months	3 lots	0.710MT
3.	Mild steel	5.50MT	10 Mouths	5 lots	(another 3.00MT issued on 11.10.84 Exb.P2/11 but not by CO) 4.32MT

PO has failed to produce original copies of indents on which EE passed orders for issue of material as well as register maintained for the purpose which will reveal as to how further material was issued with EE's authority when material was already available as alleged by PO. EE, MCD, Imphal sent report to CE(EZ) vide his letter No.54(170)/87/MCD/649 dated 24.3.88 (Exb.D8) wherein he stated in para 4 "the quantities issued as evident from the indentwise details attached is quite normal required for such a work. But the contractor all of

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a sudden removed the material and abandoned the work. The quantity issued was complete as per requirement of the work."

Work was rescinded on 30.11.85 (Exb.D1) with the direction that work executed would be measured on 17.12.85. Thus work was in progress and rescinded after one year of transfer of CO when Sh.Hari Das AE was incharge. No details are furnished about taking over of left over material and record of measurements at the time of rescinding. Even no notice was issued to contractor about non-availability of material at site, and also removal of material by contractor. According to Exb.P5, consumption of cement is 590 bags against issue of 610 bags and no cement was removed but charge sheet memo alleged it was removed and thus contradictory to each other. Full work was not measured which is evident from page 26 to 30 of MB No.532 i.e. the work involving use of cement and steel were measured on 4.9.84 and 5.11.84 as it was carried out after 17.7.84. Steel work carried out from time to time was also not measured.

It is also seen that final bill was not 100% checked as there were mistakes in calculations. For example:

Stirrup quantities

p.16 MB 532 =  $2 \times 7 = 14$   
 $2 \times 7 = 14$

-----  
 $14 \times 0.75 = 10.50 \text{ Kg.}$

Whereas it should have been  $28 \times 0.75 = 21 \text{ Kg.}$

C.C.1:5:10

p.26 MB 532 = 7.165 cu.m.

"Not to be paid since 1:5:10 is defective and not to required level".

sd/-  
AE 9.12.85.

It is surprising how this hidden item which was executed after payment of 3rd RA bill was declared after rescinding of work on 30.11.85.

It is said that work was abandoned after 10/84 and thus the work was abandoned when Sh.M.K.Haridass was incharge of work and rescinded after one year of CO's transfer.

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Advocate.

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According to paras 10.7.7 and 10.7.8 of CPWA code it is the duty and responsibility of divisional accountant to see that balances in contractor's ledger does not remain outstanding for a long time. According to CPWA Code para 10.5.21, divisional officer is responsible for keeping a strict watch over the balances under the surpense account of contractors for prompt adjustment by recovery.

According to PW1 deposition, the whole material as provided in the agmt. is to be issued in two lots as the period of execution is 4 months whereas the CO has issued the material in 11 lots and that too for not full quantity. Details of work executed are as follows:

- i) Final bill Vr. No.174 dt. 17.10.87 1,96,903
- ii) Less already paid in 3rd RA bill in 9/84 (-)68,745

Balance work executed after 3rd RA bill Rs.1,28,157/-.

It is learnt that this fact was upheld by Arbitrator and court as well. It is not understood as to why the quantity of work already executed and also the quantity of the balance work got executed from other agency was not produced by the PO.

Thus no material was issued in excess of requirements as admitted by EE, MCDI vide Exb.D8, and that the work executed after 7/84 till transfer of CO and even thereafter were not measured and paid for as well till the date of rescinding of work on 30.11.85 as final bill was passed in 2/88 showing work executed after 3rd RA bill for Rs.1,28,157/- (Exb.P3/4). It was also admitted by department before arbitrator and court.

#### Observations

- i) From the details given by the CO regarding issue of stipulated materials, have been issued in piccemeals (cement in 7 lots, tor steel in 3 lots and mild steel in 5 lots.)
- ii) From the details furnished by the PO and the CO, it is seen that the materials have been issued within the stipulated quantity (except for mild steel) during the tendre of the CO in that sub.dn.

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iii) From the details of the running bills at Exb.P3, it is seen that the materials have been issued much in excess of the anticipated actual requirements as may be seen from the details given below:

sl.No.	Description of material	1st RA bill	2nd RA RA bill	3rd RA bill	4th final bill
i.	<u>Cement</u>				
	(a) issued	10.00MT	18.00MT	28.00 MT	30.50MT
	(b) theoretical requirement	8.42	11.12	17.03	18.066MT
	<u>Excess issue</u>	1.58MT	6.88MT	10.97MT	12.434MT
ii)	<u>Mild steel</u>				
	(a) Issued	0.55	0.55	4.95	7.95
	(b) theoretical requirement	-	-	1.643	1.997
	<u>Excess issue</u>	0.55	0.55	3.307	5.953
iii)	<u>Tor steel</u>				
	(a) Issued	-	0.14	0.71	0.71
	(b) theoretical requirement	-	-	0.046	0.046
	<u>Excess issue</u>	-	0.14	0.664	0.664

From the above it reveals that even at the end of 3rd RA bill which was paid during the tenure of CO:-

a) There should have been a balance of 10.97MT of cement but the cement register at Exb.P5 shows 'Nil' balance as on 28.8.84. The certificate given on page 6/9 that "balance are in the custody of contractor" is also wrong. It also clearly shows issue of cement in excess of requirement of work actually done at site and also issue much in advance of actual requirement.

b) 0.55MT mild steel issued on 22.9.83 was not consumed upto 29.3.84. At the end of 3rd RA bill, 4.95 MT was issued where as the consumption was only 1.643 MT. Thus 3.303 MT was issued in excess of requirement of work actually done at site and also issue much in advance of actual requirement. Even after the completion of balance work it is seen

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that 5.353 MT (1.997+3.356) was required against the total issue of 7.50MT. It also shows that stipulated quantity of 5.50MT was sufficient. Therefore, there was no justification for issue of 3.00MT steel vide indent No.950103 dated 13.9.84 (Exb.P2 page 21/24) during the tenure of CO.

c) 0.14 MT for steel issued on 2.1.84 was not consumed upto 29.3.84. Another 0.57 MT was issued vide indent No.924295 dated 24.7.84 (page 19/24 of Exb.P2). Only 46 kg. was consumed in the work till the contractor abandoned the work. Therefore there was no justification for issue of 0.57 NT for steel which is much in excess of the anticipated actual requirement.

The final measurements made at the time of 4th RA bill, after the contractor abandoned the work, show that quantities paid for items consuming cement and steel upto 3rd RA bill were almost final quantities and very little additional quantities were measured after 3rd RA bill. No proper precautions were taken for the safety of unused materials and it facilitated the contractor to remove the materials from site.

EE MCD while sending report to CE(EZ) vide his no. 54(170)/87/MCD/649 dated 28.3.88 (Exb.D8) intimated that materials issued as evident from the indent wise details is quite normal required for such a work. But the contractor all of a sudden abandoned the work. the quantity issued was completely as per requirement of the work.

As already brought out, the materials have been issued within the stipulated quantity except for mild steel but the provisions of para 6 & 9(a) of section 27 of CPWD manual vol.II have not been taken care of which provides that there is an inherent risk of their pilferage and misuse if such stores are issued to contractor long in advance of their actual requirement.

Based on the evidence before me, it is seen that the materials except for mild steel have been issued within the stipulated quantity & stipulated time of completion of work. The materials have however been issued much in advance of the actual requirements which resulted in loss to the Govt.. The charge is thus proved partially.

Article-IV

The CO in his final brief has brought out as follows:-

As per certificate given on theoretical consumption statements Exb.P3/1 and p3/3, the balance quantity of cement and steel are in safe custody of contractor. It was admitted by EE, MCDI, while making running payments, last being in 9/84.

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Sunder Narayan  
Advocate.

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The fabrication of Exb.P5 is established by the entries which did not correspond with the entries of running account bills as already explained under Articles I.II and III of charges, above.

The deposition of PW1 that balance material was not available at site is wrong in view of the certificates given on the body of theoretical consumption statements at Exb.P3/1 and Exb.P3/3.

It was also agreed and prevailing practice in CPWD and also in accordance with para 10.3.7 of CPWA Code to avoid hardship to contractors, the recovery to be affected gradually as the material issued to the contractor are actually consumed/used on the work executed and as per theoretical consumption, the recovery is effected for which EE is responsible.

In this case AE has only proposed and final order for recovery were made by EE who took upon himself the responsibility in accordance with CPWA Code, treasury rules and also departmental instructions.

As per clause 10 of agreement, "any such stores/material remaining unused shall be returned to the Engineer-in-Charge at a place directed by him, if by a notice by him, he shall so required.....". No such notice is given to contractor even after rescinding the work on 30.11.85 but asked to return cement 12.434MT, mild steel 5.953MT and tor steel 0.665MT on 16.12.87 (Exb.D4) and also asked the contractor to deposit Rs.50620/- being work got executed at his risk and cost.

The arbitration case was dealt in file No.54/170/Arb./92 MCD as per PO letter No.1/5/94 VSII dated 8.11.96 (copy enclosed). The arbitration award was already published vide case No.TKM/ARB/CAL/NEZ/9 dated 30.8.93 by Sh.T.K.Mishra, arbitrator. This fact is deliberately not disclosed by PO or EE. MCDI as study of award will throw all articles of charges to wind.

It is learnt that the arbitration case has already been decided in 1993 in favour of contractor upholding that contractor had executed the work as per 4th and final bill amounting to Rs.1,96,903/-. No double rate recovery of material is allowed and the department had to bear cost as well as interest thereon and also had to make payment for work done from 7/84 to date of rescission i.e. 30.11.85. The PO deliberately not pointed out the fact that arbitration proceedings were over and award published

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and accepted by the department. This award demolishing all the PO contentions as well.

The CO has proposed proportionate recovery of material actually consumed and according to theoretical calculations, keeping in view that balance material was lying at site in safe custody of contractor, has not violated any orders/instructions of the department. Thus the allegations of PO as per charge memo is not proved.

Observations

i) While perusing the 3rd RA bill at Exb.P3/3, it is seen that recovery has been made for 19.40MT cement whereas total quantity issued to the work was 28.00MT and full quantity seems to have been consumed as the cement register at Exb.P5 shows 'NIL' balance since 23.7.84.

ii) The certificate given on the body of theoretical consumption statement that "balances are in the custody of contractor" is also wrong as there was no balance cement as on 28.8.84 as per Exb.P5.

iii) The CO has neither given any reason for not making recovery of 28MT cement nor given any reasons for non-recovery. Similarly neither full recovery has been made non reasons for not recovering full quantity of mild steel and tor steel given by the CO. PW1 deposed that provisions of paras 10.3.6 and 10.3.7 of CPWA Code and provisions of paras 6 & 9 of Section 27 of CPWD manual vol:II have not been followed by the CO.

The papers regarding awarding of award in favour of contractor cannot be commented upon by the IO in the absence of any such paper on the record of inquiry.

PW1 while answering Q.No.6 of IO deposed that though the responsibility for recovery of cost of materials issued to contractor under paras 10.3.6 and 10.3.7 of CPWA Code lies with the divisional account (divisional office), the proposal for recovery should come from sub divisional office. PW1 further deposed that it was the duty of divisional accountant being a financial adviser to the EE to check and preaudit the bill before putting a passorder for payment. PW1 while answering Q.No.8 deposed that when full amount of materials issued were debited to the contractor in the contractor's ledger under the signatures of DA, it is a lapse on the part of divisional accountant for not recovering the full amount from the contractor. PW1 also deposed that if the same contractor is doing several works in the same division, it is the duty of DA/EE to

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recover the amount from the dues available from the other works. PW1 while answering Q.No.11 deposed that it is the responsibility of DA also to point out the discrepancy if any regarding issue and availability of surplus material while checking the bill. The divisional accountant has not even pointed out as discrepancy of cement which shows 'Nil' balance in cement register at Exb.P5 and availability of 10.97 MT cement as per theoretical calculations at page 6/9 of Exb.P3.

iv) The CO has admitted that shortages of materials existed during his tenure which is evident from the contents of para 'h' on page 4 of his letter dated 7.4.92 (annexure-I).

Based on the evidence before me, it is seen that though the CO did not indicate that certain items involving use of cement & steel were left unmeasured but it was not the function of CO to point out regarding full recovery of materials. The charge is thus proved partially.

Article-V

The CO in his final brief has brought out as follows:-

According to para 2 of letter no.65/8/MCD/84/540 dated 4.4.84 available at Exb.P6 which is issued to all AEs of the division; the govt. materials which are not required for the work or are surplus to the requirement should immediately be returned to the stock and so on..... The correspondence made therein from the sub. divisional file asked as defence document has not been produced. But as per para 4 of EE's report dated 28.3.88 (Exb.D8), the quantities of materials issued to contractor is quite normal required for such a work but the contractor all of a sudden removed the material and abandoned the work. Thus it is proved that there was no surplus material which was required to be taken over from the contractor and the deposition of PW1 in this regard is false and malafide. The CO was incharge of sub. division upto 10/84 and transferred in 11/84 and as per the charge memo, the marterial was removed after 10/84 when CO was not incharge of work. My successor Sh.Hari Dass reported vide letter NO.23(3)/85/MCSDI/268 dated 11.7.85 that contractor failed to restart the work, upholding that materials were available at site otherwise Sh.Hari Das would have reported that materials were removed. It proves beyond doubt that no material was removed during the period, I (CO) was incharge of work.

According to Exb.D9, SE, Assam Central Circle issued letter and asked EE to intimate arrangements which were made between the time decision was taken to rescind the contract and contract was rescinded and

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material accounted for. Action taken on SE's letter dated 18.4.85 (Exb.D9) by Sh.M.K.Haridas, AE is not known to CO.

The work was rescinded on 30.11.85 but PO failed to produce any document showing measurements of work already executed were either recorded or any board of officers was constituted to take over the material lying at site, which is said to be removed as done in other cases (Exb.D11&D13).

The deposition of PW1 as per final brief of PO is false as the CO was not incharge of the work after 10/84 and the action to be taken by CO to report to police does not arise.

Sh.V.P.Singh, DW1 intimated during examination in chief "I do not remember whether Sh.Haridas the then AE, submitted any report regarding shortage of material before finalising the work. However at the time of finalising the bill, he submitted report about shortage of material. This implies that no report of shortages of material was ever submitted from the date of abandonment of the work which must be after 11/84 to rescission of work and from rescission of work on 30.11.85 to 17.2.88 (Exb.D3).

From the above submission no charge is proved against the CO and CO was incharge of work upto 10/84 and all happenings as alleged occurred after 11/84 when Sh.M.K.Haridass was AE incharge of work. Moreover, CO had not caused any loss to the govt.

Observations

i) The EE, MCD vide letter No.65/8/MCD/84/540 dated 4.4.84 asked all AEs to return the surplus materials available on various works so that the same could be utilised elsewhere. The CO has rightly pointed out that there was no surplus material on this work as the work was in progress and the materials issued were within the stipulated quantity. There was no indication as on 4.4.84 that the contractor will abandon the work after 10/84. As per EE's report dated 28.3.88 (Exb.D8) also, the quantities issued to the contractor were quite normal.

ii) PW1 deposed that the materials which were in excess of actual consumption, as per page 12/91 of Exb.P3/4, were not available at site and therefore double recovery has been made for these materials removed by the contractor. PW1 deposed that these materials were found short ultimately indicating that these were pilfered.

*(Signature)*

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Advocate

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iii) PW1 also deposed that JE/AE are the site representatives of EE and they should have brought the shortage of materials to the notice of the EE and also lodged complaint with the police for the materials removed by the contractor.

iv) The contention of the CO that the surplus materials were available at site and were not removed during his tenure is proved wrong from the fact that as per Exb.P3/3 (third RA bill), 8.60MT cement should have been available at site on 28.8.84 whereas the cement register at Exb.P5 shows 'Nil' balance from 23.7.84 to 26.10.84. This must have also helped the contractor to set aside the double recovery during arbitration (pointed out by the CO in his final brief) as the cement has been shown as consumed in the work as per cement register at Exb.P5 whereas the fact is other wise.

The CO in para (b) of his letter dated 7.4.92 (annexure-I) has admitted that the CO pointed out to the divisional officer that the material brought at site was less than the quantities issued from the store. However, full quantity as per issue was taken over by contractor and as per USR and entered into MAS account register by JE. Further in para (h) of the same letter, he intimated that he had informed EE for alleged shortages. It was for EE to lodge report to police or ordered the CO to lodge report but no action was taken. From the above it reveals that shortages of materials existed during the tenure of CO in that sub. division.

Sh.V.P.Singh,EE. DW1 deposed during cross examination the situation due to insurgency was so bad that the contractors were not taking the govt. materials at site of work and were keeping at their residence/private godowns. The condition was so bad that in 1983 even the CRPF left the civil air port at Imphal and went into their barracks.

v) The work executed between 7/84 to 320.11.85 was for Rs.1,28,157/- (Rs.1,96,902 (-) Rs.68745)/.

Based on the evidence before me, it is seen that the CO intimated the matter regarding non-receipt of full material at site to the EE but there is no letter on the record of inquiry where the CO had written for the return of materials to the contractor or reported the matter to Police which resulted in loss to the Govt. The article of charges V levied against Sh.K.K.Singh,AE(C) Retd. is thus proved partially.

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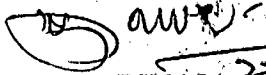
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Findings

The status of charges of articles I to V are as follows:

1. Article-I Proved
2. Article-II Partially proved.
3. Article-III Partially proved.
4. Article-IV Partially proved.
5. Article-V Partially proved.

  
(R.D.AGGARWAL) 27/10/98  
S.E.(Inquiry)  
Inquiry Officer

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Advocate.

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ANNEXURE-A/ 3

To,

The Director General of Works,  
CPWD(Vigilance Unit), Govt.of India;  
Room No.132-A Wing  
Niman Bhavan, New Delhi.

Ref:-REPORT OF ENQUIRY OFFICER NO.SE(INQ)/5/95  
dt.27-10-1998.

Sub:-REPRESENTATION AGAINST THE REPORT OF THE  
ENQUIRY OFFICER

Respected Sir;

With reference to letter under File No.1/5/94-VSII  
dt.2-12-1998 issued by the Engineer Officer(D)1/P.O.  
Office of the Directorate General of Works CPWD(Vigilance  
Unit), Govt.of India; the undersigned beg to avail himself  
of the Opportunities to lay the following few lines for  
your kind perusal and necessary action.

That, at the outset the undersigned beg to state that  
a copy of the report of Enquiry referred above along with  
the letter of the Engineer Officer(D)1/P.O.dt.2-12-1998  
was received by the undersigned through post only on  
10-12-98 and as such this representation could be sub-  
mitted only to-day.

That as regards the finding of the Enquiry Officer,  
the undersigned beg to submit that the conclusion of the  
Enquiry Officer in respect of each of the charges made  
under Article I to V are all perverse and not supported  
by any material documents, Further the Enquiry Officer  
failed to appreciate the entire advance on record. The  
Enquiry Officer should discuss all the available evidence,  
documents, statements recorded along with the procedural  
requirements to be followed in holding the Departmental  
Enquiry.

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Advocate.

Contd...2/-

That as per the materials on record in the D.E. file; all the charges are not proved. The details of the materials on records are more fully described in the final brief dated 25-6-98 submitted before the Enquiry Officer. For easy reference a copy of the final brief is enclosed in this representation.

That, in view of the facts and materials on record the finding of the Enquiry Officer is perverse and not maintainable in the eye of law.

In the circumstances, it is prayed that the findings of the enquiry officer be set aside and the undersigned be debarred from the liabilities of the charges for the ends of justice.

Yours faithfully,

Dt/Imphal,

the 19th Dec., 1998.

Sd/- (Shri K. Khomei Singh)  
A. E. (Retd.)

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Smt. Nona  
Advocate.

भारत सरकार  
निर्माण महाविदेशालय  
केन्द्रीय लोक निर्माण विभाग  
। सतईता एकक ।

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संख्या:- 115194-VSII

बई विलती, विभाक

22/5/20

शापन

विषय:- श्री K.K. Singh, Asst. Engineer, Retd. के विषय  
विभागीय कार्रवाई ।

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उपर्युक्त विषय के संदर्भ में कइरी - विकास मंत्रालय/ निर्माण  
महाविदेशालय/ मुख्य इंजीनियर/ सतईता। का आदेश/ शापन संख्या: \_\_\_\_\_  
C.13012/4199-AVI विभाक S-S-2000 संलग्न है ।

आप से अनुरोध है कि उक्त आदेश/ शापन की पावती संलग्न प्रपत्र की दो प्रतियों  
में भर कर इस कार्यालय को भेज दें ।

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Suresh Nandi  
Advocate.

संलग्नक:- उपरोक्त वरिष्ठ ।

Akshay 22/5  
H.K. Suanthang

अनुमान अधिकारी/ सतईता।-2  
मुख्य मुख्य इंजीनियर/ सतईता।

सेवा में,

Shri K.K. Singh,  
Asst. Engineer (Retd.)  
Sougaijam Leikai  
Moirangkhom  
P.O. Imphal - 795001

Government of India  
Ministry of Urban Development  
(Shahari Vikas Mantralaya)

.....  
New Delhi, dated May 5, 2000

**ORDER**

Shri K.K. Singh, Assistant Engineer (Civil), CPWD was charge-sheeted under Rule 14 of CCS (CC&A) Rules, 1965 vide DG(W), CPWD Memo. No. 13/11/88-VSI dated 23/24.2.1994 and he was called upon to answer the following articles of charge:

"That the said Shri K.K. Singh, while functioning as Assistant Engineer in Manipur Central Sub-Divn., under Manipur Central Division, CPWD, Imphal, got executed the work of 'C/o 2 Nos. Type IV Qtrs. at C.A. Imphal, including internal sanitary and W/s installations from 28.3.83 onwards during which he committed serious irregularities as follows:-

**Article I**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to ensure maintenance of cement register in proper shape.

**Article II**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed in exercising his weekly checks on the balance of cement in cement register.

**Article III**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

**Article IV**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to propose full recovery of the materials issued in each R.A. Bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

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Advocate.

Article V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to get balance materials returned from the contractor. Shri K.K. Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Shri K.K. Singh, A.E., the Government had incurred a loss of Rs. 48,957.30.

Shri K.K. Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS (Conduct) Rules, 1964. ]

2. Shri K.K. Singh, Assistant Engineer (C) (Retd.) denied the charges vide his statement of defence dated 15.2.1995 and accordingly, Shri Anant Ram, S.E. (Inquiries) of CPWD was appointed as the Inquiry Officer vide Order dated 15.3.1995. Due to non-availability of Shri Anant Ram, Shri R.D. Aggarwal, S.E. (Inquiry) was appointed as Inquiry Officer vide Order dated 13.12.1995. The Inquiry Officer submitted his report dated 27.10.1998 in which he held article I of the charge as proved and articles II, III, IV & V of the charge as partially proved against Shri K.K. Singh, Assistant Engineer.

3. As per Government of India's instructions below Rule 15 of the CCS (CC&A) Rules, 1965, a copy of the inquiry report was forwarded to Shri K.K. Singh, Assistant Engineer (Elect.) vide DGW, CPWD letter No. 1/5/94-VS-II dated 2.12.98. Sh. K.K. Singh, AE (C) (Retd.) submitted his representation dated 19.12.1998 against the findings of the Inquiry Officer.

4. The President considered the Inquiry Report, the representation of the Charged Officer against the findings of the Inquiry Officer and provisionally decided to hold article I as proved and articles II, III, IV & V of the charge as partially proved against Shri K.K. Singh, Assistant Engineer and took a tentative decision for imposition of suitable penalty under pension rules to recover the one third of total loss of Rs. 48,957.30 caused to the Govt. against Shri K.K. Singh, AE(C) (Retd.) and referred the matter to the UPSC for their advice about the quantum of penalty that would be imposed upon him.


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Advocate.

5. The Union Public Service Commission, vide their letter No.F.3/330/99-SI dated April 6, 2000 have advised that the ends of justice would be met if a penalty of 10% cut in pension for a period of five years is imposed on Shri K.K. Singh, Asstt. Engineer (Retired), CPWD.

6. The President has considered the advice of the UPSC vis-a-vis the records of the case and has come to the conclusion that ends of justice would be met if a penalty of 10% cut in pension for a period of five years is imposed on Shri K.K. Singh, Asstt. Engineer (Retired), CPWD, as advised by the UPSC. The President orders accordingly.

A copy of the UPSC's advice contained in their letter No. F.3/330/99-SI dated April 6, 2000 is enclosed.

By order and in the name of the President.



(S.N. GUPTA)

UNDER SECRETARY TO THE GOVT. OF INDIA

To

Shri K.K. Singh,  
Assistant Engineer (Retired),  
CPWD

Through, DGW, CPWD  
[Shri J.M. Raj, CE (Vig.)],  
Nirman Bhawan,  
New Delhi.

**TRUE COPY**  
Suresh Narain,  
Advocate.

Dt:- 6/4/2000

The Secretary to the Govt. of India,  
Ministry of Urban Development,  
(Shahari Vikas Mantralaya),  
New Delhi

Attn :- Shri S.C. Sharma, Dy. Chief Vigilance Officer

Sub :- Departmental inquiry against Shri K.K. Singh,  
Assistant Engineer (C) (Retd.), CPWD

Sir,

I am directed to refer to your letter No. C-13012/4/99-AVI dt. 18.11.1999 on the subject mentioned above and to convey the advice of the Commission as under :-

2. Vide Memo No. 13/11/88-VSI dt. 24.2.1994, issued under rule 14 of CCS (CC&A) Rules 1965, Shri K.K. Singh, Assistant Engineer (C) (Retd.), CPWD was called upon to answer the following article of charge.

That the said Shri K.K. Singh, while functioning as Assistant Engineer in Manipur Central Sub-Division, under Manipur Central Divn., CPWD, Imphal, got executed the work of C/o.2 Nos. type IV Qtrs. at C.A. Imphal including internal sanitary & W/S installations from 28.3.1983 onwards during which he committed serious irregularities as follows :-

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Advocate.

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Article-I

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to ensure maintenance of cement register in proper shape.

Article-II

That during the aforesaid period and while function in the aforesaid office, the said Shri K.K.Singh, failed in exercising his weekly checks on the balance of cement in cement register.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

Article-IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to propose full recovery of the materials issued in each R.A. bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

Article-V

That during the aforesaid period and while functioning in the aforesaid office, the said Sh. K.K.Singh, failed to get balance materials returned from the contractor. Shri K.K.Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Shri K.K. Singh, AE, the Government had incurred a loss of Rs.48,957.30.

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Suresh Narain  
Advocate.

Shri K.K.Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS Conduct Rules 1964.

3. A statement of imputation of misconduct/misbehaviour in support of article of charge framed against the CO was also enclosed with the above said memo. On denial by the CO of the charges against him, the case was remitted to inquiry. The IO in his report has found Article-1 of the charge as proved and Article-II, III & V, as partly proved. The IO's report was accepted by the DA and a copy was sent to the CO for any representation he may wish to make. The CO submitted his representation on 9.12.1998. The Minister, on behalf of the President, considered the IO's report, the representation of the CO against the findings of the IO and has provisionally decided to hold Article-I as proved and Article-II, III & V of the Charge, as partially proved. He has also taken a tentative decision for imposition of a suitable penalty under the Pension Rules to recover 1/3<sup>rd</sup> of the total loss suffered by Government, of Rs. 48,957.30, from the CO. The Ministry has sent the case to the Commission for advice in this case.

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S. N. S. N. S.  
Advocate

4. Since the CO has retired from Government service on superannuation the proceedings are deemed to have been continued under Section 9 of CCS(Pension) Rules, 1972.

5. The case records have examined in detail by the Commission. As regards the background of the case the Commission observe that the CO while functioning as Assistant Engineer in Manipur Central Sub-Division, under Manipur Central Division, CPWD, Imphal, was put in-charge of the work to construct 2 Nos. of Type IV quarters at C.A. Imphal including the internal sanitary & W/S installations. The contract was awarded to one Shri S.Ibochauve Singh, by the Executive Engineer on 28.3.1993 with the stipulation that the work would commence on 12.4.1983 and be completed in 4 months, by 12.8.1983. The Contractor failed to complete the work and also removed excess materials, issued to him, from the CPWD Store. Several notices were served on the Contractor by the Executive Engineer, Manipur Central Division, but the contractor failed to either complete the work or to return the excess stores issued to him and not utilised in the work. The Contractor then apparently abandoned the work sometime after 10./1984, i.e. more than a year after he was to have completed the work. (According to the Chief Engineer (EZ), CPWD, Calcutta, the work was not 'abandoned' by the Contractor but had to be 'rescinded' at the risk & cost of the Contractor). During the arbitration proceedings which followed in order to recover the excess materials from the

Contractor, the Executive Engineer reported that the following amounts had been issued to the Contractor and were in excess of the theoretical requirements of the work done at the time of abandoning the work :

- a) Cement : 12.431 MT,
- b) Mild Steel: 4.953 MT
- c) Tor Steel : 0.665 MT

6. No action had been taken by the then EE/AE/JE to report the removal of the materials from the site by the Contractor at that crucial time when the work was rescinded. The Police authorities were also not informed. According to the new Executive Engineer in Manipur Central Division, the Contractor, all of a sudden, removed the material and abandoned the work. Action was apparently initiated against the EE/AE and JE, who were involved at that time. This case relates to the charges brought against the AE for his role in the matter.

7. The Commission observe that the charge in Article-I is that the CO failed to ensure maintenance of Cement Register in proper format. The CO in his defence submitted that the Register produced by the prosecution was a fabricated document. The IO did not accept this argument of the CO and found that the Cement Register is genuine as confirmed by Vigilance that this Cement Register was received by them from the office of the Superintendent Engineer. The Commission agree with the IO and also find that the CO had himself accepted the authenticity of this document. The Commission further observe that the document i.e. the Cement Register is not in the proper format as mentioned in Appendix 18 of the CPWD Manual, Volume-II. It does not contain the entries as required by the Manual. Therefore, the Commission observe that the CO failed to ensure proper maintenance of this Cement Register and hold the charge as proved.

7.1. The Commission observe that Article-II accuses the CO of failing to exercise stipulated weekly checks on the balance of Cement in this Cement Register. The CO submitted that he checked cement and other material and pointed out the shortage. The Commission observe that the IO has held that the CO had failed to check the balance of the cement in the Cement Register. The Commission further observe that in fact, in a letter dt. 7.4.1992 the CO had himself stated that "it was humanly impossible to exercise weekly or fortnightly checks of cement in Cement Register". The Cement Register shows that the CO did not check it even once. Therefore, the Commission hold that the charge, as drafted, is proved.

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Advocate.

7.2. As regards the Article-III, the Commission observe that the CO has been charged with signing indents for cement and steel, in excess and much in advance of the requirement, which finally resulted in loss to the Government. The CO submitted that no material was issued in bulk and more than the stipulated quantity to the contractor. The Commission observe from the details given in RA bills that the materials have been issued much in excess of the anticipated actual requirement and also much in advance of actual requirement. Therefore, the Commission hold that the charge levelled against the CO as proved. In this connection, the Commission point out that the IO has also concluded that there has been an issue of cement in excess of requirement of work actually done at site and also issued much in advance of actual requirement. He has come to the same conclusion with regard to the issue of indents for mild steel as well as Tor Steel. He has also added that these materials were issued much in advance of the actual requirement thereby causing a loss to the Government.

7.3 As per Article IV of Charge, the allegation is that the Charged Officer failed to propose full recovery of the material issued in each RA bill even though he did not indicated that certain items involving the use of cement and steel were left unmeasured. The Charged Officer denied the Charge and submitted that he had recorded certificates that the quantity of cement and steel were in safe custody of the contractor and that the responsibility of recovery of balance material was that of the EE. In this regard the Commission observe that as per provision of paras 6 & 9 of section 27 of CPWD manual, the issue of stores should be regulated and restricted to the actual requirements. They also note that PW-1 in his statement has clearly stated that it is for the AE to make the proposal to the divisional office for payment. A perusal of third RA bill reveals that recovery had been made for 19.40 MP Cement whereas total quantity issued to the Contractor was 28.00 MT and full quantity seems to be gave been consumed as per cement register. Therefore, the certificate that balance was in the custody of the contractor is not correct. The Charged Officer has not furnished any reason for not making recovery of 28 MT cement. Regarding mild steel and for steel also, the Charged Officer has not made full recovery and not furnished any reason. Therefore, in view of above, the Commission observe that the Charge that the Charged Officer failed to propose full recovery of material issued in each RA bill, is proved.

7.4 As regards the Articles V of Charge, the Commission observe that the Charged Officer is accused of (a) failing to get balance material returned from the contractor (b) failing to

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Jawahar Naonah  
Advocate.

report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. The prosecution has alleged that the Charged Officer did not take back the quantity of material shown as balance in the third bill in spite of instruction issued by the EE and has the Charged Officer followed these instructions, there would have been no materials with the contractor for removal from the site him and loss sustained to the government could have been avoided. The Charged Officer has submitted that the contractor, all of a sudden, abandoned the work and removed the material, thus, there was no surplus material at site to be taken over. However, the Commission observe that the contractor had removed the material after the Charged Officer had left the post. The Charged Officer in his letter dated 7.4.1992 admitted that the material brought at site was less than the quantity issued from the store. It shows that the material was short from the very beginning and did not reach the site in its full quantity. The same was probably removed on the way before it reached the site. The Commission observe that the Charged Officer did, in fact, inform the EE about the shortages but he did not take any action against the contractor nor did he report the matter to the police. In view of above, the Commission observe that the charge is partly proved to the extent that the Charged Officer failed to follow the instruction of the EE and take back excess quantity of material and that he failed to report the matter above the removal of departmental by the contractor to police authorities.

7.5. To sum up, the Commission hold Articles I to IV of the charges levelled against the CO as proved and Article-V as partially proved. The Commission observe that the CO has clearly been guilty of negligence in this case but the Commission also note that there are mitigating factors such as insurgency, which was plaguing the area at that time thereby perhaps affecting regular checks etc. Nevertheless, there is no doubt, that had the CO been more meticulous in maintaining the Cement Register and in making weekly and fortnightly visits, he would have been able to spot the discrepancies which eventually came to light. However, the most serious charge, the Commission observe, which is proved, is the issue of material to the contractor much in excess and much in advance of the theoretical requirements. The Commission notice that had the CO not signed these indents, the contractor would not have been able to decamp with such large amounts of material, causing loss to the government. The Commission further note that the other charges are of procedural lapses and the CO could have been treated more leniently, had they been the only ones against him.

8. In the light of their findings as discussed above and after taking into account all other aspect relevant to the case,

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 Advocate

the Commission consider that the ends of justice would be met in this case if a penalty of 10% cut in Pension for a period of 5 years is imposed on Shri K.K. Singh. Since no malafides have been charged or proved, his gratuity should be released. They advise accordingly.

9. The case along with all records is returned herewith. Their receipt may kindly be acknowledged.

10. A copy of the orders passed by the Ministry in this case may please be endorsed for Commission's perusal and records.

Yours faithfully

Sd/-

(J.K. Mehra)

Under Secretary

Union Public Service Commission

Tele : 3070820

Encl :-

- 1. Case records as per list attached.
- 2. Two spare copies of this letter.

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Saver Nandan,  
Advocate.

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-प्राप्त-

Mou P's

श्री अदेश / शरण देय

C-13012/499-AVF

दिनांक 5.5.2000

श्री अदेश देय ।

हस्ताक्षर \_\_\_\_\_  
 विनांक \_\_\_\_\_  
 पूरा नाम K.K. Singh  
 पदनाम A.E. (Retd.)  
 पूरा पता Sougaijan Leikai,  
 Morangkhon,  
 P.O. Imphal - 795001

**TRUE COPY**  
 Given Name \_\_\_\_\_  
 Advocate.

-प्राप्त-

Mou P's

श्री अदेश / शरण देय

C-13012/499-AVF

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हस्ताक्षर \_\_\_\_\_  
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 पूरा पता Sougaijan Leikai,  
 Morangkhon, P.O. Imphal - 795001

EM

In the Central Administrative Tribunal  
Guwahati Bench :: Guwahati

OA No. 196/2000

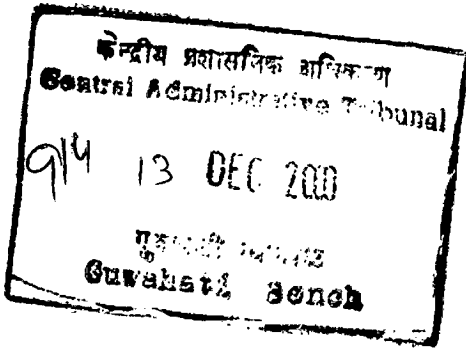
Shri K.K. Singh

..... Applicant

-Versus-

Union of India and others.

..... Respondents.



17  
Filed by  
Seil A. Garg.  
Through RAS.P.A.  
R.R. Bhabha Singh Bhabha  
Atoll. C.G.B.C., CAT.  
Sf. 27/10

WRITTEN STATEMENT FOR AND ON BEHALF OF RESPONDENT NOS. 1 & 2

I, Shri Anurag Garg, Executive Engineer (A)/ACC-I/ CPWD, Guwahati - 21, do hereby solemnly affirm and state as follows:

- 1) That I am the Executive Engineer (A)/ACCI, CPWD, Guwahati -21 and I am under instructions from the Secretary, Ministry of Urban Development, Govt. of India, Nirman Bhawan, New Delhi for taking necessary steps including filing written statement in this original application for and on behalf of Union of India as well as the Director General of works, CPWD (Vigilance Unit) Room No.132, A Wing, Nirman Bhawan, New Delhi. Be it stated that the Union of India and the Director General of Works have been impleaded parties Respondent No. 1 & 2 respectively. A copy of the aforesaid original application has been received from the Respondent No.1 and I have gone through the same and understood the contents thereof. As such I am competent to file this written statement for and on behalf of both the Respondent No 1&2.
- 2) That this deponent does not admit any of the facts, statement, allegations and averments made in the original application save and except those have been specifically admitted hereunder in the written statement. Further the statements which are not born on records have also been categorically denied.
- 3) That this deponent makes no comments as regards the contents of paragraph 1 of the original application since those are matter of records.

anurag 6/12/00

- 4) That as regards the contents of paragraphs 2 & 3 of the original application this deponent does not make any comments.
  
- 5) That as regards the contents of paragraph 4(A) of the original application this deponent respectfully states that the statements are based on the records. However, it is stated that the applicant, Shri K.K. Singh. Assistant Engineer(C) was transferred and posted at different places in India during his service and finally he retired on 28.02.1994 after attaining the age of superannuation, as per the Central Civil Services Rules. From the records, it also appears that Shri Singh was functioning as Assistant Engineer(C) in Manipur Central Sub Division under Manipur Central Division, CPWD, Imphal and executed the work of construction of 2 Nos. type IV quarter at CA Imphal including internal water supply and sanitary installation from 28.3.83 upto October 1984.
  
- 6) That as regards the contents of paragraph 4(B) of the original application this deponent respectfully states from the record that the applicant the said Shri K.K.Singh was issued charge sheet vide Memorandum No.13/11/88-VS-1, dtd. 23/24/2/94 containing 5 Articles of charge (Annexure 1-A).
  
- 7) That as regards the contents of paragraph 4(C) of the original application this deponent respectfully states that the applicant was charge sheeted for major penalty in the departmental proceedings under Rule 14 of CCS (CC&A) Rules 1965 for committing certain serious irregularities in connection with execution of work of construction of 2 Nos. type IV quarters at CA Imphal including internal water supply and sanitary installation during the period between 28.3.83 & October, 1984.

The irregularities as mentioned in the charge sheet dated 23/24/2/94 were comitted by him during the period when he was incharge of the above said work. The 3<sup>rd</sup> running account bill was prepared by Shri K.K.Singh, the applicant on 17.7.84. Thereafter also he was in charge of the work till October 1984 and thereafter he was transferred when the work in question was in progress. Thus, the final bill had to be prepared by his successor, and which was passed by the competent authority after transfer of the applicant. From the records it also appears that the scope of the articles of charges I to V as contained in the charge sheet is limited to the period during which Shri K.K.Singh remained incharge of the execution of the work of construction of 2

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Nos type IV quarters at CA Imphal including water supply and sanitary installation.

8) That as regards the contents of paragraph 4(D) of the original application this deponent respectfully states that the charges of Sri K.K.Singh, Assistant Engineer were governed by the CCS (CC&A) Rules, 1965 while he was in service. After his retirement, the Central Civil Services (Pension) rules, 1972 are applicable on Shri K.K.Singh.

The applicant was charge sheeted as per the CCS(CC&A) rules, 1965 by the competent authority i.e. the Director General of Works, Central Public works Department, Government of India the respondent No.2 hereof vide Memorandum No.13/11/88/VS-1 dated: 23/24/2.94 prior to his retirement which took place on 28.2.94.

Photostat true copy of the aforesaid Memo dt.23/24-2-94 is annexed herewith and marked as Annexure- R 1(A).

It is further stated that a Govt. servant can be charge sheeted during the tenure of his Govt. service by the competent authority for any misconduct of irregularity committed at any time during the service period as and when noticed. As per CCS(CC&A) rules, 1965 (Chapter 9 of compilation by Muthuswamy and Brinda). "Disciplinary proceedings initiated while an officer was in service should be deemed to be proceedings under Rule 9 of the Central Civil Services (Pension) Rules, 1972 after his retirement and should be continued and concluded under the provision of that rule".

Photostat true copy of the extracts from chapter 9 of the Compilation of Muthuswamy and Brinda is annexed herewith and marked as Annexure R 1(B).

It is pertinent to mention that as per the normal procedure, the applicant was directed vide aforesaid charge sheet dated 23/24-2-94 to submit his

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statement of defence within 10 days from the date of receipt of the memorandum of the charge sheet and also to state whether he desires to be heard in person. He was reminded for this repeatedly vide Memo No. 13/11/88-VS-I, dated 26-4-94, 19-10-94, 16-12-94 and 25-1-95.

Photostat true copies of the aforesaid Memo dtd. 26-4-94, 19-10-94, 16-12-94 and 25-1-95 are annexed herewith and marked as ANNEXURE- R II(a) to R II(d) respectively hereof.

It was also informed to the applicant vide letter No.13/11/88-VS-I, dated 26-4-94 that the records which are available in the Vigilance Unit and based on which the charges are proposed to be proved were already shown to him at the time of calling of his explanation at preliminary stage prior to issue of charge sheet dated 23/24-2-94 and it should be possible for him to deny or accept the charges on that basis and further he could requisition more records subsequently. Be that as it may Shri K.K.Singh the applicant submitted his statement of defence to the disciplinary authority on 15-2-95 wherein he denied the charge level against him in the charge sheet.

9) That as regards the contents of paragraph 4(E) of the original application this deponent respectfully states that the statements are made on the bases of records and it is also stated here that the change of inquiry officer was purely due to Administrative reasons and the charged officer was also duly informed immediately about it and such change is permitted under the Rules.

10) That as regards the contents of paragraph 4(F) of the original application this deponent does not make any comments since these are matter of record.

11) That as regards the contents of paragraph 4(G) (I to VI) of the original application this deponent respectfully states that after denial of the charges by the said Shri K.K.Singh, on 15-2-95, Shri Anant Ram, Superintending Engineer, CPWD was appointed as Inquiry Officer vide No. 1/5/94-VS-II, dated 15-3-96 and later on due to Administrative reasons Shri R.D.Aggarwal, Superintending

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Engineer was appointed as Inquiry Officer on 13-12-95 in place of Shri Anant Ram, Superintending Engineer.

Preliminary hearing of the case was held by the I.O. on 8-5-95 and regular hearings were held on 12-3-96, 6-3-97, 7-8-97, 16-10-97, 12-12-97, 8-1-98, 17-2-98 and 1-4-98. The Inquiry Officer has to arrange for defence documents requisitioned by the charged officer. All efforts were made to arrange the documents and allow the same to be inspected by Shri K.K.Singh, Assistant Engineer. Regular hearings were held at close intervals to complete the proceedings in the least possible time. Seven listed documents for prosecution marked as Ex. P-1 to P-7 and also 13 defence documents which were marked as D-1 to D-13 were taken on record by the Inquiry Officer.

The prosecution witness and defence witness were also cross examined and all evidences of inquiry were recorded as per procedural requirement Shri K.K.Singh was thus provided adequate opportunity by the I.O. to defend the case. The charged officer submitted his final briefs to the Inquiry Officer on 25-6-98 and the Inquiry Officer after concluding the inquiry and taking into account all aspects/facts of the case, submitted his findings to the disciplinary authority vide No. SE(Inquiry)/5/95, dated 27-10-98 in which the charge under article-I was held as proved and other charges under article-II, III, IV and V were held as partially proved.

A copy of the report of the Inquiry Officer was also sent to Shri K.K.singh, Assistant Engineer vide CPWD Vigilance Unit letter No. 1/5/94-VS II dtd.2-12-98 to offer him another opportunity to make his representation against the I.O's report, if any., Shri K.K.singh, submitted his representation against the inquiry report vide his letter dated 19-12-98.

The final brief of Shri K.K.Singh, Assistant Engineer dated 25-6-98 submitted by him to the Inquiry Officer is available as a part of record of the inquiry which has also been considered and discussed in detail by the I.O. in his report. The I.O. is not required to give his findings on each and every word of C.O.'s brief. The I.O. is to examine brief of the C.O. broadly and assess the issues raised by the C.O. in his representation and then give his findings on the various issues thus identified.

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There are five articles of charges in the charge sheet and the findings of I.O. as contained in his report issued vide No. SE(Inquiry) 5/95, dt.27-10-98 are as under :-

**Charge under Article-I**

The article of charge states that Shri K.K.Singh, AE failed to ensure maintenance of cement register of the work in question, in proper shape.

The Inquiry Officer has clearly identified all the issues raised by Charged Officer in his defence. He has also countered all three points in his comments by giving detailed reasons which are based on facts, before coming to the conclusion about holding the charge under article-I as proved.

Shri K.K.Singh, AE during inquiry deposed that the cement register under Ex. P-5 has not been issued by him, though he identified the signature of Shri I.A.Majumdar, JE which are available in the register. He also confirmed of being conversant with the initials of JE and the contractor and also identified their signatures during the cross examination. The applicant also informed during inquiry of having received the photo copies of the listed documents on 2-9-97 in compliance to his requisition dated 14-8-97. During the cross examination of the inquiry, Shri K.K.Singh, did not point out about the authenticity of Ex. P-4 & Ex. P-5 i.e., about the two registers (Site Order Book and Cement Register). He also deposed that he did not write any letter in this regard after 2-9-97 i.e., the date when the applicant received the copy of the listed documents after he had inspected them in original.

The authenticity of the cement register of the work as challenged by Shri K.K.Singh, has already been considered and rebutted by the Inquiry Officer in his report. Moreover, Shri K.K.Singh never asked the said cement register (Ex. P-5) as defence documents. He did not challenge the authenticity of the cement register during cross examination held in the inquiry. The authenticity was challenged by Sh. K.K.Singh in his final brief dated 25-6-98 submitted before the I.O. who has considered all arguments put forward by Shri K.K.Singh in this context. By giving his detailed findings under the 'Assessment of Evidence' in his report, the I.O. has held this charge as proved.

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The cement register was to be maintained by the J.E. but Shri K.K.Singh, AE as a controlling officer of the JE, was supposed to advise his JE and ensure that cement register is maintained in a proper shape as per the extant rules/instructions. **The I.O. in his findings has held this charge as proved against the C.O.**

#### **Charge under Article- II**

Under article II of the charge it is alleged that Shri K.K.Singh, AE failed to conduct his weekly check on the balance of cement in the cement register. The I.O. in his findings has observed that the C.O. i.e., Shri K.K. Singh had checked the cement and had conveyed the result of his test check to the contractor through the letter under intimation to the EE but he **failed to check the balance at site in the cement register.**

Had Shri K.K.Singh regularly recorded the result of his test check on the cement register, he could keep watch on the issue of cement with progress of the work and also he could use the same data available in the cement register for preparation of Contractor's bill. This is the main element of charge which has basically led to shortage of material and the Inquiry Officer has held this part of the charge against the C.O. as partially **proved.**

#### **Charge Under Article-III**

Under this article of charge it is alleged that Shri K.K.Singh signed the indents for **cement** and **steel** for the work in question which were in excess of and much in advance of requirements which finally resulted in loss to the Govt. The Inquiry Officer after considering all evidences has held the charge under this Article as partially proved.

#### **Charged under Article-IV**

Under this article of charge it is alleged that Shri K.K.Singh failed to propose full recovery of materials issued to Contractor in each running Account Bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured. This charge is also proved partially by the Inquiry Officer.

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**Charged under Article-V**

Under this article of charge it is alleged that Shri K.K. Singh failed to get balance material returned from the contractor and he also failed to report the matter about removal of departmental stores by the contractor to Police Authorities as well as to the higher officers. On account of these lapses on the part of Shri K.K.Singh, the Govt. has incurred a loss of Rs.48,957.30 P. and this charge is also held as partially proved by the Inquiry Officer.

The Inquiry Officer has considered the various points of defence presented by the charged officer i.e., Shri K.K. Singh in respect of each article of charge and has given detailed reasons for acceptance or not acceptance of the same.

12) That as regards the contents of paragraph 4 (sic) of the original application this deponent respectfully states that final briefs dated 25-6-98 of Shri K.K Singh the applicant are already available as a part of record of inquiry which have been duly examined and considered by the Inquiry Officer as has already been stated in the immediate preceding paragraph. From the records it also appears that the said final briefs of the charged officer dtd.25-6-98 were considered by the I.O.

13) That as regards the contents of paragraph 5 (sic) of the original application this deponent respectfully states that the statements made by the applicant are matter of record, however it is reiterated that the copy of the inquiry report was sent to Shri K.K Singh to enable him to make his submission before the disciplinary authority in regard to the findings of the I.O.

It is pertinent to mention here that the representation dated 19-12-98 of the applicant addressed to the Director of Administration, CPWD has been considered by the disciplinary authority viz. the President of India before passing the final order issued vide No. C-13012/4/99-AV.I dated 5-5-2000.

A true copy of the aforesaid order dt.5-5-2000 is annexed herewith and marked as Annexure- R-III hereof.

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Under the facts and circumstances as has already been elaborately explained in the forgoing paragraphs of the written statement the deponent respectfully submits that this instant original application is not tenable in the eye of law and as such liable to be dismissed.

14) That as regards the contents of paragraph 6 (sic) of the O.A. this answering Respondent respectfully states that the allegation of Shri K.K.Singh that his representation dated 19-12-98 has not been considered is not correct. In the contrary it is well designed. In this regard it may further be stated that the disciplinary authority had consulted with the UPSC before passing the final order. The UPSC vide their communication No.F. 3/330/99-SI, dated 6-4-2000 not only agreed with the I.O.'s report but they had recommended the quantum of penalty.

A Photostat true copy of the aforesaid letter dated 6-4-2000 is annexed herewith and marked as ANNEXURE-~~RIV~~hereof.

Thereafter the disciplinary authority after careful consideration of the applicant's representation dated 19-12-98, Report of the Inquiry Officer, recommendation of the UPSC and taking into account of all other aspects of the matter the final order dated 5-5-2000 was duly passed by the disciplinary authority. As such there is no legal infirmity as alleged by the applicant.

The earlier O.A. No.388 of 1999 filed by Shri K.K.Singh before the CAT Guwahati Bench is still pending in the CAT Bench. Shri K.K.Singh has also filed Misc. Petition 161/2000 in O.A. No.388/99. Counter reply to O.A. No.388/99 has been filed by the respondents in the CAT Bench Guwahati and the final orders of the CAT Bench are awaited. Counter reply to the Misc. Petition No.161/2000 has also been filed by the respondents in the CAT, Guwahati Bench.

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**7 (to be 8) GROUND FOR RELIEFS WITH LEGAL PROVISIONS.**

(A) That as regards the contents of this para graph the deponent does not make any comments since these are matter of records.

(B) The deponent respectfully states that the entire proceeding has been concluded as per CCS(CC&A) Rules 1965 as applicable on Shri K.K.Singh and is based on the records of the work in question got executed by Shri K.K.Singh during his period of Govt. Service as AE(C) CPWD.

(C) the final penalty order has been issued by the competent disciplinary authority i.e., President of India judiciously and as per principle of natural justice after considering the Inquiry Report, representation of the charged officer against the findings of the Inquiry Officer (para 4,5 and 6 of final order dated 5-5-2000 (Annexure III).

(D) the report of inquiry is based on documents of the work taken on record by the Inquiry Officer and Shri K.K.Singh had never disputed the authenticity of documents during the course of inquiry proceedings. Copy of the Inquiry Report was also sent to Shri K.K.Singh for submitting his representations against the findings of the Inquiry Report, if any Shri K.K.Singh submitted his representation to the disciplinary Authority vide his letter dated 19-12-98 which has been duly considered by the DA before passing the final order (para 4,5, 8 of final order dated 5-5-2000 (Annexure-III).

(E) Reply same as in para (D) above.

(F) It is stated that a Govt. servant can be charge sheeted during the tenure of Govt. service by the competent authority for any misconduct or irregularity committed at any time during the service period as and when noticed. As per the CCS(CC&A) Rules, 1965 (Chapter 9 of Compilation by Muthuswamy and Brinda copy of the extract enclosed as Annexure 1B) Disciplinary proceedings initiated while an officer was in service should be deemed to be proceedings under rule 9 of the Central Civil Service (Pension) Rules 1972, after his retirement and should be continued and concluded under the provision of that rule.

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- (G) No comments.
- (H) Reply same as para 7(C)
- (I) Reply same as para 7(D)
- (J) No comments.
- (K) Reply same as under para 6 of the application.

On the whole the answering Respondent respectfully submits that the instant O.A. is liable to be dismissed in as much as the same is devoid of merits and legal valid grounds.

8. Details of the remedies exhausted.

All these are a matter of record and all the representation of Shri K.K.Singh has been considered by the competent disciplinary authority before passing the final order Shri K.K.Singh is allowed to seek review by the President of India even after passing of order by him (i.e., the President of India) but within prescribed time limit after date of receipt of final order by Shri K.K.Singh as per rules 29-A CCS(CC&A) Rules 1965 (annexure IV).

9. Shri K.K. Singh has also filed a Misc. petition No.161/2000 in O.A No.388/99 in CAT Bench Guwahati, which is scheduled for hearing on 5-1-2001.

10. Relief.

Since the final penalty order has been issued by the competent Disciplinary Authority i.e., President of India and accordingly pension payment order of Shri K.K.Singh, AE(Retd.) has already been issued by the Pay & Accounts Officer-XII AGCR Building New Delhi vide No. F.8(PEN)/PA/XII/766 dated 23-6-2000 (Annexure V), it is prayed that the application No. 196/2000 may be dismissed (without cost).

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VERIFICATION

I, Anurag Garg, Executive Engineer(A), ACC-I, CPWD, Guwahati-21, Assam, do hereby solemnly affirm and states that the statements made in this verification including these have been paragraphs 1, 2 and 3 are true to the best of my knowledge and those have been made in paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 are true to the best of my information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

And I verify and sign this verification on this the 6<sup>th</sup> day of December 2000.

Anurag Garg  
DEPONENT

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ANN-R1(A)

~~असि (सि.सि.) (सहायक)~~

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ANNEXURE-I-A  
CONFIDENTIAL

130 (67)

Government of India  
Directorate General of Works  
Central Public Works Department

NO. 252-94

WORKS  
ESTT  
Dated: 24/2/94

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri K.K. Singh, Asstt. Engineer under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substances of the imputations of mis-conduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV).

2. Shri K.K. Singh is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

सहायक अभियंता (सतलुडा)  
नोटिस नं. 388  
252-94

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri K.K. Singh is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CC&A) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

RPS  
25/2/94

5. Attention of Shri K.K. Singh is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1954 under which, no Govt. servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Govt. If any representation is received on his behalf from another person in respect of any matter dwelt with these proceedings, it will be presumed that Shri K.K. Singh is aware of such a representation and that it has been made at his instance and action will

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24/2/94

For n u  
SOLVJ-II

24.10.94  
Assistant Engineer D-1 (Vig)  
कॉन्ट्रोलिंग

CPW-11  
मि.जी. भवन, नई दिल्ली  
Mr. J. B. Bhawan, New Delhi

Contd to P. 2



15 -

Annexure 1(A) (Colic) 12/1  
Annexure 1

132/ (69)

Statement of articles of charges framed against Sh.K.K.Singh, Assistant Engineer (Civil), CPWD.

That the said Sh.K.K.Singh, while functioning as Assistant Engineer in Manipur Central Sub-Divn., under Manipur Central Divn., CPWD, Imphal, got executed the work of 'C/o. 2 Nos. type IV cars at C.A. Imphal, including internal sanitary W/s installations' from 28.3.83 onwards during which he committed serious irregularities as follows:-

Article I:-

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, failed to ensure maintenance of cement register in proper shape.

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, failed in exercising his weekly checks on the balance of cement in cement register.

Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

Article IV

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, failed to propose full recovery of the materials issued in each R.A. bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

Attached

कॉन्ट्रोलिंग इंजीनियर डी-1 (मंत्रालय)  
Assistant Engineer D-1 (Vig.)  
कॉन्ट्रोलिंग इंजीनियर  
CPWD  
निर्माण भवन, नई दिल्ली  
A. man Bhawan. New Delhi

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122  
170  
Annex 1 A (full)  
139

Article V

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, failed to get balance materials returned from the contractor. Sh.K.K.Singh, also failed to report the matter about removal of departmental stores by the contractor to Police authorities as well as to his higher officers. On account of these lapses on the part of Sh.K.K.Singh, A.E., the Government had incurred a loss of Rs.48,957.30.

Sh.K.K. Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3 (1) (ii) of C.C.S. Conduct Rules 1964.

Attended

महेश्वर लाल  
KANISHKA LAL  
सहायक इंजीनियर डी-1 (प्रतिष्ठा)  
Assistant Engineer I-1 (Viz)  
कोलकोता  
CPW  
निर्देशन भवन, नई दिल्ली  
N. Man Bhawan, New Delhi

Ann 1 A (contd) 128, 131, 134

17

Statement of imputations of misconduct or misbehaviour in support of the Articles of charge framed against Shri K.K.Singh, Assistant Engineer (Civil) CPWD

The Executive Engineer, Manipur Central Division Imphal awarded the work of c/o 2 Nos. Type-IV Qtrs. at CA Imphal including internal sanitary and W/S installations to Shri S. Bechauba Singh, contractor vide his letter dated 26.3.83 with stipulated date of commencement as 12.4.83 and stipulated date of completion as 12.8.83. The contractor abandoned the work sometime after 10/84 and also removed excess materials issued from stores. Shri K.K.Singh, who was the Asstt. Engineer incharge of the aforesaid work committed following irregularities during the execution of the work which not only violated departmental instructions but ultimately resulted in loss to the Govt.

(i) As per para 14 of Section 27 of CPWD Manual Vol.II,1972 cement register is to be maintained in the proforma as per appendix 18 and each page of it should be machine numbered and initialled by EEs or the SDOsk. In the instant case the register used is not page numbered and columns are not strictly as per appendix 18. Thus, the Asstt. Engineer, Shri K.K.Singh failed either to issue the cement register in the prescribed manner from his own office or to get the same issued by the divisional office and allowed use of a cement register in improper shape thus violating the departmental instructions in the manner contained in the manual.-

(ii) A perusal of cement register indicate that cement was issued from 20.9.83 to 31.10.84 and AE did not check it even once. The work was situated at the H.Q. of AE and as per provision of para 14 of CPWD Manual Vol.II 1972 he was supposed to check the cement register weekly which he did not. The JE issued cement daily for more than a year. Shri Singh might have visited this site on number of occasions and he could have definitely checked the balance if he had a desire to do so. Thus, he failed in exercising his weekly checks on the balances of cement, in cement register.

(iii) A perusal of all the 11 Nos. indents against which materials were drawn, reveal that these have been issued under the signature of Shri Singh except indent No. B/950103/

*Attended*  
क. कृष्ण लाल (वि.वि.)  
R. K. Singh  
उद्दयक इंजीनियर डि. (वि.वि.)  
Assistant Engineer (Civil)  
क. क. सिंघ  
C.P.W.D.  
निर्माण म. इ. दिल्ली  
A. Man Bha...

CAD/T-IV dated 13.9.84 which was signed by Shri K.C. Singha, JE.

The following statement shows the quantities of various materials issued through these orders, theoretical requirement against the measured quantities in each bill, quantities recovered and balance in the bill.

Material	1st RA bill CV No.9 dt. 5.11.83 MT	2nd RA bill CV No.35 dt.31.3.84	3rd RA bill CV No.33 dt. 13.9.84 MT	4th RA bill TF No.1 of 2/88 MT
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(i) Cement

(a) Issued	10	18.00	18.00	30.50
(b) Theoretical requirement	8.42	11.12	17.05	18.066
(c) Recovered	8.40	11.40	19.40	19.40
(d) Balance	1.60	6.60	8.60	11.10

(ii) Mild Steel

(a) Issued	0.55	0.55	4.95	7.95
(b) Theoretical requirement	-	-	1.643	1.997
(c) Recovered	-	-	2.00	2.00
(d) Balance	0.55	0.55	2.95	5.95

(iii) Tor Steel

(a) Issued	-	0.14	0.71	0.71
(b) Theoretical requirement	-	-	0.046	0.046
(c) Recovered	-	-	0.10	0.10
(d) Balance	-	0.14	0.61	0.61

The statement reveals the following :-

(i) Cement : The uncovered balances at the time of payment of 2nd RA bill and 3rd RA bill were 6.60 MT & 8.60 MT respectively. Another 250 MT cement was issued after 3rd RA although the outstanding balance should have been sufficient for the work done and measured after 3rd RA bill. This clearly shows issue of cement in excess of requirement of work actually done at site and also issue much in advance of requirement.

(ii) Mild Steel : 0.55 MT issued on 22.9.83 were not consumed upto 29.3.84. The theoretical requirement corresponding to the measured quantities of M.S. Items in 3rd RA bill was 1490.28 Kg + 5% wastage + 5% variation = 1.643 MT whereas quantity issued before 3rd RA bill was 4.95 MT. Thus a quantity of 4.95-1.643=3.307 MT should have been available with the contractor at the time of

Attested  
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Assistant Engineer  
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to measured quantities though at that time recoveries were governed by the provisions of paras 10.3.6 & 10.3.7 of CPWA Code and paras 7 & 8 of Section 17 of CPWD Manual Vol.II. As per these paras on the authority of the contractor's acknowledgement, the cost recoverable from him should be debited at once to his personal account. The recovery on account of cost of materials issued to the contractor for use on work should ordinarily be made by deductions from the first bill and in case a lumpsum recovery is undesirable in any case, the Divisional Officer may permit for recorded reasons the recovery to be effected gradually.

In the 3rd RA bill 19.4 MT of cement was recovered leaving a balance of 8.6 MT uncovered whereas the cement register indicates Nil balance at the time showing as if the full quantity issued was consumed at site. Shri K.K. Singh, AE did not record any certificate in the bills which would justify his proposals for non-recovery of full quantities of materials issued. He neither certified that there were unmeasured items not included in the bill which account for the consumption of the balance quantities nor did he certify based on survey of the balance quantities nor did he certify based on survey of the balance quantities of each type and category of materials at site that balance quantity is available at site in the contractor's custody. In fact the final measurements made at the time of 4th RA and final bill after the contractor abandoned the work, show that quantities paid for items consuming cement and steel upto 3rd RA bill were almost final quantities and very little additional quantities were measured after 3rd RA bill. The failure of Shri K.K. Singh to exercise the required control allowed the contractor to remove the unused material from site resulting in the loss to the Government.

(v) In the 3rd RA bill recoveries for 19.40 MT of cement, 2 MT of mild steel and 0.1 MT of tor steel were made against 28 MT of cement, 4.95 MT of mild steel and 0.71 MT of tor steel issued indicating balances of 8.60 MT, 2.95 MT and 0.61 MT respectively. AE should have taken back these quantities from the contractor and there was a general instruction from the EE in this regard issued vide his letter No.65/8/MCD/84/540 dated 4.4.84 copy of which was addressed to Shri Singh also. In this letter the EE instructed his AEs to take back

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the materials which are not required for the work or are surplus to the requirement so that the same could be utilised for other work which will help to reduce costly materials remaining unnecessarily in the custody of contractor without any use. Had Shri Singh followed these instructions, there would have been no materials with the contractor for removal from the site by him and loss sustained to Government could have been avoided.

There is nothing on record to establish that Shri Singh informed EE about the shortage of materials. Being Site representative of the Engineer incharge it was his duty to intimate the EE the exact quantities of various materials removed by the contractor from the site.

He also did not report the matter to the police. On account of all these lapses on the part of Shri K.K. Singh, AE, an amount of Rs.48,957.30 being the cost of balance materials as detailed below, remained unrecovered from the contractor.

Cement 11.10 MT @ Rs.1040/- per MT = Rs.11,544.00  
M.S. bar 5.95 MT @ Rs.5680/- per MT = Rs.33,796.00  
Tor Steel 0.61 MT @ 1/2rs.5930/- per MT = Rs. 3,617.30

Rs.48,957.00

This amount could not be recovered from the contractor as sufficient amount was not due to him which resulted in the loss to the Government.

Shri K.K. Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rule 3(1)(i) & 3(1)(ii) of CCS Conduct Rules, 1964.

Attended  
र-हेगा लाल  
KANCHIYALIL  
सहायक इंजीनियर (सि.वि.)  
Assistant Engineer - (Civil)  
कॉलोनिअलि  
CPW  
विभागीय भवन, तहसील  
N. M. P. Bhawan

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Annexure III  
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List of Documents by which Articles of Charge framed against  
Sr. K. Singh, A.E. (Civil) are proposed to be sustained:-

1. Certified copy of Aqrt. No.27/SE/EE/MCD/82-83.

2. Copies of Indents as below:

- i) B 596292 dtd. 21.9.83.
- ii) B 924458 dtd. 9.12.83.
- iii) B 924486 dtd. 29.1.84.
- iv) B 924275 dtd. 11.5.84.
- v) B 924278 dtd. 16.5.84.
- vi) B 924251 dtd. 12.3.84.
- vii) B 924261 dtd. 7.4.84.
- viii) B 924268 dtd. 24.4.84.
- ix) B 924284 dtd. 31.5.84.
- x) B 924295 dtd. 24.7.84.
- xi) B 950103 dtd. 13.9.84.
- xii) B 950115 dtd. 25.10.84.

3. Certified copies of bills:-

- 1) 1st R/A Bill (C.V.9 of 11/83).
- ii) IIInd R/A Bill (C.V.85 of 3/84).
- iii) III rd R/A bill (C.V.33 of 9/84).
- iv) Final bill.

4. Site order book = 1 No.

5. Cement Register = 1 No.

6. Photostat copy of EE, MCD No.65/S/MCD/84/540 dtd. 4.4.84

Attested  
K. SINGH  
पहायक इंजीनियर  
Assistant Engineer  
कोलोनियाल  
CPV  
निर्माण भवन, नई दिल्ली  
Nirman Bhawan, New Delhi

- 23 -

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Annexure IV

List of witness by whom the Articles of charge framed against Sh.K.K. Singh, A.E. are proposed to be sustained:-

1. Sh.K.V.Ch.Rama Rao, Executive Engineer (V) III, CPWD, New Delhi.

*Attended*  
Kishore Lal  
सहायक इंजीनियर डी-1 (मत्कता)  
Assistant-Engineer D-1 (Vig)  
कॉलोनिओडि  
CPWD,  
मिर्जा भवन, नई दिल्ली  
New Delhi

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ANNEXURE - <sup>P.L.B.</sup> ~~III~~ IV  
(2 sheets)

Swamy's Compilation of

# CCS CCA

## RULES

*Handwritten signature*

व. हेम लाल  
KAMBHIYA LAL  
सहायक इंजीनियर डी-1 (संरक्षित)  
Assistant Engineer D-1 (Vig)  
कंप्यूटिनिस्ट  
C.P.O.  
बंगला, नई दिल्ली  
New Delhi

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and  
**brinda**

CHAPTER 9

Proceedings after Retirement

Disciplinary proceedings initiated while an officer was in service should be deemed to be proceedings under Rule 9 of the Central Civil Services (Pension) Rules, 1972, after his retirement and should be continued and concluded under the provision of that rule. In such a case, the function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under Rule 9 of CCS (Pension) Rules. If as a result of such consideration in consultation with the Commission, it is decided to pass an order under Rule 9, necessary orders will be issued in the name of the President. This procedure will also apply to a case where the President functions as the Disciplinary Authority.

Disciplinary proceedings can be initiated against a retired officer in the manner provided in Rule 9 for the purpose of withholding or withdrawing a pension or any part of it either permanently or for a specified period and also for ordering recovery from pension and/or Gratuity of the whole or a part of any pecuniary loss sustained by the Government on account of the negligence of the retired officer. Such orders can also be passed under that rule and in the manner provided therein, if the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Where any departmental or judicial proceeding is instituted under Rule 9 or where a departmental proceeding is continued under that rule, the retired officer should be granted a provisional pension in accordance with the provision of Rule 69 of the CCS (Pension) Rules, 1972.

[ Rules 136 to 138 of P. & T. Manual, Vol. III. ]

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Right of President to withhold or withdraw pension.—1. The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension either in full or part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

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Handwritten signature and stamp: KANWARI, I. I. L., Assistant Engineer (I) (Vig), dated 10-2-72, New Delhi.

Handwritten numbers: 23, 18, 142

Annex 1 Balle

PROCEEDINGS AFTER RETIREMENT

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five per mensem

2. (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President:

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment—

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

4. In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69, shall be sanctioned.

5. Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant

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Government of India,  
Directorate Genl. of Works,  
Central Public Works Department,  
Vigilance Unit, Nirman Bhawan,  
New Delhi - 110 011.

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No.13/11/88-VSI

New Delhi, the 16 April 1994

To

Sh.K.K.Singh,  
Flat No. 536-A,  
Sector 3,  
R.K.Puram,  
New Delhi - 110 022.

Please refer to your letter No. Nil dated 21.3.94. The records that are available in this Unit and based on which the charges are proposed to be proved were already shown to you at the time of calling of your explanation at preliminary stage. It should be possible for you to deny or accept the charges on this basis.

You may send your requisition for more records subsequently for your detailed submission, if so required.

*Handwritten signature*  
कन्हैया लाल  
KANHAIYALAL  
सहायक इंजीनियर डी-1 (वर्तमान)  
Assistant Engineer I -1 (Vig)  
कॉलोनिअलिजि  
C.P.W.D.  
निर्माण भवन, नई दिल्ली  
Nirman Bhawan, New Delhi

*Handwritten signature*  
(B. MAJUMDAR)  
Superintending Engineer (Vig.)

TRUE  
Secretary  
13/11/88-VSI

*Handwritten signature*

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रजिस्ट्र-ए.डी.

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Reply sent  
on 2/12/93  
under Regd. No. 3/12/93  
4961

संख्या:- 1/5x94-वी.एस.-2

भारत सरकार

निर्माण महाविदेशालय

केन्द्रीय लोक निर्माण विभाग

। येतकता एकक ।

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नई दिल्ली, दिनांक 19-10-94

कार्यालय ज्ञापन

विषय:- श्री के.के.सिंह, सहायक इंजीनियर।वि.। सेवाविद्युत के विस्तार विभागीय कारवाई ।

उपर्युक्त विषय पर आपका पत्र इस कार्यालय के पत्र संख्या 13/11/88-वी.एस.-1 दिनांक 26-4-94 फोटो प्रति संलग्न है। की ओर दिनांक 24-2-94 में जिसमें आपसे प्रत्युत्तर किया गया था कि आप आरोप पत्र दिनांक 24-2-94 में लगाये गये आरोपों को इस स्तर पर केवल स्वीकार या इंकार करें। परन्तु आप कोई भी पत्र इस कार्यालय में अभी तक नहीं पहुँचा है। कृपया इसे तुरन्त भिजवाये अन्यथा नियमावुसार कारवाई शुरू कर दी जायेगी।

संलग्नक:- उपरोक्त वर्णित पत्र की फोटो प्रति

M. V. Singh

हरदीपेन्द्र सिंह ।  
इंजीनियर अधिकारी।अबु.।-1

सेवा में,

श्री के.के.सिंह,  
सहायक इंजीनियर।सेवाविद्युत।  
कवाटर ब. 536-ए खेक्टर-3  
आर.के.पुरम  
नई दिल्ली-22

Mr. V. Singh  
कन्हैया लाल  
KANHAIYA LAL  
सहायक इंजीनियर डी-1  
Assistant Engineer D-1 (V)  
कॉलोनिअल  
CPW II,  
निर्माण भवन, नई दिल्ली  
Mun Bhuwan, New Delhi

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REQD. A. R.  
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No. 1/5/94-VS.II  
Directorate General of Works  
Central Public Works Department  
( Vigilance Unit )

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New Delhi, dated the 16th Dec., 1994

OFFICE MEMORANDUM

Subject:- Departmental inquiry against Shri K.K.Singh, Asstt. Engineer (C) Retd.

With reference to your letter No. NIL dated 2/12/94 on the above mentioned subject, your attention is drawn to this office letter No. 13/11/88-VSI dated 26-4-94 ( copy enclosed ) wherein you have been requested to accept or deny the charges levelled against you vide chargesheeted dated 24-2-94, at this stage. But the same is still awaited. please convey the same immediately otherwise the proceedings will be started as per Rules.

Encl : As mentioned above.

*Hardipender Singh*  
( Hardipender Singh )  
Engineer Officer (D) I.

TO

Shri K.K. Singh,  
Asstt. Engineer (Retired),  
C/O Revd. A. Khapudang,  
St. John's Church compound,  
House No. 404, Mehrauli,  
New Delhi-110030.

*Attended*  
*24-10-2005*  
कन्हैया लाल  
KANHAIYA LAL  
सहायक इंजीनियर सी.ई. (नियंत्रण)  
Assistant Engineer - (C) (Control)  
कॉन्ट्रोलिंग इंजीनियर  
CP  
निर्माण भवन, नई दिल्ली  
Man Bhowan, New Delhi

TAKE  
Sunder Singh  
Advocate

*Relph*

*Sam W*

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No. 1/1/94-VS.II  
Directorate General of Works  
Central Public Works Department  
( Vigilance Unit )

\*\*\*\*\*

New Delhi, dated the 25 Jan., 1995

TO

Shri K.K. Singh,  
Asstt. Engineer (Retd.),  
C/o Revd. A. Khapungang,  
St. John's Church Compound,  
House No. 404, Mehrauli,  
New Delhi-110030.

Subject:-- Departmental inquiry against Shri K.K. Singh, Asstt. Engineer (C) Retd., CPWD.

Sir,

Kindly refer to your Regd. A.D. Letter bearing No. NIL dated 4-1-1995 regarding above noted subject. Your kind attention is drawn to Rule 14(4) of Central Civil Services (Classification, Control & Appeal) Rules, 1965 according to which a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents & witnesses by which each article of charges is proposed to be sustained, have already been delivered to you vide Memo. No. 13/11/88-VS.I dated 24-2-1994 and you were required to submit within 10 days of the receipt of the said Memo. a written statement of your defence and to state whether you were desired to be heard in person. As a very detailed and elaborate statement of defence may not be necessary at this stage but only an opportunity has been given regarding admission or denial of your guilt. For admitting or denying the guilt no inspection of documents is necessary. However, if so desired you may inspect the listed documents in the office of Engineer Officer (D) I, C.P.W.D., Vigilance Unit, Nirman Phawan, New Delhi on 9-2-1995 at 11-30 hrs. Please note that in case your written statement of defence and the statement whether you desire to be heard in person is not received within 10 days thereafter, the same will be taken as denial of articles of charges on your part and further necessary action will be taken as per rules.

You may please note that the departmental proceedings instituted against you before your retirement from Govt. Service are deemed to be proceedings under Rule 9(2) (a) of CCS (Classification) Rules, 1972 after your final retirement on 28-2-1994 and shall be continued and concluded in the same manner.

Handwritten signatures and stamps, including a circular stamp with text: "F. M. 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100".

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No. C-13012/4/99-AVI  
Government of India  
Ministry of Urban Development  
(Shahari Vikas Mantralaya)

New Delhi, dated May 5, 2000

**ORDER**

Shri K.K. Singh, Assistant Engineer (Civil), CPWD was charge-sheeted under Rule 14 of CCS (CC&A) Rules, 1965 vide DG(W), CPWD Memo. No. 13/11/88-VSI dated 23/24.2.1994 and he was called upon to answer the following articles of charge:

"That the said Shri K.K. Singh, while functioning as Assistant Engineer in Manipur Central Sub-Divn., under Manipur Central Division, CPWD, Imphal, got executed the work of 'C/o 2 Nos. Type IV Qtrs. at C.A. Imphal, including internal sanitary and W/s installations from 28.3.83 onwards during which he committed serious irregularities as follows:-

**Article I**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to ensure maintenance of cement register in proper shape.

**Article II**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed in exercising his weekly checks on the balance of cement in cement register.

**Article III**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

**Article IV**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to propose full recovery of the materials issued in each R.A. Bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

Attended  
K. K. CHHAYA  
हायक इंजीनियर डी-1 (विद्युत)  
Assistant Engineer D-1 (Vig.)  
CPWD  
प्रमाण भवन, नई दिल्ली  
n Bhawan, New Delhi

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**Article V**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to get balance materials returned from the contractor. Shri K.K. Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Shri K.K. Singh, A.E., the Government had incurred a loss of Rs. 48,957.30.

Shri K.K. Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS (Conduct) Rules, 1964.

2. Shri K.K. Singh, Assistant Engineer (C) (Retd.) denied the charges vide his statement of defence dated 15.2.1995 and accordingly, Shri Anant Ram, S.E. (Inquiries) of CPWD was appointed as the Inquiry Officer vide Order dated 15.3.1995. Due to non-availability of Shri Anant Ram, Shri R.D. Aggarwal, S.E. (Inquiry) was appointed as Inquiry Officer vide Order dated 13.12.1995. The Inquiry Officer submitted his report dated 27.10.1998 in which he held article I of the charge as proved and articles II, III, IV & V of the charge as partially proved against Shri K.K. Singh, Assistant Engineer.

3. As per Government of India's instructions below Rule 15 of the CCS (CC&A) Rules, 1965, a copy of the inquiry report was forwarded to Shri K.K. Singh, Assistant Engineer (Elect.) vide DGW, CPWD letter No. 1/5/94-VS-II dated 2.12.98. Sh. K.K. Singh, AE (C) (Retd.) submitted his representation dated 19.12.1998 against the findings of the Inquiry Officer.

4. The President considered the Inquiry Report, the representation of the Charged Officer against the findings of the Inquiry Officer and provisionally decided to hold article I as proved and articles II, III, IV & V of the charge as partially proved against Shri K.K. Singh, Assistant Engineer and took a tentative decision for imposition of suitable penalty under pension rules to recover the one third of total loss of Rs. 48,957.30 caused to the Govt. against Shri K.K. Singh, AE(C) (Retd.) and referred the matter to the UPSC for their advice about the quantum of penalty that would be imposed upon him.

Attest  
KAMPHIYALAL  
सहायक इंजीनियर डी-1 (वर्क)  
Assistant Engineer D-1 (Work)  
केंद्र कार्यालय  
CPWD  
एन भवन, नई दिल्ली  
New Delhi

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5. The Union Public Service Commission, vide their letter No.F.3/330/99-SI dated April 6, 2000 have advised that the ends of justice would be met if a penalty of 10% cut in pension for a period of five years is imposed on Shri K.K. Singh, Asstt. Engineer (Retired), CPWD.

6. The President has considered the advice of the UPSC vis-a-vis the records of the case and has come to the conclusion that ends of justice would be met if a penalty of 10% cut in pension for a period of five years is imposed on Shri K.K. Singh, Asstt. Engineer (Retired), CPWD, as advised by the UPSC. The President orders accordingly.

A copy of the UPSC's advice contained in their letter No. F.3/330/99-SI dated April 6, 2000 is enclosed.

By order and in the name of the President.

  
(S.N. GUPTA)

UNDER SECRETARY TO THE GOVT. OF INDIA

To

Shri K.K. Singh,  
Assistant Engineer (Retired),  
CPWD

Through, DGW, CPWD  
[Shri J.M. Raj, CE (Vig.)],  
Nirman Bhawan,  
New Delhi.

Attested  
RANJAN YADAV  
Assistant Engineer (Retired)  
CPWD  
Nirman Bhawan, New Delhi

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CONFIDENTIAL  
F.3/330/99-SI

dt:- 6/4/2000

The Secretary to the Govt. of India,  
Ministry of Urban Development,  
(Shahari Vikas Mantralaya),  
New Delhi

Attn :- Shri S.C. Sharma, Dy. Chief Vigilance Officer

Sub :- Departmental inquiry against Shri K.K. Singh,  
Assistant Engineer (C) (Retd.), CPWD

Sir,

I am directed to refer to your letter No. C-13012/4/99-AVI dt. 18.11.1999 on the subject mentioned above and to convey the advice of the Commission as under :-

2. Vide Memo No. 13/11/88-VSI dt. 24.2.1994, issued under rule 14 of CCS (CC&A) Rules 1965, Shri K.K. Singh, Assistant Engineer (C) (Retd.), CPWD was called upon to answer the following article of charge.

That the said Shri K.K. Singh, while functioning as Assistant Engineer in Manipur Central Sub-Division, under Manipur Central Divn., CPWD, Imphal, got executed the work of C/o.2 Nos. type IV Qtrs. at C.A. Imphal including internal sanitary & W/S installations from 28.3.1983 onwards during which he committed serious irregularities as follows :-

Attested  
KANCHIYAN  
हायक इंजीनियर (C) (Retd.)  
Assistant Engineer (C) (Retd.)  
केंद्र, इलाहाबाद  
दिनांक 10/10/2000

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Article-I

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to ensure maintenance of cement register in proper shape.

Article-II

That during the aforesaid period and while function in the aforesaid office, the said Shri K.K.Singh, failed in exercising his weekly checks on the balance of cement in cement register.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Sh.K.K.Singh, signed the indents for cement and steel which were in excess of and much in advance of requirement which finally resulted in loss to the Government.

Article-IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri K.K. Singh, failed to propose full recovery of the materials issued in each R.A. bill even though he did not indicate in the bills that certain items involving use of cement and steel were left unmeasured.

Article-V

That during the aforesaid period and while functioning in the aforesaid office, the said Sh. K.K.Singh, failed to get balance materials returned from the contractor. Shri K.K.Singh, also failed to report the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. On account of these lapses on the part of Shri K.K. Singh, AE, the Government had incurred a loss of Rs.48,957.30.

*Attested*  
KANCHIYAN  
सहायक इंजीनियर टी-1 (परीक्षा)  
Assistant Engineer T-1 (Vig)  
को. वि. वि. वि.  
- गि. भ. वि. नई दिल्ली  
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Shri K.K.Singh, thus failed to maintain absolute integrity and exhibited lack of devotion to duty and contravened Rules 3(1)(i) & 3(1)(ii) of CCS Conduct Rules 1964.

3. A statement of imputation of misconduct/misbehaviour in support of article of charge framed against the CO was also enclosed with the above said memo. On denial by the CO of the charges against him, the case was remitted to inquiry. The IO in his report has found Article-1 of the charge as proved and Article-II, III & V, as partly proved. The IO's report was accepted by the DA and a copy was sent to the CO for any representation he may wish to make. The CO submitted his representation on 9.12.1998. The Minister, on behalf of the President, considered the IO's report, the representation of the CO against the findings of the IO and has provisionally decided to hold Article-I as proved and Article-II, III & V of the Charge, as partially proved. He has also taken a tentative decision for imposition of a suitable penalty under the Pension Rules to recover 1/3<sup>rd</sup> of the total loss suffered by Government, of Rs. 48,957.30, from the CO. The Ministry has sent the case to the Commission for advice in this case.

4. Since the CO has retired from Government service on superannuation the proceedings are deemed to have been continued under Section 9 of CCS(Pension) Rules, 1972.

5. The case records have examined in detail by the Commission. As regards the background of the case the Commission observe that the CO while functioning as Assistant Engineer in Manipur Central Sub-Division, under Manipur Central Division, CPWD, Imphal, was put in-charge of the work to construct 2 Nos. of Type IV quarters at C.A. Imphal including the internal sanitary & W/S installations. The contract was awarded to one Shri S.Ibochauve Singh, by the Executive Engineer on 28.3.1993 with the stipulation that the work would commence on 12.4.1983 and be completed in 4 months, by 12.8.1983. The Contractor failed to complete the work and also removed excess materials issued to him, from the CPWD Store. Several notices were served on the Contractor by the Executive Engineer, Manipur Central Division, but the contractor failed to either complete the work or to return the excess stores issued to him and not utilised in the work. The Contractor then apparently abandoned the work sometime after 10./1984, i.e. more than a year after he was to have completed the work. (According to the Chief Engineer (EZ), CPWD, Calcutta, the work was not 'abandoned' by the Contractor but had to be 'rescinded' at the risk & cost of the Contractor). During the arbitration proceedings which followed in order to recover the excess materials from the

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or, the Executive Engineer reported that the following had been issued to the Contractor and were in excess of theoretical requirements of the work done at the time of doing the work :

- a) Cement : 12.431 MT,
- b) Mild Steel: 4.953 MT
- c) Tor Steel : 0.665 MT

6. No action had been taken by the then EE/AE/JE to report the removal of the materials from the site by the Contractor at that crucial time when the work was rescinded. The Police authorities were also not informed. According to the new Executive Engineer in Manipur Central Division, the Contractor, all of a sudden, removed the material and abandoned the work. Action was apparently initiated against the EE/AE and JE, who were involved at that time. This case relates to the charges brought against the AE for his role in the matter.

7. The Commission observe that the charge in Article-I is that the CO failed to ensure maintenance of Cement Register in proper format. The CO in his defence submitted that the Register produced by the prosecution was a fabricated document. The IO did not accept this argument of the CO and found that the Cement Register is genuine as confirmed by Vigilance that this Cement Register was received by them from the office of the Superintendent Engineer. The Commission agree with the IO and also find that the CO had himself accepted the authenticity of this document. The Commission further observe that the document i.e. the Cement Register is not in the proper format as mentioned in Appendix 18 of the CPWD Manual, Volume-II. It does not contain the entries as required by the Manual. Therefore, the Commission observe that the CO failed to ensure proper maintenance of this Cement Register and hold the charge as proved.

7.1. The Commission observe that Article-II accuses the CO of failing to exercise stipulated weekly checks on the balance of Cement in this Cement Register. The CO submitted that he checked cement and other material and pointed out the shortage. The Commission observe that the IO has held that the CO had failed to check the balance of the cement in the Cement Register. The Commission further observe that in fact, in a letter dt. 7.4.1992 the CO had himself stated that "it was humanly impossible to exercise weekly or fortnightly checks of cement in Cement Register". The Cement Register shows that the CO did not check it even once. Therefore, the Commission hold that the charge, as drafted, is proved.

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As regards the Article-III, the Commission observe the CO has been charged with signing indents for cement and steel, in excess and much in advance of the requirement, which naturally resulted in loss to the Government. The CO submitted that no material was issued in bulk and more than the stipulated quantity to the contractor. The Commission observe from the details given in RA bills that the materials have been issued much in excess of the anticipated actual requirement and also much in advance of actual requirement. Therefore, the Commission hold that the charge levelled against the CO as proved. In this connection, the Commission point out that the IO has also concluded that there has been an issue of cement in excess of requirement of work actually done at site and also issued much in advance of actual requirement. He has come to the same conclusion with regard to the issue of indents for mild steel as well as Tor Steel. He has also added that these materials were issued much in advance of the actual requirement thereby causing a loss to the Government.

7.3 As per Article IV of Charge, the allegation is that the Charged Officer failed to propose full recovery of the material issued in each RA bill even though he did not indicated that certain items involving the use of cement and steel were left unmeasured. The Charged Officer denied the Charge and submitted that he had recorded certificates that the quantity of cement and steel were in safe custody of the contractor and that the responsibility of recovery of balance material was that of the EE. In this regard the Commission observe that as per provision of paras 6 & 9 of section 27 of CPWD manual, the issue of stores should be regulated and restricted to the actual requirements. They also note that PW-1 in his statement has clearly stated that it is for the AE to make the proposal to the divisional office for payment. A perusal of third RA bill reveals that recovery had been made for 19.40 MP Cement whereas total quantity issued to the Contractor was 28.00 MT and full quantity seems to be gave been consumed as per cement register. Therefore, the certificate that balance was in the custody of the contractor is not correct. The Charged Officer has not furnished any reason for not making recovery of 28 MT cement. Regarding mild steel and for steel also, the Charged Officer has not made full recovery and not furnished any reason. Therefore, in view of above, the Commission observe that the Charge that the Charged Officer failed to propose full recovery of material issued in each RA bill, is proved.

Handwritten notes and signatures:  
K. M. ...  
Asst. ...  
Observer ...  
...

As regards the Articles V of Charge, the Commission observe that the Charged Officer is accused of (a) failing to get balance material returned from the contractor (b) failing to

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Part the matter about removal of departmental stores by the contractor to police authorities as well as to his higher officers. The prosecution has alleged that the Charged Officer did not take back the quantity of material shown as balance in the third bill in spite of instruction issued by the EE and has the Charged Officer followed these instructions, there would have been no materials with the contractor for removal from the site him and loss sustained to the government could have been avoided. The Charged Officer has submitted that the contractor, all of a sudden, abandoned the work and removed the material, thus, there was no surplus material at site to be taken over. However, the Commission observe that the contractor had removed the material after the Charged Officer had left the post. The Charged Officer in his letter dated 7.4.1992 admitted that the material brought at site was less than the quantity issued from the store. It shows that the material was short from the very beginning and did not reach the site in its full quantity. The same was probably removed on the way before it reached the site. The Commission observe that the Charged Officer did, in fact, inform the EE about the shortages but he did not take any action against the contractor nor did he report the matter to the police. In view of above, the Commission observe that the charge is partly proved to the extent that the Charged Officer failed to follow the instruction of the EE and take back excess quantity of material and that he failed to report the matter above the removal of departmental by the contractor to police authorities.

7.5. To sum up, the Commission hold Articles I to IV of the charges levelled against the CO as proved and Article-V as partially proved. The Commission observe that the CO has clearly been guilty of negligence in this case but the Commission also note that there are mitigating factors such as insurgency, which was plaguing the area at that time thereby perhaps affecting regular checks etc. Nevertheless, there is no doubt, that had the CO been more meticulous in maintaining the Cement Register and in making weekly and fortnightly visits, he would have been able to spot the discrepancies which eventually came to light. However, the most serious charge, the Commission observe, which is proved, is the issue of material to the contractor much in excess and much in advance of the theoretical requirements. The Commission notice that had the CO not signed these indents, the contractor would not have been able to decamp with such large amounts of material, causing loss to the government. The Commission further note that the other charges are of procedural lapses and the CO could have been treated more leniently, had they been the only ones against him.

*[Handwritten signature]*  
K. H. V.  
Asst. Secy. (C.E.)  
M. B. S. (C.E.)  
11/11/92

In the light of their findings as discussed above and after taking into account all other aspect relevant to the case,

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Commission consider that the ends of justice would be met in this case if a penalty of 10% cut in Pension for a period of 5 years is imposed on Shri K.K. Singh. Since no malafides have been charged or proved, his gratuity should be released. They advise accordingly.

9. The case along with all records is returned herewith. Their receipt may kindly be acknowledged.

10. A copy of the orders passed by the Ministry in this case may please be endorsed for Commission's perusal and records.

Yours faithfully

*Sd/-*  
(J.K. Mehra)  
Under Secretary  
Union Public Service Commission  
Tele : 3070820

Encl :-

1. Case records as per list attached.
2. Two spare copies of this letter.

*Attached*  
*u-10-100*  
 श्री लाल  
 P. V. LAL  
 सहायक इंजीनियर डी-1 (व.स.)  
 Engineer-D-1 (V.S.)  
 निर्माण भवन, 15 फी  
 Nirman Bhawan, New Delhi

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Annexure R  
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Government servants to show-cause notices were considered and the Union Public Service Commission also consulted, wherever necessary, before the imposition of enhanced penalties.

It is clarified that in case of the kind mentioned in the preceding paragraph, it is not appropriate to set aside/cancel the penalty already imposed on the Government servants, more so when the revising authority is the President, as, strictly speaking, cancellation of the penalty, if done in the name of the President, amounts to modification by the President of the earlier order of the subordinate authority, for which prior consultation with the Union Public Service Commission is necessary under Regulation 5 (1) (c) of the UPSC (Exemption from Consultation) Regulations, 1958. The correct procedure in such cases will, therefore, be to take action in accordance with the first proviso to Rule 29 (1) of the CCS (CCA) Rules, 1965, without cancelling/setting aside the order of the subordinate authority. It is only at the final stage when orders are issued modifying the original penalty, that it would be necessary to set aside the original order of penalty.

[ G.L., M.H.A., O.M. No. 39/2/68-Ests. (A), dated the 14th May, 1968. ]

(6) How to reckon the period of revision of six months.—According to Rule 29 (1) (v) an appellate authority may within a period of six months of the date of the order proposed to be revised call for the records of any enquiry at any time either on his own motion or otherwise and revise any order made under these rules. In D.G., P. & T., Letter No. 15/10/67-Disc., dated the 22nd May, 1968 (not printed) it was stated that the appellate authority, calling for the relevant records of the case with a view to revising an order already passed within six months of the date of the order to be revised would be acting well within this time-limit. It has now become necessary, however, to revise this order in view of a recent judgment of a High Court. Accordingly, it is hereby clarified that it will be incumbent upon the appellate authority to make a specific mention of the fact that it proposes to revise the order already passed, when calling for the papers. In other words, the appellate authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the papers are being called for. At the same time the Government servant should also be informed that the appellate authority proposes to revise the order. It is necessary to ensure that the intention of the appellate authority to revise the orders in this way is conveyed to all concerned within the stipulated period of six months from the date of the order proposed to be revised.

[ D.G., P. & T., Letter No. 6/1/72-Disc. I, dated the 27th July, 1972. ]

(7) Remanding case for revision of penalty.—The President or the P & T Board is competent to remand a case to the disciplinary authority under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for revising the penalty imposed on an employee, if such a revision is necessitated under some peculiar circumstances, as

for example, in a case where the penalty of recovery is ordered but subsequently it is found that no loss has been sustained by the department.

[ Rule 127 of P. & T. Manual, Vol. III. ]

(8) UPSC consultation not necessary for remanding case.—Consultation with the UPSC is not necessary when the President sets aside disciplinary proceedings for non-compliance of Article 311 of the Constitution and remands the case back to the appropriate authority for proper disposal in accordance with the rules.

[ Rule 128 of P. & T. Manual, Vol. III. ]

(9) Effect of setting aside of appellate order.—An appellate order replaces the punishment order. Accordingly, if an appellate order is set aside for procedural defects, the punishment order will also simultaneously stand quashed. In such a case, it should, therefore, be necessary to initiate de novo proceedings against the concerned officer.

[ Rule 129 of P. & T. Manual, Vol. III. ]

[ 29-A. Review

The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary.

GOVERNMENT OF INDIA'S INSTRUCTION

(1) President's power of review.—Attention is invited to Notification of even number, dated the 6th August, 1981, amending Rule 29 of the CCS (CCA) Rules, 1965, and introducing Rule 29-A therein. The amendment has been necessitated by the judgment of the Delhi High Court in the case of Shri R.K. Gupta v. Union of India and another (Civil Writ Petitions Nos. 196 of 1978 and 322 of 1979-1981, Vol. 26, S.L.R. 375) in which the High Court has held that under Rule 29 of the CCS (CCA) Rules, 1965—

1. Inserted rule G.L., M.H.A., Notification No. 1012/1/69-Ests. (A) dated the 6 August, 1981.

Vertical text on the left margin, possibly a stamp or reference number, partially obscured.

Handwritten notes and stamps on the left side, including 'C.P. & T.', 'Assistant Engineer', and other illegible text.

- 14.
- (1) the President has power to review any order under the CCS (CCA) Rules, 1965, including an order of exoneration, and
  - (2) the aforesaid power of review is in the nature of *revisionary power* and not in the nature of reviewing one's own order.

The matter has been examined in consultation with the Ministry of Law who have observed that the judgment of the Delhi High Court would indicate that the President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, Rule 29 of the CCS (CCA) Rules, 1965, has been amended to make it clear that the power available under that rule is the power of revision and a new rule, Rule 29-A, has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted that while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965, exercise the power of revision under that rule, the power of review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction of Rule 29-A, the heading of Part VIII of the CCS (CCA) Rules, 1965, has also been appropriately changed as "Revision and Review".

[G.I., M.H.A., O.M. No. 11012/1/80-Ests. (A), dated the 3rd September, 1981.]

## PART IX

### MISCELLANEOUS

#### 30. Service of orders, notices, etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

#### GOVERNMENT OF INDIA'S INSTRUCTION

(1) Service of orders at residence of subordinate staff not to be made by Gazetted Officers.—It has come to the notice of the Director-General that in certain cases Gazetted Officers have gone to the residence of subordinate staff with a view to serve orders, notices, etc., which the officials were trying to avoid for one reason or the other. The Director-General considers that the practice of deputing Gazetted Officers to serve such notices/orders on subordinate staff at the latter's residence is highly objectionable, besides being embarrassing to the Gazetted Officers concerned.

This question has since been considered that wherever, an officer is satisfied that a subordinate is wilfully evading the acknowledgement of a document, he should record all the facts within his knowledge which lead him to this conclusion on the file, and having done so, the document should be sent to the official concerned by Registered Post, Acknowledgement Due at the last known address of the employee. If the document sent by Registered Post, Acknowledgement Due, is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned.

It may also be impressed on all the employees that if any one fails to turn up to accept a document intended for him, when required to do so, he is liable to be treated as absent from duty without leave and will suffer all the consequences of such absence.

In a rare case where it may be absolutely necessary to depute an official for delivering a document at the residence of an employee, a Gazetted Officer should, in no case, be deputed for this purpose, and an official, not higher in rank than Inspector of Post Offices/Town Inspector/Phones Inspector, etc., be deputed for this purpose, if necessary. [D.G., P. & T., Letter No. 101/1/65-SPA, August, 1965.]

#### 31. Power to relax time-limit and to condone delay

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

#### 32. Supply of copy of Commission's advice

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order.

#### GOVERNMENT OF INDIA'S INSTRUCTION

(1) Copy of advice by UPSC to be given to Government servant.—Rule 32 lays down *inter alia* that a copy of the advice given by the Union Public Service Commission should be furnished to the Government servant concerned. It has been decided, in consultation with the Commission, that henceforth the Commission should furnish two spare copies along with the original advice letter in each case.

[G.I., M.H.A., O.M. No. F. 23/19/60-Ests. (B), dated the 29th December, 1964.]

#### Transitory Provisions

On and from the commencement of these rules, and until the publication of the Schedules under these rules, the Schedules to the Central Civil

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K. H. Y. I.  
Assistant Engineer  
C.P.W.D.  
सहायक इंजीनियर  
क.पी.व.ड.

