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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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allowed date 25/3/2002

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allowed date-24/7/02

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 128/2000 OF 199

Applicant(s) Sri H. Saengaria.

Respondent(s) Union of India and or.

Advocate for Applicant(s) Mr. M.K. Choudhary
Mr. S. Sarma






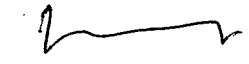



Advocate for Respondent(s)

C.G. Se.

Notes of the Registry	Date	Order of the Tribunal
<p>11.4.00</p> <p>18-4-2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D. Vide D.No. 1143 to 1147 Dtd-19.4.00</p> <p>trd</p>	<p>11.4.00</p> <p>1m</p> <p>11/4/2000</p> <p>15.5.00</p>	<p>Heard Mr.S.Sarma learned counsel for the applicant and Mr.A. Deb Roy, Sr.C.G.S.C. for the respondents.</p> <p>Perused the application. Application is admitted. Issue notice on the respondents by registered post. Returnable by 4 weeks. List on 15.5.00 for written statement and further orders.</p> <p>Member</p> <p>Learned Sr. C.G.S.C. Sri A. Deb Roy prays for two weeks time to file written statement. Prayer allowed.</p> <p>List on 1.6.2000 for written statement and further orders.</p> <p>Member(J)</p>

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Notes of the Registry	Date	Order of the Tribunal
<u>12-5-00</u> no C/S has been fwd. by - Notice returned un-served on R.No.8, Notice duly served on resdnt No 883. 3/7/00	1.6.00 3.7.00 lm 25.7.00 29.8.00 3-11-2000 6.11.00 pg 18.12.00 trd	<p>There is no Bench today. Adjourned on 3.7.00. By h</p> <p>On the prayer of Mr.B.S.Basumatary, learned Addl.C.G.S.C. two weeks time is granted for filing of written statement. List on 25.7.00 for filing of written statement and further orders. Member(A). By h</p> <p>There is no Bench today. Adjourned on 29.8.00. By h</p> <p>There is no Bench today. Adjourned on 6.11.00. By h</p> <p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Six weeks time is granted to the respondents to enable them to file written statement on the prayer of Mr B.S.Basumatary, learned Addl.C.G.S.C. List on 18.12.2000 for written state- ment and further orders. Vice-Chairman By h</p> <p>No representation. List on 1.1.2001. Member(A) Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
	1.1.2001	No written statement has so far been filed by the respondents. List after four weeks for filing of written statement. List on 31.1.01 for written statement and further orders.
<u>12-1-2001</u> Written Statement has been filed by the respondents No. 1-4.	mk 31.1.01 (Shillong)	 Vice-Chairman
 Wfs has been filed.	pg	 Member
<u>29-1-2001</u> No. Rejoinder has been filed.	16.3.01	 Vice-Chairman
<u>15-3-2001</u>	pg	 Member
<u>20-4-01</u> No Rejoinder has been filed.	23.4.01	 Vice-Chairman
 No Rejoinder has been filed.	9.5.01	 Member
<u>21-5</u>	trd	 Vice-Chairman

Notes of the Registry

Date

Order of the Tribunal

22.5.91

Written statement has been filed. The applicant may file rejoinder if any, within 2 weeks from today.

List on 8-5-91 for orders.


Member


Vice-Chairman

bb

(5)

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Notes of the Registry	Date	Order of the Tribunal
	8.6.2001	<p>Written statement has been filed. The respondents may file rejoinder, if any, within two weeks.</p> <p>List on 2-7-2001 for order.</p> <p><i>IC Usha</i> Member</p>
<p>No. Rejoinder has been filed.</p> <p><i>24</i> <i>13.8.01</i></p>	<p>mb</p> <p>2.7.2001</p>	<p>Written statement has been filed. However, applicants has not filed any rejoinder.</p> <p>List for hearing on 14-8-2001. In the mean while applicant may file rejoinder if any.</p> <p><i>IC Usha</i> Member</p>
	<p>bb</p> <p>14.8.01</p>	<p>Prayer has been made on behalf of Mr A. Deb Roy, learned Sr.C.G.S.C for adjournment of the case.</p> <p>List on 20.8.2001 for hearing.</p>
	<p>pg</p>	<p><i>IC Usha</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	<p>20.8.01</p>	<p>On the prayer of learned counsel for the parties case is adjourned to 22.8.01 for hearing.</p> <p><i>IC Usha</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><i>30.8.2001</i></p> <p><i>Copy of the order has been sent to the D/sec. for issuing the rule to the Applicant as well as to L.C.G.S.C. in the Respondent.</i></p> <p><i>HS</i></p>	<p>lm</p> <p>22.8.2001</p>	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.</p> <p><i>IC Usha</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	nk m	

Notes of the Registry

Date

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXXX No. 128 of 2000

DATE OF DECISION 22.8.2001.....

Shri H. Sangawia APPLICANT(S)

Mr M.K. Choudury and Mr S. Sarma ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

5. Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.128 of 2000

Date of decision: This the 22nd day of August 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

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

Shri H. Sangawia,
Store Keeper Grade II,
No.80(P) (NEC),
Survey of India,
Shillong.

.....Applicant

By Advocates Mr M.K. Choudhury and Mr S. Sarma.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Surveyor General of India,
Dehradun, Uttar Pradesh.
3. The Additional Surveyor General,
Eastern Zone,
Calcutta.
4. The Director,
North East Circle,
Survey of India,
Shillong.
5. The Director General,
Surveyor General of India,
New Delhi.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

This application under Section 19 of the Administrative
Tribunals Act, 1985 has arisen and is directed against the order imposing
the punishment of compulsory retirement from service which was also
subsequently upheld in appeal ^{and} under review.

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2. The applicant at the relevant time was holding the post of Store Keeper Grade II in the Office of the Survey of India and posted at the North East Circle, Shillong. While he was serving as such, the respondent authority initiated departmental proceeding under Rule 14 of the CCS (CCA) Rules, 1965. Sequel to the aforesaid enquiry, the authority imposed the penalty of compulsory retirement from service vide order dated 20.8.1996 with a direction for recovery of the depreciated value of loss of stores amounting to Rs.60,128.91 (Rupees sixty thousand one hundred twentyeight and paise ninetyone only) from the applicant's Death-cum-Retirement Gratuity and other pensionary benefits. The applicant thereafter preferred an appeal as well as review before the Appellate Authority, which were also turned down in due course. Being aggrieved, the applicant moved this application assailing the aforesaid orders.

3. We have heard Mr S. Sarma, learned counsel for the applicant as well as Mr A. Deb Roy, learned Sr. C.G.S.C. Considering the materials on record in its entirety it appears that the enquiry conducted by the respondents was not in ^{conformity with} letter and spirit mentioned in the CCS (CCA) Rules, 1965. The applicant, from the inception of the enquiry, raised his objection for change of the Inquiry Officer for the reasons indicated in the application. Despite the objections, the respondent authority concluded the enquiry process ^{by the same inquiry officer.} That apart, in our view the enquiry conducted was in violation of the principles of natural justice. The respondent authority relied upon the alleged admissions of the applicant, seemingly made before the Court of Enquiry. However, those materials which contained his admissions were not furnished. We have also gone through the enquiry proceedings, which also show that the applicant was put to cross-examination from the beginning, instead of following the procedure prescribed in the rules. In the circumstances, it would be difficult to uphold the enquiry proceedings, which terminated in the impugned orders. Accordingly the impugned order dated 20.8.1996 passed by the respondent No.4, Disciplinary Authority, imposing the penalty of compulsory retirement as well as the order dated 16.12.1996 passed by the.....

the respondent No.3, Appellate Authority, rejecting the appeal of the applicant and also the order dated 14.8.1998 passed by the Reviewing Authority upholding the orders of the Appellate Authority and the Disciplinary Authority are set aside.

4. Since we have set aside the enquiry proceeding only on the ground of natural justice, we fully concede with the prayer of Mr A. Deb Roy for allowing the respondents to hold a fresh enquiry as per law. The respondents are directed to complete the disciplinary proceeding as early as possible at any rate within a period of three months from the date of receipt of the order.

5. Subject to the above observation, the application is allowed. There shall, however, be no order as to costs.



(K. K. SHARMA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN

Central Administrative Tribunal

18 APR 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

10

(An application under Sections 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 128 of 2000

Shri H. Sangawia ... Applicant

- Versus -

Union of India & Ors. ... Respondents

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For use in Tribunal's Office :

Date of filing :

Registration No.:

REGISTRAR

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Filed by
Siddhanta Samra
Advocate
6/2/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

O.A. No. 128 of 2000

BETWEEN

Shri H. Sangawia, Store Keeper, Grade-II, No. 80(P) (NEC), Survey of India, Shillong.

... Applicant

AND

1. Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi-110001
2. The Surveyor General of India, Dehradun, Uttar Pradesh.
3. The Addl. Surveyor General, Eastern Zone, 13, Wood Street, Calcutta
4. The Director, North East Circle, Survey of India, Shillong.
5. The Director General, Surveyor General of India, New Delhi

.... Respondents

DETAILS OF APPLICATION

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

The application is against the following orders :

- ✓ (i) Order No.C -527/4-A-302 dated 20.8.96 passed by the Respondent No. 3 imposing the punishment of compulsory retirement from service (Annexure-B).
- (ii) Office Order No. EZ-336 dated 16.12.96 passed by the Addl. Surveyor General, Eastern Zone, Calcutta rejecting the appeal preferred by the Applicant (Annexure-D).
- (iii) Order No. LC-34/1196-PF dated 14.8.98 passed by the Lieutenant General, Surveyor General of India, rejecting the review petition passed by the Applicant (Annexure-F).

(iv) Order dated 29.12.99 issued by the Additional Surveyor General, Eastern Zone, rejecting the prayer for revision (Annexure-I).

(v) Order dated 13.1.2000 (communicating Annexure-I order) (Annexure-J)

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application for which he wants redressal is well within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant files this application assailing the order under Memo No. C-527/4-A-302 passed by the Director, N.E. Circle in his order under Memo No. C-527-4-A.302 dated 20.8.96 passed by the Director, North East Circle, Survey of India, Shillong imposing the major penalty of compulsory retirement, pursuant to a departmental enquiry initiated vide Memo No. C-256/4-A-302 dated 19.5.95 as also the order dated 16.12.96 passed by the Addl. Surveyor General of India rejecting the appeal preferred by the Applicant and the order dated 14.8.98 passed by the Lieutenant General, Survey of India, rejecting the review application preferred by the applicant against the order imposing the punishment.

4.2 That adverting to the facts of the case, your Applicant is a citizen of India and a permanent resident of Shillong and therefore entitled to the protection of the legal rights available under Part III of the Constitution of India.

4.3 That the Applicant was recruited as TTTB (Store Keeper) on 1.7.92 in the office of the Survey of India and posted in the North East Circle at Shillong. The Respondent authorities in recognition of his excellent service was pleased to effect promotion to Grade IV, Grade III and finally to Grade II and was posted at Shillong with the No. 5 Party (NEC).

4.4 That the Applicant was proceeded departmentally under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (the "Rules" for short) and in this regard served a Memorandum being No. C-256/4-A-302 dated 19.5.1995 which consisted of 2 articles of charges, the statement of imputation of misconduct, list of witnesses and a list of documents proposed to be relied upon to prove the charges. The allegations as contained in Article I, revolved around alleged irregularities with Government Stores and failure to amount the deficiencies and thereby misappropriated Government Stores' amounting to Rs.1,62,991/0 thereby violating Rules 3(1)(i) (iii) of CCS (Conduct) Rules, 1964. The irregularities in stores were alleged to have been detected by a Board constituted by Director, N.E. Circle to complete the handing/taking over of stores of

No. 5 Party (NEC) after the transfer of the Applicant to No. 80(P) NEC due to alleged failure on his part to complete the handing over Stores.

Article II alleged that the Applicant while functioning as Store Keeper had allegedly forged the signature of his Os.C. Parties/Verifying Officer in the ledgers and invoices with an intention to hide the loss of Government stores and that some pages of his consumable items register were allegedly missing and exhibited lack of devotion to duty and integrity and violating Rule 3(1)(i) (ii) and (iii) of the CCS (Conduct) Rules, 1964.

Copy of the memorandum dated 19.5.95 referred to above is annexed hereto and marked as ANNEXURE-A.

4.5 That after the issuance of the aforesaid Memorandum dated 15.5.95, a preliminary hearing was held on 5.7.95 in the chambers of the Enquiry Officer appointed for the purpose and the regular hearing commenced from 24. 7.95.

During the course of the preliminary hearing, the Applicant submitted a statement praying for furnishing certain additional, documents to enable him to prepare his written statement of defence and also submitted a list of witnesses to be made available for examination in his defence.

4.6 That the departmental proceeding commenced in the form of hearing on different dates, the first of which was held on 24.7.95 and the Applicant submitted his

written statement of defence as and when the articles of charge/allegations came up during the regular hearings held from time to time.

To briefly summarise and narrow the compass in so far as this application is concerned, it is stated that the substantive allegations as contained in the said Memorandum dated 15.5.95, hinges upon loss of store items, and allegation of forgery to defalcate/misappropriate store items valued at Rs.1,62,991/- and that too, for items alleged to have been unaccounted/misappropriated for a period from July 1987 to 13 July 1994, when the facts clearly indicated the stock verification had been done thoroughly and the items alleged to be short, had actually been accounted for and no allegation of misappropriation can be sustained in the wake of the evidence on record. In this regard reference may be made to the Defence Witnesses No. 3 and 4 examined during the enquiry who clearly stated that the store items alleged to be missing were either physically available or duly accounted for.

4.7 That the first sitting of the departmental was held on 24.7.95, when surprisingly the allegations contained in Article II of the impugned show cause notice was taken up and three witnesses were examined on behalf of the prosecution to establish the charge of alleged forgery by the charged officer/Applicant.

PW1, S.P. Das was asked to verify initial on Invoice No. 336/SK/29P dated 22.6.92 and the said

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witness denied his initials on the carbon copy of the said invoice, while admitting his initials on the original copy of the same invoice, indicating thereby the totally and unacceptable testimony of the said witness in so far as the allegation of forgery was concerned. The testimony of the witness No.1 cannot therefore be at all relied upon to base any conviction on the allegation levelled against the Applicant/charged officer. The records however established that the materials in the said invoice was taken into stock ledger and authenticated by the Officer Commanding No. 5 (P). It is relevant to state that the subject matter of the enquiry dated back to 1992 and the delay itself casted doubts on the initiation of the proceedings itself.

The prosecution witness No. 3, P. Deb, denied that he had affixed initials in the Consumable Store Ledger against issues made on 18.11.92 and 20.11.92 while admitting that the initials made on 11.12.92 was his, which established that the said witness did not accept his initials one inch below or above for reasons unknown. The materials namely, paints etc. were purchased by the said witness and consumed for painting new batteries and steel tables etc. The denial of the said witness cannot remotely establish the alleged charge of forgery for mere suspicion cannot form the substance of a charge of forgery.

4.8 That in the sitting of the enquiry committee on 24.7.95, the Presenting Officer traversed beyond the purview of the Rules in force, more specifically the

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CCS (CCA) Rules 1965, and started questioning the charged officer/Applicant (as witness No. 7) with regard to the allegations/charges as contained in the listed articles although these questionings by the Presenting Officer was not legally permitted and ran counter to the canons governing any departmental enquiry. It was for the prosecution to establish the charges as contained in the impugned show cause notice and by no stretch of imagination could the prosecution/authorities question the Applicant to elicit responses to the allegation at hand and use the same against him as has been done in the instant case and this alone vitiates the entire proceedings and renders the impugned order of punishment passed thereon liable to be set aside and quashed. The Applicant as the charged officer can never be produced as a prosecution witness as has been done which clearly runs counter to Article 22(5) of the Constitution of India and on this ground alone the entire proceedings and the impugned order of punishment are liable to be set aside and quashed.

4.9 That during the examination of the Applicant/charged officer, reference was made to two applications dated 24.4.95 and 29.5.95 wherein the Applicant was alleged to have admitted to the allegation of forgery when in fact the Applicant unaware of the niceties and legal implications of the word "forgery" readily affixed his signature, drafted by rank strangers solely to bring to an end the

needless controversy that had arisen with regard to the stores of the company was in question.

Be it stated here that the said applications dated 24.4.95 and 29.5.95 do not figure in the listed documents annexed to the impugned show cause memorandum dated 19.5.95 and therefore the Inquiring Authority while relying on the aforesaid two applications caused grave prejudice and left the Applicant wholly unprepared and without any opportunity to prepare his defence.

4.10 That on the second meeting of enquiry meeting held on 26.7.95, the Enquiry Officer surprisingly took up the allegations contained in Article I of the impugned memorandum dated 19.5.95, when in the earlier hearing held on 24.7.95, the Enquiry Officer without deciding the allegation as contained in Article I of the impugned show cause notice dated 19.5.97 went beyond the articles of charge to take up piece-meal the articles of charges listed under the head of Article I of the charge sheet and as contained in the impugned order dated 19.5.97, which action is clearly beyond the provisions of the rules framed under the Assam Services (Discipline and Appeal) Rules, 1964, more significantly Rules 7 and 9 of the said Rules which prima facie renders the impugned order of punishment based on such a farcical enquiry liable to be set aside and quashed.

4.11 That in the second hearing conducted on 26.7.95, the Enquiry Officer took up hearing on Article I of the charge with reference to the Consumable Register along

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with the list of items alleged to be short/deficient, and in the course of the hearings, the Applicant prayed for submission of a defence statement on 28.7.95 when other witnesses were to be examined.

On the specific date in question when the hearing on Article I was unduly taken up, the Presenting Officer opened up page 39 of the Consumable Store Ledger and the initials of the Applicant as the charged officer was compared with the Attendance Register and allegedly it was found that the signatures were not tallying and based thereupon the Presenting Officer concluded that the Applicant as the charged officer had allegedly forged the signatures of the O.C. Maj. G.S. Chaudhuri.

4.12 That in the context of the issues at hand and the facts detailed hereinabove, it is abundantly clear that the Respondent authorities while alleging that the Applicant had in any way forged any documents did not do so, by referring to any expert opinion as is normally required to do so, but left the decision to the Inquiring Authority, untrained in the niceties of comparisons of signatures and the finding of forgery as alleged cannot be relied upon or acted for purposes of imposing any penalty.

In the course of the hearing the Applicant/charged officer prayed for submission of defence statement and 28.7.95 was the date fixed for submission of the written statement and accordingly the defence statement was duly filed denying the charges and highlighting

the legal and procedural lapses conducted by the Inquiring Authorities during the course of the proceedings.

Be it stated here that the Enquiry Officer instead of handling and taking up the charge listed under Article I of the impugned memorandum, rather took Article II (relating to forgery etc.) and went beyond the service rules in vogue governing any departmental enquiry.

4.13 That on 28.7.95 when the third sitting of the enquiry was conducted the Applicant submitted his defence statement on Consumable Store Ledger relating to Article I and the Applicant thereafter was allowed to submit his statement of defence relating to the alleged loss of Government stores by 4.8.95.

During the hearing, the Applicant/charged officer requested that three other witnesses be summoned on the part of the defence. Among the witnesses sought to be examined on behalf of the defence, the following were called for :

- (i) Shri Sridhar Roy, Surveyor, No. 9(P) ;
- (ii) Shri T.R. Dhar, Store Keeper, No. 5 (P) ;
- (iii) Shri Parameshwar Ram, Khalasi, No. 5 (P).

In the proceedings conducted by the Respondent authorities, a peculiar situation arose where the Commanding officer of No. 5 (P) appeared as a witness and deposed on alleged loss of certain items denying his own signatures in the Ledger when the facts

indicated otherwise. The witness be it stated here was solely responsible for this malicious proceedings actuated by personal and selfish interests and bent upon solely to wreak personal vengeance, to ensure that the Applicant suffered at this hands. The said witness as the Officer Commanding of No. 5 (P) had on several occasions in flagrant abuse of his position as a superior officer had sought to seek undue favour for personal gain, through the Applicant who happened to be the Store Keeper of the company and due to the refusal on the part of the Applicant to be a party to such nefarious activities, the said witness out of personal animosity and hatred for the Applicant, deposed that the initials in the Ledger was not his own and in fact went beyond the terms of the enquiry and the allegations at hand to label the Applicant "incapable". The witness went on to depose that he was unable to monitor one such item in question, in the midst of so many store items and in fact denied his own initials, conveniently stating that he could not recollect other related and relevant matters.

The deposition of the said witness clearly indicates that it is a mere denial of the initials on the Consumable Store Ledger, which by itself cannot constitute forgery or establish an allegation of forgery as has been done by the Enquiry Officer while presenting the enquiry report, holding that the charges as contained in Article III had been fully proved. Mere assumptions and surmises cannot be the foundation for establishment of guilt with regard to the serious

allegation of forgery as contained in Article II of the impugned memorandum.

One other witness, A.B. Chakraborty (No.2) was already examined on behalf of the defence and during the course of his examination, reference was made to office memorandum and the instructions of the Director, N.E. Circle, regarding inspection and authentication. The Applicant demanded a copy of the said office memorandum which would have helped him to meet the allegations, but the same was denied.

The Applicant had put initials wherever consumable issue columns were left blank for the period 1986 to 1992 as per instructions of the DNFCs and therefore there was no question of forgery.

Defence Witnesses 3 and 4 during the examination regarding issue of curtains, jute mattings etc. and their answers establishes that all the stores items alleged to be short were physically available and fully accounted for in the ledgers. The deposition of these 2 witnesses establishes beyond doubt that the allegations had no factual foundation.

On 4.8.95, the Applicant submitted his written statement of defence relating to alleged loss of Government stores as contained in Article I and on the said day, defence witnesses 2 and 3 namely Sridhar Roy and T.R. Dhar were also examined and their depositions clearly proved that all stores/items etc. alleged to have been misappropriated were fully accounted for and physically available.

On 8.8.95, the Presenting Officer questioned the Applicant/charged officer on the defence statement submitted earlier and the Presenting Officer directed to submit his briefs on 24.8.95 which was accordingly done and was read out by the Enquiry Officer. The briefs submitted by the Presenting Officer was a reassertion of the allegations of misappropriation of Government stores amounting to Rs.1,62,991/- and of forgery, both of which would not be supported by hard evidence.

4.14 That the defence Assistant appearing on behalf of the Applicant/charged officer too submitted his defence briefs refuting the allegations and pointed out in clear terms how the principles of natural justice was flouted with impunity ever since the enquiry started with the preliminary hearing on 5.7.92 when the documents/records demanded for inspection so as to enable him to prepare his written statement was denied. The denial of the documents as sought for clearly prejudiced his defence and vitiated the entire enquiry. it was also pointed out that the subject matter of the enquiry covered a long period of six years (between 1986-1992) and initiated well after the charged officer/Applicant was transferred out of No. 5(P) on 19.5.95 and the delay itself was a ground which vitiated the proceedings.

4.15 That the defence briefs also showed how the various items/stores listed and alleged to be misappropriated in the impugned memorandum of charges,

was correctly accounted for and physically available in the stores and there being no shortage reported during yearly audit and inspection conducted for the years in question, that it between 1986 to 1992, the allegation of misappropriation and forgery was unfounded on all counts.

4.16 That conclusion of the departmental enquiry, the Enquiry Officer submitted his report on 29.9.1995, holding that the charge contained in Article I had been partly proved and the charge against the second head (under Article II) had been proved fully.

The enquiry report while arriving at the conclusion regarding the two articles of charge, based on the findings solely on conjectures and surmises and did not appreciate either the defence briefs/submissions or the evidence adduced on behalf of the charged officer/Applicant and arrived at a perverse finding not borne out of hard evidence either oral or documentary. Moreover the Enquiry Officer relied upon a so called admission supposedly to have been made by the Applicant to the effect that he had forged the signature of his Officer Commanding without having the so called confession exhibited or proved and without considering the context and circumstances under which the same was made. The Enquiry Officer thus traversed beyond the permissible limits available under the extant Rule to arrive at the findings by placing undue emphasis on a document not listed by the prosecution in the impugned memorandum of charges, to be relied upon

to prove the charges and thus prejudiced the Applicant who was caught unawares.

A perusal of the analysis and assessment made of the evidence upon which the enquiry report has been based, it is abundantly clear that the Enquiry Officer relied solely on surmises and conjectures and never discussed the charges under separate heads on the actual evidence placed on record and therefore the findings cannot be relied upon to base any conviction of guilt.

The Enquiry Officer arrived at a unilateral observation that the Applicant/charged officer "took out stores under forged signatures amounting to Rs.1,25,142/-" which value was reduced to Rs.1,17,699/- after certain items/stores were dropped and the value of the stores as per book value was ascertained as Rs.1,00,955/- (Rupees one lakh nine hundred and fifty five only). This alone exhibits the fact that the Respondent authorities were uncertain and unclear as to what was the quantity of stores etc. that was misappropriated or found to be short.

The Enquiry Officer while submitting his report under challenge, arrived at a finding that the Applicant/charged officer had been "careless and negligent" about performing Government duties, which finding per se is without any foundation and has to be totally disregarded in toto as being perverse and without any basis.

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The impugned enquiry report also referred to the inability of the charged officer/Applicant "to carry out his duties correctly" even after serving for more than 24 years, and that his procedure of store keeping was not in order and was "in gross-violation of standard instruction" and hence it was found that the Applicant/charged officer was "careless and negligent" in performance of Government duties and lacks in devotion to duties". This conclusion by itself clearly establishes how the Enquiry Officer on his own without keeping the evidence on record in mind arrived at the perverse finding with regard to the articles of charge in question.

The enquiry report also made reference to alleged manipulation of entries at serial No. 164 against invoice No. 336/SK/298 dated 22.6.92 at page 22 which after investigation clearly established that the allegation was totally unfounded as also the admission of "forgery" alleged to have been made by the charged officer/Applicant.

In so far as the alleged missing pages of the stock ledger where it was found that the Applicant had alleged signatures etc., the Enquiry Officer had been informed that the failure to maintain the ledger was solely attributable to the book binder who had failed to maintain the pagination after the authorities had duly completed the certification of the records. The Applicant/charged officer therefore could not be faulted on this score.

An overview of the inquiry report under challenge clearly establishes the summary and casual manner by which the charges/allegations as contained in the impugned memorandum dated 17.5.98 was sought to be proved totally disregarding the contentions raised by the Applicant during the course of the enquiry and the evidence adduced thereof, thereby making a mockery of the entire proceedings.

4.17 That after the said enquiry report was submitted on 29.9.95 the Applicant was allowed to submit his defence submission which was done on 3.11.1995, and in brief the Applicant submitted that the alleged delay on the part of the Applicant to hand over charge was unfounded and the so called delay was solely attributable to the Enquiry Officer. T.R. Dhar who refused the transfer and went on extra-ordinary leave with effect from first week of January 1994 to first week of February 1994 and in the midst of the Officer Commanding met with an unfortunate accident in February 1994 and had to take long leave. The delay in handing over charge was occasioned due to factors beyond the control of the Applicant and it was in undue haste that a Board was constituted for unilateral taking of charge without the presence of the Applicant and thereby raising serious doubts about the allegations of misappropriation or deficiencies in stock/stores etc. It was submitted that each of the items alleged to be found short was properly explained with hard evidence and the assumption that the Applicant/charged officer "appeared to be casual" was wholly unjustified and

unfounded. It was contended on behalf of the Applicant that the principal charge of forgery if taken at its face value related to all the items alleged to have been misappropriated, but the Enquiry Officer on his own dropped as many as 14 listed items, which according to him were "trivial" nature, thereby clearly indicating that the allegation of forgery was unfounded and legally untenable.

The Applicant further contended that he had put his initials in the stock ledger wherever columns were left blank but did as acting on instructions of the D.N.F.C. and of O.M. Inspection, 1992 vide Sl. No. 15 in Exhibit 5(1) and no count could this be termed as forgery. The pages alleged to be missing in the stock ledger was not attributable to the Applicant as the ledger after authentication and proper verification/certification by the appropriate authority had been sent to an outside agency for binding and after re-binding the office failed to check or to re-count or re-number the pages as it had already been certified and therefore the allegation that the Applicant was careless and negligent did not hold any water. The Applicant also explained the allegations of forgery of two invoices dated 22.6.92 and 10.6.92 and the error in serialisation at page 23 was an inadvertent error made through oversight.

The Enquiry Officer by relying on letters dated 30.4.95 and 29.5.95 both of which were not listed in the memorandum of charges traversed beyond all permissible limits governing a departmental enquiry and

thereby caused serious prejudice to the charged officer/Applicant.

The enquiry itself was conducted in a shoddy, unsystematic manner, in as much as the charge/allegation of forgery as contained in Article II of the memorandum sought to have taken up first and only then the allegation of misappropriation which had a close and direct bearing on the allegation of forgery, both being inter-linked, taken up for consideration. Moreover, the allegation of forgery dominated the proceedings when Article I was taken up by the Enquiry Officer which was contrary to all available norms. Besides the Inquiring Authority ought to have conclusively proved the allegation of forgery which had a close nexus to the charge/allegation as contained in Article I of the impugned memorandum and the failure of the Inquiring Authorities in taking up the charges/allegations on a topsy-turvy manner clearly reveals the failure of the Respondent authorities in conclusively proving the articles of charges as listed in the impugned memorandum under challenge.

4.18 That upon submission of the defence briefs/submissions, the Disciplinary Authority after a prolonged lapse of over eight months vide order No. C-527/4-A-302 dated 20.8.96, passed by the Director, North Eastern Circle imposed the major punishment of "compulsory retirement" from the date of the said order and further imposed the penalty of recovery of

depreciated value of loss of stores amounting to Rs.60,128.91 from the Death-cum-Retirement Gratuity and other pensionary benefits. The Disciplinary Authority while passing the aforesaid order of punishment did so after agreeing with the findings of the Enquiry Officer as reflected in the enquiry report also under challenge.

The Disciplinary Authority while passing the order of punishment did not however give distinct and independent reasons for agreeing with the findings of the Enquiry Officer, which is required to be done under the extant rules before imposition of any penalty. The impugned order of punishment dated 20.8.96, merely reiterate the allegations and observations of the Enquiry Officer as contained in his report on the finding which clearly betray the non-application of mind by the Disciplinary Authority. In the context of the issues raised hereinabove, the imposition of the major penalty of compulsory retirement is already unjustified, unwarranted considering the facts detailed hereinabove.

The impugned order of punishment dated 20.8.96 passed by the Respondent No. 4 does not prima facie deal with the distinctive articles of charges as contained in the memorandum of charges/allegations but in effect merely reaffirms the finding of the Enquiry Officer without giving independent and cogent reasons for agreeing with the findings of the Enquiry Officer.

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A copy of the order No. C-527/4-A-302 dated 20.8.96 passed by the Respondent No. 4 imposing the major punishment of compulsory retirement is annexed hereto and marked as ANNEXURE-B

4.19 That following the imposition of the major penalty of compulsory retirement and recovery of depreciated value of loss of stores amounting to Rs.60,128.91 from the death-cum-retirement gratuity, the Applicant preferred a statutory appeal on 20.9.96 addressed to the Respondent No. 2 where the Applicant detailed the procedural and legally substantive flaws which vitiated the enquiry and seriously prejudiced the Applicant in his defence.

In the said appeal, the Applicant pointed out that the statement of allegations was admittedly founded on a preliminary enquiry conducted by the Inquiry Board before the impugned memorandum of charges/allegations was served on him but in spite of demanding a copy of the report, the same was denied. The failure to do so caused serious prejudice and ran counter to the principles of natural justice.

The appeal also contended that the allegation as contained in Article I regarding the alleged misappropriation of Rs.1,62,991/- which the Enquiry Officer held was partially proved was negated by the Disciplinary Authority who summarily held the said Article No. I also proved, when sufficient evidence was not available either by way of documentary or oral evidence to prove the allegation against Article. The

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Disciplinary Authority while passing the impugned order of punishment under challenge failed to adduce or advance distinct and separate reasons for disagreeing with the findings of the Enquiry Officer while submitting the impugned report vide report dated 29.9.95.

It was further contended in the said appeal dated 20.9.96 that the Enquiry Officer while passing the enquiry report under challenge failed to discharge the duties cast upon such an authority acting as an Enquiry Officer and acted in a biased manner which necessarily renders the entire proceedings bad in law and hence liable to be quashed and merits interference under the provisions of Article 14 of the Constitution of India to set aside the impugned order of punishment dated 20.8.96 passed by the Respondent No. 4 as passed hereinabove for the ends of justice.

The appeal also alleged bias on the part of the Enquiry Officer and the denial of the Applicant's request for change of Enquiry Officer denied the Applicant a fair and impartial enquiry. Again the refusal on the part of the authorities in not producing certain vital documents as sought for also denied a fair opportunity to defend himself at the enquiry.

The appeal also highlighted the fact that the Applicant was made to appear as a witness against himself as he was listed at Sl. No. 7 in the list of witnesses for the prosecution and contrary to all norms governing a departmental enquiry, the Applicant was

asked several questions by the Presenting Officer and by compelling him to answer the questions, the Enquiry Officer acted in bad faith vitiating the enquiry.

The listed defence witnesses to have appeared in behalf of the Applicant were not produced. Only 6 out of the 10 witnesses were called and the other 4 who were also material witnesses were not called for causing serious prejudice. The appeal also listed certain other grounds.

A copy of the appeal dated 20.9.96 is annexed hereto and marked as ANNEXURE-C

4.20 That the Addl. Surveyor General, Eastern Zone Office, purportedly acting as the Appellate Authority, however, rejected the appeal dated 20.9.96 by holding that the punishment was commensurate with the gravity of the allegations. The Appellate Authority while passing the impugned order relied heavily on the so called confessional statement (which was not exhibited or proved or listed as a document to be relied upon) held that the findings of the Disciplinary Authority are warranted by the evidence on record and there was a "preponderance of probability of the fraudulent manipulations by the Appellant". The order was communicated to the Applicant on 16.1.97.

Copy of the order dated 16.12.96 passed by the Addl. Surveyor General rejecting the appeal is annexed hereto as ANNEXURE-D.

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4.21 That after the rejection of the appeal, the Applicant who was totally shell-shocked suffered severe mental trauma and had to be confined to his house as he had a lapse of memory. His children had to be taken out of school as he could not bear the financial burden. After regaining control of his mental faculties after over a year, the Applicant preferred yet another appeal on 9.2.1998 addressed to the Surveyor General (Respondent No. 2) detailing the facts leading to the rejection of the earlier appeal vide order dated 16.12.96 and prayed that the order of penalty be set aside and he be reinstated in service. The Applicant also prayed that the recovery of Rs.60,129.91 be made from his salary.

Copy of the appeal dated 9.2.98 preferred by the Applicant is annexed hereto and marked as ANNEXURE-E.

4.22 That the said Respondent No. 2 however upheld the order of punishment dated 20.8.96 as also the order of the Appellate Authority rejecting the appeal. The said Respondent No. 2 while sustaining the aforesaid orders failed to independently give cogent reasons for doing so, and passed the impugned order relying on the findings of the Inquiry Board constituted prior to the issuance of the memorandum of charges, which findings/report had been denied to the Applicant when sought for during the enquiry.

The said Respondent No. 2 held that the acts of the Applicant was unbecoming of a Government servant

which was violative of Rule 3(1)(i), (ii), (iii) of the CCS (Conduct) Rules, 1964. The said order was passed on 14.8.1998 vide No: LC-34/1196-PF (H. Sangawia).

Copy of the impugned order dated 14.8.98 referred to above is annexed hereto and marked as ANNEXURE-F.

4.23 That during the proceeding as aforesaid and after the penalty of compulsory retirement was passed by the authorities, the Applicant was mentally shocked and was not in his self. It caused serious effect on his mental health and the Applicant did not know what to do. However, after recouping from the situation, the Applicant filed an application before the authorities to grant him personal hearing in order to enable him to point out certain material irregularities in the proceeding. Accordingly, the Applicant filed a representation dated 29.6.99 before the authorities.

A copy of the representation dated 29.6.99 is annexed hereto as ANNEXURE-G.

4.24 That responding to the prayer of the Applicant, the authorities by a letter dated 30.6.99 asked the Applicant to present his case personally on 30.6.99 at 11.30 hours as provided within Rule 27 of the CCS (CCA) Rule, 1965.

A copy of the letter dated 30.6.99 is annexed hereto as ANNEXURE-H.

4.25 That the Applicant appeared personally before the authorities on 30.6.99 and presented his case. The

authorities gave him a patient hearing and thereafter asked the Applicant to await further communication in this regard.

4.26 That when the Applicant did not hear anything from the authorities, he made several communications dated 26.10.99, 7.12.99 31.12.99 and 10.1.2000. However, by a communication dated 13.1.2000, the authorities intimated the Applicant that no further correspondence will be entertained and also enclosed a letter dated 29.12.99 by which the revising authority rejected the prayer of the Applicant.

A copy of the communications dated 29.12.99 and 13.1.2000 are annexed hereto as ANNEXURES-I & J respectively.

4.27 That the Applicant states that the recovery contemplated in the order of penalty has not yet been made by the authorities and therefore there is no impediment in staying the recovery.

4.28 Being aggrieved by the order dated 20.8.96 passed by the Disciplinary Authority imposing the penalty of "compulsory retirement" and of recovery of Rs.60,129.91 from the death-cum-retirement gratuity and the subsequent orders passed by the Respondent authorities, the Applicant begs to prefer this application.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the departmental enquiry conducted by the Respondent authorities cannot be termed "an enquiry

within the ambit of the CCS (CCA) Rules, 1964 in as much as the so called enquiry is replete with serious procedural and legal flaws which runs counter to the provisions of the extant Rules as well as the principles of natural justice and fair play governing any departmental enquiry. This has in effect vitiated the entire enquiry and the findings arrived at by the Enquiry Officer in his report and the impugned order of punishment dated 20.8.96 cannot stand legal scrutiny and is liable to be set aside as being violative of Article 14 of the Constitution of India.

5.2 For that the Enquiry Officer at the very offset, denied the Applicant his legitimate right of production of certain material and relevant documents as sought for during the preliminary hearing held on 5.7.95 and the refusal by the conducting officers, seriously prejudiced the Applicant and prevented him from preferring a detailed written statement against the allegations levelled against the Applicant. The documents as sought for by the Applicant were highly relevant for his defence and the failure thereof, caused serious prejudice, running counter to the principles of natural justice and being violative of Article 14 of the Constitution of India, the impugned order of punishment dated 20.8.96 is liable to be set aside and quashed as also the two subsequent orders passed by the Respondent Nos. 3 and 4 as indicated above.

5.3 For that the Enquiry Officer while conducting the so called enquiry did so without having any regard to

the ex6ant rules more specifically, the CCS(CCA) Rules, 1964 in force, in asmuch as the memorandum of charges/allegations issued to the Applicant listed his name as a prosecution witness and by being repeatedly questioned by the Presenting Officer during the proceedings, the Applicant was compelled to answer the questions and incriminate himself by doing so and therefore the findings of the Enquiry Officer being founded on a vitiated enquiry, they cannot be acted upon to impose any penalty as has been done and therefore the impugned orders under challenge being contrary to Article 22(3) of the Constitution as well as the CCS (CCA) Rules, 1964 are liable to be set aside and quashed.

5.4 For that the action of the Enquiry Officer is not calling for the attendance of all the listed defence witnesses and instead calling for only six out of the ten witnesses seriously prejudiced the Applicant and denied him reasonable opportunity to defend himself more effectively than was possible and this action being arbitrary, illegal and violative of the principles of natural justice and fair play, the impugned orders under challenge are liable to be set aside and quashed.

5.5 For that the authorities while conducting the enquiry, acted illegally and arbitrarily by rejecting the request made by the Applicant for change of Enquiry Officer due to apprehension of bias, as the officer concerned being his superior officer, had been

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responsible for initiation of the misconceived proceedings motivated by personal grudge and for collateral reasons and the refusal thereof caused serious prejudice and denied the Applicant a fair trial/hearing and reasonable opportunity which action ran counter to the principle of natural justice, vitiating the entire enquiry and the findings based thereon.

5.6 For that the Enquiry Officer while holding that he allegations contained in Article I had been partially proved while charge under Article II had been fully proved did so rather mechanically and without appreciating the evidence on record or the evidence of the two defence witnesses No. 3 and 4 which clearly established that the stores/articles alleged to have been misappropriated/found short were accounted for or more physically available thereby negating the allegations as contained in both the Articles of charges. This being so, the impugned order of punishment dated 20.8.96 based on the perverse enquiry report is liable to be set aside as being contrary to Articles 14 and 16 of the Constitution of India and the CCS (CCA) Rules, 1964 governing the instant proceeding.

5.7 For that the learned Enquiry Officer while arriving at the findings as contained in the enquiry report dated 29.9.95 did so without application of mind and acted solely on surmises and conjectures and not on legally admissible evidence and such findings cannot be the foundation for imposition of any penalty as has been done and renders the orders under challenge

liable to be interfered with by this Hon'ble Tribunal.

5.8 For that the Enquiry Officer while conducting the proceedings proceeded contrary to all established norms by taking up the allegations contained in Article II relating to allegations of forgery etc. of the memorandum initially without taking up Article I as is required and the Enquiry Officer also failed to apply his mind while arriving at the conclusion that Article I had been "partly proved" while holding that Article II had been "fully proved" when the allegations seen in its totality was one of "forgery" in order to misappropriates stores/articles and if the allegation of "misappropriation" had only been "partly proved" then it does not stand to reason to hold the allegation of "forgery" (Article II) as "fully proved" as both the allegations are intertwined and inter-connected, and these findings alone show the casual manner by which the proceedings had been conducted. The enquiry report in the light of the above has to be totally disregarded and no order of penalty as has been done can be imposed.

5.9 For that the Respondent No. 3 acting as the Disciplinary Authority also failed to apply its mind while imposing the major penalty/penalties and did not give independent and cogent reasons for agreeing with the findings of the Enquiry Officer as is required before imposition of any penalty and without appreciating whatever evidence was adduced during the course of the proceedings imposed the major penalty of compulsory retirement and also ordered recovery of the

value of stores allegedly misappropriated from the retiral benefits payable to the Applicant which order is not sustainable in the eye of law and is liable to be set aside and quashed as being contrary to Articles 14, 16 of the Constitution of India as well as the CCS (CCA) Rules, 1964 in vogue.

5.10 For that the Disciplinary Authority while passing the impugned order of penalty dated 20.8.96 did so solely and totally relying on the surmises and conjectures which formed the enquiry report under challenge without sifting or independently analysing whatever evidence that was set forth during the course of the proceedings and the impugned order of penalty dated 20.8.96 being contrary to Article 14 of the Constitution of India is thus liable to be quashed.

5.11 For that the appellate orders passed by the Respondents No. 2 and 4 presently under challenge, clearly reveals that the order are mere repetition of the narration as contained in the report of the Enquiry Officer as well as the Enquiry Officer (Respondent No. 3) and does not indicate the independent application of mind as is required by the appellate authority under law and the said orders dated 16.12.96 and 14.8.98 are liable to be set aside and quashed as being violative of Articles 14, 16 of the Constitution of India.

5.12 For that the Disciplinary Authority while passing the impugned order dated 20.8.96 failed to take into consideration the fundamental fact that two punishments cannot be imposed at the same time after conclusion of an enquiry and the Disciplinary Authority besides

imposing the major penalty of "compulsory retirement" from service also imposed the additional penalty of recovery of the sum of Rs.60,129.91 and that too from the death-cum-retirement gratuity due to the Applicant as a part of his retiral benefits and the imposition of this double punishment for allegations that have not been proved at all, clearly runs counter to Article 14 of the Constitution of India as well as the CCS (CCA) Rules in vogue, which necessarily renders the impugned order dated 20.8.96 liable to be set aside and quashed.

5.13 For that the Appellate Authority while upholding the order of penalty dated 20.8.96 failed to take into account the basic fact that the enquiry itself was replete with procedural and legal flaws running counter to the extant rules and the principles of natural justice and that the punishment imposed on the Applicant was in fact imposition of two major punishments for the same set of allegations which is legally impermissible and this being so, the impugned orders under challenge are liable to be set aside and quashed.

5.14 For that the Disciplinary Authorities well as the Appellate Authorities failed to take into account the quantum of punishment that ought to have been imposed, seen in the context of the allegations, and by imposing the double punishment not envisaged under the law in force, have penalised the Applicant for allegations which are grossly disproportionate to the penalty imposed by the said order dated 20.8.96 and on this

count also the said order is liable to be set aside and quashed.

5.15 For that the authroities having entertained his application for revision, ought to have passed a resoned order.

5.16 For that in any view of the matter, the impugned orders under challenge are liable to be set aside and quashed as being bad in law as well as in facts.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant states that he has no other alternative efficacious remedy except by way of approaching this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition ore suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

In view of the facts' and circumstances stated above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to admit the instant application, call for the records of the case and upon hearing the parties on the cause or causes that may be

shown and on perusal of the records, be pleased to grant the following reliefs :

- 8.1 To set aside and quash order No.C -527/4-A-302 dated 20.8.96 passed by the Respondent No. 3 imposing the punishment of compulsory retirement from service (Annexure-B). ✓
 - 8.2 To set aside and quash Office Order No. EZ-336 dated 16.12.96 passed by the Addl. Surveyor General, Eastern Zone, Calcutta rejecting the appeal preferred by the Applicant (Annexure-D). ||
 - 8.3 To set aside and quash order No. LC-34/1196-PF dated 14.8.98 passed by the Lieutenant General, Surveyor General of India, rejecting the review petition passed by the Applicant (Annexure-F).
 - 8.4 To set aside and quash order dated 29.12.99 issued by the Additional Surveyor General, Eastern Zone, rejecting the prayer for revision (Annexure-I).
 - 8.5 To set aside and quash orders dated 29.12.99 and 13.1.2000 (Annexure-I and J)
 - 8.6 To reinstate the Applicant in service alongwith all consequeuntial benefits.
 - 8.7 Cost of the application.
 - 8.8 Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal.
- AB

9. INTERIM ORDER PRAYED FOR :

In the facts and circumstances of the case, the Applicants seeks a direction for stay of the recovery contemplated in the impugned order from death-cum-retirement gratuity and early production of the record and an expeditious hearing inasmuch as he has no source of livelihood at present.

10.

The Application is filed through Advocate

11. PARTICULARS OF THE I.P.O. :

- (i) I.P.O. No. : 06 494172
- (ii) Date : 3-4-2000.
- (iii) Payable at : Guwahati

12. LIST OF ENCLOSURES :

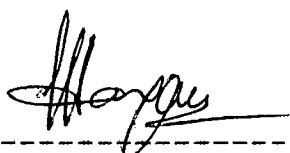
As stated in the Index.

Verification.....

VERIFICATION

I, Shri H. Sangawia, son of Shri Saikhuaia, aged about 51 years, earlier working as Store Keeper, Grade-II, resident of Nongthymmai, Shillong-279014, do hereby verify and state that the statements made in the accompanying application in paragraphs 1, 2, 3, 4.1, 4.2, 4.3, 4.5 to 4.17, 4.19, 4.21, 4.23, 4.25, 4.27 ^{4.28, 6.7, 10 and 11} are true to my knowledge; those made in paragraphs 4.4, 4.18, 4.26, 4.22, 4.24 and 4.26 being matters of records are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 30th day of March, 2000 at Guwahati.



(H. SANGAWIA)

इस पत्र का उत्तर निदेशक,
पूर्वोत्तर सर्किल के पते
से भेजा जाना चाहिए, किसी
अधिकारी के नाम से नहीं।
उत्तर देते समय इस पत्र की
संख्या और तारीख का हवाला
दिया जाना चाहिए।

Any reply to this letter
should be addressed to the
Director, North Eastern
Circle and not to any officer
by name. The number and
date of this communication
should be quoted.

सं० No. C-256/4-A-302 - 37-

तार—"सपूर्वोत्तर"

Telegram—"SURNOREAST"

टेलीफोन Telephone:

कार्यालय Office - 4937

निवास स्थान Res. - 3410

पूर्वोत्तर सर्किल कार्यालय
NORTH EASTERN CIRCLE OFFICE

डाक बक्स सं० 89, POST BOX NO. 89,

शिलांग-793001 (मेघालय)

SHILLONG-793001 (MEGHALAYA)

तारीख Dated 19 May 1970

189 (शंक Saka).

ANNEXURE- A

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri H. Sangwia, Storekeeper Grade II under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of articles 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).

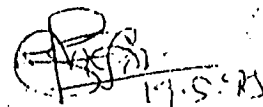
2. Shri Sangwia is directed to submit within 10 (ten) days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri Sangwia 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 inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 14 of C.C.S. (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Shri Sangwia is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government 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 matter pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Sangwia is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of C.C.S. (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.



(P.K. GUPTA) BRIGADIER,

DIRECTOR, NORTH EASTERN CIRCLE.

To

Shri H. Sangwia
Storekeeper Grade II
No. 80(P) Party(NEC)

(Through O.C. No. 80(P) Party(NEC))

Attended

Hpuha
Advocate

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGWIA, STOREKEEPER GRADE II OF NO.80(P) PARTY(NEC), SURVEY OF INDIA, SHILLONG

ARTICLE-I

That the said Shri H. Sangwia, Storekeeper Grade II of No.80(P) Party(NEC), Survey of India, Shillong was entrusted with the responsibilities of Govt. stores in charge of No.5 Party(NEC) since 07 July, 1987 to 13 July, 1994.

During his tenure as Storekeeper of No.5 Party(NEC), Shri Sangwia made a great deal of irregularities with Govt. stores which was detected by a board constituted by DNEC to complete the handing/taking over of stores of No.5 Party(NEC), as Shri Sangwia could not complete handing over of stores at the time of his transfer out of the unit to the incoming Storekeeper despite several verbal and written orders. After the irregularities were detected, a Court of Inquiry was conducted to inquire into the matter thoroughly. It was found by the Inquiry Board that Shri Sangwia had intentionally carried forward mistakes, manipulated shortages with surplus items and issued tyres/batteries to the vehicle during the period when the vehicle was under repair in the workshop and issued items from ledger under forged signature, thus resulting into huge shortage of stores items of No.5 Party(NEC) for which Shri Sangwia could not give convincing reasons.

By his failure to account for the above deficiencies, Shri H. Sangwia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character unbecoming of a Govt. servant and charged for misappropriating Govt. stores amounting to Rs. 1,52,991/- (Rupees one lakh, sixtytwo thousand, nine hundred and ninstyone only), thereby violating Rules 3(1) (i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE -II

That the said Shri H. Sangwia, Storekeeper Grade II of No.80(P) Party(NEC), Survey of India, Shillong while functioning as Storekeeper holding charge of Govt. stores of No.5 Party(NEC) had forged the signature of his Os.C. Parties/Verifying Officer in the ledgers and invoices with an intention to hide the misdeeds done by him and get himself free from the charge of loss of Govt. stores. Even some pages of his consumable items register were found missing. Shri Sangwia could not give convincing reasons for the abovementioned lapses on his part and he had admitted the charge of forgery done by him.

By his failure to maintain the responsibilities entrusted on him as a Storekeeper of Govt. stores, Shri H. Sangwia, Storekeeper Grade II exhibited lack of devotion to duty and integrity and also exhibited character unbecoming of a Govt. servant, thereby violating Rules 3(1) (i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

Attested

Mdubh
Advocate

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STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGWIA, STOREKEEPER GRADE II OF NO.80(P) PARTY(NEC), SURVEY OF INDIA, SHILLONG.

ARTICLE-I

That the said Shri H. Sangwia, Storekeeper Grade II of No.80(P) Party(NEC) was entrusted with the responsibilities of safe custody and accounting of Govt. stores of No.5 Party(NEC) since 07 July'87 to 13 July'94.

At the time of his transfer out of No.5 Party(NEC), Shri Sangwia could not complete the handing/taking over of stores of the unit to the incoming Storekeeper Shri T.R. Dhar. Therefore, by order of DNEC, a board was constituted to complete the handing/taking over of stores of No.5 Party(NEC). During the course of handing/taking over, the board detected the irregularities/loss of stores made by Shri Sangwia during his tenure as Storekeeper of Govt. stores of No.5 Party(NEC). As such, a Court of Inquiry was held to ascertain the magnitude of irregularities/loss of Govt. stores made by Shri H. Sangwia. It was revealed through Court of Inquiry that Shri Sangwia was responsible for loss of huge amount of Govt. stores amounting to Rs.1,62,991/- (Rupees one lakh, sixtytwo thousand, nine hundred and ninetyone only) which he did with intention/negligence. Shri Sangwia did intentional mistakes/manipulation in the ledgers and by forging the signatures of various officers, he had issued invoices and stores items from the ledgers. He even swindled with M.T. Parts which were issued to the vehicle at a time when the vehicle was in the workshop under repair. Shri Sangwia could not give satisfactory explanation for the huge loss of Govt. stores and his failure to maintain the ledgers in proper way and admitted that he had forged the signatures of various officers.

The above act of Shri H. Sangwia, Storekeeper shows his failure to maintain absolute integrity and exhibit conduct unbecoming of a Govt. servant, thereby violating Rule 3 (1) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri H. Sangwia, Storekeeper Grade II of No.80(P) Party(NEC), Survey of India, Shillong while functioning as Storekeeper was holding the charge of Govt. stores of No.5 Party(NEC).

While functioning as Storekeeper of No.5 Party(NEC), due to his irregularities and negligence, a huge amount of Govt. stores were lost. This fact was detected by a board which was constituted to complete handing/taking over of stores of No.5 party(NEC). The board also found that Shri Sangwia had forged the signature of his Os.C. Parties/Verifying Officer to hide the fact that there are major irregularities in Govt. stores under his charge. He had issued invoices under forged signature and ledger entries were also authenticated under forged signature which he did himself. This fact was also confirmed by the Court of Inquiry report held later on to ascertain the loss of stores of No.5 Party(NEC). Even some pages of his consumable items register were found missing, which is considered as a serious lapse on the part of a Storekeeper and for which Shri Sangwia could not give satisfactory explanation. But Shri Sangwia admitted that he had forged the signature of various officers.

The above act of Shri H. Sangwia, Storekeeper shows his failure to maintain absolute integrity and devotion to duty and exhibit conduct unbecoming of a Govt. servant, thereby violating Rule 3 (1) of CCS (Conduct) Rules, 1964.

Attested

Mdulla
Advocate

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGWIA, STOREKEEPER GRADE II AND PROPOSED TO BE SUSTAINED.

Following Ledgers and connected invoices of No.5 Party(NEC):-

- (i) Equipment Register.
- (ii) Stock Register for Consumable Items
- (iii) Stock Register of Furniture
- (iv) Register for M.T. Parts (M.T. Register)
- (v) Stock Register for Stationery.

ANNEXURE -IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGWIA, STOREKEEPER GRADE II ARE PROPOSED TO BE SUSTAINED.

1. Shri S.P. Das, Officer Surveyor, O.C. No.12 Party(NEC)
2. Shri A.K. Sengupta, Officer Surveyor, O.C. No.9 Party(NEC)
3. Shri P. Dev, Officer Surveyor, No.5 Party(NEC)
4. Shri S.S. Negi, Officer Surveyor, No.80(P) Party
5. Shri Sridhar Roy, No.9 Party(NEC)- Verifying Officer.
6. Shri T.R. Dhar, Present Storekeeper of No.5 Party(NEC)
7. Shri H. Sangwia, Storekeeper Grade II, No. 80(P) Party(NEC) (Previous S.K. of No.5 Party)

Advocate.

Advocate.

Advocate.

CONFIDENTIAL

No.C- 527 /4-A-302

ARTICLE II

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
SHILLONG-793 001 (MEGHALAYA)
charge of Govt. stores
Dated: the 20 Aug 1996

ORDER one by me and a...
the charge of Govt. stores. Even some...
WHEREAS a Memorandum No. C-250/4-A-302 dated 19 May 1995 proposing to hold an inquiry against Shri H. Sangawia, Storekeeper Grade III of No. 80 (Photo) Party (NEC), Survey of India, Shillong under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was served on Shri H. Sangawia. He was entrusted on him as a Storekeeper of Govt. stores, Shri H. Sangawia WHEREAS under mentioned statement of articles of charge (Annexures I & II) were enclosed with the above mentioned Memorandum by violating rule 3(1)(i)(ii) the (iii) of Central Civil Services (Conduct) Rules, 1964.

STATEMENT OF ARTICLES OF CHARGE

From the statement of misconduct or misbehaviour issued under Memorandum No. C-250/4-A-302 dated 19 May 1995 that they said Shri H. Sangawia, Storekeeper Grade II of No. 80 (Photo) Party (NEC), Survey of India, Shillong was entrusted with the responsibilities of Govt. stores in charge of No. 5 Party (NEC) since 07 July, 1987 to 13 July, 1994.

During his tenure as Storekeeper of No. 5 Party (NEC), Shri Sangawia made a great deal of irregularities with Govt. stores which was detected by a board constituted by DNEC to complete the handing/taking over of stores of No. 5 Party (NEC). As Shri Sangawia could not complete the handing over of stores of No. 5 Party (NEC) at the time of his transfer out of the Unit to the incoming storekeeper despite several verbal and written orders. After the irregularities were detected, an inquiry was conducted to inquire into the matter thoroughly. It was found by the Inquiry Board that Shri Sangawia had intentionally carried forward mistakes, manipulated shortages with a surplus of items and issued tyres/batteries to the vehicles during the period when the vehicle was under repair in the workshop and issued items from ledgers under forged signature, thus resulting into huge shortage of stores of No. 5 Party (NEC) for which Shri Sangawia could not give convincing reasons. Various Officers, he had issued invoices and stores items from the ledgers. He even swindled his failure to account for the above deficiencies. Shri Sangawia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character, unbecoming of a Govt. servant and misappropriated Govt. stores amounting to Rs. 1,62,991/- (Rupees proper lakh and sixty two thousand nine hundred and ninety one only) thereby violating Rule 3(1)(i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.

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The above act of Shri H. Sangawia, Storekeeper shows Ass per the charge contained in Article 12 enclosed with the Memorandum, Shri H. Sangawia, Storekeeper Grade II of No. 80 (Photo) Party (NEC) at the time of his transfer but of No. 5 Party could not complete handing over of stores of by order of DNEC, a board was constituted to complete the handing/taking over of stores of No. 5 Party (NEC). During the course of handing/taking over, the board detected the irregularities/loss of stores made by Shri Sangawia during his tenure as Storekeeper of Govt. stores of No. 5 Party (NEC). As such a Court of Inquiry was held to ascertain the magnitude of irregularities/loss of Govt. stores made by Shri H. Sangawia. It was revealed through Court of Inquiry that Shri Sangawia was responsible for loss of huge amount of Govt. stores amounting to Rs. 1,62,991/- (Rupees one lakhs sixty two thousand nine hundred & ninety one only). Shri Sangawia did the intentional mistakes/manipulation in the ledgers and by forging the signature of various Officers, he had issued invoices and stores items from the ledgers. He even swindled with M.T. Parts which were issued to the vehicle at a time when the vehicle was in the workshop under repairs. Shri Sangawia could not give any satisfactory explanation for the huge loss of Govt. stores and his failure to maintain the ledgers in proper way and admitted that he had forged the signatures of various Officers. Shri H. Sangawia asking him to submit his representation/submission, if any, within 15 days of the receipt of the letter. Shri Sangawia has submitted his representation on 03.05.2014.

Contd. . . . p/4

Attested.

M Dutton

Advocate

The above act of Shri H. Sangawia, Storekeeper shows his failure to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating rule 3(1) of Central Civil Services (Conduct) Rules, 1964.

As per the charge contained in Article II, the said Shri H. Sangawia, Storekeeper Grade II while functioning as Storekeeper of No.5 Party(NEC), was responsible for loss of a huge amount of Govt. stores which occurred due to the irregularities and negligence on his part. This fact was detected by a board which was constituted to complete handing/taking over of stores of No.5 Party(NEC). The board also found that Shri Sangawia had forged the signatures of his Os.C. Parties/Verifying Officers to hide the fact that there are major irregularities in Govt. stores under his charge. He had issued invoices under forged signature and ledger entries were also authenticated under forged signature which he did himself. This fact was also confirmed by the Court of Inquiry report held later to ascertain the loss of stores of No.5 Party(NEC). Even some pages of his consumable items register were found missing, which is considered as a serious lapse on the part of a Storekeeper and for which Shri Sangawia could not give satisfactory explanation. But Shri Sangawia admitted that he had forged signatures of various officers.

The above act of Shri H. Sangawia, Storekeeper shows his failure to maintain absolute integrity and devotion to duty and exhibit conduct unbecoming of a Govt. servant, thereby violating rule 3(1) of Central Civil Services (Conduct) Rules, 1964.

In view of the aforesaid Memorandum Shri Sangawia was directed to submit within 10 days of the receipt of the Memorandum a written statement of defence and also to state whether he desired to be heard in person. Shri Sangawia had submitted one written statement of defence wherein he had pleaded not guilty for the charge levelled against him in Article I but admitted the charge put forth in Article II. However, it was decided to hold a departmental inquiry to determine the gravity of offence committed by Shri H. Sangawia, Storekeeper Grade II. The Inquiry Report was submitted by the Inquiry Officer on 29 Sept '95 wherein the charges levelled against Shri Sangawia were proved beyond doubt. However, the amount of total loss of Govt. stores was reduced from Rs.1,62,991/- (Rupees one lakh, sixtytwo thousand, nine hundred and ninetyone only) to Rs.1,55,098/- (Rupees one lakh fiftyfive thousand and ninetyeight only) since the Inquiry Officer had dropped some store items being trivial in nature from the loss statement.

A copy of the Inquiry Report was supplied to Shri H. Sangawia asking him to submit his representation/submission, if any, within 15 days of the receipt of the letter. Shri Sangawia has submitted his representation on 03 Nov '95.

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Amended

M. Dutt

Advocate

In his written defence statement Shri Sanagawia pleaded not guilty for the charges levelled against him and tried to put the entire responsibility for inordinate delay in handing/taking over of charge of stores of No.5 Party(NEC) and the irregularities/loss of Govt. stores in No.5 Party(NEC) on the present Storekeeper of the Unit and various Officers involved in administrative job of the Unit at different times during his tenure as Storekeeper of the Unit. Further Shri Sangawia pleaded that the charge of forgery levelled against him, which was already admitted by him to be quashed on the ground that the Inquiry Officer had dropped some store items being trivial in nature from the loss statement and he had put initial in place of G.Os. in compliance with the instructions of O&M Inspection Report, 1992.

Since from the time Shri H. Sangawia, Storekeeper Grade II took over the charge of Govt. stores of No.5 Party(NEC), it was his sole responsibility for proper accounting of the stores under his custody and therefore, his effort to shift the responsibility to others without any convincing reason is not tenable. Again dropping of some store items by the Inquiry Officer from the loss statement being trivial in nature does not mean that charge of forgery levelled against him stands annulled. Moreover, it was nowhere instructed in the O&M Inspection Report of 1992 that Storekeeper himself should copy signatures of G.Os. on ledgers which amounts to forgery. It is evident that Shri Sangawia is not only hiding the fact by giving false and contradictory statements, but he also has the intention to misguide the Disciplinary Authority. However, it has been established beyond doubt through Court of Inquiry and own admission that Shri Sangawia had forged signatures of several Officers and the Govt. sustained huge loss through fraud/negligence on his part. Also in view of the fact that Shri Sangawia was fully aware about the deficiencies of stores held under him, he was reluctant to hand over the charge of stores of No.5 Party(NEC) to the incoming Storekeeper by adopting dilly-dallying tactics.

5. Having gone through the full facts of the case carefully and also examining the documentary evidences available and going through the defence statement of Shri H. Sangawia, Storekeeper Grade II, it is established that the loss of Govt. stores occurred in No.5 Party(NEC) is due to irresponsibility/negligence/forgery on the part of Shri Sangawia since he was solely responsible for safe custody and proper accounting of Govt. stores of No.5 Party(NEC) during his tenure as Storekeeper of the Unit. Therefore, I hold that the charges contained in Article I & II are proved beyond doubt.

6. In view of the foregoing and considering the gravity of the offence, specially the forgery, committed by

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Attested

M Dutt

Advocate

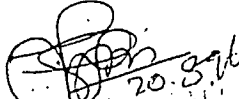
Shri H. Sangawia, Storekeeper Grade II, the undersigned is of the opinion that Shri H. Sangawia, Storekeeper Grade II is not a person fit to be retained in service.

NOW, THEREFORE, the undersigned hereby orders the undermentioned penalty on Shri H. Sangawia, Storekeeper Grade II, No.80(Photo) Party(NEC), Survey of India, Shillong:-

(i) "COMPULSORY RETIREMENT"- from the date of issue of this order.

AND

(ii) Recovery of Depreciated Value of Loss of Stores of amounting to Rs.60,128.91 (Rupees, sixty thousand one hundred twentyeight and paise ninetyone only) from DCRG and other pensionary benefits.


20.8.96

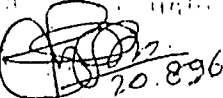
(P.K. GUPTA) BRIGADIER,
DIRECTOR, NORTH EASTERN CIRCLE.
(DISCIPLINARY AUTHORITY)

To

✓ Shri H. Sangawia,
Storekeeper Grade II,
No.80(Photo) Party(NEC)

(Through O.C. No.80(P) Party(NEC)).

Copy to O.C. No.80(Photo) Party(NEC). Recoveries towards the loss of Govt. stores amounting to Rs.60,128.91 (Rupees Sixty thousand one hundred twentyeight and paise ninetyone only) for which Shri H. Sangawia, Storekeeper Grade II is held responsible may please be effected from the pensionary benefits admissible to Shri Sangawia to the extent possible. He is requested to form a Board of Officers who will seal the store of No.80(Photo) Party(NEC) and later on, the same Board will hand over the stores of the Unit to the incoming Storekeeper whenever posted.


20.8.96

DIRECTOR, NORTH EASTERN CIRCLE.

Attested

M. Dutta

Advocate.

To

Additional
The Surveyor General of India
Dehradun, U.P.

Sub: Appeal against the D.N.E.C.'s Order No.C-527/
4-A-302 dated 20.8.96.

Sir,

Aggrieved and devastated by the penalty of compulsory retirement imposed upon me by the Director, N.E. Circle in his memo No.C-527/4-A-302 dated 20.8.96, I submit this appeal with the hope that I shall get justice at your hands. The proceedings right from the commencement of issuance of charge sheet to the final order suffer from many flaws which are given below :-

I.(a) The Disciplinary Authority, in his Memorandum dated 19-5-95 proposed to hold enquiry against the appellant and under Article- I of Statement of Article of charge framed against Shri. Sangawia, it mentions that "It was found by the Inquiry Board that Shri. Sangawia had intentionally carried forward mistakes". It is clear that a preliminary enquiry was carried out and the fact had been included in Article- I. Request for supply of the copy of the Preliminary enquiry was turned down though this was to have been given if the report of the Preliminary enquiry was mentioned in the charge sheet. This is in violation of Rules shown in the case of Krishna Chandra Tandon-Vs.-Union of India, A.I.R. 1974 SC/589. Bhagat Ram Case as shown at Sub-para-IV of 6.4 under Documentary held as admissible in G.B. Singh's Hand Book for Enquiry Officers etc. Request for supply of a copy of the Preliminary Enquiry report is enclosed and portions marked 'B' at page-2 were not supplied (Annexure-I). Denial to the appellant of the copy of the Preliminary Enquiry mentioned in the charge sheet is denial of opportunity to defend himself at the enquiry and is violative of Article-311 of the Constitution of India and the punishment is liable to be set aside.

Attested

Maula

Advocate.

(II) Article-I of the charge alledged that the appellant had mis-appropriated a sum of Rs.1,62,991/-. The I.O. in his report excluded the cost of water filter from the amount. The finding of the I.O. for Article-I against the appellant is proved partially whereas the learned Disciplinary Authority holds in his order at para-5 as proved beyond doubt. Where the Disciplinary Authority does not agree with the report of the I.O., the former is to furnish reasons for disagreement according to Ministry of Public Grievancies and Pensions letter No.110/2/13/85-Estt(A) dated 27-11-95. The Learned Disciplinary Authority has failed to comply with the requirement. The punishment order is liable to be set aside.

III) The Inquiry Officer has acted like a disciplinary Authority offering his opinion not based on facts b, expressing that the appellant's integrity is doubtful and cannot be depended upon. The job of the Inquiry Officer is to arrive at his findings based on facts before him. Here is an Inquiry Officer whose bias and prejudice are as clear as day light. His own letters show his prejudice(Annexure-2).

IV) The Inquiry Officer was the immediate boss of the appellant i.e. O.C. of No. 80(P). He was and is an alter ego of the learned Disciplinary Authority and the Dy. Director acted at the dictates of the former. He bore grudges against the appellant for his refusal to adjust irregularity his contingent money. My prayer to change the Inquiry Officer on grounds of bias and prejudice and appoint an impartial officer as Inquiry Officer was rejected by the Director vide his Memo No.C-424/4-A-302 dated 24-7-95. This refusal amounts to denial to the appellant a fair hearing at the enquiry(Annexure-3)

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Moult

(V) The learned Disciplinary Authority, now the present Director, was the O.C. of No.5 (P) and during the long period of his incumbency no meeting for condemnation of un-serviceable goods except trivial items such as hunting boots etc. was convened. Shri. A.K. Dey the Store Keeper of No. 5(P) mis-managed the stores and absconded. The Disciplinary Authority has personal and vested interest in trying to fix me for the mis-management of the previous Store Keeper to his own failure, omission and commission (Annexure-4).

(VI) The appellant was denied an opportunity to defend himself when he was refused production of documents viz:- (a) Issue Receipt for 1987-92 on consumable items of stores, (b) File No.15-M-I (Conf.) where-in condemnation of tyres was recorded. (c) File No.15-M-I (1986) wherein issue orders for surplus Level Machines on record, (d) Gate pass for tyres etc. (Annexure-5 marked 'C').

(VII) The alleged loss is stated to have taken place between '86 to '92 and charge sheet against the appellant was issued on 19-5-95. What action did the Director and the O.C. No.5(P) taken on alleged loss during this long period ?. What action was taken against those Officers who were in-charge of No.5(P) and whether they performed their duty such as verification of stores etc.? If there was loss they ought to be equally responsible for not doing their duty and not your poor appellant alone. There was a subtle attempt to shield these officers for their serious lapses and made the appellant a scape-goat.

(VIII) Against all norms and in violation of the Article-311 of the Indian Constitution your appellant was compelled to be a witness against himself vide Annexure -IV under "List of Witnessess by whom articles

...4/-

Accepted

M. Dutt

Advocate.

of charge framed against Shri. H. Sengrawia, Store Keeper, Gr. II are proposed to be sustained". Your appellant's name appears at Sl. 7. To make the appellant a prosecution witness against himself is illegal and violation of the principle of Natural Justice (Annexure- 6).

(IX) The Presenting Officer had no business to question the charged Officer (your appellant) unless he had volunteered to do so. In this instant case not only he was compelled to be a prosecution witness against himself; the Presenting Officer put many questions to your appellant on 24-7-95 (copy enclosed). It is the Inquiry Officer who alone can put questions to the charged officer. Both the Inquiry Officer and Presenting Officer acted in bad faith and prejudice against your appellant and therefore the whole proceedings were viciated (Annexure- 7).

(X) Your appellant was denied an opportunity to defend himself when his defence witnesses were not called at the enquiry. Of the ten witnesses, your appellant wished to examine only 6 persons were called. No reasons were assigned as to why the others were not called at the enquiry. Their names are Shri. A.R. Das, Shri. Parameshwar Ram, Maj. G.S. Chandela and Shri. H.R. Dutta. This has greatly hampered my defence. This is against an instance where the disciplinary authority had acted in an arbitrary and partisan manner (Annexure-8).

(XI) Both the Presenting Officer and the Inquiry Officer have brought extreneous matter. Your appellant denied the charges and hence denied that he had forged signatures. The Presenting Officer in his brief dated 24.8.95 to the Inquiry Officer at para- 5 mentions a letter alledged to have been written on 20.4.95 long before the enquiry and this letter was not an exhibit. The Inquiry Officer at para- 5.2.2 under Article- II of his report again mentions this letter.

Attested

H. Dutta

Advocate

(XII) Your appellant was dedicated to his duty and was performing his duty with competence and efficiency. He was made to hold dual charge of No.29(P) and No.5(P) with effect from 28.11.85 vide DNEC's letter No.CI-12330/8-B(NEC) dated 18.11.85 till 7.7.87, when Store Keeper of No.5(P), absconded. The works of these two units were enormous end. My performance was appreciated, Maj.S.Chowdhury joined as O.C. No.5(P) in 8/92. Soon after when I refused to adjust contingent money which he had drawn he turned against me threatening 'I will write your ACR as bad as I would and you will be the second man to be out from this Department'. Maj.Chowdhury was Dy. Director and O.C. No.5(P). Purchases made by Maj. Chowdhury and Shri. S.Bhattacharjee from 12/92 to 94 were not entered in consumable Register. It is under these circumstances and background that a charge sheet against me was issued.

(XIII) The Learned Disciplinary Authority in his order No.C.527/4-A-302 dated 20.8.96 at para-2 under Article-II again relies upon a report of Court of Inquiry which was denied to me. It is surprising that the then Driver who resided at Shillong was not called to ascertain if M.T. parts were issued on the specious plea that he had retired from service.

(XIV) Your appellant was charged that he had misappropriated stores worth Rs. 1,62,991/-. The fact that the Inquiry Officer dropped some items from this amount shows that the so called loss was a got-up case against me. If I was responsible for the loss of Rs.1,55,098/- not Rs.1,62,991/- as I was charged how the magic figure of Rs. 60,129.91 was arrived at and the amount to be recovered from my D.C.R.G. etc. ?.

Attested

M Dutt

Advocate.

I have four growing children studying in Schools at Shillong. To maintain a family of six members even with my salary was extremely difficult because of soaring prices. This punishment of compulsory retirement will completely ruin the future career of my children.

Under these circumstances, I would fervently pray that the points I have mentioned in the foregoing paras be examined dispassionately and set aside the punishment.

Yours faithfully,

[Signature] 20/9/86

(H. SANGAWIA)
Two Brothers Home
Poktiah Nongthymmai
Shillong- 793014
MEGHALAYA

Enclo: as stated above
2) Copies of punishment order & charge sheet.

Dated Shillong-14
The 20th Sept. 1996.

Copy to :-

The Director, North Eastern Circle, Survey of India, Shillong- 793001 for necessary action.

[Signature] 22/9/86

(H. SANGAWIA)
Two Brothers Home
Poktiah, Nongthymmai,
Shillong- 793014
Meghalaya.

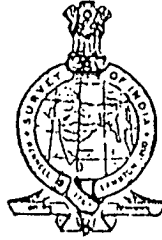
Attested
Mouth
Advocate

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

ANNEXURE D

-52-

ग्राम्स
Grams code SUREAST
टेलिक्स
Telex 0214268 DKO IN
फोन
Phone 40-2150; 40-6571



पूर्वी क्षेत्र
EASTERN ZONE

13 वुड स्ट्रीट
13 WOOD STREET
कलिकाता- 700 016
CALCUTTA-700 016

सं. No. EZ - 336 / 4-A(HS)

दि. Dated 16.12.96

EASTERN ZONE OFFICE ORDER NO. EZ-336 DATED 16.12.96

Sub:- APPEAL AGAINST THE ORDER OF COMPULSORY RETIREMENT -
CASE OF SHRI. H. SANGWIA, STOREKEEPER, GRADE II
(RETIRED) OF NO.80 PARTY (NEC), SHILLONG.

An appeal dated 20.9.96 by Shri H. Sangwia, Storekeeper, Grade II of No.80 Party (NEC), Shillong (Retired) against the penalty awarded to him by the Disciplinary Authority was received under D.N.E.C.'s letter No.C-527/4-A-302 dated 20.8.96 alongwith necessary information and records. The appeal had been addressed to the Surveyor General of India by the appellant himself and accordingly it was sent to the Surveyor General of India by the Director, North Eastern Circle which subsequently has been received in the office of the Appellate Authority on 11.11.96 from the Surveyor General's Office. Parawise comments on the appeal have been received by the Appellate Authority on 26.11.96 from the Disciplinary Authority.

FACTS OF THE CASE

Shri H. Sangwia had been recruited as T.T.T.'B' (Storekeeper) on 01.07.1972 in North Eastern Circle, Shillong. After his successive promotions to Grade IV, III and finally to Grade II and with about 15 years of experience in the trade of Storekeeper he was subsequently posted as Storekeeper, Grade II in No.5 Party (NEC) with effect from 7.7.87. His transfer order from No.5 Party (NEC), Shillong to No.80 Party (NEC), Shillong was issued during December, 1993 and he was finally relieved from No.5 Party (NEC) on 13.7.94. Since at the time of his transfer from No.5 Party (NEC) Shri Sangwia did not complete handing over of stores of No.5 Party to his successor, the Director, North Eastern Circle constituted a Board to complete the handing over of stores by Shri Sangwia. During handing over the Board detected a great deal of irregularities during the tenure of Shri H. Sangwia, as Storekeeper of Govt. stores of No.5 Party. As such the Disciplinary Authority conducted Fact Finding Enquiry by a Board to ascertain the nature and magnitude of

Attested

Moultan

Advocate

irregularities/loss of Govt. stores in the unit. It was revealed during Court of Enquiry that Shri H. Sangwia was responsible for the loss of Govt. stores amounting to the book value of Rs.1,62,991/- (Rupees One lakh sixtytwo thousand nine hundred ninetyone only) which he did, as per available documents kept in custody of the appellant, with the intention/by manipulation. Subsequently Shri Sangwia was charge sheeted and a departmental enquiry was held against him. Shri Sangwia was found guilty of the charges by the Disciplinary Authority through Court of Enquiry. The Disciplinary Authority awarded the punishment of Compulsory Retirement with effect from 20.8.96 and recovery of depreciated value of loss of stores amounting to Rs.60,128.91 from DCRG and other pensionary benefits to Shri H. Sangwia. The punishment was awarded under DNEC's letter No.C-527/\$-A-302 dated 20.8.96 and the appeal has been preferred by the appellant on 20.9.96 and therefore it is covered under period of limitation.

The following information/records furnished by the Disciplinary Authority have been examined :-

- 1) Brief history of the case.
- 2) Parawise comments by the Disciplinary Authority on the appeal.
- 3) Annexures duly completed.
- 4) Disciplinary File.
- 5) Appeal File.
- 6) Service Book.
- 7) A.C.R. for 1996.
- 8) Correspondence in the file 4-A(H. Sangwai).
- 9) Records available in the office of Appellate Authority in this case.

On the perusal of the above records the undersigned has arrived at the following conclusions :-

Para 1 of the appeal :

It is a fact that the copy of the Fact Finding enquiry report to establish prima facie whether in view of the facts on records there was a need to hold disciplinary enquiry under Rule 14 of CCS (CCA) Rules, 1965 or not had not been supplied to the appellant through him. However, the statements of the witnesses during the stated preliminary enquiry have not been used against the appellant to prove the charges against him. The non-supply of copy of the Fact Finding Enquiry Report has not resulted in the miscarriage of justice. The appellant has been afforded full

Attested

M Dutt
Advocate

opportunities during the detail enquiry under Rule 14 of CCS (CCA) Rules, 1965 to rebutt the charges against him and he has not been denied opportunities to defend himself against the allegations. Thus no violation of Article 311 of the Constitution has been committed. In view of the facts stated above. The reference to the case law in Krishna Chandra Tandon Vs. Union of India, AIR 74 SC/589, Bhagat Ram case sub-para IV of 6.4 in G.D. Singh's Handbook for Enquiry Officer is not relevant in the present case as the appellant had been provided with full opportunity to defend himself against the charges and statements of prosecution witnesses and documentary evidences against him (Charged Officer).

Para 2 of the appeal :

Originally the appellant, Shri H. Sangwia, was held responsible for loss of Govt. stores amounting to Rs.1,62,991.00 being the book value of stores. However, certain consumable items which had outlived the prescribed period and allowing benefit of doubt to Shri H. Sangwia in a few other cases and allowing depreciation in the cost of the lost articles an amount of Rs.1,02,862.09 was excluded from the book value of stores (lost) and the Disciplinary Authority found him responsible only for the effective loss of stores caused to the Govt. to the value of Rs.60,128.91 being depreciated value of the stores as arrived at by the Director, North Eastern Circle. Since this was done allowing benefit of doubt to Shri Sangwia and no hardship has been caused to the appellant on account of suggestions of the Enquiry Officer for reduction in the amount of loss to be attributed to the appellant, this is not required to be reasoned out. In fact it is not disagreement in substance but in allowing the benefit of doubt to the appellant and depreciation in the cost of lost articles. The contention of the appellant on this ground, therefore, fails.

Para 3 of the appeal :

The Disciplinary Authority has not taken action on the basis of opinion expressed by the Enquiry Officer regarding integrity of the appellant and therefore no prejudice has been caused to the appellant.

Para 4 of the appeal :

The allegation by the appellant does not prove his innocence. The case of the appellant is whether or not he is responsible for the said loss of Govt. stores through false attestations. That some officer did not favour him in suppressing the enquiry or not helping him out for certain alleged reasons is no defence of the appellant against the act of misconduct with which he was charged.

Para 5 of the appeal :

The appellant had been posted in No.5 Party (NEC) when

Accused

H. Dutt

Advocate

he took over the charge of the stores from his predecessor with effect from 7.9.87 and as custodian of stores he is responsible to account for the stores held in his charge. What happened before his taking over the charge of the stores will not come to his rescue. He is to state only his defence and error of judgement, if any, committed by the Disciplinary Authority.

Para 6 & 7 of the appeal

The charge against the appellant is that he forged initials of the Attesting Authority for taking out stores from the concerned stock ledgers and the appellant in reply to the Memorandum of Charges had categorically confessed to the forging of initials of the Attesting Authority for taking out of stock the articles in the concerned stock ledger. What was relevant to the appellant was the entries in the stock ledgers against which he had forged his initial/signature which stands admitted as per his own confession vide his letter dated 29.5.96 in reply to the charge sheet and later during enquiry in a different way. For preparation/statement of his defence the documents stated by him in para 6 of his appeal are extraneous and nonsupply of these documents did not handicap the appellant in his defence as he was given full opportunities in examining the entries in the stock ledgers. The appellant has been made responsible for the loss of stores of items against which he has made his own signature/initial and has fraudulently taken out the stores against his own signature/initial in the stock ledger/invoices. He has not been made responsible for any other loss. The case against the appellant is that he made the initials/signature of the Attesting and Verifying Officers and thereby fraudulently caused loss to the Govt. stores and the appellant was required to state his defence against this charge.

Para 8 of the appeal :

The appellant had made a confession statement as regards Article II of the charge. The charge against the appellant was that he unauthorisedly made numerous (series of) signatures/initials of the attesting/verifying officers in ledgers etc. which he was to accept or deny during enquiry seeing each initial/signature. Accordingly the enquiry officer appears to have kept his name alongwith other witnesses. The innocuous/inadvertent entry of the appellant's name alongwith the other witnesses has, however, not caused any jeopardy to the appellant as the charge against him is based on the documentary evidences. The appellant's contention contained in para 8 of the appeal does not warrant any interference with the decision of the disciplinary authority.

Para 9 of the appeal :

The entire prosecution depends on the single fact whether or not the appellant had made his own signature/initial against the entries for taking out certain items of stores by which loss was caused to the Govt. and the appellant had already

Attested
MDWth
Advocate

confessed to having forged his signature by which loss was caused to the Govt. and the act of this misconduct by the Govt. servant had stood admitted. Therefore there was no need to hold any enquiry in respect of Article of charge II which stood admitted. During the course of enquiry the appellant was only asked to see whether or not the said initials/signatures of attesting/verifying officers were put by him which other than the appellant no body else could do. Therefore the contention of the appellant in this context, fails.

Para 10 of the appeal :

This was a case of prosecution to prove the charges against the appellant for which prosecution submitted the documents and produced witnesses to substantiate the charge. The appellant was given full opportunities to examine the witnesses produced by the prosecution/presenting officer and also rebutt the allegations. The appellant was given full opportunities to defend himself. Again the major charge of putting his own signature/initial for attesting/verifying officers stood substantiated since accepted also during the enquiry by the appellant.

Para 11 of the appeal :

The appellant had already confessed to having made his own signatures/initials of the attesting officers in addition to his letter dated 29.5.96 in reply to the charge sheet and in accordance with the provisions contained in the relevant rules no enquiry was required to be held in respect of the admitted charge. The appellant had made this confession in his full sense and without any duress or coercion which he did not withdraw during the intervening period till enquiry. There was no need to hold enquiry in respect of this admitted charge except for verification of the signature/initials of the appellant by him during enquiry.

Para 12 of the appeal :

The appellant had not been charged with inefficiency or incompetence. He had been charged with misconduct of forgery for fraudulently taking out of stores under his own initials/signature. The plea put forward in his appeal is untenable.

Para 13 of the appeal :

The disciplinary authority has mostly relied on the confession of the appellant to his self signature/initials against the entries for taking out the stores fraudulently. Since this charge had been accepted by the appellant there was no further requirement to substantiate this charge through witnesses or enquiry. The contention of the appellant is untenable.

Para 14 of the appeal :

The book value of the items of the stores against which

Attested.

M Dutt

Advocate.

the appellant had made his own signatures/initials assuming a role of attesting officer stood as Rs.1,62,991/-. However, item of the stores which had outlived their prescribed period of life was excluded and also allowing benefit of doubt to the appellant the book value of stores lost stood at Rs.1,55,098/- and the depreciated value of these articles was found out to be Rs.60,129.91 (Rupees sixty thousand one hundred twentynine and paise ninetyone) and accordingly the disciplinary authority taking the most modest view had ordered to recover only the depreciated value of the lost items of the stores due to self signatures/initials of the appellant in the stock ledgers/invoices.

The duty of the Storekeeper is to account for the stores held in his charge for which he keeps in his custody all the receipts/invoices duly authenticated by the Head of the Office or an officer authorised by the Head of the Office and make entries in the concerned ledgers for the items of stores received and stores taken out and all such entries in the stock ledgers on the invoices should be attested by the Head of the Office himself or by an officer, normally a Gazetted Officer, duly authorised by the Head of the Office, to attest such entries. The charge against the appellant is that in respect of said items of the stores in the concerned stock ledgers and invoices etc he had himself made the signatures/initials of the attesting officer to which he had confessed in the written statement in reply to the charge sheet i.e. article (ii) of the Memorandum of Charges. During enquiry he was asked to categorically examine the said initials/signatures made by him. He said that he had made these signatures/initials not on behalf of the attesting officers but on his own behalf/for himself and that he had not committed any act of forgery. During the course of enquiry his signatures/initials were compared against his signatures/initials in the Attendance Register and other records and normally the signatures/initials put by him in the stock ledgers and invoices did not tally with those in the Attendance Register etc. However, when a delinquent Govt servant disputes a signature/initial and handwriting, the matter needs to be examined by the experts in the Department of Questioned Documents. In the instant case evidences available in the documents did not call for reference of his signature/initial to the vigilance department because he admitted to having made such initials/signatures himself. Even assuming that he did not sign/initial for the attesting officers but he did make series of signatures/initials against the entries himself assuming the role of the attesting and physical verification officers in respect of stated articles without any authority for which he could not have been authorised since belonging to Group 'C' service in Divn.II cadre and also himself holding the charge of stores. The misconduct of assuming the role of attesting and physical verifying officers is equally grave warranting disciplinary action for major penalties contemplated in Rule 14 of C.C.S. (C.C.A.) Rules, 1965.

Attested

M. Smith

Advocate.

68

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ORDER

WHEREAS the points raised in appeal by the appellant, Shri H. Sangwia, Storekeeper, Gd.II and entire disciplinary proceedings have been thoroughly examined, the findings of the disciplinary authority are held to be warranted by the evidences on record, which are documentary contained in the relevant stock ledgers and invoices which were kept in the personal custody of the appellant himself.

AND WHEREAS there is a preponderance of probability of the fraudulent manipulations by the appellant in taking out the Govt. stores under his own signature/initials.

WHEREAS the appellant by trade was employed for custody of Govt. stores entrusted to him (with trust) the appointing and disciplinary authority came to a decision that further continuance of the appellant in Govt. service may not be in public interest and the loss of stores has been caused to the Govt. on account of fraudulent manipulations by the appellant, the undersigned confirms the following order of the disciplinary authority :-

- 1) Compulsory retirement of the appellant from service with effect from 20.8.96 passed by the disciplinary authority, and
- 2) Recovery of the cost of the Govt. stores to the depreciated value of Rs.60,128.91 (Sixty thousand one hundred twentyeight and paise ninetyone) from the pensionary benefits of the appellant within the constraint of the existing rules for recovery as decided by the Disciplinary authority.

These penalties are held to be appropriate and adequate and do not require to be either toned down or enhanced as these meet the ends of justice.

G. Choudhary 16/11/96
(G. CHOUDHARY),
Addl. Surveyor General,
Eastern Zone.
(Appellate Authority).

To

Shri H. Sangwia,
Storekeeper, Grade II

(Through : The Director, North Eastern Circle,
Shillong) - 3 copies

Accepted

*Moulik
Advocate.*

9-2-98

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ANNEXURE: E

69

To

The Surveyor General of India
Dehradun U.P.

Through Proper Channel.

Sir,

Since my appeal was rejected by Additional Surveyor General, Eastern Zone (Appellate Authority) Order No EZ. 336 dated 16.12.96 I have the honour to submit this appeal to you being the next Superior Authority as follow.

The Disiplinary Authority through Court of Inquiry awarded me the punishment of Compulsory Retirement with effect from 20.8.96 and recovery of depreciated Rs 60,128.91 from DCRG and other personay benefits under DNEC's letter No C-527/s-A /302 dated 20.8.96.

I was shocked too much when I got the Order. It gave me a lot of mental worriness. So I submitted an appeal to the Additional Surveyor General Eastern Zone, Calcutta on 20.9.96 waiting for favourable reply.

But unfortunately my appeal was rejected. I am afraid that I was not in a proper mind. Unfortunately this rejection couased me bad to worse physically and mentally. All my children school had to be clased and a big burden of family support was infront of me. I lost my mental balance and memeory which made me to confined at home for more than 12 months. I was in such position. Slowly I am recovering from this mental trouble. This is the first time that I could make an appeal to you with a clear mind and allow me to make this appeal for favour of your kind consideration.

I have four children under teenage. They need to continue their studies. I have no other means to support them their schooling unless you allow me to continue my service under your department.

I have been helped by some of my relatives who are unable to continue to help me. Financially I am very helpless now as I do not have other skill to earn money. My hope of maintaining family depend upon your consideration alone. Kindly reinstate me and this is the only way off surviving for us.

If recovery of Rs 60,129.91 is deducted from my penson benefit it will too heavy for me. Kindly make arrangement to deduct from my monthly salary so that I can refund the amount within two years.

After serving more than 20 years it will not possible

Accepted

M. B. Bhat

Advocate.

P.T.O.

for me to get any service. There will be age bar and also there is unemployment problem every where in India today. So there is no hope for me to get a new service.

Under all these circumstances I have the honour to submit this humble appeal to you for favour of your kind and sympathetic consideration so that reconsiliation will be restored for me. Allow me to request you to set a side the punishment and reinstate me in the service. Act of your kindness will save me and my family from drstruction.

Your Fathfully.



9.2.78

(H. SANGAWIA) SK Gte II.

Address

Two Brothers Home
Pohkthieh
Nongthymai
Shillong -793014
Meghalaya.

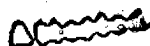
OC.No 80 (P) NEC Shillong 1.

C6py to

The Surveyor General of India
Dehradun U.P. for kind information.

Advance copy

Received
07/2/78



M. S. S. S.

Advocate

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

31 जी (य.सं.)
31 0 (S.O.)

सं. No. 4C-34/1196-PP (H. Sangawia)

महासर्वेक्षक का कार्यालय

SURVEYOR GENERAL'S OFFICE

तार : " महासर्वेक्षक "

Telegram : " SURVEYS "

डाक बक्स सं. 37, POST BOX NO. 37,

देहरादून-248001 (उ.प्र.) — भारत ।

DEHRA DUN-248001 (U.P.) — INDIA.

CONFIDENTIAL

तारीख Dated 14 Aug 1998
(स.क. Saka)

ORDER

This is petition dated 9.2.1998 from Shri H. Sangawia, Ex-Store Keeper Gde.II, of No.5 Party (NEC) for reinstatement in Government Service.

Facts of the case are as under:-

Shri H. Sangawia, Store Keeper Gde.II, was posted in No.5 Party (NEC) with effect from 7.7.1987. His transfer order from No.5 Party (NEC) to No.80 Party (NEC) Shillong was issued during December 1993. Finally, he could be relieved from No.5 Party (NEC) only on 13.7.1994. Even at that time, Shri Sangawia did not complete the handing/ taking over of Stores of No.5 Party (NEC). In this regard a Board was constituted by DNEC to complete the same. During the handing over, the Board detected a great deal of irregularities during tenure of Shri H. Sangawia, as Store Keeper of No.5 Party (NEC). As such, a court of Inquiry was held to ascertain the magnitude of irregularities/ loss of government Stores made by Shri Sangawia. It was revealed through court of Inquiry that Shri H. Sangawia was responsible for loss of huge amount of government Stores amounting to Rs.1,62,991/- which he did wilfully by manipulating the ledgers and by forging the signatures of various officers. Subsequently, Shri Sangawia was charge sheeted and Departmental Inquiry was held against him vide Director, North Eastern Circle's Memo No.C-256/4-A-302 dated 19.5.1995. Shri Sangawia was found guilty of the charges framed against him.

However, on going through the Inquiry Report and after careful examination of documentary evidences, the Disciplinary Authority awarded Shri H. Sangawia, Store Keeper Gde.II, the punishment of 'Compulsory Retirement' with effect from 20.8.1996 and 'recovery of depreciation value of loss of Stores amounting to Rs.60,128.91 from DCRG and other pensionary benefits of the applicant. The punishment was awarded under DNEC's letter No.C-527/4-A-302 dated 20.8.1996.

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Attested

H. Dutt

Advocate.

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Aggrieved by the impugned punishment, Shri Sangawia submitted an appeal on 20.9.1996 direct to Surveyor General of India with copy to DNEC. The Surveyor General of India sent the appeal on 16.10.1996 to the Appellate Authority i.e. the Addl.SG, EZ, Calcutta for appropriate disposal. The Appellate Authority after going through all the relevant informations/documents etc. passed the following order under his No.EZ-336/4-A-(HS) dated 16.12.1996:-

"WHEREAS the points raised in appeal by the appellant, Shri H. Sangwia, Storekeeper Gde.II and entire disciplinary proceedings have been thoroughly examined, the findings of the disciplinary authority are held to be warranted by the evidences on record, which are documentary contained in the relevant stock ledgers and invoices which were kept in the personal custody of the appellant himself.

AND WHEREAS there is a preponderance of probability of the fraudulent manipulations by the appellant in taking out the government stores under his own signature/ initials.

WHEREAS the appellant by trade was employed for custody of government stores entrusted to him (with trust) the appointing and disciplinary authority came to a decision that further continuance of the appellant in government service may not be in public interest and the loss of stores has been caused to the government on account of fraudulent manipulations by the appellant, the undersigned confirms the following order of the disciplinary authority:-

- 1) Compulsory retirement of the appellant from service with effect from 20.8.1996 passed by the disciplinary authority, and
- 2) Recovery of the cost of the government stores to the depreciated value of Rs.60,128.91 (Sixty thousand one hundred twentyeight and paise ninetyone) from the pensionary benefits of the appellant within the constraint of the existing rules for recovery as decided by the Disciplinary authority.

These penalties are held to be appropriate and adequate and do not require to be either toned down or enhanced as these meet the ends of justice."

..3

Attested

M. S. S. S.

Advocate.

Aggrieved by the above order of Appellate Authority, Shri H. Sangawia submitted mercy petition dated 9.2.1998 to the Surveyor General of India and requested for his reinstatement in government Service purely on humanitarian grounds.

I have carefully gone through all the documents relevant to the case and reached the following conclusions:-

It is established by the findings of Inquiry Board that Shri H. Sangawia made a great deal of irregularities with government Stores during his tenure as Store Keeper of No.5 Party (NEC). It was found by the Inquiry Board that Shri Sangawia had intentionally carried forward mistakes and manipulated shortages with surplus items and even issued tyres/ batteries to the vehicles during the period when the vehicle was under repairs in the workshop. He had issued items from ledgers under forged signatures, thus resulting into huge shortage of Stores of No.5 Party (NEC) to the tune of Rs.1,62,991/- (Rupees one lakh sixty two thousand nine hundred and ninety one only). He was afforded opportunity to defend his case but could not give convincing reasons for the shortages.

It is also evidently clear that said Shri H. Sangawia, while functioning as Store Keeper of No.5 Party had forged signatures of Verifying Officers of the Party in the ledgers and invoices with intention to hide the misdeeds done by him and get himself free from the charge of loss of government Stores. Even some pages of the consumable items register were found missing. Shri H. Sangawia could not give convincing reasons for the lapses on his part even though he was afforded full opportunity for the same. He admitted the charges of forgery done by him.

The above acts of Shri H. Sangawia show his failure to maintain absolute integrity, devotion to duty and exhibit conduct unbecoming of a government servant, thereby violating Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

Appellate Authority has already appropriately dealt with the points raised by Shri H. Sangawia in his appeal dated 20.9.1996 and disposed off his appeal by a self-contained, reasoned speaking order.

Accepted

Month

Advocate.

I, therefore, do not find any justification to interfere with the order of Appellate Authority and the penalty imposed by the Disciplinary Authority vide his order No.C-527/4-A-302 dated 20.8.1996, is sustained. The appeal, therefore, fails.



(A.K. AHUJA)
LIEUTENANT GENERAL
SURVEYOR GENERAL OF INDIA
(REVISING AUTHORITY)

To

✓ Shri H. Sangawia,
Ex-Store Keeper Gde.II,
No.5 Party (NEC),
Survey of India,
SHILLONG.

(Through - Addl.SG, Eastern Zone, Calcutta)

Received
H Dutta
Director.

From

- 65 -

H. Sangawia
S.K. Gde.II, No.80 (P) Party
NEC, Shillong
Two Brothers Home
Pohkthieh, Nongthymai
Shillong-793014. (Meghalaya).

To

The Addl Surveyor General(EZ)
Appellete Authority
Survey of India
13, Wood Street
Calcutta.

SUB: PERSONAL HEARING AT THE JURISDICTION OF APPELLETE
AUTHORITY IN MAJOR PENALLTY CASE.

Ref: Govt. of India's instructions No.5 appearing below rule
27 of CCS (CCA) 1965 of Swamy's Compilation of CCS
(CCA) Rules, 23rd Edn., 1997. Reconsideration of
appeal against the order of compulsory retirement vide
your letter No.EZ-36/4-A(HS) dt. 16.12.96.

Sir,

I have the honour to request you to kindly grant me personal hearing to present my case as available under rule 27 of CCS (CCA) rules, 1965. I have gone through the records of disciplinary proceedings and subsequent correspondence and now feel that I was not mentally fit for past few years although I was not undertaking any treatment as I was not aware of mental debility. I really feel ashamed now and having done many things which was not expected from a Govt. servant with my experience, I am extremely sorry for my actions and express my regrets. I may kindly be granted personal hearing to present my case effectively as now I feel that I am mentally fit.

Yours faithfully,

[Signature]
(H. SANGAWIA)
S.K.GDE II

Copy to: The Director, North Eastern Circle, Survey of India for
information.

*Received
27/6/97
[Signature]*

ATTACHED
Mduth
ADVISED

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

ANNEXURE- H

दूरभाष

Grams. case SUREAST

फैक्स

Fax : 033-240-2156

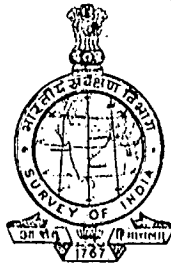
टेलीग्राफ

Telex : 021 5579-EZSY-IN

021 1253 DEFC-IN

फोन

Phone : 240-2156/240-8224/240-6571



- 66 -

अपर महासचिव का कार्यालय

पूरी धारा

13, वृद्ध

कलकत्ता-700 016

ADDL SURVEYOR GENERAL'S OFFICE

EASTERN ZONE

15, WOOD STREET

CALCUTTA-700 016

सं.
No.

दि.
Dated

EZ- 99-44-A(H.Sangawia).

30 June '99


To

✓
Shri H. Sangawia
S.K. Gde.II (Retired)
NEC, Shillong
Two Brothers Home
Pohkthieh, Nongthymai
Shillong-793014 (Meghalaya)

SUB: PERSONAL HEARING AT THE JURISDICTION OF APPELLETE
AUTHORITY IN MAJOR PENALTY CASE.

Ref: Your letter No.NIL dated 29.6.99.

6
You may present your case in person on 30.6.99 at 1130
hours. Accordingly, you have been granted personal hearing as
provided within rule 27 of CCS (CCA) rules, 1965.


(Gulab Choudhary)
Addl Surveyor General, EZ

Copy to DNEC, Shillong for information.

-oOo-



M. Dutt
Advocate.

Copy of 81 no. (3)

-67-



ADDL. SURVEYOR GENERAL'S OFFICE

EASTERN ZONE

D. H. G. O. SHILLONG

CALCUTTA OFFICE

No. EZ- 6018 /4-A(H. Sangwia) Dated 28 Dec. 1999.

To

Shri H. Sangwia,
Retired Storekeeper, Gd. II
Two Brothers' Home,
Poktieh, Nongthymmai,
Shillong - 793014.
MEGHALAYA.

Sub:- ORDER OF DNEC'S LETTER NO.C-527/4-A-302 DATED 20.8.96 -
COMPULSORY RETIREMENT.

Ref:- Your letter No.Nil dated 7.12.99.

We have communicated to you that Addl. Surveyor General, Eastern Zone in the capacity of Appellate Authority has already disposed of your appeal rejecting the same. The Surveyor General of India in the capacity of Revising Authority has also considered your prayer sympathetically but has concurred with the order passed by the Director, North Eastern Circle (Disciplinary Authority) and with appellate order passed by the Addl. Surveyor General, Eastern Zone (Appellate Authority).

Shri M. Tumsanga, Inspector General of Police, Calcutta as your well-wisher met the undersigned and enquired if some consideration could be shown on humanitarian grounds. He was explained the entire matter in detail which he might have communicated to you. As far as this office is concerned the matter stands closed at this end. You had been afforded fullest opportunities to defend/present your case at all stages i.e. during disciplinary proceedings and during consideration of appeal. It may please be noted that beyond Revising Authority there is no other statutory authority envisaged under the rules.

AC

.....2.

Accepted

M. Tumsanga

Advocate

In order to make representations you are required to keep copies of all the correspondences etc. with you.

G. Choudhary

(G. CHOUDHARY),
Addl. Surveyor General,
Eastern Zone.

Copy to Surveyor General of India, Dehra Dun for information.

SEMR/2812/3-4

Amr
M Dutt
DDP-10

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

ANNEXURE- J

(5)



अपर फायरिंग का जवाब
पुनः भेज
11. 12. 1999
दिल्ली 1100 016

ADDL SURVEYOR GENERAL'S OFFICE
EASTERN ZONE
13, WOOD STREET
CALCUTTA-700 016

Grams: care SUREAST

फैक्स

Fax : 033-240-2156

टेलीग्राफ

Telex : 021-5579-EZSY-IN

021-4253-DECC-IN

फोन

Phone : 240-2156/240-8224/240-6571

सं. दि.
No. EZ- 13 /4-A(H.Sangawia) Dated 13 Jan: 2000.

To

Shri H. Sangawia,
Retired Storekeeper, Gd.II
Two Brothers' Home,
Poktieh, Nongthymmai,
Shillong - 793014
Meghalaya.

Sub:- ORDER OF DNEC'S LETTER NO.C-527/4-A-302 DATED 20.8.96

Ref:- Your letter dated 4.1.2000. → Ref. to M. no. (2)

Your attention is drawn to last para of this office letter No.EZ-6018/4-A(H. Sangawia) dated 29.12.99 (copy enclosed).

Ref. to S. no. 3

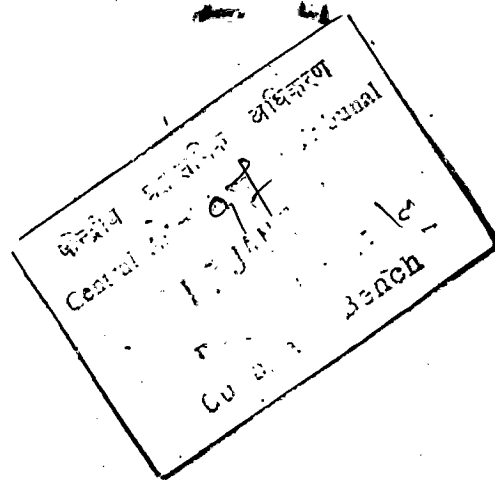
Please note that no further correspondence will be entertained in this regard.

(G. CHOUDHARY),
Addl. Surveyor General,
Eastern Zone.

Sbm/11100/3

Attested

Maula
Advocate.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. NO. 128 OF 2000

Shri H. Sangawia

..... Applicant.

-Vs-

Union of India and others.

..... Respondents.

Written Statement on behalf of the Respondents of 1 to 4.

I, Tapan Kanti Bandyopadhyay, aged 56 years son of late C.C. Banerjee, at present holding the current duty charge of the Director, North Eastern Circle, Survey of India, Shillong do hereby verify and state as follows:

1. That I am respondent at serial 4 and authorized to sign this verification on behalf of the respondents from serial 1 to 4. Respondent at serial 5 that is Director, General, Surveyor General of India, New Delhi is non-existent as no such authority is known. For respondent No. 1, it should be Department of Science & Technology and not Ministry of Home Affairs.
2. That I have gone through the original application and have understood the contents there of.
3. That the applicant in the present original application has prayed to this Hon'ble Tribunal to quash Annexure 'B' i.e. punishment awarded under letter No. C-527/4-A-302 dated 20.8.1996 passed by the Director, North Eastern Circle, Shillong being the Disciplinary Authority.

[Handwritten signature]

Filed by
Sr. Tapan Kanti Bandyopadhyay,
... ASSIST.
Through
Rajesh Singh Daramadhy
A.D. CGSC, CAT. 80
12/12/2000

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4. To quash Annexure 'D' i.e. Office order No. EZ-336 dated 16.12.1996 passed by the Additional Surveyor General, Eastern Zone i.e. respondent at serial 3.
 5. To quash Annexure 'F' passed by the Surveyor General of India under his letter No. LC-34/1196-PF dated 14.8.1998.
 6. To quash Annexure 'I' and Annexure 'J' and to reinstate, the applicant in the service along with all consequential benefits and any other reliefs.
 7. That it is humbly submitted that the prayer of the applicant is completely misconceived and untenable. Punishment awarded to him by the Disciplinary Authority i.e. Director, North Eastern Circle, Shillong was after due deliberation and through examination of the report of Inquiry Officer. His appeal to appellate authority i.e. Additional Surveyor General, Eastern Zone, Calcutta was also examined at length. His appeal preferred to the Surveyor General of India i.e. Revising Authority was examined in great detail. He was even accorded personal hearing but he could not produce any new facts in his support for sympathetic consideration and review by the higher formations.
 8. That in regard to the averments made by the applicant, it is submitted that all the contentions of the applicant except those which are specifically accepted, are denied. Para-wise submissions of the respondents to the original application are as under:
 9. As regards the contents of para 1 to 3 of the O.A. this answering respondent does not make any comments.
 10. As regards the contents of para 4.1 of the O.A. this answering respondent does not make any comments.



11. As regards the contents of para 4.2 of the O.A. this answering respondent does not make any comments. Since those are matter of records.

12. That with regard to para 4.3 the respondents beg to state that his promotions in all grades i.e. grade IV, Grade III and Grade II were based on Trade Test which he passed and hence promoted in these grades. His promotion in these grades had nothing to do with Annual Confidential Reports. Moreover he had no access to his Annual Confidential Reports to know if they were average/ good etc.

13. That with regard to para 4.5 and 4.6 the respondents beg to state that the applicant was functioning as Store Keeper and it was his duty to account for all Stores kept under his custody as per the relevant Stock Ledgers. It was his duty to make entries of all items of Stores issued/ sent on invoices and also entered in the Stock Ledgers, the items of stores procured and received on invoices with the approval of the Competent Authority and get the stock entries duly attested by the Competent Authority. The Disciplinary Authority issued a Charge Sheet against him for losses of Stores amounting to Rs. 1,62,991/- which was serious. He also happened to attest the entries in the Stock Ledgers forging the signature of the competent authorities under his own signature which he admitted during the court of inquiry. This was also a serious offence. Court of inquiry was held under Rule 14 of CCS9CCA) Conduct Rules. The applicant was offered all opportunities to defend himself. The report of the Inquiry Officer was thoroughly examined by the Disciplinary Authority who awarded punishment of compulsory retirement from the service to the applicant. There was no evidence of malafide or discrimination against the applicant.

14. That with regard to para 4.7 the respondent beg to state that the applicant during the course of inquiry had admitted the charge of forgery in as much as he attested the entries at places under his own initials and thus the

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charge of forgery stood proved. Thus the inquiry proceedings are not vitiated. The initials of the applicant against the stock entries are matter of documentary evidence and had the applicant denied his initials then the matter would have been sent to Director of Questioned Documents for verification of his initials. The applicant is trying to mislead the Hon'ble Court at this stage.

15. That with regard to para 4.8 and 4.9 the respondent beg to state that the charges against the applicant are based on the documents i.e. Stock Ledgers and the applicant was given opportunity to state whether the entries in the Stock Ledgers were made by him and were attested by him under his own initials which the applicant admitted having done by himself.

16. That with regard to para 4.10. the respondents beg to state that the provisions of the rules 14 of CCS(CCA) Rules were meticulously followed.

17. That with regard to para 4.11 the respondents beg to state that the applicant during his course of inquiry had admitted specifically that he had under his own initials made attested entries in the Stock Ledgers thus charge of forgery stood proved on the basis of the documents.

18. That with regard to para 4.12 the respondents beg to state that the matter relates to the attestation against the entries maintained in the Stock Ledgers. The Stock Ledgers were throughout kept under the custody and charge of Store Keeper and the stated entries in the Stock Ledgers were made by the applicant himself. These entries were required to be attested by the Head of Office or by the Gazetted officers duly authorized by the Head of office. Since the attestations were not done by the Head Of Office or by authorized Gazetted Officer, the applicant is responsible for its attestation by an authorized person. The applicant has himself admitted that the said attestations were done under his own signatures, therefore, the matter was not required to be referred to the Handwriting Experts.

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19. That with regard to para 4.13 the respondents beg to state that the statements of the applicant are mere afterthought and malicious. It was his duty to get the initials from the Head of Office or by an authorized Officer against the entries in the Stock ledgers and he was not supposed to put his own initials against the entries of stock out in the Ledgers. That he put his own initials against the entries on orders from the Director, North Eastern Circle, is mere concoction, mischievous and hence untenable.

20. That with regard to para 4.15 and 4.16 the respondents beg to state that as stated above the charges were completely based on documents. The applicant was an experienced Store Keeper well conversant with rules of Stores accounting. He was required to account for all stores in his charge as per Stock Ledgers. He failed to produce the required quantities of items as per balance in Stock Ledgers. The items of stores could be issued only against the receipts and he was supposed to get receipts/ invoices duly accounted for, also the entries in the Stock Ledgers were required to be duly authenticated. The applicant failed to account for items of stores as per the stock position and also put his own initials against many items of the stores issued by him. No defence statements of any nature can come to the rescue of the applicant in respect of the charges stated above, the charges being based on documentary evidence.

21. That with regard in para 4.17 the respondents beg to state that the benefit of doubt to the maximum extent was allowed to the applicant and this could not be the basis for his defence. The applicant was required to produce the receipts and the invoices kept in his custody for items of stores taken out of the stock. Under no circumstances he was supposed to attest the entries in the Stock Ledgers were kept in the personal custody of the applicant being the Store Keeper and he alone is responsible if any pages are taken out from the Stock Ledgers. If pages from Stock Ledgers be allowed to be taken out, the amount of havoc cannot be imagined.

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22. That with regard to para 4.18 the respondents beg to state that the Disciplinary Authority has analysed thoroughly the inquiry report para wise and has given his reasoned findings on each of the items of report. The order of punishment is based on the findings by the Disciplinary Authority and does not disclose any non application of mind.

23. That with regard to para 4.19 and 4.20 the respondents beg to state the appeal of the applicant (Appellant) has been thoroughly examined by the Appellate Authority and reasoned findings of the Appellate Authority are given in Annexure 'D'. From the perusal of Annexure 'D' it may be observed that no irregularities or departure from the rules during the course of inquiry and by the Disciplinary Authority are noticeable.

24. As regard to contents of para 4.21 of the O.A. this answering respondent does not make any comments.

25. That with regard to para 4.22 the respondent beg to state that the Annexure 'F' detailed reasoned statements are put forth by the Revising Authority for his agreement with the findings of the Disciplinary and Appellate Authorities no irregularities are noticed in the order of the Revising Authority.

26. As regard the contents of para 4.23, 4.24 and 4.25 of the O.A. this answering respondent does not make any comments.

27. That with regard to para 4.26 of the way this answering respondent beg to state that the matter of records does not make any comments. Since the last statutory authority contemplated under rule i.e. Revising Authority has already rejected the 2nd appeal of the Authority and during the personal hearing also no new facts were produced by the applicant, there was no scope to re-examine the case under the rules.

MRB m/s

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28. That with regard to para 4.27 the respondents beg to state that the matter has become subjudice, the action of recovery for loss of stores will be taken only under the order of the Hon'ble Court.

29. As regards the contents of para 4.28 of the O.A. this answering respondents does not make any comments. Since those are matter of records.

30. As regard the contents of para 5 of the O.A. this answering respondents respectfully submit that the grounds taken by the applicant are not tenable as this are all vague and general commentaries on flaws and irregularities. No specific legal flaws or irregularities have been made out by the applicant either with Disciplinary Authorities or with the findings of the Disciplinary and Appellate Authorities. The charges of loss of stores and self attestation against the entries in the Stock Ledgers are documentary proofs. After thought statements can not be come to the rescue of the applicant. Therefore the contentions of the applicant are wild, misconceived, vexatious and not tenable.

31. As regard the contents of para 6 and 7 of the O.A. this answering respondents does not make any comments, since those are matter of records.

32. As regard the contents of para 8 of the O.A. of this answering respondent beg to state that the applicant is not entitled to any of the reliefs. He is responsible for loss of stores kept in his custody as a Store Keeper. The benefit of doubt with maximum extent has been allowed and he has been asked to pay minimum assessed amount of losses of stores caused by him i.e. Rs. 60,128.91/- The Hon'ble Court may be pleased to reject the prayer of the applicant such that the respondents Government Authorities are enable to implement the order of punishment i.e. recovery and the loss of stores at Rs. 60,128.91 from his Death Cum Retirement Gratuity and his compulsory

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retirement from service allowing him the financial benefits admissible under rules.

33. As regard the contents of para 9 of the O.A. of this answering respondent beg to state that the Hon'ble Court may be pleased to dispose of the application at the earliest such that there is no necessity of interim order in the matter as the implementation of the order issued by the Disciplinary Authority under his No. C-527/4-A-302 dt 20.8.1996 (Annexure 'B') has remained unexecuted for past about four years.

34. That with regard the O.A. the respondents beg to state that in view of the above facts and the circumstances the original application is liable to be rejected.

35. That with regard to the O.A. the respondents beg to state that the facts stated in the counter affidavit are true to the best of my knowledge and based on official records and I have not suppressed any material facts. I have signed the verification.

KB

VERIFICATION

I, Shri Tapan Kanti Bandyopadhyay, holding the current duty charge of the Director, North Eastern Circle, Survey of India, Shillong being authorized do hereby solemnly declare that the statements made in this written statements reply is true to my knowledge, information and belief.

And I sign this verification on this 22nd day of December, 2000
at Guwahati.

Declarant

T K Bandyopadhyay