

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P- 8103 order sheet pg-1
allowed Date- 05/02/2003

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O.A/T.A No. 194/03

R.A/C.P No.

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SECTION OFFICER (Judl.)

File No. 4
(SEE RULE 42)

SENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 194/2002

Misc Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s) Lakhsenon Deka

-Vs-

Respondent(s) K. O. I. Tom

Advocate for the Applicant(s) A. Dasgupta, S. Chakrabarty

Advocate for the Respondent(s) Addl. C.A. S. A. K. Choudhury

Notes of the Registry	Date	Order of the Tribunal
26579525 19.6.2002 PAB 26/6/02	25.6.02 26/6/02	Heard Mr. S. Chakrabarty, learned counsel for the applicant and also Mr. A. K. Choudhury, learned Addl. C. A. S. C. for the respondents. The application is admitted. Call for the records.
2 + 7 - 2002		In the meantime, the Respondents are directed to dispose of the appeal preferred by the applicant. List on 29.7.2002 for orders.
Notice prepared and sent to D. Section for issuing of the summons to the Respondents by Regd. post with A/D File No. 1897 to 1900 Date - 3/7/2002	mb	<u>U. C. Usha</u> Member
	29.7.02 bb	put up the case again on 6.8. 2002 for orders.
		<u>U. C. Usha</u> Member
		Vice-Chairman
		Vice-Chairman

(2)

6.8.02 List on 9.9.2002 to enable the Respondents to file written statement as prayed by Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the Respondents.

IC Usha
Member

Vice-Chairman

① Service report
was still awaited.

mb

9.9.02 List again on 8.10.2002 to enable the Respondents to file written statement.

Vice-Chairman

No written statement
has been filed.

3/10/02
F.1/10/2002

mb

8.10.02 The Respondents are yet to file written statement. Further four weeks time is allowed to the respondents to file written statement on the prayer of Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents.

List on 18.11.2002 for orders.

IC Usha

Member

Vice-Chairman

mb

18.11.02

Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents prayed for four weeks time to file written statement. Prayer is allowed. List on 16.12.02 for orders.

IC Usha

Member

Vice-Chairman

mb

16.12.02

Heard Mr. S. Chakrabarty, learned counsel for the applicant. On the prayer of Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents further four weeks time is allowed to the respondents to file written statement.

No written statement
has been filed.

3/10/03
22/10/2003

List on 23.1.2003 for orders.

Vice-Chairman

23.1.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

The case is adjourned to 5.2.2003 on the prayer of learned counsel for the applicant to obtain necessary instructions on the matter.

No written statement has been filed.

2/2
4.2.03

Member

mb

Vice-Chairman

5.2.2003 List the matter on 14.2.2003 for further orders.

S.M.
Member

mb

Vice-Chairman

2/2
11.3.03

14.2.2003 None appears for the applicant. Put up again on 12.3.2003 to enable the applicant to take necessary steps.

Vice-Chairman

mb

12.2.2003 None appears for the applicant today also. Put up again on 26.3.2003 for further orders. The applicant may take necessary steps in the meantime.

Slips taken. Notice already issued vide
D/L No/ 1897 & 1900
dtd. 3/7/2002.

13/3/03

Vice-Chairman

mb

26.3.2003 Written statement has been filed. The case may now be listed for hearing on 13.5.2003. The applicant may file rejoinder, if any, within two weeks from today.

S.K.H.

Member

Vice-Chairman

mb

No rejoinder has been filed.

2/2
12.5.03

(3)

13.5.03

Adjourned List 29.5.03
for hearing.

Written Statement

filed on behalf

of the R. No. 1,2,3 & 4.

29.5.2003

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

The Hon'ble Mr. S.K. Hajra,
Member (A).

28.5.03

By order

On the prayer of Mr. A.K.
Choudhury, learned Addl. C.G.S.C.

the case is adjourned to enable the
respondents to produce the connected
records.

List again on 24.6.2003 for
hearing.

WTS has been
filed.

Member

Vice-Chairman

mb

24.6
15.7.03

24.6

Division bench did not sit today
The case is adjourned to
16.7.2003.

pm

A.K.S.

16.7.03 Present : The Hon'ble Mr Justice D.N.
Chowdhury, Vice-Chairman
The Hon'ble Mr N.D. Dayal,
Admn. Member.

Heard in part. List again on 21.7.
2003. The respondents shall produce the
connected records on that day.

Member

Vice-Chairman

pg

21.7. Heard Mr. A. Dasgupta, learned Counsel
for the appellants Mr. A. K. Chowdhury,
Addl. C.G.S.C. for the respondents.
Hearing concluded.
Judgment reserved.

pm

A.K.S.

25.7.2003

Heard learned counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No costs.

12.8.2003

Copy of the judgment has been sent to the office for issuing the same to the parties as well as to the Addl. C. S. C. for its record.

lm

Member

Vice-Chairman

Recd copy of
Addl C. S. C. 13/8/03

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXXX No. 194 . . . of 2002

DATE OF DECISION

25/7/2003

Shri Lakheswar Deka APPLICANT(S).

Mr A. Dasgupta and Mr S. Chakraborty ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others RESPONDENT(S).

Mr A.K. Chaudhuri, Addl. C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR N.D. DAYAL 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 ?

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.194 of 2002

Date of decision: This the 25th day of July 2003

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

The Hon'ble Mr N.D. Dayal, Administrative Member

Shri Lakheswar Deka
S/o Late Kripal Ch. Deka,
Resident of Maidam Bakrapara,
Guwahati.

.....Applicant

By Advocates Mr A. Dasgupta and
Mr S. Chakraborty.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Defence,
South Block, R.K. Puram (Defence Headquarters),
New Delhi.

2. The Officer-in-Charge, Records
A O C Records, P B No.3,
Trimulghery Post,
Secundrabad.

3. The Director General of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters,
D H Q, New Delhi.

4. The Commandant 222 A B O D,
C/o 99 A P O.Respondents

By Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.

.....

O R D E R

CHOWDHURY. J. (V.C.)

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has assailed the impugned order dated 25.11.2002 passed by the respondent No.3- The Director General, Ordnance Service imposing the penalty of compulsory retirement as Appellate Authority in aid of Rule 27 of the Central Civil Service (Classification, Control and Appeal) Rules,

1965 (for short the Rules), and thereby modifying the order of removal passed by the Disciplinary Authority.

2. Basic facts leading to the institution of the O.A. are briefly summed up below:

The applicant at the relevant time was working as Store Keeper, No.2 Sub Depot under 222 ABOD. While he was serving as such a disciplinary proceeding was initiated against the applicant under Rule 14 of the Rules on the following two charges:

"Article of Charges I

That the said Sri L. Deka while functioning as storekeeper in the No.2 Sub Depot 222 ABOD during the period of 1985 - 1990 committed an act of Negligence by not ensuring proper stacking and storing of the Skid Boards held on his charge resulting qty 2978 Skid Boards became unservisable.

Article of Charges II

That the said Sri L. Deka while functioning as storekeeper in No.2 Sub Depot of 222 ABOD during the period Jul 02 Committed an act of carelessness by improperly charging off Quantity 550 Skid Boards of NI-8 held on his charge."

3. The applicant submitted his written explanation denying the charges. In his reply the applicant inter alia asserted that in the year 1987-88, 1988-89 and 1989-90 he received 35895, 16583 and 50483 nos. of Skid Boards AN-32 respectively, but for want of space in the store houses those were stacked and covered by terpolines and kept in Railway platform and corridors in between store houses. It was done on the advice of the Sub Depot Commandar who was well aware and informed of the shortage of space. He also visited the store house from time to time and also maintenance of the Skid Boards were duly inspected by the higher authority from time to time.. With regard to charge No.2 the applicant pleaded that it was an inadvertant mistake which was subsequently detected.....

detected and rectified by making counter entry and there was no disparity of the stock. Accordingly he prayed for exonerating him from the charges.

4. In due course the authority conducted an enquiry by appointing an Inquiry Officer as well as a Presenting Officer. According to the applicant the Inquiry Officer acted unfairly by denying him opportunity to defend his case properly. On the basis of the report of the Inquiry Officer, which according to the applicant was perverse, the Disciplinary Authority passed an order dated 3.5.1999 imposing the penalty of reduction of pay by three stages from Rs.4110/- to Rs.3875/- in the pay scale of Rs.3050-4500/- for a period of two years with effect from 1.5.1999 with cumulative effect. It was also indicated that the applicant would not earn increment during the period of such reduction and on expiry of the period, the reduction would have no effect of postponing his future increment of pay. The applicant preferred an appeal before the Appellate Authority. The Appellate Authority reached the following conclusion:

"(a) Inspite of repeated request made by SK Shri L. Deka during the course of inquiry, Maj KS Sinha being a listed witness (Annexure IV of Charge Sheet) was not made available for cross-examination by the appellant. Thus, violation of provisions available under sub-rule 26 of Rule 14 of CCS (CC&A) Rules, 1965 has been committed while conducting oral inquiry against Shri Deka. As per this sub-rule, under Section 4 of Enforcement of Attendance of Witnesses and Production of documents) Act 1972. Inquiry Authority in departmental enquiry exercise powers specified in Section 5 of said Act to enforce attendance of witnesses and production of documents. In this case, efforts have not been made under the powers conferred under said Act to make available Maj KS Sinha a prosecution witness for cross-examination by the delinquent official.

(b) On perusal of inquiry proceedings violation of sub-rule 35 of Rule 14 of CCS (CC&A) Rules, 1965 is also observed to the extent that as per said sub-rule.....

sub-rule statement of witnesses to be authenticated by the signature of the witnesses, the accused and the inquiry officer whereas in this case unsigned copy of statement of only witness Maj Sinha was provided to the delinquent official for scrutiny.

(c) The Appellant in his appeal has stated that he had reported the matter regarding non-availability of proper store house to the 2 Sub depot Commander after consultation with the then commandant/Dy Commandant Ordered to keep those skid boards in various place like receipt platform and varandas of various store houses covered by tarpoulin. Though, no such documentary evidence are available however, it is felt that for such negligence immediate officer in hierarchy may also be held responsible for damage of skid boards which had cause huge loss to the state by not providing proper guidance to the storekeeper for storage of such store.

NOW THEREFORE, the undersigned being the Appellate Authority excercising the powers conferred vide Rule 27 of the CCS (CCA) Rules, 1965 hereby directs the Disciplinary Authority to remit the case ot the Inquiry Authority for further inquiry on the aforesaid points."

The Appellate Authority accordingly directed the Disciplinary Authority to remit the case to the Inquiry Authority for further enquiry on the aforesaid points.

5. In course of time the Inquiry Officer called the then Major K.S. Sinha and he was cross-examined by the Inquiry Officer himself and thereafter allowed the applicant to cross-examine Shri K.S. Sinha, which according to the applicant was to a limited extent. The Inquiry Officer thereafter submitted his report holding the applicant guilty of both the charges. The Disciplinary Authority furnished him a copy of the report and communicated the applicant for proposed penalty of removal from service. On receipt of the communication, the applicant submitted his representation dated 8.10.2001. The Disciplinary Authority in course of time, vide order dated 5.1.2002, accepted the findings of the Inquiry Officer and found the applicant guilty of the charges and imposed

the.....

the penalty of removal from service. The applicant preferred an appeal before the Appellate Authority, but since the appeal was not disposed of in time, the applicant filed the present O.A. and during the pendency of the O.A. the Appellate Authority passed the impugned order dated 25.11.2002 modifying the penalty of removal from service to that of compulsory retirement from service. The applicant amended his petition and finally in the O.A. assailed the action of the respondents including the impugned order of compulsory retirement imposed on the applicant vide order dated 25.11.2002 passed by the respondents. The applicant in the O.A. assailed the action of the respondents as arbitrary and discriminatory, perverse and further alleged that the said order was passed in contravention of all canons of justice.

6. The respondents contested the case and submitted their written statement denying and disputing the allegations of the applicant. The respondents contended that the authority passed the impugned order of compulsory retirement with due application of mind. Mr A.K. Chaudhuri, the learned Addl. C.G.S.C., while opposing the application, referred to the stand taken by the respondents in the written statement and also fairly placed before us the departmental records in its entirety.

7. Mr A. Dasgupta, the learned counsel for the applicant, contended that the purported proceeding was per se arbitrary and unfair. The learned counsel contended that the alleged lapses took place between 1985 to 1990 and the authority initiated a court of enquiry in which the conduct of the applicant was also looked into

and.....

and after being absolved by the court of enquiry the purported proceeding was initiated against the applicant alone and thereby exuding the superior officers who were the persons responsible for the alleged misconduct. The learned counsel referred to the written statement of the applicant, the evidence of the applicant including that of the then Major Shri K.S. Sinha who took charge of the Sub Depot on 1.5.1991 from Lt. Col. (TS) Ram Dwivedi. The learned counsel contended that the allegation against the applicant was negligence for not ensuring proper stacking and storing, whereas the responsibility rested on the higher authority for taking the measure for stacking and storing the articles. In respect of the article of charges II the learned counsel for the applicant submitted that the said charge was relating to accounts keeping and the applicant explained his conduct in the written statement which was not considered by any of the authorities. The learned counsel contended that there was no proof of any disparity of stock and therefore the respondent authority fell into error in holding the applicant guilty of charge No.2. The learned counsel for the applicant further contended that the essential ingredients of the charge was not established against the applicant and therefore the authority fell into obvious error in imposing the penalty on the applicant. The learned counsel for the applicant also complained about the procedural irregularities. The learned counsel submitted that the Inquiry Officer acted contrary to the direction of the Appellate Authority. The Appellate Authority directed the Inquiry Officer to enquire into the three factors mentioned in the Appellate Order. Instead, the Inquiry Officer held a fresh enquiry and

recorded.....

recorded further evidence from Major K.S. Sinha, whereas as per the Appellate Authority the said witness was to be recalled only for cross-examination by the applicant. The learned counsel referring to the enquiry proceeding contended that the Inquiry Officer himself acted like a Prosecutor and cross-examined the witness as well as the applicant without giving further scope to the applicant to defend his case. The learned counsel contended that the Inquiry Officer conducted unfairly and in a biased manner which prejudiced the case of the applicant.

8. Mr A.K. Chaudhuri, learned Addl. C.G.S.C., opposing the contention of the learned counsel for the applicant, submitted that the Inquiry Officer at best might have faltered in some of the steps, but nonetheless, the said Inquiry Officer acted in a most impartial manner. Mr A.K. Chaudhuri contended that the applicant even moved the higher authority for change of the Inquiry Officer and the higher authority considering all the facts rejected the plea of the applicant for change of the Inquiry Officer. The learned Addl. C.G.S.C. further submitted that the Inquiry Officer to elucidate the facts examined Major Sinha who was a vital witness in presence of the applicant. The said examination was made in the interest of justice and fair play enabling the applicant also to know the department's case. The learned Addl. C.G.S.C. submitted that there was no scope for holding the enquiry as unfair. The learned Addl. C.G.S.C. also submitted that the fairness of the respondents will reveal from the fact that at all relevant times the respondent authority considered the case objectively and fairly. He referred to the first order of the Appellate Authority sending back the case to the Inquiry Officer to

enquire.....

enquire into the points cited in the Appellate Order and thereafter the final order of the Appellate Authority whereby the punishment of removal from service was set aside the modified to that of compulsory retirement.

9. We have already indicated the nature of the charges. The applicant was charged for not ensuring proper stacking and storing of skid boards held on his charge resulting two thousand nine hundred seventy eight skid boards becoming unserviceable. The witness on behalf of the department was the then Major K.S. Sinha. When the witness was presented, the Inquiry Officer thoroughly cross-examined him instead of allowing the Presenting Officer to do the needful. The witness speaking from his recollection after ten years informed the Inquiry Officer about the court of enquiry conducted to investigate certain matters regarding the condition of stores, deficiency of stores in 2 Sub Depot of 222 ABOD at the fag end of 1993. He mentioned that he referred those matters to the to the then Commandant and Deputy Commandant. He said that the records of ABOD could be checked and details obtained, if required. He was asked by the Inquiry Officer as to whether there was any details regarding Skid Boards in handing/taking Notes and he answered in the negative. In answer to the question by the Inquiry Officer as to whether he was given any details by Lt. Col Ram Dwivedi, Ex Commandar, No.2 Sub Depot about the condition of the Skid Boards at the time of taking over charge, the witness answered that when he took over charge of No.2 Sub Depot he had no knowledge about the condition of the Skid Boards, whether it was under dispute or Inquiry by Lt. Col Ram Dwivedi. He was corss-examined by the Inquiry Officer as to whether the

delinquent.....

delinquent officer brought out any discrepancy of Skid Boards which the witness denied. He was also asked specifically by the Inquiry Officer whether the delinquent officer brought to his notice about unserviceable Skid Boards, which also he denied. The following question and answer is very pertinent in this case:

"Q.5 Was Shri L. Deka SK reported you about the Skid Boards for which had no place for storing?

Ans.5 On my inquiring as to why Skid Boards were stacked in open area in varandah SK. Shri L. Deka stated that since arrival of Skid Boards from 1986-1990 Skid Boards were stacked outside due to paucity of covered space. Moreover he stated that since receipt all Sub Depot Cdrs and Dy Comdt, Comdt were informed verbally but no action was taken to keep them inside due to lack of space as such they got deteriorated. Subsequently state of Skid Boards was put up to Comdt through Dy Comdt on 19 Jan 93."

The 25th November proceeding was adjourned. On 26 November 2000, the Presenting Officer asked Major Sinha as to whether before taking over charge of Commandar No.2 Sub Depot I/c Sheds he was to be given a certificate regarding correctness of the stores and if it had been received it was to be enclosed with the Handing/Taking over charge. The witness stated that he had nothing to say and answered that correctness certificate received from Store Incharge could be looked into. In answer to the question by Defence Assistant the witness admitted that he was the Commandant No.2 Sub Depot when the discrepancy took place. Interestingly, the Presenting Officer was advised by the Inquiry Officer to produce the copy of the noting sheet of 19.1.1993 submitted to the then Deputy Commandant by Major K.S. Sinha in the Staff Court of Enquiry, though for fairness sake the said report ought to have been placed when Major Sinha was

examined.....

examined to confront him on those matters. In the enquiry proceeding the statement of Major Sinha made on 24.11.1993 in the court of enquiry was also referred to and marked as Exhibit 'D'. In the court of enquiry the said witness stated that his permanent posting at 222 ABOD was made on 1.5.1991. Before taking over charge of Commandant of No.2 Sub Depot, he was doing the duties of Personnel Officer. He called on the new Commandant Col Ashwant Kumar on 11.8.1993. On the querry of the Commandant as to whether there was any problem in the Sub Depot, the witness informed him about the problems of Skid Boards and Thinner which had evaporated over the period. On the querry of the Commandant as to whether there was any other deficiency, the witness replied that there was nothing alarming. He, however, reported about certain deficiencies which came to his mind at that time.

10. No attempt was made by the Department to prove and establish the charge No.2 mentioned in the article of charges. In the written statement the applicant put up his own explanation as to the accounts entries which were not considered by any of the authorities. No disparity of stocks was found by any of the authorities to hold the applicant guilty of charge No.2 also. The findings reached by the Inquiry Officer holding the applicant guilty of both the charges and accepted by the Disciplinary Authority are patently perverse. No materials are discernible for holding the applicant guilty of the charges alleged. The Appellate Authority which was entrusted with the responsibility to consider the appeal in its right perspective, overlooked those material aspects.....

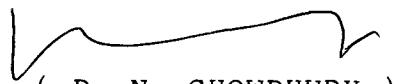
aspects of the matter. Rule 27 of the Rules entrusted the Appellate Authority to consider the appeal on merit and to see and assess as to whether the findings of the Disciplinary Authority were warranted by the evidence and/or whether the procedure adopted in conducting the enquiry was in consonance with the principles of fairness in action. There was no objective assessment. The Appellate Authority failed to objectively assess those material aspects which caused grave failure of justice.

11. We have gone through the materials relied upon by the Inquiry Officer as well as the Disciplinary Authority for holding the applicant guilty of the charges. On consideration of all the materials it appears that the essential ingredients mentioned in both the charges were not established. There was no semblance of evidence for holding the applicant guilty of the charges. Perversity writ large on the findings of the Inquiry Officer which was acted upon by the Disciplinary Authority and the Appellate Authority holding the applicant guilty. In the facts and circumstances of the case the impugned order imposing the penalty vide order dated 25.11.2002 is liable to be set aside and is accordingly set aside.

The application is allowed to the extent indicated. There shall, however, be no order as to costs.



(N. D. DAYAL)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN

General Administration Bench

21 MAY 2003

Guwahati Bench

(AMMENDED APPLICATION)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 184 / 2002

Sri Lakheswar Deka

APPLICANT

Union of India

RESPONDENTS

I N D E X

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Filed by:-
S. Chakraborty
Advocate

*Procedure
and Application*

File No. 2

2 Disc. 2

1

Case No. 2

obj. in G.P.C.

6x

*Filed by Sri. Lakheshwar Deka
20/08/2002
Human Garwabadi
Advocate*

(AMMENDED APPLICATION)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 184 / 2002

PARTICULARS OF THE APPLICANT :--

Sri Lakheshwar Deka

Son of Late Kripal Ch. Deka

Resident of Maidam Bakrapara

Guwahati -- 781 029.

PARTICULARS OF THE RESPONDENTS :--

1. Union of India

Represented by the Secretary to the

Govt. of India, Ministry of Defence

South Block, R.K.Puram (Defence Headquarters)

New Delhi --- 11.

2. Officer -- in -- Charge, Records

A O C Records, P B No.3

Trimulgherry Post, Secundrabad -- 500015.

3.

Director General of Ordnance Services

Master General of Ordnance Branch

Army Headquarters

D H Q, P.O. New Delhi -- 110011.

Contd. 2..

4. Commandant 222 A B O D
C / O 99 A P O

1. PARTICULARS OF THE ORDER FOR WHICH THIS APPLICATION IS MADE : --

An order dtd. 25.11.02 passed by Director General Ordinance Service vide Order No.A/24321/03/05-8c(ii) whereby the penalty, of removal from service was modified to compulsory retirement from service.

2. JURISDICTION OF THE TRIBUNAL : --

This application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION : --

This application is within the period of limitation.

4. FACTS OF THE CASE : --

(i) That the applicant was working as Store Keeper No.2 Sub Depot under 222 A B O D. There were all together 16 sheds under him.

Contd. 3..

The store was used to keep skid boards and parasuits which were supplied. During the period 1985 - 90 huge quantity of materials were supplied and due to shortage of space in ware house, materials received by the depot had to be kept in railway platform and available corridors in between storehouses. During that period skid boards received were stacked and covered by tarpolines in the aforesaid area and all adequate measures to protect the same were taken. This was done on the advice of the Sub Depot Commander who was aware of shortage of space as the higher authority was informed of lack of space through him.

(ii) That in the year 1995 the applicant was served with a chargesheet issued by the officer - in - charge, records vide memo no: 6865581/S K/D C-131/A 2/Civ/C A-6/34 dtd. 1.8.95. The Charge Sheet contained two Charges which reads as under --

Article of Charges I

That the said Sri L. Deka while
Contd. 4.

functioning as storekeeper in the No.2 Sub Depot 222 A B O D during the period of 1985 - 1990 committed an act of Negligence by not ensuring proper stacking and storing of the Skid Boards held on his charge resulting qty 2978 Skid Boards became unservisable.

Article of Charges II

That the said Sri L. Deka while functioning as storekeeper in No.2 Sub Depot of 222 A B O D during the period Jul 92 Committed an act of carelessness by improperly charging off Quantity 550 Skid Boards of NI-8 held on his charge.)

The aforesaid charges were sought to be established by the statements of Maj. K S Sinha dtd 24. Nov 93. The applicant was not served with a copy of that statement or any other documents.

A Copy of the Charge Sheeet dtd 1.8.95 is annexed hereto as Annexure -- 1.

(iii) That the applicant submitted his reply
Contd. 5..

on 19.8.95. It was, interalia, stated that in the year 1987 - 88 he received 35895 nos. of skid boards AN-32, and 16583 nos. & 50483 nos in the year 1988-89 & 1989-90 respectively. Due to lack of space in the store houses these skid boards were stacked and covered by terpolines and kept in Railway platform and corridors in between storehouses. This was done on the advice of Sub Depot Commander who was well aware and informed of the shortage of space. He also visited the store house from time to time and also maintainance of the skid boards were duly inspected by the higher authority from time to time. He also pointed out that for any damage of the skid boards he was not responsible. With regard to the Charge no.2 he pointed out that it was an inadvertant mistake which was subsequently detected by him and rectified by making Counter entry and there was no disparity of stock. He prayed to absolve him from the alleged Charges.

A Copy of the reply dtd.

19.8.95 is annexed as

Annexure - 2

Contd. 6..

(iv) That the respondents were not satisfied with his reply and proceeded with a departmental enquiry by appointing one Mr. H. R. Sorate as Enquiry Officer and Sri K. C. Gogoi as Presenting Officer. The enquiry officer conducted the enquiry in gross violation of the principles of natural justice without affording adequate opportunity to applicant to defend himself. The enquiry officer commenced the enquiry by questioning the applicant on the charges levelled against him. The listed witness of the prosecution Major K. S. Sinha was not produced in the enquiry and the enquiry officer relied on an unsigned statement of the officer recorded on 24.11.93. The applicant was deprived of his right to cross examine the witness. The enquiry officer concluded the enquiry without affording any opportunity to the applicant to adduce evidence in his support. The enquiry officer, thereafter, gave his findings holding the applicant guilty of the Charges levelled against him. The findings of the enquiry officer was perverse and based on no evidence

Contd. 7..

on record. Even the report was not reasoned justifying the conclusion.

(v) That on the basis of the perverse report of the enquiry officer the Officer-in-Charge A O C Records vide order dtd 3.5.99 bearing no. 6965581/SK/Discp/119/Civ/CA-6 imposed a penalty of Reduction of Pay by three stages from Rs. 4110/- to Rs. 3875/- in the pay scale of Rs. 3050-75-3950-80-4590/- for a period of two years w.e.f 1st May 99 with cumulative effect. It was further directed that Sri L. Deka would not earn increment of pay during the period of such reduction and that on expiry of the period, the reduction would have no effect of postponing his future increment of pay.

A copy of the order dtd 1.5.99
is annexed as Annexure - 3

(vi) That being highly aggrieved by the Order dtd 3.5.99 the applicant preferred an appeal before the Director General, Ordnance Service (Respondent no.3) for setting aside the Order of punishment. The appeal was made on
Contd. 8..

8.6.88 by narrating the facts under which the skid boards were kept with due advice and supervision of the Sub Depot Commander. The Sub Depot Commander also had consultation with the then Commandant / Deputy Commandant. The applicant also pointed out the irregularities of the enquiry where the listed witness was not produced in the enquiry. The applicant craves leave of this Hon'ble Tribunal to produce the copy of the appeal dtd 8.6.89 at the time of hearing, if so required.

(vii) That the appellate authority examined the appeal and the records available and vide Order dtd 27.12.88 directed the Disciplinary Authority to remit the case to the inquiry authority for further enquiry on the points specified therein.

A copy of the order dtd 27.12.88 passed by appellate authority is annexed as

Annexure - 4
~~~~~

(viii) That pursuant to the aforesaid direction a fresh enquiry was initiated,  
Contd. 9..

though there was no Order of fresh enquiry, by appointing one Sri M. Bhattacharjee as the presenting officer without any change of enquiry officer. The enquiry officer conducted the enquiry without following the due process of law. The enquiry officer examined the prosecution witness Major K.S.Sinha by putting question and leading evidence. He assumed the role of presenting officer. The applicant raised objection to this but his protest was not recorded and thereafter he was asked to cross examine the witness. However on the next date of enquiry the enquiry officer asked the presenting officer to examine the witness and this was done to cover his illegal action. The bias attitude of the enquiry officer compelled the applicant to move an application on dtd 28.11.2000 before the respondent no. 2 expressing his grievance. A copy of the same was furnished to the enquiry officer and he was requested to keep in abeyance the enquiry till disposal of the said application. But the enquiry officer did not pay any heed to the request so made and

Contd. 10..

concluded the enquiry without affording any opportunity to the applicant to adduce evidence in his defence and before the disposal of the representation. The enquiry officer even did not try to go into the facts under which the skid boards were stacked outside the store on the advice and with the knowledge of the Sub Depot Commander, the then Commandant / Deputy Commandant as directed by the appellate authority. However the representation dtd 28.11.2000 was rejected vide Order dtd. 5.1.01.

(ix) That the enquiry officer submitted his report holding the applicant guilty of the charge levelled against him. He also recommended major punishment for the applicant in his report. The finding of the enquiry officer is perverse and based on no evidence on record. The applicant craves leave to furnish copy of the enquiry report at the time of hearing.

(x) That the respondent no.2 vide letter dtd. 7.9.2201 asked the applicant to make  
Contd. 11..

representation against the proposed penalty of removal from Service which shall not be a disqualification for further employment under the Govt. Accordingly the applicant submitted his representation on 8.10.01, but the same was not considered. The respondent no.2 thereafter, vide Order no.6965581 / S K / Discp / Civ / 218 / CA - 6 dtd 5.1.02 imposed a major penalty of Removal from Service which shall not be a disqualification for future employment under the Govt.

A copy of the order dtd 5.1.02  
is annexed as Annexure - 5

(xi) That the applicant being highly aggrieved by the Order dtd 5.1.02 preferref an appeal on 4.2.02 before the respondent no.3. In the appeal the applicant pointed out the biasness of the enquiry officer and irregularities of the enquiry.

A copy of the appeal dtd  
4.2.02 is annexed as  
Annexure - 6

(xii) That the appellate authority was  
Contd. 12..

pleased to dispose of the appeal vide Order dtd. 25.11.02 whereby the penalty of removal from service was modified to compulsory retirement.

A copy of the order dtd. 25.11.2002 is annexed as

Annexure - 7

5. GROUNDS WITH LEGAL PROVISION : --

Being highly aggrieved by the Order of Removal from Service, the applicant begs to prefer this application on the following amongst other grounds :

A) For that the enquiry was conducted in gross violation of the principles of natural justice. The applicant was not afforded with adequate opportunity to defend himself. The enquiry is biased to be set aside and quashed.

B) For that the enquiry officer assumed the role of presenting officer and examined the prosecution witness by putting questions to prove the Charges. The enquiry officer is not a prosecutor. It is not his duty to some

Contd. 13..

how prove the Charges. In the instant case the enquiry officer acted beyond the permissible limits and as such the enquiry is vitiated and liable to be set aside and quashed.

C) For that the applicant raised some objections before the respondent no.2 with regard to bias functioning of the enquiry officer and also requested the enquiry officer to keep in abeyance the proceeding till disposal of his representation. But before his representation was disposed of, the enquiry officer hastily concluded the enquiry without allowing the applicant to adduce defence evidence. Thus the enquiry by no means can be termed a fair enquiry and hence liable to be set aside and quashed.

D) For that the appellate authority directed for further enquiry on the points specified in the Order dtd 27.12.89. But the authority concerned initiated a fresh enquiry which was not ordered. Even the direction of the appellate authority was not complied as there was direction to enquire the

Contd. 14..

circumstance under which skid boards were stacked and covered by terpoulines outside the store with the knowledge and advice of the higher authority. The enquiry officer failed in his duty as directed and gave his findings without examining those facts. Thus the enquiry was not properly conducted and as such liable to be set aside.

E) For that the applicant was earlier awarded with a penalty of reduction of pay by three stages for two years for the alleged offence. However on appeal it was set aside and further enquiry was ordered. For the same offence he was awarded with compulsory retirement from service. Thus the action of the respondents suffer from non application of mind, arbitrary and whimsical. The impugned Order is liable to be set aside and quashed.

F) For that the applicant was victimised to save the higher authorities who were fully aware of the shortage of space in store and advised the applicant to stack the skid boards outside. The applicant was not negligent in

Contd. 15..

his duty and the damages, if any, was due to the compelling circumstance beyond the control of the applicant. In the instant case the applicant was not charged with misappropriation. Thus the disciplinary authority failed to exercise their mind and appreciate this aspect of the case. The impugned order is liable to be set aside and quashed.

G) For that the punishment is shockingly disproportionate to the nature and circumstances of the offence alleged. It is an admitted position that there was lack of space in the store and the case was not of misappropriation. Even the past service of the applicant was not spotted with any stigma. The disciplinary authority failed to exercise their mind and inflicted the punishment of compulsory retirement from service. The impugned order is liable to be set aside and quashed.

H) For that the enquiry officer exceeded his jurisdiction by recommending severe penalty to the applicant in his enquiry

Contd. 16..

report. This action does not need any explanation to show the fact that the enquiry officer was bias and not an independent person. The enquiry thus is liable to be set aside and quashed.

I) For that the finding of the enquiry officer is perverse and based on no evidence on record. From the materials available on record a man of ordinary prudence cannot come to such a finding and hence there being non application of mind on the part of the enquiry officer the enquiry report is liable to be set aside and quashed.

J) for that the impugned order was passed arbitrarily and whimsically without any application of mind and as such violative of Art 14 of the Constitution of India and liable to be set aside and squashed.

K) For that the impugned order was passed in total violation of the procedure established by law and as such the applicant was deprived of his sole means of livelihood.

Contd. 17..

The impugned action being violative of Art 21 of the Constitution of India is liable to be set aside.

L) For that in any view of the matter the impugned order is liable to be set aside and squashed.

6. DETAILS OF REMEDY EXHAUSTED : --

The applicant prefers this application being aggrieved by the order dtd. 25.11.02 passed by the appellate authority against his appeal dtd. 4.2.02 and there is no other alternative remedy.

7. MATTER NOT PENDING BEFORE ANY COURT / TRIBUNAL : --

The applicant declares that no Case is pending before any Court or Tribunal pertaining to the subject matter of this Case.

8. RELIEF SOUGHT : --

The applicant prays that this Hon'ble  
Contd. 18..

Tribunal may be pleased to

(i) Set aside and quash the impugned order dtd. 25.11.02 [Annexure - 7] passed by the Respondent no. 2 whereby the applicant was removed from service.

(ii) Direct the Respondents to reinstate the applicant with full back wages.

(iii) Any other further or other order / orders as this Hon'ble Tribunal deems fit and proper for the ends of justice.

9. INTERIM RELIEF : --

Pending disposal of the Case the Order dated 5.1.2002 passed by the respondent no. 2 be stayed and the applicant be allowed to perform his usual duties with his due scale of pay.

Contd. 18..

10. PARTICULARS OF THE POSTAL ORDER : --

- (i) I. P. O number :
- (ii) Name of issuing office :
- (iii) Date of issue :
- (iv) Payale to :

11. LIST OF ENCLOSURES : --

As indicated in the Index.

Contd. 20..

-20-

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

I, Sri Lakheswar Deka, son of Late Kripal Ch. Deka, aged about years, resident of Maidam Bakarapara, Gau. -- 29, do hereby verify that the statements made in paragraphs 4.[i, iv, vi, viii  
ix] are true to my knowledge and belief and that made in paragraphs 4.[ii, iii, v, vii, x, xi, xii] are true to my information derived from records and rest are my humble submissions made before this Hon'ble Tribunal.

I sign this verification on this the 13<sup>th</sup> day of May 2003 at Guwahati.

Ref. No : 862251/395

Sena Ayudh Corps Abhilash Karyalaya  
 AOC Records  
 Post Box No 3  
 Trichy Post  
 Secunderabad - 500 015

Road Srl No 131

No. 6965581/SK/DC-131/A2/Civ/CA-6/31

01 Aug '95

MEMORANDUM1. The undersigned proposes to hold an inquiry against No 6965581.

Rank Storekeeper Name Shri L Deka 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 each article of charge if enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained are also enclosed (Annexure-III & IV).

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

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

4. Shri L Deka is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of CCS(CCsi) 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 L Deka 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 interests in respect of matters pertaining to his services under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri L Deka 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 the Central Civil Services (Conduct) Rules 1964.

6. The receipt of this Memorandum may be acknowledged.

(TA D'Gunha)  
 Brig  
 Karyabharti ADG  
 Officer-in-Charge Records

Encl: No 6965581 Storekeeper  
 Shri L Deka  
 222 ABOD C/O 99 APO

Attested by  
 S. Chakkreddy  
 Advocate

(Page No 2)

Statement of article of charge framed against Shri L Deka

Storekeeper No 6955581 (Name and designation of the Govt servant)

ARTICLE OF CHARGE - I

NEGLIGENCE OF DUTY

That the said Shri L Deka while functioning as Storekeeper in No 2 Sub Depot 222 ABOD during the period 1985 to 1990 committed an act of Negligence by not ensuring proper stacking and storing of the Skid Boards held on his charge resulting Qty 2973 Skid Boards become unserviceable.

NOT

ARTICLE OF CHARGE - II

NEGLIGENCE OF DUTY

That the said Shri L Deka while functioning as Storekeeper in No 2 Sub Depot of 222 ABOD during the period Jul 92 committed an act of carelessness by improperly charging off quantity 550 Skid Boards of MI-8 held on his charge.

ARTICLE OF CHARGE - III

NIL

carelessness

Improperly charging

Quantity

Skid Boards

47  
23  
(Page No 3)

Annexure - II.

Statement of imputations of misconduct or misbehaviour in support of the Article of charge framed against Shri L Deka Storekeeper No 633581  
(Name and designation of the Government servant).

ARTICLE OF CHARGE - I

NEGLIGENCE OF DUTY

In that the said Shri L Deka while functioning as Storekeeper in No 2 Sub Depot of 222 ABOD during the period 1985 to 1990 failed for proper stacking and storing of Skid Boards held in his charge and its proper care and preservation resulting Qty 2678 Skid Boards declared as unserviceable.

Shri L Deka by his above act exhibited conduct unbecoming of a Govt servant in violation of rule 3 of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE II.

NEGLIGENCE OF DUTY

In that the said Shri L Deka while functioning as a Storekeeper in No 2 Sub Depot of 222 ABOD during the period Jul 92 committed an act of carelessness by improperly charging off Qty 550 Skid Boards of ML-3 held in his charge.

Shri L Deka by his above act exhibited his carelessness and thus violated rule 3 of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE III

XL

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Slack

(Page No. 4)

Annexure III

List of documents by which the articles of charge framed against  
Shri L Daka Storekeeper No 6965581 (Name and designation  
of the Government Servant) are proposed to be sustained:-

(a) Statement of Major KS Sinha dated 24 Nov 93

Annexure - IV

List of witnesses by whom the articles of charge framed against  
Shri L Daka Storekeeper No 6965581 (Name and designation  
of the Government Servant) are proposed to be sustained:-

(n) Major KS Sinha

Secunderabad

Dated 10 Aug 95

(T. D'Gama)  
B.R.C.  
Karyabkhari ACB  
Officer-in-Charge Roc. 13

To:

The Officers Incharge Records  
 AOC Records, PB No 3  
 Trimulgherry Post, Secunderabad 500015  
 ( Through Proper Channel )

Ref :- Memorandum No 6965581/SK/Dc-131/A2/Civ/CA-6/34  
 dated 01 Aug 95.

Sir,

With due respect I beg to state that I am an employee of 222 ABOD C/O 99 APO and serving as store keeper. I was appointed as store keeper on 2nd July 1982. During my long tenure of service I performed my duties to the satisfaction of all concerned. My service record has not been spotted by any stigma. My performance has always been duly appreciated by all concerned.

With regards to allegation ~~Max~~ No-1 I beg to state that since 1985 I have been posted as a store keeper at No 2 Sub Depot of 222 ABOD. In the year 1987-88 I received 35895 numbers of Skid Board AN-32, similarly in the year 1988-89 - 16583 numbers, in the year 1989-90 - 50483 respectively.

During that time all store houses were fully packed with different kinds of materials. At the relivent time when those Skid Boards were received we did not have any store to stack them properly. It was duly informed to the higher authority through Sub Depot Commander who personally visited all store houses. As advise by him all such Skid Boards received from time to time during the period commencing from 1985 to 1990 were kept in the Railway plateform and available corridores in between store houses. (Sub Road). The Skid Boards so stacked were duly covered by tarpolines and possible adequate measure were also adopted to protect those Skid Boards. Maintenance of the Skid Boards were also duly inspected by the higher authority from time to time.

This state of affair was known to all. Inquiries in this regards were also held in the year 1991 and 1993. All concerned authority including myself were present in the Court of Inquiry. The Inquiry officer was fully satisfied to the prevailing conditions and submitted his reports. Nothing was found against me. Now for the same set of allegation a charge sheet has been served upon me. It is stated that during the period of 1985 to 1990 I committed an act of negligence by not ensuring proper stacking and storing of the Skid Boards held on my charge. It is also alleged that due to this negligence 2978 numbers of Skid Boards became U/S during that period. As stated above I am not at all responsible for this alleged misconduct of negligence. In this regard it may be noted that two Court of Inquiries were held in the year 1991 and 1993. At no point of time during those inquiry proceedings it was stated that a number of Skid Boards became U/S during the period of 1985 to 1990. On what basis the stipulated number of 2978 U/S Skid Boards has been detected is not known to me. No particulars in this regards has also been charged upon me. However I am not at all responsible for damages if any. So I request your honour to drop this charge against me.

.... P/2

Attested by  
 S. Chakraborty  
 Advocate

With regard to allegation No-2 I beg to state that this allegation pertains to the accounting entry consist of endorsements calls as write off charge and brought on charge. Initially these two endorsements were properly done. Subsequently another double entry of the same voucher with respect to right off charge was also made by me invertently. This improper entry was also detected by me and rectified by making a counter entry in the head of brought on charge in the Bin Card as there is no desparity of stock in fact.

In this circumstances, it is there-fore prayed that your honour may be pleased to consider the case and releave me from the alleged misconduct as contained in the aforesaid charge sheet.

Thanking you.

Yours faithfully

6965581 Store Keeper  
Shri L Deka  
222 ABOD C/O 99 APO

Dated : 19/8/95

Received

Ans  
19/8/95

Telc : 7882100

REGISTERED

Sena Ayudh Corps Abhilekh Karyalaya  
 Army Ordnance Corps Records  
 Post Box No 3  
 Trimulgherry Post  
 Secunderabad - 500 015

NO 6965581/X/Discp/119/Civ/CA-6

03 May / Apr 99

16

O R D E R

1. WHEREAS, Shri L Deka while serving in 222 ABOD was served with a charge sheet under Rule 14 of CCS (CC & A) Rules 1965 vide this office Memorandum bearing No 6965581/X/DC-131/A2/Civ/CA-6/34 dated 01 Aug 95, for an offence "Negligence of Duty".

2. AND WHEREAS, pursuant to order bearing No 6965581/X/DC-131/A2/Civ/CA-6/38 dated 18 Sep 95, Inquiry Officer OOC (A) Shri HR Sorate submitted his report relating to the charges levelled against Shri L Deka has been proved.

3. AND WHEREAS, a copy of the oral inquiry report was served on the delinquent official to make any representation or submission, if he so wished in writing to the Disciplinary Authority.

4. AND WHEREAS, the said Shri L Deka has submitted his representation dated 29 May 97 against the oral inquiry proceedings and raised several points for consideration.

5. AND WHEREAS, on careful examination/consideration of the inquiry report, relevant records and individual's representation and factual position on the main points is as under:-

(a) The statement of Major KS Sinha who is the prosecution witness was supplied to the delinquent official/Defence Assistant on 17 Feb 96. On request of delinquent official/defence assistant Major KS Sinha was called on to present himself before the inquiry, but Major KS Sinha, the prosecution witness failed to attend the inquiry. However, the delinquent official/defence assistant were given an opportunity to give their questionnaire to the prosecution witness, but they refused to send their questionnaire. Therefore, the inquiry was closed.

(b) The delinquent official/defence assistant were given adequate opportunity to defend the case during inquiry, but they did not co-operate with the Inquiry Officer. As such, the inquiry was closed. The inquiry was conducted in a very fair, just and un-biased manner. There seems to be no lacuna for injustice done to the delinquent official.

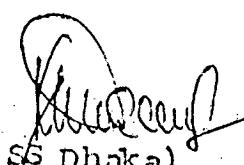
..... 2/-

Attested by  
 S. Chakraborty  
 Advocate

(c) The delinquent official adopted dilatory tactics and did not co-operate with the Inquiry Officer during the course of oral inquiry, thus the inquiry was concluded ex-parte based on the available records.

6. AND WHEREAS, the undersigned being the Disciplinary Authority after having carefully considered/examined the inquiry report, relevant records and individual's representation, agrees with the findings of Inquiry Officer and holds Shri L Deka "Guilty" of the charges levelled against him.

7. NOW, THEREFORE, the undersigned in exercise of the powers conferred under Rule 15 of CCS (CC & A) Rules 1965, hereby imposes the penalty of "Reduction of pay by three stages from Rs. 4110/- to Rs. 3875/- in the pay scale of Rs. 3050-75-3950-80-4590 for a period of two years wef 01 May 99 with cumulative effect". It is further directed that Shri L Deka will not earn increment of pay during the period of such reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay.

  
(SS Dhaka)  
Brig  
Officer-in-Charge Records

No 6965581 Storekeeper  
Shri L Deka  
222 ABOD C/O 99 APO

(Through the Commandant 222 ABOD)

1  
5/99

Directorate General of Ordnance Services *AB*  
 Master General of Ordnance Branch  
 Army Headquarters  
 DHQ PO New Delhi - 110011

A/24321/3/05-8C(iii)

27 Dec 99

ORDER

1. WHEREAS, P. No 6965581 SK Shri L Deka of 222 ABOD vide order No. 6965581/SK/Discp/119/Civ/CA-6 dated 03 May 99 of the Disciplinary Authority (Officer-in-Charge, AOC Records) was awarded the penalty of "Reduction of pay by three stages from Rs. 4110/- to Rs. 3875/- in the pay scale of Rs. 3050-75-3950-80-4590 for a period of two years w.e.f. 01 May 99 with cumulative effect" with further direction that Shri L Deka will not earn increment of pay during the period of such reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay, on account of negligence of duty causing loss to the state.
2. WHEREAS, the said Shri L Deka has preferred an appeal dated 08 Jun 99 to the Appellate Authority against the said penalty imposed by the Disciplinary Authority.
3. AND WHEREAS, the undersigned being the Appellate Authority having examined the said Appeal with reference to records available has arrived at the conclusion that :-

(a) Inspite of repeated request made by SK Shri L Deka during the course of inquiry, Maj KS Sinha being a listed witness (Annexure IV of Charge Sheet) was not made available for cross examination by the appellant. Thus, violation of provisions available under sub-rule 26 of Rule 14 of CCS (CC&A) Rules, 1965 has been committed while conducting oral inquiry against Shri Deka. As per this sub-rule, under Section 4 of Enforcement of Attendance of Witnesses and Production of documents) Act 1972, Inquiry Authority in departmental enquiry exercise powers specified in Section 5 of said Act to enforce attendance of witnesses and production of documents. In this case, efforts have not been made under the powers conferred under said Act to make available Maj KS Sinha a prosecution witness for cross-examination by the delinquent official.

....2/-

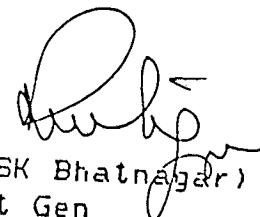
Attested by  
*S. Chakrabarty*  
*Advocate*

-2-

(b) On perusal of inquiry proceedings violation of sub-rule 35 of Rule 14 of CCS (CCA) Rules, 1965 is also observed to the extent that as per said sub-rule statement of witnesses to be authenticated by the signature of the witnesses, the accused and the inquiry officer whereas in this case unsigned copy of statement of only witness Maj Sinha was provided to the delinquent official for scrutiny.

(c) The Appellant in his appeal has stated that he had reported the matter regarding non-availability of proper store house to the 2 Sub depot Commander after consultation with the then Commandant/Dy Commandant Ordered to keep those skid boards in various place like receipt platform and varandas of various store houses covered by tarpoulin. Though, no such documentary evidence are available however, it is felt that for such negligence immediate officer in hierarchy may also be held responsible for damage of skid boards which has cause huge loss to the state by not providing proper guidance to the storekeeper for storage of such store.

4. [ ] NOW THEREFORE, the undersigned being the Appellate Authority excersing the powers conferred vide Rule 27 of the CCS (CCA) Rules, 1965 hereby directs the Disciplinary Authority to remit the case to the Inquiry Authority for further inquiry on the aforesaid points. ]



(SK Bhatnagar)

Lt Gen

Director General Ordnance Services

No. 6965581 SK  
Shri L Deka

Through

Commandant  
222 ABOD  
C/o 99 APO

ANNEXURE :- 5

7882343

Sena Ayudh Corps Abhilash Karyalaya  
Army Ordnance Corps Record Office  
Post Box No. 3  
Trimugherry post  
Secunderabad- 500 015

C/6965581/SK/Discp/Civ/218/CA-6

05 Jan 2002.

O R D E R

1. AND WHEREAS, on careful examination/consideration of inquiry proceedings and relevant records, a Memorandum bearing No. C/6965581/SK/Discp/Civ/204/CA-6 dated 07 sep 2001 with the proposed penalty of "Removal from service which shall not be a disqualification for future employment under the Govt" was served on No. 6965581 SK Shri L. Deka and he was given an opportunity to make his representation if any, to the Disciplinary Authority .
2. AND WHEREAS, the said Shri L Deka has submitted his representation dated 08 Oct 2001 against the proposed penalty and raised several points for consideration.
3. AND WHEREAS, on careful examination of the individual's representation, inquiry proceedings and other relevant records, finds the factual position on the main points as under :..

(a) The contention of the delinquent official that the inquiry officer has started examination of the prosecution

Contd....2

Attested by  
S. Chakraborty  
Advocate.

- 2 -

Witness Major (Now Lt. Col.) K.S. Sinha straight away and asked the accused person to cross examine the prosecution witness which amounts to violation of rules is not tenable, as per of Govt. of India's instructions No. (31) and (32) under Rule 14 of CCS (CCeA) Rules 1965 inquiry officer is fully empowered to examine/cross examine the witnesses of either side .

(b) The contention of delinquent official that his appeal dated 09 Feb 2001 addressed to the Appellate Authority, DGDS Army Hd for change of inquiry officer on grounds of bias is still under consideration is not tenable as the said appeal was examined by the Appellate authority and rejected vide Signal No. A/24321/3/03-80(11) dated 17 Jul 2001 in terms of Govt. of India's instruction No. 16 under Rule 14 of CCS (CCeA) Rules 1965, where change of inquiry officer can be considered on the grounds of bias as soon as inquiry officer has been appointed and not after the proceedings have commenced and reached at advanced stage . Para 13 of Memorandum No. C/6965581/SK/Disp/ Civ/204/CA-6 dated 07 Sep 2001 refers .

(c) The contention of delinquent official that there is no hard and fast rule of application Govt. of India's instruction No. 16 under Rule 14 of CCS( CCeA)

Rules 1965 for change of inquiry officer on grounds of bias is not tenable, as inquiry officer fully complied provisions laid down in Rule 14 of COS (CC&A) Rules 1965.

(d) The contention of delinquent official that Appellate Authority order dated 27 Dec 99 regarding immediate Officer in hierarchy should also be held responsible for damage of skid Boards has been ignored by the inquiry officer is not tenable, as delinquent official had never brought notice to any of the officers in ~~his~~ hierarchy regarding discrepancy/unserviceable condition of Skid Board. Moreover, delinquent official also on behalf of Comdr. No. 2 Sub Depot Signed all stock taking slips (IAFO 2634) which clearly indicates that all the time he knew the deficiency and condition of skid boards ~~xxx~~ but he always concealed the factual position.

(e) The contention of delinquent official that on conclusion of inquiry proceedings. Inquiry officer did not question the Govt. servant, presenting officer and witness is not tenable, as the copy of presenting Officer's brief was supplied to the delinquent official by inquiry officer vide letter No. 266/IMC/L Daka/531 dated 05 Dec 2000 for submission of his brief. However, inspite of repeated reminders the delinquent official did not submit his brief and as such inquiry officer came to conclusion for recording his assessment.

(f) The contention of the delinquent official that inquiry officer should be limited to the findings and not to the penalties is agreed by the Disciplinary Authority after having examined inquiry proceedings, relevant records and then only had come to the conclusion for awarding the said penalty.

(g) The contention of the delinquent official that examining and producing of the prosecution witness is the responsibility of presenting officer and doing so by the inquiry officer amounts to bias is not tenable. As per Govt of India's instruction Bn. (31) and (32) under Rule 14 of CCS (CDA) Rules 1965, the inquiry officer is fully empowered to summon/enforce attendance of witnesses and production of documents as per Departmental Inquiring Act No XVIII of 1972.

(h) The contention of the delinquent official that the complainant Maj (Now Lt Col) KS Singh cannot be prosecution witness is not tenable. As per Govt of India's instruction No. (15) under Rule 14 of CCS (CDA) Rules 1965 the witness cannot function as inquiry officer or presenting officer. In this case Maj (Now Lt. Col) KS Singh is neither inquiry officer nor as prosecution officer. As such Maj (Now Lt. Col) KS Singh can appear as prosecution witness.

Contd...5

- 35 -

5  
- 5 -

4. AND WHEREAS, the undersigned being the Disciplinary Authority after having carefully examined/considered the individual's representation dated 03 Oct 2001, inquiry report, relevant records and factual position explained above holds the said Shri L. Deka Guilty of the charge levelled against him.

11. FOR THEREFORE, the undersigned in exercise of the powers conferred vide Rule 15 of CS (CC + A) Rules 1965, hereby orders that No. 6965581 SK Shri L. Deka be "Removed from service which shall not be a disqualification for future employment under the Govt." from the date this order served on him.

Sd/- Illegible

(AK Jyoti )

Brig

Officer in charge Records

No. 6965581 SK

Shri L. Deka

222 ABOD

S/o. M. A. T. D.

(Through the Comptendant 222 ABOD)

ANNEXURE :- 6

REGISTERED

L. DEKA

S.K. (6965581)

Maidam Bakrapara  
Guwahati-29, Assam

04 Feb, 2002

DTE Gen of Ord. Services(OS-SC)

Master General of Ord. Branch

Army Headquarter

DHQ P.O. New Delhi- 110011

DISCIPLINE CIVILIAN

sir,

Most respectfully, I the undersigned beg to submit the following for your kind consideration under existing rules and necessary action please .

2. That, Sir I was issued charge sheet vide AOC records Memo No. 6965581/SK/DC-13/A2/Civ/CA-6/33 dt. 18 Sept. 1995 with a series of allegation. Thereafter department inquiry was held against me for the charges so framed. In the said inquiry the inquiry officer held me guilty without going into the fact the circumstances of the allegation as per existing rules, Being on the finding and assessment of the inquiry officer the AOC records office awarded punishment vide AOC records Memo No. 6965581/SK/DisCP/119/CIV/CA-6 dt. 03 May, 99 .

Contd....2

Attested by  
S. Chakrabarty  
Advocate

3. I, on my part appealed to my appellate authority against the order cited in para 2. After careful examination of my appeal appellate authority directed to re-constituted the Court of inquiry and categorically indicated the points to inquire Vide Army HQ letter No. A/2/2432/38 30-S-Sc-II dt. 27th Dec. 99 which was forwarded to AOC records with a copy to me (copy enclosed).

4. As directed by the Army HQ cited in para-3 the inquiry was resumed on 15th Sept, 2000 in which the inquiry officer had drawn in record all the article of charges and other related charges frames against me. But, I <sup>repeatedly</sup> respectfully submitted the inquiry officer only to record those points which have categorically indicated by Army HQ. But the inquiry officer did not agreed with my submission and proceeded with the inquiry. During the course of inquiry the inquiry officer had issued a letter bearing No. 206/L.Deka/ INQ/551/26 dt. 24 Nov. 2000 in which the inquiry officer informed that he will produce the prosecution witness for any cross examination. On 25th Nov. 2000 Major K.S. Sinha's (Now LT. Col. Prosecution witness) statement was recorded in the inquiry proceeding and straightaway started to examine prosecution witness by the inquiry officer and asked me to cross examine the prosecution witness Major K.S. Sinha

- 3 -

in which I have raised objection with the plea that in presence of presenting officer examining of the prosecution witness should have been done by the presenting Officer only. I submitted the inquiry officer to record my protest in the proceeding by the inquiry officer refused to record as it is irrelevant to the proceeding.

(Refer inquiry proceeding dt. 27th Nov. 2000 para 38)

when this lacuna/gapes of violating the existing rules of examining the prosecution witness was brought to the light then the inquiry officer asked the presenting officer to examine the prosecution witness to cover up the lacuna, gapes. From the act of the inquiry officer a doubt have been created in my mind regarding the free and fairness of the inquiry officer, Hence, I moved an application regarding the act of the inquiry officer and expressed doubt about continuing the Biasness of the inquiry officer and copy of the same was produced in the Court of inquiry with a request to stay the inquiry till disposal of my application by concerned authority but the inquiry officer rejected my plea on the ground that the inquiry officer is not bound to wait for the reply from concerned authority. (Refer Court in inquiry dt. 2nd Dec. 2000 Para 48) .

Contd....3

- 4 -

5. The inquiry officer arbitrarily closed the inquiry, ignoring all these facts. My application regarding the Biasness of the inquiry officer have been turned down by AOC records vide Memo No. 69668/SK/DISA/176/C 1v/CA-6 dt 5th Jan. 2001. After rejecting my application by AOC records narrating all the facts I submitted an application to Army HQ on 9 Feb., 2001. The reply is still awaited.

6. In the meantime AOC records office issued a letter bearing No. 6965531/SK/DISCB/CIV/204/CA-6 dt. 07 Sept, 2001 in which the records office proposed to impose a Major Penalty of "Removal from service which shall not be a disqualification for future employment under the Govt." and asked me to represent if I have anything to do so (Copy enclosed).

7. I which I submitted my representation on the said AOC records memo vide my application dt. 08 Oct. 2001, a copy of the same is also attached herewith.

8. After receiving my applications as cited above the AOC records office rejected my plea and imposed me the proposed penalty of "Removal from service which shall not be a disqualification for future employment under the Govt." vide AOC records memo No. 6965531/SK/DISCB/CIV/218/CA-6 dt 5 Jan, 2002 (Copy enclosed).

- 5 -

9. That Sir, the rejection of my application was not done on factual position of the case by AOC records. The undermentioned para wise facts of the case are mentioned below :

(a) The contention of the delinquent official that the inquiry officer has started examination of the prosecution witness Major K.S. Sinha (now LT Col) straightway and asked the accused person to cross examine the prosecution witness which amounts to violation of rules is not tenable as per Govt. of India's instruction No. 31 and 32 under 14 of CCS (CC&A) Rules 1965 Inquiry officer is fully empowered to examine/Cross examine the witness of either side .

In this context I would like to draw the attention of my appellate authority Rule 14 inquiry Sub-rule ~~page~~ 11 page - 465 CCS/CC&A/Rule/1965 corrected up to 1st Nov, 1937 which reads as follows :

"During the inquiry the presenting officer will produced all documentary evidence and also have his witnesses examined . The attention of appellate authority is also drawn to Supreme Court Judgement 46 (1973) 2 SLR 353 S. Krishnan Nair Vs. Divisional Superintendent Southern Railway where the Supreme Court observed " The inquiry officer is not a prosecutor." It is not his duty to somehow prove the

Contd...6

- 6 -

charge. When the inquiry officer forget his role and instead of putting the question with a view of elucidating answers for a proper understanding of facts before him and begin a searching cross examination, the object of which is apparently evident, he ceases to be an inquiry officer.

(b) The contention of AOC records regarding my appeal to Army HQ of 09 Feb. 2001 have been rejected to Army HQ vide signal No. A/24321/3/03-II dt. 27th July, 2001 has not intimated to me. Moreover the contention of the AOC records regarding the Biasness of the inquiry officer, my plea have been rejected by the AOC records on the ground that the Bias allegation should have been brought in the initial stage of the proceeding. But the attention of Army HQ is drawn to the letter No. 6/28/72-DISC/1 dt. and Aug 1973 of DG PNT in which it is stated as under :

"No hard and fast rules, can, however, be laid down and each case will have to be examined on the merit of the fact and circumstances brought out by the concerned Govt. Servant Alleging the Bias on the part of inquiry authority. As a rule stand at present, it is not possible to Govt. servant the right to ask for review of any orders issued under C.R.S (C.R.A) rules 1965 at any time."

Contd....7

- 7 -

c). The contention of AOC records regarding the appellate authority order dt. 27 Dec. 99 regarding immediate officer in hierarchy should also be held responsible for the damage of skid boards have been ignored by the inquiry officer is not tenable as the delinquent official have never brought notice to any officer in hierarchy regarding the descriptency/unserviceable condition of the skid boards. In this context, I would like to submit that this point was categorically pointed out in this context. I would like to submit that this point was categorically pointed out by Army HQ vide letter even number dt, 27 Dec. 99. I also submitted the same in the court of the inquiry to look into that point as it is a part and parcel of the entire proceeding and very vital for my defence which I have been denied.

d). The contention of the AOC records that the delinquent official on conclusion of the inquiry proceeding the inquiry officer did not questioned the Govt. servant, the presenting officer and the witnessess is not tenable . In this regards it is submitted that during the entire proceeding in no stage I have raised such question as mentioned in AOC records memo No. 6965531/SK/DISCP/CM/218/CA-6 dt. 5 Jan, 2002 .

Contd...8

(e) The contention of AOC records that the delinquent official that inquiry officer should be limited to the finding not to the penalties is agreed . In this regard I would like to submit that in every proceeding the inquiry officer should have to furnish a certificate as under :

"Certified that I have acquainted myself with the provision of rule 14 of CCS/CCRA) rule 1965 and the same have been completed within conducting the oral inquiry in aforesaid disciplinary case." Whereas the inquiry officer stepped out the mandatory provision of the existing rules deliberately ~~with~~ with a intention to victimise me .

(f) The contention of AOC records regarding the prosecution witness Major K.S. Sinha (Now Lt. Col.) in this regard it is submitted that Major KS Sinha (Now Lt. Col.) was then Comdr. No.2SP who had brought/framed the allegation against me as cited in the charge sheet as per existing rules the complainant cannot be functioned as principle prosecution witness. Your kind attention is drawn to the para 14 page 261 under the heading disciplinary proceeding of CCS (CCRA) rules 1965 corrected upto 1st Nov. 1987 which reads as under :

"Similarly, where the official is complainant himself, and also principle witness, he can be said to be biased".

10. Sir, the above narrated facts are the brief of the entire proceeding . The act of the inquiry officer is certain <sup>contains</sup> ly elements of Bias for the following reason :

(a) Before starting the second spell of proceeding that is 15th Sept. 2000 the inquiry officer Shri H.R. Sorate CJO was posted in COD Chauki , Allahabad..... whom then officiating Administrative Officer Major Raghabendra Kumar sent a letter with a order to take experty inquiry. Thus the inquiry officer have brought under influence of Local administration (Copy enclosed ).

(b) The inquiry officer deliberately cross the warrant ed provision by giving suggestion for severe penalties to the accused person .

(c) The inquiry officer deliberately refused to record the submission made by the accused person in proceeding

(d) The inquiry officer some how tried to prove the charges against the accused person, hence took the role of presenting officer instead of inquiry officer .

(e). Production of prosecution witness is lies with the presenting officer, whereas the inquiry officer informed the accused person in writing that prosecution witness will be produced for examination/cross examination (Copy enclosed)

45

f). The inquiry officer deliberately ignored the points to produce the officer in hierarchy for the damage, inspite of repeated request of the accused person and categorical order of Army HQ which is very vital in my defence .

11. Therefore, in view of the above it is my humble submission that the fact in records be called for and examine the case in light of the brief as submitted above and set aside the order imposed on me by AOC records Memo even No. dated 05 Jan, 2002. For which I shall remain ever grateful to you Sir ,

Thanking you,

Yours faithfully

Sd/- Illegible

( L. DEKA )

Dated 04 Feb, 2002

Enc. L 14

Copy to :

1. AOC record for information please .

2. Comdt. 222 ABOD for information please .

Tele: 301 8735

Directorate General of Ordnance Services  
Master General of Ordnance Branch  
Army Headquarters, New Delhi-110 011

A/24321/03/OS-8C(ii)

25 Nov 2002

ORDER

1. WHEREAS, OIC AOC Records Secunderabad being the Disciplinary Authority has imposed the penalty of "Removal from Service which shall not be a disqualification of future employment under the Government" vide Order No. C/6965581/SK/Discp/Civ/218/CA-6 dt 05 Jan 2002 on No. 6965581/SK Shri L Deka.

2. WHEREAS, the said Shri L Deka, being not satisfied with aforesaid penalty imposed by the Disciplinary Authority, has preferred an appeal dated 04 Feb 2002 to the Appellate Authority. In his appeal ibid Shri L Deka has submitted the following main points for consideration by the Appellate Authority:-

- (a) Inquiry Officer had drawn in record all the article of charges even though the appellant has repeatedly requested to record only those points which have been categorically indicated by Army HQ. His application for change of Inquiry Officer on the basis of bias is still under consideration with the concerned authority.
- (b) The ibid penalty was imposed on the appellant without considering the factual position of the case.
- (c) Inquiry Officer has been brought under influence of local administration to take ex-parte inquiry.
- (d) Inquiry Officer deliberately crossed the warranted provision by giving suggestion for severe penalty.
- (e) Inquiry Officer took the role of Presenting Officer instead of an Inquiry Officer.
- (f) Inquiry Officer deliberately ignored the request to produce the officer in hierarchy inspite of repeated request of the accused person.

3. AND WHEREAS, on examination of disciplinary proceedings, relevant documents and other available information the Appellate Authority arrived at the conclusion that:-

- (a) On being directed by Army HQ, further inquiry into the disciplinary case was conducted according to para 14 of CCS (CC&A) Rules, 1965.

Attested by  
S. Chakrabarty  
Advocate

(b) As per Government of India's Instruction No. 31 and 32 under Rule 14 of CCS (CC&A) Rule 1965, Inquiry Officer is fully empowered to examine/cross-examine the witnesses of either side. As such the Inquiry Officer has not violated any rules. The other contention of the delinquent official that examining/production of the prosecution witness is the responsibility of Presenting Officer only and doing so by the Inquiry Officer amounts to bias is not tenable in view of the rule position as stated above. The Inquiry Officer is also empowered to summon/enforce attendance of witnesses and production of documents as per Departmental Inquiries Act No. XVIII of 1972.

(c) The contention of the delinquent official that his appeal addressed to Appellate Authority for change of Inquiry Officer on the ground of bias is still under consideration is not tenable as the said appeal was examined by the Appellate Authority and rejected vide Signal No. A/24321/3/OS-8C(ii) dated 26 Jul 2001 in terms of Government of India's Instruction No. 16 under Rule 14 of CCS(CC&A) rules 1965, where change of Inquiry Officer can be considered on the ground of bias as soon as inquiry officer has been appointed and not after the proceedings have commenced and reached at advance stage.

(d) The Inquiry Officer had correctly furnished the certificate i.e. "Certified that I have acquainted myself with the provisions of Rule 14 of CCS(CC&A) Rules 1965 and the same have been complied with conducting oral inquiry in the aforesaid disciplinary case". Hence the contention of the delinquent official is not correct.

(e) The Local Administration of 222 ABOID never directed to take expert inquiry. Hence contention of the appellant in this regard is not tenable.

(f) It is agreed that the Inquiry Officer should be limited to his findings and should not suggest penalty.

(g) The contention regarding holding immediate officers in hierarchy also responsible is partially acceptable, however as delinquent official had never brought to notice of any of the officers in hierarchy regarding discrepancy/inservicable condition of skid boards, the contention is not tenable at this stage. Moreover, delinquent official also on behalf of Commandant, No. 2 Sub Depot signed all stock taking slips which clearly indicates that he knew the deficiency and condition of skid boards but he always concealed the factual position.

4. NOW, THEREFORE, the undersigned being the Appellate Authority exercising the powers conferred vide Rule 27 of CCS (CC&A) Rules, 1965 hereby modifies the penalty of removal from service to compulsory retirement from service.

*TJS Gill*  
(TJS Gill)  
Lt Gen  
Director General Ordnance Service

Ex SK P.No. 6965581 Shri L Deka

Through

Commodant  
222 ABOD,  
C/o 99 APO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUNAHATI BENCH.

O.A. No. 194 / 2002

Sri Lakheswar Deka

APPLICANT

Union of India

RESPONDENTS

I N D E X

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Filed by:-

Human Chakraborty  
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

O.A. No. 194 / 2002

PARTICULARS OF THE APPLICANT :--

Sri Lakheswar Deka

Son of Late Kripal Ch. Deka

Resident Maidam Bakrapara

Gau --- 29

PARTICULARS OF THE RESPONDENTS :--

1. Union of India

Represented by the Secretary to the

Govt. of India, Ministry of Defence

South Block, R.K.Puram ( Defence Headquarters )

New Delhi --- 11.

2. Officer -- in -- Charge, Records

A O C Records, P B No.3

Trimulghery Post, Secundrabad -- 500015.

3. Director General of Ordnance Services

Master General of Ordnance Branch

Army Headquarters

D H Q, P.O. New Delhi -- 110011.

4. Commandant 222 A B O D

C / O 99 A P O

1. PARTICULARS OF THE ORDER FOR WHICH THIS APPLICATION  
IS MADE : --

An order dtd 5.1.02 passed by

Contd. 2..

Filed by  
The applicant  
through  
Human  
Chandrapada  
Lakheswar Deka

Officer - in - Charge Records Vide Order No. C / 6965581 / S K / Discp / Civ / 218 / C A - 6 whereby the applicant was awarded with the major penalty of Removal from services with effect from the date of service of the order.

2. JURISDICTION OF THE TRIBUNAL : --

This application is within the jurisdiction of this Hon'ble Tribunal.

3: LIMITATION : --

This application is within the period of limitation.

4. FACTS OF THE CASE : --

(i) That the applicant was working as Store Keeper in No. 2 Sub Depot under 222 A B O D. There were all together 16 sheds under him. The store was used to keep skid boards and parasuits which were supplied. During the period 1985 - 90 huge quantity of materials were supplied and due to shortage of space in ware house, materials received by the depot had to be kept in railway platform and available corridors in between storehouses. During that period skid boards received were stacked and covered by tarpolines in the aforesaid area and all adequate measures to protect the same were taken. This was done on the advice of the Sub Depot Commander who was aware of shortage of space as the higher

authority was informed of lack of space through him.

(iii) That in the year 1985 the applicant was served with a chargesheet issued by the officer - in - charge records vide memo no. 6965581 / S K / D C - 131 / A 2 / Civ / C A - 6 / 34 dtd 1.8.85. The Charge Sheet contained two Charges which reads as under --

Article of Charges I

That the said Sri L. Deka while functioning as storekeeper in No.2 Sub Depot 222 A B O D during the period of 1985 - 1980 Committed an act of Negligence by not ensuring proper stacking and storing of the Skid Boards held on his charge resulting qty 2878 Skid Boards become unservisable.

Article of Charges II

That the said Sri L. Deka while functioning as storekeeper in No.2 Sub Depot of 222 A B O D during the period Jul 92 Committed an act of carelessness by improperly charging off Quantity 550 Skid Boards of NI - 8 held on his charge.

The aforesaid charges were sought to be established by the statements of Maj. K S Sinha dtd 24. Nov 93. The applicant was not served with a copy of that statement or any other documents.

A Copy of the Charge Sheet  
dtd 1.8.95 is annexed hereto as  
Annexure -- 1.

(iii) That the applicant submitted his reply on 19.8.95. It was, interalia, stated that in the year 1987 - 88 he received 35895 nos. of skid boards AN - 32 and 16583 nos. & 50483 nos in the year 1988 - 89 & 1989 - 90 respectively. Due to lack of space in the store houses these skid boards were stacked and covered by terpolines and kept in Railway platform and corridors in between storehouses. This was done on the advice of Sub Depot Commander who was well aware and informed of the shortage of space. He also visited the store house from time to time and also maintainance of the skid boards were duly inspected by the higher authority from time to time. He also pointed out that for any damage of the skid boards he was not responsible. With regard to the Charge no.2 he pointed out that it was an inadvertant mistake which was subsequently detected by him and rectified by making Counter entry and there was no disparity of stock. He prayed to absolve him from the alleged Charges.

A Copy of the reply dtd 19.8.95

is annexed as Annexure - 2

(iv) That the respondents were not satisfied with his reply and proceeded with a departmental enquiry by appointing one Mr. H. R. Sorate as

Contd. 5..

X2  
Lakshman Sekha

Enquiry Officer and Sri K. C. Gogoi as Presenting Officer. The enquiry officer conducted the enquiry in gross violation of the principles of natural justice without affording adequate opportunity to applicant to defend himself. The enquiry officer commenced the enquiry by questioning the applicant on the charges levelled against him. The listed witness of the prosecution Major K. S. Sinha was not produced in the enquiry and the enquiry officer relied on an unsigned statement of the officer recorded on 24.11.93. The applicant was deprived of his right to cross examine the witness. The enquiry officer concluded the enquiry without affording any opportunity to the applicant to adduce evidence in his support. The enquiry officer, thereafter, gave his findings holding the applicant guilty of the Charges levelled against him. The findings of the enquiry officer was perverse and based on no evidence on record. Even the report was not reasoned justifying the conclusion.

(v) That on the basis of the perverse report of the enquiry officer the Officer - in - Charge A O C Records vide order dtd 3.5.98 bearing no. 6965581 / SK / Discp / 119 / Civ / CA - 6 imposed a penalty of Reduction of Pay by three stages from Rs. 4110 /- to Rs. 3875 /- in the pay scale of Rs. 3050 - 75 - 3850 - 80 - 4590 /- for a period of two years w.e.f 1st May 98 with cumulative effect. It was further directed

Contd. 6..

that Sri L. Deka would not earn increment of pay during the period of such reduction and that on expiry of the period, the reduction would have no effect of postponing his future increment of pay.

A Copy of the order dtd 1.5.99  
is annexed as Annexure - 3

(vi) That being highly aggrieved by the Order dtd. 1.3.99 the applicant preferred an appeal before the Director General, Ordnance Service (Respndent no.3) for setting aside the Order of punishment. The appeal was made on 8.6.99 by narrating the facts under which the skid boards were kept with due advice and supervision of the Sub Depot Commander. The Sub Depot Commander also had consultation with the then Commandant / Deputy Commandant. The applicant also pointed out the irregularities of the enquiry where the listed witness was not produced in the enquiry. The applicant craves leave of this Hon'ble Tribunal to produce the copy of the appeal dtd 8.6.99 at the time of hearing, if so required.

(vii) That the appellate authority examined the appeal and the records available and vide Order dtd 27.12.99 directed the Disciplinary Authority to remit the case to the inquiry authority for further enquiry on the points specified therein.

A Copy of the order dtd 27.12.99  
passed by the appellate authority  
is annexed as Annexure - 4

(viii) That pursuant to the aforesaid direction, a fresh enquiry was initiated, though there was no Order of fresh enquiry, by appointing one Sri M. Bhattacharjee as presenting officer without any change of enquiry officer. The enquiry officer conducted the enquiry without following the due process of law. The enquiry officer examined the prosecution witness Major K.S.Sinha by putting question and leading evidence. He assumed the role of presenting officer. The applicant raised objection to this but his protest was not recorded and thereafter he was asked to cross examine the witness. However on the next date of enquiry the enquiry officer asked the presenting officer to examine the witness and this was done to cover his illegal action. The bias attitude of the enquiry officer compelled the applicant to move an application on 28.11.2000 before the respondent no. 2 expressing his grievance. A copy of the same was furnished to the enquiry officer and he was requested to keep in abeyance the enquiry till disposal of the said application. But the enquiry officer did not pay any heed to the request so made and concluded the enquiry without affording any opportunity to the applicant to adduce evidence in his defence and before the disposal of the representation. The enquiry officer even did not try to go into the facts under which the skid boards were stacked outside the store on the advice and with the

knowledge of the Sub Depot Commander, the then Commandant / Deputy Commandant as directed by the appellate authority. However the representation dtd 28.11.2000 was rejected vide Order dtd. 5.1.01.

(ix) That the enquiry officer submitted his report holding the applicant guilty of the charge levelled against him. He also recommended major punishment for the applicant in his report. The finding of the enquiry officer is perverse and based on no evidence on record. The applicant craves leave to furnish ~~A~~ a Copy of the enquiry report at the time of hearing.

(x) That the respondent no.2 vide letter dtd. 7.9.2001 asked the applicant to make representation against the proposed penalty of Removal from Service which shall not be a disqualification for further employment under the Govt. Accordingly the applicant submitted his representation on 8.10.01, but the same was not considered. The respondent no.2 thereafter, vide Order no. 6965581 / S K / Discp / Civ / 218 / CA - 6 dtd 5.1.02 imposed a major penalty of Removal from Service which shall not be a disqualification for future employment under the Govt.

A Copy of the order dtd 5.1.02  
is annexed as Annexure - 55

(xi) That the applicant being highly aggrieved  
Contd. 9..

by the Order dtd 5.1.02 preferred an appeal on 4.2.02 before the respondent no. 3. In the appeal the applicant pointed out the biasness of the enquiry officer and irregularities of the enquiry. But till date nothing has been done and no Order has yet been passed in spite of repeated request to expedite the matter.

A Copy of the appeal dtd 4.2.02  
is annexed as Annexure - 6

**5. GROUNDS WITH LEGAL PROVISION : --**

Being highly aggrieved by the Order of Removal from Service, the applicant begs to prefer this application on the following amongst other grounds :

A) For that the enquiry was conducted in gross violation of the principles of natural justice. The applicant was not afforded with adequate opportunity to defend himself. The enquiry is liable to be set aside and quashed.

B) For that the enquiry officer assumed the role of presenting officer and examined the prosecution witness by putting questions to prove the Charges. The enquiry officer is not a prosecutor. It is not his duty to somehow prove the Charges. In the instant case the enquiry officer acted beyond the permissible limits and as such the enquiry is vitiated and liable to be set aside and quashed.

C) For that the applicant raised some objections before the respondent no.2 with regard to bias functioning of the enquiry officer and also requested the enquiry officer to keep in abeyance the proceeding till disposal of his representation. But before his representation was disposed of, the enquiry officer hastily concluded the enquiry without allowing the applicant to adduce defence evidence. Thus the enquiry by no means can be termed a fair enquiry and hence liable to be set aside and quashed.

D) For that the appellate authority directed for further enquiry on the points specified in the Order dtd 27.12.99. But the authority concerned initiated a fresh enquiry which was not ordered. Even the direction of the appellate authority was not complied as there was direction to enquire the circumstance under which skid boards were stacked and covered by terpoulines outside the store with the knowledge and advice of the higher authority. The enquiry officer failed in his duty as directed and gave his findings without examining those facts. Thus the enquiry was not properly conducted and as such liable to be set aside.

E) For that the applicant was earlier awarded with a penalty of reduction of pay by three stages for two years for the alleged offence. However on appeal it was set aside and

further enquiry was ordered. For the same offence he was awarded with a major penalty of removal from service. Thus the action of the respondents suffer from non application of mind, arbitrary and whimsical. The impugned Order is liable to be set aside and quashed.

F) For that the applicant was victimised to save the higher authorities who were fully aware of the shortage of space in store and advised the applicant to stack the skid boards outside. The applicant was not negligent in his duty and the damages, if any, was due to the compelling circumstance beyond the control of the applicant. In the instant case the applicant was not Charged with misappropriation. Thus the disciplinary authority failed to exercise their mind and appreciate this aspect of the case. The impugned order is liable to be set aside and quashed.

G) For that the punishment is shockingly disproportionate to the nature and circumstances of the offence alleged. It is an admitted position that there was lack of space in the store and the case was not of misappropriation. Even the past service of the applicant was not spotted with any stigma. The disciplinary authority failed to exercise their mind and passed the severe punishment of removal from service. The impugned order is liable to be set aside and quashed.

80  
Sakthivas  
Sekar

H) For that the enquiry officer exceeded his jurisdiction by recommending severe penalty to the applicant in his enquiry report. This action does not need any explanation to show the fact that the enquiry officer was biased and not an independent person. The enquiry thus is liable to be set aside and quashed.

I) For that the finding of the enquiry officer is perverse and based on no evidence on record. From the materials available on record a man of ordinary prudence cannot come to such a finding and hence there being non application of mind on the part of the enquiry officer the enquiry report is liable to be set aside and quashed.

J) for that the impugned order was passed arbitrarily and whimsically without any application of mind and as such violative of Art 14 of the Constitution of India and liable to be set aside and squashed.

K) For that the impugned order was passed in total violation of the procedure established by law and as such the applicant was deprived of his sole means of livelihood. The impugned action being violative of Art 21 of the Constitution of India is liable to be set aside.

L) For that in any view of the matter the impugned order is liable to be set aside and squashed.

6. DETAILS OF REMEDY EXHAUSTED : --

The applicant preferred an appeal before the Director General of Ordnance Services (Respondent no. 3), but inspite of repeated request to expedite the matter nothing has been done till date and no order has been passed.

7. MATTER NOT PENDING BEFORE ANY COURT / TRIBUNAL : --

The applicant declares that no Case is pending before any Court or Tribunal pertaining to the subject matter of this Case.

8. RELIEF SOUGHT : --

The applicant prays that this Hon'ble Tribunal may be pleased to

(i) Set aside and quash the impugned order dtd 5.1.2002 [Annexure - 5] passed by the Respondent no.2 whereby the applicant was removed from service.

(ii) Direct the Respondents to reinstate the applicant with full back wages.

(iii) Any other further or other order / orders as this Hon'ble

Contd. 14..

Tribunal deems fit and proper for  
the ends of justice.

9. INTERIM RELIEF : --

Pending disposal of the Case the  
Order dated 5.1.2002 passed by the  
respondent no. 2 be stayed and the  
applicant be allowed to perform his usual  
duties with his due scale of pay.

10. PARTICULARS OF THE POSTAL ORDER : --

- (i) I. P. O. number : 7G 577525
- (ii) Name of issuing office : G. P. O.
- (iii) Date of issue : 19.6.02
- (iv) Payable to : Registrar CAT

11. LIST OF ENCLOSURES : --

As indicated in the Index.

VERIFICATION

I, Sri Lakheswar Deka, son of Late Kripal Ch. Deka, aged about years, resident of Maidam Bakarapara, Gau. -- 29, do hereby verify that the statements made in paragraphs 4.[i, iv, vi, viii, ix ] are true to my knowledge and belief and that made in paragraphs 4.[ii, iii v, vii, x, xi ] are true to my information derived from records and rest are my humble submissions made before this Hon'ble Tribunal.

I sign this verification on this the day of June 2002 at Guwahati.

Lakheswar Deka

STANDARD FORM OF CHARGE SHEET (RULE 14 OF THE CCS(CC&I) RULES 1964)

Ref. No : 862251/395

Sena Ayudh Corps Abhilekh Karyalaya  
AOC Records  
Post Box No 3  
Trinulgherry Post  
Secunderabad - 500 015

84

Regd. Srl No 131

No. 6965581/SK/DC-131/A2/Civ/CA-6/34

01 Aug 95

MEMORANDUM

1. The undersigned proposes to hold an inquiry against No 6965581.

Rank Storekeeper Name Shri L Deka 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 each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained are also enclosed (Annexure-III & IV).

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

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

4. Shri L Deka is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of CCS(CC&I) 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 L Deka 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 interests in respect of matters pertaining to his services under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri L Deka 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 the Central Civil Services (Conduct) Rules 1964.

6. The receipt of this Memorandum may be acknowledged.

(TA D'Omha)

Brig

Karyabhari AFSAR

Officer-in-Charge Records

Storekeeper

No 6965581 Storekeeper

Shri L Deka

222 ABOD C/O 99 APO

Attested by  
S. Chakrabarty  
Advocate

Statement of article of charge framed against Shri L Daka  
Storekeeper No 6965581 (Name and designation of the Govt servant).

ARTICLE OF CHARGE - I

NEGLIGENCE OF DUTY

That the said Shri L Daka while functioning as Storekeeper in No 2 Sub Depot 222 AEDB during the period 1985 to 1990 committed an act of Negligence by not ensuring proper stacking and storing of the Skid Board held on his charge resulting Qty 2978 Skid Boards become unserviceable.

ARTICLE OF CHARGE - II

NEGLIGENCE OF DUTY

That the said Shri L Daka while functioning as Storekeeper in No 2 Sub Depot 222 AEDB during the period Jul 92 committed an act of carelessness by improperly charging off quantity 550 Skid Boards of MI-8 held on his charge.

ARTICLE OF CHARGE - III

BIL

Contd. 3/-

Statement of imputations of misconduct or misbehaviour in support of the Article of charge framed against Shri L Deka Storekeeper No 6245581  
(Name and designation of the Government servant).

ARTICLE OF CHARGE - I

NEGLIGENCE OF DUTY

In that the said Shri L Deka while functioning as Storekeeper in No 2 Sub Depot of 222 ABOD during the period 1985 to 1990 failed for proper stacking and storing of Skid Boards held in his charge and its proper care and preservation resulting Qty 2978 Skid Boards declared as unserviceable.

Shri L Deka by his above act exhibited conduct unbecoming of a Govt servant in violation of rule 3 of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE II

NEGLIGENCE OF DUTY

In that the said Shri L Deka while functioning as a Storekeeper in No 2 Sub Depot of 222 ABOD during the period Jul 92 committed an act of carelessness by improperly charging off Qty 550 Skid Boards of NL-8 held in his charge.

Shri L Deka by his above act exhibited his carelessness and thus violated rule 3 of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE III

*XL*

*Ques*

*Impairing*

*Charge off*

*Impairing*

*Off Board*



*Top*  
The Officers Incharge Records  
AOC Records, PB No 3  
Trimulgherry Post, Secunderabad- 500015

( Through Proper Channel )

Ref :- Memorandum No 6965581/SK/Dc-131/A2/Civ/CA-6/34  
dated 01 Aug 95.

Sir,

With due respect I beg to state that I am an employee of 222 ABOD C/O 99 APO and serving as store keeper. I was appointed as store keeper on 2nd July 1982. During my long tenure of service I performed my duties to the satisfaction of all concerned. My service record has not been spotted by any stigma. My performance has always been duly appreciated by all concerned.

With regards to allegation ~~Mark~~ No-1 I beg to state that since 1985 I have been posted as a store keeper at No 2 Sub Depot of 222 ABOD. In the year 1987-88 I received 35895 numbers of Skid Board AN-32, similarly in the year 1988-89 - 16583 numbers, in the year 1989-90 - 50483 respectively.

During that time all store houses were fully packed with different kinds of materials. At the relivent time when those Skid Boards were received we did not have any store to stack them properly. It was duly informed to the higher authority through Sub Depot Commander who personally visited all store houses. As advise by him all such Skid Boards received from time to time during the period commancing from 1985 to 1990 were kept in the Railway plateform and available corridores in between store houses. (Sub Road). The Skid Boards so stacked were duly covered by tarpolines and possible aacute measure were also adopted to protect those Skid Boards. Maintainance of the Skid Boards were also duly inspected by the higher authority from time to time.

This state of affair was known to all. Inquiries in this regards were also held in the year 1991 and 1993. All concerned, authority including myself were present in the Court of Inquiry. The Inquiry officer was fully satisfied to the prevailing conditions and submitted his reports. Nothing was found against me. Now for the same set of allegation a charge sheet has been served upon me. It is stated that during the period of 1985 to 1990 I committed an act of negligence by not ensuring proper stacking and storing of the Skid Boards held on my charge. It is also alleged that due to this negligence 2978 numbers of Skid Boards became U/S during that period. As stated above I am not at all responsible for this alleged misconduct of negligence. In this regard it may be noted that two Court of Inquiries were held in the year 1991 and 1993. At no point of thime during those inquiry proceedings it was stated that a number of Skid Boards became U/S during the period of 1985 to 1990. On what basis the stipulated number of 2978 U/S Skid Boards has been detected is not known to me. No particulars in this regards has also been charged upon me. However I am not at all responsible for damages if any. So I request your honour to drop this charge against me.

.....P/2

Attested by  
S. Chakraborty  
Advocate

With regard to allegation No-2 I beg to state that this allegation pertains to the accounting entry consist of endorsements calls as write off charge and brought on charge. Initially these two endorsements were properly done. Subsequently another double entry of the same voucher with respect to right off charge was also made by me invertently. This improper entry was also detected by me and rectified by making a counter entry in the head of brought on charge in the Bin Card as there is no desparity of stock in fact.

In this circumstances, it is there-fore prayed that your honour may be pleased to consider the case and releave me from the alleged misconduct as contained in the aforesaid charge sheet.

Thanking you.

Yours faithfully

6965581 Store Keeper  
Shri L Deka  
222 ABOD C/O 99 APO

Dated :

19/8/95

Received

Ans  
19/8/95

REGISTERED

Tele : 7882100

Sena Ayudh Corps Abhilekh Karyalaya  
 Army Ordnance Corps Records  
 Post Box No 3  
 Trimulgherry Post  
 Secunderabad - 500 015

No 6965581/SK/Discp/19/Civ/CA-6 03 May 1997

ORDER

1. WHEREAS, Shri L Deka while serving in 222 ABOD was served with a charge sheet under Rule 14 of CCS (CC & A) Rules 1965 vide this office Memorandum bearing No 6965581/SK/DC-131/A2/Civ/CA-6/34 dated 01 Aug 95, for an offence "Negligence of Duty".

2. AND WHEREAS, pursuant to order bearing No 6965581/SK/DC-131/A2/Civ/CA-6/38 dated 18 Sep 95, Inquiry Officer OOC (A) Shri H P Sorate submitted his report relating to the charges levelled against Shri L Deka has been proved.

3. AND WHEREAS, a copy of the oral inquiry report was served on the delinquent official to make any representation or submission, if he so wished in writing to the Disciplinary Authority.

4. AND WHEREAS, the said Shri L Deka has submitted his representation dated 29 May 97 against the oral inquiry proceedings and raised several points for consideration.

5. AND WHEREAS, on careful examination/consideration of the inquiry report, relevant records and individual's representation and factual position on the main points is as under:-

(a) The statement of Major KS Sinha who is the prosecution witness was supplied to the delinquent official/Defence Assistant on 17 Feb 96. On request of delinquent official/defence assistant Major KS Sinha was called on to present himself before the inquiry, but Major KS Sinha, the prosecution witness failed to attend the inquiry. However, the delinquent official/defence assistant were given an opportunity to give their questionnaire to the prosecution witness, but they refused to send their questionnaire. Therefore, the inquiry was closed.

(b) The delinquent official/defence assistant were given adequate opportunity to defend the case during inquiry, but they did not co-operate with the Inquiry Officer. As such, the inquiry was closed. The inquiry was conducted in a very fair, just and un-biased manner. There seems to be no lacuna for injustice done to the delinquent official.

.....2/-

Attested by  
 S. Chakrabarty  
 Advocate

(c) The delinquent official adopted dilatory tactics and did not co-operate with the Inquiry Officer during the course of oral inquiry, thus the inquiry was concluded ex-parte based on the available records.

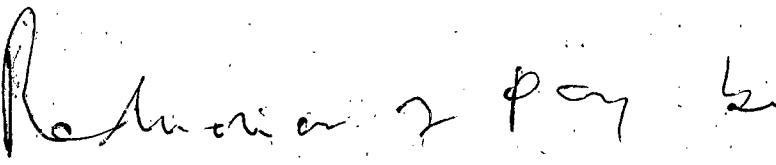
6. AND WHEREAS, the undersigned being the Disciplinary Authority after having carefully considered/examined the inquiry report, relevant records and individual's representation, agrees with the findings of Inquiry Officer and holds Shri L Deka "Guilty" of the charges levelled against him.

7. NOW, THEREFORE, the undersigned in exercise of the powers conferred under Rule 15 of CCS (CC & A) Rules 1965, hereby imposes the penalty of "Reduction of pay by three stages from Rs. 4110/- to Rs. 3875/- in the pay scale of Rs. 3050-75-3950-80-4590 for a period of two years wef 01 May 99 with cumulative effect". It is further directed that Shri L Deka will not earn increment of pay during the period of such reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay.

  
( SS Dhaka)  
Brig  
Officer-in-Charge Records

No 6965581 Storekeeper  
Shri L Deka  
222 ABOD C/O 99 APO

(Through the Commandant 222 ABOD)

  
Reduction of pay by 3 Stages

Directorate General of Ordnance Services  
 Master General of Ordnance Branch  
 Army Headquarters  
 DHQ PO New Delhi - 110011

A/24321/3/06-8C(ii)

27 Dec 99

a1

ORDER

1. WHEREAS, P. No 6965581 SK Shri L Deka of 222 ABOD vide order No. 6965581/SK/Discp/119/Civ/CA<sup>46</sup> dated 03 May 99 of the Disciplinary Authority (Officer-in-Charge, AOC Records) was awarded the penalty of "Reduction of pay by three stages from Rs. 4110/- to Rs 3875/- in the pay scale of Rs. 3050-75-3950-80-4590 for a period of two years wef 01 May 99 with cumulative effect" with further direction that Shri L Deka will not earn increment of pay during the period of such reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay, on account of negligence of duty causing loss to the state.

2. WHEREAS, the said Shri L Deka has preferred an appeal dated 08 Jun 99 to the Appellate Authority against the said penalty imposed by the Disciplinary Authority.

3. AND WHEREAS, the undersigned being the Appellate Authority having examined the said Appeal with reference to records available has arrived at the conclusion that :-

(a) Inspite of repeated request made by SK Shri L Deka during the course of inquiry, Maj KS Sinha being a listed witness (Annexure IV of Charge Sheet) was not made available for cross examination by the appellant. Thus, violation of provisions available under sub-rule 26 of Rule 14 of CCS (CC&A) Rules, 1965 has been committed while conducting oral inquiry against Shri Deka. As per this sub-rule, under Section 4 of Enforcement of Attendance of Witnesses and Production of documents) Act 1972, Inquiry Authority in departmental enquiry exercise powers specified in Section 5 of said Act to enforce attendance of witnesses and production of documents. In this case, efforts have not been made under the powers conferred under said Act to make available Maj KS Sinha a prosecution witness for cross-examination by the delinquent official.

...2/-

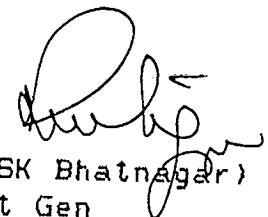
1. No steps for po-  
 2. WS May 99

Attested by  
 S. Chakraborty  
 Advocate

(b) On perusal of inquiry proceedings violation of sub-rule 35 of Rule 14 of CCS (CC&A) Rules, 1965 is also observed to the extent that as per said sub-rule statement of witnesses to be authenticated by the signature of the witnesses, the accused and the inquiry officer whereas in this case unsigned copy of statement of only witness Maj Sinha, was provided to the delinquent official for scrutiny.

(c) The Appellant in his appeal has stated that he had reported the matter regarding non-availability of proper store house to the 2 Sub depot Commander after consultation with the then Commandant/Dy Commandant Ordered to keep those skid boards in various place like receipt platform and varandas of various store houses covered by tarpoulin. Though, no such documentary evidence are available however, it is felt that for such negligence immediate officer in hierarchy may also be held responsible for damage of skid boards which has cause huge loss to the state by not providing proper guidance to the storekeeper for storage of such store.

4. NOW THEREFORE, the undersigned being the Appellate Authority exercising the powers conferred vide Rule 27 of the CCS (CCA) Rules, 1965 hereby directs the Disciplinary Authority to remit the case to the Inquiry Authority for further inquiry on the aforesaid points.



(SK Bhatnagar)

Lt Gen

Director General Ordnance Services

No.6965581 SK  
Shri L Deka

Through

Commandant  
222 ABOD  
C/o 99 APO

(B)

Author

Shri L Deka

ANNEXURE :- 5

7882343

Sena Ayudh Corps Abhilesh Karyalaya

Army Ordnance Corps Record Office

Post Box No. 3

Trimugherry post

Secunderabad- 500 015

C/6965581/SK/Discp/Civ/218/CA-6

05 Jan 2002.

O R D E R

1. AND WHEREAS, on careful examination/consideration of inquiry proceedings and relevant records, a Memorandum bearing No. C/6965581/SK/Discp/Civ/204/CA-6 dated 07 sep 2001 with the proposed penalty of "Removal from service which shall not be a disqualification for future employment under the Govt" was served on No. 6965581 SK Shri L. Deka and he was given an opportunity to make his representation if ~~new~~ any, to the Disciplinary Authority .

2. AND WHEREAS, the said Shri L Deka has submitted his representation dated 08 Oct 2001 against the proposed penalty and raised several points for consideration.

3. AND WHEREAS, on careful examination of the individual's representation, inquiry proceedings and other relevant records, finds the factual position on the main points as under :-

(a) The contention of the delinquent official that the inquiry officer has started examination of the prosecution

Conted...2

Attested by  
S. Chakrabarty  
Advocate

- 2 -

witness Major (Now Lt. Col.) K.S. Sinha straight away and asked the accused person to cross examine the prosecution witness which amounts to violation of rules is not tenable as per of Govt. of India's instructions No. (31) and (32) under Rule 14 of CCS (CC&A) Rules 1965 inquiry officer is fully empowered to examine/cross examine the witnesses of either side .

(b) The contention of delinquent official that his appeal dated 09 Feb 2001 addressed to the Appellate Authority, DGOS Army HQ for change of inquiry officer on grounds of bias is still under consideration is not tenable as the said appeal was examined by the Appellate authority and rejected vide Signal No. A/24321/3/05-8C(11) dated 17 Jul 2001 in terms of Govt. of India's instruction No. 16 under Rule 14 of CCS (CC&A) Rules 1965, where change of inquiry officer can be considered on the grounds of bias as soon as inquiry officer has been appointed and not after the proceedings have commenced and reached at advance stage . Para 13 of Memorandum No. C/6965581/SK/Discp/ CIV/204/CA-6 dated 07 Sep 2001 refers .

(c) The contention of delinquent official that there is no hard and fast rule of application Govt. of India's instruction No. 16 under Rule 14 of CCS (CC&A)

- 3 -

Rules 1965 for change of inquiry officer on grounds of bias is not tenable, as inquiry officer fully complied provisions laid down in Rule 14 of CCS (CC&A) Rules 1965.

(d) The contention of delinquent official that Appellate Authority order dated 27 Dec 99 regarding immediate Officer in hierarchy should also be held responsible for damage of skid Boards has been ignored by the inquiry officer is not tenable, as delinquent official had never brought notice to any of the officers in ~~his~~ hierarchy regarding discrepancy/unserviceable condition of Skid Board. Moreover, delinquent official also on behalf of Comdr. No. 2 Sub Depot Signed all stock taking slips (IAFO 2634) which clearly indicates that all the time he knew the deficiency and condition of skid boards ~~existing~~ but he always concealed the factual position .

(e) The contention of delinquent official that on conclusion of inquiry proceedings. Inquiry officer did not question the Govt. servant, presenting officer and witness is not tenable , as the copy of presenting Officer's brief was supplied to the delinquent official by inquiry officer vide letter No. 266/INQ/L Deka/581 dated 05 Dec 2000 for submission of his brief , However, inspite of repeated reminders the delinquent official did not submit his ~~brief~~ and as such inquiry officer came to conclusion for recording his assessment .

Contd....4

(f) The contention of the delinquent official that inquiry officer should be limited to the findings and not to the penalties is agreed by the Disciplinary Authority after having examined inquiry proceedings, relevant records and then only had come to the conclusion for awarding the said penalty .

(g) The contention of the delinquent official that examining and producing of the prosecution witness is the responsibility of presenting officer and doing so by the inquiry officer amounts to bias is not tenable. As per Govt of India's instruction Bo. (31) and (32) under Rule 14 of CCS (CRA) Rules 1965, the inquiry officer is fully empowered to summon/enforce attendance of witnesses and production of documents as per Departmental inquiring Act No XVIII of 1972.

(h) The contention of the delinquent official that the complainant Maj (Now Lt Col) KS Sinha cannot be prosecution witness is not tenable. As per Govt of India's instruction No. (15) under Rule 14 of CCS (CRA) Rules 1965 the witness cannot function as inquiry officer or presenting officer. In this case Maj (now Lt. Col) KS Sinha is neither inquiry Officer nor as prosecution officer . As such Maj (Now Lt. Col) KS Sinha can appear as prosecution witness .

- 5 -

4. AND WHEREAS, the undersigned being the Disciplinary Authority after having carefully examined/considered the individual's representation dated 08 Oct 2001. inquiry report, relevant records and factual position explained above, holds the said Shri L. Deka Guilty of the charge levelled against him .

11. NOW THEREFORE, the undersigned in exercise of the powers conferred vide Rule 15 of CCS (CC & A) Rules 1965, hereby orders that No. 6965581 SK Shri L. Deka be "Removed from service which shall not be a disqualification for future employment under the Govt." from the date this order served on him .

1993.

Sd/- Illegible

(AK Jyoti )

Brig

Officer in charge Records

No. 6965581 SK

Discharge -

Shri L. Deka

A Comm / D, C

222 ABOD

O/O. 99 APO

( Through the Commandant 222 ABOD)

ANNEXURE :- 6

REGISTERED

L. DEKA

S.K. (6965581)

Maidam Bakrapara  
Guwahati-29, Assam

04 Feb, 2002

DTE Gen of Ord. Services (OS-80)

Master General of Ord. Branch

Army Headquarter

DHQ P.O. New Delhi- 110011

DISCIPLINE CIVILIAN

Sir,

Most respectfully, I the undersigned beg to submit the following for your kind consideration under existing rules and necessary action please .

2. That, Sir I was issued charge sheet vide AOC records Memo No. 6965581/SK/DC-13/A2/Civ/CA-6/38 dt. 18 Sept. 1995 with a series of allegation. Thereafter department inquiry was held against me for the charges so framed. In the said inquiry the inquiry officer held me guilty without going into the fact the circumstanes of the allegation as per existing rules, Based on the finding and assessment of the inquiry officer the AOC records office awarded punishment vide AOC records Memo No. 6965581/SK/DisCP/119/CIV/CA-6 dt. 03 May, 99 .

Conted....2

Attested by  
S. Chakrabarty  
Advocate

- 2 -

3. I, on my part appealed to my appellate authority against the order cited in para 2. After careful examination of my appeal appellate authority directed to re-constituted the Court of inquiry and categorically indicated the points to inquire Vide Army HQ letter No. A/2/2432/30-S-Sc-II dt. 27th Dec. 99 which was forwarded to AOC records with a copy to me (copy enclosed) .

4. As directed by the Army HQ cited in para-3 the inquiry was resumed on 15th Sept, 2000 in which the inquiry officer had drawn in record all the article of charges and other related charges frames against me. But, I ~~repeatedly~~ submitted the inquiry officer only to record those points which have categorically indicated by Army HQ . But the inquiry officer did not agreed with my submission and proceeded with the inquiry. During the course of inquiry the inquiry officer had issued a letter bearing No. 206/L.Deka/INQ/551/26 dt. 24 Nov. 2000 in which the inquiry officer informed that he will produce the prosecution witness for any cross examination . On 25th Nov. 2000 Major K.S. Sinha's (Now LT. Col. Prosecution witness) statement was recorded in the inquiry proceeding and straightaway started to examine prosecution witness by the inquiry officer and asked me to cross examine the prosecution witness Major K.S. Sinha

Conted...3

- 3 -

in which I have raised objection with the plea that in presence of presenting officer examining of the prosecution witness should have been done by the presenting Officer only. I submitted the inquiry officer to record my protest in the proceeding by the inquiry officer refused to record as it is irrelevant to the proceeding.

(Refer inquiry proceeding dt. 27th Nov. 2000 para 38)

when this lacuna/gapes of violating the existing rules of examining the prosecution witness was brought to the light then the inquiry officer asked the presenting officer to examine the prosecution witness to cover up the lacuna, gapes. From the act of the inquiry officer a doubt have been created in my mind regarding the free and fairness of the inquiry officer, Hence, I moved an application regarding the act of the inquiry officer and expressed doubt about continuing the Biasness of the inquiry officer and copy of the same was produced in the Court of inquiry with a request to stay the inquiry till disposal of my application by concerned authority but the inquiry officer rejected my plea on the ground that the inquiry officer is not bound to wait for the reply from concerned authority. (Refer Court in inquiry dt. 2nd Dec. 2000 Para 48) .

Conted....3

- 4 -

5. The inquiry officer arbitrarily closed the inquiry, ignoring all these facts. My application regarding the Biasness of the inquiry officer have been turned down by AOC records vide Memo No. 69668/SK/DISA/176/Civ/CA-6 dt 5th Jan. 2001. After rejecting my application by AOC records narrating all the facts I submitted an application to Army HQ on 9 Feb., 2001. The reply is still awaited.

6. In the meantime AOC records office issued a letter bearing No. 6965581/SK/DISCB/Civ/204/CA-6 dt. 07 Sept, 2001 in which the records office proposed to impose a Major Penalty of "Removal from service which shall not be a disqualification for future employment under the Govt" and asked me to represent if I have anything to do so (Copy enclosed).

7. I which I submitted my representation on the said AOC records memo vide my application dt. 08 Oct. 2001, a copy of the same is also attached herewith.

8. After receiving my application as cited above the AOC records office rejected my plea and imposed me the proposed penalty of "Removal from service which shall not be a disqualification for future employment under the Govt." vide AOC records memo No. 6965581/SK/DISCB/CIV/218/CA-6 dt 5 Jan, 2002 (Copy enclosed).

- 5 -

9. That Sir, the rejection of my application was not done on factualposition of the case by AOC records. The undermentioned parawise facts of the case are mentioned below :

(a) The ~~an~~ contention of the delinquent official that the inquiry officer has started examination of the prosecution witness Major K.S. Sinha (now LT Col) straightway and asked the accused person to cross examine the prosecution witness which amounts to violation of rules is not tenable as per Govt. of India's instruction No. 31 and 32 under 14 of CCS (CC&A) Rules 1965 inquiry officer is fully empowered to examine/Cross examine the witness of either side .

In this context I would like to draw the attention of my appellate authority Rule 14 inquiry Sub-rule ~~page~~ 11 page - 265 CCS/CC&A/Rule/1965 corrected up to 1st Nov, 1987 which reads as follows :

"During the inquiry the presenting officer will produced all documentary evidence and also have his witnesses ~~exam~~ exmine . The attention of appellate authority is also drawn to Supreme Court Judgement 46 (1973) 2 SLR 353 S. Krishnan Nair Vs. Divisional Superintendent Southern Railway where the Supreme Court observed " The inquiry officer is ~~a~~ not a prosecutor." It is not his duty to some how prove the

Conted...6

- 6 -

charge . When the inquiry officer forget his role and instead of putting the question with a view of elucidating answers for a proper understanding of facts before him and begin a searching cross examination, the object of which is apparently evident, he ceases to be an inquiry officer .

(b) The contention of AOC records regarding my appeal to Army HQ of 09 Feb. 2001 have been rejected to Army HQ vide signal No. A/24321/3/OS-II dt. 27th July, 2001 has not intimated to me. Moreover the contention of the AOC records regarding the Biasness of the inquiry officer, my plea have been rejected by the AOC records on the ground that the Bias allegation should have been brought in the initial stage of the proceeding. But the attention of Army HQ is drawn to the letter No. 6/28/72-DISC/1 dt. and Aug 1973 of DG PNT in which it is stated as under :

"No hard and fast rules, can, however, be laid down and each case will have to be examined on the merit of the fact and circumstances brought out by the concerned Govt. Servant Alleging the Bias on the part of inquiry authority. As rule stand at present, it is not possible to Govt. servant the right to ask for review of any orders issued under CCS (CC&A) rules 1965 at any time."

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- 7 -

c). The contention of AOC records regarding the appellate authority order dt. 27 Dec. 99 regarding immediate officer in hierarchy should also be held responsible for the damage of skid boards have been ignored by the inquiry officer is not tenable as the delinquent official have never brought notice to any officer in hierarchy regarding the desripenency/unserviceable condition of the skid boards. In this context, I would like to submit that this point was categorically pointed out in this context, I would like to submit that this point was categorically pointed out by Army HQ vide letter even number dt, 27 Dec. 99. I also submitted the same in the court of the inquiry to look into that point as it is a part and parcel of the entire proceeding and very vital for my defence which I have been denied.

d). The contention of the AOC records that the delinquent official on conclusion of the inquiry proceeding the inquiry officer did not questioned the Govt. servant, the presenting officer and the witnesses is not tenable . In this regards it is submitted that during the entire proceeding in no stage I have raised such question as mentioned in AOC records memo No. 6965581/SK/DISCP/CAV/218/CA-6 dt.

5 Jan, 2002 .

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- 8 -

(e) The contention of AOC records that the delinquent official that inquiry officer should be limited to the findings not to the penalties is agreed . In this regard I would like to submit that in every proceeding the inquiry officer should have to furnish a certificate as under :

"Certified that I have acquainted myself with the provision of rule 14 of CCS/CC&A) rule 1965 and the same have been completed within conducting the oral inquiry in aforesaid disciplinary case." Whereas the inquiry officer stepped out the mandatory provision of the existing rules deliberately ~~with~~ with a intention to victimise me .

(f) The contention of AOC records regarding the prosecution witness Major K.S. Sinha (Now LT. Col.) in this regard it is submitted that Major KS Sinha (Now Lt. Col.) was then Comdr. No.2SD who had brought/framed the allegation against me as cited in the chargesheet as per existing rules the complainant cannot be functioned as principle prosecution witness. Your kind attention is drawn to the para 14 page 261 under the heading disciplinary proceeding of CCS (CC&A) rules 1965 corrected upto 1st Nov. 1987 which reach as under :

"Similarly, where the official is complainant himself, and also principle witness, he can be said to be biased".

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10. Sir, the above narrated facts are the brief of the entire proceeding . The act of the inquiry officer is certain  
<sup>contains</sup> ly elements of Bias for the following reason :

(a) Before starting the second spell of proceeding that is 15th Sept. 2000 the inquiry officer Shri H.R. Sorate CSO was posted in COD Chouki , Allahabad..... whom then officiating Administrative Officer Major Raghabendra Kumar sent a letter with a order to take experty inquiry. Thus the inquiry officer have brought under influence of Local administration (Copy enclosed ).

(b) The inquiry officer deliberately cross the warrant ed provision by giving suggestion for severe penalties to the accused person .

(c) The inquiry officer deliberately refused to record the submission made by the accused person in proceeding

(d) The inquiry officer some how tried to prove the charges against the accused person, hence took the role of presenting officer instead of inquiry officer .

e). Production of prosecution witness is lies with the presenting officer, whereas the inquiry officer informed the accused person in writing that prosecution witness will be produced for examination/cross examination (Copy enclosed)

Contd.... 10

- 10 -

f). The inquiry officer deliberately ignored the points to produce the officer in hierarchy for the damage, inspite of repeated request of the accused person and categorical order of Army HQ which is very vital in my defence .

11. Therefore, in view of the above it is my humble submission that the fact in records be called for and examine the case in light of the brief as submitted above and set aside the order imposed on me by AOC records Memo even No. dated 05 Jan, 2002. For which I shall remain ever grateful to you Sir ,

Thanking you ,

Yours faithfully

Sd/- Illegible

Dated 04 Feb, 2002

( L. DEKA )

Encl L 14

Copy to :

1. AOC record for information please .
2. Comdt. 222 ABOD for information please .

ପ୍ରେସରି ଏବଂ ଏକ ପରିଚାର ।

28/3/2023.....

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~~IN THE~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**GUWAHATI BENCH : : : GUWAHATI**

Union of India & 01  
Bhawan  
"Mangal"  
Hindu Kumar Chaudhary  
26/2/03

In the matter of :

OA No. 194/2002

Shri Lakeswar Deka,

..... Applicant

-VS-

Union of India & Ors.

\*\*\*\*\* Respondents

**In the matter of :**

Written Statements for and on  
behalf of respondents Nos.

1, 2, 3 and 4.

I, Shri Col M. Rajgopal, Commandant,

222 ABCD C/o 99 APC do hereby solemnly affirm and declare  
as follows :-

1. That I am the Commandant of 222 ABOD and I have been impleaded as respondent No 4 in the instant case. I am fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application filed by the applicant and have understood the contents thereof. Save and except what is specifically admitted herein all other contentions and statements may be deemed to have been denied. I am authorised and competent to file this written statement on behalf of all the respondents.

2. That with regard to the statements made in paragraph 1 of the application the answering respondents beg to state that the applicant was served with a charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965 vide office memorandum No 6965581/SK/DC-131/A-2/Civ/CA-6/34 dated 1.08.95 for an offence "Negligence of duty". The Inquiry Officer OOC (A) Shri HR Serate in pursuant to order no. 6965581/SK/DC-131/A-2/Civ/CA-6/38 dated 18.09.95 and order No 6965581/SK/Discp/Civ/145/CA-6 dated 27.04.2000 submitted his report whereby the charges levelled against the applicant has been said to be proved. The Disciplinary Authority (OIC Records) after having examined/considered the applicant's representation dated 8.10.2001, the inquiry report and the relevant records found the applicant guilty of the charges levelled against him and accordingly imposed the major penalty of "removal from service" under Rule 14 of the CCS/CC&A/Rules, 1965 vide order No 6965581/SK/Discp/Civ/218/CA-6 dated 5.01.2002.

3. That with regard to the statements made in paragraph 2 and 3 of the application the answering respondents has no comments to offer.

4. That with regard to the statements made in paragraph 4(i) of the application the answering respondents beg to state that the contention of the applicant that on advice of the Sub Depot commander the applicant had kept the skid board stacked properly covered with tarpaulin in the railway platform due to shortage of space and he had taken all feasible measures to protect the stores is not correct.

There is no such documentary evidence available on records to prove the contention of the applicant. Moreover, the essential witness Major (now Lt Colonel) KS Sinha had stated during the course of oral inquiry that the condition/discrepancy of skid board was never brought to his notice by the applicant.

5. That with regard to the statements made in paragraph 4 (ii) of the application the answering respondents beg to state that the contention of the applicant that copy of the statement made by Major (now Lt Colonel) KS Sinha was not provided to him is not correct. During the course of the oral inquiry held on 26.9.2000 copy of the aforesaid statement was handed over to the applicant.
6. That with regard to the statements made in paragraphs 4 (iii) of the application the answering respondents beg to state that the contention of the applicant that due to his inadvertant mistake he had charged off 550 quantity of skid boards is not correct. It was established during the course of the enquiry that the applicant had deliberately charged off 550 quantity of skid board on 9.12.91 vide TV/4W/2 SD and had again charged off 550 quantity of skid board on 12.08.92 against the same TV/4W/2 SD. Moreover the applicant had signed all the stock slips (IAFO-2634) on behalf of the commander No 2 Sub Depot along which clearly indicates the applicant was all aware of the deficiency and the condition of the skid boards but he had deliberately concealed the truth with malafide intention.

7. That with regard to the statements made in paragraphs 4 (iv) of the application the answering respondents beg to state that the contention of the applicant that the inquiry officer and presenting officer had conducted oral inquiry in gross violation of the principles of natural justice is not correct. The applicant and his defence assistant were given adequate opportunity to defend his case during the inquiry but they did not co-operate with the inquiry officer. As such the inquiry officer was left with no option but to conclude the inquiry ex parte, on the basis of the materials on record.

8. That with regard to the statements made in paragraph 4 (v) of the application the answering respondents beg to state that the disciplinary authority ie. OIC Records after careful examination of the records and the applicant's representation dated 29.05.97 found the applicant 'guilty' of the charge levelled against him and awarded the penalty in question.

9. That with regard to the statements made in paragraphs 4 (vi) and (vii) of the application the answering respondents beg to state that the applicant being aggrieved by the penalty awarded by the disciplinary authority vide order dated 3.05.99 had preferred an appeal dated 8.06.99 before the appellate authority. The appellate authority on examination of the records found the inquiry to be defective and remitted the matter back to the inquiry officer vide order no A/24321/3/OS-8C (II) dated 27.12.99 for further inquiry

(45)

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10. That with regard to the statements made in paragraphs 4 (viii) of the application the answering respondents beg to state that the contention of the applicant that there was no order for conducting fresh inquiry by the disciplinary authority is not correct. The disciplinary authority vide order no 6965581/SK/Discp/Civ/145/CA-6 dated 27.04.2000 had remitted the matter to the inquiry officer for further inquiry with the direction that he is to comply with observation made by the appellate authority vide order dated 27.12.99. The contention of the applicant that representation dated 28.11.2000 was rejected by the disciplinary authority vide order No 6965581/SK/Discp/170/Civ/CA-6 dated 5.01.01 is correct as on careful examination of the same it was found that it did not contain any merit.

11. That with regard to the statements made in paragraph 4(ix) of the application the answering respondents beg to state that on examination of the relevant point on record, oral inquiry proceedings and the findings of the inquiry officer and taking into consideration the fact that the irresponsible conduct of the applicant had caused loss of stores, was in Rs. 63,98,034/- to the state and the major penalty of 'removal from service' was awarded to the applicant.

12. That with regard to the statements made in paragraphs 4(x) and (xi) of the application the answering respondents beg to state that the disciplinary authority after having carefully examined the representation dated 8.10.2001 of the applicant based on the relevant records, inquiry report and then only had awarded the major penalty.

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

I, Shri C. M. Rajgopal, Commandant  
222 ABOD, Guwahati being authorised do hereby solemnly affirm  
and declare that the statements made in paragraphs 1, 3, 4, 7,  
11, 12, 12 and 14 of this written statement are true to my  
knowledge, those made in paragraph 2, 5, 6, 8, 9 and 10 being  
matters of record are true to my information derived therefrom  
and those made in the rest are humble submission before the  
Hon'ble Tribunal.

And I sign this verification on this 3<sup>rd</sup> day Jan 2003.

*Madanlal Rajgopal*  
Dependent.  
*Rajgopal*  
*Colonel*  
*Commandant*