

30/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 323/02

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SECTION OFFICER (Judl.)

FROM No. 4  
(SEE RULE 42 )

SENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Applecation No. 223/02

Mise Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s). Cherdan Das

-Vs-

Respondant(s) H. O. T. Toms

Advocate for the Applecant(s) G.K. Bhattacharjee, Sr. Advocate

B. Chaudhury

Advocate for the Respondat(s) CGSC

Notes of the Registry Date Order of the Tribunal

19.7.02 Heard Mr. G.K. Bhattacharjee,  
learned Sr. counsel for the applicant.  
The application is admitted.  
Call for the records.  
List on 20.8.2002 for orders.

23-7-2002

Notice prepared and  
Sent to D. Section 80  
issuing of the same  
to the Respondents  
through Road, post  
with A.P.D.  
Vide D.No 2052 to 2054  
Dtd - 24.7.02.

mb

20.8.02

I C Usha  
Member

Vice-Chairman

On the prayer of Mr. J.L.Sarkar  
learned counsel for the Respondents  
further four weeks time is allowed to  
the Respondents to file written state-  
ment. List on 18.9.2002 for orders.

I C Usha  
Member

Vice-Chairman

No. 108 has been filed

mb

23/8/02

2

2

18.9.02

Four weeks time was granted to the Respondents on the prayer of Mr.J.L. Sarkar learned Railway Standing Counsel. But no written statement so far filed. Again prayer has been made on behalf of Mr.S.Sarma <sup>for some time</sup> to file written statement. Prayer is allowed. List on 5.11.02. for orders.

No written statement has been filed.

1m

Vice-Chairman

*3/9/02*

5.11.02

No written statement so far filed by the respondents, though time was granted. List <sup>again</sup> on 28.11.02 to enable the respondents to file written statement.

No written statement has been filed.

1m

Vice-Chairman

*27.11.02*

28.11.02

The respondents are yet to file written statement. Further four weeks time is granted to the respondents to file written statement.

28.11.02

The Respondents are yet to file written statement, though time was granted. Further four weeks time is allowed to the respondents to file written statement.

No written statement has been filed.

List on 7.1.03 for orders.

*3/12/02*  
6.1.03

1m

Vice-Chairman

7.1.03 Present : The Hon'ble Mr Justice V.S. Aggarwal, Chairman.

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

No written statement has been filed.

Written statement has not been filed. It be filed within four weeks.

List on 5.2.03 for order.

*3/12/02*

I.C.Usha  
Member

*MS Ag*  
Chairman

5.2.2003 The respondents are yet to file written statement though numbers of time were granted. On the prayer of Mr. S. Sarma, learned counsel for the respondents, we, however, granted four weeks time to file written statement as a last chance. Mr. Sarma, learned counsel stated that he ~~is~~ prays for time on behalf of Mr. J.L. Sakkar, learned counsel for the respondents. We do not know counsel for the respondents but the party is the Railway. No further time shall be granted to the respondents to file written statement.

List the matter on 5.3.2003 for fixing the date of hearing.

Member

Vice-Chairman

No written statement has been filed.

mb

5.3.2003 Court did not sit today. The case is adjourned to 14/3/2003.

MS  
Ady

11.3.2003

None appears for the parties. Put up the matter again on 31.3.2003 for fixing a date of hearing.

Vice-Chairman

bb

31.3.2003

Heard Mr. B. Choudhury, learned counsel for the applicant. None appears for the respondents. The respondents are yet to file written statement. List on 5.5.2003 to enable the respondents to file written statement, if any.

No written statement has been filed.

MS  
2.5.03

Vice-Chairman

mb

(4)

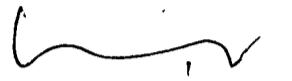
5.5.2003

The respondents are yet to file written statement, though time granted. Mr. S. Sarma, learned counsel appearing for the respondents again prays for time to file written statement.

Further four weeks time is granted to the respondents to file written statement as a last chance.

List the case on 6.6.2003 for further order.

  
Member

  
Vice-Chairman

bb

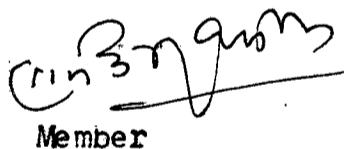
6.6.2003

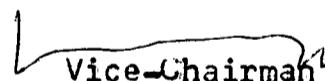
Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. R.K. Upadhyay, Member (A).

The respondents are yet to file written statement though sufficient time was granted. Mr. S. Sarma, learned counsel appearing on behalf of the Railway again prayed for time for filing written statement. Reluctantly, the respondents are granted further three weeks time for filing written statement as a last chance.

List again on 26.6.2003 for written statement and further orders.

  
Member

  
Vice-Chairman

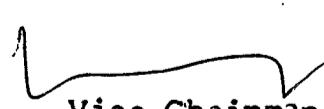
mb

6.8.03

Ms submitted  
on behalf of the  
Respondents.



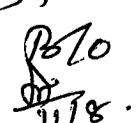
No written statement so far filed by the respondents though time granted. The matter may now be listed for hearing on 11.8.2003. The respondents may file written statement within three weeks from today.

  
Vice-Chairman

mb

11/8/03

Division Bench is not available.  
Adjourned to 12/9/03 for hearing.

  
RLO  
11/8

Office Note	Date	Tribunal's Order
WLS has been filed bifurc.	12.9.2003	Present : The Hon'ble Sri K.V. Prahaladan, Member (A).  No Division Bench is sitting. Put up again on 28.10.2003 for hearing.
<i>My 27.10.03.</i>	mb	<i>KV Prahaladan Member</i>
	28.10.2003	On the prayer made by Mr.B.Choudhury, learned counsel appearing on behalf of Mr.G.K.Bhattacharya, learned Sr.counsel for the applicant, the case is adjourned and again listed for hearing on 19.11.2003.
	bb	<i>KV Prahaladan Member</i>
	19.11.2003	Present : The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman. The Hon'ble Sri S.K. Naik, Administrative Member.
		Mr. B. Choudhury, learned counsel submits that Mr. G.K. Bhattacharjee, learned Sr. counsel for the applicant <sup>has</sup> suffered bereavement. Mr. B.G. Pathak, learned Addl. C.G.S.C. for the Respondents.
		List on 5.12.2003 for hearing.
	mb	<i>7/12/03 Member</i>
		<i>7/12/03 Vice-Chairman</i>

(6)

O.A.No.223/2002

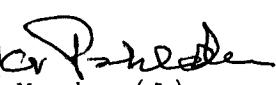
Office Note	Date	Tribunal's Order
Written statement has been filed.  <i>Rey 19.12.03.</i>	23.12.2003	<p>Present: Hon'ble Mr Justice B. Panigrahi, Vice-Chairman Hon'ble Mr K.V. Prahaladan, Administrative Member.</p> <p>On the prayer of Mr G.K. Bharracharyya, learned counsel for the applicant, the matter is adjourned. The matter may be listed for hearing before the next available Division Bench.</p> <p><i>S. Bhattacharya</i> Member</p> <p><i>B</i> Vice-Chairman</p>
	20.1.2004	<p>Present: Hon'ble Shri Bharat Bhusan, Member (J) Hon'ble Mr K.V. Prahaladan, Member (A).</p> <p>Mr B. Choudhury, proxy counsel for Mr G.K. Bhattacharyya, learned counsel for the applicant and Mr J.L. Sarkar, learned counsel for the respondents are present. Today again request for adjournment is made on behalf of the applicant. Perusal of the previous order sheets reveal that repeated adjournments had been sought for by the applicant. Adjourned as a last opportunity. List for hearing on 6.2.04.</p> <p><i>K.V. Prahaladan</i> Member (A)</p> <p><i>A</i> Member (J)</p>
		<p>nkm</p>

23.2.2004

Present: Hon'ble Shri Shanker Raju,  
Judicial MemberHon'ble Shri K.V. Prahladan,  
Administrative Member.15.3.04

Copy of the order  
was been sent to the  
S/fee. for issue of  
the same to the applicant  
as well as to the  
Adv. Standing counsel  
for the respondent.

nkm

  
Member(A)h  
Member(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.223 of 2002

Date of decision: This the 23rd day of February 2004

The Hon'ble Shri Shanker Raju, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Chandan Das  
S/o of Late Munindra Mohan Das  
Presently serving as Junior Engineer-II(Works)  
Resident of Railway Quarter No.561-B  
P.O.- Badarpur, District- Karimganj,  
Assam. ....Applicant  
By Advocates Mr G.K. Bhattacharyya and  
Mr B. Choudhury.

- versus -

1. Union of India,  
represented by the General Manager,  
N.F. Railway,  
Maligaon, Guwahati.
2. Senior Divisional Engineer (Coordination)  
N.F. Railway, Lumding.
3. Divisional Engineer-II  
N.F. Railway, Lumding. ....Respondents  
By Advocate Mr J.L. Sarkar, Railway Counsel.

.....

O R D E R (ORAL)

SHANKER RAJU, MEMBER(J)

The applicant impugns the penalty of reduction to three stages lower in the time scale for a period of three years with cumulative effect awarded by order dated 24.8.2001 as well as the Appellate Order dated 22.10.2001 upholding the punishment.

2. Heard Mr G.K. Bhattacharyya, learned Sr. counsel for the applicant and also Mr J.L. Sarkar, learned counsel for the respondents.

3. Though several contentions have been taken to assail the orders including vagueness of charge, case of no evidence and punishment on suspicion and surmises, at the outset the learned counsel for the applicant states that as per the guidelines of the Railway Board and in consonance with the Railway Servants (Discipline and Appeal) Rules, 1968, the Disciplinary Authority as well as the Appellate Authority are obligated to pass reasoned orders dealing with the contentions raised by the delinquent official.

4. Referring to the orders passed by the Disciplinary Authority and the Appellate Authority, it is seen that the orders show no application of mind. The contentions have not been dealt with the the punishment has been inflicted and confirmed by non-speaking orders.

5. The learned counsel for the respondents vehemently opposes the claim of the applicant and contends that the charge against the applicant has been proved and no illegality has cropped up in the disciplinary proceeding.

6. On perusal of the order of the Disciplinary Authority, keeping in view the trite law that in the event the Inquiry Officer's report is reasoned, it is not mandated upon the Disciplinary Authority to pass a detailed order, but he should agree with the Inquiry Officer. However, we find that the Disciplinary Authority has not even agreed with the Inquiry Officer's report. His conclusion may be on the basis of record, but one thing is clear that while issuing orders the guidelines vide circular dated 3.3.1978 which mandates him not only to pass speaking order but also to deal with the contentions of the concerned employee has not been followed.

7. The necessity regarding recording reasons by the Disciplinary Authority is more important when as a quasi judicial authority the order is amenable to appeal. One is deprived of an effective right of appeal in the absence of conclusions arrived at by the Disciplinary Authority. This prejudices the right of a delinquent officer. Fairness in action is a sine quanon of action by an executive authority discharging quasi judicial function. As we are satisfied that neither the contentions raised by the applicant have been dealt with nor reasons in support of the conclusions arrived at by the Disciplinary Authority, the order passed by the Disciplinary Authority is not sustainable in law.

8. As per Board's instructions dated 3.3.1978 and Rule 22 of the Railway Rules ibid the Appellate Authority is also required to pass reasoned order. No reasons have been assigned by the Appellate Authority while passing the impugned order. The order of the Appellate Authority is bald and does not show application of mind.

9. In the result for the foregoing reasons without dealing upon the other contentions of the applicant the O.A. is partly allowed. The impugned orders are quashed and set aside. However, the respondents are at liberty, if so advised, to take up the proceedings from the stage of passing the final orders, keeping in view our observations made above. The directions shall be complied with within a period of three months from the date of receipt of a copy of the order.

  
( K. V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( SHANKER RAJU )  
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH  
GUWAHATI

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

O.A.No.....OF 2002

Sri Chandan Das.

...Applicant

VS

Union of India and others

...Respondents.

<u>SL.NO</u>	<u>PARTICULARS</u>	<u>PAGE NO</u>
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Filed by

  
(Bikram Choudhury)  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH. GUWAHATI.

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

O.A. NO. OF 2002.

Sri Chandan Das  
Son of Late Munindra Mohan Das  
Presently serving as Junior Engineer-II(Works)  
Resident of Railway Quarter No. 561-B  
Saheb Colony, Tennis Ground,  
Badarpur, P.O. and P.S. Badarpur,  
District: - Karimganj, Assam.

... Applicant.

- Versus -

1. Union of India,  
Represented by the General Manager,  
N.F.Railway, Maligaon, Guwahati-781011

2. Senior Divisional Engineering (Coordination)  
N.F. Railway, Lumding.

3. Divisional Engineer-II,  
N.F.Railway, Lumding.

... Respondent.

Chandan Das  
Filed by the applicant  
through Bihari Choudhury  
Ahucole/18-7-02

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

- (1) Order no. W/275/LM/DAR/W-5 dated: 24.8.01 passed by the Respondent no 3 whereby the applicant was imposed the major penalty of reduction to three stage lower in time scale of pay for a period of three years with cumulative effect.
- (2) Order dated: 22.10.2001 issued by the Respondent no 2 dismissing the appeal dt: 15.10.2001 against the order of major penalty dt: 24.8.01 filed by the applicant arbitrarily, mechanically and without any just reason.

2. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of orders is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

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

4. FACTS OF THE CASE

1. That the applicant joined the Railway Service as an Apprentice Inspector of Works (Grade- III) in the scale of Rs 425-700/ in the Construction Department of N.F.Railway on 5.1.1984. On satisfactory completion of apprenticeship period the applicant was regularized in the year 1985. Thereafter the applicant was promoted on ad-hoc basis to the post of Inspector of Works, Grade-II in scale of Rs 1600-2660 in November 1987 in the Construction Department itself. Later on, the

applicant was reverted to open line on 3.6.1993 as Inspector of Works Grade-III in the scale of Rs. 1400-2300/-.

2. That the applicant begs to state that while working as Inspector of Works (Con.), Silchar from 31.12.91. (FN), on 20.6.1992, the applicant found that Godown no 3 was broken into and theft of MS Rod (Scrap) was committed. Accordingly, the applicant lodged an F.I.R. with GRP, Silchar on 20.6.1992 and with OC, GRP, Badarpur on 21.6.1992.

3. That while the case was under investigation by the police, a joint physical verification of the stock of MS Rod (Scrap) lying in the Godown No.3 by a team of RPF officials and a Stock Verifier was conducted from 8.8.1992 to 20.8.1992 and based on this verification a shortage of 81.868 MT MS Rod was worked out. Later on the applicant was made to sign a summary statement of MS. Rod (Scrap) as on 20.8.1992 by the Inspector, CBI, Silchar on 27.1.94. when the applicant had already relinquished the charge of Inspector of Works (Con.), Silchar.

4. That thereafter a major penalty charge memorandum no W/275/LM/DAR/W-5 (Loose) dt: 23.5.96 issued by the Respondent no 3 under Rule 1707 R.I. was served on the applicant alleging that he misappropriated MS Rod (Scrap) totaling 108.061 MTS from Godown no.3 of N.F.Railway, Silchar which was entrusted to him on or before 8.8.92. It was further alleged that during a joint physical verification of the stock of MS Rod (Scrap) lying in Godown no.3, Silchar during 8.8.92 to 20.8.92 by GRP'S and RPF personnel of N.F.Railway, Maligaon a shortage of MS Rod (Scrap) to the extent of 81.868 MTS worth Rs. 3.25 lakhs was detected and on further checking of book balance through Stock Verifier a shortage of 118.088MTS as against 36.220 MTS of MS Rod (Scrap) physically available, making a total shortage of 108.061 MTS.

It was further alleged that the entries in the ledger and other documents were manipulated by him to cover up the shortage and thereby he violated the provisions of Rule 3 (i) (ii) of Railway Services

6m

(Conduct) Rule, 1966. The lists of documents containing one document and witnesses by whom the article of charges is going to be sustained were also annexed therein.

Copy of the charge memorandum dt: 23.5.96 is annexed herewith and marked as Annexure -I

5. That on receipt of the memorandum, the applicant submitted an application dt: 3.6.96 denying the charges and praying for a copy of the document specified in the Annexure-III for preparing and submitting an effective reply. But there was no response from the disciplinary authority in this regard until 29.10.97 when Respondent no 3 issued letter No. W/275/LM/ DAR/W-5 (Loose) dated 29.10.97 addressed to Sri Raj Shekar, CRSE, Maligaon and M. Thanglian SI/CBI, Silchar stating that as per advice of Senior AVO/E/Maligaon they have been incorporated as Inquiry officer and Presenting officer in the DAR case against the applicant.

Copy of the letter is annexed herewith and marked as Annexure -II

6. That the applicant begs to state that after the appointment of the Inquiry officer and Presenting officer no steps were taken to proceed with the enquiry. Again on 6.12.99 a corrigendum to the original charge memorandum was issued, but no follow up action was taken.

7. That the applicant begs to state that on 6.1.2000 he again received a major penalty charge memorandum no W/275/LM/DAR/W-5 (Loose) dt: 6.1.2000 issued by the respondent no 3 with a forwarding letter stating that a corrigendum imputation of charge has been issued for his information.

6m

The fresh charge memorandum dt: 6.1.200 alleged that the applicant had failed to maintain absolute integrity and devotion to duty and due to his serious misconduct MS Rod (Scrap) to taking 108.061

MTS from Godown no 3 of N.F.Railway, Silchar was found short by RPF and GRP personnel, which was entrusted to him on or before 8.8.92. It was further alleged that during a joint physical verification of the stock of MS Rod (Scrap) shortage to the extent of 81.868 MTS worth Rs.3.25 lakhs were detected and on further checking of book balance through stock verifier shortage of 118.088 MTS as against 36.220 MTS of MS Rod physically available making a shortage of 108.088 MTS. It was further was alleged that the ledger and other documents depicting receipts and issues of MS Rod (Scrap) during the aforesaid period by several cuttings, over-writings were manipulated to cover up the shortage and thereby he violated the provisions of Rule 3(i) (ii) of Railway Services (Conduct) Rule, 1966. The list of documents containing 20 documents and 12 witnesses by whom the articles of charges were going to be sustained were also annexed therein.

Copy of the charge memorandum dt: 6.1.2000 is annexed herewith and marked as Annexure-III

8. That, thereafter, the disciplinary authority appointed the Inquiry officer vide order dt: 1.3.2000 and the Presenting officer vide order dt: 20.4.2000.

9. That, after inspection of all the twenty documents, regular hearing commenced from 12.5.200. During the inquiry, nine prosecution witnesses out of twelve listed witnesses in the memo of charge (Annexure-II) were examined and cross-examined, one Md. Abdul Basir, P.W.7 stated to have been expired by the Presenting Officer. The Presenting Officer could not produce two witnesses, namely Sri N.G.Neware, Ex.Dy.CEE, Construction, Silchar, who without showing any reason did not turned up on any date of inquiry and Sri Kamala Das Boro (P.W.6), Stock Verifier (Retd.) who attended the inquiry only for

one day. The non-examination of these two witnesses deprived the applicant of his right to cross-examination. The presenting officer, later on, dropped these two witnesses.

It would be relevant to point out that the statement of MS Iron Rod prepared by Kamala Das Boro (P.W.6), Stock Verifier was taken on record of the proceeding by the Inquiry Officer in arriving the so called shortage. The maker has taken this statement on record without corroboration/authentication and as such it cannot constitute any evidence against the applicant.

At the closure of the prosecution case, the charged officer (applicant) denied the charges and was subjected to general examination by the Inquiry Officer. The charged officer also submitted his written defense as provided u/s 9(19) of the Railway Servants (D&A) Rules, 1968 to the Inquiry officer on 16.11.2000 after submission of written brief by the Presenting Officer on 9.11.2000. The applicant craves leave of this Hon'ble tribunal to rely upon the written defences and written brief by the Presenting officer at the time of hearing.

10. That the applicant begs to state that it will be apparent from the inquiry that the cuttings over writings etc. of the entries in the ledger were done during the tenure of previous Inspector of Works as admitted by P.W. 2 and the dates of entries which were tampered with are proof of the fact that the over writings etc. were done before the applicant's tenure.

11. That, thereafter, the applicant received the Enquiry Report dt: 30.11.2000 submitted by the Inquiry Officer from the Divisional Railway Manager (Works), Lumding, which he receive on 23.7.01, under cover of office memo no. W/275/LM/DAR/WS (Loose) dt: 16.7.01 and the applicant was further directed to submit defense on the enquiry report within 10 days for further course of action.

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Copy of the Enquiry Report is annexed herewith  
and marked as Annexure-IV

12. That, accordingly, the applicant submitted a detailed representation on 1.8.2001 against the finding a of the inquiry officer, stating, inter-alia, that the authorities have not been able to arrive at a definite finding of exact loss of MS Rods, as in the charge memo the shortage has been described as 81.868 MTS, 108.06 MTS and 118.088 MTS and no materials were produced during the inquiry to show that the applicant had taken over the materials in question from his predecessor, on the contrary, it was established that he had not taken over charge of the materials. Further no physical verification of the stock was done prior to 8.8.92 and as such determining the quantum of shortage on the basis of 1986 book balance was an unfair and flawed procedure and moreover putting the blame of cutting/ over writing of entries in the ledger on the applicant inspite of clear evidence of PW-2 who admitted of doing the same with permission of earlier incumbent.

Copy of the representation-dated 1.8.2001 is  
annexed herewith and marked as Annexure- V.

13. That, thereafter, on 31.8.2001 the applicant received letter No.W/275/LM/DAR/W-5 dated 24.8.2001 from respondent No.3 imposing the major penalty of reduction to three stage lower in time scale of pay for a period of three years with cumulative effect.

Copy of the impugned order dated 24.8.2001 is  
annexed herewith and marked as Annexure- VI.

14. That being aggrieved by the impugned order dated 24.8.2001 (Annexure-VI); the applicant submitted an appeal-dated 15.10.2001 under Rule 18 (ii) r/w Rule 21 of Railway Servant (Discipline and Appeal) Rules, 1968 before the Respondent No.2.

Copy of the appeal-dated 15.10.2001 is annexed  
herewith and marked as Annexure- VII.

Gan

15. That thereafter-on 31.10.2001, the applicant received the impugned letter dated 22.10.2001 issued by the Respondent No.2 rejecting his appeal mechanically without assigning any reason.

Copy of the letter dt: 22.10.01 is annexed  
herewith and marked as Annexure-VIII

16. That the applicant begs to state that due to inordinate delay in initiating and concluding the disciplinary proceeding by the authorities for a cause arising in 1992 the applicant has been highly prejudiced in denying his promotion to the post of Junior Engineer (Works), Grade -I scale of Rs.5500-9000/, inspite of being in the list of selected candidates as per the suitability test conducted in 1997.

17. That, being highly aggrieved by the impugned orders, the applicant is approaching this Hon'ble Tribunal for relief.

#### **5. GROUND FOR RELIEF WITH LEGAL PRVISIONS.**

I. For that, the investigation were initially entrusted to the CBI and when a prima facie case couldn't be established against the applicant, the CBI advised the Railway authorities to initiate DAR action against the applicant which apparently showed that the disciplinary authority did not form its own opinion but was influenced by the advice of the CBI. The disciplinary authority issued the charge memorandum against the applicant with a closed mind and as such the entire proceedings culminating in imposition of the major penalty on the applicant is illegal and void and liable to be set aside.

II. For that the charge sheet dt: 23.5.96 was issued under rule 1707- RI which was repealed under Rule 29 of Railway Servants (D&A) Rules, 1968 and as such the same is invalid, inoperative and void ab initio.

III. For that it is the duty of the disciplinary authority to decide as to who should be the inquiry and presenting officers, but it will be apparent

6m

from the letter dt: 29.10.97 that the disciplinary authority exercised this power at the dictat of Vigilance Officer which is illegal and bad in law.

IV. For that the action of the inquiry officer in taking the statement of book balance of MS Rod (P.W.6) in record without authentication /deposition by the maker and as such this document could not constitute any evidence against the applicant. Producing documents and relying upon them without presenting the maker to prove them amounts to denial of cross-examination to the other side causing serious prejudice to the defense and as such the impugned orders are bad in law and liable to be set aside.

V. For that the action of the inquiry officer in not taking into account the admission of Subhash Dasgupta, (P.W.2), who was the Store Clerk from 6.9.80 to 12.12.91 in the office of Inspector of Works (Con), Silchar, before the applicant had joined the office that the over writings, cuttings etc. of entries were made by him with the permission of Inspector, incharge has prejudiced the applicant and as such the impugned orders are bad in law and liable to be set aside.

VI. For that the authorities failed to determine the exact quantity of shortage as three different quantities were stated in the charge memo and as such the charge is vague, indefinite, and indistinct which is violative and as such the impugned orders are liable to be set aside.

VII. For that, the inquiry was conducted on the basis of misappreciation of facts and circumstances of the case whereby the disciplinary authority, on the basis of such findings, imposed the major penalty of reduction to three stage lower in time scale of pay for a period of three years with cumulative effect is in flagrant violation of the provisions of the Railway Servants (D&E) Rules, 1968 and principles of natural justice and as such the action of the authorities is bad in law and is liable to be set aside.

VIII. For that the penalty imposed by the authority is grossly disproportionate to the gravity of misconduct alleged and as such this is a fit case where this Hon'ble Tribunal will exercise jurisdiction and grant relief.

IX. For that the action of the Inquiry officer in relying on the biased and self-serving declarations of the Chowkidars, whose duty was to guard the Godown and prevent theft and by ignoring the police report of OC, GRP, Silchar confirming the theft in the Godown no. 3 on 9.6.92 is highly illegal and arbitrary and as such the impugned orders are bad in law and is liable to be set aside and quashed.

XI. For that the appellate order dt: 22.10.01 was passed arbitrarily, mechanically and without assigning any reasons and as such the same is bad in law and is liable to be set aside.

XII. For that, in any view of the matter, the impugned orders are bad in law and are liable to be set aside and quashed.

**6:DETAILS OF REMEDY EXHAUSTED:-**

The applicant filed an appeal dt: 15.10.01 before the Respondent no 2 which was rejected by order dt: 22.10.01.

**7:DECLARATION:-**

That the applicant declares that he has not previously filed any application/writ petition or suit whatsoever regarding the matter in respect of which this application has been made before any Court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application/writ petition or suit is pending.

6m

**8. PRAYER**

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned orders dt: 24.8.01 (Annexure-V) and 22.10.01 (Annexure-VIII) should not be set aside and quashed and after perusing the causes shown, if any, and hearing the parties, set aside and quash the impugned orders dt: 24.8.01 (Annexure-V) and 22.10.01 (Annexure-VIII) and /or pass any other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant, as in duty bound, shall ever pray.

9. Interim order. Nil

10. Does not arise.

11: Postal order No 7G576395 dated 18 th July 2002 of Guwahati Post Office is annexed.

VERIFICATION

I, Sri Chandan Das, son of Late Munindra Mohan Das, aged about 43 years, presently serving as Junior Engineer-II(Works), resident of Railway Quarter No. 561-B, Saheb Colony, Tennis Ground, Badarpur, PO&PS Badarpur, Dist. Karimganj, Assam, do, hereby verify that the statements made in paragraphs nos 1,2,3,6,8,9,10,12,16 and 17 are true to my personal knowledge and statements made in paragraphs nos 4,5,7,11,13,14, and 15 are believed to be true on legal advice and that I have not suppressed any material facts.

Place:- Guwahati

Date:- 18-7-02

Chandan Das.

SIGNATURE OF THE APPLICANT

दायरेशन और व्यापक नियम-अधिकाय XVII-आर I नियम 1708-1715 आर I  
Discipline and Appeal Rules-Chapter XVII-R. I. 1708-1715 R. I.

(संदर्भ-नियम 1707 आर I के अन्तर्गत सं तिं 8 )  
(References . R. 8 under Rule 1707-R. I.)

सं/No. 4/275/LM/DAR/W-5(L0050)

तारीख/Date..... 5-9-56.

## भारी दंडों के लिए आरोपों का ज्ञापन

## MEMORANDUM OF CHARGES FOR MAJOR PENALTIES

श्री.....को एतद् द्वारा सूचित किया जाता है कि उनके विरुद्ध नियम 1708 से 1715 आर I के अन्तर्गत जांच करने वी प्रस्थापना की गयी है। जिस अभिकथन के आधार पर जांच करने वी प्रस्थापना है उन्हे अभिकथन के संग्रह विवरण में निर्दिष्ट किया गया है और उस अभिकथन के आधार पर लगाये गये आरोपों वी मालवन आरोपों के विवरण में विनिर्दिष्ट किया है।

Shri Chandan Das, Ex. IOW/II/Con now IOW/III/BPB.  
Shri Chandan Das,.....is hereby informed that it is proposed to hold an inquiry against him under Rules 1708-1715 R. I. The allegations on which the inquiry is proposed to be held are set out in the enclosed statement of allegations and the charges framed on the basis of the said allegations are specified in the enclosed statement of charges.

2. श्री.....को एतद् द्वारा सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के 7 कार्य दिवसों के अंदर कार्यालय समय में निरी भी समय संलग्न सूची में उल्लिखित प्रलेखों का निरीक्षण कर सकते हैं और उसमे उद्धारण ले सकते हैं। यदि वह ऐसे किसी अन्य प्रलेखों तक अपनी पहुंच नाहते हैं तो जिनका उल्लेख मालवन प्रलेखों की सूची में न किया गया हो तो वह सूची में उल्लिखित प्रलेखों का निरीक्षण पूरा करने के 5 दिनों के भीतर इस प्रकार के सभी अतिरिक्त प्रलेखों की एक गूची अयोहस्तात्तरी के पांच प्रस्तुत करे। केवल उन्ही अतिरिक्त अभिलेखों तक पहुंच का अनुमति दी जाएगी जिन्हे भगत गमना जाएगा। उन्ह किसी ऐसे अभिलेख तक पहुंच की अनुमति देना जनहित के विरुद्ध हो। अतिरिक्त प्रलेखों का निरीक्षण, उन्हें उपलब्ध कर दिये जाने के पांच दिनों के अन्दर अवश्य पूरा कर लिया जाना चाहिए। केवल उन्ही अतिरिक्त प्रलेखों से उद्धारण लेने की अनुमति दी जाएगी जिनके निरीक्षण की अनुमति दी गयी है।

Shri Chandan Das, Ex. IOW/Con/II now IOW/III/BPB.  
Shri Chandan Das,.....is hereby informed that if he so desires he can inspect and take extracts from the documents mentioned in the enclosed list at any time during office hours within 10 working days of receipt of this Memorandum. If he desires to be given access to any other official records other than those specified in the list referred to above, he should submit a list of all such additional documents to the undersigned within 5 days of completing the inspection of the documents mentioned in the list. Access will be given only to such of the additional records as are considered relevant. He will not be given access to any documents it is considered that it is against the public interest to give him such access. He should complete the inspection of the additional documents within 5 days of their being made available. He will be permitted to take extracts from such of the additional documents as he is permitted to inspect.

3. श्री.....को सूचित किया जाता है कि जांच के बाद के प्रत्यार्पण में प्रलेखों तक पहुंच के लिए किये गये अनुरोध को तब तक स्वीकार नहीं किया जाएगा जब तक कि उपयक्त विनिर्दिष्ट समय-सीमा के भीतर विलम्ब से अनुरोध करने के लिए पर्याप्त कारण न यताया जाय और परिस्थिति स्पष्ट रूप से यह प्रकट न करे कि अनुरोध इससे पहले के प्रत्यार्पण में नहीं किया जा सकता था। जांच पूरी हो जाने के पश्चात अतिरिक्त प्रलेखों तक पहुंच के किसी अनुरोध पर विचार नहीं किया जाएगा।

Ex. IOW(II)/Con now IOW(III)/BPB.

Shri Chandan Das,.....is informed that the request for access to documents made at the later stages of the enquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances shown clearly that the request could not have been made at an earlier stage. No request for access to additional document will be entertained after the completion of the inquiry.

Qualified to be true copy  
Ranu Bhattacharya  
Adv.

1. श्री ..... को यह भी सूचित किया जाता है कि यदि वह चाहे तो प्रलेखों का निरक्षण करने और भौतिक जांच होने की स्थिति में जांच प्राधिकारी के समक्ष अपना मामला प्रस्तुत करने के लिए किसी अन्य कर्मचारी / किसी रेलवे ट्रेंड यूनियन के पदाधिकारी (जो नियम 1712 (2) आर-1 की अपेक्षाय पूरी करता है) सहायता ले सकते हैं। सहायता करने के इस प्रयोजन के लिए उन्हें अभिमान्यता त्रामानुसार तीन व्यक्तियों के सामने देना होगा।

Shri... Chandan Das

Shri... Chandan Das is further informed that he may, if so desires, take the assistance of another Railway servant/an official of a Railway Trade Union (who satisfies the requirement of Rule 1712 (2)-R1) for inspecting the documents and assisting him in presenting his case before the inquiry authority in the event of an oral inquiry being held. For this purpose he should furnish the names of three persons, in order of preference to assist him.

5. श्री .....

को एतदद्वारा यह भी निर्देश दिया जाता है कि वे अपने प्रतिवाद का लिखित बयान तक अद्योदृष्टाकारी के पास (उचित माध्यम के द्वारा) अवश्य प्रस्तुत करें और यह भी बतायें कि,

Shri... Chandan Das is hereby required to submit to the undersigned (through proper channel) a written statement of his defence not later than ..... and also

- (क) क्या वे व्यक्तिगत रूप से गुण कहना चाहते हैं,
- (ब) to state whether the desires to be heard in person,
- (च) गवाहों का नाम और पते, यदि हो तो, दो जिन्हें वे अपने प्रतिवाद के लिए बुलाना चाहते हैं, योर
- (द) to furnish the names and addresses of the witness, if any, when he wishes to call in support of his defence and
- (ग) उन प्रलेखों की सूची, यदि कोई हो, प्रस्तुत करें जिन्हें वह अपने प्रतिवाद के समर्थन में प्रस्तुत करना चाहते हैं।
- (क) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

उन्हें सूचित किया जाता है कि केवल अभियोगों अथवा अभिकथनों के गुंबंध में जांच की जाएगी जो स्वीकार नहीं किये गये हैं। इसलिए उन्हें चाहिए कि वह अभिकथन के विवरण में दिये गये प्रत्येक अभियोग और अभिकथन को स्पष्ट रूप से प्रा. तो स्वीकार करे अथवा अस्वीकार करें। ऐसे अभियोग तथा अभिकथन, जिन्हें स्पष्ट रूप से अस्वीकार नहीं किया है, उन्हें स्वीकार किया गया भासा जाएगा।

He is informed that an inquiry will be held only in respect of the charges or allegations as are not admitted. He should therefore, specifically admit or deny each of the charges and each of the allegations in the statement of allegations. The charges and the allegation which are not specifically denied which will be admitted.

6. श्री ..... को यह भी सूचित किया जाता है कि यदि वे अपने प्रतिवाद का लिखित कथन उपर्युक्त दिनिंदिंष्ट तारीय तक अथवा उससे पूर्व प्रस्तुत नहीं करते हैं तो एक पक्षीय जांच की जाएगी।

Shri... Chandan Das is further informed that if the written statement of his defence is not received on or before the date specified above, the inquiry is liable to be held ex parte.

7. श्री ..... का आन रेल मेवा (आचरण) नियम 1956 के 17 की ओर आकृष्ट किया जाता है जिसके अन्तर्गत कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से संबंधित मामलों के मंबंध में अपने हितों को आगे बढ़ाने के लिए किसी अरिष्ट प्राधिकारी पर कोई राजनीतिक अथवा अन्य प्रभाव न तो डालने का प्रयत्न करेगा। यदि इन कार्रवाइयों से संबंधित किसी मामलों में उनकी ओर से किसी अन्य व्यक्ति से कोई अन्यावेदन प्राप्त होता है तो यह समझा जाएगा। कि श्री ..... को इस प्रभाव के अन्यावेदन की जानकारी है और वह उनके कहने पर दिया गया है और उनके विश्व द्वारा नियम 17 के उल्लंघन के लिए कार्रवाई की जाएगी।

1968 The attention of Shri... Chandan Das is invited to Rule 20 of the Railway Service (conduct) Rule 188, under which no Railway Servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from any other person in respect of any matter desirous within these proceedings, it will be presumed that Shri... Chandan Das 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 Rules 17 of these rules.

उमस्तकाम की पायी हैं

The receipt of this Memorandum should be acknowledged.

उल्लंघन/Enclo:

DA/2 sheets

रेवा में, To

हस्ताक्षर/Signature (S. No. 14377)

अनुशासनिक प्राधिकारी का पदनाम तथा स्थान। (पदनाम/Designation)

Designation & Station of the Disciplinary Authority

Div. of N. F. Rly. Lumbering

N. F. Rly. Lumbering

श्री/Shri... Chandan Das

Ex. ICW/II/CON now IOW(III) / BPB

(पदनाम/Designation)

Through : AEN(I) / BP G

(स्थान आदि/Place etc.)

प्रतिलिपि श्री/Copy to Shri... AEN(I) / BP G, DRM(P) / LMG,

(उद्यार दाता प्राधिकारी का पदनाम तथा स्थान) को सूचनार्थ/(Designation and station of the lending authority) for information

नियम 1702 (II)-आर-1 देखें/See Rule 1702 (II)-R-1

जहां लागू हो, वहां उपयोग में लाया जाय-देखें नियम 1721-(I)-आर-1। रेल कर्मचारी को भेजी जानेवाली प्रति में इसे शामिल न किया जाय/To be used wherever applicable-See Rule 1721 (I)-R-1 not to be asserted in the copy sent to Railway servant.

भारी दंडों के लिए ज्ञापन के आरोप पत्र का अनुलग्नक  
Enclosure to the Memorandum of Charges Sheet for Major Penalties.

श्री ..... (रेल कर्मचारी का नाम तथा पदनाम) के विरुद्ध विरचित आरोपों का विवरण  
Statement of charges framed against Shri..... (name and designation of  
the Railway Servant:-

### अभियोग I/Charge I

यह कि श्री ..... ने

को अवधि में ..... के रूप में काम करते हुए

That the Said Shri ..... while  
functioning as ..... during the period.....

### अभियोग II/Charge II

यह कि उक्त श्री ..... ने उक्त अवधि में उक्त कार्यालय में काम करवे हुए

That during the aforesaid period and while functioning in the aforesaid office, the said Shri.....

### अभियोग III/Charge III

यह कि उक्त श्री ..... ने उक्त अवधि में उक्त कार्यालय में काम करते हुए

That during the aforesaid period and while functioning in the aforesaid office, the said Shri.....

श्री ..... (रेल कर्मचारी का नाम तथा पदनाम) के विरुद्ध विरचित आरोपों के समर्थन के आधार  
ग्रन्थांक विवरण/Statement of Allegations on the basis of which charges are framed against Shri.....  
(name and designation of the Railway servant)

आरोप I के संबंध में लांछन/ALLEGATION REGARDING CHARGE I

आरोप II के संबंध में लांछन/ALLEGATION REGARDING CHARGE II

आरोप III के संबंध में लांछन/ALLEGATION REGARDING CHARGE III

टिप्पणी/Note:—लांछनों में स्पष्टरूप से यह ठीक-ठीक निश्चिट किया जाय कि संबंधित रेल कर्मचारी किस प्रकार दंडनीय है अर्थात् इन विशिष्ट मामले में ठोक-ठीक किस सीमा तक वह उत्तरदायी था और उस उत्तरदायित्व के निवाह में वह किस प्रकार विफल रहा/The Allegations should indicate clearly how exactly the Railway servant concerned is culpable i. e. what exactly his responsibility was in particular's case and how he failed to discharge it.

ANNEXURE to standard form No. 5.

MEMORANDUM OF CHARGE SHEET under Rule - 9 of the  
Rs. (D & A) Rules 1968.

ANNEXURE - I.

Statement of ARTICLES of charges framed against Sri Chandan Das, Ex. IOW(II)/Con/ now IOW(III)/BPB.

ARTICLE - I.

That the said Sri Chandan Das, while functioning as IOW(III)/Con/SCL during the ~~during the~~ period 1991 to Sept./1993, has violated the provision of Rule No. 3(i) (ii) of Railway service conduct rules of 1966.

ANNEXURE - II.

Statement of imputation of misconduct or misbehaviour in support of the ARTICLE framed against Sri Chandan Das, Ex. IOW(II)/Con/SCL.

ARTICLE - I.

Sri Chandan Das failed to maintain absolute integrity and devotion to duty as much as he misappropriated M. S Rod (Scrap) totalling 108.061 MTS from godown No. 3 of N. F. Rly Silchar which was entrusted to him on or before 8-8-92.

Whereas it is further alleged that during a joint physical verification of the stock of M. S. (Rod) scrap lying in Godown No. 3 of N. F. Rly., Silchar conducted during 8-8-92 to 20-8-92 by GRPs and APF of N. F. Rly./Maligaon shortages of M. S. Rod (Scrap) to the extent of 81.868 Mts. with worth Rs. 3.25 lacs were detected, while on further checking of book balances through stock verifier shortage of 118.088 MTS. as against 36.220 MTS. of MS. Rod (Scrap) physically available ~~was~~ in the stock, thereby arrange the total shortage of M. S. Rod (Scrap) total 108.061 MTS. was detected.

And where as it is further alleged that the ledger and other connected documents depicting the receipts and issues of MS (Rod) (scrap) received/issued during the aforesaid period by several cuttings, over writings and manipulations to cover the shortages by causing loss to the Railways.

And thereby said Sri Chandan Das, IOW(III)/Con. N. F. Rly., Silchar violated the provision of Rule 3(i)(ii) of Railway Service (conduct) Rules of 1966.

:::

List of document by which the Article of Charges framed against Shri Chandan Das, Ex. IOW/II/CON.

1. List of documents submitted by DRM(P)/MLG - 2 sheet.

List of witness by whom the Article of charges framed against Sri Chandan Das, Ex. IOW(II)/CON are proposed to be sustained.

1. Sri N. G. Neware, Dy. CE(CON), N. F. Rly, Silchar.
2. " Subhash Dasgupta, Sr. Clerk C/O. Dy. CE/CON.
3. " Swapnil Nath, Gangman, C/O IOW/Con/Silchar.
4. " A. L. Barman, Stock Verifier (Retd.) R/O Madan -  
Mohan park, PO & PS Dinhata, Dist. Coach Bihar  
(West Bengal)
5. " A. C. Roy, Borbhuviya Inspector, R.P.F. O/O. Asstt.  
Security Officer, RMB, M'ligaon, Guwahati.
6. " Kamala Das, Peon, Stock Verifier, N. F. Rly., MLG,  
Guwahati.
7. " Md. Abdul Basia, Chowkider.
8. " Motilal Rabidas, Chowkider.
9. " Tapan Sen, Chowkider
10. " Sashanka Das, Chowkider.
11. " Sailendra Nath, Chowkider.
12. " Rajat Kanti Das, Jr. Clerk, IOW(Con)/Silchar.

Divl. Engineer ( II )

9. M. Lumding

Divl. Engineer ( II )

N. F. Rly. Lumding

\*\*\*

R.C. 461044  
Issued by DRM/OPG.

N.F.Rly.  
Office of the Divisional  
Railway Manager(Works), Lumding

Date: 29-10-97

31

No. W/275/LM/DAR/W-5(Loose)

✓ 1. Shri Raj Shokhar, CRSE/Maligaon (Inquiry Officer)  
N.F.Railway

2. Shri M.Thanglian Mang, SI/CBI/Silchar (Presenting Officer)  
P.O.Silchar, Assam

Sub:- Nomination of I.O. & P.O. in the DAR proceedings  
against S/Shri Chandan Das, IOW/III/Baderpur.

Ref:- Major penalty Memo No.W/275/LM/DAR/W-5(Loose)  
dtd. 23-5-96 &  
Sr.AVO/E/Maligaon's L/No.Z/VIG/68/2/4/93(G)/CVC  
dtd. 18-9-97 addressed to Dy.CPO/CON/MLG with a  
copy to URM(P) Lumding.

As per advice communicated by Sr.AVO/E/MLG vide reference  
above, Shri Raj Shokhar CRSE/Maligaon and Shri M.Thanglian Mang,  
SI/CBI/Silchar, have been incorporated as Inquiry Officer  
and Presenting Officer respectively in respect of DAR case  
No. W/275/LM/DAR/W-5(Loose) dtd. 23/5/96 against Shri Chandan  
Das, IOW/III/Baderpur.

It is, therefore, requested to enquire into the case and  
present the case in support of the charge by nominated Inquiry  
Officer and Presenting officers respectively please. Necessary  
appointment orders of I.O. and P.O. so issued alongwith  
following particulars are sent herewith at your disposal for  
further action.

- i) GM/CON/MLG's L/No.E/91/SS/CON/3/Pt.IV dt. 16-4-96;
- ii) DRM(P)LMG's L/No. EC/27(E) dtd. 22-4-96; ✓
- iii) C/sheet No.W/275/LM/DAR/W-5(Loose) dtd. 13-6-96;
- iv) Shri Chandan Das's L/No.(a)CD/DAR/1-96 dt. 3-6-96 &  
      (b) CD/DAR/2-96 dt. 17-3-97; ✓
- v) Annexure to S.F.5: I, II, III & IV; ✓
- vi) Inquiry Officer's nomination order; ✓
- vii) Presenting Officer's nomination order; ✓

29.10.97  
Divisional Engineer/II  
N.F.Railway, Lumding

C/to:- DRM(P)LMG; For information please  
: (Nodal Officer)

: GM/CON/MLG; For kind information with reference to his L/No.E/91/SS/CON/3/Pt.IV dt.16-4-96 (DA:- As above)

: Sr.AVO/E/MLG; For information with ref. to his L/No.Z/VIG/68/2/4/93(G)/CVC dtd. 18-9-97. (DA:- As above)

C/to:- AEN/I/BPG; For information please. This is in supersession  
to earlier I.O. Order No.W/275/LM/DAR/W-5(Loose)dt.16-6-97.

Divisional Engineer/II  
N.F.Railway, Lumding

Certified to be true copy  
Bhawalney  
Adw

20 ✓

STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF  
INQUIRY OFFICER.

(Rule 9 (2) of Railway Servants (Discipline & Appeal)  
Rules 1968).

No. 4/273/LM/GR/4-6 (Loose)

(Name of Railway Administration) N.F. Railway  
(Place of issue) - Lumding. Dated. 29.9.1968

ORDER.

Whereas an enquiry under Rule 9 of the Railway Servants  
(Discipline and Appeal) Rules 1968 is being against Shri.....  
Chandon Das, 104/III/EPB

And whereas the undersigned consider that an Inquiry  
Officer should be appointed to enquiry into the charges  
framed against him.

Now, therefore, the undersigned in exercise of the  
power conferred by Sub-Rule (2) of the said Rule, hereby  
appoint.

Shri. Baj. Sarker (GR/MLG).....Designation GR/MLG, N.F. Rlyo  
an Inquiry Officer to enquire into the charges framed against  
the said Shri. Chandon Das, 104/III/EPB.

Signature.....

Name. (Anil Kumar Roy).....

Designation. GR/MLG .....

Copy to:- Shri. Chandon Das, 104/III/EPB for information  
in ref. to his defence submitted on 17-3-67. y/po No. 60/GR/GRB/  
6-2-67 in connection with Memorandum No 4/273/LM/GR/4-6  
(Loose). ..... Dated 27-8-67.

(A) Dated 27-8-67  
GR/MLG, N.F. Rlyo  
In Charge, (1)  
N.F. Rlyo, Lumding

STANDARD FORM NO. 6

## Form for nomination of Presenting Officer

Sub-rule (7) (c) of Rule 9 of RS (D &amp; A) Rules, 1968.)

W/275/LM/DAR/W-5 (Loose)  
No.....

(Name of Rly. Administration) N.F.Rly., DRM(W)LMG

(Place of issue) Lumping dated 29-10-97

## ORDER

Whereas an inquiry under Rule 9 of the Railway Servants ( Discipline and Appeal ) Rules, 1968, is being held against Shri/ ~~Max~~ Chandan Das, IOW/III/BPB.....

And whereas the Railway \*Board/the \*undersigned consider (s) it necessary to nominate person to present the case in support of the charges before the Inquiring Authority.

Now, therefore, the Railway \*Board/the \*undersigned, in exercise of the powers conferred by sub-rule (7) (c) of rule 9 of the RS (D&A) Rules, 1968, hereby nominates Shri/ ~~Max~~ M. Thanglian Mang, SI/CBI/Silchar as Presenting Officer to present the case in support of the charges before the Inquiring Authority.

(Signature).....  
(Name) (AMIT KR. ROY)  
DEN/II/LUMPING  
Secretary, Railway Board  
OR  
Designation of the Disciplinary Authority

W/275/LM/DAR/W-5 (Loose)

No .....

Dated.....

Sri Chandan Das, IOW/III/BPB

Copy forwarded for information to Shri/ ~~Max~~ (name address of the Railway servant).

(Signature).....  
(Name) (AMIT KR. ROY)  
DEN/II/LUMPING  
Secretary, Railway Board  
OR  
Designation of the Presenting Officer

W/275/LM/DAR/W-5 (Loose)

No .....

Copy forwarded for information to:-

Rej. Shokhar, CRSE/MLG

(name and designation of the Inquiring Officer).

1. Shri.....

2. Shri.....

M. Thanglian Mang, SI/CBI/Silchar (name and designation of the Presenting Officer).

(Signature).....  
(Name) (AMIT KR. ROY)  
DEN/II/LMG  
N.F.Rly.

As may be applicable

CONFIDENTIALN.R.RailwayCORRIGENDUM:Office of the  
DRM(W)lumdingNo.W/275/LM/DAR/W-5(Looso).Date:06-01-Y2K.

TO :: Shri Chandan Das,  
Ex-IOW/II/CON/SCL at present working as IOW/III/BPB  
Through AEN/I/BPB.

Sub:- Imputation of charges vide memorandum  
No.W/275/LM/DAR/W-5(Looso) dt 23-5-94  
on & 6.12.99.

Please find herewith the corrigendum imputation  
of charges as per standard form No.5(Memorandum) of charges  
sheet under Rule-9 of Rs.(D&A)Rules, 1968 for your necessary  
information please in Annexure-I to IV.

DA:-Annexure-I to IV.

On 6.1.2000  
DEN-II/LMG.  
Disciplinary Authority.

Copy to:-

- 1) Dy CVO/E/MLG
- 2) DRM(P)/LMG.
- 3) AEN/I/BPB.
- 4) EO./HQ/MLG.

: for kind information please .

for necessary action please .

1  
DEN-II/LMG.  
Disciplinary Authority.

*Certified to be true copy  
B. S. D. M. B.  
Adv.*

23

STANDARD FORM NO.5

Standard Form of Charge-Sheet

Rule-9 of Railway Servants (Discipline and Appeal) Rules, 1968.

No. . . . . DRM(W) N. F. RLY. Lumding.  
(Name of Railway Administration)

place of issue). Lumding. . . . . Date. . . . . 1-2000.

MEMORANDUM

1. & The President/Railway Board/undersigned propose(s) to hold an Inquiry against Shri. Chandan Das, JE/II/Works/PPB, under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct and 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 (Annexures-III & IV). \* Further, copies of documents mentioned in the list of documents, are per Annexure-III are enclosed.

2. \*Shri Chandan Das . . . . . is hereby informed and if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this memorandum. For this purpose he should contact \*\*DRM(W)/AMG . . . . . immediately on receipt of this memo.

3. Shri. Chandan Das . . . . . is further informed that he may, if he so desires, take the assistance of another Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule-9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968, and Note 1 and/or Note 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s) or Railway Trade Union Officials(s), Shri Chandan Das . . . . . should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned DEN(JI) AMG. N. F. Railway alongwith the nomination.

4. Shri Chandan Das . . . . . is hereby directed to submit to the undersigned (through DEN(I)/PPG. . . . . N.F.Railway) a written statement of his defence (which should reach the said) within ten days of receipt of this memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also  
(a) to state whether he wishes to be heard in person; and  
(b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence.

(Contd.2)

-2-

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

6. Shri. Chandan Das . . . . . is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri. Chandan Das . . . . . is invited to Rule 20 of the Railway Servant (Conduct) Rules, 1966 under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matter pertaining to his service under the Government. If any representation is received on his behalf from another person respect of any matter dealt within those proceedings, it will be presumed that Shri. Chandan Das . . . . . 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 Railway services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

Encls:

1 By order and in the name of the President  
Signature :- AD

6/2000

Name :- (AMIT KUMAR)  
Designation :- DENCI(B)/BPG  
Name and designation of the investigating authority  
Divisional Engineer  
N.R. Railway, Bhopal

To ,

Shri. Chandan Das . . . . .  
Designation. JE(II)/Works/BPB under SSE(works)/BPB.

place . . . . . BADARPUR . . . . .

(P) Copy to Shri . . . . . AEN(I)/BPG.  
(name and designation of the lending authority) for formation .

~~EE~~ Strike out whichever is not applicable.

~~EE~~ To be deleted if copies are given/not given with the Memo. as the case may be.  
Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the Investigation Authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the document or to enable that authority being mentioned in the draft memo.

(D) Where the President is the Disciplinary Authority.

To be retained wherever applicable President or the Railway Board is the competent authority.

(J) To be used wherever applicable- Note to be inserted in the copy sent to the Railway Servant.

N.F. RAILWAY  
ANNEXURE TO STANDARD FORM NO.5  
MEMORANDUM OF CHARGE SHEET under Rule 9 of the  
Rs. (P & A) Rules 1966.

## ANNEXURE I

Statement of ARTICLES of charges framed against Sri Chandan das, Ex IOW(II)/Con/SCL Now IOW(II)/BPB.

ARTICLE - I

Sri Chandan Das while functioning as IOW/II/CON/SCL during the period 1991 to Sept. '1993. A joint surprise raid was conducted by GRP's, RPF's Maligaon, N.F.Rly. from 8-8-92 to 20-8-92 in the godown No.3 and found shortage of 108.061 MT M.S. Rod. As the keys of godown No.3 was taken over by Sri Chandan Das and transaction of materials was done without physically handing over and taken over of the charge's, Sri Chandan Das showed extreme negligence of duty and misconduct, thus violating the provision of rule 3 (I), (ii) of Railway services (Conduct) rules, 1966.

## ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the ARTICLE framed against Sri Chandan Das, Ex. IOW(II)/CON/SCL.

ARTICLE - I

Sri Chandan Das failed to maintain absolute integrity and devotion to duty and due to his serious misconduct MS Rod (Scrap) to taking 108.061 Mts. From godown No.3 of N.F.Rly./SCL found shortage during surprised check by RPF, GRP's from godown No.3 of N.F.Rly. Silchar which was entrusted to him on or before 08-08-92.

Whereas it is further alleged that during a joint physical verification of the stock of M.S. (Rod) scrap lying in Goodman No.3 of N.F.Rly., Silchar conducted during 8-8-92 to 20-8-92 by GRP's and RPF of N.F.Rly./Maligaon shortages of M.S. Rod (Scrap) to the extent of 81.868 Mts. With worth Rs 3.25 lacs were detected, while on further checking of book balances through stock verifier shortage of 118.088 Mts. As against 36.220 Mts. Of M.S. Rod (Scrap) physically available in the stock, thereby arrange the total shortage of M.S. Rod (Scrap) total 108.061 Mts. Was detected.

And where as it is further alleged that the ledger and other connected documents depicting the receipts and issues of M.S. Rod (Scrap) received/issued during the aforesaid period by several cuttings, over writings and manipulations to cover the shortages by causing loss to the Railways.

And thereby said Sri Chandan Das, IOW(II)/CON. N.F.Rly., Silchar violated the provision of Rule 3(i) (ii) of Railway Service (conduct) Rules of 1966.

(a) List of documents are enclosed.

## ANNEXURE-III.

(b) List of witnesses are enclosed.

## ANNEXURE-IV.

N.F. R.A.D.

6/1/2000  
 10:15 AM (2)

Handing over and taking over charge memo vide letter No. H/1(C) SCL/19 dt. 1.3.84 signed by Subhendu Sarkar and P.K. Sutradhar alongwith inventory (Pg.No.1 - 8) (26) *W.M. Tally*

2. Office order No 26/83 O/O, AEN (CON) Silchar in respect of transfer of P.K. Sutradhar and in place of posting of S. Sarkar (A-I) ( 2 sheets).

3. Xerox copy of letter No. E/1/Con/SCL dtd. 13.12.91 signed by S. Sarkar (A-I) and Chandan Das (S-2) pertaining to take working charge as IOW/Con/SCL by S-2. D.P. 3 *Supply Letter*

4. Xerox copy of letter No. E/1/Con/SCL dtd. 15.5.92 regarding taking over of full charge of store materials by S-2 from S-1 alongwith inventory. ✓ *✓*

5. Original ledger No. 3, O/O IOW/Con/SCL. Chand 10/11/97

6. 7 Original ledger No 7 of O/O IOW/Con/Silchar. ✓

7. Xerox copy of physical stock verification report of A.L. Barman & A.C. Roy Borbhuian, Inspector, RPR alongwith tally sheet. ✓

8. Statement of M.S. Iron Rod/IOW/CON/SCL in consultation with all relevant records prepared by Kamala Das Boro, Stock Verifier. ✓

9. Report of O/C. G.R.P.S. Badarpur alongwith copy of the statement of Chandan Das recorded in connection with case No. 18/92 u/s. 380 IPC. D.P. 11/11/97 *Inv. (NS) B-1 Report tabled in Court on 10/11/97*

10. Xerox copy of letter No. S/3/2/S dt. 15.10.90 regarding receipt of M.S. Rod (scrap) ✓

11. D.M.T.R. for the period 23/5/85 to 30/8/88, O/O IOW/CON/Silchar. X *Not relevant*

12. D.M.T.R. for the period 1.9.88 to 14.2.94, O/O IOW/CON/SCL. ✓

13. Duty Register of Chowkidar, O/O, IOW/Con/SCL for the period Dec.88 to Dec.1993. ✓

14. Issue notes No. IOW/0/11/Sct.30 dt. 10/10/88, Con/C/KAM/33 dtd. 13.7.88; IOW/C/KAM/34 dtd. 13/7/88, IOW/Con/11/SCL/627 dtd. 12.8.86; IOW/CON/2 BM/8/2/CON/Steel/SCL Dtd. 1/1/87; IOW/CON/SCL/12 dtd. 29/08/87; IOW/CON/11/SCL/13 dtd. 7/9/87; IOW/CON/KAR/28 Dtd. 2/2/88; 8/2/CON/Steel/Scl dtd. 13/12/88; CON/C/7MM/17 dtd. 23/05/88 & CON/C/7MM/18 dtd. 23/05/88; IOW/CON/11/SCL/15 dtd. 22/6/88; CON/CON/IOW/11/SCL/16 dtd. 28/06/88; IOW/C/N/11/SCL/23 dtd. 19/08/88; IOW/CON/11/SCL/25 dtd. 26/11/88; MDMS/CON/SCL/RB/8 dtd. 9/11/88; IOW/CON/7BM/26 dtd. 26/11/88; 8/2(Con/Steel/SCL) dtd. 13/12/88; 8/2/CON/Steel/SCL dtd. 13/12/88; IOW/CON/KAM/62 dtd. 30/05/90; 8/2(Con) STEEL/SCL dtd. 2/1/89; IOW/CON/2BM/M/33 Dt. 23/05/89; IOW/CON/KAM/45(A) dtd. 22/05/89; IOW/CON/495/SCL/PP/2 dtd. 7/2/90; IOW/C/11/SCL/31 dtd. 14/10/88; IOW/C/11/SCL/45 dtd. 31/3/90; IOW/CON/11/SCL/74 dtd. 4/7/91; IOW/C/KAM/66 dtd. 16/07/90; IOW/C/KAM/112 dtd. 19/03/91; IOW/CON/KAM/71 dtd. 7/1/91; PB/CON/HP/BGO/60 dtd. 15/10/90

Contd...P2/-

11/2020  
11.11.2020  
Divisional Engineer  
Divisional Engineer

-- 2 :-

IOW/C/11/SCL/59 dtd. 1/1/90; IOW/C/11/SCL/80 dtd. 16/1/91.  
 (three sheets); IOW/U/11/SCL/26 dtd. 6/12/90; IOW/C/KAM/111  
 dtd. 11/2/91; IOW/C/KAM/114 dtd. 21/03/91; IOW/C/KAM/113  
 dtd. 21/3/91; BKP/CON/RB/3 dtd. 26/3/91; IOW/CON/ARCT/05  
 dtd. 27/03/91; IOW/CON/2BM/94 dtd. 10/10/91; IOW/CON/KAM/  
 117 dtd. 15/06/91; IOW/C/ARCL/07 dtd. 24/06/91; IOW/C/ARCL/  
 08 dtd. 9/8/91; DB/CON/RB/3 dtd. 15/08/90; IOW/CON/ARCL/60  
 dtd. 07/08/91 (2 sheets); CB/CON/SCL/RB/8 dtd. 19/09/91;  
 IOW/CON/SC/22 dtd. 15/01/90; IOW/CON/2RBG/603 dtd. 23/3/92;  
 BC/CON/HB/SCL dtd. 27/3/91; IOW/CON/SCL/24 dtd. 25/08/90;  
 IOW/CON/7P/196 dtd. 6/8/92; IOW/C/1 KAM/130 dtd. 20/12/91;  
 IOW/C/2 RPM/105 dtd. 6/8/92; DM/CON/SCL/562/RP (1)  
 dtd. 18/2/92; MTMN/CON/SCL/RP/22 dtd. 6/9/89.

15. Issue Challan Book ~~against~~ of CA/CON/SCL/551 dt. 2/11/90  
 of Contractor Chandan Bhattacharjee (page upto 214 used);  
 CA/No./CON/258 dtd. 15/07/88 against B.B.O Contractor  
 (page upto 27 used); 7 CA No. CON/SCL/362 & Con/S-2/88/11  
 156 dtd. 4-6/05/88 (page upto 50 used); C.A No. CON/SCL/  
 470 Book No. I containing no. SP/CON/1 to SP/CON/20.

16. Issue Register No. I CA No. CON/SCL/289 dtd. 6/4/87 of  
 M/S Dhirendra Brothers of which page upto 34 used.

17. Department Issue slip book for period ending 17/7/89  
 dtd. 14/12/90 bearing sl. no. 578 dtd. 18/7/89 to 1016  
 dtd. 7/12/90.

18. Dept./Issue Book for period ending 17/12/90 to 8/1/93  
 bearing slip no. 1024 dtd. 17/12/90 to 1366 dtd. 8/1/93.

19. Issue Note Book No. 188 for period ending 25/10/89 to  
 30/10/89; book no. 192 for period ending 15/11/89 to  
 20/11/89; book no. 211 for period ending 20/03/90 to  
 29/03/90; book no. 232 for period ending 7/3/91 to  
 26/03/91; book no. 234 for period ending 13/04/91 to  
 24/05/91; book no. 236 for period ending 21/06/91 to  
 10/08/91; book no. 241 for period ending 15/04/92 to  
 09/06/92.

20. Original theft report submitted by IOW/C. 1/2 to U/C  
 GRPS & RPF. -/-

APR 6, 1990

महाल इलाजियर (र.)  
 श. सी. रेलवे लाम्फि.  
 Divisional Engineer, (I)  
 N.C. Railway, Lumding

ANNEXURE-IV.

LIST OF WITNESSES  
IN RC-2(A)/93-SCL.

1. Shri N.G. Naewara, & Dy. CE/CON/Silchar, now Dy CE/CON/SE Rly  
JAJPUR. Dist. Keonjhar  
Orissa.

2. " Subhas Das Gupta, Sr.Clerk, 0/0/Dy.CE/CON/LMG.

3. " Swapna Nath Khalashi, 0/0/SE/Works/SCL.

4. " A.L. Barman, Stock Verifier(Rtd.) R/o Madan Mohan  
park PO & PS. Dinhata, Dist. Coach Bihar (West Bengal)

5. " A.C. Roy Borbhuyan Insp. R.P.F. 0/0 Asstt. Security  
Officer, RMB Maligaon, Guahati.

6. " Kamala Das ~~Reh~~, Stock verifier Maligaon Guahati.

7. " Md. Abdul Basir, Gangman, SE/Works/SCL.

8. " Moti Mal Rabi das, Chowkidar, Gang SE/Way/BPB

9. " Tapan Sen, Khalashi SE/Works/BPB.

10. " Sashanka Das, Gangman SE/Way/BPB.

11. " Sailendra Nath, Gangman under SE/Way/BPB.

12. " Rajab Kanti Das, Jr.Clerk 0/0/ Dy.CE/CON/SCL.

al2  
on 6.1.2000.  
कलकत्ता रेलवे अधिकारी  
क. सी. रेलवे अधिकारी  
Divisional Engineer (I)  
W.R. Railway, Lumding

29 -  
-IV  
No. 6275 /1 /200/05 (LOOSE)

N.F.RLY.

CONFIDENTIAL

OFFICE OF THE DIVISIONAL  
RAILWAY MANAGER ( WORKS )  
LUMDING.

TO

Shri chandan Das.  
JE/II/WORKS /BPB.  
(THROUGI AEN/I/BPG)

Dated 16.7.01

SUB: ENQUIRY REPORT.

REF: CBI CASE NO. RC- 2 ( A )/93/SCL.

The enquiry report of the case mentioned above containing 7 pages is sent herewith for your information & to submit defence on enquiry report within 10 days to this office for further course of action.

please acknowledge receipt of enquiry report.

Recd  
on 23/7/01

16/7  
Sr. Div. Engineer /C  
N.F. RLY. LUMDING.

Certified to be true copy.  
Chandan Das  
AEN

N.F.RAILWAY

REPORT OF THE DEPARTMENTAL INQUIRY INTO THE CHARGES FRAMED  
AGAINST SRI CHANDAN DAS. IOW/CON/SCL NOW JE-II/WORKS/BADARPUR  
VIDE MEMORANDUM NO. W/275/LM/DAR/W-5(LOOSE) DATED 6.1.2000.

**1.0 INTRODUCTION**

1.1. I was appointed as an inquiry officer under order no. W/275/LM/DAR/W-5 (loose) dated 1.3.2000 to enquire into charges framed against Sri Chandan Das, IOW/CON/SCL now JE/Works/Badarpur. Sri B.U.Laskar, CVI/Engg. was appointed as the Presenting Officer. The preliminary in the case was held on 29/3/2000. The regular hearing was held on 10/5/2000, 12/5/2000, 12/7/2000, 13/7/2000 & 17/10/2000. The regular hearing scheduled on 12.5.2000, 21/6/2000, 13/7/2000 & 24/8/2000 had to be adjourned for absence of listed witnesses and the regular hearing scheduled on 17/10/2000 had to be adjourned for absence of defence counsel of C.O. The P.O. placed on record 20 documents marked P1CD to P20CD. There were 12 listed witnesses vide Annexure-4 of the memo of the charges. The PW7 expired as communicated by his controlling officer vide letter No. C/1/SCL/Pt.II/115 dated 5.5.2000 while the PW1 & 6 were dropped by P.O. The recorded statement of all the witnesses were accepted as defence document. All the above documents were supplied to the C.O. by P.O. as instructed. But the C.O. did not like to assess over the same and as such he dropped all the aforesaid defence documents. There was no defence witness. The C.O. did not submit any second statement of defence and did not like to be examined as his own witness. The C.O. was generally examined. The P.O. submitted his brief on 9/11/2000. The C.O. submitted his defence brief on 17.11.2000. Other details are in the order sheets.

**2.0 ARTICLE OF CHARGE**

2.1. Sri Chandan Das, IOW/Con/SCL now JE/II/Works/Badarpur was issued a memo of charges containing single article of charge vide memo No. W/275/LM/DAR/W-5(Loose) dated 6.1.2000. The article of charge is reproduced below:

Sri Chandan Das while functioning as IOW/II/Con/SCL during the period 1991 to Sept. '93. A joint surprise raid was conducted by GRP's, RPF's, Maligaon, N.F.Rly., from 8.8.92 to 20.8.92 in the godown No.3 and found shortage of 108.061 MT M.S. Rod. As the keys of godown No.3 was taken over by Sri Chandan Das and transaction of materials was done without physically handing over and taken over of the charges, Sri Chandan Das showed extreme negligence of duty and misconduct, thus violating the provision of rule 3(i), (ii) of Railway services (Conduct) rules, 1966.

P.B.D.  
20/11/00

### 3.0. THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY.

3.1. The P.O. in his ~~defence~~ brief dated 9.11.2000 states that the article of charge and imputation thereto supported by exhibits and depositions of PWs stand prove. The P.O. states that the PW-2 has authenticated the listed ledgers (P-6 & 7 CD), challan Books ( P-15 CD), material issue register (P-16CD) and DMTR (P-11CD). The PW-2 confessed that whatever cutting/overwriting/manipulations done in the relevant document as per permission of his IOW In-Charge vide Ans. to Q.No.9. He was working in the unit of IOW/Con/SCL during 6.9.80 to 12/12/91. During the above period he was maintaining the ledgers along with PW-12 & PW-3. P.O. states that the PW-8 & 9, the Chowkidars clearly deposed that neither there was theft in the godown No.3 nor they got any information about the theft. PW-11 who worked as godown Chowkidar during the tenure of C.O. also clearly states that there were no theft from godown No.3. PW-12 confirmed that he was sharing the works with PW-2 ( maintenance of ledger book) as per instruction of PW-2 and IOW/Con/SCL. PW-10 stated that there was no theft from Godown No.3 during his tenure. The keys of godown were under the custody of C.O. PW-3 authenticated P-11 CD, P-14CD, P-15CD, P-16CD, P-18CD & P-19CD. The overwritings in the page No. 97 & 99 in receipt column were done by him as per instruction of IOW/Con/SCL. The keys of the godown were kept under the custody of In-Charge. The PW-3 was sharing the work with PW-2 as instructed by IOW/Con/SCL. The P.O. further states that PW-4 admitted that he had done joint verification of stock of M.S. rod (scrap) under IOW/Con/SCL during August'92 along with IOW/Con/SCL and RPF official. As a result of joint verification there was shortage of M.S. Rod (scrap) to the tune of 81.868 MT which was done consulting the relevant challans, DMTRs and ledger. The difference was accepted by IOW/Con/SCL. As token of his acceptance the IOW/Con/SCL (C.O.) signed the joint verification statement (P-7CD). PW-5 (Inspector RPF now retired) stated that he did not find any sign of tampering of walls of godown No.3 except one place of Western side wall measuring 2ft x 1.5ft broken which was protected by one piece of C.I. sheet with the help of nails, through which it is not possible to remove the materials. PW-5 identified the signature of Sri A.L.Barman (Stock verifier now retired-PW4), C.O. and his own on the joint verification report (P-7CD) which was initiated on the basis of theft memo. In respect of over writing in the ledger book the P.O. states, the PW-5 categorically stated that there was only one over writing in one entry during their joint verification in which subsequent over writings were done which was shown to him by CBI. After the joint verification the concerned ledger and documents were left with the custody of Sri Chandan Das (C.O.). The P.W.-5 on the other hand expressed that there were some thing wrong in the records and it was an effort to escape from the foul game by some of the concerned officials. During general examination the C.O. stated that he found one lot No.6 ( only lot, quantity of materials in the lot not mentioned) was not in proper stack i.e. disturbed. On his presumption he called Sri Swapan Nath, PW-3 (not the concerned chowkidar) to explain the reason. The C.O. informed the fact to his superior to Sri S.K.Sarkar, AEN/Con/SCL, who advised him to submit theft memo. The C.O. agreed in reply to Q. No.5 by I.O. that he was handling the same consignment of M.S. Rod (scrap)

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from the same Godown No.3 of IOW/Con/SCL from which he presumed that there was theft and as such he issued the theft memo. Subsequent over hauling and evaluation of document to pin point the exact book balance, afterwards, a joint physical verification of contents of godown No.3 by Sri K.Das Boro, Stock Verifier (PW-6 now retired) jointly with C.O. and CBI Inspector resulted in net book balance of 144.28 MT. Thus making a total net shortage of M.S.Rod (Scrap) 108.061 MT from the stock of IOW/Con/SCL (P-8CD). The P.O. concludes his brief stating that there was no theft of M.S. Rod (Scrap) from godown No.3. It is also established that the cutting, overwritings and manipulations of relevant documents were done after joint verification during Aug.'92.

#### 4.0. THE DEFENCE OF THE CHARGED OFFICIAL.

4.1. In his defence brief dated 16/11/2000, C.O. defends stating that no surprise raid was conducted by GRPs/RPFs from 8.8.92 to 20.8.92 in the godown No.3 of IOW/Con/SCL as pointed out in the article of charge. No such documentary evidence or any statement of GRP/RPF is available with prosecution to substantiate the charges of surprise raid. The RPF Inspector (PW-5) has clearly stated that a joint investigation was carried out in IOW/Con/SCL's godown No.3 on the basis of an intimation submitted by IOW/Con/SCL. Therefore, the charge brought through article-I is vague, indefinite and not precise, therefore, not tenable. Not annexing the statement of witnesses as listed document by the prosecution is denial of natural justice. The C.O. states the deposition of witnesses in the inquiry cannot be accepted as their authenticity was not affirmed. The C.O. submitted that he had taken over the working charge of IOW/Con/SCL on ✓ 31/12/91 (FN) from Sri Subhendu Sarkar, IOW/Con/SCL in terms of Dy.CE/Con/SCL's office order dated 19/12/91. The working charge meant for carrying out day to day work and basically to facilitate promotional effect of the incumbent. The C.O. further added that, since Sri Subhendu Sarkar had no time to hand over the godown, he took the working charge. On exigency the godown No.3 was opened by him to take out few M.S. Rod (scrap) which was received from contractor during his tenure and kept in a separate stack. He did not take out scrap rods of any quantity from the stacks which was also surveyed by the Inspector of scraps, Survey committee/Maligaon and the scraps stored there for final disposal to DCOS/PNO and proper entry was made in the ledger No.7 at page No.388 dated 18.2.92 wherein he had posted a quantity of 0.661MT in receipt and 0.100 MT was taken out on 15.4.92 for issue to IOW/Con/HQ/LLBR. The C.O. states though he did not take over the charge of M.S. Rod (scrap) of Godown No.3 but whatever quantity he had received from contractors and further issue was done accurately with proper account in the ledger and there were no any over writing in these period. He further pointed out that up to the joint investigation by stock verifier and RPF on 8.8.92 to 20.8.92 he issued M.S. Rod (scrap) to IOW/Con/HQ and departmental mason to the quantity of 0.02 MT and 0.005 MT respectively from the scrap which he had received on 18.2.92. The C.O. states, he started entry from 18.2.92 in ledger No.7 page No.388 and Sri Subhendu sarkar, AEN/Con/SCL under whose custody the godown No.3 was

made a remark calculating the total balance summing up his entry of quantity of 0.661MT and ledger balance of 117.27MT under clear signature. The C.O. has quoted the remark which was made by the predecessor Sri Subhendu Sarkar that – “ This item could not be physically handed over to IOW/Con/HQ/SCL due to high quantity store in heap condition for which much time is required and the cited quantity could be ascertained during verification to be undertaken by SV/Con/MLG shortly”. He pointed out that over writing and manipulation in the figures were done much before his taking over the working charge. The C.O. has quoted some instance stating that over writing and doubling the figures with ink pen as being done from 12/88 to 25.5.90 by Sri Subhas Das Gupta, the then Store Clerk which he has admitted in reply to Q. No.5 of D.C. The C.O. again mentioned that on 20.6.92 he entered into the godown to take out some rod from the stack which he received during his period. He noticed that one lot (lot No.6) was disturbed and the wire rope which was earlier used to tie it up was not there. The C.O. summoned Sri Swapan Nath who used to enter in the godown but could not clarify. Thereafter, he informed Sri Subhendu Sarkar, his superior. Sri S. Sarkar along with C.O. noticed that a portion of the split bamboos wall which was broken but covered by C.I. sheet. The door was also found unbolted from the hinges of the threshold (PD-9). The claim of Sri Borbhuyan (PW-5) that there was no over writing in the ledger is not true as the figure 118.088 in the P-7CD stands after over writing which they taken into account after check.

#### 5.0. ASSESSMENT OF EVIDENCE

5.1. The article of charge, in brief, is that a shortage of 108.061 MT of M.S. Rod was found short during joint surprise check conducted by GRPs, RPFs/MLG from 8.8.92 to 20.8.92 in the godown No.3 at IOW/II/Con/SCL in which period the C.O. was functioning as IOW/II/Con/SCL. The keys of the godown No.3, was taken over by C.O. and transaction of materials were done without physically handing over and taking over the charges. The imputations cite a joint physical verification of the stock of M.S. Rod(scrap) lying in the godown No.3 of N.F.Railway/SCL conducted during 8.8.92 to 28.2.92 by GRPs & RPFs of N.F.Railway/MLG and shortage to extant of 81.868 MT worth Rs. 03.25 Lacs were detected while on further checking of book balances through Stock Verifier a shortage of 118.088 MTS was found. 36.200 MTS of M.S.Rod (Scrap) physically available in the stock, and thereby arranged the total shortage of M.S. Rod(Scrap) to tune of 108.061 MTS was detected. Again the imputation cite that ledger and other connected documents depicting the receipt and issues and M.S. Rod (scrap) contains several cuttings, over writing and manipulation to cover the shortages.

5.2. P-3CD shows that the C.O. took over the working charge of IOW/Con/SCL w.e.f. 31/12/91 from Sri S.Sarkar the then CIOW/Con/SCL. In reply to Q. No.4 during general examination the C.O. has stated clarifying the term “working charge” that he took the charge of office only. His predecessor did not hand over any stores materials. P-6CD (Ledger No.7 page No.338) shows that he had started

P.S.W.  
30/11/11

transaction of materials from 18.2.92. The C.O. had issued the materials, M.S. Rod (Scrap) on 2 occasions on 15/4/92 and 15/5/92. The first issue was made after taking the working charge w.e.f. 31/12/91 but before taking over the stores physically from Sri S.Sarkar. The documentary evidences establishes the fact substantively that the godown No.3 and store therein were under the custody of C.O. though he did take the physical charge officially. The C.O. claimed that he kept the M.S. Rod (Scrap) separately (received during period) from the existing lots in the godown No.3 is not tenable as neither there is any lot wise and quantity wise break up exist in the ledger nor the C.O. could furnished any evidence to substantiate his claim. P-7CD shows that a physical stock verification was done by Sri A.L.Barman, Stock verifier (PW-4) and Sri A.C. Roy Borbhuyan, Inspector RPF (PW-5) from 8.8.92 to 20.8.92 and a quantity of 118.088 was found as book balance and physical balance to the tune of 36.220 MT of M.S. Rod (scrap) was assessed. Thus there was shortage of 81.868 MT of the material. The statement (P-7CD) was signed by the C.O. in addition to PW-4 & 5 in token of acceptance of shortage without any objection. Subsequently the ledger balance was re-casted with reference to individual receipt and issues as per P-11CD, 12-CD, 14-CD, 15-CD, 16-CD, 17-CD, 18-CD & 19-CD as several cuttings and overwritings were found subsequently in the ledger. As a result of subsequent evaluation of documents the book balance as on 20.8.92 raised to 144.281 MT resulting in net shortage of 108. 061 MT. The subsequent verification statement i.e. P-8CD was signed by the C.O. in addition to the Stock verifier, PW-6 who could not be testified for his absence but the C.O. has authenticated the document and signed on P-8CD in token of acceptance of assessment of the book balance made by the stock verifier. Therefore, the C.O.'s plea that physical verification made by the stock verifier Sri K.Das Bora cannot be accepted is not tenable as the document shows that the stock verifier did not make any physical verification but he verified the relevant record only which was signed and accepted by the C.O. and the C.O. has admitted in reply to Q. No.6 during general examination that the stock verifier checked the ledger with reference to DMTR and other records. He did not verify the physical stock. P-13CD shows that the duty performed by the Chowkidars in various shift in the unit of IOW/Con/SCL during the period in question. Sri Motilal Rabi Das, Chowkidar (PW-8) performed evening duty (2 p.m. to 10 p.m.) from 17.6.92 to 20.6.92, Sri Sailendra Nath, Chowkidar ( PW-11) performed night duty (10.00 p.m. to 6.00 a.m.) from 16.6.92 to 20.6.92, Sri Tapan Kr. Sen Chowkidar (PW-9) performed morning (6.00 a.m. to 2.00 p.m.) duty from 18.6.92 to 20.6.92, Sri S.Das, Chowkidar (PW-10) performed evening duty (2.00 p.m. to 10.00 p.m.) from 17.6.92 to 20.6.92 i.e. up to date of submission of theft report to O.C./GRP/SCL and OC/RPF/SCL (P-20CD). All the witnesses have been testified who clearly stated during examination by P.O. that they have performed the duties mentioned above and there was no occurrence of theft from godown No.3 of IOW/Con/SCL during their duty period. Documentary evidence shows that there was an arrangement of round the clock guard of the godown of IOW/Con/SCL during the period in question. It is surprising that the C.O. instead of asking the Chowkidars who were entrusted the responsibility to guard the godown he called

Sri Swapan Nath, PW-3 to clarify the position (as per defence brief and Ans. to Q. No:2 of C.O. during general examination) who in no way responsible to guard the godown. Again Sri A.C.Roy Borbhuyan, Inspector/RPF (PW-5) has stated during examination by P.O. that the Western side wall of the godown measuring about 2ft x 1 1/2 ft was broken and protected by one piece of C.I. sheet with the help of nails, but he further stated that it is not possible to remove the scrap materials through the repaired whole. Thus, assessment of PW-5 who conducted the joint inquiry on the basis of theft memo (as per Ans. to Q. No.9 put by P.O.) shows that there was no trace of theft. It is therefore, substantively concluded that the theft report (P-20CD) was submitted by the C.O. motivatedly. It is truly mentioned by the C.O. in his brief that statement of prosecution witnesses have not listed as relied upon document. These statements were accepted as defence documents on demand by the C.O. and these were supplied to C.O. by P.O. as instructed. But the same ~~was~~ dropped by the C.O. Therefore, C.O's plea in his defence brief dated 16.11.2000 that natural justice was denied is not correct. In reply to clarification Q. No.2 during general examination the C.O. has stated that on 20.6.92 he had the necessity of some cut pieces of scrap M.S. Rod kept in godown No.3. After entering into the godown he noticed that one lot (lot No.6) was disturbed. But the C.O. on the other hand has stated in his defence brief dated 16.11.2000 that on 20/6/92 he collected the keys from Sri S.Sarkar, AEN and entered into the godown is contradictory. The collection of the key of the godown from Sri S.Sarkar on 20.6.92 by C.O. does not arise as he took the complete charges of the unit from his predecessor Sri S.Sarkar (As per P-4CD) i.e. prior to 20.6.92 and thus he was custodian/In-Charge of the materials during that time. PW-10,11 & 3 have stated that the keys of the godown were kept by the In-Charge. The evidence prevails that the C.O. was possessing the complete charge of the unit during the period in question and the keys of the godown were under the custody of C.O. Therefore, the C.O.'s plea in his brief that he entered into the godown on 20.6.92 collecting the keys from Sri S.Sarkar is not substantive. In his defence brief the C.O. states that the P.O. had failed to provide the hand writing expert which was accepted on demand is true. But evidence would speak for itself that there was no theft in godown No.3 but theft report was submitted by C.O. with some motive and as such there is no need for additional corrective evidence in form of hand writing expert to substantiate the over writings and cuttings in the ledger. The evidence shows that the ledger was under the possession of C.O. before taking the physical charge of materials and started posting in the said ledger taking into account the previous balance. The above action of C.O. shows that he had accepted the balance drawn by his predecessor though not physically handed over to him and therefore, the responsibility of over writings and cuttings in the ledger lies with the C.O. The document should have been got corrected from his predecessor before posting the transaction in the said ledger concerned. Therefore, I conclude that the C.O. had arranged/indulged the cuttings, overwritings and manipulations in the ledger of M.S. Rod(Scrap).

6.0. **FINDINGS**

6.1. In view of the reasons given above and on the basis of documentary and oral evidences adduced with the case I, consider that the charge framed vide article of charge-I against Sri Chandan Das, IOW/II/Con/SCL now JE/II/Works/Badarpur/N.F.Rly. vide memorandum No. W/275/LM/DAR/W-5(Loose) dated 6.1.2000 is PROVED.

Dated : 30/11/2000

*Pt. 2nd*  
30/11/2000  
( B.N.Chakraborty)  
Inquiry Officer.

En/CD/DAR/2001

dated: 3rd Aug, 2001

To  
The Sr. DEN/C/Lunding  
N.F.Rly.

Sub: Representation against the Enquiry Report  
submitted in case No: W/275/LM/DAR/W-5  
(loose) dt 23.5.96 and 6.12.99.

Ref: your letter No: W/275/LM/DAR/W5 (loose)  
dt. 16.07.2001

Sir,

I beg to state that the representation against  
the Inquiry Report (submitted by I.O.) is enclosed here-  
with for the consideration of the Disciplinary Authority  
in this case.

Enclo: Four sheets;

Yours faithfully.

Chandan Das,  
(Chandan Das )  
JE/II/Works/BPB

Badarpur;  
3rd August, 2001

P/C

Certified to be true copy.  
Bhandarkar  
Adv.

Recd 3/8/01  
5/8/01  
5/8/01

REPRESENTATION AGAINST ENQUIRY REPORT  
SUBMITTED BY E.O./VIG/HQ AGAINST CASE  
NO. WJ 275/LM/DAR/W-5 (loose) dated  
23-5-96 at 6-12-99.

In terms of the charge memorandum the ingredients of the charge are as follows:-

- (1) That a shortage of 108,061 M.T. MS Rod Scrap was allegedly caused by me.
- (2) That a shortage of 81,868 MT MS Rod scrap worth of Re. 3.25 Lakhs was detected by GRP and RPF Team and that allegedly was responsible for that.
- (3) That allegedly the Ledger and connected documents depicting the receipts and issues of MS Rods(Scrap) was manipulated by cutting and over writing to cover the shortage which caused loss to the Railway.

To establish the above ingredients of the charges the Disciplinary authority was required to establish that the facts alleged took place during my tenure as IOW/CON/SCL. That I had taken over the charge of the said scrap and I was its custodian and the overwriting etc. were done by me during my tenure as IOW/CON/SCL.

#### PROSECUTION CASE:

Through 20 prosecution documents (PD) and 12 Prosecution witness's (PW) were cited in Annexure III/IV of the said charge memorandum in the enquiry only 10 PWs were examined.

In respect of ingredient of the charge i.e. causing a shortage of 108,618 MTs Scrap rods no evidence was laid by the prosecution that such a shortage was caused by me by E.O. para 5.1 of the Report has merely referred to shortage of 108,061 MTs of MS Rods detected by the GRP/RPF officials from 8.8.92 to 20.8.92. In the same breath he refers to shortage of 81,868 MT worth Rs.3.25 lakhs by the same official in the same Godown No.3 and then again the E.O. mentioned shortage of 118,088 MT of MS Rods scrap. From these observation of E.O. as well as the statement of imputation in the charge sheet it is demonstrably and undeniably established that the prosecution and the evidence adduced do not indicate the exact amount of shortage of MS Rods.

The credibility of the RPF/GRP officials who conducted the verification is suspect in view of the fact that same materials could not be found short in three different quantities. Either, the shortage could have been of 108,061 MTs or 81,868 MTs or 118,088 MTs all the three conclusions therefore, are in conclusive and they can not formed basis of drawing an inference or guilt against any body. If an employee is charged with negligence causing shortage of loss of any materials the charge should be definite enough to conclusively established that the C.O. caused a loss of shortage through negligence of an exact quantity. Not three different quantities of shortage.

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C. Chanda Ds.

Therefore, the findings of the E.O. without definitely arriving at the exact quantity of shortage caused is suffers from ambiguity confusion, and indefiniteness as such finding of the E.O. merits rejection on this ground alone.

The same goes from 2 & 3 of the charge.

The second point for determination by the E.O. was as to whose tenure the alleged shortage whatsoever was caused. In this respect the E.O. has shown his proclivity to swim against the current evidence framed against C.O. by relying on surmises and conjectures to drive home the guilt on the C.O. From the documentary evidence available before the E.O. it was palpable that before the alleged physical examination by the GRP/RPF official between 8.8.92 to 20.8.92, there was no physical verification of the stock of godown no.3 ever. It is also evident from the record that the C.O. took over the charge of the Godown on 15.4.92. Before that the C.O. on 18.2.92 0.661 MT MS rods was received and put in the godown on which date the C.O. have not taken over the charge of the said Godown as is evident of the remarks of his predecessor Shri S.Sarkar dated 5.5.92 where he had clearly stated that this item could not be physically handed over to his successor due to heavy quantity stacked in heap condition for which much time is required .... (PD-6 Page-388). From 5.5.92 to 8.8.92 there is no entry in any of the pages of ledger No. 7 that the C.O. was handed over the said stock after physical verification. If blame is to be apportioned on a particular individual of causing shortage in a particular stock it has to be established that, a certain quantity of stock was duly received by him after physical verification by the relieved and relieving officials. Fastening blame on the basis of entries in the various books and ledgers without conclusively establishing that the official received a stock after physical verification would be akin to punishing an innocent person and letting go dozens of guilty persons which is the antithesis of rule of law that ordain that one thousand guilty persons may be spared but one innocent should not be punished.

The E.O. has mechanically let the blame on me by reasoning that the godown No.3 and store therein were under the custody of C.O. though he did not take the physical charge officially. This logic has serious ramification for all prospective C.O. who may have the misfortune of submitting to an enquiry before the E.O.

According to his logic whatever misdeeds the previous incumbents may have committed it is the present incumbent alone who should be punished for the offence. The C.Os. claim that he was responsible for the transaction (Receipt and issue) during his tenure only was repeated by I.O. on the surmise that in the ledger no. separate entries about lot wise and quantity wise break up. Either the I.O. was woefully ignorant about the practice involved in running a Godown or he deliberately acted ignorant when there was a clear cut entry that, the MS Rods were stacked in heap condition by I.O. S.Sarkar and there are clear cut entries in the ledger that during the tenure of C.O. 0.661 MT was received and

put up in the Godowns and when the charge had not been taken over the said materials were bound to be segregated in the interest of the incumbent so that in future he would not be able to account for stocks he received. This ground reality was totally ignored by the I.O. owing to his lack of knowledge and experience in field work particularly maintaining a Godown.

Therefore, from the evidence adduced during the Enquiry it was established beyond an iota of doubt that the C.O. had not physically verified and had not taken over the charge of 117.227 MT of MS Rods and as such on the basis of available evidence no reasonable man acting reasonably would arrive at the conclusion that the C.O. is responsible for any shortage whatsoever.

Allegedly, the physical verification done by RPF/GRP official from 8.8.92 to 20.8.92. But before that in the night of 19.6.92 the godown No.3 was broken into and a theft was committed. An FIR was lodged with GRP/SCL by the C.O. himself at 5 p.m. on 20.6.92 and on 21.6.92 at BPB/GRP. In this connection OC/GRP/BPB's letter dated 17/2/94 addressed S.P./CSI/SPE/SCL(PD-9) has been cited as relied upon document by the D.A. wherein item No.9 - OC/GRP/BPB had recorded that "the case was return in F.R. as true, but no trace of culprit" it shows that the Police after investigation of the case found the complain of theft from godown No.3 of MS.cut piece rods true. But since no culprit could be traced Final Report (F.R.) was submitted by the Police. This glaring piece of evidence is the part of relied upon documents which was cited in Annexure III (PD-9). This document vindicates the conduct of the C.O. in claiming the theft in godown No.3. But, inspite of the fact that it was one of the relied upon document, the I.O. totally ignored it by falsely relying on statements of PWs 8, PW-11 and PW-9 PW-10 all Chowkidars responsible for preventing theft in godown who had vested interest in disclaiming theft to save their own necks. It is well settled principle of law the statements of witnesses should be acts scrutinised closely to see whether they have any interest in lying. Since all the said Chowkidars were interested to saving their bacon. Their statement should not have been relied to disprove the Police version of the theft particularly when the wall of the store was broken and the back door of the godown torn off from the hinges. All these were signs of theft corroborated by the fact that a shortage of about 81.00 MT to 118 MT MS rods. By ignoring this evidence the I.O. has shown his biased against the C.O. and his determination to save how proved the charge.

In view of the bias of the I.O. as demonstrated from above absence the report of the I.O. is perverse, arbitrary and illegal and is such that no reasonable man acting reasonably would have arrived at the conclusion which I.O. has arrived from the materials of record. Therefore, the finding of the I.O. fastening blame for the shortage on me ignoring the fact of theft certified to be true by the police is liable to be rejected.

Another aspect of the case is that the I.O. has held me responsible in arranging/indulging in cutting overwriting in the ledger MS Rods(scrap) this conclusion of the E.O. is solely based on his own surmises and conjecture whereas direct evidence was available in the form of statement of PW-2 Subhas Das Gupta, Hd.clerk under Dy.CE/CON/LMG who worked at IOW/CON/SCL's office from 6-9-80 to 12.12.91 i.e. before the C.O. took charge as IOW/CON/SCL. PW-2 in Answer to question no.4 has stated that he worked under IOWs P.K. Sutradhar and S.Sarkar in answer to Q.No.5 he admitted that he was one of the persons who maintained the ledger. In answer to Q.No.6 on cross examination PW-2 admitted that all the correction in various entries were made by him and answer to a clarificatory question by the I.O. PW-2 stated that the corrected and overwriting etc. was made by him during the tenure of S.Sarkar. The I.O. has not discussed the testimony of PW-2 at all. Probably the I.O. totally ignored this testimony. It is a well settled law that if a Quasi-judicial authority does not take into consideration a material fact he surrenders jurisdiction to adjudicate in the matter. By ignoring crucial testimony in regard to overwriting etc. which were alleged to be made by me in this charge sheet were admitted to have been made by PW-2. Yet the I.O. has exhaused x made by x D.W. found me guilty of overwritings etc.

In view of this, the finding of the I.O. on this aspect of the allegation is perverse, contrary to evidence adduced during the enquiry and as such the finding of the I.O. is liable to be rejected.

In view of the foregoing I submit that the charge of causing shortage of MS rods in godown No.3 framed against me is not proved. Further the charge of cutting,overwritings etc. framed against me is also not proved in that it was admittedly made by PW-2 Shri Das Gupta during the tenure of S.Sarkar, my predecessor.

In view of the foregoing I request you to kindly reject the findings of the I.O. for the reasons afores mentioned and exonerate me from the charges.

Yours faithfully,

Chandan Das

( CHANDAN DAS )  
J.E./II/WORKS  
BADARPUR.

Dt.1.8.2001.



25/8 - 42 -

Staff copy

CONFIDENTIAL - VI SM

N.F.RAILWAY

OFFICE OF THE  
DRM/W/LMG

No. W/275/LM/DAR/W-5

Dtd 24-08-01

From :: S.R. PRASAD, DEN/II/LMG (D.A.)

To  
Shri Chandan Das, JE/II/Works/BPB.

Sub : N.I.P.

Ref. : W/275/LM/DAR/W-5 (Loose), Dt. 06-01-2000

With reference to above following N.I.P. is issued by disciplinary authority.

Shri Chandan Das, Ex.IOW/CON/SCL now JE/II/Works/BPB has been charged for violation of rule 3(1), (i), (ii) of Railway services (Conduct) rules 1966. The charges brought against Shri Chandan Das was enquired by Inquiry officer where charged official deposed with his defence council. From the enquiry report based on records and witnesses it is evident that charge brought against Shri Chandan Das is proved. His misconduct resulting in shortage of 108.061 MT M.S. Rod in Godown No.3 is established.

Considering the gravity of offence the following penalty is imposed on charged official which will meet the ends of justice.

"Reduction to three stage lower in time scale of pay for a period of three years with cumulative effect".

The appeal against above order may be made to Sr.DEN/C/LMG within 45 days from the date of receipt of N.I.P.

*Deepta*  
24-8-01  
(S.R. PRASAD)  
Divl. Engg. II/LMG  
(Discp. Authority)

Copy to ::

- (i) S.P./CBI/Silchar
- (ii) Dy.CVO/E/MLG
- (iii) Sr.DEN/C/LMG

*Certified to be true copy.*  
*Chowdhury Adw*

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From: Chandan Das,  
JE/II/Works/Badarpur

Dated, 15-10-2001

To  
Sr. Divisional Engineer/C,  
N. F. Railway, Lumding,

Sub:- Appeal under Rule 18(ii) r/w Rule 21 of  
RS(D&A) Rules, 1968, against the order of  
DEN/II/Lumding imposing the penalty of  
reduction to three stages lower in time  
scale of pay for three years with cumulative  
effect.

Ref:- DEN/II/LMG's N.I.P. issued under No.W/275/LM  
DAR/W-5 dated 24.08.2001 received on 31.08.01.

Sir,

Being aggrieved by the order of the disciplinary authority, DEN/II/LMG, imposing the penalty of reduction of pay by three stages in the same time scale of pay for a period of three years with cumulative effect, I am constrained to prefer this appeal under Rule 18(ii) r/w Rule 21 of RS(D&A) Rules, 1968. For the purpose, I submit below a brief history of the case, material statements and arguments against the impugned proceedings and the penal order, and submissions for your kind and judicious orders and appropriate orders. Consideration

#### A. Brief history of the case

1. While I was working as IOW/CON/Silchar, Godown No.3 at SCL was broken into and theft was committed. An FIR was lodged with GRP/SCL by me at 5 p.m. on 20.6.92 for the theft committed on the preceding day. While the case was under investigation by the police, a joint check was made by GRP and RPF/MIG from 8.8.92 to 20.8.92 of Godown No.3 at IOW/Con/SCL and a shortage of 81.868 MT MS Rod (scrap) was detected and later on the Stock Verifier claimed a shortage of 118.088 MT, in 1994.

2. A major penalty was charge memorandum No.W/275/LM/DAR/W-5 (Loose) dated 23.5.96 was served on me alleging misappropriation of MS Rods to the tune of 108.061 MTs from godown No.3. In the same place it was also alleged that the shortage was of 81.868 MT worth Rs.3.25 lacs, further it was alleged that in fact the max shortage was of 118.088 MTs. It was further alleged that the entries were manipulated (by me) to cover up the shortage. The list of documents in Annexure III of the charge memorandum, ibid, enlisted only one document and annexure IV, ibid, enlisted the names of 12 witnesses to sustain the charge.

3. However, for some obscure reason, the disciplinary authority, DEN/II/LMG, vide his letter dated 6.1.2000, on the pretext of issuing a corrigendum to the earlier charge sheet dated 23.5.96 and 6.12.99, issued a fresh charge sheet dated 6.1.2000, alleging that I showed extreme negligence of duty and misconduct in that a shortage of 108.061 MTs MS Rod was found (Article I/Annexure I). In Article I, annexure II, the shortage was shown both as 118.088 MTs and 108.061 MTs. Annexure III enlisted 20 documents and Annexure IV, ibid, enlisted 12 witnesses to sustain the charge.

4. That in the inquiry held into the charges, out of 12 witnesses 3 (i.e. PW-1, 6 & 7) were dropped. The inquiry officer held the charge proved. On being furnished with the inquiry report, I made a detailed representation against the findings of the inquiry officer.

5. Finally, the disciplinary authority, vide his order dated 24.8.2001 appealed against imposed the penalty as aforesaid. Hence, this appeal.

Certified to be true -

**8. Material statements and arguments relied on against the disciplinary proceeding and the final order.**

The disciplinary authority has imposed the penalty based on the inquiry report considering the charge as proved. I assail the conclusions and decision of the disciplinary authority on the following grounds.

1. The disciplinary authority has failed to consider material facts and circumstances of the case which belied the allegations levelled against me, as will be evident from below.
2. I was charged with violation of Rule 3(1)(i) & (ii) of RS(Conduct) Rule, 1966, sub-clause (i) of the said rule ordains every railway servant to maintain absolute integrity at all times and sub-clause (ii), *ibid*, is related to maintenance of devotion to duty. In the light of these provisions, let us examine the allegations levelled.
3. Though the charge memorandum contains only one article of charge, the allegations are two-fold: one, there was shortage of stock of MS Rod (Scrap) off sized which was entrusted to me as ICM/Con/SCL, and that there were attempts to cover up the shortage by several cuttings, over-writings and manipulations which has been insinuated to be done by me.
4. Firstly, let us take up the matter of shortage in the quantity of MS Rod and as to who could be held responsible for that.
  - (i) The shortage of MS Rod (Scrap) has been shown to be of three different quantities, all based on some so-called verification of records, in the same charge sheet.
  - (ii) In Article I, Annexure I, *ibid*, the shortage has been shown as 108.061 MT based on some undisclosed report made on a joint surprise raid by GRP and RPF officials of Maligaon of godown No.3 of ICM/Con/SCL's office. No documents were cited as a proof of such a joint raid and the consequent report, if any. None of the 20 documents cited in Annexure III of the charge sheet shows that there was a joint GRP and RPF raid when shortage of 108.061 MT MS rods was detected. The only document which is relied on by the disciplinary authority is SN-9 of Annexure III, *ibid*, which is a report of OC/GRP/Badarpur alongwith copy of the statement of the C.O. recorded in connection with the case No.18/92 u/s 380 IPC. In item (9) of the police report, the OC/GRP/BPB has recorded that "The case was return in FR as true, but no trace of culprit". This report was made by OC/GRP/BPB to SP/CBI/SPE/Silchar. From this document relied upon by the disciplinary authority himself it is established that the FIR lodged on 20.6.92 at GRP/SCL and on 21.6.92 with GRP/BPB in relation to theft of MS rod from godown No.3 of ICM/Con/SCL was found to be true on investigation by the police who have the exclusive jurisdiction to investigate and report on whether a theft was in fact committed or not.
  - (iii) The other document i.e. SN-7 of Annexure III, *ibid*, is a copy of physical stock verification report of B.L.Barman, Stock Verifier/Con/MIG, and A.C.Roy Barbhuyan, Inspector, RPF, alongwith the tally sheet. This document was signed by the two on 20.8.92. Even a cursory glance at the said document would show that it was a tally sheet of physical verification of stock. According to this document, the MS rods found available in godown No.3 were of 36.220 MT.
  - (iv) While the physical stock verification report (SN-7, *ibid*) does not disclose the shortage, interestingly, one of the authors of SN-7, *ibid*, i.e. A.L.Barman, SV/Con/MIG in his letter No.ALB/SV/Con/MIG dt.28.8.92 addressed to XEN/Con/SCL recorded that there was a heavy difference of 81.868 MT between the

ground balance and the entries made in relevant papers. In the stock verification sheet dated 28.10.92 which is signed by ALN/Con/SCL the difference between actual balance and depot balance has been shown as minus 81.869 MT.

\* (v) Then finally a statement of MS rod (scrap) was prepared by Kamla Das Kere, SV/MLG on 27.1.94 when I was not working as IOW/Con/SCL and I was made to sign on it by Inspector/ CSI/SCL who also signed, drawing a summary of actual book balance as on 28.8.92, in which the opening balance was taken as on 29.9.86, and receipts from 29.9.86 to 28.8.92 was assessed making a total of 148.976 MT of MS rod and deducting 4.695 MT therefrom from 29.9.86 to 28.8.92 as issued, thus making out a total book balance of 144.281MT. A shortage of 118.088 has thus been worked out by treating 144.281 MT calculated on 27.1.94 as book balance and deducting 36.228 MT as ground balance (worked out two years previously) on 28.8.92. If that be so, then the actual ground balance should come to 26.193 MT and not 36.228 MT as found on 28.8.92. But if the ground balance was correctly assessed to be 36.228 MT, then the shortage could not have been of 118.088 MT. The inquiry report instead of definitely determining the amount of shortage repeats only the language of the statement of allegations in the charge memo.

\* (vi) Be that as it may, a very significant fact that the inquiry officer in his over-cautiousness to somehow establish the charge ignored is that during all the transactions from 29.9.86 to 28.8.92, records of which were verified on 27.1.94, I was IOW/Con/SCL only for a brief period of seven months and 20 days from 31.12.91 to 28.8.92.

(vii) From the above documents it could not be ascertained from what source the disciplinary authority calculated the shortage of 118.088 MT.

(viii) Out of the conclusions reached from the book balance of 144.281 MT as on 28.8.92, let us examine now the list of materials taken over by me from my predecessor on 15.5.92. It will be evident that none of the items taken over by me includes MS rods of any quantity.

\* (ix) From page 388 of SN-6, Annexure III, ibid, it is evident from the remark of my predecessor that "This item could not be physically handed over to IOW/C/SCL due to high quantity stored in heap condition for which much time is required and the exact quantity could be ascertained during verification will be conducted by SV/C/MLG shortly." This entry is dated 5.5.92. These two documents demonstrably and undeniably prove that no physical charge of MS rod weighing 117.788 MT was handed over to me on 5.5.92 and thus I was not at all responsible for any shortage of MS rods.

In view of the foregoing, from the relied upon documents themselves, it is established that MS rods were not entrusted to me and I could not by any stretch of imagination be accountable for the shortage of whatever quantity of MS scrap.

5. Next point for determination was as to who was responsible for cuttings, over-writings and manipulations in the ledgers and as to whether they were made by me for the purpose of covering up the shortage.

(i) Cuttings, over-writings etc. are to be seen in the entries dated 3.8.91 (P/344, PD-5); dated 13.6.91 (P/386 ibid); 24.6.91, 9.8.91, 18.8.91, 4.9.91, 19.9.91, 28.12.91 (P/388, ibid) dated 5.8.91, 8.8.91 and 26.8.91 (P/391, ibid); Dec '92 and

(Contd....4)

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Jan'99 (P/97, *ibid*); June to Sept'98 (P/98, *ibid*); and Page 99, *ibid*, and dated 14.3.90 to 22.5.90, *ibid*.

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(ii) From PD-3 (SN-3 of Annexure III of the charge memorandum) it is established that I took over the working charge of the post of IOW/Con/SCL from S.Sarkar, on 31.12.91. If so, all the over-writings etc. made prior to that date as is demonstrated from the documents mentioned hereinabove they were made during the periods of my predecessors. If, as alleged, the over-writings etc. were made to cover up the shortages, then the motive for the same is attributable to those who were then incumbents of the post of IOW/Con/SCL.

\* In this connection, the statement of the Store Clerk, Subhash Dasgupta (PW-2) is very pertinent and conclusive in that it settles the controversy if there was one.

Shri Dasgupta, in Ans. to Q.No.3, in examination-in-chief, stated that he worked at IOW/Con/SCL's office from 6.9.80 to 12.12.91; that during his tenure P.K.Sutradhar was IOW/incharge since his joining there and later S.Sarkar was IOW/incharge from 1984 to 12.12.91 (Ans. to Q.No.4); that he maintained the ledgers (Ans. to Q.5); that all the entries made at P/388, ledger No.7 (P-6CD) were made by him (Ans. to Q.7); that he admitted that the corrections in the entries were made by him with the permission of IOW/incharge (Ans. to Q.9); that the over-writings, erasing, cutting and subsequent entries were made by him due to wrong entry detected subsequently (Ans. to Q.10).

(iii) The above statement of Subhash Dasgupta, PW-2, proved beyond an iota of doubt that all the cuttings, erasures, over-writings etc. were made by him albeit with the permission of IOW/incharge who were P.K.Sutradhar and S.Sarkar, during his term at IOW/Con/SCL's office.

Therefore, it is crystal clear that on the basis of evidence adduced during the inquiry, I could not be held responsible for the over-writings, cuttings etc. in the ledger.

6. Contrary to the above irrefutable, unimpeachable and conclusive evidence establishing the innocence of the charged official, the inquiry officer laboriously tried to fasten the guilt on me by doggedly clutching at the straws of irrelevant, prejudiced and biased statements of interested witnesses, totally and pointedly ignoring and omitting from consideration relevant, objective, unbiased and disinterested statements of witnesses favourable to me. Against the perverse findings of the inquiry officer, I had made elaborate submissions in my representation before the disciplinary authority, which, in brief, were as follows:

- (i) That the variable quantity of shortage of MS rod mentioned in the same charge memorandum, that is, 81.868 MT or 108.613 MT or 108.061 MT or 118.088 MT, showed that the evidence adduced does not indicate the exact amount of shortage of MS rod.
- (ii) That the variable quantity of shortage proves the suspect nature of allegation and that the charge of causing shortage could not be established when the exact amount of shortage is not proved.
- (iii) That the finding of the inquiry officer without definitely arriving at the exact quantity of shortage caused suffered from ambiguity, confusion and indefiniteness and hence the finding of the inquiry officer merited rejection on this ground alone.
- (iv) That the inquiry officer's findings were based on surmises, and conjectures in that from the documentary evidence available before him it was palpable that before the alleged physical

verification by RPS officials and SV/Con/MIG from 8.8.92 to 28.8.92 there was no physical verification of the stock of godown No.3 ever. That it was also evident from the records that when I had taken over the charge of the godown on 15.4.92 no physical verification of MS rods had been done and MS rods had not been handed over to me as noted by my predecessor on 5.5.92.

(v) The inquiry officer's conclusion that since the godown was under my custody I had to be held responsible for the shortage even if the stock had not been physically handed over to me after verification is arbitrary, unreasonable and prejudiced opinion based on no evidence at all.

(vi) Regarding the theft in godown No.3 on 19.6.92, the inquiry officer relied on the interested, biased and self-serving declarations of Chowkidars whose duty it was to guard the godown and prevent theft and had failed and thus were interested in disproving the theft so as to escape liability. His reliance on their testimony so as to disprove theft was totally misplaced in the face of another relied upon document, i.e. SN-9 of Annexure III which is a police report by GC/CRP/SCL confirming the theft in the godown No.3 on 19.6.92.

(vii) The report of the inquiry officer is perverse, arbitrary and illegal and is such that no reasonable man acting reasonably would have arrived at the conclusion as the inquiry officer has done from the materials on record. Therefore, the finding of the inquiry officer fastening blame for the shortage on me ignoring the fact of the theft certified to be true by the police is liable to be rejected.

(viii) The inquiry officer's finding that I was responsible for cutting, over-writings in the ledger was contrary to the proved fact that the cuttings, over-writings etc. were made by Subhash Basgupta, Hd.Clerk, PW-2, who admitted in the inquiry that he had done the same and that too during the ~~tenure~~ tenure of P.K.Sutradhar and S.Sarkar. The dates of entries which were tampered with are proof of the fact that the over-writings must have been before my term as IOW/Con/SCL.

7. Against the above submissions made by me in my representation against the findings of the inquiry officer, had the disciplinary authority applied his mind to the facts and circumstances disclosed through documentary and oral evidence as well as my statement of defence and representation against the inquiry report, the disciplinary authority should not have failed to notice that:

- (i) the exact quantity of shortage has not been determined.
- (ii) there is no evidence that the shortage was caused during my tenure as IOW/Con/SCL;
- (iii) that whatever shortage was caused it was due to theft in godown No.3 on 19.6.92 as certified to be true by the police;
- (iv) that there is no evidence that I caused the shortage;
- (v) that I was being hauled over the coals merely because of the fact that the shortage was discovered at the time I happened to be IOW/Con/SCL;
- (vi) that the fact that there were over-writings etc. in the ledger that were done before I had joined there shows that the shortage must have been caused before my time and attempts were made to cover up the same by manipulation of records;

8. The failure of the disciplinary authority to consider the evidence properly and then decide the case demonstrates that the disciplinary authority has violated Rule 10 of RS(D&A) Rules, 1968 which ordains the disciplinary authority to act on the evidence on the record and decide on all or any of the findings of the inquiry officer. But in the penal order, the disciplinary authority has not deigned to discuss any of the findings of the inquiry report. As such, the order of the disciplinary authority imposing penalty is ultra vires Rule 10, *ibid.*, and as such the same is liable to be set aside and quashed.

9. That the disciplinary order imposing the penalty is mechanical, arbitrary, unreasonable, and unlawful in that no reasons have been supplied by the disciplinary authority while imposing the penalty.

Railway Board in terms of its letter No.E(D&A)86 RG 6/1 dated 20.1.1986 on the subject of "Need for issuing speaking orders by competent authority" in disciplinary cases enclosed D.O.P. & Trg's O.E.No.134/12/86/A.V.D.1 dt.5.12.1986 and D.O.P & Admn.Reforms' O.M.No.134/1/81-A.V.D.-II dated 13.7.1981.

In D.O.P & Trg.'s letter dt.5.12.86, it was laid down:

"1.... Inspite of the instructions contained therein, it has come to notice that speaking orders are not issued while passing final orders in disciplinary cases. It is an essential legal requirement that, in the case of decisions by quasi-judicial authorities, the reasons should be recorded in support thereof. As orders passed by disciplinary authorities are in exercise of quasi-judicial powers, it is necessary that self-contained, speaking and reasoned orders should be issued while passing orders in disciplinary cases."

In D.O.P & Admn.Reforms' O.M. dated 13.7.1981, it was laid down:

"1.... It is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs. State of UP (AIR 1970 1302)(SC) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on the ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal."

From the above provisions of the rules laid down by the Railway Board, the order of the disciplinary authority in this case is illegal, unlawful and ultra vires the constitution and as such the order imposing penalty is liable to be set aside and quashed.

10. That yet another rule which ordains supplying of reasons while passing final order in a disciplinary case is Rule 6,*ibid.*, which lays down that any of the penalties enlisted therein may be imposed for good and sufficient reasons only. Since no reasons have been given by the disciplinary authority in the penal order the order is violative of Rule 6, *ibid.*, and as such the order imposing penalty is liable to be set aside and quashed.

11. That the order of the disciplinary authority is assiable on the further ground that he has acted on the second stage advice of Vigilance Deptt/CBI in imposing the penalty without furnishing to me a copy thereof which is violative of the principles of natural justice and fair play, as enshrined in Article 311(2) of the Constitution.

C. Submissions

1. From the foregoing, it is evident that the charge framed against me did not constitute any misconduct so as to warrant initiation of a disciplinary proceeding.
2. I further submit that from the evidence adduced during the inquiry the offence alleged is not proved and the charge of lack of integrity within the meaning of Rule 3(1)(i), RS(Conduct)Rule, 1966, is not proved and no penalty was warranted.
3. That I further submit that on the basis of evidence adduced during the inquiry the charge of lack of devotion to duty within the meaning of Rule 3(1)(ii) of RS(Conduct)Rule, 1966, is not proved and thus no penalty was warranted.
4. That I further submit that the inquiry report was based on no evidence at all and as such it was perverse and it deserved rejection by the disciplinary authority. Instead, penalty has been imposed without proof of the charge and as such the penal order is violative of principles of natural justice and fair play enshrined in Article 311(2) of the Constitution.
5. That I further submit that disciplinary authority has acted in violation of Article 14 of the Constitution in that he has given a mechanical, arbitrary, unlawful and unconstitutional order. It is further submitted that the disciplinary authority has acted in violation of Rules 6, and 10 of RS(D&A)Rules, 1968 and as such the order imposing penalty is liable to be set aside and quashed.
6. That I further submit that the disciplinary authority has imposed the penalty on the second stage advice of Vigilance/CBI obtained behind my back and as such it is violative of principles of natural justice enshrined in Article 311(2) of the Constitution and hence the order is liable to be set aside and quashed.
7. That I further submit that the disciplinary order is illegal, unlawful, malefide and unconstitutional for being violative of Articles 14, 16, 21, 51A(h) and 311(2) of the Constitution as also Rules 6 and 10 of RS(D&A)Rules, 1968 and as such the order is liable to be set aside and quashed.

In view of the aforesaid reasons, I request you that you will be graciously pleased to consider the facts and circumstances of the case in the light of the evidence adduced during the inquiry and set aside the penalty imposed by the disciplinary authority. And for which I shall remain for ever grateful.

Yours faithfully,

Chandan Das  
15/10/01  
(Chandan Das)  
JE/II/Works/BPB

Copy to DEN/II/LMG for information. He is requested to please take necessary action in accordance with Rule 21(3) of RS(D&A)Rules, 1968.

Chandan Das  
15/10/01  
(Chandan Das)  
JE/II/Works/BPB

15/10

SO

ANNEXURE

VIII

N.F. RLY.

Confidential.

Office of the  
DRM (W)/LMG.

No. W/275/LM/DAR/W-5.

Dt. 22.10.2001.

To

Sri Chandan Das,  
JE/II/Works/BPB.  
N.F. RLY.

Sub: Major penalty DAR action against Shri -  
Chandan Das, JE/II/Works/BPB.

Ref: Your appeal No. Nil. dt. 15.10.01

I have carefully gone through the charges framed against Shri Chandan Das, JE/II/Works/BPB vide major memorandum No.- W/275/LM/DAR/W-5 (Loose) dt. 6.1.2000. I have also gone through the enquiry report and NIP issued by DEN/II/LMG. vide letter No.- W/275/LM/DAR/W-5 dt. 24.8.01. After careful consideration of the fact and circumstances of the case and written statement of the defence against the appeal of Shri Chandan Das and I have come to the conclusion that the charges levelled against Shri Chandan Das were proved.

I, therefore, felt that the NIP issued is just and fair. This will disposed the appeal submitted vide letter No.-Nil dt. 15.10.2001 by Shri Chandan Das.

*DRM 22/10/01*  
Sr. Divl. Engineer/C,  
N.F. RLY. LMG.

Copy to: DRM(P)/LMG.

By CVO/MLG.

For information and necessary action please

Sr. Divl. Engineer/C,  
N.F. RLY. LMG.

*Red  
31/10/01*

*Certified to be true copy  
Chanchlal  
Adv*

GAUR

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In The Central Administrative Tribunal  
Guwahati Bench :: Guwahati.

O.A. NO. 223/2002

Shri Chandan Das

✓5.

Union Of India & Ors.-

In the matter of :

Written Statement on behalf of  
the respondents.

The respondents in the above case most respectfully beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to statements in paragraph 4.1 to 4.4 it is stated that Major Penalty Charge Memorandum dated 23.5.1996 was issued based on the fact findings supported by report of GRP and RPF. It was established that the entries in the ledger and other documents were manipulated by the applicant to cover-up the shortage.
4. That in reply to statements in paragraph 4.5 it is stated that the applicant submitted application dated 3.6.1996 for the copy of some documents for his defence. At

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that time, the relevant records were available with Dy.CVO/E/MLG. Accordingly Dy.CVO/E/MLG vide letter No. W/SS/CON/VC/C.Das dated 20.12.1996 followed by reminder dated 6.1.1997 and 24.1.1997 was requested to return the relevant records. In Turn Dy.CVO/E vide letter No.Z/Vig/68/2/93(G)CVC dated 17.1.1997 requested SP, CBI/ACB/SPE/Silchar by letter No.3/2(A) 93-SLC/727-28 dated 3.2.1997 requested to direct the applicant to inspect the same at CBI Office, Silchar as desired by him. Accordingly the applicant by letter No.W/SS/Con/VC/C.Das dated 3.3.1997 was advised to attend CBI office, Silchar to have the copy of the required documents. The applicant attended CBI Office Silchar on 12.3.1997 and inspected the documents and collected Xerox copies. On 17.3.1997 by letter No. CD/DAR/2-97 the applicant admitted that he had received relevant documents from SP/CBI, Silchar on 12.3.1997. Hence, it is denied that disciplinary authority did not respond for preparation and submission of effective reply to the Memorandum dated 23.5.1996.

5. That in reply to statements in paragraphs 4.6 it is stated that from the record it is ascertained that Inquiry Officer and Presenting Officer could not locate certain records of the case for which CBI/Silchar had to be further communicated. All the records were collected from CBI/Silchar only on 21.1.1998 and the same were presented to the Inquiry Officer and the Presenting Officer. It is stated that corrigendum dated 6.12.1999 to Original Memorandum dated 23.5.1996 was issued to reflect the factual position only.

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Co. Gr. Test, Supply  
Divisional Engineer (W)  
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6. That in reply to statements in paragraph 4.7 it is stated that corrigendum No. W/275/LM/DAR/W-5 (Loose) dated 6.01.2000 was issued to reflect the charges properly.

7. That in reply to statements in paragraphs 4.9 it is stated that out of twelve listed witness nine prosecution witness were examined and cross examined by the presenting officer. PW-7 Md. Abdul Basiv could not be examined as he expired before the date of cross examination and PW-6 (Stock Verifier) could be examined due to his retirement prior to the date of hearing and the other witness could not come for his new assignment as Dy. CE/CON/South Eastern Rly and hence both were subsequently dropped. However from the witness of other nine Witnesses the charge against the applicant was established.

It is further stated that statement of shortage of MS Rod is based on physical verification of a team of RPF Official and a stock verifier as admitted by the applicant in para 3 to the OA.

8. That in reply to statements in paragraph 4.10 to 4.16 it is stated that the Inquiry Officer gave his report with reasoning and found that the charge against the applicant has been proved which the disciplinary authority has agreed to and imposed the penalty after considering the whole case record. It is also stated that the appellate authority has carefully considered the appeal of the applicant and after considering the complete case record

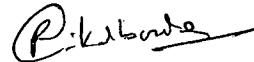
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Defendant  
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found that the penalty imposed upon by the disciplinary authority was just and proper. It is further stated that there was no deliberate delay on the part of the respondents to complete the disciplinary proceedings.

9. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

I,.....RAVI KALBANDE.....,working as ...PEVIV/ENG..., LUMDING..., N.F.Rly, ~~Maligaon~~, do hereby verify that, the statements made in the paragraphs 1 to 9 are true to my knowledge.



Guwahati

Signature

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