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4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 51/2003

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SECTION OFFICER (Judl.)

Sakita
15/11/17

(RULE - 4)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
.....

ORDER SHEET

Original Application No. 51/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (S) Nagendra Nath Das

- Vs. -

Respondent (s) H.O.I. Form

Advocate for the applicant (s) M. Chanda, G.N. Chakrabarti

Advocate for the respondent (s) Case S. Chandray.

Notes of the Registry	Date	Order of the Tribunal
<p>this application is in form but not in time Condonation Petition is filed / not filed Rs. 500/- paid IPO/B/ 7460549 Dated 17-3-03</p> <p><i>[Signature]</i> By Registrar</p> <p>Steps taken along with envelopes.</p> <p><i>[Signature]</i> 20/3/03</p> <p>Notice prepared and sent to the respondent No 1 to 5 by Regd. A/D. <i>[Signature]</i> 27/3</p> <p>DINo 5905594 dtd 28/3/03</p> <p>① Service report are still awaited.</p> <p><i>[Signature]</i> 6.5.03</p>	<p>21.3.2003</p> <p>mb</p> <p>7.5.2003</p>	<p>Heard Mr. M. Chanda, learned counsel for the applicant. The application is admitted. Call for the records. List on 22.4.2003 for orders.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Court did not set today. The case is adjourned to 7.5.2003. <i>[Signature]</i></p> <p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S. Biswas Member (A).</p> <p>On the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents four weeks time is allowed to file written statement. List on 6.6.2003 for written statement.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

No. written statement
has been filed.

30
5.6.03.

No. W/S has been
filed.

30
4.7.03.

18.8.03
W/S submitted
by the respondents.

Par

6.10.03

Rejoinder submitted
by the applicant in
reply to W/S.

Par

6.6.2003 Present : The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman.
The Hon'ble Mr. R.K. Upadhyay,
Member (A).

Put up again on 7.7.2003 to
enable the respondents to file written
statement. This order is passed on the
prayer of Mr. A. Deb Roy, learned Sr.C.G.
S.C. for the respondents.

amb37gumy

Member

Vice-Chairman

mb

7.7.2003 Mr.A.Deb Roy, learned Sr.C.G.S.C.
submitted that he is filing written sta-
tement. Accordingly four weeks time is
given to the respondents to file writte
statement.

List the case on 11.8.2003 for writt
statement.

amb37gumy
Vice-Chairman

bb

11.8.2003 On the prayer of Mr. A. Deb Roy,
learned Sr. C.G.S.C. for the respondents
further four weeks time is allowed to
file written statement. List on
17.9.2003 for orders.

amb37gumy
Vice-Chairman

mb

17.9.03 Written statement filed. Case is
ready for hearing. List on 7.11.03
for hearing.

In the meantime the applicant may
file rejoinder, if any.

ICV Pralhadam
Member

pg

17-11-03
Case is ready for
hearing.
la

7-11-03 no Bench today.
Adjourn to 18-11-03.

B70
on

18.11.2003 Present: The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman
The Hon'ble Shri S.K.Naik
Administrative Member.

Mr.G.N.Chakraborty, learned counsel for the applicant.

Mr.A.Deb Rpy, learned Sr. C.G.S.C. for the respondents.

List the case on 20.11.2003 for hearing.

J. Naik
Member

J.S.
Vice-Chairman

bb

20.11.2003

Heard both the learned counsel for the parties. The O.A. is dismissed. No order as to costs. Reasons to follow.

J. Naik
Member

J.S.
Vice-Chairman

nk m

*Remd 6/11/03
O.A. 51/2003
48- C.G.S.C.
Smt. Lakshmi
10.12.03
D. Deb Rpy
Central Board,
G.M.*

11.12.03

*Copy of the judgment
has been sent to the
D/Sec. for issuing
the fine to the
applicant by post.*

JS

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXXX~~ No. 1111 51 of 2003

DATE OF DECISION 20.11.2003

Shri Nagendra Nath Das

.....APPLICANT(S).

Shri M. Chanda and Shri G.N. Chakraborty and

.....ADVOCATE FOR THE
APPLICANT(S).

Shri S. Choudhury

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Shri A. Deb Roy, Sr. C.G.S.C.

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MRS LAKSHMI SWAMINATHAN, VICE-CHAIRMAN

THE HON'BLE SHRI S.K. NAIK, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble ~~Member~~ Vice-Chairman

js
21/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.51 of 2003

Date of decision: This the 20th day of November 2003

The Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman

The Hon'ble Shri S.K. Naik, Administrative Member

Shri Nagendra Nath Das
S/o Late Purna Kanta Das
Resident of Village- Garamur,
P.O.- Jorhat, District- Jorhat,
Assam.

.....Applicant

By Advocates Shri M. Chanda,
Shri G.N. Chakraborty and Shri S. Choudhury.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road, New Delhi.
3. The Commissioner,
Central Excise and Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
Morrellow Compound, Shillong.
4. The Appellate Authority
Central Board of Excise & Customs,
Government of India,
New Delhi.
5. The Deputy Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
New Delhi.

.....Respondents

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

.....

X

O R D E R

SMT LAKSHMI SWAMINATHAN (V.C.)

The applicant is aggrieved by the action of the respondents in issuing penalty order dated 23.5.2002, imposing on him penalty of 10% cut in the monthly pension otherwise admissible to him for a period of one year.

2. The brief relevant facts of the case are that the applicant while working as Administrative Officer with the respondents was chargesheeted by order dated 24.2.1992. Departmental proceeding under Rule 14 of CCS (CCA) Rules, 1965 was held. The chargesheet against the applicant was that while he was posted and functioning as Administrative Officer (A.O.), Jorhat, during the period from 15.1.1990 till the issuance of the chargesheet, he was alleged to have failed to maintain absolute integrity inasmuch as he has embezzled and misappropriated Government money to the tune of Rs.74,856/- from the cash of the divisional office, Jorhat. In the circumstances, the applicant was alleged to have exhibited lack of integrity, devotion to duty and acted in a manner, unbecoming of Government officials. In the statement of imputations of misconduct/ misbehaviour in support of the articles of charge, the respondents have stated that the applicant had directed one Shri L.C. Gogoi, Ad hoc LDC to prepare the bill of arrears of Special (Duty) Allowance (SDA) of retired Superintendents where another LDC was placed to prepare the bill. Shri Gogoi without considering the Service Books of retired Superintendents had, included the names of two Superintendents, one Shri J.C. Das who was transferred

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from Jorhat Division to Agartala Division on 12.6.1987 and the other Shri S. Dutta who was transferred from Jorhat Division to Silchar Division and both of them had since retired from service. It was alleged that the applicant had sanctioned the bill amounting to Rs.1,22,805/- prepared by Shri L.C. Gogoi and the cheque was also signed by him. It was also alleged that on 7.8.1991 the applicant had come over to the Headquarters at Shillong and submitted a written complaint against the Cashier without disclosing all the facts as he was fully knowing all the anomalies in the cash.

3. The applicant had submitted his written statement of defence denying all the charges. Shri G.N. Chakraborty, learned counsel for the applicant has submitted that a report of the Inquiry Officer had been given to the applicant to which he had also made a representation. Learned counsel has submitted that this is a very hard case where the applicant was chargesheeted and departmental enquiry proceedings were initiated in February 1992 but the respondents had taken an inordinately long time to complete the same. During the pendency of the enquiry proceedings the applicant had also superannuated from service with effect from 31.1.1996. He has submitted that even after retirement of the applicant, the respondents took several years to refer the matter to UPSC thereby, causing delay in disbursement of retiral benefits to the applicant because departmental proceedings for major penalty were pending against him since 1992. He has referred to the advice of the UPSC (Annexure VIII). He has in particular referred to observations of the UPSC in paragraphs 3 and 4 in which it has been stated that there

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has.....

: 3 :

have been some deficiencies in the submission of the original documents pertaining to some records. He has submitted that the UPSC advice is based on the documents made available by the department and had also observed that the applicant had been examined by the Inquiry Officer. In this connection it is relevant to note that the UPSC has stated, inter alia, ^{that is} "disciplinary proceedings were also initiated against the co-accused Shri Bora and Shri Gogoi who have been imposed major penalty of reduction by three stages in the time scale of pay for a period of one year with further directions that they will not earn increments during the period of reduction....." The UPSC concluded that the applicant was responsible to the extent that he signed the bill for the SDA without verification of the Service Books of the persons who were to be paid the said allowance. They have also stated that had the applicant been careful in passing the said bill, the irregularity would not have occurred in the first place but have observed that there appears to be no malafide intention on the part of the charged official. In its findings the Commission, after discussing all the aspects of the case, came to the conclusion that the charge has been proved against the applicant and ends of justice would be met if penalty of 10% cut in his monthly pension is imposed for a period one year. Thereafter, the impugned penalty order dated 23.5.2002 had been imposed on the applicant. Learned counsel for the applicant has submitted that in the circumstances of the case, the penalty is too harsh, particularly because the respondents took several years to complete the departmental proceedings during which time the applicant could not also get his retiral benefits.....

benefits. He has, therefore, prayed that the impugned penalty order may be quashed and set aside with consequential benefits.

4. Respondents in their reply ~~have submitted~~^{Y₂} or have controverted the above submissions. According to them, the action taken by them against the applicant in holding the departmental proceedings and finding him guilty of lack of devotion to duty have been fully proved. As the applicant had retired from service during the pendency of the disciplinary proceeding the same were continued under Rule 9 of CCS (Pension) Rules, 1972. They have stated that based on the available records and taking into account all relevant aspects of the case, the UPSC had considered that the charge was proved against the applicant which was of a grave nature and had recommended ~~that~~^{Y₂} a penalty of 10% cut in his monthly pension for a period of one year. Learned counsel for the respondents has stated that in the circumstances of the case, as the respondents have already themselves taken a lenient view of the matter, there is no ground to allow the O.A. and has prayed that the same may be dismissed.

5. We have also considered the submissions of the learned counsel for applicant in rejoinder.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. Learned counsel for applicant had repeatedly mentioned that although the departmental proceedings were initiated in the year 1992, the same had been unnecessarily and deliberately stretched for a number of years and even his retiral benefits had been delayed after the applicant retired on 31.1.1996. However, we note that

after.....

after the applicant retired from service, proceedings had been conducted under the provisions of Rule 9 of CCS (Pension) Rules, 1972. Although we do find that the departmental proceedings had been pending for a number of years, that by itself will not be a sufficient ground to set aside the impugned penalty order in the circumstances of the case. It is further noted that the applicant had been furnished a copy of the Inquiry Officer's report on which he had made ^{a n} representation and the applicant himself has not raised any grounds that the principles of natural justice or other procedural rules have been violated in this case. The UPSC in its advice to the department had pointed out certain shortcomings in the documents that were relied upon in the departmental proceedings. They have noted, inter alia, that the department had informed them that it was not possible to authenticate the documents in the absence of the original documents and the investigation was conducted in the matter by Director General of Vigilance, wherein ^{who has since expired B.} it was found that the PO was responsible for the loss of the documents. In the circumstances they had tendered their advice on the basis of available documents. They have noticed from the available documents that the applicant was responsible to the extent that he signed the bill for the SDA without verification of the service books of the persons who were to be paid the said allowance. They have noted ^{that B.} if the applicant had been more careful in passing the said bill the irregularity would not have occurred in the first place. Taking into account the entire facts of the case they had, therefore, recommended that the applicant should be given the penalty of 10% cut in his monthly pension for

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a period of one year. They have also noted that the Disciplinary Authority had agreed with the findings of the Inquiry Officer who had held the applicant responsible to the extent that he signed the bill for SDA without verification of the service books of the persons to be paid that allowance. In the circumstances of the case, we are unable to agree with the contentions of the learned counsel for applicant that the findings of either the Disciplinary Authority or the Inquiry Officer were not based on some evidence or the same is either perverse or arbitrary to justify any interference in the matter. It is settled law that in a departmental proceeding the Courts/ Tribunal is not to sit as ^{an Appellate Authority} to reappraise the evidence so as to come to its own conclusions. In the impugned penalty order dated 23.5.2002, the Disciplinary Authority has also given the reasons for its conclusions, namely, that the applicant was responsible to the extent that he signed the bill for the SDA without verification of the service books of the concerned persons to whom that allowance was to be paid. In the circumstances of the case, the acceptance by the competent authority of the advice given by the Commission which is stated to be just, fair and reasonable cannot also be faulted. It may also be observed that the penalty of 10% cut in the monthly pension otherwise admissible to the applicant for a period of one year cannot also be held to be disproportionate or excessive considering the nature of the charge ^{proved} against the applicant. The contention of the learned counsel for applicant that the charge against the applicant is not what has been held to be proved is also without any basis as the charge include allegations against.....

YSL

against the applicant that he lacked integrity, devotion to duty and acted in a manner unbecoming of a Government servant. This charge has been fully proved against the applicant in the aforesaid departmental proceeding after following the due procedure laid down under the rules. We have also considered the other submissions made by the learned counsel for applicant but do not find any merit in the same.

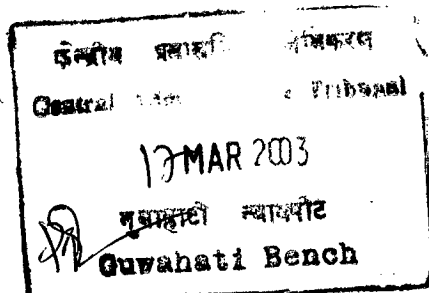
8. In the result, for the reasons given above the O.A. fails and is dismissed. No order as to costs.

S. K. Naik

(S. K. NAIK)
ADMINISTRATIVE MEMBER

Lakshmi Swaminathan

(LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

GUWAHATI

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

O.A. NO. 51 /2003

Shri Nagendra Nath Das

-Vs-

Union of India & Ors.

- 15.7.91 - The applicant Shri N.N.Das signed one Bill in his official capacity as Administrative Officer towards payment of SDA arrear to some retired Supdts. of the Central Excise & Customs Deptt.; which also included the SDA arrear of one Shri J.C. Das and Shri S.Dutta, Supdts. alongwith that of others and the Bill was prepared by Shri L.C. Gogoi, LDC and disbursement made by Shri A. C. Bora, Cashier as per existing practice.
- 31.7.91 - The Cashier being busy in disbursement of pay, handed over the required amount of money to the LDC, Shri Gogoi for making payment of arrear SDA to the said Shri J.C. Das and S.Dutta amounting to Rs. 37,428/- only, which Shri Gogoi did.
- 02.8.91 - The Cashier doubted the discharge voucher submitted by the LDC which bore the signature of the Payees Shri Das and Shri² Dutta and the Cashier reported the matter to the applicant.

contd...p/2

Filed by the
applicant through
advocate Sri
Chakraborty

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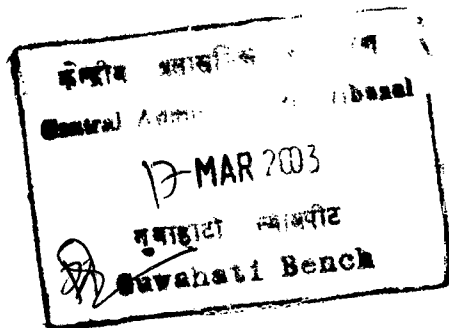
The applicant smelt some fraud and instructed the Cashier to deposit the amount to SBI from his own source forthwith.

- 07.8.91 - The Cashier deposited the amount of Rs.37,428/- to SBI from the official cash instead of from his own sources, thereby making a shortage of Rs. 37,428/- + Rs. 37,428/- in the cash.
- 24.2.92 - Applicant charge sheeted under Rule 14 of the CCS (CCA) Rules , 1965 on the alleged charges of negligence, lack of integrity, devotion to duty and embazzlement of cash to the tune of Rs.74,856/-.
- 15.5.92 - Applicant submitted his written statement of defence denying all the charges and inquiry started thereafter.
- 04.12.92 - First hearing was held and thereafter the subsequent inquiries were held on different dates till 1995, as per the procedure laid down under Rule 14 of the CCS (CCA) Rules, 1965.
- 31.1.96 - Applicant retired on attaining the age of superannuation.
- 27.5.98 - Report of Inquiry Officer supplied to the applicant whereby the charges were held to have been proved.
- 9.11.98 - After having been granted the extension of time limit, the applicant submitted his representation on 9.11.98, rebutting the findings of the I.O.

- 9.1.2002 - Applicant submitted representation praying for settlement of his retiral benefits which were held up on the plea of disciplinary proceeding.
- 23.5.2002 - Letter issued by the Respondents imposing 10%
&
28.6.2002 cut in the monthly pension of the applicant for one year by way of penalty.
- 30.8.2002 - Applicant preferred an appeal to the appellate authority against the order of penalty, describing the facts and circumstances of the case.
- 24.10.02 - Respondents issued letter rejecting the appeal and holding that the penalty imposed is in order, on the ground that the appeal does not lie against the said order of penalty since it was passed by the President of India under Rule 9 of CCS (Pension) Rules, 1972.

PRAYER

- 8.1. - That the Impugned Order of Penalty issued under No.F. No.C-14012/12/97-AD.V/2051-57 dated 23.05.02 and the inquiry proceedings be set aside and quashed.
- 8.2. - That the Respondents be directed to pay the regular Pensionary benefit, gratuity and commutation value etc. to the applicant immediately.
- 8.3. - Costs of the application.
- 8.4. - Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.



Filed by the
applicant through
advocate Son
G. W. Chakraborty

DISTRICT : JORHAT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH

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

Title of the case : O.A. No. 51 /2003

Shri Nagendra Nath Das : Applicant

-Versus -

Union of India & Others : Respondents

I N D E X

<u>Sl.No.</u>	<u>Annexures</u>	<u>Particulars</u>	<u>Page Nos.</u>
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3	I	Copy of Order dtd.31.1.96	17
4	II	Copy of Memorandum dated 24.2.92	18-22
5	III	Copy of Written Statement dated 15.5.92	23-24
6	IV	Letter dtd. 27-5-98	25-33
7	V	Copy of Application dtd. 30.10.98	34
8	VI	Representation dated 9.11.98	35-38
9	VII	Representation dated 9.1.2002	39-41
10	VIII Series	Copy of impugned order dtd.23.5.2002 and the forwarding letter dated 28.6.02	42-48
11	IX	Copy of Representation dated 30.8.02	49-50
12	X	Letter of rejection dated 24.10.02	51-52

Filed on : 3.3.2003

Filed by,

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:::: GUWAHATI

(An Application Under Section 19 of the
Administrative Tribunals Act, 1985)

Original Application No. _____/2003

BETWEEN

Shri Nagendra Nath Das,
S/O Late Purna Kanta Das
Resident of Vill- Garamur
P.O. : Jorhat, District : Jorhat, Assam.

... Applicant

- AND -

1) The Union of India

Represented by the Secretary to the Government
of India, Ministry of Finance, Department of
Revenue, New Delhi.

2) The Chairman,

Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

3) The Commissioner,

Central Excise and Customs,
Government of India,
Ministry of Finance,
Department of Revenue
Morrellow Compound, Shillong.

contd...p/2

Nagendra Nath Das

(2)

4) The Appellate Authority

Central Board of Excise & Customs,
Government of India, New Delhi.

5) The Deputy Secretary to the Govt. of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise & Customs,
New Delhi..... Respondents.DETAILS OF THE APPLICATION :1. Particulars of Order against which this
application is made :

This application is made against the order bearing No.F. No. C-14012/12/97-AD.V./2051-57 dated the 23rd May 2002 of the Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, communicated to the applicant by the Commissioner of Central Excise & Customs, Shillong under his No.C.No. II(10)A/CIU-VIG/3/1991(PART)/458-61 dated 28.6.02 whereby a penalty in the form of 10% cut in the monthly Pension for a period of one year has been imposed upon the applicant following a Disciplinary proceedings conducted against the applicant after his retirement on superannuation.

contd...p/3

Nagendra Nath Das

2. Jurisdiction of the Tribunal

The Applicant declares that the subject matter of this application is well within jurisdiction of this Hon'ble Tribunal.

3. Limitation

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

4. Facts of the Case

That this applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2. That the Applicant had been serving as the Administrative Officer under the Department of Central Excise and Customs and was posted in the Central Excise Division, Jorhat wherefrom he retired as Administrative Officer on attaining the age of superannuation on 31.01.1996 and released from his services by the Respondent Department w.e.f. 31-01-96 vide Order No.C.No.II(25)1/ET/95-264-70 dated 31.1.96.

(Copy of order dated 31.1.96 is annexed herewith as Annexure- I).

4.3. That while serving as Administrative Officer as stated above in Divisional Office, Jorhat during the

contd..p/4

Nagendra Nath Das

(4)

period from 15.1.90, some discrepancies could be noticed on 2.8.91 in connection with the payment of arrear SDA of one Shri J.C. Das and Shri S. Dutta, Retd. Superintendents amounting to Rs. 37,428/- which was disbursed by the Cashier and the LDC concerned in a wrong and negligent manner. The payment was made on 31.7.91 for which the relevant Bill was signed by the Applicant on 15.7.91 as per practice.

4.4. That thereafter, a departmental proceeding was initiated against the applicant vide Memorandum No. C. No. II (10)A/CIU-VIG/3/91/152-53 dated 24.2.92 whereby an inquiry was proposed to be held against the applicant under Rule-14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 on the alleged ground that the applicant as a signatory of the Bill had failed to maintain absolute integrity inasmuch as he embezzled and misappropriated Govt. money to the tune of Rs. 74,856/- from the cash of the Divisional Office, Jorhat and that by the said acts, the applicant exhibited lack of integrity, devotion to duty and acted in a manner, unbecoming of a Govt. Servant and thereby contravened the provisions of Rule 3(1)(i)(ii) & (iii) of the C.C.S. (Conduct) Rules, 1964.

By the said Memorandum dated 24.2.92, the applicant was further asked to submit his written statement of his defence within 10 days of the receipt of the memorandum

(Copy of the memorandum dated 24.2.92 is annexed herewith as Annexure-III).

Nagendra Nath Das
contd...p/5

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(5)

4.5. That the applicant was however granted extension of time upto 15.5.1992 for submission of his written statement as prayed by the applicant. Accordingly the applicant submitted his written statement of defence on 15.5.92 thereby explaining the detailed position and denying all the charges labelled against him and further prayed to be heard in person.

(Copy of Written Statement dated 15.5.92 is annexed herewith as Annexure-III).

4.6. That thereafter the formal inquiry was started in which the applicant participated and the first hearing was held on 4th December '92 as evident from the inquiry report. The inquiry was conducted over a period of few years and stretched even after the applicant retired from service on 31.1.1996 on attaining the age of superannuation. The applicant participated and cooperated in the inquiry and pleaded not guilty since he signed the Bill and cheque on good faith only since the same were prepared by the authorised subordinate staff i.e. LDC and Cashier who are expected to exercise due care and diligence. Eventually on conclusion of inquiry, a copy of the inquiry report was served upon the applicant after a lapse of about six years which was served vide letter No.C.No.II (10)A/CIU-VIG/3/91(Part)/315 dated 27.5.98 issued by the Deputy Commissioner (P & V), Shillong, calling upon the applicant to submit his submission on the inquiry report within 15 days from the date of receipt of the letter.

(Copy of letter dated 27.5.98 is annexed hereto as Annexure-IV.)

contd...p/6
Nagendra Nath Das.

(6)

4.7. That the applicant received the aforesaid letter belatedly and immediately prayed for extension of time limit for 15 days vide his application dated 30.10.98. Eventually he submitted his written representation on the inquiry report on 9th November , 1998. The applicant in his representation dated 9.11.98 rebutted the findings of the Inquiry Officer and pleaded him not guilty and further prayed to be exonerated from the false and unfounded charges labelled against him.

(Copy of the application dated 30.10.98 and Representation dated 9.11.98 are annexed herewith as Annexure- V and VI respectively).

4.8. That whereas the applicant retired from service on 31.1.96, his terminal benefits have not been settled by the Respondents on the plea of pendency of the Disciplinary proceeding aforesaid. The applicant has been receiving a provisional pension only and his claims in respect of regular pensionary benefit, gratuity, commutation value etc. are yet to be settled. The applicant made all efforts to get his terminal benefits but neither he has been paid the amount due, nor the fate of the Disciplinary proceeding has been known to him although the same was initiated as back as 1992(more than 10 years) and although it is more than 6 years by now since the applicant retired from service. The applicant submitted representation on 9.1.2002 to the Respondent No.3 praying for settlement of his claims but to no avail.

(Copy of representation dated 9.1.2002 is annexed herewith as Annexure-VII).

contd. p/7

Nagendra Nath Das

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4.9. That after a lapse of 10 years of the initiation of the disciplinary proceeding against the applicant, an impugned order has now been passed by the Respondent No.5 issued under No.F. No. C-14012/12/97-AD.V/2051-57 dated 23.5.2002 imposing a 10% cut in the monthly pension of the applicant for a period of one year by way of penalty which has been communicated to the applicant by Respondent No.3 vide his letter No. C.No. II(10)A/CIU-VIG/3/1991 (PART)/458-61 dated 28.6.2002.

(Copy of the impugned order dtd. 23.5.2002 and the forearding letter dtd. 28.6.2002 are annexed herewith as Annexure- VIII Series).

4.10. That thereafter, the applicant made an appeal to the Appellate Authority against the order of penalty dated 23.5.02 stating the facts and prayed to be exonerated from the penalty imposed on him for no fault of his. The appeal was preferred by the applicant vide his representation dated 30.8.2002. Unfortunately the said appeal was rejected by the appellate authority on the ground that since the order of penalty was passed in the name of the President of India, the appeal cannot be entertained since no appeal lies against the order of the President as per Rule 22 of the CCS(CCA) Rules, 1965 and the rejection was communicated to the applicant vide letter No.C. No.II (10)A/CIU-VIG/3/1991 (PART) /783 dated 24.10.02 issued by the Respondents.

(Copy of representation dated 30.8.02 and the letter of rejection dated 24.10.02 are annexed herewith as Annexure- IX & X respectively).

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4.11. That the Respondents have stated in the order of penalty dated 23.5.02 under Para-3 that the matter was referred to the President by the Original Disciplinary Authority for final decision under Rule 9 of CCS (Pension) Rules, 1972 and again stated under Para 5 of the said letter that the case was referred to UPSC for their statutory advice, on the basis of which the penalty has been imposed. It is relevant to mention here that the applicant was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 only and inquiry was conducted under the said Rule. There is nothing in record to show that the inquiry was conducted under Rule 9 of the CCS (Pension) Rules 1972 following the retirement of the applicant on 31.1.95 and whether the order of penalty was passed by the President as required under the relevant rules.

The applicant begs to state that the Disciplinary proceeding was initiated in the year 1992 and the inquiry was conducted in 1995 but the case was not settled at that time and was unnecessarily dragged even after the retirement of the applicant on 31.1.96 which the Respondents did most deliberately for creating further complicity in the case to their advantage and even thereafter the Respondents took long years to refer the case to the UPSC etc. acting in a very casual manner throughout.

4.12. That as evident from para 5 of the order of Penalty dated 23.5.02, the penalty aforesaid has been imposed on the applicant on the basis of the advice of the UPSC and the concerned letter of the UPSC has also

contd...p/9

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been enclosed with the order dated 23.5.02 (appended to Annexure-VIII series). The UPSC, in its enclosed letter has made the following important observations, in its para as under :-

Para 3 : While forwarding the case to the UPSC, the relevant documents which were relied upon during the Inquiry were not forwarded to the UPSC which include some vital records of inquiry.

Para 9 : No malafide intention on the part of charged official (i.e. the applicant) could be observed/established.

Suprisingly, even inspite of the above deficiencies, the UPSC tendered its advice for the penalty most mechanically, without any application of mind whatsoever and without conducting further inquiry in the case which is not in conformity with the principles of justice, equity and good conscience.

4.13. That the applicant begs to state that the whole inquiry was conducted in a biased and unfair way and in violation of the Procedure prescribed under the CCS(CCA) Rules, 1965. The Inquiry Officer relied upon the evidences adduced by the LDC and the Cashier, who were charged officials in the case and who furnished some concocted stories in their defence before the Inquiry Officer. The Inquiry Officer's report was not based on facts. The original Disciplinary Authority has also failed to apply his mind and acted most

contd. p/10
Nagendra Nath Das

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mechanically which is clearly evident from the orders.

It is relevant to mention here that under Para-4 of the order of Penalty dated 23.5.02 (Annexure-VIII Series) it has been stated that the applicant asked the Cashier to deposit the fraud amount in the Bank from the Govt. cash instead of his own source, on the basis of which the applicant has been penalised. But the fact is otherwise, which has been recorded by the UPSC under Para 6 of its letter wherein it has been stated that when the applicant detected the fraud, he immediately asked the Cashier to deposit the fraud amount of Rs. 37,428/- into SBI from his own source but the Cashier deposited the amount in the bank from the Govt. Cash instead of his own source. The findings of the I.O./D.A. and the findings of the UPSC are therefore contradictory. As such the whole disciplinary proceeding is vitiated by irregularity and infirmities, which deserves to be set aside by the Hon'ble Tribunal.

4.14 That it is apparent from the impugned orders that the penalty has been imposed on the applicant on the basis of the advice tendered by the UPSC. It is a settled position of law that when the UPSC advises imposition of a penalty, then such advice be construed as an additional material before the disciplinary authority on which the charged officer had not been given any opportunity to put his case forward. This aspect has been dealt in Chiranji Lal-^V Vs - Union of India & Others by the Full Bench of CAT in OA No. 1744 of 1997, decided on 22.4.99 (Page 57, Para 17 of J.S. Kalra's "Administrative Tribunal Full Bench Judgments 1997-2001 ").

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4.15 That the applicant most humbly begs to state that the penalty has been imposed on the applicant after a lapse of 10 years from the date of initiation of the Disciplinary proceeding and after 6 years of the retirement of the applicant, thereby causing huge financial loss to the applicant due to non-settlement of his regular pensionary benefit, gratuity, commutation value etc. which will be much higher than the penalty of 10% cut from the pension amount. As such the applicant has already suffered huge pecuniary losses over the last 6 years after his retirement for no fault of his, and inspite of his unblemished service for long years.

4.16. That your applicant begs to state that the order of penalty, if implemented, will cause immense financial hardships to the applicant in addition to that which he has already suffered. As such finding no other alternative the applicant is approaching this Hon'ble Tribunal for justice and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant and quash the impugned order of Penalty dated 23.5.2002 directing the Respondents to pay to the applicant his retiral benefits viz., regular pensionary benefit, gratuity, commutation value forthwith.

4.17. That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions

5.1. For that the Disciplinary Proceeding was kept pending for long 10 years for no valid reasons causing immense hardships to the applicant, both financially and

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mentally.

5.2. For that the penalty has been imposed after 6 years of the retirement of the applicant which itself is a penalty for a retired person.

5.3. For that the penalty has been imposed in violation of the procedure laid down under the relevant rules and on the basis of unfounded allegations and no malafide on the part of the applicant could be ~~xxx~~ established.

5.4. For that the inquiry was citiated by irregularities and infirmities and the penalty hasbeen imposed most mechanically without any application of mind.

5.5. For that the charge sheet was issued under Rule 14 of the CCS (CCA) Rules, 1965 and inquiry conducted accordingly whereas there is no provision of such penalty as ordered under the said Rules.

5.6. For that the proceedings of the inquiry aforesaid was not converted in terms of Rule 9 of CCS (Pension) Rules, 1972, following retirement of the applicant.

5.7. For that the UPSC tendered its advice of Penalty without having the full records of inquiry and without conducting further inquiry and such casual advice formed the basis of the order of penalty.

5.8. For that the applicant did not have any blemish or scar in his long tenure of service.

contd...p/13

Nagendra Nath Das

5.9. For that the applicant has already been made to suffer huge pecuniary losses over the last 6 years due to non-settlement of his terminal benefits which will be much higher than the penalty of 10% cut from the pension amount, now ordered for.

6. Details of remedies exhausted

That the applicant states that he has no other alternative and efficacious remedy than to file this application. Representations, Appeals made by the Applicant failed to get justice from the Respondents.

7. Matters not previously filed or pending with any other Court

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordships be pleased to issue notice to the Respondents to show cause as to why the relief sought for by the applicant shall not be

contd...p/14

Nagendra Nath Das

granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :-

- 8.1. That the impugned order of Penalty issued under No. F. No. C-14012/12/97-AD.V/2051-57 dated 23.05.02 and the inquiry proceedings be set aside and quashed.
- 8.2. That the Respondents be directed to pay the regular pensionary benefit, gratuity and commutation value etc. to the applicant immediately.
- 8.3. Costs of the application.
- 8.4. Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.
9. Interim order prayed for :

During pendency of this application, the applicant prays that the Hon'ble Tribunal be pleased to make an observation that the pendency of this application shall not be a bar for the settlement of the claims of the applicant.

contd....p/15

Nagendra Nath Das

10. That this application is filed through Advocate.

11. Particulars of the IPO

- i) IPO No. : 7G 60 58 32 .
- ii) Date of Issue : 25.2.03 .
- iii) Issued from : G.P.O., Guwahati.
- iv) Payable at : G.P.O. ,Guwahati.

12. List of enclosures

As stated in the Index

Verification

Nagendra Nath Das

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

I, Shri Nagendra Nath Das, Son of Late Purna Kanta Das, aged about 64 years, resident of Village : Garamur, P.O. & District : Jorhat, Assam do hereby verify that the statements made in paragraphs 1 to 4 and 5 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 17th day of March 2003.

Nagendra Nath Das

Signature

ORDER

ANNEXURE-I

Dated 30 Jan 96

In pursuance of the letter C No. 1 (25) /ETR/70/
68-75(A) dated 03.01.96 received from
Additional Commissioner (PEV) C.D. Ex. Billing
and Sn. Magistrate Nath, A.O. C. Ex. Div.
Jorhat is hereby ordered to be relieved
of his duties in the Customs & Central Ex.
Department with effect from 31.01.96 (A/N),
on attaining age of superannuation.

Sd/
A. C.
C. Ex. Jorhat

C No. 1 (25) /ET/75/26/90

Dated 31.1.96

- Copy forwarded for information & necessary action to-
- 1. Additional Commissioner (PEV) C.D. Ex. Billing
 - 2. Sn. N. N. Das, A.O. C. Ex. Jorhat District Office
 - 3. He is requested to hand over the charge to Sn. M. C. Hazarika, Supdt. Jorhat Range
 - 4. Sn. M. C. Hazarika, Supdt. Jorhat Range. He is requested to take over the charge from Sn. N. N. Das in addition to his own charge.
 - 5. He is in charge of cash/bill/Conf/ET/ST/ST/ST branch of Central Ex. Jorhat.

Attested
By *[Signature]*
Superintendent (Tech) Jorhat
Central Excise
Jorhat Division

[Signature]
30.01.96
A. C.
C. Ex.
Jorhat

Attested
for
Signature

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CONFIDENTIAL

ANNEXURE-II

OFFICE OF THE COLLECTOR OF CUSTOMS AND CENTRAL EXCISE

C.O. II (C) A/CW/IG/3/91/152-153
Dated Shillong, the 24/2/92

The Under signed proposes to hold an inquiry against Shri N.N. D... A.O. under Rule 14 of the Central Civil services (Classification, Control & Appeal) Rules 1865, The substance of the imputation of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure I). A Statement of the imputations of mis-conduct or mis-behaviour in support of each article of charge is enclosed (Annexure II), A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

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

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

4. Shri N.N. D... A.O. is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuse to comply with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules 1965 or the orders/directions issued in pursuance of the said Rule the inquiring authority may hold the inquiry against him exparte.

BL/-

Contd....P/2.....

Attested for Shri Dero...

19.

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5. Attention of Shri N.N. Das, A.O. is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri N.N. Das, A.O. 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 C.C.S (Conduct) Rules, 1964.

The receipt of this memorandum may be acknowledged.

✓ L. A. V. L. A.
21.2.92

(V. L. A. V. L. A.)

COLLECTOR

CUSTOMS & CENTRAL EXCISE : SHILLONG.

BL/-

To

Shri N.N. Das, Administrative Officer,
Customs & Central Excise,
Jorhat Division,
Jorhat.

ANNEXURE - I.

Statement of articles of charge framed against Shri N.N. Das, Administrative officer, Customs & Central Excise, Jorhat Divn.

Articles of Charge.

That the said Shri N.N. Das, while posted and functioning as A.O. in Divisional office, Jorhat during the period from 15.1.90 till date, is alleged to have failed to maintain absolute integrity in as much as he embezzled and misappropriated Govt. money to the tune of Rs.74,856/- from the cash of the divisional office, Jorhat.

By the above acts, the said Shri N.N. Das exhibited lack of integrity, devotion to duty and acted in a manner, unbecomingly of a Govt. Servant and thereby contravened the provisions of Rules 3(1)(i)(ii) & (iii) of the C.C.S(Conduct) Rules, 1964.

Annexure - II.

Statement of imputations of mis-conduct or misbehaviour in support of the article of charge framed against Shri N.N Das, A.O. Customs & Central Excise, Jorhat.

1. That the said Shri N.N. Das while posted and functioning as A.O. in Divisional office, Jorhat during the period from 15.1.90 till date misappropriated Govt. money to the tune of Rs.37,428/- + Rs.37,428/- = Rs.74,856/- from the cash of Jorhat Divisional office.

That the said Sri N.N. Das directed Sri L.C. Gogoi, Adhoc LDC to prepare the bill of arrear SDA of retired Supdts. where Sri Biplab Ghose, LDC was supposed to prepared the bill. Sri Gogoi did not consult the Service Books of the retired Supdts. and included the name of two Supdts. one Sri J.C. Das who was transferred from Jorhat Division to Alartala Div. on 12.6.87 and the other Sri S. Dutta transferred from Jorhat Div. to Silchar Division. On 2.1.87 both of them had since retired from their respective places of posting.

That the said Sri N.N. Das, sanctioned the Bill No.173/GO/SDA/91 dated 15.7.91 amounting to Rs.1,22,805/- prepared by Sri L.C. Gogoi and the cheque was also signed by him, Shri Das directed Shri Gogoi to take money from the Cashier for disbursement. On 31.7.91, being the pay-day and Sri A.C. Bora requested the Cashier to hand over the money to him in respect of three retired Supdts. S/Shri J.N. Hazarika, J.C. Das,

Cont/d...P/2.....

^ Cashier being busy with payments, Sri L.C. Gogoi -

and S. Dutta for disbursement. The Cashier, Sri A.C. Bora, handed over Rs.51,059.00 to Sri Gogoi for disbursement to the above mentioned officers. After a while, Sri Gogoi intimated Sri Bora, Cashier that Rs.37,428/- was paid to Sri J.C. Das and S. Dutta and returned the balance amount to cashier which was meant for Sri J.N. Hazarika.

That on 2.8.91 while going through the bill by the cashier, Sri A.C. Bora, a doubt arose in his mind regarding the genuineness of the signatures of S/Shri J.C. Das and S. Dutta Retd. Supdts. Then and there the cashier reported the matter to the A.O., Sri N.N. Das. Sri Bora also enquired the fact whether Sri J.C. Das & S. Dutta came over to take the money. But none of the officers present has seen them to take payment. Sri L.C. Gogoi was absent on that day. Afterwards, Sri N.N. Das, A.O., instructed Sri A.C. Bora Cashier to deposit an amount of Rs.37,428/- from the cash to S.B.I.. The cashier deposited the said amount in SBI, under Ch. No. 36 dated 7.8.91 from the cash in hand. This resulted a shortage of Rs.37,428/- in cash of Jorhat Division.

That on 7.8.91 the said Shri N.N. Das came over to Hqr. office Shillong and submitted a written complaint against Sri A.C. Bora, cashier where he did not disclose the actual fact knowing fully well all the anomalies in cash.

Whereas, the Asstt. Collector, Jorhat, on return from leave, verified the Bill No.173/CO/SDA/91 dated 15.7.91 with the Bill No. 340/CO/Pay/86 dated 26.6.86 and found that the signatures of S/Shri J.C. Das and S. Dutta do not tally. In this connection, A.C., Jorhat called for an explanation from Sri N.N. Das under C.No.41/CON/Acj/91/186 dated 22.8.91 and Sri Das, in his reply dated 28.8.91 admitted the fact.

In view of the above documentary evidence, it appears that Sri N.N. Das committed an offence of gross misdemeanour displaying lack of integrity, misuse of official power with a dishonest motive.

Thus by the above act Sri N.N. Das, A.O., exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened provision of Rule 3 (1)(i)(ii) & (iii) of the C.C.S.(Conduct) Rules 1964.

Contd..P/3....

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- 3 -

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Annexure - III.

List of documents by which the article of charge framed against Shri N.N. Das, A.O., Customs and Central Excise, Jorhat are proposed to be sustained.

1. Bill No. 173/GO/SDA/91 dated 15.7.91.
2. Service Books of S/Shri J.C. Das & Sukhamoy Dutta, Retd. Superintendents.
3. Cash Book of Jorhat Divisional office.
4. C.No.41/CON/Acj/91/186 dated 22.8.91
5. Representation dated 28.8.91 of Shri N.N. Das A.O..
6. Written Complaint dated 7.8.91 of Sri N.N. Das against Sri A.C. Bora cashier.
7. C.No.41/CON/Acj/91/197 dated 13.9.91

Annexure - IV.

List of witnesses by whom the article of the charge framed against Shri N.N. Das A.O., Customs & Central Excise, Jorhat are proposed to be sustained.

1. Shri J.C. Das, Retd. Supdt.
 2. Shri Sukhamoy Dutta Retd. Supdt.
 3. Shri L. Gogoi, adhoc LDC.
 4. Shri A. Bora (Cashier) T.A.
-
- Gk

चीमा नहीं NOT INSURED

क्रमांक 2369

Amount of Stamp affixed Rs. 5/-
 एक रजिस्ट्री प्राप्त कि...
 Received a Registered...
 पत्रिका के का नाम...
 Addressed to...

Collector
 Signature of Receiving Office

ANNEXURE III

CONFIDENTIAL

The Collector (By Name),
 Customs & Central Excise,
 Shillong.

Dated: 15/5/92

Subject:- Written statement of defence against
 the charges framed/submission of.

Sir,

With reference to your Memorandum C.No.II(10)A/
 CIU/IG/3/91/152-153 dated Shillong 24.2.92, I have the
 honour to submit the following reply/explanation in
 support of my defence against the charges framed therein.

That sir, the office staffs including the Lower
 Division Assistant Sri L.C. Gagei was generally and speci-
 ally instructed to consult the service book of each and
 every retired officer while preparing their arrears bills
 or/and special duty allowance bills. Therefore it was the
 duty of Sri L.C. Gagei to consult the service book of Sri
 J.C. Das and Sri S.M. Dutta, Superintendents. Sri Gagei
 after the preparing the bill of Sri J.C. Das and Sri S.M.
 Dutta and of some other officers placed the said bills
 before me for my signature. The said bill No.173/GO/SDA/91
 dtd.15.7.91 contained the names of the following officers
 besides Sri J.C. Das and Sri S.M. Dutta Superintendents,
 1) Sri H. Surendra Singh, 2) Sri J.N. Hazarika, 3) Sri U.N.
 Bora, 4) Late Hamakanta Das, 5) Sri S.R. Roy and 6) Sri N.C.
 Das. On asking Sri Gagei informed me that he prepared the
 bill after proper verification with respective documents and
 as such I signed the bill on good faith in due course of my
 official business, It is not possible to verify each and
 every item of a bill and for such verification we have to
 depend on the statement of our subordinate which suppose
 to act honestly and faithfully and this can never be termed
 as negligence of duty.

*Noted
 Sir
 Bora*

Regarding the disbursement of Rs.51,059.00 by Sri
 A.C. Bora, Cashier to Sri Gagei I did not have any knowledge
 and/or information whatsoever. I want to make it absolutely
 clear that I never asked the Cashier to handover amount to
 Sri Gagei for disbursement. Under the rules and instructions
 it is the duty of the Cashier to handover the amount personally
 to such retired persons and to obtain valid discharged thereof
 personally from such officer. It is not clear why and under

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(2)

what circumstances the amount payable to Sri J.C. Das and Sri S.M. Dutta have to be handed over to Sri Gagai for payment by the cashier.

Subsequently the matter came to my knowledge un-officially on 5.8.91 when a Preventive Officer reported the matter to me. On enquiry I found that the Cashier committed gross irregularity in handing over the cash to Sri Gagai for disbursement. Therefore I immediately asked the Cashier to deposit the said sum of Rs.37428/- into S.B.I. from his own source so that there may not be any financial loss to the Government but surprisingly enough he deposited the money in S.B.I., Jorhat from departmental Cash instead of his own source as directed.

In this connection I beg to state that for reasons best known to himself the cashier did not place the Cash Book and other related books since 31.7.91 to 5.8.91 for my verification and signature inspite of repeated demands. Though under the rules the cash book and other related papers are to be placed before me on the same day after any cash transaction. Only on 6.8.91 he handed over the duplicate key of the safe. In this connection my letter dated 7.8.91 address to the Additional Collector (P.&V), Shillong may be perused. A copy of the said letter is enclosed herewith for ready reference.

Therefore under the facts and circumstances above I did not commit any act of misdemeanor displaying lack of integrity or misuse of official power.

I have served the department faithfully and sincerely for last 32 years without any blame whatsoever in my service career and as such I pray to your honour to consider my case leniently, accept my explanation and drop the proceeding accordingly.

I desire that I should be heard in person to explain the matter more fully.

Encls:- 1 (one)

Yours faithfully,

N.N. Das
(N.N. DAS)
Administrative Officer,
Customs & Central Excise, Jorhat.

CUSTOMS AND CENTRAL EXCISE::SHILLONG.ANNEXURE - IV

C.NO.II(10)A/CIU-VIG/3/91(Part)/315

Dated: 27.5.98

To

Shri N.N.Das,
 Administrative Officer (Retd.),
 Garamurgaon, Engineering College Road,
 Near Green Park,
 P.O.Jorhat, Dist.Jorhat, (Assam)

Subject:-Disciplinary proceedings against Shri
 N.N.Das, Administrative Officer (Retd.)-
 regarding.

Enclosed, please find herewith a copy of the I.O's
 report in respect of your case. You are requested to submit
 your representation or submission on the I.O's report to
 the undersigned within 15 (fifteen) days from the date of
 receipt of this letter.

Please acknowledge receipt.

Encls:-As above.

(B. THAMAR),
 Deputy Commissioner (P&V),
Customs and Central Excise: Shillong

S. Kharbani,
 Pl. ascertain the
 address - put up
 19/5/98

5/92
 19.8.98

Disputed
 by
 Adversely

156 30
250
(157)
(129) 43

INQUIRY REPORT IN THE CASE OF SHRI N.H. DAS
ADMINISTRATIVE OFFICER, JORHAT

Shri N.H. Das, Administrative Officer, Jorhat charged with abbasement and mis-appropriation of Government money to the tune of Rs. 74,856/- from the cash of the Divisional Office. It is therefore, alleged that he had failed to maintain absolute integrity, devotion to duty and acted in a manner un-becoming of a Govt. Servant and thereby contravened the provisions of Rule 3(1), (1), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

First hearing was taken on 4th Dec '92 and was attended by Shri A.O. Borah, Charged Official and Shri L.O. Gogoi, Charged Official. Shri N.N. Das, Charged Official was not present during the preliminary hearing. The other 2 (two) charged officials who were present inspected the documents Sl.No. 1 to 18 of the list enclosed alongwith order No. 32/CIU-VIG/92 dated 10-8-92.

During the hearing held on 26-3-93 at 11.00 hours in the chamber of Deputy Collector (Audit), Customs and Central Excise, Shillong the following officers attended:

1. Shri S.T. Sunge, Presenting Officer,
2. Shri N.N. Das, Charged Official
3. Shri A.O. Borah, Charged Official.
4. Shri L.O. Gogoi, Charged Official
5. Shri N.N. Borah, Defence Counsel of Shri A.C. Borah.

During the hearing the Defence Assistant to Shri A.C. Borah requested to the Presenting Officer to examine the witnesses.

Shri N.N. Das, the 2nd witness was examined by the Presenting Officer. Shri N.N. Das was asked why he did not direct Shri B. Ghosh, LDC, Bill Clerk to prepare the Bill. Shri N.N. Das replied that he first directed Mr. Ghosh to prepare the bill but as he was a new man and did not know the particulars of the officers he requested Administrative Officer to direct Shri Gogoi to prepare the Bill.

The Presenting Officer asked whether the witness obtained approval of higher authority before sanctioning or preparing the bill. The witness replied as he is the drawing and disbursing officer in case of payment of pay and allowances it was not necessary to obtain prior approval of Assistant Collector.

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Defence Counsel asked the witness Shri N.H. Das whether he checked the names included in the Bill before signing it. He replied he partially checked the Bill and signed in good faith but did not think that names of somebody else not working in the Division were included. About the undertakings to be taken from the officers included in the Bill the Administrative Officer replied that these undertakings were not put up to him for his approval. He also did not pursue it later on. Presenting Officer next asked the witness to who the money was paid as he had stated in his statement that the money was paid wrongly. His reply was that the cashier Shri A.C. Borah was solely responsible for the wrong payment. The Defence Counsel asked whether the Cashier can cope with the disbursement work alone or some one else in the Branch is also engaged for payment of pay and allowances on pay day only. His reply is that some other officers from other Branches are also assisting the cashier in disbursing the pay. 31-7-91 was a pay day so payment of the amount by any person except the cashier was a matter of regular practice in the Division. Regarding refund of the amount to the Department the 1st witness Shri L.C. Gogoi stated he was forced to write the letter dated 27-5-92 by the Assistant Collector, Administrative Officer and Cashier. The Administrative Officer stated that they had not forced to write this letter. He voluntarily wrote it and paid the amount to the cashier in five installments. The Defence Counsel also stated that an amount of Rs. 15,500/- was received in the Cash Book as allowed by the Assistant Collector and confirmed by the ACO, Itanagar, Shillong. There was an allegation that cashier deposited Rs. 37,428/- into the treasury against the amount mis-appropriated by Shri L.C. Gogoi and the Challan was signed on 7-8-91 by the Administrative Officer whether permission from the Assistant Collector was obtained Shri N.H. Das stated as prior permission was obtained from Assistant Collector and according to him cashier was directed to make the payment from his own source. Whether the said amount was deposited from remaining cash of the office or it was arranged by the cashier. Shri Das said that although he signed the Challan as tenderer of the deposit the Cashier told him that the amount was arranged from his source so he signed the Treasury Challan. Defence Counsel next asked him whether he verified the cash at the close of the day. Shri Das replied in the

(Contd- ---P/3)

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(127)

negative because he came to Shillong on that day to report the matter to the Collector. On 19-8-91 when the cash book was produced to him he made the remark that the amount that was wrongly paid should be deposited in SBI immediately. The Defence Counsel stated since the remark was made on 19-8-91 after a lapse of 12 days is not forceful.

Presenting Officer asked how and why Shri L.C. Gogoi made recovery. Did you instruct Shri Gogoi in making this deposit. The Administrative Officer stated that he did not do so. Shri Gogoi paid the amount on his own..

During the hearing held on the 21st July, 1993 at 11.00 hours in the Office of the Assistant Collector, Customs and Central Excise, Jorhat the following officers were present :-

1. Shri S.T. Gangta, Presenting Officer,
2. Shri H.N. Das, Charged Official.
3. Shri M.O. Das, Defence Assistant to Shri H.N. Das.

The Presenting Officer stated that the Assistant Collector had asked the 11 (eleven) Superintendents to give the undertakings vide G.No. II(16)1/NT.II/91/3021-31 dated 11-8-91 but no undertaking was obtained from two Superintendents Shri J.O. Das and Shri H. Dutta. The Presenting Officer next asked why the arrears DA was paid to these two Supts. without obtaining any undertakings. The Defence Assistant to Shri H.N. Das, Charged Official replied that after receiving Assistant Collector's order to prepare the SDA Bill the Administrative Officer directed the Dealing Assistant in the Bill Branch to prepare the said Bill. The Bill Clerk failed to comply with the orders of the Administrative Officer and Shri L.C. Gogoi, LDU (Adhoc) prepared the Bill without any order from the Administrative Officer.

The Presenting Officer stated that the SDA bill was prepared for the period of their posting at Jorhat Division. Administrative Officer also gave the period of posting of these 2 Superintendents to Shri Gogoi while preparing the bill and accordingly Shri Gogoi prepared the Bill and put it

(Contd.....P/4):

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The Administrative Officer who issued the bill. Defence Assistant stated that the Administrative Officer had not given any orders to Shri Gogoi to prepare the bill. Further, when the bill was put up along with the bill register to the Administrative Officer he passed the bill.

The Presenting Officer stated that in his statement dated 28-8-91 the Administrative Officer stated as per para 9 that the bill was prepared from Service Books and Accounts Branch in para 10 he stated that Service Books of those persons were not available in Jorhat Division, this appears to be contradictory. The Defence Assistant stated that all the Service Books were available in the Division except the Service Books of Shri J.C. Das and Shri S. Dutta, Supdts.

The Presenting Officer ^{asked} when this irregularities was detected and who detected it? The Defence Assistant replied that it was detected on the 2nd August, 1991 when he produced the Cash Book for signature. The Defence Assistant replied that it was the cashier who detected and told the Administrative Officer that the cash book could not be prepared because of these irregularities.

The Presenting Officer next stated that the cashier in his statement dated 4th June '92 that he had detected these irregularities and brought it to the notice of Administrative Officer on 2-8-91 thereafter, Administrative Officer proceeded for Shillong on 7-8-91. The Presenting Officer asked Administrative Officer when he returned back from Shillong? The Administrative Officer replied that he returned on 9th Aug '91 after informing the Collector about the incident.

The Presenting Officer next stated that after his return from Shillong from 9-8-91 the Cash Book was signed by the Administrative Officer only on the 18-8-91, there has been a long gap of 10 days for verification of the cash book, why was this? The Administrative Officer stated that the Cash could not be verified by the Assistant Collector as he was on leave during the period. Only on his return the cash was verified and Administrative Officer was able to sign the Cash Book.

(Contd....P/5 p.

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(1/2)
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(125)

The Presenting Officer pointed out that Shri Gogoi in his statement dated 4-6-93 stated that the amount of Rs. 17,228/- was not deposited by him i.e. the amount was not refunded by him at all. In his earlier statement dated 7-10-92 and 27-5-92 he stated that he had been forced to give the statement by the Assistant Collector, Administrative Officer and Cashier. The reply of Defence Assistant Shri M.C. Das is that Shri Gogoi was not forced to give the statement, the amount of Rs. 17,228/- was paid by him voluntarily.

The Presenting Officer asked whether Administrative Officer had directed cashier to disburse the SDA on pay day. The Defence Assistant replied that Administrative Officer had issued instructions that no other allowances should be disbursed on pay day and in this case Administrative Officer had not instructed cashier to pay the SDA. The Administrative Officer also stated that the SDA was paid to those two Superintendents without obtaining any undertakings.

The Presenting Officer next asked whether the Administrative Officer directed Shri A.C. Borah to deposit the amount that was short from the cash available. The Administrative Officer replied that he had directed Shri Borah to deposit the amount from his own sources and not from the cash available.

The Presenting Officer in his brief dated 4-10-93 against Shri H.N. Das, Administrative Officer, Customs and Central Excise, Jorhat stated that the bill no. 173/00/SDA/91 dated 15-7-91 amounting to Rs. 1,22,005/- was prepared by the L.D.C. (Adhoc) Shri L.C. Gogoi on 15-7-91 on the express order of charged official Shri H.N. Das and signed by the name H.N. Das and the Cheque No. 707520 dated 15-7-91 was encashed on that day itself (Exhibit U-7, S-11 & S-14) even though no formal sanction of the Assistant Collector was on the file during that time, is an established fact.

The said bill was prepared on the basis of the charged official's verbal direction, and the period of posting of S/Shri Jogendra Das and Sukhamoy Datta, retired Supdts. was also furnished by the Charged Official, Shri H.N. Das (Hearing on 4-6-93 and exhibit S-5). Thus the perpetuation of the fraud was initiated by the said Shri H.N. Das, knowing fully well that these persons were no more in Jorhat Division since July '86 and hence their service books were not available.

(contd....P/6).

The said Shri N.N. Das did not obtain the 'Undertaking' as is mandatory before making such type of payment to retired Government officials (exhibit-Hearing on 26-3-93)

The amount of Rs. 1,22,805/- was drawn on 15-7-91 but actual so called disbursement of the specific sum of Rs. 37,428/- was deliberately on 31-7-91 being a pay day so that the other staff of the Jorhat Divisional Office excepting the three charged officials cannot get a hint of this fraud.

On 31-7-91, the charged official Shri N.N. Das, left the office early (exhibit Hearing of 4-6-93), in anticipation as the following elucidates :-

(a) As per his (Shri N.N. Das) statement dated 15-5-92 (exhibit S-5);

"Subsequently the matter came to my knowledge unofficially on 5-8-91 when a Preventive Officer reported the matter to me" and the proceedings of the hearing on 21-7-93, therein the Defence Assistant of this charged official states, "..... The D.A. replied that it was detected on 2-8-91, when he produced the cash book for signature. The D.A. replied that it was the cashier who detected and told the A.D. that the Cash Book could not be prepared because of these irregularities" The Charged Official Shri N.N. Das's statement (exhibit S-5) that the "..... Cashier did not place the Cash Book and other related books since 31-7-91 to 5-8-91 for my verification and signature in spite of repeated demands" is therefore false.

(b) On 7-8-91 an amount of Rs. 37,428/- was deposited by Shri N.N. Das from the 'Cash in hand' vide Challan No. 36 dated 7-8-91, with the full consciousness that this creates a running shortage of Rs. 74,856/- (Exhibit S-11 & S-17).

(c) Shri N.N. Das, a charged Official deliberately avoided cross examining any of the witnesses lending credence that all the charged officials were in cahoots.

Hence Shri N.N. Das had got prepared a false 'Bill' signed it, had the cheque encashed and waited for a fortnight to appropriate at an opportune time.

(Contd....P/7).

- 11 7 11 -

Further, to absolve himself from one fraud he perpetuated another deceit by depositing from 'cash in hand' an equal amount of money, embezzled by the three charged officials.

Thus, the charges against Shri Nagendra Nath Das, stands, and exemplary punishment should be meted out as his continuance in service is contrary to public interest.

FINDINGS

On going through the written submissions, submissions made during the personal hearings by Shri H.N. Das, Charged Officer and the report given by the Presenting Officer, I find that Shri H.N. Das has been negligent in his duties. As an Administrative Officer, he should have given strict instructions to Shri L.C. Gogoi, LDC (Adhoc), as to how the bill should have been prepared.

Secondly, he should have also checked the Service Books of all the retired Superintendents of the Division. He was very casual in his work especially when it related to payment of Government money involving a huge amount of money. Cash Register was not verified on the same day, in fact it was signed after a lapse of at least 19 (nineteen) days, which is not regular. Shri H.N. Das had also directed the cashier to replace an amount of Rs. 37,428/- from his own source and deposit the amount to the S.D.I. This amount was replaced by the cashier on 7-8-91 from the cash in hand. Hence there was a shortage of Rs. 74,056/- from the cash at Jorhat Divisional Office. Although some amount has been replaced by Shri L.C. Gogoi, LDC (Adhoc) till date the full amount has not yet been paid back to the Office. Further, Shri L.C. Gogoi denied that he had made any payment at all. But from the records available it is found that Rs. 17,228/- had been paid by Shri L.C. Gogoi. He, further, stated that he was forced to write that he had paid Rs. 17,228/- by the then Assistant Collector, Administrative Officer and Cashier. They all denied that they had forced Shri L.C. Gogoi to write the statements, stating that he had paid a portion of the money.

(Contd....P/8).

I, therefore find that there has been gross negligence on the part of the Administrative Officer and lack of devotion to duty and may be punished as deemed fit.

As the amount of Rs. 37,428/- has not yet been recovered fully, all the 3 (three) Charged Officers should pay this amount.

M. H. H. H.

(EVA M.R. HINNIWTA)
INQUIRY OFFICER

Regd
24.
(163) (123)
To
The Deputy Commissioner (FSV)
Customs & Central Excise,
Shillong.

ANNEXURE-V

Subj:- Disciplinary proceedings against Sri
H.B. Das, Asst. Officer (Rtd) regarding.
Sir,

Kindly refer to your letter C.O:II(10)
A/CIU-VIG/3/91 (part)/315, dated 27.5.98, on the subject
mentioned above.

I have to request you kindly extend time
limit of another 15 days for submission of I.O's report
as because of annual Sadha ceremony of my decade wife
which will be held on 1st week of November '98 and also
due to my ill health.

This is for favour of your kindness.

Dated:- Dibrugarh
the 26/11/98.

Yours Faithfully,

M. Das
20/7/98
(B.H. DAS)

(Rtd. Asst)

*Attended
J. Das
Advocate*

Registered A/D.

(177) (141) 52

ANNEXURE-VI

To

The Deputy Commissioner
Customs and Central Excise
Shillong.

Ref :- (1) Your letter No. II(10)A/CIU-VIG/3/
91/Part/315 dated 27-5-93.

(2) Disciplinary action against Sri
N.N. Das, Administrative Officer
(Retd.).

Subject :- Written representation or submission
on I.O's report as annexed with the
above referred letter.

Dear Sir,

In response to your above referred letter regarding
disciplinary action against me, I beg to submit as follows :-

1) The above referred letter was received by me belatedly
due to my long absence from Jorhat and on receipt of
the said letter I prayed for extension of time for
submitting my written representation and submissions
on I.O's report under my letter dated 30.10.93.

2) My written representation and submissions :-

May I please Your Honour :-

(a) At the outset of submissions I would like to draw
Your Honour's kind attention to the very fact that
the relevant bill for paying SDA was prepared by a
person entrusted to do the work, who was not an
agent but a little more than that, as he was
delegated with the work. The person is Sri L.C.
Gogoi, LDC. The work done in excess of his authority
can not bind me and for those unauthorized work
can not be held responsible.

(b) Being an ...

Attested
for
Advocate

- 2 -

(b) Being an authorised signatory, having sanctioning powers etc. I had to sign huge papers every day as A.O., unless depends on my sub-ordinates or office assistants upto the extent of works done by them or delegated to them it was simply impossible to perform and complete all official works of the day and that is why the official infrastructure is.

of handing over of the amount payable to ret.
(c) Now being such the situation, the relevant for SDA
Feb 11 (eleven) Superintendent was prepared by
Sri L.C. Gogoi, LDC after scrutinising their service
books who acted for the good of those in place of
whom he was deputed by them, and prepared bills for
19 (nine) Superintendents correctly.

24/6/33 that I had checked the bill at a glance and no
shinking of suspicion was there regarding accuracy
of the bill thus prepared as such the bill was
passed as in usual course of official works in
good faith.

the subordinates particularly the Cashier A.C.
I have already submitted above regarding passing of
the bill and signed the cheque in its due course
on going through bills annexed thereto.

Further, I beg to submit humbly that the charge as
imputed on me that I have asked Sri L.C. Gogoi,
LDC, to take money payable to the abovesaid Super-
intendents is not true as Sri L.C. Gogoi, L.D.C.
himself stated in his statements that Cashier had
asked him to take money payable to above said two
Superintendents and of another Superintendent which
was duly admitted by the Cashier Sri A.C. Borah
(T.A.).

That I have neither any knowledge regarding hand-
ing over of Rs. 51,059.00 to Sri L.C. Gogoi, by the
Cashier for disbursement to abovesaid officers nor
the knowledge that after a while Sri Gogoi intimated

Sri Borah the

- 3 -

Sri Borah the Cashier that the Rs. 37,428/- was paid to the abovesaid officers and returned the balance, which are vaguely concocted or fabricated story of the persons involved in the embezzlement. The Cashier is duty bound to handover the amount personally to such retired persons and to obtain valid discharge thereof. Therefore, the admission of handing over of the amount payable to retired persons by the Cashier himself makes him solely responsible misappropriation of above money. The most important in this point is that Sri L.C. Gogoi, LDA made a contradictory statements one on 26/3/93 that the money was paid correctly to the persons on 31.7.91 at Jorhat while in his statement dated 24/6/93 that "he did not know these two persons (Superintendents) personally as he was directed by the Cashier to pay the amount to them, he accordingly did so".

These shows that there was some collusion amongst the subordinates particularly the Cashier A.C. Borah (T.A.) and Sri L.C. Gogoi, L.D.C. and some others.

There is no acceptable reasons shown by the Cashier that under what circumstances he was compelled to hand over to Sri L.C. Gogoi, the amount payable to the said two concerned officials in violation to the prescribed rules and procedures.

Thereafter I came to know the matter unofficially on 5.8.91, when the preventive officer reported to me. On enquiry I found that the Cashier gross irregularity in handing over the cash to Sri L.C. Gogoi for disbursement. I therefore, immediately asked the Cashier to deposit the said sum of Rs. 37,428/- in to S.B.I. Jorhat from his old sources but surprisingly enough the Cashier deposited the money in S.B.I. from departmental cash instead of his own sources as directed.

3) On knowing ...

- 4 -

3) On knowing these very facts regarding shortage of cash in hand in the divisional office, Jorhat, I rushed to Shillong lodged against A.C. Borah a written complaint describing all the facts to the Head Quarter on 7/8/91.

I was never negligent at any point of time in my long tenure of service which is free from blemish far less being grossly negligent so that I can be held liable.

No charges can be imputed on me on the statements of some witnesses who are interested person, who fabricated documents in their favour, made some false statements.

It is, therefore, humbly prayed that considering my long tenure of service without any embellishment, being a widower at this age of life, a loner, I may be absolved from the charges and further be pleased to direct the department to pay me and to release all the terminal service benefits in my favour and to pay full pension which I am receiving provisionally at the rate of Rs. 1,450/- per month. I, remain, as in duty bound shall ever pray.

Yours faithfully,

N.N. DAS

(N.N. DAS)
Administrative Officer
(Retd.),
Customs and Central
Excise, Jorhat
Presently at Dibrugarh.

Dated; The
9th Nov. 1998

39
RAMUNIHAIIDAN (791821)

RL-AD 1632

PA : KMD

To: COMMISSIONER, CENTRAL EXCISE & CUSTOMS
SHILLONG, PIN:

Wt: 28 grams

PS: 24.80, Amt: 0.80, 89/01/2002, 12:10:11



To

Date - 9.1.2002

The Commissioner
Central Excise and Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
Shillong.

ANNEXURE - VII

(Through Proper Channel)

Sub : Prayer for immediate release of Gratuity, Commutation value
and other pensionary benefits.

Respected sir,

I would like to draw your kind attention on the subject cited above and further beg to state that I have retired on superannuation with effect from 31.1.1996 as Administrative Officer from the department of Central Excise and Customs. It is relevant to mention here that a disciplinary proceeding was initiated against me vide Memo dated 24.2.1992 under Rule 14 of the CCS(CCA) Rules, 1965 on the alleged ground of misappropriation of Government money in violation of CCS (Conduct) rules, 1964 and thereafter an enquiry as well as presenting officer were also appointed although I had categorically denied the alleged charges brought against me. However, I have extended all my cooperation and participated in the departmental proceeding stated above and on completion of the inquiry an enquiry report was served upon me vide letter dated 27.5.1995. Against the said report a detail representation was submitted by me within the stipulated time. Surprisingly thereafter there was no progress in the departmental proceeding. However, I have retired on superannuation with

*Noted for
Drover*

effect from 31.1.1996. But no pensionary benefit has been paid to me except the leave salary, Group Insurance and provisional pension. It is pertinent to mention here that till date neither gratuity nor commutation value has been released to me although five years have already elapsed after my retirement on superannuation. There is neither any progress with regard to departmental proceeding initiated under Rule 14 of the CCS (CCA) Rules, through Memorandum dated 24.2.1992 nor any efforts to release my pensionary benefits such as Gratuity, Commutation value and other regular pensionary benefits. In such a circumstances I am facing extreme financial difficulties. As such you are requested to release my gratuity, commutation value and regular pensionary benefits with 18% interest.

It is pertinent to mention here that the disciplinary proceeding which was initiated way back on 24.2.1992 has not yet been completed although I have always cooperated with the said proceeding and the enquiry was also completed in the year 1995 but no further decision was taken by the disciplinary authority after submission of my detail representation against the inquiry report. Therefore I further pray that since the proceeding is unreasonably delayed for about 10 years therefore on that score alone the memorandum of charge is liable to be dropped/cancelled. As such you are requested to cancel/drop the memorandum of charge sheet dated 24.2.1992 and further be pleased to release the pensionary benefits including gratuity and commutation value with 18% interest as I am in the stage of starvation and facing the extreme financial hardship due to non receipt of pensionary dues.

An early action in this regard is highly solicited with an intimation to the undersigned in the following address please.

To

The Deputy Commissioner,
Customs and Central Excise,
Shillong

Sri Nagendra Nath Das
Son of Late Purna Kanta Das
Resident of village Garamur
P.O. Jorhat, Dist. Jorhat,
Assam

Yours faithfully,

Nagendra Nath Das.
(Nagendra Nath Das)

Copy to :

Sub :

The Deputy Commissioner, Customs and Central Excise, Shillong for
information and necessary action.

31.1.1983

31.1.1983

Customs

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Verdict

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ANNEXURE - VIII (Series)



GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORRELOW COMPOUND, SHILLONG.

C.NO. II (10) A/CIU-VIG/3/1991(PART)

Dated:-

To
The Pay & Accounts Officer
Customs & Central Excise
Shillong

Subject:- Disciplinary Proceedings initiated against Shri N.N. DAS, A.O. (Retd.)
under Rule 14 of CCS (CCA) Rules, 1965 and continued under Rule 9
of CCS (Pension) Rules, 1972 after his retirement on superannuation
on 31/1/96.

Enclosed please find herewith an 'ORDER' dated New Delhi, the 23rd May
2002 in relation to the vigilance case as mentioned in the above subject received
from the Deputy Secretary to the Govt. of India, Central Board of Excise & Customs,
New Delhi vide their letter F. NO. C-14012/12/97-AD.V/2051-57. According to the said
order a penalty of 10% cut in the monthly pension otherwise admissible to Shri
N.N.Das, A.O. (Retd.) is hereby imposed on him for a period of one(1) year.

This is for your information & necessary action please.

Encls: as above

(Z. TOCHHAWNG)
COMMISSIONER
CENTRAL EXCISE, SHILLONG.

C.NO. II (10) A/CIU-VIG/3/1991(PART)
Copy to:-

Dated:- 25/6/2002

1. The C.A.O., Customs & Central Excise, Shillong.
2. Shri N.N. Das, A.O. (Retd.), Son of late Purna Kanta Das, Resident of Village
Garamur, P.O. Jorhat, DIST. - Jorhat, Assam.
3. The Guard File.

(Z. TOCHHAWNG)
COMMISSIONER
CENTRAL EXCISE, SHILLONG.

*Attested
by
A. S. D. Cali*

-43-

F.NO.C-14012/12/97-AD.V. / 105 / - 57
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

ANNEXURE-VIII (Series)

New Delhi, the 23rd May 2002.

ORDER

This is an order on is the disciplinary proceedings initiated against Shri N.N. Das, A.O. under Rule 14 of CCS (CCA) Rules, 1965 and continued under Rule 9 of CCS (Pension) Rules, 1972 after his retirement on superannuation on 31.1.1996.

2. The brief facts of the case are that wrong encashment of Govt. money amounting to Rs.37,428.00 was detected in the Jorhat Division under Shillong Commissionerate. Shri L.C. Gogoi, LDC prepared Bill No.173/GO/SDA/91 dt.15.7.91 against SDA arrears for payment to Shri J.C. Das, Supdt. (Rs.21,404.00) and Shri S.M. Dutta, Supdt. (Rs.16,024.00) who were transferred from Jorhat Division to Agartala Division on 12.6.87 and to Silchar Division on 21.1.87 respectively. Under the direction of Shri N.N. Das, A.O., Shri A.C. Bora, Cashier prepared cheque No.707528 dt.15.7.91 for Rs.37,428/-. The bill was prepared by Shri L.C. Gogoi under the direction of Shri Das without consulting the Service Books of S/Shri Das and Dutta who were transferred and had already drawn their arrears from respective Division. After encashment on 15.7.91 the entire amount was lying with Shri A.C. Bora, Cashier and the same was handed over to Shri L.C. Gogoi on the pay day i.e. 31.7.91. The entire amount was misappropriated by the A.O., the Cashier and the L.D.C. under false signature of S/Shri Das and Dutta in the acquittance roll. The matter came to the notice of AC, Jorhat at whose instance the disciplinary case was initiated. Before that, Shri Das had advised the Cashier to deposit equal amount of money which was embezzled and the same was deposited into the Bank from the cash in hand by the Cashier making deficit of cash of Rs.74,856/- on 7.8.91.

3. Shri N.N. Das, A.O. was chargesheeted under Rule 14 of CCS (CCA) Rules, 1965 by the CCE&C, Shillong on 24.2.92. Thereafter, post-facto approval of the CVC was obtained for the same. On denial of charges, an oral enquiry was conducted. In its report, I.O. held the charge as proved. A copy of I.O.'s report was supplied to C.O. for his submission, which he made on 9.11.1998. Thereafter, the matter was referred to the President by the original disciplinary authority for final decision under Rule 9 Of CCS (Pension) Rules, 1972.

*Attested
for
Advocate*

4. The matter has been considered carefully. It is observed that the C.O. had instructed Shri L.C. Gogoi, L.D.C. to prepare the bill for payment of Special Duty Allowance (SDP) of the officials (including the officials who were retired) as the bills clerk Shri Bora was a new person in the Division. Accordingly, the bills were prepared by Shri Gogoi and passed by the C.O. The amount of payment of SDP was drawn on 5.7.1991 and disbursement was made to the concerned officers except Shri J.C. Das and Shri S. Dutta. The amount of Rs.37,428/- payable to the above two officials was handed over to Shri Gogoi by the Cashier on a request made by Shri Gogoi that those two officers would come on 31.7.1991 for receiving the payment. Shri Gogoi gave acknowledgement to the cashier towards disbursement of the said amount on 5.8.1991. Subsequently, it was found that Shri Das and Shri Datta had been transferred from Jorhat Division to other places long back and their bills were prepared by Shri Gogoi wrongly with an intention to misappropriate the government money. When the C.O. noticed the aforesaid facts, he immediately asked the cashier to deposit the amount in the bank from the Govt. cash instead of his own source. The record reveals that Shri Gogoi, LDC and the cashier Shri Bora were mainly responsible for the irregularity. The disciplinary authorities have imposed major penalty on S/Shri Gogoi and Bora. The C.O. is responsible to the extent that he signed the bill for the special duty allowance without verification of the service books of the persons who were to be paid the said allowance. Had the C.O. been careful in passing the said bill, the irregularity would not have occurred in the first place. However, there is no malafide on the part of the C.O.

5. The UPSC, to whom the case was referred to for their statutory advice, has made similar observation. The advice of the UPSC has been considered carefully. The same being just, fair and reasonable, is accepted. A copy of the Commission's advice is enclosed.

Accordingly, a penalty of 10% cut in the monthly pension otherwise admissible to Shri N.N. Das, A.O. (Retd.) is hereby imposed on him for a period of one year.

[BY ORDER AND IN THE NAME OF THE PRESIDENT]

(RAJIV RAI)

DEPUTY SECRETARY TO THE GOVT. OF INDIA

To

Shri N.N. Das, A.O. (Retd.)

(Through:- The Commissioner of Central Excise & Customs, Shillong)

Encl:- A copy of UPSC's advice.

ANNEXURE VIII (Series)

Union Public Service Commission

Telex : 031-62677
Fax : 011-3185145

संघ लोक सेवा आयोग
प्रीतपुर हाउस, शाहजहाँ रोड
UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOGE)
DIRDULPUR HOUSE, SHAHJAHAN ROAD

Confidential
F.3/96/2000-S.I

सेवा में
To

नई दिल्ली-110011
New Delhi-110011

The Secretary to the Govt. of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
New Delhi.

(Attention: Shri V.P. Arora, Under Secretary)

Subject: Disciplinary proceedings against Shri N.N. Das, A.O. (Retd.) –
regarding.

Sir,

I am directed to refer to your confidential letter No.C-14012/12/1887-Ad.V dt. 23rd January, 2002 on the subject mentioned above and to convey the advice of the Union Public Service Commission as under.

2. Vide Memorandum No. II(10)/CIV-VIC/3/01/152-53 dt. 24.02.1992 under Rule 14 of CCS (CCA) Rules, 1965 Shri N.N. Das, Retd. Administrative Officer was called upon to answer the following Article of charge:-

Articles of charge

That the said Shri N.N. Das, while posted and functioning as A.O. in Divisional Office, Jorhat during the period from 15.1.1990 till date, is alleged to have failed to maintain absolute integrity in as much as he embezzled and misappropriated Govt. money to the tune of Rs. 74,856/- from the cash of the divisional office, Jorhat.

By the above acts, the said Shri N.N. Das exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

2.1 A statement of imputations of misconduct/misbehaviour was also enclosed along with the Charge Memorandum. The CO has denied the charges leveled against him. A

Attested
for
Rao auli

formal inquiry was conducted. The IO in his Report dt. nil held the charge as proved against the CO. As required, a copy of the findings of the IO was forwarded to the CO to enable him to represent, if he so desired. The CO submitted his representation on the findings of the IO vide reply dt. 9.11.1998. The records are, therefore, forwarded to the Commission for their consideration and advice in the matter.

3. The case record has been examined by the Commission in detail. The Commission observe that neither the certified copies of the following rolled upon documents nor the documents in original have been submitted along with the case as the original documents are stated to have been misplaced by PO:-

- (i) Service Books of Shri J.C. Das and Shri S. Dutta, Retd. Superintendents.
- (ii) Cash Book of Jorhat Divisional Office

Only certified copy of the duplicate Special Duty Allowance (SDA) Bill has been made available. The following deficiencies have also been reported:-

- (1) Daily Order Sheets were not maintained by the IO
- (2) Depositions from Prosecution Witnesses and Defence Witnesses were not recorded by the IO
- (3) General Examination of the CO was not recorded by the IO
- (4) Written Brief by the PO not filed
- (5) Copy of PO's brief not supplied to the CO
- (6) CO's written brief not filed by the IO
- (7) Documents viz. letter dt. 27.5.1992 of Shri Gogoi, LDC and challan dt. 7.8.1992 for depositing of Rs.37,428/- in the Govt. account have not been supplied along with the records.
- (8) The Memorandum forwarding the copy of IO's report to the CO has also not been supplied.

The matter was taken up with the Ministry of Finance, Department of Revenue to make up the above deficiencies for the purpose of examination of the case by the Commission vide letter dt. 28.7.2000. That Department have replied vide their letter dt. 15.1.2001 that it is difficult to make up the deficiencies on the part of the IO at this very late stage and stated that the service books of S/Shri J.C. Das and S. Dutta could not be traced. Regarding supply of cash book, the Department have stated that the certified copy of the SDA bill will serve the purpose in lieu of the same. That Department was again requested vide Commission's letter dt. 19.1.2001 for its submission along with the original/authenticated copies of the required documents. In pursuance of this letter, that Department has informed vide their letter dt. 20.3.2002 that it is not possible to authenticate the documents in the absence of the original documents and an investigation was conducted in the matter by Director General of Vigilance wherein it was found that the PO who has since expired is responsible for the loss of the documents. That Department has, therefore, requested with the approval of the competent authority, to tender advice in the case on the basis of the available documents.

4. Based on the documents made available by the Department, the Commission note that the IO has furnished unauthenticated copies of daily order sheet, depositions, etc. and has not generally examined the charged Officer. Further, certain rolled upon

documents are untraceable. The certified copies of duplicate SDA bill could only be obtained and Service Books of Shri J.C. Das and Shri S. Dutta remained untraceable.

5. The Commission further observe that the Directorate General of Vigilance who conducted the investigation for missing records held Shri S.T. Sungte who was presenting officer responsible for missing of records. Since Shri Sungte has expired, the Competent Authority has requested the Commission to tender their advice on the basis of available documents.

6. While going through the available records the Commission note that the CO instructed Shri I. C. Gogoi, LDC to prepare the bill for payment of Special Duty Allowance (SDP) of the officials (including the officials who were retired) as the bills clerk Shri Bora was a new person in the Division. Accordingly, the bills were prepared by Shri Gogoi and passed by the CO. The amount for payment of SDP was drawn on 5.7.1991 and disbursement was made to the concerned officers except Shri J.C. Das and Shri S. Dutta. The amount of Rs.37,428 payable to the above two officials was handed over to Shri Gogoi by the cashier on a request made by Shri Gogoi that those two officers would come on 31.7.1991 for receiving the payment. Shri Gogoi gave acknowledgement to the cashier towards disbursement of the said amount on 5.8.1991. Subsequently, it was found that Shri Das and Shri Dutta had been transferred from Jorhat Division to other places long back and their bills were prepared by Shri Gogoi wrongly with an intention to misappropriate the government money. When the CO noticed the aforesaid facts, he immediately asked the cashier to deposit the said amount of Rs.37,428/- into SBI from his own source but the cashier deposited the amount in the bank from the Govt. cash instead of his own source. The records reveal that Shri Gogoi, LDC and the cashier Shri Bora were mainly responsible for the irregularity as mentioned above.

7. The Commission note that the DA has agreed with the findings of the IO and has held the CO responsible to the extent that he signed the bill for the Special Duty Allowance without verification of the service books of the persons who were to be paid the said allowance.

8. The Commission further note that disciplinary proceedings were also initiated against the co-accused Shri Bora and Shri Gogoi who have been imposed major penalty of reduction by three stages in the time scale of pay for a period of one year with further directions that they will not earn increments during the period of reduction with consequential effect of further increments being postponed.

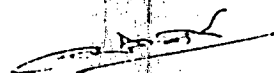
9. The Commission conclude that the CO is responsible to the extent that he signed the bill for the special duty allowance without verification of the service books of the persons who were to be paid the said allowance. Had the CO been careful in passing the said bill, the irregularity would not have occurred in the first place. However, there appears to be no mala fide intention on the part of the CO.

10. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the charge proved against CO constitute grave misconduct and ends of justice would be met if penalty of 10% cut in CO's monthly pension is imposed for a period of one year on Shri N.N. Das, the Charged Officer. They advise accordingly.

11. A copy of the Order passed by the Ministry in this regard may please be endorsed for Commission's perusal and record.

12. The case records as per list attached are returned herewith and the receipt of the same may please be acknowledged.

Yours faithfully,



(M.R. Rajoria)
Under Secretary

Encs: (i) Two spare copies of this letter.
(ii) Case records as per list attached.

ANNEXURE - IX

To
The appellate Authority
(Through the Commissioner of
Central Excise, Shillong)
Central Board of Excise & Customs
Govt. of India
New Delhi

Sub : Penalty imposed under Letter No. C-14012/12/97-ADV/2051-57 dated
23.5.2002; Appeal against.

Sir,

Most humbly and respectfully I beg to state that I have received a copy of the letter No. C.No. II (10)/A/CIU-VIG/3/1991(PART)458-61 dated 28.6.02 of the Hon'ble Commissioner, Central Excise, Shillong forwarding therewith the order No. F. No. C-14012/12/97-ADV/2051-57 dated 23.5.02 of the Hon'ble Deputy Secretary to the Government of India whereby a penalty in the form of 10% cut in my monthly pension for a period of one year has been imposed upon me following the Disciplinary Proceeding conducted against me after my retirement on superannuation on 31.3.1996. I am shocked to receive the said order of penalty and beg to lay the following few lines before your honour for your kind and sympathetic considerations.

1. That Sir, it has been established in the departmental that a charge official, there was no mala fide proved on my part and I ^{was} found responsible only to the extent that I signed the bill for Special Duty Allowance as alleged without verification of the Service Books of the concerned persons.
2. That Sir, I signed the bill only on good faith on those officials who prepared the Bill etc. and attended to the formalities, without any mala fide intention whatsoever which eventually led to my own detriment.

Attested
J. S.
Advocate

- 50
3. That Sir, during my long spell of service, I had never committed such mistake earlier, for which I am repented in this instance and I did not have any hand in the charged offences whatsoever.
4. That Sir, with my all regards to the aforesaid order of penalty, I beg to say that I have already been subjected to heavy financial losses/penalty over the last few years due to non-payment of my retiral benefits excepting provisional pension only and I have been deprived of all my due financial benefits for the last 7 (seven) years after my retirement on 31.1.1996 which will be much higher than the 10% monthly pension amount for one year now sought to be cut from my pension amount as a penalty.
5. That Sir, I beg to submit that the proceedings of the inquiry aforesaid was not converted in terms of Rule 9 of CCS (Pension) Rules, 1972 as mentioned in the order of penalty dated 23.5.02 under its para 3.
6. That Sir, there is no provision of such penalty as imposed on me under the CCS (CCA) Rules and as such this not maintainable.
7. That Sir, the order of penalty has been passed in total violation of procedure laid down in relevant CCS (CCA) Rules, 1965.

Under these circumstances, I beg to appeal before your honour kindly to consider my case sympathetically and exonerate me from the aforesaid penalty which has been imposed on me for no fault of mine and for this act of kindness I shall remain ever grateful to you Sir,

Date : 30.8.2002

Yours faithfully,

Nagendra Nath *ans*
(NAGENDRA NATH DAS)
A.O. (Retd.)



GOVT. OF INDIA
OFFICE OF THE COMMISSIONER
OF CENTRAL EXCISE, MORELLOW COMPOUND
SHILLONG.

ANNEXURE - X

C.NO.H(10)A/CTU-VIG/3/1991 (PART)

Dated : 24.10.2002

To
Shri Nagendra Nath Das, A.O. (Retd.)
Village- Garamur, P.O.-Jorhat,
Dist- Jorhat, Assam.

Subject:- Appeal against the 'ORDER' dated 23rd May 2002
correspondence regarding.

Please refer to your letter dated 30/8/2002 on the above subject. The
Ministry vide their letter F.NO.C-16012/12/02-AD.V.-3738 dated 09.10.2002
(Copy enclosed) have informed that no Appeal lies against the Orders passed by
the President of India. Therefore, your appeal cannot be entertained.

Encls: as above.

(B. THAMAR)
ADDITIONAL COMMISSIONER (P&V)
CUSTOMS AND CENTRAL EXCISE : SHILLONG

Attested
for
Advocate

52- 656 69

F.NO.C-16012/12/02-AD.V. - 23/92
Government of India
Ministry of Finance & Company Affairs
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 9th October, 2002.

To

The Commissioner of Central Excise,
Morello Compound,
Shillong.

Subject: Appeal filed by Shri N.N. Das, AO (Retd.) against Order dated
23.5.2002 passed by the President of India.

Sir,

I am directed to refer to your officer letter C.No.II(10)/ACH-
VIG/3/1991(PART)/731 dated 19.9.2002 enclosing therewith an Appeal filed by
Shri N.N. Das, AO (Retd.) against Order dated 23.5.2002 passed by the President
of India in the disciplinary proceedings initiated against him vide Memorandum
dated 24.2.1992. In this regard, it is stated that as per Rule 22 of the CCS (CCA)
Rules, 1965, no Appeal lies against the order passed by the President of India.
Therefore the Appeal filed by Shri Das cannot be entertained.

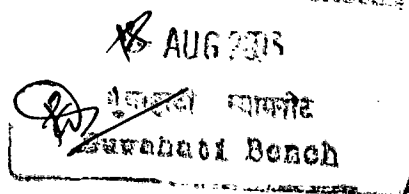
You are requested to inform Shri Das suitably.

Yours faithfully,



(V.P. Arora)

Under Secy. to the Govt. of India



(S3)
Filed by 20
7/18/03
(A. DEBROY)
ST. C. C. C.
C. A. T. Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI.

O.A. NO. 51 OF 2003

Shri N.N. Das

..... Applicant.
- Vs -

Union of India & Ors.

..... Respondents.

- And -

In the matter of L

written statement submitted by
the respondents.

The humble respondents beg to submit the para-wise
written statement as follows :-

1. That with regard to the statement made in para 1, of the application the respondents beg to state that as per rule 22 of the CCS(CCA) rules 1965, no appeals lies against the order passed in the name of the President of India.
2. That with regard to para 2, 3, 4.1 & 4.2, of the application the respondents beg to offer no comments.
3. That with regard to the statement made in para 4.3 & 4.4, of the application the respondents beg to state that the Vigilance case against the applicant as initiated vide Charge Memorandum No. II(10)A/CIU-VIG/3/91/152-53 dated 24.2.1992 under Rule CCS (CCA) Rules, 1965.

The allegation in brief was that said Shri N.N. Das, A.O. (Retd.) while posted and functioning as A.O. in divisional office, Jorhat during the period from 15.1.1990 wherefrom he retired as A.O. on attaining the age of superannuation on 31.01.96 failed to maintain absolute integrity in as much as he embezzled and mis-appropriated Govt. money to the tune of Rs. 74,856/- from the cash of the divisional office Jorhat.

By the above acts, the said Shri N.N. Das, A.O. (Retd.) exhibited lack of integrity, devotion to duty and acted in a manner un-becoming of a Govt. servant and thereby contravened the provision of Rule 3(i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

4. That with regard to the statement made in para 4.5, of the application the respondents beg to state that the matter of fact.

5. That with regard to the statement made in para 4.6, of the application the respondents beg to state that disciplinary proceeding as initiate under Rule 14 of CCS(CCA) rules and continued after retirement and concluded under Rule 9 of CCS (Pension) Rules 1972.

6. That with regard to para 4.7, of the application the respondents beg to offer no comments.

7. That with regard to the statement made in para 4.8, of the application the respondents beg to state that retirement benefits could not be settled as a Vivilance case was pending against him (Vide Charge Memorandum No. II(10)A/CIU-VIG/3/91/

No. II(10)A/CIU-VIG/3/91/152-53 dated 24.2.92).

It may also be mentioned that the final order in this case has to be issued by the Ministry in the name of the President of India.

8. That with regard to para 4.9 & 4.10, of the application the respondents beg to offer no comments.

9. That with regard to the statement made in para 4.11, of the application the respondents beg to state that as per Rule 9 of the Central Civil Services (Pension) rules, 1972 Disciplinary Proceedings initiated while an officer was in service should be deemed to be proceedings under the aforesaid rule after his retirement and should be continued and concluded under the provision of that rule.

10. That with regard to the statement made in para 4.12, of the application the respondents beg to state that based on records available and taking into account all other aspects relevant to the case the Commission considered that the Charge got proved against Shri N.N. Das A.O. (Retd.) which constitute grave misconduct and ends of justice would be met if penalty of 10% cut in his monthly pension is imposed for a period of one year. And advised accordingly.

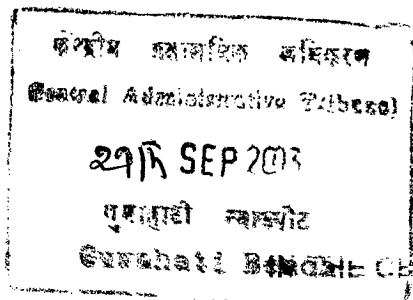
11. That with regard to para 4.13 to 4.17 and 5 to 9, of the application the respondents beg to offer no comments.

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

I, Shri *Arowar Hussain*, presently working as *Deputy Commissioner, Central Excise, Guwahati*, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in paragraphs 1, 2, 4, 5, 6, 8 to 11 are true to my knowledge and belief and those made in para 3, 7 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this th day of
July, 2003.

Arowar Hussain
Deponent.
(A. RUSSAIN)
Deputy Commissioner
CENTRAL EXCISE
GUWAHATI DIVISION



1

Filed by me applicant
through
Subrata Nath
Advocate
29.09.03

GUWAHATI BENCH

In the matter of :

O.A. No. 51 of 2003

Shri Nagandra Nath Das

-vs-

Union of India & Ors.

-And-

In the matter of

Rejoinder submitted by the applicant in reply to the written statement filed by the Respondents.

The applicant above named most humbly and respectfully begs to state as under :

1. That the applicant categorically denies the statements made in paragraphs 1,3 and 5 of the written statement and begs to state that the Disciplinary proceedings against the applicant was initiated under Rule 14 of the CCS (CCA) Rules, 1965 and there is nothing in record to show that the said proceeding was converted into Rule 9 of the CCS (Pension) Rules, 1972. Further, the applicant was charge sheeted in 1992 and retired on 31.01.1996 and the inquiry was concluded in 1995 i.e. prior to the retirement of the applicant but the case

25

was not settled before the retirement of the applicant even though the entire proceedings were conducted under Rule 14 of the CCS (CCA) Rules, 1965 and concluded in 1995. As such the applicability of Rule 9 of CCS (Pension) Rules, 1972 is irrelevant in the instant case.

2. That the applicant categorically denies the statements made in para 7 and 9 of the written statement and begs to submit that the vigilance case against the applicant was initiated in the year 1992 and it was unnecessarily and deliberately stretched for years together and left unsettled even after the applicant retired on 31.01.1996 and on that pretext, the retirement benefits of the applicant was kept withheld although the entire disciplinary proceedings were conducted under Rule 14 of the CCS (CCA) Rules, 1965 only but the penalty was imposed under Rule 9 of CCS (Pension) Rules 1972 and that too after a span of more than 10 years from the date of charge sheet i.e. in 2002 only and as such the entire disciplinary proceedings and the order of penalty are liable to be set aside.

3. That the applicant categorically denies the statements made in para 10 of the written statement and further begs to submit that as evident from the para 5 of the order of penalty dated 23.05.2002, the penalty has been imposed on the applicant on the basis of the advice of the UPSC although such provision does not exist under

Rule 14 of CCS (CCA) Rules, 1965 under which the disciplinary proceeding was initiated and inquiry was conducted in the instant case.

This apart, the UPSC itself, while tendering advice in the instant case, recorded that-

(a) While forwarding the case to the UPSC, the relevant documents, which were relied upon during the inquiry, were not forwarded to the UPSC, which include some vital records of inquiry.

(b) No malafide intention on the part of the charged official (i.e. the applicant) could be observed/established.

Surprisingly, even inspite of the above deficiencies, the UPSC tendered its advice for the penalty most mechanically, without any application of mind and without conducting further inquiry in the case. Even in the inquiry, the alleged charges could not be proved/established and the inquiry report was not based on facts. Inspite of all those infirmities/shortcomings the Disciplinary authority, acting malafide, exercised his power in the most unjust, unfair and arbitrary manner and imposed the penalty of 10 percent cut in his monthly pension for a period of one year which is not in conformity with the principles of justice, equity and good conscience.

4. That in the facts and circumstances stated above, the application deserves to be allowed with costs.

VERIFICTION

I, Shri Nagendra Nath Das, Son of Late Purna Kanta Das, aged about 64 years, resident of Village- Garamur, P.O & District- Jorhat, Assam do hereby verify that the statements made in para 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the ^{27th} day of ~~October~~ ^{September} 2003.

Nagendra Nath Das