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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A./T.A No. 213/2004

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SECTION OFFICER (Judl.)



FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. _____

213/2004

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants: _____

H. Sangania

Respondents: _____

W/O 2008

Advocate of the Applicants: _____

Mr M. Chanda, A. N. Chakrabarti,
S. Smith, S. Chandelhy

Advocate for the Respondents: _____

CGSC. A.K. Chandelhy

Notes of the Registry

Date

Order of the Tribunal

8.9.04

This application is in form

is filed in Form No. 30/-

deposited Rs. 30/-

No. 206/11/2003

Dated 31/8/04

L. y. Registrar

Defect

pg

1 P.O. not yet received

with the application.

Defect is removed to
day only.

8/9/04

3.11.04.

No steps

Notice & order sent
to D/section for
issuing to resp. Nos.
1 to 3, by regd. A/D
post.

lm

29/9/04 D/No = 1676 to
1678

Dt. 12/10/04

Heard Mr M. Chanda, learned counsel
for the applicant.

Application is admitted. Issue
notice to the respondents. Call for
the records.

List on 3.11.04 for order.

Member (A)

Present: Hon'ble Mr. Justice R.K. Batta
Vice-Chairman.

Hon'ble Mr. K.V. Prahladan, Administra-
tive Member.

None for the applicant. Mr. A. Deb
Roy, Sr. C.G.S.C. seeks 8 weeks time
to file written statement. Stand over
to 6th January, 2005 for filing written
statement.

Member

Vice-Chairman

2.11.04

A/D cards not
received back
from the Respondents
No. 1 to 3.

lm

14.12.04.

Present: Hon'ble Mr.R.K.Batta, Vice-
Chairman.

This matter is already fixed on
6th January, 2005. Hence stand over to
6th January, 2005.

lm


Vice-Chairman

06.01.2005

Four weeks time is given to the
respondents to file written statement.
List on 08.02.2005.



Member (A)

mb

8.2.05.

None appears for the Respondents.
Reply has not been filed. We find on
record the communication dated 24th
January, 2005, Survey of India, Shillong
addressed to the Registry of this Bench
wherein it has been indicated that the
representing their cases should continue
to appear before this Tribunal.

Adjourned to 9.3.05 for filing
reply.


Member (J)

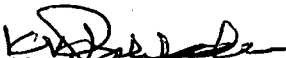
9.3.2005

Present: The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.

The Hon'ble Mr.K.V.Prahladan,
Member (A).

Ms.U.Das, learned Addl.C.G.S.C.
requests for adjournment on behalf of
Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for
filing written statement and for making
submission.

Post on 22.3.2005.


Member


Vice-Chairman

bb

5-1-05

No W/S has been

filed.

lm

7-2-05

No reply has been

filed.

lm

7-3-05

No reply has been

filed.

lm


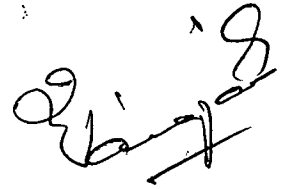
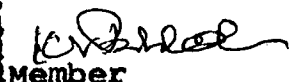


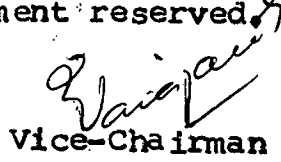
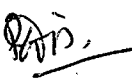

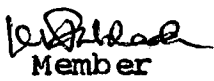
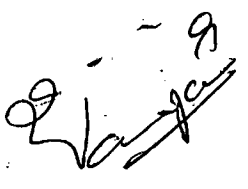
21-3-05

No W/S has been

filed.

O.A. 213/2004

Notes of the Registry	Date	Order of the Tribunal
Order dt. 22/03/05 Sent issuing to learned advocates for both the parties. <u>23/3/05</u>	22.03.2005	Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V. Prahladan, Administrative Member. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents seeks further time for filing written statement. List on 12.4.2005 for filing written statement. No further time shall be given to the respond- ents for filing written statement.
<u>31. 3. 05</u> W/S filed by the Respondents 1, 2 & 3.	12.4.05	 The Respondents filed their written statement. The learned counsel for the applicant seeks time to file rejoinder. Post the matter on 13.5.05.
<u>12-5-05</u> No rejoinder has been filed.	13.5.2005	 Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that written statement has already been filed. Mr. S. Nath, learned counsel for the applicant submits that this case may be posted for hearing. Post on 16.6.2005. Rejoinder, if any, in the meantime.

Notes of the Registry	Date	Order of the Tribunal
	15.6.2005	At the request of Mr. M. Chanda, learned counsel for the applicant the case is adjourned to 22.7.2005.
	mb	<div>  Member </div> <div>  Vice-Chairman </div>
	22.07.2005	At the request of Mr. M. Chanda, learned counsel for the applicant the case is adjourned to 28.7.2005.
	pg	<div>  Member </div> <div>  Vice-Chairman </div>
27.7.05 Rejoinder submitted by the Applicant	28.7.05.	Heard learned counsel for the parties. Hearing concluded. Judgment reserved.
	lm	<div>  Member </div> <div>  Vice-Chairman </div>
 27.8.05 Copy of the has sent to the office for issuing the order to the applicant by post. 	12.8.2005	Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order passed in separate sheets.
	mb	<div>  Member </div> <div>  Vice-Chairman </div>

CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH.

O.A. No. 213 of 2004.

DATE OF DECISION: 12-08-2005.

Mr. Hrangtling Sangawia

APPLICANT(S)

Shri M. Chanda

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

Shri A.K. Chaudhuri, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE-CHAIRMAN

THE HON'BLE MR K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

- bwd No
1. Whether Reporters of local papers may be allowed to see the judgments?
 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 Administrative Member.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 213 of 2004.

Date of Order : This the 12th Day of August, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN

HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Hrangtling Sangawia,
S/o Sailkhuaia,
Two Brother's Home,
Poktieh, Nongthymmai,
Shillong-793014.

... Applicant.

By Advocate Shri M. Chanda.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Science and Technology,
New Delhi.
2. The Surveyor General of India,
Post Box No. 37,
Dehradun-248001,
Uttaranchal.
3. The Director,
North Eastern Circle,
Survey of India,
Shillong-793001.

... Respondents

By Shri A.K.Chaudhuri, Addl.C.G.S.C.

ORDER

K.V.PRAHLADAN, MEMBER (A)

owl
The applicant worked as a Storekeeper Grade II
in the office of the respondent No.3. In the first
round of litigation the applicant was charge sheeted
for alleged misappropriation of stores worth
Rs.1,62,991/- and forging signatures of his superior

officers in the ledgers and invoices maintained by him as a Storekeeper. The disciplinary authority, vide order dated 20.8.96 ordered compulsory retirement and recovery of Rs.60,128.91, the depreciated value of the stores lost. The applicant approached this Tribunal by filing O.A. No.128 of 2001. The Tribunal by order dated 22.8.2001 set aside the enquiry proceeding as well as allowing the respondents to hold a fresh enquiry as per law. In accordance with the order in O.A.128/2001 the respondents framed charges of irregularities in the maintenance of stores, delay in handing over charge of store No.5 on his transfer to Store No.80(P) and forging of signatures of competent and superior officers in the stores records as per Memorandum dated 18.9.2001. The applicant claims that misappropriation of stores estimated at Rs.1,62,991/- ultimately came down to Rs.13,221. Thus the applicant claims that the Board of Enquiry set up to ascertain the shortage of stores submitted a bogus verification report. The applicant also claims that the enquiry report has proved that the loss of stores amounting to Rs.1,62,991/- is totally false and misleading and as such the respondents are not legally entitled to act upon the said report. Therefore, proceedings under CCS (CCA) Rule 14 is void ab-initio. The applicant also states that unauthorized signature in the receipt/issue stores register has been done without any intention of

undue advantage and is therefore an act of irregularity and not misconduct. Moreover at para 5 of the findings of the disciplinary authority at page 75, the loss of stores was due to "negligence/irresponsibility/forgery" on the part of the applicant. The charge of forgery against him is not forgery in the strict sense of the said word since he put his initials to comply with the instructions in the O & M report of 1992. The applicant alleges that Major S. Chaudhury turned against him when he refused to acknowledge the receipt of Rs. 5000/- instead of Rs. 3000/- the actual amount he received from the cashier through Major Chaudhury. His refusal to acknowledge receipt of Rs. 5000/- instead of Rs. 3000/- took place in December 1992 in the presence of the cashier. The applicant also objects to the appointment of Shri T.K. Bandopadhyay as the ad-hoc disciplinary authority/^{since} the Director in charge of North Eastern Circle was stationed at Shillong, no presidential sanction was obtained for the appointment of Shri Bandopadhyaya who was prejudiced against the applicant. The applicant has sought quashing of the order of penalty of compulsory retirement dated 26.8.2002, Annexure-G, issued by the Disciplinary Authority and the Appellate Order dated 30.7.2003 upholding the order of the former (Annexure-1). The applicant also claims that there was no delay on his part in handing over

charge at party No.5 and taking over charge at party No.80 since he was relieved on 13.7.1994 only.

2. The Respondents claim that on the basis of the order of this Tribunal in O.A.128 of 2000 dated 22.8.2001, a fresh enquiry was held. The applicant was found guilty. Rs.13,221/- was recovered from dues payable to him. He was simultaneously awarded the punishment of compulsory retirement with effect from 26.8.2002. The respondents claim that the loss of stores has been reduced in the second proceedings. However, misappropriation of stores against the applicant remained. So has delay in handing over charge on his transfer from store No.5 to Store No.80. The applicant admitted to forging the signature of the competent authority. This was also confirmed by the Government Examiner of Questioned Documents.

3. The respondents claim that they conducted the enquiry against the applicant as per the procedures prescribed under the CCS(CCA) Rules 1965. This is one reason why the amount of stores misappropriated came down from Rs.1,62,991/- to Rs.13,221/-. The applicant therefore violated Rule 3(i) of the CCS Conduct Rules which calls for maintenance of absolute integrity and devotion to duty.

4. Heard both the counsel for the applicant and counsel for the respondents and perused the materials produced. The argument of the applicant can be summed

up in three parts : (1) He was relieved only on 13.7.94 in pursuant to the order transferring him from party No.5 to party No.80.(2) The varying amount of monetary loss on account of shortage of stores noticed during the inspection showed that the inquiry was not conducted fairly.(3) He forged the signature of his superiors only to comply with the provisions of the O & M Manual. The applicant claim that he was relieved only on 13.7.94, on a transfer order dated 16.12.93. However, in his letter to the Director, Survey of India dated 4.7.2002 he has stated that Shri T.R.Dhar, the incoming storekeeper went on leave from the 1st week of January 1994 and resumed duty in the first week of February 1994. He has not given any convincing reason as to why he delayed handing over charge to his successor till 13.7.94. Although loss amounting to Rs.1,62,991/- was not fully substantiated, loss of stores to the tune of Rs.13,221/- occurred during the period when the applicant was the store keeper. The Apex Court in Union of India vs. Sardar Bahadur SLR 1972(7)355 has observed that :

"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. (Para 14)

"Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court

exercising its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy of reliability of the evidence cannot be canvassed before the High Court." (Para 14)

"If the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established." (Para 18)

The respondents have produced enough materials which "reasonably support the conclusion" that the applicant was responsible for the loss of stores to the tune of Rs.13,221/-. The Apex Court, in Nand Kishore Prasad v State of Bihar and Ors. (AIR 1978 SC 1277) has observed:

".....disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him."

".....if the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the Constitutional provisions, the

order passed by such authority cannot be interfered with in proceedings under art. 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial."

The disciplinary authorities have fully adhered to all the procedures as required under the CCS(CCA) Rules 1965.

5. As far as his allegations against Major Choudhury are concerned the Apex Court judgment in Medley Minerals India Ltd. V State of Orissa (2004) 12 SCC 390 may be referred to since he was not made a party in the present application :

"the person against whom the mala fides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing. No such attempt was made in the Writ Petition before the High Court. The argument of mala fides must therefore fail."

6. The applicant's forgery of the signatures of his superiors in the receipt and issue store ledgers has been proved by direct ocular evidence by the Government Examiner of Questioned Documents, a premier organisation under the Ministry of Home Affairs specializing in detection of forged signatures, forged documents etc. So the forgery has been proved beyond reasonable doubt. Forging of signature was also apparently to prevent senior officers from finding out the irregularities in the maintenance of store records.

It was done with the intention of avoiding detection of his irregularities in receipt and supplies of store materials. The applicant's claim that forged signature did not give him any undue advantage and that it did not amount to any misconduct. Black's Law Dictionary defines misconduct in office as, "any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder has no right to perform acts performed improperly, and failure to act in the face of an affirmative duty to act." The forgery of signature in the Stores record, accepted by the applicant himself, is an unfortunate example of misconduct in office as defined in Black's Law Dictionary. It clearly shows lack of integrity on the part of the applicant.

7. The claim of the applicant that Shri Bandopadhyay was prejudiced against him appears to be an after thought. There was not even a whisper of complaint of prejudice on the part of Shri Bandopadhyay by the applicant when he was appointed as Disciplinary Authority. Now the applicant cannot turn around and make any allegation against the disciplinary authority. It is apparently only a baseless allegation made by the applicant. The contention of the applicant that Presidential sanction is to be obtained for appointment of Shri Bandopadhyay as ad hoc Disciplinary Authority is based on a lack of knowledge of the relevant rules.

Government of India order No.(4) under rule 12 of CCS(CCA) rules 1965 (Swamy's Compilation of CCS(CCA) Rules, 1965, Twenty Eighth Edition 2003) which runs thus,

"In case the Appointing Authority is of higher rank than the present Disciplinary Authority, the fact should be reported to the Department/Ministry concerned for issue of President's orders nominating another officer to act as the Disciplinary Authority in that particular case."

The above rule has no relevance to the appointment of Shri Bandopadhyaya as Disciplinary authority. As per Government of India's Decision No.9 under Rule 14 of CCS (CCA) Rules 1965,

"According to Rule 14 (5) of the CCS(CCA) rules, 1965, the Disciplinary Authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry Officer for the purpose. However, it should be possible in a majority of cases, and the more serious ones at any rate, to ensure that the Disciplinary Authority himself does not conduct the inquiry. It may still be not practicable to ensure in all cases that the Disciplinary Authority himself would not be the Inquiry Officer. Such a course may be necessary under certain circumstances particularly in small field formations where the Disciplinary Authority as well as the Inquiry Officer may have to be one and the same person. It has accordingly been decided that unless it is unavoidable in certain cases as mentioned above, the Disciplinary Authority should refrain from being

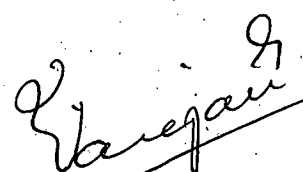
CWS

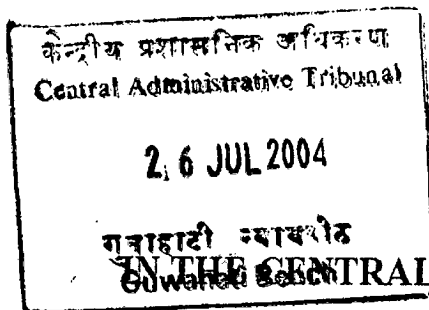
the Inquiry Officer and appoint another officer for the purpose."

By following the above rule the Director, N.E.Circle avoided acting as both the inquiry and disciplinary authority. So the whole argument of the applicant against the appointment of Shri T.K.Bandopadhyay, Director Eastern Circle, as Disciplinary Authority no force in it on the basis of the CCS(CCA) Rules, 1965 cited above. We have thoroughly examined the entire decision making process of the respondents and find that the inquiry has been conducted as per the provisions of Rule 14 of the CCS(CCA) Rules 1965. The disciplinary authority as well as Appellate Authority has observed the principles of natural justice. The order of the Disciplinary Authority dated 26.8.2002, Annexure-G and the order of the Appellate Authority dated 30.7.2003, Annexure-1 are comprehensive, lawful, fair and just.

8. In view of the above given facts this application does not have any merit and is therefore liable to be dismissed. The application is therefore dismissed. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE CHAIRMAN



16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No. 213 /2004

Shri Hrangtling Sangawia. : Applicant

- Versus -

Union of India & Others. : Respondents.

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04.	B	A copy of the penalty order dated 20.08.96.	37-41.
05.	C	A copy of the judgment and order dated 22.08.2001 in O.A. No.128/01.	42-44.
06.	D	A copy of the memorandum dated 18.09.01.	45-49.
07.	E	A copy of the Inquiry report dated 17.06.02.	50-61.
08.	F	A copy of the representation dated 04.07.02.	62-69.
09.	G	A copy of the order of penalty dated 26.08.02.	70-76.
10.	H	A copy of the representation dated 07.10.02.	77-82
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Date: 26.07.04

Filed by
Subrata Naha
Advocate

Hrangtling Sangawia

(X)
Filed by the applicant
Through: Subroto Nalin
Advocate
26.07.04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O. A. No. _____/2004

BETWEEN

Shri Hrangtling Sangawia.

S/O Sailkhuaia,

Two Brother's Home,

Poktieh, Nongthymai,

Shillong-793014.

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Science and Technology,
New Delhi.
2. The Surveyor General of India,
Post Box no-37,
Dehradun-248001
Uttaranchal.
3. The Director,
North Eastern circle,
Survey of India,
Shillong-793001.

... Respondents.

DETAILS OF THE APPLICATION

Hrangtling Sangawia

1. Particulars of order(s) against which this application is made.

This application is made against the impugned penalty order dated 26.08.2002, whereby penalty of compulsory retirement imposed w.e.f. 26.08.2002 and a further order of recovery of Rs. 13,221/- has been ordered from the dues payable to the applicant and also against the impugned appellate order dated 30.07.2003 and praying for a direction upon the respondents for reinstatement of the applicant in service with all consequential service benefits.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of this application is well within the 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

- 4.1 That the 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. The applicant belongs to ST community.
- 4.2 That your applicant while working as Store Keeper Grade II in the Office of the Respondent No.3, a Memorandum

Arangthing Sangawia

of charge sheet was issued under letter bearing No. C.256/4-A-302-37 dated 19.05.1995 against the applicant proposing to hold an inquiry under Rule 14 of CCS (CCA) Rules 1965. The Memorandum was issued for alleged irregularities in the Government Store and for alleged misappropriation of an amount of Rs. 1,62,991/- which was detected by a Board of Inquiry constituted by Respondent No.3 at the time of handing and taking over of stores of No.5 Party (NEC) and also with an allegation that the applicant had admitted the charge of forgery done by him.

A copy of the memorandum of charge sheet dated 19.05.95 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-A.

- 4.3 That however when the applicant denied in writing the aforesaid allegation an inquiry was conducted for gross violation of Rules and a penalty of compulsory retirement w.e.f. 20.08.1996 and a order of recovery of Rs. 60,128.91 was passed by the order dated 20.08.1996. Thereafter the applicant preferred an appeal against the said order dated 20.08.1996 pointing out numbers of irregularities committed in conducting the proceeding under Rule 14 under memorandum dated 19.05.1995. The appellate authority thereafter rejected the appeal of the applicant dated 20.09.1996 vide his order bearing letter No. EZ-336/4-A (HS) dated 16.12.96 confirming the order of penalty and recovery passed by the disciplinary authority.

Arangthing Sangawia

The applicant urge to produce all the relevant documents including the inquiry report, copy of the appeal and the order of the appellate authority passed in the previous proceeding at the time of hearing of this original application.

A copy of penalty order dated 20.08.96 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-B.

- 4.4 That the applicant being highly aggrieved with the penalty order dated 20.08.96 and appellate order dated 16.12.96 approached this Hon'ble Tribunal through O.A. No.128/2000 challenging the validity and legality of the order of penalty dated 20.08.96 as well as the appellate order confirming the aforesaid penalty order. The said original application was contested by respondents filing written statement, the matter was finally decided by this Hon'ble Tribunal on 22.08.2001 by setting aside the order of penalty dated 20.08.96 as well as the appellate order dated 16.12.96, however liberty was granted to the respondents to hold a fresh inquiry as per law and to complete the said proceeding at any rate within a period of 3 months from the date of receipt of the order. In the said judgment and order dated 22.08.2001 the Hon'ble Tribunal held that the applicant was not provided reasonable opportunity and the respondents have violated the principle of natural justice while conducting the said proceeding by not supplying those relevant materials which contained

Hraigthing Sangawia

admissions of the applicant and also for other infirmities as evident from inquiry proceeding.

A copy of judgment and order dated 22.08.2001 passed in O.A. No. 128/2000 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-C.

- 4.5 That pursuant to the judgment and order dated 22.08.01 the disciplinary authority i.e. Respondent No.3 further decided to hold an inquiry under Rule 14 of the CCS (CCA) Rules 1965 vide memorandum issued under letter No. C-313/4-A-302 dated 18.09.01 on the same charges as alleged earlier.

A copy of memorandum dated 18.09.01 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-D.

- 4.6 That it is stated that after issuance of aforesaid memorandum dated 18.09.01 enquiry held on different dates on 20.11.01, 22.11.01, 26.11.01, 27.11.01, 04.12.01, 07.12.01, 03.01.02, 17.01.02, 18.01.02, 04.03.02, 19.03.02, where the applicant participated in the proceeding all along and extended his best co-operation with the inquiry officer. A mere reading of the daily order sheets of the enquiry proceeding conducted by the inquiry officer and the cross-examination of list of witnesses examined on and behalf of the government side as well as list of witnesses of the defence side in as much as 14 witnesses were examined from the defence side and all witnesses of both of the government side as well as defence side

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were cross-examined in the proceeding. It is evident from the record of the cross-examination of the proceeding that not a single article of charges contained in the memorandum dated 19.05.1995 or memorandum dated 18.09.2001 was proved. Most of the witnesses either belongs to prosecution side or belongs from the defence side stated nowhere in the inquiry proceeding that the applicant is guilty of shortage of store materials indicated in the memorandum of charges or guilty of forging of signature in the ledger and invoices with a intention to hide the misdeeds done by him as alleged. A mere reading of the cross-examination report of the Chairman of Board of Inquiry constituted by the Director, NEC SOI, for ascertaining the shortage of store materials, it would be evident that he had specifically stated that the Board of Inquiry verified the store materials physically as well as checked up and verified all the relevant ledgers where entries of the stocks are made and store materials were issued on requisition. In the first inquiry proceeding the inquiry authority came to the conclusion that there was a loss caused to the government exchequer to the tune of Rs. 60,128.91 due to mismanagement and negligence, when the allegation as per Memo of charge sheet was Rs. 1,62,991/- as per Board of inquiry. But surprisingly in the second proceeding it has come down to the tune of Rs. 13,221/-. It is evident from the proceedings itself that many of the store materials were found/traced out in the store itself, therefore on a perusal of the

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inquiry proceeding it would be established beyond doubt that the same has been conducted in a very casual manner in two different occasions and the inquiry authority with a predetermination and in order to maintain their stand held the applicant responsible even in the second proceeding for causing loss of store materials to the tune of Rs. 13,221/-. This fact establishes beyond doubt that the inquiry authority never made an attempt to conduct the inquiry fairly and the applicant's apprehension as well as allegation of biasness of the inquiry officer also establish beyond doubt as indicated in the judgment and order dated 22.08.01. If a careful scrutiny of the proceeding is made then it would be evident that even the loss of store material to the tune of Rs. 13,221/- has not at all established in the subsequent inquiry proceedings also. The inquiry report of the subsequent proceeding is also contrary to the records of the cross-examination of said proceeding, none of the listed witnesses relied upon by the prosecution failed to establish the charges labeled against the applicant. The list of documents not examined at all as required under the rule. Therefore, inquiry proceedings have been conducted in a very irregular and casual manner in total violation of procedure and relevant provisions of CCS (CCA) Rules 1965. The cross-examination report of the individual witnesses examined in the inquiry proceeding establishes beyond doubt that the applicant is not guilty of any charges as alleged in the

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memorandum dated 18.09.2001. The applicant urges to produce all the relevant cross-examination report of the individual witnesses who were examined in the inquiry proceeding to impress upon the Hon'ble Court that none of charges labeled against the applicant is established in the inquiry report.

- 4.6 That the inquiry officer in his inquiry report dated 17.06.02 held that misappropriation of government store amounting to Rs. 1,62,991/- has been partly proved as alleged in the article of charge No. I but surprisingly it is held that lack of devotion to duty, integrity and character unbecoming of a government servant of Shri H. Sangawia has been fully proved by the disciplinary authority. This finding towards charge of Article I is itself contradictory. Moreover, on a mere perusal of the reason for conclusion recorded by the inquiry officer in support of Article of charge No. I is itself contradictory with the records of the proceedings. On a mere perusal of the relevant portion of the findings related to Article of charge No. I it appears that the inquiry officer stated in his reasoning for conclusion that the supporting documents including government examiner's report shows applicant's fraudulent conduct and further it is stated in the said column by the inquiry officer that oral evidences of prosecution as well as defence witnesses the allegation that the applicant is lacking devotion to duty, integrity, and character unbecoming of a government servant has been proved. In this connection it may be stated that on a

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mere perusal of the inquiry proceeding it would be evident that the charge of forging the initial of other officers in the ledger by the applicant is never established, Govt. examiner simply says that something was written over the initial of the other officers in some of the entry point of the stock register. Therefore this fact never establishes that the charged official has forged the signature with the intention to hide the misdeeds. Therefore findings of the inquiry officer so far charge of Article No. I is contrary to the records of the inquiry proceedings. Similarly other findings of charge of Article No. I is contrary to the record of inquiry proceeding.

It is further submitted that the findings of the inquiry officer relating to charge of Article No. II is also contrary to the records of the inquiry proceeding as already stated above and as such the findings of inquiry is perverse and same is violative to the procedure laid down in CCS (CCA) Rules 1965, moreover there is no discussion of evidence, no discussion of documents, no discussion of cross-examination report and no examination of the relevant documents relied upon by the prosecution side as required under the Rule and on that score alone the entire inquiry proceeding is liable to be set aside and quashed.

A copy of the inquiry report dated 17.06.02 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-E.

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4.7 That it is stated that in the impugned order of penalty issued by the disciplinary authority vide order bearing letter No. C/A-103/4-A (H. Sangawia) dated 26.08.2002 whereby penalty of compulsory retirement imposed upon the applicant w.e.f. 26.08.02 and further order of recovery of Rs. 13,221/- has been passed for loss of govt. store material in a most arbitrary manner without application of mind and without consultation the records of the inquiry proceedings more particularly the relevant records pertaining to cross-examination, examination of documents and examination of witnesses and their statements recorded in the inquiry proceedings, the disciplinary authority with a predetermination came to the conclusion that the charges labeled either in the memorandum dated 19.05.1995 or in the memorandum dated 18.09.2001 has been established beyond doubt when without recording the disagreement with the findings of the inquiry officer.

It is further submitted that inquiry officer in his inquiry report dated 17.06.2002 held that misappropriation of government store amounting to Rs. 1,62,991/- was partly proved however forging of signature of O.C Parties/Verifying officers fully proved but the disciplinary authority in the impugned order of penalty dated 26.08.2002 more particularly the disciplinary authority in his findings is especially in paragraph 5 held that charges contained in Article I

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and II of the memorandum proved beyond doubt. The relevant portion of para 5 is quoted below:

"Therefore, I held the charges contained in Article I & II of the Memorandum proved beyond doubt----".

But before arriving to such arbitrary decision the disciplinary authority never recorded his disagreement with the report of the inquiry officer as required under the rule. Moreover when some charges are partly proved in that case the charged official is entitled to a second notice from the end of the disciplinary authority before imposition of penalty but in the instant case no such course was adopted by the disciplinary authority before imposing the penalty order dated 26.08.2002 on that score alone the impugned order of penalty is liable to be set aside and quashed.

It is further stated that on a mere perusal of the findings of the Board of Inquiry constituted by the Director (NEC) SOI, Shillong which ascertained that the applicant was responsible for loss of huge amount of government stores amounting to Rs. 1,62,991/- but surprisingly it appears that in the first inquiry proceeding it was held by the inquiry officer that the shortage of store materials is only to the tune of Rs. 60,128.91, where as when that proceeding and the order of penalty and appellate order was set aside by this Hon'ble Tribunal for violation of provisions of rule and granted liberty to the respondents to hold a de-novo inquiry, now in the subsequent proceeding the

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inquiry officer as well as the disciplinary authority came to the conclusion that loss of govt. exchequer is caused only to the tune of Rs. 13,221/- , therefore it is quite clear that the Board of Inquiry which was constituted for ascertaining the shortage of store materials but the said inquiry committee submitted a bogus report without proper physical verification of store materials and based on which a proceeding under Rule 14 was initiated against the applicant. Therefore none of the inquiry report reveals the factual position and the findings of the proceeding is contradictory to each other, therefore it appears that the initial report of the Board of Inquiry is totally vague and the same has been prepared with an ulterior motive to damage the service prospect of the applicant and the disciplinary authority also acted upon the said report and decided to hold a inquiry under Rule 14 of the CCS (CCA) Rules, 1965. Since the basic report based on which the inquiry was initiated under Rule 14 against the applicant has now proved beyond doubt that said initial report is not at all authentic and on that score alone the present inquiry proceeding is liable to be set aside and quashed. None of the grounds raised by the applicant in his representation dated 04.07.2002 was entertained and discussed by the disciplinary authority before imposition of the penalty.

The applicant in his representation dated 04.07.2002 pointed out series of infirmities right from the report of the Board of Inquiry an also specifically

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pointed out that he was relieved from No. 5 party on 13.07.1994 before handing over the stores to any one pursuant to a transfer and posting order issued by the respondent, posting the applicant to No. 80 party and those facts neither discussed by the disciplinary authority but rejected those grounds without any valid reasons. Applicant in his representation against the inquiry report categorically pointed out that the charges of misappropriation of government money has been partly proved and further stated specifically that the store of the 5 party was in a very bad shape even before the applicant took over the charge of store of 5 party and he had made entries of materials for receipt/issue works for more than 15 years, he had to prepare papers for condemnation of unserviceable stores which have never been taken place since 1974, no sanction for payment against the bills were issued earlier, khamal was shifted to Guwahati in 1988 which severely effected smooth functioning of office and the applicant also stated that Maj. S. Choudhury became annoyed when the applicant refused to acknowledge Rs. 5000/- instead of Rs. 3000/- which was the actual sum for permanent contingency advance and as a result of which all those inquiries and proceedings were initiated subsequently but the disciplinary authority in his reports not even discussed a single ground raised by the applicant in his representation dated 04.07.02, while reached to the conclusion that all the charges has been proved. It is also admitted in para 3.

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of the findings of the disciplinary authority relating to Article of charge No.2, wherein it is admitted by the disciplinary authority that "most of the lost items of the stores were located during inquiry at several places", therefore it is quite clear that the board of inquiry did not take the pain of physical verification of the store materials enquired into by them, for the purpose of which the Board of inquiry was constituted. Hence the subsequent inquiry proceeding has established it beyond doubt that the report of the Board of inquiry regarding the loss of stores, amounting to Rs. 1,62,991/- is totally false and misleading and the said report is not bonafide as such the respondents are not legally entitled to act upon the said report of shortage of store materials furnished by the board of inquiry and as such initiation of the very proceeding under Rule 14 is void-ab-initio. It is ought to be mentioned here that in as much as at least two inquiry proceedings were initiated by the respondents themselves which came to the conclusion that most of lost store materials were found in different places of the store itself while physical verification conducted, therefore initiation of a proceeding against the applicant under Rule 14 on the basis of incorrect report furnished by a board of inquiry is highly arbitrary, unfair and illegal, more so, when the said report is found not bonafide but the same has been prepared with an ill motive as because amount of loss of stores in the first proceedings came

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down to Rs. 60,128.91 on physical verification and in the subsequent proceeding when physical verification instituted the loss of store materials came down to Rs. 13,221 on further physical verification, therefore it is established beyond all doubt that all the proceedings conducted by the respondents in total violation of the relevant procedure laid down in CCS (CCA) Rules and the irregularities and infirmities in conducting the first proceeding already confirmed by this learned Tribunal in its judgment and order dated 22.08.2001 passed in O.A. No. 128 of 2000. As such the present proceeding which is visited for gross violation of procedure as stated above and also in view of the fact that none of the grounds raised by the applicant in his representation dated 04.07.02 were taken into consideration while disciplinary authority reached to the conclusion that the charges has been proved beyond doubt. On that score alone the impugned order of penalty dated 27.07.02 and the inquiry proceeding are liable to be set aside and quashed.

Copy of the representation dated 04.07.02 and order of penalty dated 26.08.02 are enclosed hereto for perusal of Hon'ble Tribunal as Annexure- F and G respectively.

- 4.8 That it is stated that the allegation of forgery labeled against the applicant infact not established in any of the inquiry proceeding. Moreover the applicant has simply complied with the observation of the O & M inspection report of 1992 as because there were certain

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time limit fixed for compliance of the instructions, even assuming but not admitting the contention of the disciplinary authority is correct that the applicant is not authorized as indicated in para 4 of the findings of the disciplinary authority that the applicant has unauthorisedly put his initials against the receipt/issue columns of items in the stock register being a non-gazeted staff, the said omission or commission may at best be termed as "irregularity" but the said irregularity when done without any ill motive to gain undue advantage or to give undue favour to any persons interested in the same, the said action or omission or commission does not fall within the definition of "misconduct" as alleged in the instant case. In any of the inquiry proceeding nowhere it is alleged in the findings of the disciplinary authority that the applicant has caused all those irregularities with the intention to gain any undue monetary benefit but the findings of the disciplinary authority came to specific conclusion in a subsequent proceeding more particularly in paragraph 5 as follows:

"5. Having gone through the full facts of the case carefully and also after examining the documentary evidences available and going through the defence statement of Shri H. Sangawia, Storekeeper Grade II, it is established that the apparent huge loss of Govt. stores occurred in No. 5 Party (NEC) is due to negligence/irresponsibility/forgery on the part of Shri H.

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Sangawia since he was solely responsible for safe custody and proper accounting of Govt. stores of the Unit. Therefore, I hold the charges contained in Article I & II of the Memorandum proved beyond doubt although the charge for loss of huge amount of Govt. stores to the tune of Rs. 1,62,991/- (Rupees one lakh sixty two thousand nine hundred and ninetyone only) has been reduced to Rs. 13,221/- (Rupees thirteen thousand two hundred and twentyone only) since most of the store items have been located at several places during the course of Inquiry. As such recovery for loss of Govt. stores to the reduced value of Rs. 13,221/- (Rupees thirteen thousand two hundred and twentyone only) will be affected from him."

It is quite clear on a plain reading of the conclusion arrived at by the disciplinary authority in his findings that the loss has been caused due to negligence/irresponsibility/ forgery". The very question of negligence and irresponsibility is totally based on a ability of a person, therefore said act of omission on the part of the applicant does not fall within the definition of misconduct as alleged by the respondents. The word "forgery" has been used on the context that the applicant put his initials to comply with the instruction contained in the O & M inspection report dated 1992. Therefore that cannot be said forgery in a strict sense of the said word as alleged in the memorandum of charge sheet or in the imputation

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of the misconduct. In the findings of the disciplinary authority in paragraph 4 it is categorically held by the disciplinary authority that the applicant is not authorized to put his initial against the issue/ receipt of store items in stock ledger only on the ground that he is a non-gazetted employee. Therefore it can at best be termed as an irregularity that too not with any evil intention in the inspection report as stated above. Therefore allegation of forgery as alleged in the memorandum of charge sheet has never been established in the proceedings and the omission or commission made by the applicant also does not fall within the definition of misconduct in its real sense. As such Article of charge No. I as well as Article of charge No. II has not been established at all and the alleged irregularities also do not fall within the definition of misconduct, which warrants imposition of any punishment upon the applicant. In this context the applicant begs to refer Stroud's Judicial Dictionary (1986 fifth edition) which is as under:

"misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes, do not constitute such misconduct."

Hon'ble Supreme Court in the case of U.O.I Vs. J. Ahmed also held as follows:

"It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct.

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If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondents. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

In view of the facts and circumstances the impugned order of penalty dated 26.08.02 whereby the penalty of compulsory retirement imposed upon the applicant w.e.f. 26.08.02 as well as the order of recovery of Rs. 13,221/- are liable to be set aside and quashed.

- 4.9 That your applicant preferred an appeal against the impugned order dated 7th October, 2002 addressed to the Addl. Surveyor General (EZ), Kolkata in the said appeal the applicant pointed out series of irregularities and infirmities in conducting the proceeding under Rule 14 of CCS (CCA) Rules 1965. The first point, the applicant has taken in his appeal that the applicant was posted at No.5 Party store at the time when there were lots of anomalies and no store keeper were willing to take over the charges of the said store. Applicant also pointed out that Sri T.K. Bondopadhyaya, Director Eastern Circle was appointed as ad-hoc disciplinary authority under Rule 12 (2) of CCS (CCA) Rules, 1965, inspite of the fact that there was regular Director available in N.E. Circle and that too

without approval of the President as required under the rule, therefore appointment of Sri T.K. Bondapadhya was objected by the applicant but the said objection was not considered. Applicant also raised non payment of subsistence allowance as per rate prescribed by the government and it was clear from the attitude and behaviour of the disciplinary authority that he is vindictive towards the applicant and was working with a predetermined notion as such finding of the disciplinary authority to the extent that the applicant made attempt to shift responsibility to others is not correct at all. Moreover, variation of amount of Rs. 1,62,991/- to 13,221/- itself establishes that the explanation of the defence of the applicant was not properly examined and considered and none of the defence considered by the disciplinary authority, which was advanced by the applicant in his explanation on the alleged misappropriation of the stores, therefore it is irregular and to hold the applicant responsible for non recovery of earlier items like blankets, umbrellas when no intimation about the retirement or transfer of the concerned staffs was given to the applicant. Inquiry officer also not considered plea of the applicant of the fact that in the inquiry Shri Zatin sang admitted taking padlock on loan from No.5 Party stores. Plea of condemnation and misidentification of certain equipments and instruments put forwarded by the applicant also not considered and accepted by the disciplinary authority in his findings. Applicant

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further pointed out many items, which were purchased by Major G.S. Chandella and taken by him to camp, but never brought back to the stores, which are worth of Rs. 766/-. Applicant also pointed out that Sri S.P. Das was responsible for loss of water filter amounting to Rs. 450/-. Sri S. Choudhury condemned 9 nos. of tea flasks worth of Rs. 760/- and out of 15 plastic canes four (4) were written off by Major S. Choudhury. Applicant also specifically pointed out that infact physical verification was not conducted by the preliminary inquiry committee and also given his reply to his findings on loss of stores worth of Rs. 13,221/- where items were given in details with their respective value and also specifically given details of the replacement value of Rs. 6,127/- consumable articles and other items as well but surprisingly the appellate authority only considered the following points:

- (i) Appointment of Shri T.K. Bandyopadhyaya as Ad-hoc Disciplinary Authority is not in order as the Director-in-charge of North Eastern Circle was stationed at Shillong.
- (ii) Presidential sanction is required for appointment of an Ad-hoc Disciplinary Authority which has not been obtained.
- (iii) The appointment of Shri T.K. Bondyopadhaya as ad-hoc Disciplinary Authority is objected on the basis of his prejudice against the applicant.

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- (iv) The ad-hoc Disciplinary Authority is bias against the appellant.
- (v) The appellant was charged for misappropriation of stores worth Rs. 162991/- but the Inquiry Officer in his own findings found the loss to be Rs. 13221/- only. As such the charge of misappropriation against the appellant was not proved.
- (vi) The appellant's defences brief were dismissed arbitrarily by both the Inquiry Officer and the Disciplinary Authority, which is against all norms of enquiry.

That too in a most arbitrary and mechanical way without considering the other defence advanced by the applicant, there is no discussion of evidence as required under the rules and also no scrutiny is made by the appellate authority on the points whether the procedure laid down in CCS (CCA) Rules has been complied or not and whether such non compliance resulted in violation of any provisions or in the failure of any justice and no scrutiny is made by appellate authority so far findings of the disciplinary authority which is contrary to the evidence on records but confirmed the same in total violation of provisions laid down in Sub-Rule (2) of Rule 27 of CCS (CCA) Rules 1965. The appellate authority also failed to take note of the fact that the findings of the disciplinary authority is not in conformity with the evidence of

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records and no disagreement is recorded by the disciplinary authority when held that all the charges are proved but the same are contrary to the findings of the inquiry officer and the appellate authority also not considered the grounds raised by the applicant in his appeal dated 07.10.02 as such the inquiry proceeding, order of penalty dated 26.08.02 and appellate order dated 30.07.03 are liable to be set aside and quashed.

Copy of the representation dated 07.10.02 and impugned appellate order dated 30.06.02 are enclosed hereto for perusal of Hon'ble Tribunal as Annexure- H & I respectively.

- 4.11 That it is submitted that the Appellate Authority also confirmed the impugned penalty order in a most mechanically way without application of mind and also without considering the fact whether the procedure laid down in Rule 14 of CCS (CCA) Rules, 1965 has been complied with or not by the Disciplinary authority. There is no discussion of evidence, as required under the Rule but the order has been confirmed by the Appellate Authority in total violation of the relevant provisions laid down in the CCS (CCA) Rules and on that score alone the impugned appellate order is liable to be set aside and quashed. Most of the grounds raised by the applicant in his appeal dated 07.10.02 were not examined by the Appellate authority, moreover, when very initiation of the proceedings based on a biased inquiry report furnished by the Board of Inquiry, as

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such the very initiation of the proceeding is bad in law. The applicant also gave a detail explanation regarding shortage of store materials alleged by the Board of Inquiry but not a single discussion is made by the Appellate authority on those grounds and on that score alone impugned appellate order dated 30.07.03 is liable to be set aside and quashed.

4.12 That it is stated that there is no other alternative remedy available to the applicant under the rule but to approach this Hon'ble Tribunal for protection of his valuable legal rights. It is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interest of the applicant by setting aside order of penalty dated 26.08.02 and appellate order dated 30.06.02.

4.13 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 report furnished by the Board of Inquiry alleging loss of store materials to the tune of Rs. 1,62,991/- has been estimated without physical verification of the store materials but with a predetermined mind to harass the applicant which is established beyond doubt that the said report is not correct in view of the categorical findings of the Inquiry officer in the first as well as in the second proceeding which was conducted against the applicant

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and on that score alone the memorandum of charge sheet dated 19.05.1995 and memorandum dated 18.09.2001 are liable to be set aside and quashed, as the said inquiry was based on an incorrect report of the Board of Inquiry which was constituted by the Director of Survey of India and on the basis of which the alleged misconduct of charge sheet was issued against the applicant.

5.2 For that, the very initiation of the Memorandum of charge sheet dated 19.05.1995 or 18.09.2001 is made on the basis of a incorrect and misleading report of the Board of Inquiry which were established on different occasion when inquiry reports were submitted which was constituted in terms of Rule 14 of CCS (CCA) Rule, 1965 alleging misappropriation of govt. money to the tune of Rs. 1,62,991/- due to loss of store materials, the said inquiry reports were also confirmed by the Disciplinary Authority while agreeing with the inquiry report and imposing penalty upon the applicant in total violation of relevant provisions of CCS (CCA) Rules 1965.

5.3 For that, on a mere perusal of the records of the inquiry proceeding, the records of the cross examination, it would be evident that documents, witnesses, listed witnesses were not properly examined and none of the charges labeled against the applicant were established but the report of the inquiry office are contrary to the evidence recorded in the inquiry proceeding.

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- 5.4 For that, the findings of the inquiry officer in the subsequent proceeding to the effect that the charge of misappropriation of govt. money only to the tune of Rs. 13,221/- partly proved against the alleged amount of misappropriation of Rs. 1,62,991/-, whereas, in the first inquiry report the inquiry officer without proper physical verification of the store materials came to the conclusion that there was loss of store materials to the tune of Rs. 60,128.91/- which was also accepted by the same disciplinary authority without making any effort to reach to a reasonable conclusion after taking into consideration the points raised by the applicant in his representation submitted earlier against the inquiry report, as such, it is established beyond doubt that both the inquiry proceeding has been conducted in a very casual manner, without proper physical verification of store materials which is evident from the 'variation' of findings of the inquiry officer submitted in different inquiry report, as such, the inquiry proceeding, order of penalty and the Appellate order are liable to be set aside and quashed.
- 5.5 For that, the discussion of evidence in the inquiry report as well as findings of the inquiry officer relating to subsequent inquiry proceeding not in conformity with the records of the inquiry proceedings, as such, findings of the inquiry officer is perverse, not based on records.

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- 5.6 For that, allegation of admission of forging the initials of other officials in the Stock Registrar, also not established. The applicant has complied with the observation of the O & M inspection report of 1992 where certain time limit was fixed for compliance of the instructions.
- 5.7 For that, the findings of the disciplinary authority so far the allegation of forging of the initials of other officials against the receipt and issue columns of items in the stock registrar is held as "unauthorized" being a non-gazetted employee, as such said omission or commission may be termed as "irregularity" but not "misconduct".
- 5.8 For that, in the impugned order of penalty the disciplinary authority did not make any discussion of evidence; recorded in the inquiry proceeding or regarding examination of listed witnesses, defence witnesses and also regarding examination of list of documents as required under the law, but mechanically came to the conclusion that the charges has been proved.
- 5.9 For that, no reason for disagreement is recorded by the disciplinary authority while holding all the charges were established when there was a specific finding of the inquiry officer that the charge of misappropriation of govt. money partly proved, as such the order of penalty is liable to be set aside and quashed.

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5.10 For that, the disciplinary authority himself came to the finding that "It is established that the apparent huge loss of Govt. stores occurred in No. 5 Party (NEC) is due to negligence/irresponsibility/forgery on the part of Shri H. Sangawaia since he was solely responsible for safe custody and proper accounting of Govt. stores of the Unit. Therefore, I hold the charges contained in Article I & II of the Memorandum proved beyond doubt although the charge for loss of huge amount of Govt. stores to the tune of Rs. 1,62,991/- (Rupees one lakh sixty two thousand nine hundred and ninety-one only) has been reduced to Rs. 13,221/- (Rupees thirteen thousand two hundred and twenty-one only) since most of the store items have been located at several places during the course of Inquiry." But there is no finding in the report of either of the inquiry office or of disciplinary authority that the aforesaid omission or commission has been done with any illegal or dishonest motive to gain any undue advantage which falls within the definition of misconduct.

5.11 For that the disciplinary authority did not take into consideration of the explanation of a large number of store materials, which were never returned by the employees in whose favour those were issued.

5.12 For that the Appellate Authority did not take into consideration the vital ground raised by the applicant explaining the details store materials issued in favour of the employees of Survey of India, amounting to the

Hranying Sangawia

tune of Rs. 13,221/- but mechanically confirmed the decision of the disciplinary authority.

5.13 For that, the Appellate Authority failed to discuss the evidence recorded in the inquiry proceeding as well as the record of the cross examination of witnesses, listed witnesses, list of the documents, defence raised by the applicant as required under the relevant provision of the CCS (CCA) Rule, 1965.

5.14 For that, the Appellate Authority also failed to look into the procedural violation as well as other infirmities which are made in conducting the inquiry proceeding, but confirmed the impugned order of penalty, rejecting the ground raised by the applicant in his appeal.

5.15 For that, the act of omission or commission made by the applicant does not fall within the definition of misconduct, as such, the impugned order of penalty dated 26.08.02 and impugned appellate order dated 30.07.03 are liable to be set aside and quashed.

5.16 For that, no second notice was issued before imposition of penalty when the inquiry officer held that allegation contained in Article No. I is partly proved as required under the law.

5.17 For that, Appellate Authority also failed to take into consideration that the charge in Article No. I is partly proved but held that the charges are proved

Harpthy Sangawie

beyond doubt mechanically simply on the basis of the order of the disciplinary authority.

6. Details of remedies exhausted:

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

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

The applicant declares that he had previously filed O.A. No.128/2000 before this Hon'ble Tribunal, which was decided in favour of the applicant. The applicant further declares that no application, Writ Petition or Suit is pending before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that, Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted 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 relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quashed the impugned order of penalty dated 26.08.2002 (Annexure-G) issued by the Disciplinary Authority as well as the impugned Appellate order dated 30.07.03 (Annexure-I) passed by the Appellate Authority.

Hraunthyr Sangawia

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in service, with all consequential service benefit including arrear monetary benefit.

8.3 That the Hon'ble Tribunal be pleased to set aside and quash the report and findings of the Board of inquiry to the effect that there was a shortage of loss of store materials to the tune of Rs. 1,62,991/- in the store of No. 5 Party of Survey of India, Shillong.

8.4 Costs of the application.

8.5 To pass any other order or order (s) as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be a bar to the respondents to consider the case of the applicant to reinstate him in service.

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

i)	I. P. O. No.	:	20G 114135
ii)	Date of Issue	:	31.8.04
iii)	Issued from	:	GPO. Guwahati
iv)	Payable at	:	GPO. Guwah

12. List of enclosures.
As given in the index.

Hraunthang Sangaria

VERIFICATION

I, Shri Hrangtling S/o Shri Sailkhuaia, aged about 55 years, resident of Two Brother's Home, Poktieh, Nongthymai, Shillong do hereby verify that the statements made in Paragraph 1 to 4 and 6 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 26th day of July, 2004.

Hrangtling Sangawia

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

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

सं० No. C-256/4-A-302 - 87-

तार—"सपूर्वोत्तर"
Telegram—"SURNOREAST"
टेलीफोन Telephone :
कार्यालय Office - 4937
निवास स्थान Res. - 3410

पूर्वोत्तर सर्किल कार्यालय
NORTH EASTERN CIRCLE OFFICE
डाक बक्स सं० ८९, POST BOX NO. ८९,
शिलांग-७९३००१ (मेघालय)
SHILLONG-793001 (MEGHALAYA)

तारीख Dated 19 May 55 1955
189 (सक Saka).

ANNEXURE- A

MEMORANDUM

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

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

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

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

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

6. The receipt of the Memorandum may be acknowledged.

(F.K. GUPTA) DIRECTOR,
DIRECTOR, NORTH EASTERN CIRCLE.

Tc

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

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

Done by
Jant. Adm. Unit

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

ARTICLE-I

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

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

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By his failure to account for the above deficiencies, Shri H. Sangwia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character, unbecoming of a Govt. servant and charged for misappropriating Govt. stores amounting to Rs. 1,62,991/- (Rupees one lakh, sixtytwo thousand, nine hundred and ninetyone only), thereby violating Rules 3(1) (i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE -II

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

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

-39- -35-

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

ARTICLE-I

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

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

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

ARTICLE-II

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

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

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

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

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

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

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

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

True copy
for
Advocate

CONFIDENTIAL

No. C- 527 /4-A-302

ARTICLE II

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
SHILLONG-793 001 (MEGHALAYA)

Dated: the 20 Aug 1996

ORDER

WHEREAS a Memorandum No. C-250/4-A-302 dated 19 May '95 proposing to hold an inquiry against Shri H. Sangawia, Storekeeper Grade II of No. 80 (Photo) Party (NEC), Survey of India, Shillong under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was served on Shri H. Sangawia, the responsibilities entrusted on him as a Storekeeper of Govt. stores, Shri H. Sangawia WHEREAS the undermentioned statement of articles of charge (Annexures and (i) (ii) were enclosed with the above mentioned Memorandum: by violating (i) (ii) (iii) of Central Civil Services (Conduct) Rules, 1964.

STATEMENT OF ARTICLES OF CHARGE

From the statement of articles of misconduct or misbehaviour issued under Memorandum No. C-250/4-A-302 dated 19 May '95 that they said Shri H. Sangawia, Storekeeper Grade II of No. 80 (Photo) Party (NEC), Survey of India, Shillong was entrusted with the responsibilities of Govt. stores in charge of No. 5 Party (NEC) since 07 July, 1987 to 13 July, 1994.

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

Contd....p/3

Contd....p/2

True Copy
for
Advocate

ARTICLE II

The above act of Shri H. Sangawia, Storekeeper shows his faith that the said Shri H. Sangawia, Storekeeper Grade III of No. 80 (Photo) Party (NEC) Go Survey of India at Shillong while functioning as Storekeeper, Holdings (Charge of Govt. Stores of No. 5 Party (NEC) had forged signatures of his Os. C. Parties/Verifying Officers in the ledgers and invoices with intention to hide the misdeeds done by him and get himself free from the charge of loss of Govt. stores. Even some pages of his consumable items register were found missing. Shri Sangawia could not give convincing reasons for the above mentioned lapses on his part and he had admitted the charge of forgery done by him of No. 5 Party (NEC). The board also found that Shri Sangawia had forged the signatures of his Os. By this failure to maintain the responsibilities entrusted to him as a Storekeeper of Govt. stores, Shri H. Sangawia, Storekeeper Grade III exhibited lack of devotion to duty and integrity and also exhibited character unbecoming of a Govt. employee thereby violating rule 3 (i) (i) (ii) (iii) of Central Civil Services (Conduct) Rules, 1964 in the loss of stores of No. 5 Party (NEC). Even some pages of his 2nd personal from the statement of imputations of misconduct or misbehaviour issued under Memorandum No. C-250/4-A-302 dated 19 May 1995, which may be seen that Shri H. Sangawia, Storekeeper Grade III was entrusted with the responsibility of safe custody and proper accounting of Govt. stores of No. 5 Party (NEC) from 07 July '87 to 13 July '94.

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

Sangawia asking him to submit his representation/submission, if any, within 15 days of the receipt of the letter. Shri Sangawia has submitted his representation on 0 Contd. p/3

Contd. / p/4

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

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

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

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

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

Contd....p/4

Not guilty

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

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

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

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

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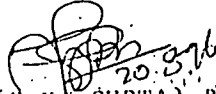
Shri H. Sangawia, Storekeeper Grade II, the undersigned is of the opinion that Shri H. Sangawia, Storekeeper Grade II is not a person fit to be retained in service.

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

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

AND

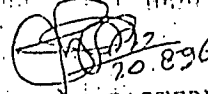
(ii) Recovery of Depreciated Value of Loss of Stores of amounting to Rs. 60,128.91 (Rupees sixty thousand one hundred twentyeight and paise ninetyone only) from DCRG and other pensionary benefits.


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

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

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

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


DIRECTOR, NORTH EASTERN CIRCLE.

*For my
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

58

Original Application No.128 of 2000

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

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

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

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

.....Applicant

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

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. The Surveyor General of India, Dehradun, Uttar Pradesh.
3. The Additional Surveyor General, Eastern Zone, Calcutta.

The Director,
North East Circle,
Survey of India,
Shillong.

5. The Director General, Surveyor General of India, New Delhi.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY, J. (V.C.)

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

*True copy
for Advocate*

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

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

the.....

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

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

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

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

TRUE COPY

प्रतिप्रति

Section Officer (J)

प्रशासनिक अधिकारी (न्यायिक शाखा)

Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण

Guwahati Bench, Guwahati

गुवाहाटी न्यायपीठ, गुवाहाटी

True Copy
for reference

45.
Received
on 19.9.01
for 61
ANNEXURE-D

CONFIDENTIAL

No.C- 313 /4-A-302

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
SHILLONG-793 001 (MEGHALAYA)

Dated, the 18 Sept 2001

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri H. Sangawia, Storekeeper Grade II under rule 14 of the Central Civil Services (Classification, Control and Appeal) rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of articles of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV).

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

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

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

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

6. The receipt of the Memorandum may be acknowledged.

T.K. Bandyopadhyay
(T.K. BANDYOPADHYAY)
DIRECTOR, NORTH EASTERN CIRCLE
(DISCIPLINARY AUTHORITY)

✓ To

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

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

Tone copy sent Advocate

ANNEXURE-I

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

ARTICLE-I

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

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

By his failure to account for the above deficiencies, Shri H. Sangawia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character unbecoming of a Govt. servant and charged for misappropriating Govt. stores amounting to Rs.1,62,991/-. (Rupees one lakh, sixtytwo thousand, nine hundred and ninetyone only), thereby violating Rules 3(1) (i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

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

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

ANNEXURE-II

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

ARTICLE-I

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

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

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

ARTICLE-II

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

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

But Shri Sangawia admitted that he had forged the signature of various officers.

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

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGAWIA, STOREKEEPER GRADE II AND PROPOSED TO BE SUS-TAINED.

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

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

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. SANGAWIA, STOREKEEPER GRADE II ARE PROPOSED TO BE SUS-TAINED.

- (i) Shri S.P. Das, Officer Surveyor, NECO, [The then O.C. No.12 Party(NEC)]
- (ii) Shri A.K. Sengupta, Officer Surveyor, O.C. No.12 D.O.(NEC) [The then O.C. No.9 Party(NEC)]
- (iii) Shri P. Dev, Officer Surveyor, No.13 D.O.(NEC) [The then in No.5 Party(NEC)]
- (iv) Shri Sridhar Roy, Surveyor, NECO [The then in No.9 Party(NEC)]- Verifying Officer
- (v) Shri T.R. Dhar, Storekeeper Grade II, NECO [The then Store keeper of No.5 Party(NEC)]

*True Copy
Sent
Annexure*

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Conducted ... Under Rule 14 of CCS(CCA) Rules, 1965

By ... Lt Colonel B D Sharma
Dy. Director (Then) & Director (Now)
North Eastern Circle,
Survey of India, Shillong.

Under the order of ... Director, North Eastern Circle's
Order No. C - 329 /4-A-302
Dated the 28 Sep 2001 .

To inquire into ... Memorandum of charges vide Director
North Eastern Circle's No. C-313 /4-A-302
Dated the 18 Sep 2001 issued to Shri H
Sangawia, SK Gde II of No. 80(P) Party
(NEC) - regarding:

(i) his failure to account for deficiencies of
Govt stores amounting to Rs. 1,62,991/- (Rupees
one lakh sixty two thousand nine hundred and ninety
one only) entrusted to him ,thus exhibiting lack of
devotion to duty ,integrity and also exhibiting
character unbecoming of a Govt. servant and thereby
violating Rules 3 (1) (i) (ii) &(iii) of CCS(conduct)
Rules 1964 .

AND

(ii) by forging the signatures/ initials of his
OC Parties/ Verifying Officers in the Stock ledgers
and invoices with an intention to hide the misdeeds
done by him, thus exhibiting lack of devotion to duty
,integrity and also exhibiting character unbecoming of
a Govt. servant and thereby violating Rules 3 (1) (i)
(ii) &(iii) of CCS(conduct) Rules 1964 .

Conducted in the ... Office of Deputy Director /Director (NEC)
Survey of India, Shillong -793 001.

During the period ... 10 th Oct 2001 to 19 Mar 2002 .

The enquiry officer pursuant to the order proceeded to examine the case :-

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*Tone Long
for advocate*

ABBREVIATIONS USED IN THE PROCEEDINGS

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DNEC	: Director, North Eastern Circle, Survey of India, Shillong
NEC	: North Eastern Circle
O.C.	: Office-in-Charge
No.	: Number
C.O.	: Charged Officer
P.O.	: Presenting Officer
I.O.	: Inquiry Officer
memo	: Memorandum
P/Tr	: Plane-table
Gde.	: Grade
(P)	: Photo
PHQ	: Party Head Quarter
S.K.	: Storekeeper
D.A.	: Defence Assistant
O.S.	: Officer Surveyor

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INQUIRY REPORT

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1. INTRODUCTION :-

1.1 Shri H Sangawia, Store Keeper Grade II posted in No. 80(P) Party of North Eastern Circle of Survey of India Shillong was proceeded with the departmental inquiry during 1996 under rule 14 of the CCS(CCA) Rules 1965 for the charges of failure to maintain absolute integrity and exhibiting conduct unbecoming of a Govt servant thereby violating Rule 3(1) of CCS Conduct Rules 1964.

1.2 Sequel to the above inquiry, Shri H Sangawia was imposed the penalty of compulsory retirement from service vide the Director, North Eastern Circle, Survey of India, Shillong (Disciplinary Authority) order dated 20.8.1996 with a direction for recovery of the depreciated value of loss of stores amounting to Rs. 60,128.91 (Rupees sixty thousand one hundred twenty eight & paise ninety one only) from Death-Cum-Retirement Gratuity and other pensionary benefits.

1.3 Shri H Sangawia thereafter preferred an appeal before appellate authority, and also revision before reviewing authority which were turned down in due course.

1.4 Then Shri H. Sangawia moved to the Hon'ble CAT, Guwahati Bench, Guwahati challenging the above orders.

1.5 The Hon'ble CAT by order dated 22.8.2001 (refer exhibit E-26) set aside all the above orders passed by the disciplinary authority, the appellate authority and also by the reviewing authority on the ground of natural justice but allowed the respondents to hold a fresh inquiry as per law.

1.6 Accordingly, Under sub-Rule (2) of Rule 14 of C.C.S. (C.C.A.) Rules, 1965, Lt Col BD Sharma (then) Deputy Director, North Eastern Circle, Survey of India, Shillong was appointed as the Inquiry Officer (I.O.) vide the DNEC letter No. C-329/4-A-302 dated 28 Sep 2001 (refer the exhibit E-2 of Folder - I).

1.7 Shri B Mahapatra, Superintending Surveyor, O.C. No. 29 Party (NEC) was appointed as Presenting Officer (P.O.) in this case vide the DNEC letter No. C-330/4-A-302 dt 28th Sep 2001 (refer exhibit E-3 of Folder-I)

1.8 In the light of the Hon'ble CAT, Guwahati Bench order all endeavors were made to guarantee the right to natural justice during the conduct of the Inquiry.

1.9 As desired by the C.O., the name of his Defence Assistant (D.A.) was received and allowed. (refer Annexure L-2 of Folder V along with the Annexure D2 of Folder IV).

1.10 All documents as asked by the C.O. were duly ensured that they were supplied to him.

1.11 The C.O. submitted a list of 13 defence witnesses (refer Annexure L-12 of folder IV) in his defence which were duly allowed and ensured their presence during different examination stages.

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1.12 At the end of the regular proceedings, mandatory questions were asked by the I.O. to the C.O. The same is enclosed as Annexure A-46 of folder II.

1.13 As per para 12(iii) of the written Brief by the P.O. (refer Annexure B1 of Folder III) he requested verification of doubtful signatures of officers in the stock ledger, maintained by Shri H Sangawia by the expert authorities, which was duly ensured. For report on the verification of signature please refer Exhibit E24 of the folder I)

1.14 Since a number of defence witnesses were to be summoned from other stations namely, Delhi, Kolkata, Chandigarh, Jaipur, Guwahati and also the signature authentication/ verification had to be got done by the expert authorities, an extension upto to 30th June 2002 by the hon'ble court was requested which was duly granted by the hon'ble court, please refer Exhibit E-22 in folder I.

2. **DEFENCE ASSISTANT AVAILABLE BY THE CHARGED OFFICER AND HIS PARTICIPATION IN THE INQUIRY :-**

2.1 The C.O. had given the name of his D.A. as Shri L Zadeng, Retd. Post Master General, NE Circle which was duly permitted for the purpose.

2.2 The C.O. appeared along with his D.A. throughout the inquiry proceedings as and when summoned.

3. **ARTICLE OF CHARGES AND SUBSTANCES OF IMPUTATIONS OF MISCONDUCT :-**

3.1 **ARTICLE OF CHARGES FRAMED :-**

The following two articles of charges were framed against Shri H. Sangawia.

ARTICLE-1

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

During his tenure as storekeeper of No. 5 Party (NEC), Shri Sangawia made a great deal of irregularities with Govt. stores which was detected by a board constituted by DNEC to complete the handing/taking over of stores of No. 5 Party (NEC), as Shri Sangawia could not complete handing over of stores at the time of his transfer out of the unit to the incoming storekeeper despite several verbal and written orders. After the irregularities were detected, a court of Inquiry was conducted to inquire into the matter thoroughly. It was found by the Inquiry Board that Shri Sangawia had intentionally carried forward mistakes, manipulated shortages with surplus items and issued tyres/ batteries to the vehicle during the

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period when the vehicle was under repair in the workshop and issued items from ledger under forged signatures, thus resulting into huge shortage of stores items of No. 5 Party (NEC) for which Shri Sangawia could not give convincing reasons.

By his failure to account for the above deficiencies, Shri H Sangawia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character unbecoming of a Govt. servant and charged for misappropriation of Govt. stores amounting to Rs. 1,62,991/- (Rupees one lakh, sixty two thousand, nine hundred and ninety one only), thereby violating Rules 3(1) (i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE -II

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

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

3.2 STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGES FRAMED :-

ARTICLE-1

That the said Shri H. Sangawia, Storekeeper Grade II of No. 80(P) Party (NEC) was entrusted with the responsibilities of safe custody and accounting of Govt. stores of No. 5 Party (NEC) since 07 July 1987 to 13 July 1994.

At the time of his transfer out of No. 5 Party (NEC), Shri Sangawia could not complete the handing / taking over of stores of the unit to the incoming Storekeeper Shri T.R. Dhar. Therefore, by orders of DNEC, a board was constituted to complete the handing / taking over of stores of No. 5 Party (NEC). During the course of handing / taking over, the board detected the irregularities/loss of stores made by Shri Sangawia during his tenure as Storekeeper of Govt. stores of No. 5 Party (NEC). As such, a court of inquiry was held to ascertain the magnitude of irregularities/ loss of Govt. stores made by Shri H Sangawia. It was revealed through court of inquiry that Shri Sangawia was responsible for loss of huge amount of Govt. stores amounting to Rs. 1,62,991 (Rupees one lakh sixty two thousand, nine hundred

and ninety one only) which he did with intention/ negligence. Shri Sangawia did intentional mistakes / manipulation in the ledgers and by forging the signatures of various officers, he had issued invoices and stores items from the ledgers. He even swindled with M.T. Parts which were issued to the vehicle at a time when the vehicle was in the workshop under repair. Shri Sangawia could not give satisfactory explanation for the huge loss of Govt. stores and his failure to maintain the ledgers in proper way and admitted that he had forged the signatures of various officers.

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

ARTICLE - II

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

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

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

4. ANALYSIS OF THE ARTICLE OF CHARGES /ALLEGATIONS :-

4.1 ARTICLE - I

4.1.1 Shri H Sangawia, SK Gde II of No. 80(P) Party (NEC) could not complete the handing/taking over of stores of No. 5 Party (NEC) at the time of his transfer from No. 5 Party (NEC) to No. 80(P) Party (NEC).

4.1.2 A board was constituted by the Director, North Eastern Circle to complete the handing/taking over of stores of No. 5 Party (NEC). The board detected irregularities/loss of stores made by Shri Sangawia during his tenure as storekeeper in No. 5 Party (NEC).

4.1.3 Then a court of inquiry was held to ascertain the magnitude of irregularities/ Loss made by Shri H Sangawia which revealed that Shri Sangawia is responsible for loss of stores amounting to Rs. 1,62,991/- (Rupees one lakh sixty two thousand nine hundred and ninety one only) by virtue of his negligence/ mal-intention. As per the court of inquiry report, Shri Sangawia did intentional mistakes/ manipulation in the stock ledgers and he also forged the signatures of various officers against issue columns in the ledger.

4.1.4 As per the inquiry report Shri H Sangawia also swindled with vehicle parts which were falsely shown issued to the vehicle under forged signature when the vehicle was actually under repair in workshop, for which he could not give convincing reasons.

4.2

ARTICLE -II

4.2.1 Shri H Sangawia while functioning as SK of No. 5 party forged the signature of his officer in charge/ verifying officer of stores in the ledgers and invoices with an intention to hide the misdeeds done by him and to get himself free from the charges of loss of govt stores.

4.2.2 Shri Sangawia admitted the charge of forgery of signature done by him.

5. PROCEEDINGS IN THE PRELIMINARY HEARING :-

5.1 The proceedings of preliminary hearing was conducted on 10th Oct 2001, (refer Daily Order Sheet dated 10th oct 2001 enclosed as Annexure D3 under folder IV)

5.2 The Charged Officer (C.O.) pleaded not guilty.

5.3 The C.O. availed the services of his defence assistant named Shri L. Zadeng (Retired Chief Post Master General, NEC).

5.4 Inspection of documents as listed in annexure III to the charge sheet was arranged in the presence of the defence assistant.

6. GIST OF THE EVIDENCES PRODUCED BY THE PROSECUTION :-

6.1 The (Presenting Officer) P.O. produced all the documents mentioned in Annexure III to the memorandum which were as under:-

- (i) Equipment Register
- (ii) Stock Register for consumable items

- (iii) Stock Register for furniture
- (iv) Register for MT parts
- (v) Stock Register for Stationary.

6.2 The following state witnesses as mentioned in Annexure IV of memo were examined in course of regular proceedings.

- (i) Shri S.P. Das, officer Surveyor (Then OC No. 12 Party)
- (ii) Shri AK Sengupta, officer Surveyor (Then OC No. 9 Party)
- (iii) Shri P Dev, Officer Surveyor (Then posted in No. 5 Party)
- (iv) Shri Sridhar Roy (Then in No. 9 Party being verifying officer of No. 5 Party store items)
- (v) Shri T.R. Dhar, SK Gde II (Then SK of No. 5 Party)

6.3 The P.O. also produced the original invoice No. 336/SK/29P dated 22.6.92 the copy of which is enclosed here as exhibit E-12 in folder-I in which he alleged that Shri H Sangawia forged the signature of Shri SP Das, Officer Surveyor. The P.O. requested for verification of forged signature by the expert as per para 9 of his written brief, enclosed here as Annexure B1 in folder III.

6.4 The P.O. also produced various pages of different stock ledger alleging the forging of signature by Shri H Sangawia, the charged officer. He requested for verification of those documents by expert.

7. GIST OF THE EVIDENCES PRODUCED BY THE DEFENCE :-

7.1 The charged officer submitted a list of thirteen defence witnesses whose details were as under:-

- (i) Maj S Chaudhuri, (OC No. 5 Party then)
- (ii) Shri AK Sengupta, officer Surveyor
- (iii) Shri S.P. Das, officer Surveyor
- (iv) Shri Sridhar Roy, Surveyor
- (v) Shri T.R. Dhar, SK Gde II
- (vi) Shri PK Sen, officer Surveyor
- (vii) Shri Parameshwar Singh, Khalasi
- (viii) Shri U.K. Pradhan, P/tr Gde II
- (ix) Shri B Das, ASD man Gde II
- (x) Shri Zatinsang, SK Gde II
- (xi) Shri P K Sen, SK
- (xii) Shri H.R. Dutta, Head Clerk
- (xiii) Maj G.S. Chandela, OC No. 5 Party

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All these defence witnesses were duly permitted and needful arrangements were made to have their examinations completed during inquiry proceedings.

7.2 The charged officer submitted his written defence brief which is enclosed as Annexure B-2 in folder III

7.3 The C.O. also submitted a defence brief addenda which is enclosed in the folder III as Annexure B-3.

8. ANALYSIS OF THE EVIDENCES ADDUCED :-

On analyzing the evidences adduced during the process of inquiry proceedings, the following points came to the light.

8.1 ARTICLE-I

8.1.1 Shri H Sangawia, Store Keeper Gde II of No. 5 Party was transferred to No. 80(P) Party during Dec 1993 but he tried to delay his handing over charge to incoming Store Keeper Shri TR Dhar. Statement of Defence Witness named Lt Col S. Choudhuri during examination by the Defence Assistant; attached as Annexure A-23 in folder II may be referred.

8.1.2 Shri H Sangawia being storekeeper did not maintain proper store procedure regarding issue or receipt of store items. The statement of Defence witness named Shri Zainsang during cross examination by P.O. (attached as Annexure A-45 of folder II) shows how Shri Sangawia was issuing store items on loan without proper invoices and he was not bothered at all for taking the items back.

8.1.3 Shri H Sangawia issued items from ledger under forged signature, is clear by the statement of the state witness named Shri P Dev, O.S. during examination by P.O. (enclosed as Annexure A-6) in which Shri P Dev denied his signatures on pages 113, 116, 118 of the equipment register which was later on also verified by the expert and got confirmed regarding forging of his signatures. ✓

8.1.4 Regarding the charges of misappropriation of Govt stores amounting to Rs. 1,62,991 (Rupees one lak sixty two thousand nine hundred & ninety one only) the P.O. in his written brief (enclosed here as Annexure B1 in folder III) vide para 12(V) himself attributed only Rs. 13, 221 as loss and not Rs. 1,62,991/- and so the charge for loss of Govt stores worth Rs. 1,62,991/- is not fully substantiated. ✓

8.1.5 As per the written brief of the P.O. (attached here as Annexure B-1 in folder III) Shri H Sangawia was very casual in handling govt stores and he handled the issue/receipt of stores items very carelessly. This aspect is substantiated. For example, the item Level Tertiary

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cost Rs 4850/-) was found surplus in the store of 9 Party, as confirmed by, Street...

No. 9 Party vide his letter dated 8 Jan 2002 (attached as annexure E-25 Of folder I) though this instrument belonged to the unit of No. 5 Party where Shri Sangawia was store keeper. So this is something strange that the instrument under custody of Shri H Sangawia has disappeared and now it is located by this inquiry as a surplus item with store of No. 9 Party (NEC).

8.1.6 Regarding swindling of vehicle parts by Shri H Sangawia, the P.O. vide his sub-para 9-a-(x) of written brief has himself denied the charge and brought out the fact that these vehicle parts like tyres etc. were not duly accounted for by Shri H Sangawia SK and so the items were shown as shortages by the earstwhile inquiry board. Proper book keeping for these items should have been done either in the concerned vehicles log book or in the registers. This showed the carelessness on the part of the individual who is responsible for handling of store items.

8.1.7 In para 2 of defence brief by Shri H Sangawia (Annexure B-2) of folder(III) he states that his refusal to acknowledge for Rs. 5000/- to Maj S Choudhuri antagonized him and then he went behind him to harm him. But during the examination of Maj Choudhuri by the defence assistant at no point this thing was brought to the record. (refer Annexure A-23 in folder II). Also during mandatory questions by I.O. to C.O. vide question No. 4 this was asked wherein Shri Sangawia replied that he felt this would be a hard question to put forth and so he did not put forth this fact during examination of Maj (now) Lt Col S Choudhuri. This being the important thing, Shri H Sangawia should have brought out at the time of examination of Lt Col S Choudhuri. Hiding the fact at the time of examinations but mentioning in his written brief and later on saying that this could have been a hard question by him to Lt Col. S Choudhuri clearly shows adversely on part of Shri H Sangawia.

8.2

ARTICLE II

8.2.1 Regarding the forging of signature by Shri H Sangawia, SK Gde II of his Os.C. parties, verifying officer in the stock ledger, the P.O. in his written brief (Annexure B1 folder III) had requested for verification of signatures to be done by the expert agencies.

8.2.2 Accordingly, the office of the "Government examiner of questioned documents" stationed at Kolkata was approached for examination of the doubtful signatures/ initials in respect of (a) Shri S.P. Das, officer Surveyor on the invoice No. 336/SK/29P dt. 22.6.92, (b) Shri P Dev, Officer Surveyor who was the verifying officer of the stores whose doubtful initials were appearing in the stock ledgers against the issue columns of store items, (c) Maj G.S. Chandela, Superintending Surveyor that time and officer in charge of No. 5 Party whose doubtful signatures/ initials were appearing in the ledger registers.

8.2.3 In all the above cases as per the norms of the "Office of the government examiner at Kolkata" the doubtful signatures were encircled in red colours and marked as Q1, Q2, Q3 Qn and the correct signatures were encircled in blue colours marked as S1, S2, S3

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...for their analysis. Sufficient number of correct signatures of all concerning persons were made available for their comparison to the Government Examiner.

8.2.4 In all the three cases the report of the "Office of Government examiner" suggested that the signatures stamped and marked as S1, S2,.....Sn are different than signatures stamped & marked as Q1, Q2,..... Qn. This proves the forging of signatures. The photocopy of report along with the questioned documents is enclosed as exhibit No. E-24 under folder I.

8.2.5 Also, during the mandatory questions asked by I.O. to C.O. Shri H Sangawia (refer Annexure A-46 of Folder II), Shri H Sangawia, the C.O., himself admitted the forging of signature done by him. On asking the reason for doing the forging of signatures of various officers, he said that he did it out of ignorance.

8.2.6 Against the opinion of the government examiner, Shri H Sangawia the C.O. submitted the Defence Brief – addenda (refer Annexure B-3 of folder III). In para 2,3, & 4 Shri Sangawia admitted that he put the signature of the other officers. However, he himself accepted in the last line of the brief addenda that by putting the forged signature he had no malaide intention but this was not a proper course of action to be done, by him. This shows the confession by Shri H Sangawia for forging the various signatures.

On the basis of the evidences adduced before me and in view of the detailed analysis made on them, I have the following findings :-

Charges	Remarks	Reasons for conclusion
Article I		
(i) Exhibiting lack of devotion to duty, Integrity and character un-becoming of a Govt servant by Shri H Sangawia, SK	Fully proved	(a) Supporting documents including the govt examiner's report which shows his fraudulent conduct. (b) Oral evidences of Prosecution as well as Defence Witness.
(ii) Misappropriation of Govt stores amounting to Rs. 1,62,991/- (Rupees one lakh sixty two thousand nine hundred and ninety one only)	Partly proved	Since most of the lost items were located during this inquiry at several places for which Shri Sangawia had no accountability records, though he was the custodian of the store, being storekeeper. This reflects his careless/ negligent attitude towards duty in handling stores/ property assigned to him. ✓
(iii) Swindling of vehicle parts	Partly proved	Same as above.
(iv) Forging of signatures	Fully proved	(a) Signature verification report of the "Government examiner" of questioned documents. (b) Own confession (c) Oral evidences.
Article-II		
Forging of signature of Os.C. Parties / Verifying officers, thereby exhibiting lack of devotion to duty and integrity and character un-becoming of a Govt. servant	Fully Proved	Same as above.

B D Sharma
17.6.02

(B D SHARMA) COLONEL
DIRECTOR, NORTH EASTERN CIRCLE
(INQUIRY OFFICER)

*True copy
for
Advocate*

000013

To,

The Director,
Inquiry Authority & Disciplinary Authority,
Survey of India,
Shillong.

Ref : Letter No.C³⁴⁴~~433~~/4-A-302 Dated 17th June 2002.

Sir,

I beg to inform you that I received the above letter along with the report of the Inquiry Officer in the evening of 20th June 2002. I had hoped and prayed that I would be exonerated from all the charges when my Defence brief was read dispassionately. I feel dismayed and disappointed to read in the report of the Inquiry Authority that the charges against me are either fully proved or partially proved and not exonerated. I would appeal to your honour to consider the following points in response to the Analysis of the evidences adduced with sympathetic consideration.

ARTICLE - I

- 8.1.1 I have explained in my Defence brief how a combination of circumstances had intervened before I could hand over charge of No.5 party stores to the incoming Store keeper and that I had no ulterior motive to delay or not to hand over charge. The reasons for the delay are briefly stated again. As mentioned in para 1 to 4 of the Defence brief the order of my transfer was issued on 16.12.93 Shri T.R. Dhar, the incoming Store-keeper went on leave in the first week of January 1994 and resumed duty in the first week of February 1994. Shri Gyan Singh, who was asked to carry out 100% Physical verification of stores at the time of handing over and taking over, went on long leave from March to April 1994 and never carried out the verification. Maj.S. Chaudhuri, who met accident in February 1994 and was on long leave, joined duty in May 1994. On his resumption to duty he directed Shri Sridhar Roy to carry out 100% physical verification of No.5 Party stores and supervise handing/taking over of stores between the two Store-keepers. On receipt of the fresh order I began to take over stores of No.80 (P) Party from 7th July 1994 and completed on 15th July 1994. I was relieved from No.5 Party on the 13th July 1994 without physically handing over stores to any one. It will be seen from this statement that I had at no time deliberately delayed handing over stores of No.5 Party to the incoming Store-keeper. On my return from Guwahati where I had handed over stores of No. 5 Party, I fell ill and was unable to attend office from 16.9.94 to 27.9.94. suspecting that I feigned illness the Medical Certificate I had produced in support of my illness was summarily rejected. The statement of Maj. S. Chaudhuri during his evidence shown at Annexure A-23 that my illness was without supporting Medical Certificate was false since I was duly sanctioned Earned Leave on production of Medical Certificates. A combination of circumstances which were beyond my

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for
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control was the reason for the delay in handing over charge of No.5 Party stores to the incoming Store-keeper. ✓

8.1.2. It was a practice, and I believe it is still in vogue even now, among Store-keepers to take on loan articles from another if they are not available in their stores to meet emergency requirement. Articles such as Steel trunk, Padlocks, items of Furniture etc. are often loaned from one Store-keeper to another. In the case of Shri Zatinsang he had been reminded verbally to return the Padlocks but he requested for time as the same were not returned to him. While in No.29 Party store for 13 years I maintained receipts and issues of store materials in accordance with the procedure. It was in No. 5 Party where there was no proper entry of items in the Ledgers that the difficulty was arose. Moreover, I had to start entry of items in the Ledger from the beginning. In this connection I wish to mention that I got the appointment in the Department as Store-keeper on compassionate grounds. Under normal circumstances, I should have been given practical Training for one year. Due to shortage of staff I was not given Training at the Institute and I was asked to work as Store-keeper without institutional training.

8.1.3. I have explained truthfully in the Defence brief why I put signature in the Consumable Ledgers. The reason for putting signatures was to comply with the requirement of O & M Inspection 1992 and putting of signatures did not involved loss to the Govt.

8.1.4. Since I was not charged with causing loss to Govt. for Rs.13,221/- and the charge against me was for causing loss to the Govt. to the tune of Rs.1,61,991/- was not proved I should have been exonerated from the charge. The charge against me should be either proved or not proved and not "partially proved". Even the alleged loss of Rs.13,221/- attributed me was not a loss as the items were all accounted for as given in the Defence brief. I still firmly believe that I shall be absolved of the charge of loss of even Rs.13,221/- if my explanation is read with open mind since materials were issued to Field parties, O.Cs, Officers and Officials.

8.1.5. It hurts me deeply to say that I was very casual in handling Govt. stores especially in respect of issue/receipt of materials. Had this statement been true the No.29 Party stores where I worked for 13 long years would have been in a mess and its condition worst than No.5 Party stores. The same would have been true in the case of No.80 (P) Party store where I worked for about 3 years. The main reasons for the minor lapses on my part was the extremely bad conditions of No.5 Party stores prior to my taking over as store-keeper. I had to make entries of materials for receipt/issue of arrear works for more than 15 years. I had to start Consumable, Stationery Equipments, M.T. registers etc. from the beginning and this severely affected smooth functioning of the office procedure. Besides, I had to prepare papers for condemnation of unserviceable stores which had never taken place since 1974. Incoming invoices amounting 103 and

Bills of Medical stores indented for more than 20 years were not entered in the registers and no sanction for payment against the bills was issued. Searching suitable buildings for Khamal at Guwahati and later shifting the Khamal to Guwahati in 1988 severely affected smooth functioning of the office. The Level Tertiary Machine was temporarily issued in 1991 to a party from Dehra Dun for field works in Mizoram on verbal instructions from the O.C.. I obtained from the party a issue/receipt chit which would enable me to recover /trace it out later. I came to know much later that the party on its return deposited the Instrument at No.9 Party store. This fact was disclosed to the members of Preliminary Inquiry Committee (See para 17 of page 11 of the Response of the Preliminary Inquiry) Had I know their return to Shillong I would have collected the instrument from them.

8.1.6 Old M.T. Parts were not entered in Vehicle Log Books or old parts registers prior to my joining No.5 party. Old Tyres, Tubes, Flaps etc. were thrown in heaps for the last 20 years and it was not possible to enter their numbers and quantity in the register. Whatever entries were made they were made at my initiative.

8.1.7 There appears to be doubt about the veracity of my statement in the Defence brief that Maj. S. Chaudhuri become revengeful from the time I refused to acknowledge receipt of Rs.5,000/- instead of Rs.3,000/- which was the sum I received (Permanent Contingent Advance) from the Cashier through Maj. S. Chaudhuri especially when this matter was not asked at his evidence. All I can say in reply is that when the officer in his evidence at Annexure A-23 denied that I had produced Medical Certificate, he could easily deny this too and no truth would come out from him despite the fact that my leave on Medical ground was sanctioned. Besides, incidents which he did not want to recollect were passed as 'I do not remember'. The incident of my refusal to acknowledge receipt of Rs. 5,000/- instead of Rs.3,000/- took place in December 1992 in presence of the Cashier.

ARTICLE - II

8.2.2. I have already explained in my Defence brief the reason for putting signatures. Signatures in Invoice No.336/SK/29 P. dated 22.6.92 was in acknowledge of the receipt of articles by No.5 Party from No.29 Party and these articles were taken later in the Ledgers. As regards the signature of Shri P. Dev, they were put much later, after issue, to comply with the requirement of the O & M Inspection 1992 when Shri P. Dev was unable to complete authentication of issue columns as mentioned in Addenda of Defence brief. The same was in the case of the signatures of Maj. G. S. Chandella - to comply with the requirement of O & M Inspection 1992. Materials were issued much earlier to Field hands, Officers, Officials etc. and putting signatures did not involved loss to Govt. It will be of interest to note that there are other Consumable Ledger and Stationery Register covering for the period 1986-1988 where signatures as proof of authentication in the

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issue columns are still blank but articles had been issued. This shows that articles were authentically issued to bonafide officials. However, issue/receipt vouchers were strictly maintained in Duplicate Book Registers for requirement of authentication in Ledgers in Issue columns. All these Duplicate Book Registers and Vouchers etc. were handed over to the incoming Store-keeper.

The findings of the Inquiry Officer are based on incorrect premises:

- (i) It fails to take into account the tremendous volume of works in No. 5 Party at the time I took over the store and the mess in the stores was so extensive that even today, the actual loss caused to the Govt. for a period prior to my joining No. 5 Party store cannot be accurately assessed.
- (ii) It fails to appreciate the enormous labours I had put in trying to keep various records of the store of No.5 Party up-to-date.

Aware that the stores of No.5 Party were in shambles the authorities enticed me into taking over these stores with the promises of promotion and honorarium, the promises they never kept. My ignorance and gullibility were fully exploited. It is an irony that I, who worked for many years to keep the records of No.5 Party stores up-to-date, have to face humiliation and endless difficulties while those officials who refused to work in the No.5 Party stores enjoyed the fruits of their refusal. I feel I deserve commendation and not condemnation for my labours.

I also feel that the Analysis of the evidences adduced by the Inquiry Authority has not been fair and objective which is essential in such a report. The Defence brief where I have explained in detail how the alleged loss of Rs.13,221/- was not a loss but every item of materials issued was accounted for appears to have been ignored completely for no rebuttal to my points had been brought forward. I feel that the findings of the Inquiry Authority is flawed because the Analysis of evidences has not been objective.

ARTICLE - I

The charges that I exhibited lack of devotion to duty and integrity is emphatically denied.

1. If this charge were true I would have been pulled up while I was in No.29 Party or No.80 (P) Party. I feel that opinion of the Govt. Examiner has nothing to do with lack of devotion to duty and integrity on this matter and as already mentioned these signatures were put to comply with the requirement of the O & M Inspection 1992.

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2. Since the charge against me is for misappropriation of Rs.1,62,991/- and this has not been proved, even in the words of the Prosecution, the question of partial proof does not arise. All I can say is that when some one is out to find fault with another no reason is too small to condemn him. In my case the normal method of reconciliation/write off of articles, which had been in vogue, was denied, mistakes were magnified so as to punish me for my temerity.

It is unfair and unjustified to hold me responsible for the loss of the following items amounting to Rs.13,221/- on the following items.

- (a) As Store-keeper of No.5 Party I recovered 85 out of 124 Blankets and 14 out of 28 Umbrellas (country) which were issued to Group 'D' staff prior to my joining No.5 Party. This shows I had made sincere efforts to recover them from the officials. However, the balance 21 Blankets and 4 Umbrellas (country) could not be recovered as the Group 'D' staff to whom they were issued had retired. I cannot be held responsible for non-recovery of these items when I was not informed of the dates of retirement/transfer of these officials. Further, the disappearance of the issue register which was available at the time of physical verification in 1994 was a deliberate act of commission to put me in difficulty.
- (b) As already pointed out Shri S.P.Das and his field party were responsible for the loss of water filter. This was reported to the O.C. No. 5 Party in October 1992 as shown in the file. The Verifying Officer too recorded the item as issued in 1991, 92, 93 against the outstanding voucher, I cannot be held responsible for its loss.
- (c) Shri. Zatinsang in his evidence admitted taking the Padlock on loan from me.

EQUIPMENT/INSTRUMENT ITEMS

- (i) Belt Cloth Red: This was an item for condemnation and was lost while shifting stores to Guwahati.
- (ii) Medical Box: When physical verification was carried out 32 Medical Boxes against 28 entered in Register were found. After adjustment with two Cash Boxes two Medical Boxes were still available.
- (iii) Snow Sun Goggle: Snow Sun Goggles were never issued/purchased. While carrying out physical verification in 1994, one was found missing (from the case). This missing must have taken place prior to 1986.
- (iv) Mark Arrow Steel: Mark Arrow Steel and Hammer are similar in size and appearance. While condemning hammers one Mark Arrow have been included since 1992 verification showed 20 hammers surplus.

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- (v) Kettle Big : One big Kettle was in use in the Office of No.5 Party for drawing water. This was most likely taken away later.
 - (vi) Padlock Navtal : One Navtal Padlock was used for locking the quarter of a Group 'D' official who has retired from service. The issue voucher was signed in 1987.
 - (vii) Vice Carpenter : The Vice Carpenter was not available in the Carpenter Tool Box when I took over stores of No. 5 Party in 1985.
 - (viii) Punching Machine : One Punching Machine (single hole) was unserviceable and was an item of condemnation. The material must be still in the office.
 - (ix) Wooden Racks : (Assorted) Five wooden Racks received from No. 29 Party were mean to reconcile racks used earlier by No. 5 Party.
 - (x) Compass Bow Pump : There is no shortage of Compass Bow Pump except there was no case in the case of one Compass Bow Pump.
 - (xi) Scale Diagonal : There is a mix-up/misidentification between Scale Diagonal 2' and Rule Straight Edge. There is no shortage in the Scale Diagonal 2'.
 - (xii) Curve French : One Curve French was issued to O.C. No. 13 D.O. and must remain with him.

CONSUMABLE ARTICLE.

- (i) Out of four hand bags one was issued to me by Maj. S. Chaudhuri which he did not deny in his evidence. The other three Rexine bags were issued to me in 1988, 90, 91 for day to day duty in stores.
- (ii) One First Aid Box was issued to Maj. G.S. Chandella for Field Inspection in Bhutan on 19.01.90. this was acknowledged by Maj. G.S.Chandella.
- (iii) 31 Board Clips were Camp article issued in 1988, 1989, 1990. when Camp work were over they were returned to store. The articles were available in the store in 1994. the Preliminary Enquiry did not physically count this item.
- (iv) 5 Plastic containers were used for keeping Drawing Instruments. They were damaged after long used. The item was duly verified by the Verifying Officer.
- (v) One Plastic Bucket used in the office for a long time was damaged. This was duly verified.

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- (vi) Of the 15 plastic Cans 4 were written off by Maj. S. Chaudhuri as shown in the Consumable Register. 11 Nos. were issued in 1990 and 1991. These Camp articles were returned to store on completion of Camp works. They were available in the store in 1994. The Preliminary Inquiry did not physically count the articles but concluded that they were lost on the basis of alleged forged signature.
 - (vii) Maj. S. Chaudhuri personally condemned 9 Nos. of Tea Flask. His own signature is available in the Consumable Register.
 - (viii) Two Plastic Mugs used in Office and Khanal (used in toilet) were available.
 - (ix) 41 Nos. Mirror (country) were used in 1988 and 1991 (33 and 9 respectively) They were Camp articles and were returned to store after Camp works were over. They were available in store and the Preliminary Inquiry did not physically count the articles.
 - (x) The number of Plastic Can is 13 and not 15 as per Ledger. They were issued to Camp and returned to store after Camp works were over. This again was duly verified.
 - (xi) 14.25 Kgs. of Type Fount were issued to Typing Section. The Store-keeper does not handle after issue.
 - (xii) Two numbers Collin were issued on 26.04.89 for use in the office. This was verified by the Verifying Officer on 28.08.90.
 - (xiii) The following 8 items were purchased by Maj. G.S. Chandella O.C. No.5 Party and vouchers given to me. The articles were never brought to stores but issued to Maj. G.S. Chandella.
 - (1) Latro & Tape 1 No. (Sl.No. 33)
 - (2) Rubber Bag 1 No. (Sl.No.34)
 - (3) Room Heater 1 No. (Sl.No.34A)
 - (4) Sharp Drill bit 3 Nos. (Sl.No.35)
 - (5) Office set 1 No. (Sl.no.39)
 - (6) Chain 1 No. (Sl.No.40)
 - (7) Punching Machine 1 No. (Sl.No.41)
 - (8) Plastic Pad 6 Nos. (Sl.No.54)
 - (xiv) Three torn Bed Sheets were used at Khamal Guwahati. These three Nos. were handed over to Shri T.R.Dhar. There was no shortage.
 - (xv) Out of 36 Glasses for Torch electric 8 Nos. were written off by Maj. S. Chaudhuri. There was mistake in subtraction (ie. 36-8= 26) I handed over 28 Nos. to Shri T.R.Dhar.

The detailed note above will speak that the alleged loss of Rs.13,221/- was not a loss but every item of materials was accounted for in the ledger. If the materials issued amounting to Rs.1,49,770/- (1,62,991-13,221/-) were accepted as genuinely issued there is no reason why the materials issued amounting to Rs.13,221/- cannot be accepted as genuinely issued.

3. At no stage of enquiry swindling of M.T. Parts was proved against me. I was charged with causing loss to two tyres Nos. VIP 58829 and SUS 469988 which were condemned in 1991 and 1987 by the Committee. The Canvas Water Proof alleged to have been lost was actually utilized for the Hood of Tata Vehicle MLS - 6873, 8 Toner Truck.

These cases were brought out either to implicate me in as many cases as possible to cause me maximum damage to my reputation and career.

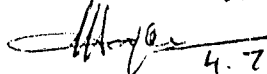
ARTICLE - II

As for putting signatures of officers I have explained the circumstances under which signatures were put to comply with the requirements of the O & M Inspection 1992. Many of these items were issued in 1986, 87, 88-91, long before the O & M Inspection of 1992 took place.

The verifying officer every year verified materials received and issued as correct. When the Verifying Officer certified the correctness of issue shown by the Store-keeper the question of loss on the part of the Store-keeper does not arise. If the materials are to be accepted as lost what will be the responsibility of the Verifying Officer ? Surely he too cannot escape responsibility.

In the light of detailed explanation mentioned above and also in my Defence brief I would fervently prayer to your honour to exonerate me from the above charges and allow me to join the Department once again. I would like to assure and prove to your honour that my devotion to duty is second to none if I am given a chance.

Yours Sincerely,

 4.7. 2002

(H.SANGAWIA)

STORE-KEEPER GRADE II(U/S)

NO.80 (P) PARTY (NEC)

SURVEY OF INDIA,SHILLONG -I

Dated : Shillong
The 4th July 2002.

*True copy
for Advocate*

EASTERN CIRCLE OFFICE
13 WOOD STREET
KOLKATA 16

No.C/A-103/4-A(H. Sangawia)

Dated 26 Aug. 2002.

ORDER

WHEREAS Shri H. Sangawia, Storekeeper Grade II of No.80(Photo) Party (NEC), Survey of India, Shillong (now under suspension) was charged for misconduct, lack of integrity, lack of devotion to duty and character unbecoming of a Govt. servant for violating Rule 3(1)(i), (ii), (iii) of Central Civil Services (Conduct) Rules, 1964;

AND WHEREAS a Memorandum No.C-313/4-A-302 dated 18 Sept 2001 proposing to hold an inquiry against Shri H. Sangawia, Storekeeper Grade II of No.80 (Photo) Party (NEC) under Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 was served on him;

AND WHEREAS Col. B.D. Sharma, the then Deputy Director, North Eastern Circle, Shillong was appointed as Inquiry Authority and conducted an inquiry and submitted the Inquiry Report on 17 June, 2002 which has been duly considered by the undersigned;

AND WHEREAS Shri H. Sangawia, Storekeeper Grade II was given an opportunity to appear in the Departmental proceedings which was instituted to enquire into the charges framed against him and his representation dated 4.7.02 on Inquiry Report has also been considered by the undersigned;

AND WHEREAS it is considered that the gravity of the charges is such as to warrant the imposition of major penalty;

AND WHEREAS the undersigned has been appointed as Disciplinary Authority under provisions of Rule 12(2) of Central Civil Services (Classification, Control & Appeal) Rules, 1965 read with authority imposed vide Surveyor General's letter No.LC-21/1196-PF (H. Sangawia) dated 11.7.2002;

.....2.

*Tone Copy
Sent.
Adm.*

NOW, THEREFORE, in exercise of the powers conferred under sub-rule (2) of Rule 12 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the Disciplinary Authority hereby imposes the undermentioned penalties :-

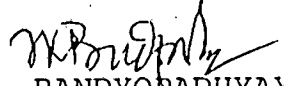
- (i) COMPULSORY RETIREMENT OF SHRI H. SANGAWIA, STOREKEEPER GRADE II (now under suspension) FROM SERVICE WITH EFFECT FROM THE DATE OF ISSUE OF THIS ORDER i.e. 26.08.02

&

- (ii) RECOVERY FOR LOSS OF GOVT STORES TO THE VALUE OF Rs.13,221/- (RUPEES THIRTEEN THOUSAND TWO HUNDRED AND TWENTYONE ONLY) FROM THE DUES PAYABLE TO SHRI H. SANGAWIA, STOREKEEPER GRADE II.

NOW, THEREFORE, it is ordered that Shri H. Sangawia, Storekeeper Grade II (now under suspension) of No.80 (P) Party, North Eastern Circle, Survey of India, Shillong be compulsorily retired from service with effect from the date of issue of this order i.e. 26.08.02 and recovery for loss of Govt. stores to the value of Rs.13,221/- (Rupees thirteen thousand two hundred and twentyone only) be affected from the dues payable to Shri H. Sangawia, Storekeeper Grade II of No.80(P) Party, North Eastern Circle, Survey of India, Shillong.

A copy of the findings of the Disciplinary Authority is enclosed.


(T.K. BANDYOPADHYAY)
Director, Eastern Circle
Disciplinary Authority.

To

Shri H. Sangawia
Storekeeper Grade II
(Now under suspension)
No.80 (P) Party (NEC)
Shillong.

(Through O.C. No.80 (P) Party, Shillong)

Copy to Surveyor General of India, Dehra Dun for information.
Copy to Addl. Surveyor General, Eastern Zone, Kolkata for information.
Copy to Director, North Eastern Circle, Survey of India, Shillong.
Copy to O.C. No.80 (P) Party (NEC), Survey of India, Shillong.
Copy to AO, RP&AO, Survey of India, Kolkata.
Copy to File 4-A-302 (H. Sangawia).

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FINDINGS OF THE DISCIPLINARY AUTHORITY

A Memorandum No.C-313/4-A-302 dated 18 Sept 2001 proposing to hold an inquiry against Shri H. Sangawia, Storekeeper Grade II of No.80 (P) Party (NEC), Survey of India, Shillong (now under Suspension) under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was served on Shri H. Sangawia.

The undermentioned statement of articles of charge (Annexure I & II) were enclosed with the abovementioned Memorandum :-

STATEMENT OF ARTICLES OF CHARGE

ARTICLE I

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

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

By his failure to account for the above deficiencies, Shri Sangawia, Storekeeper Grade II exhibited lack of devotion to duty, integrity and character unbecoming of a Govt. servant and misappropriated Govt. stores amounting to Rs.1,62,991/- (Rupees one lakh sixtytwo thousand nine hundred and ninetyone only), thereby violating Rule 3(1)(i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.

.....2.

ARTICLE II

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

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

2. As per the charge contained in Article I enclosed with the Memorandum, Shri H. Sangawia, Storekeeper Grade II of No.80(P) Party (NEC), at the time of his transfer out of No.5 Party could not complete handing over of stores of the Unit to incoming Storekeeper Shri T.R. Dhar. Therefore, by order of DNEC, a board was constituted to complete the handing/taking over of stores of No.5 Party (NEC). During the course of handing/taking over, the board detected the irregularities/loss of Govt. stores made by Shri Sangawia during his tenure as Storekeeper of Govt. stores of No.5 Party (NEC). As such a Court of Inquiry was held to ascertain the magnitude of irregularities/loss of Govt. stores made by Shri H. Sangawia. It was revealed through Court of Inquiry that Shri Sangawia was responsible for loss of huge amount of Govt. stores amounting to Rs.1,62,991/- (Rupees one lakh sixtytwo thousand nine hundred and ninetyone only). Shri Sangawia did intentional mistakes/manipulation in the ledgers and by forging the signature of various officers, he had issued invoices and stores items from the ledgers. He even swindled with M.T. Parts which were issued to the vehicle at the time when the vehicle was in the workshop under repair. Shri Sangawia could not give any satisfactory explanation for the huge loss of Govt. stores and his failure to maintain the ledgers in proper way and admitted that he had forged the signatures of various officers.

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

3. In the aforesaid Memorandum Shri Sangawia was directed to submit within 10 days of receipt of the Memorandum a written statement of defence and also to state whether he desired to be heard in person. Shri Sangawia had submitted one written statement of defence wherein he pleaded not guilty of the charges framed against him in Articles I & II of the Memorandum. However, it was decided to hold a detailed inquiry to determine the gravity of offence committed by Shri H. Sangawia, Storekeeper. The Inquiry Report was submitted by the Inquiry Officer on 17 June 2002 wherein the charges framed in Articles I & II of the aforesaid Memorandum have been proved beyond doubt except the charge of misappropriation of Govt. stores amounting to Rs.1,62,991/- (Rupees one lakh sixtytwo thousand nine hundred and ninetyone only) which could not be fully substantiated as most of the lost items of stores were located during inquiry at several places, for which Shri Sangawia had not maintained any accountability records in respect of the above said store-items, although he was the custodian of stores with full responsibility and hence this fact reflects his carelessness and negligent attitude towards Govt. duty.

4. A copy of the Inquiry Report was supplied to Shri H. Sangawia asking him to submit his representation/submission, if any, within 15 days of receipt of the letter. Shri Sangawia has submitted his representation on 4 July 2002.

In his written defence statement, Shri Sangawia pleaded not guilty of the charges levelled against him and tried to put the entire responsibility for inordinate delay in handing/taking over of charge of stores of No.5 Party (NEC) and the irregularities/loss of Govt. stores due to poor maintenance/improper accounting of stores of No.5 Party (NEC) on various personnel including incoming storekeeper as well as staff/officers involved in administrative work of the Unit. He also pleaded that since the charge framed against him in Article I for causing loss to the Govt., to the tune of Rs.1,62,991/- (Rupees one lakh sixtytwo thousand nine hundred ninetyone only) has not been substantiated fully in the course of inquiry, he should be exonerated from the entire charge. Further, Shri Sangawia pleaded that the charge of forgery as levelled against him in Article II of the Memorandum should be dropped since he had put the signatures of various officers in his own handwriting to comply with the instructions of O&M Inspection Report of 1992.

Since from the time Shri H. Sangawia, Storekeeper Grade II took over the charge of Govt. Stores of No.5 Party (NEC), it was his sole responsibility for proper accounting of stores under his custody and, therefore, his effort to shift the responsibility on others without any convincing reason is not tenable. Again locating most of the store items during inquiry, thereby reducing the amount of loss does not mean that the charge of forgery levelled against him stands annulled. Moreover, it was nowhere instructed in the O&M Inspection Report of 1992 that storekeeper himself should copy signatures of G.Os and others on ledgers to comply with the observations. If, Shri Sangawia had good intention and he was so much anxious to comply with the orders of O&M Inspection Report within the stipulated time, he could have brought this thing to the knowledge of O.C. Party, who is the only competent authority for signing/putting initials against the receipt & issue columns of items in the stock ledger. The Storekeeper, being a non-gazetted staff, is not authorized to authenticate the issue/receipt columns of store items in stock ledger. Therefore, it is evident that Shri Sangawia is not only hiding the facts by giving false and contradictory statements, but he also has the intention to misguide the Disciplinary Authority. However, it has been established beyond doubt through Court of Inquiry/own admission during the course of inquiry and through varification of signatures from Govt. Examiner of questioned documents that Shri Sangawia had forged the signatures of several officers. Also it is clear now that Shri Sangawia was fully aware of the deficiencies of stores held under him due to his mismanagement and negligent attitude and so he was reluctant to hand over the charge of stores of No.5 Party (NEC) to the incoming Storekeeper, by adopting dilly-dallying tactics."

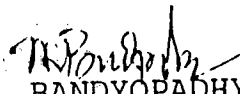
5. Having gone through the full facts of the case carefully and also after examining the documentary evidences available and going through the defence statement of Shri H. Sangawia, Storekeeper Grade II, it is established that the apparent huge loss of Govt. stores occurred in No.5 Party (NEC) is due to negligence/irresponsibility/forgery on the part of Shri H. Sangawia since he was solely responsible for safe custody and proper accounting of Govt. stores of the Unit. Therefore, I hold the charges contained in Articles I & II of the Memorandum proved beyond doubt although the charge for loss of huge amount of Govt. stores to the tune of Rs.1,62,991/- (Rupees one lakh sixtytwo thousand nine hundred and ninetyone only) has been reduced to Rs.13,221/- (Rupees thirteen thousand two hundred and twentyone only) since most of the store items have been located at several places during the course of Inquiry. As such recovery for loss of Govt. stores to the reduced value of Rs.13,221/- (Rupees thirteen thousand two hundred and twentyone only) will be affected from him.

.....5.

6. In view of the foregoing and considering the gravity of offence especially forgery committed by Shri H. Sangawia, Storekeeper Grade II, the undersigned is of the opinion that Shri H. Sangawia, Storekeeper Grade II is not a fit person to be retained in Govt. service, since to maintain absolute integrity is one of the main pre-requisite to be followed by every Govt. servant as per CCS (Conduct) Rules and the person who has forged the signature of others to hide his own short comings has visibly failed to maintain absolute integrity and as such he has shown conduct unbecoming of a Govt. servant, thereby violated the proviso to be followed by every Govt. servant, contained in CCS (Conduct) Rules, 1964.

Now, therefore, the undersigned is of the opinion that the penalty of compulsory retirement with effect from the date of issue of this order should be imposed on Shri H. Sangawia, Storekeeper Grade II (now under suspension) of No.80 (Photo) Party (NEC) Shillong and recovery of loss of Govt. stores to the value of Rs.13,221/- (Rupees thirteen thousand two hundred and twentyone only) should be affected from the dues payable to Shri H. Sangawia, Storekeeper Grade II.

I, accordingly, hold that he is unfit to be retained in Govt. service and it is ordered that Shri H. Sangawia, Storekeeper Grade II (under suspension) of No.80 (P) Party, North Eastern Circle, Survey of India, Shillong be compulsorily retired from service with effect from the date of issue of this order i.e. 26.08.02 and loss of Govt. money to the worth of Rs.13,221/- (Rupees thirteen thousand two hundred and twentyone only) will be recovered from the dues payable to Shri H. Sangawia, Storekeeper Grade II of No.80 (P) Party (NEC), Shillong.


(T.K. BANDYOPADHYAY)
Director, Eastern Circle
(DISCIPLINARY AUTHORITY)

Sbm/19802/1-7

*Tone Comy
for
Advocate*

A P P E A L

To,

The Additional Surveyor General (EZ),
Calcutta - 16

(through proper channel)

Sub: Appeal against order No.C/A-103/4-A (H.Sangawia)
dated 26.08.2002 issued by the Disciplinary Authority.

Sir,

Appaled and agrieved by the above order imposing upon me the penalty of compulsory retirement I submit this appeal with the fervant hope that I may get sympathetic and favourable consideration at your hands.

1. That the present case arose following the setting aside of the DNEC'S order No.C-527/4-A-302 dated 20.08.1996 which was confirmed by the appellate order No. EZ-336/4-A(HIS) dated 16.12.1996 A de-novo proceeding against me was initiated on the 10th October 2001 and completed in June 2002.
2. The disciplinary authority chose to ignore completely the enormous labours I had put in No.5 Party Store where there has been huge loss to the Govt. before I joined as a Store Keeper as a result of laxity and connivance of the successive Officers-in-charge and in a post no other store-keeper was willing to work. It seems that I have been made a scapegoat for the misdeeds and venality of others which made me aggrieved and unable to accept the above unjust and punitive order.
3. That the Surveyor General Of India in his letter LC-21/1196-PF(H.Sangawia) dated 11.07.2002 has appointed Shri T.K. Bandyopadhyay Director, Eastern circle Calcutta as the disciplinary authority in my case under Rule 12 (2) of CCS (CCA) 1965 inspite of the fact that a Director in-charge of North Eastern Circle was stationed at Shillong.

Under this Rule a Presidential approval is required to be obtained if an Adhoc disciplinary authority is to be appointed in case an authority other than the one -in-charge is to function as disciplinary authority. The letter quoted above does not indicate anywhere if such approval has been obtained. If no Presidential approval has been obtained for the appointment of the Adhoc disciplinary authority the punishment imposed by Shri T.K.Bandyopadhyay in order No.C/A-103-4-A dated 26.08.2002 as adhoc disciplinary authority is null and void

The Appointment of Shri T.K.Bandyopadhyay as adhoc disciplinary authority is objected on the basis of his prejudice against me on the following grounds.

True copy
for
Annexure

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(a) Shri T.K.Bandhyopadhyay right from the time he joined N.E. Region, expressed strong prejudice against me, I was placed under suspension following CAT's Verdict and when there was delay in issue of sanction for payment of subsistence allowance one of my well wisher Shri L.Zadeng, Chief Postmaster General, N.E. Region (Retired) met him at his office for early payment of the subsistence allowance Shri T.K.Bandhyopadhyay bluntly told him that had he know that he was coming to plead for Shri H.Sangawia's case he would not have allowed him to come to office.

(b) Again, when revised charge sheet against me was issued and inquiry was to begin, I requested payment of arrear of subsistence allowance from the date of deemed suspension. Again Shri T.K.Bandhyopadhyay instructed Head Clerk of 80(P) Party to pay for three month's subsistence allowance only, inspite of Govt. standing instruction.

(c) When I personally met him on 30.10.2001 he admonished me for late filing of case at the CAT.

(d) When I told him that my relatives and friends helped me maintain my family during the period till disposal of the case by CAT he doubted the veracity of my statement

(e) From the tone and manner of his questions he appears to have made up his mind that I was guilty of the loss of huge amount of government money and he expressed doubt if I could ever rejoin the Department even after the Departmental Inquiry.

5. (a) It is surprising that the disciplinary authority found me reluctant to hand over charge of No.5 Party stores to the incoming Store-keeper without any documentary proof. The Inquiry Authority has nowhere proved this charge and is silent on this point in his findings. The disciplinary authority has brought in extraneous consideration in arriving at his decision. It is a case of bias against me.

(b) The conclusion of the disciplinary authority that I was trying to shift responsibility to others for not keeping No.5 Party stores properly was not borne by facts of the Inquiry. If, by this he means I was trying shifting responsibility to others in the case of Blankets, Umbrella (country), Water Filter, Padlock and Scale Diagonal 2", facts as revealed during the enquiry have been stated in the following paras. His conclusion is therefore, biased against me.

6. That though I was charged with misappropriation of stores worth Rs.1,62,991/- the Inquiry Officer, in his own finding found the loss to be Rs.13,221/- only. the charge against me was therefore not proved. It is pertinent to mention here that the Inquiry Officer failed to examine or analysis my defence brief where I explained that materials worth Rs.13,221/- were not lost but all accounted for. Similarly, the disciplinary authority completely failed to rebut my explanation on this point. It is highly irregular and against all norms of enquiry to dismiss arbitrarily the defence brief without proper examination. Again it is against all norms of fair play and justice when the disciplinary authority arrived at a decision without considering the appellant's refutation on the issue of loss of stores worth Rs.13,221/- attributed to me in the finding of the Inquiry Officer.

(a) It is pertinent to mention that the Personal issue Register for Group 'D' staff available in 1994 mysteriously disappeared even though I was charged with non-recovery of Blankets and Umbrellas. The fact is that with my constant pursuit I was able to recover 85 out of 124 Blankets and 14 out of 28 Umbrellas issued long before I joined No. 5 Party as Store-keeper. The remaining articles could not be recovered from the staff because I was never informed of the retirement or transfer of staff from No.5 Party. It is irregular and malicious to hold me responsible for non-recovery of these items when no intimation about their retirement or transfer was given to me. (Book value Rs.1,270.72 and replacement value Rs.3,890/-) (Sl.No.3 & 8)

(b) At the time of enquiry Shri Zainsang admitted taking Padlock on loan from No.5 Party stores. This matter although mentioned in the brief, was never considered by Inquiry Officer. (worth Rs.81/- Book value and replacement value Rs.270/-) (Sl.No.9)

(c) With regard to Equipment/Instrument items, the reasons for the shortage, such as for condemnation, misidentification due to similarities etc. were detailed in my defence brief and reply to the findings of the Inquiry Officer. Scale Diagonal 2' shown short while Rule Straight Edge 30"x42" found surplus (worth Rs.31.11 Book value and replacement value Rs.960/-) (Sl.No.21,25,26)

(d) It is surprising that as many as 8 items purchased by Maj.G.S. Chandella and taken by him to camp and never brought to stores were shown as lost at my hands (worth Rs.766/- Sl.No.33,34,34A,35,39,40,41 & 54)

(e) Shri S.P. Das and his party were responsible for the loss of Water Filter issued in 1991 for field camp. This was duly verified by the Verifying Officer. The matter was brought to the notice of the then O.C. as noted in the file and Register. In no case can I be responsible for this loss. (worth Rs.450/-) Sl.No.4.)

(f) Maj. S. Chaudhudi personally condemned 9 Nos. of Tea Flasks under his signature. I can in no way, be held responsible for their non-availability (worth Rs.760/-) (Sl.No. 20)

(g) Of 15 Plastic cans 4 were written off by Maj. S. Chaudhuri, 11 issued in 1990 and 1991. These were available in the store. The members of the Preliminary enquiry committed did not physically count these items and falsely showed them as lost (worth Rs.600/-) (Sl.No.12)

2 A Copy of Defence Brief and reply to the finding on loss of stores worth and replacement V.Rs.13,221/- is given below:

EQUIPMENT/INSTRUMENT

Book Value worth Rs.1,880/-

Repl. Value worth Rs.7,094/-

- 80 -
- ab
- (i) 1 No Belt Cloth Red : This was an item for condemnation and was lost while shifting stores to Guwahati Khamal (Sl.No.1)
 - (ii) 2 Nos Medical Boxes Surveyor : When physical verification was carried out 32 Nos against 28 Nos entered in Register were found. After adjustment with 2 Nos. Cash Boxes two Medical Boxes were still available (Sl.No.2)
 - (iii) 1 No Snow Sungoggle : (High Hill Equipment) This item were never issued/purchased. While carrying out physical verification in 1994 one was found missing (one leather case found empty). This missing have taken place prior to 1986. (Sl.No.5)
 - (iv) 1 No. Mark Arrow Steel : Mark Arrow Steel and Hammer are in similar in size and appearance, while condemning Hammers one Mark Arrow Steel have been included (Stock quality was 1 No.) since 1992 physical verification showed 20 Hammers surplus (Sl.No.6)
 - (v) 1 No Kettle Big : One Big Kettle was in used in the office of No.5 Party for drawing water for long years. This was most likely taken away later (Sl.No.7)
 - (vi) 1 No Padlock Naytal : One Naytal Padlock was used for locking the quarter of Group 'D' staff who was retired from service. The issue voucher was signed in 1987 (Sl.No.9)
 - (vii) 1 No. Vice Carpenter : The Vice Carpenter was not available in the Carpenter Tool Box when I took over store of No. 5 Party in 1985 (Sl.No.15)
 - (viii) 1 No Punching Machine (single hole) : One old Punching Machine was unserviceable and was in an item of condemnation. The material must be still in the office (Sl.No.16)
 - (ix) 5 Nos Wooden Rack (removable shelves) : 5 Wooden Racks received from No. 29 Party were mean to reconeile racks used earlier by No. 5 Party (Book value Rs.64/- and repl. value Rs.1,000/- (Sl.No.17)
 - (x) 1 No Compass Bow Pump (Circle pen) : There is no shortage of Compass Bow Pump except there was no case in the case of Compass Bow Pump (Sl.No.19)
 - (xi) Scale Diagonal 2' : 1 No. There is mixed up/misidentification between Scale Diagonal 2' since Rule Straight Edge 30"/42" were surplus and taken on stock (Sl.No.21,25,26) Book Value Rs.31.11 and repl. value Rs.960/-)
 - (xii) 1 No Curve French : One Curve French was issued to OC. No. 13 DO and must be remained with him.

The prescribed lives of the above articles charged lost had already expired long back. Their book value worth Rs.1,380.- and replacement value rs.7094/-

CONSUMABLE ARTICLES
(Replacement Value Rs.6,127/-)

- (i) Out of 4 Hand Bags one leather Hand Bag was issued to me by Maj. S. Chaudhuri which he did not deny in his evidence (worth Rs.108/-) The other three Rexine Hand Bags were issued to me in 1988, 1990 and 1991 for day to day duty in stores (Sl.No.1)
- (ii) 1 First Aid Box (small) was issued to Maj. G.S. Chandella for field inspection in Bhutan on 19.01.1991. This was acknowledged by Maj. G.S. Chandella (worth Rs.25/-) (Sl.No.2)
- (iii) 31 Nos. Board Clip were Camp Articles issued in 1988, 1989 and 1990 when Camp works were over they were returned to stores. The articles were available in 1994. The Preliminary Inquiry did not physically count this item (Sl.No.7)
- (iv) 5 Nos. Plastic Containers were used for keeping drawing instruments. They were damaged after long used. The item was duly verified by the Verifying Officer (Sl.No.8)
- (v) One Plastic Bucket used in office for long time was damaged. This was duly verified. (Sl.No.9)
- (vi) Of the 15 Nos. Plastic Cans 4 Nos. were written off by Maj. S. Chaudhuri as shown in Consumable Register. 11 Nos. were issued in 1990 and 1991. These Camp articles were returned to stores on completion of Camp works. They were available in the stores in 1994. The Preliminary Inquiry did not physically count the articles but concluded that they were lost on the basis of alleged forged signatures (Sl.No.12)
- (vii) Maj. S. Choudhuri personally condemned of 9 Nos. Tea Flask. His own signature is available in the Consumable Register.(worth Rs.766/-) (Sl.No.12)
- (viii) 2 Plastic Mugs used in office and Khamal (in Toilet) were available (Sl.No.21)
- (ix) 41 Nos. Mirror (country) were issued in 1988 and 1991 (33 and 8 respectively). They were camp articles and were returned to store after camp work were over. They were available in store and the Preliminary Inquiry did not physically checked/count the articles (Sl.No.22)
- (x) The number of Plastic Can (big) (used for stocking Petrol/Diesel/K.Oil in Field) is 13 and not 15 as per Ledger. They were issued to Camp and returned to stores after Camp works over. This again duly verified (Sl.No.24).
- (xi) 14.25 Kgs. of Type Fount were issued to Typing Section. the Store-keeper does not handle after issue (Sl.No.27)
- (xii) 2 Nos Collin were issued on 26.04.1989 for use in the office. This was verified by the Verifying Officer on 28.08.1990 (Sl.No.29)

(xiii) The following 8 items were purchased by Maj. G.S. Chandella OC No.5 Party and vouchers given to me. The articles were never brought to stores but issued to Maj. G.S. Chandella (worth Rs.766/-)

- | | | |
|-------|-------------------------------|--------------|
| i) | 1 No. Letro and Tape | (Sl. No.33) |
| ii) | 1 No. Rubber Bag | (Sl. No.34) |
| iii) | 1 No. Room Heater | (Sl. No.34A) |
| iv) | 3 Nos. Sherp Drill Bits | (Sl. No.35) |
| v) | 1 No. Office Set | (Sl. No.39) |
| vi) | 1 No. Chain for VIP Suit Case | (Sl. No.40) |
| vii) | 1 No. Punching Machine | (Sl. No.410) |
| viii) | 6 Nos. Plastic Pad | (Sl. No.54) |

(xiv) 3 torn Bed Sheets were used at Khamal Guwahati. These 3 Nos Bed Sheets were handed over to Shri T.R. Dhar, incoming Store keeper as shown in Consumable Register. There was no shortage (worth Rs.270/-) (Sl.No.55)

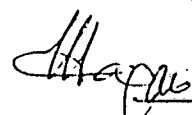
(xv) Out of 36 Nos Glasses for Torch Electric 8 Nos were written off by Maj.S. Chaudhuri. There was mistake in subtraction (ie. $36 - 8 = 28$) I handed over 28 Nos. to Shri Dhar.

7. On hind sight it is admitted that signatures of Officers should not have been immitated in the issue column of Consumable Register even for completion of O & M inspection observation 1992. However, these materials were issued from 1986 to 1992 and it is due to failure on the part of the Officer-in charge to authenticate issue columns (in Consumable Ledger) for may years that O & M Inspection in 1992 pointed out these ommission for remedial action. When the due date for completion of O & M Inspection was approaching and report was to be sent to the office of higher authority these columns were filled in. Putting signature in these columns did not cause loss to the Government as the enquiry clearly proved that all articles issued were accounted for. My only fault was the impropriaty in putting signatures in thsesse columns for which I beg your purdon.

From the foregoing paras your honour may be convinced that I do not deserve the penalty of compulsory retirement as ordered by the disciplinary authority. Under these circumstances I would beseech your honour to consider my case sympathetically and allow to rejoin the Department for which of kindness I shall ever be grateful.

Dated : Shillong,
the 7th October 2002.

Yours faithfully,



(H.SANGA WIA) 07.10.2002
SK GDE - 11(Retired)
No. 80 (P) PARTY (NEC)

*True copy
for
Admstr*

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भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

Annexure-I

09

तार : "महासर्वेक्षक"

Telegram : "SURVEYS"

फैक्स व दूरभाष : 0091-135-2744064

Fax-cum-Telephone : 0091-135-2744064

ई-मेल : sgo@nde.vsnl.net.in

E-Mail : sgo@nde.vsnl.net.in

महासर्वेक्षक का कार्यालय

SURVEYOR GENERAL'S OFFICE

डाक बक्स सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (Uttaranchal), INDIA

No. LC- 21 /1196-PF (H. Sangawia)

Dated : 30-07-2003

ORDER

WHEREAS an appeal dated 7th October 2002 was addressed by Shri H. Sangawia, Store Keeper Gde. II of No. 80 Party (NEC), Shillong (Retired) and Addl Surveyor General, Eastern Zone against the penalty of compulsory retirement awarded to him by the Adhoc disciplinary Authority vide Director Eastern Circle order No. C/A-103-C/4-A (H. Sangawia) dated 26.8.2002. Since Addl. SG, EZ is holding current duty charge, the appeal in question has been forwarded by him to the Surveyor General of India under letter No. EZ-161-C/4-A (H. Sangawia) dated 25.11.2002 for disposal. WHEREAS the facts of the case are as under :-

In a disciplinary case of major penalty proceedings Shri H. Sangawia, S.K. Gde II of No. 80 Party (NEC) was awarded the punishment of compulsory retirement w.e.f. 20.8.1996 alongwith recovery of Rs. 60128.91 being depreciated value of Govt. stores misappropriated by him while he was holding the charge of stores of No. 5 Party (NEC) vide DNEC order No. - 527/4-A-302 dated 20.8.1996. Being aggrieved with the punishment order awarded by the disciplinary authority, Shri Sangawia appealed to Addl SG, EZ which was rejected vide appellate authority's order No. EZ-336/4-A (HS) dated 16.12.1996. Subsequently Shri Sangawia had submitted a review petition to the Surveyor General of India being Reviewing Authority but the same was also rejected vide SG's order No. LC-34/1196-PF (S. Sangawia) dated 14.8.1998.

Being aggrieved by the punishment order, Shri Sangawia filed a case vide OA No. 128/2000 in the Guwahati Bench of Hon'ble CAT, Guwahati. The Hon'ble CAT delivered the order dated 22.8.2001 while apart from setting aside the punishment, Appellate and Review orders, the Disciplinary Authority was further directed to hold fresh enquiry to provide natural justice to the applicant.

WHEREAS to comply with the Hon'ble CAT orders, a fresh departmental inquiry was ordered in October 2001 which was concluded in June, 2002. As per the findings of the inquiry, Shri H. Sangawia was found guilty of the charges framed against him though the amount of recovery was reduced since most of the stores items were located / traced during the course of inquiry. After careful examination of inquiry report and documentary evidence, the disciplinary authority has awarded him the penalty of "Compulsory Retirement w.e.f. 26.8.2002 and recovery for loss of Govt. stores to the value of Rs. 13221/-" vide DEC's order No. C/A-103/4-A (H. Sangawia) dated 26.8.2002.

Recd on 13/8/03

Tone copy
for
admission

WHEREAS being aggrieved with the above punishment order of the Disciplinary Authority, Shri H. Sangawia has made this appeal dated 7.10.2002 to the Appellate Authority.

AND WHEREAS on careful consideration of the appeal it is observed that the appellant has made following arguments / points against the punishment orders of the Disciplinary Authority :

- (i) Appointment of Shri T.K. Bandyopadhyaya as Ad-hoc Disciplinary Authority is not in order as the Director-in-charge of North Eastern Circle was stationed at Shillong.
- (ii) Presidential sanction is required for appointment of an Ad-hoc Disciplinary Authority which has not been obtained.
- (iii) The appointment of Shri T.K. Bandyopadhyay as ad-hoc Disciplinary Authority is objected on the basis of his prejudice against the applicant.
- (iv) The ad-hoc Disciplinary Authority is bias against the appellant.
- (v) The appellant was charged for misappropriation of stores worth Rs. 162991/- but the Inquiry Officer in his own findings found the loss to be Rs. 13221/- only. As such the charge of misappropriation against the appellant was not proved.
- (vi) The appellants's defence brief were dismissed arbitrarily by both the Inquiry Officer and the Disciplinary Authority which is against all norms of enquiry.

WHEREAS on careful consideration of above points raised in the appellant in his appeal with reference to documentary evidence, findings of the inquiry officer, facts and circumstances of the case, the Appellate Authority has come to following conclusion :-

- (i) Col B.D. Sharma (now Brigadier) who is holding the charge of the office of the Director, North Eastern Circle was already appointed as Inquiry Officer in the subject disciplinary case. As such the same officer who was appointed as Inquiry Officer cannot function as Disciplinary Authority in the same disciplinary case. That is why the Competent Authority has appointed Shri T.K. Bandyopadhyay, Director, Eastern Circle as ad-hoc disciplinary Authority of the appellant. In view of this, the point raised by the appellant is not in order.
- (ii) Head of the Department on behalf of the president is Competent Authority for appointment of ad-hoc Disciplinary Authority under Rule 12 (2) of CCS (CCA) Rules 1965. As such the order of appointment of Shri T.K. Bandyopadhyaya, Director, Eastern Circle as ad-hoc disciplinary authority in the disciplinary case against the appellant is in order. Hence the point raised by the appellant is baseless.

(iii) & (iv) On perusal of records put forth before the Appellate Authority it is seen that the appellant during his suspension was duly paid the subsistence allowance as admissible to him. No instructions for Shri Bandyopadhyay to the Head clerk of No. 80 Party regarding non-payment of subsistence allowance beyond three months are found on records. On the contrary it is found that the appellant was paid subsistence allowance for entire period from 20.8.1996 to 31.8.2002 as was admissible to him. Further the penalty imposed by the Disciplinary Authority has been found in accordance with the outcome of the Inquiry Report. As such the allegation of bias against the Disciplinary Authority is found baseless.

(v) In the charge sheet the appellant was charged for misappropriation of Govt. stores worth Rs. 1,62,999/-. On conducting fresh inquiry in the light of Hon'ble CAT, Guwahati Bench, Guwahati order dated 22.8.2001 complete store items were checked systematically. During the course of inquiry, various store items were found unaccounted and mingling with other store items either in the store of No. 5 Party or in other units. Thus on locating some of store items and on taking into account the book value as well as depreciation value of those lost items of store which had outlived their prescribed period of life, the amount of misappropriation reduced and the loss came down to Rs. 13,221/-.

It was sole responsibility of the appellant for proper accounting of store. Locating some of store items, thereby reducing the amount of loss charged against the appellant does not mean that the charge of misappropriation / negligence / forging / mishandling of stores stands annulled. As such the plea of the appellant that the charge of misappropriation against him was not proved, is false and not tenable.

(vi) On examination of whole proceedings it has been observed that the inquiry officer while submitting his findings and the Disciplinary Authority while considering the inquiry report and deciding the quantum of penalty against the appellant have thoroughly examined all aspects of the case. As such the allegation of dismissal of appellant's defence brief arbitrarily by both the I.O. & the Disciplinary Authority has been found baseless.

WHEREAS the points raised in appeal by the appellant are having no cognizance as concluded in preceding paragraph and there is a preponderance of probability of the fraudulent manipulation by the appellant in taking out the Govt. Stores under forged signature of Competent Authority.

WHEREAS it is established by the findings of inquiry officer that the appellant had made a great deal of irregularities with Govt. stores during his tenure as Store Keeper of No.5 Party (NEC) by issuing items from ledgers under forged signatures in the ledgers and invoices with intention to hide the misdeeds resulting shortage of store to the tune of Rs.13,221/- (Rupees thirteen thousand two hundred twenty one only). Even some pages of the register of consumable items of stores were found missing.

AND WHEREAS the appellant by trade was employed for custody and proper accounting of Govt. stores entrusted to him (with trust) but due to his mismanagement and negligent attitude towards Govt. duty, the Disciplinary Authority came to a decision that further continuance of the appellant in Govt. service may not be in public interest.

NOW THEREFORE the undersigned after considering all documentary evidences, findings of the inquiry officer, points raised by the appellant in his appeal and disagreement with these points with reference to concerned records and facts and circumstances of the case does not find any justification to interfere with the order of Disciplinary Authority and confirmed the following orders of the Disciplinary Authority issued vide DEC's order No.C/A-103/4-A (H. Sangawia) dated 26.8.2002:-

"Compulsory Retirement w.e.f. 26.8.2002 and recovery for loss of Govt. stores to the value of Rs.13,221/- (Rupees thirteen thousand two hundred twenty one only)."

The appeal, therefore, fails.

P. Nag

(Dr. P. Nag)

Surveyor General of India
(Appellate Authority)

To

✓ Shri H. Sangawia,
Ex-Store Keeper Gde.II,
No.80 Party (NEC),
Survey of India,
Shillong.

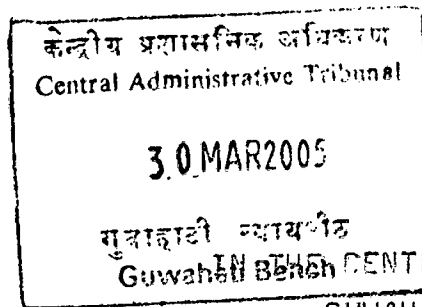
(Through – Addl.SG, Eastern Zone, Kolkata)

- 3 copies

Recd in 13-8-03
at 11.20 Am.

13/8/03

Tone copy
sent
Associate



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::GUWAHATI

103
Union of India & Ors. - Respondent
Shri H. Sangawia - Applicant
Shri B. D. Sharma - Director, Peghalaya and
Ar. P. G.D.C., Survey of India, Malki, Shillong-793 001
Adl. Central Govt. Standing Order 336/4-A(HS)

In the matter of :-

O.A. No.213 of 2004

Shri H. Sangawia ... Applicant

-Versus-

Union of India & Ors.

... Respondent

WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENTS NO.1,2 & 3.

I, Brig. B.D. Sharma, Director, Peghalaya and
Ar. P. G.D.C., Survey of India, Malki, Shillong-793 001 do
hereby solemnly affirm and say as follows :-

1. That I am the Director, Peghalaya and Arunachal
Pradesh, GDC, Survey of India, Malki, Shillong and as such fully
acquainted with the facts and circumstances of the case. I have
gone through a copy of the application and have understood the
contents thereof. Save and except whatever is specifically
admitted in this written statement the other contentions and
statement may be deemed to have been denied. I am authorised to
file the written statement on behalf of all the respondents.

2. That the respondents beg to place the brief history
of the case as follows :-

During 1996 the applicant was awarded the
punishment of "Compulsory Retirement" w.e.f. 20-8-1996 alongwith
recovery of Rs.60,128.91(Rupees sixty thousand and one hundred
twenty eight and paise ninety one only) being the depreciated
value of stores vide DNEC's Order No.C-527/4-A-302, dtd.20-8-96
since he was held responsible for misappropriation of Govt.
stores and forging the signatures of several Officers while he
was holding the charge of Stores of erstwhile No.5 Party(NEC) .
Thereafter, the applicant appealed to the Addl. Surveyor General
EZ, Kolkata being appellate authority that time, which was
rejected vide Appellate Authority's Order No.EZ-336/4-A(HS)

Contd..p'2-

dated 16-12-1996. Subsequently, the applicant had submitted review petition to the Surveyor General of India, being the reviewing authority but the same was also rejected vide SG's No.LC-34/1196-PF(WApplicant) dated 14-8-1998. Being aggrieved by the punishment order, the applicant filed a case vide O.A. No.128/2000 during 2000 in the Guwahati Bench of Hon'ble Tribunal. The Hon'ble Tribunal delivered the order on 22-8-2001 wherein apart from setting aside the punishment, appellate and review orders, the Disciplinary Authority was further directed to hold fresh Inquiry to provide natural justice to the applicant.

To comply with the Hon'ble Tribunal order, a Departmental Inquiry was started during October, 2001 and concluded during June, 2002. As per the findings of the Inquiry, the applicant was again found guilty of the Charges framed against him though the amount of recovery got reduced since most of the store items were located/traced during the course of inquiry. However, after careful examination of all documentary evidences, the Disciplinary Authority awarded the applicant ^{Shri H. Sengupta,} Storekeeper Grade-II the penalty of "Compulsory Retirement" with effect from 26-8-2002 and recovery of an amount of Rs.13,221/- (Rupees thirteen thousand two hundred twenty one) only from the dues payable to him.

Being aggrieved, the applicant appealed to the then Addl. Surveyor General Eastern Zone, Kolkata, since at that time, regular Addl.S.G. was not posted in EZO, the appeal case of the applicant was considered by the Surveyor General of India only as appellate Authority and after due consideration the same was rejected vide order No.LC-21/1196-PF(the applicant) dated 30-7-2003.

Thereafter, the applicant has filed the present case in the Hon'ble Tribunal being O.A. No.213/2004 during October, 2004.

3. That the respondent have no comments to the statements made in paragraph 1, 2, 3, 4.1, 4.2, 4.3, 4.4 & 4.5 of the application being matter of records.

4. That with regard to the statements made in paragraph 4.6 of the application, the respondent beg to state that the dates of holding inquiry and list of witnesses are matter of records and subject to verification. The inquiry was conducted in the free and fair manner as per the procedure laid down in relevant provisions of CCS(CCA) Rules, 1965, so that natural justice can be provided to the ~~Respondent~~ applicant. Due to this fact, the amount towards shortage of stores came down to Rs.13,221/- in the present proceeding, whereas in the previous disciplinary proceedings it was Rs.1,62,991/-

The Inquiry Officer in his report held at misappropriation of Govt. stores amounting to Rs.1,62,991/- has been partly proved, since most of the store items were located/traced out during the course of inquiry, thereby amount of misappropriation reduced to Rs.13,221/- but this fact does not mean that the charge of misappropriation/mishandling of stores through negligence/forgery stands annulled. Therefore, the Disciplinary Authority has rightly concluded that the charge contained in Article-I has been fully proved since Rule 3(I) of CCS Conduct Rules, 1965 provides that a Govt. servant at all times should maintain absolute integrity and devotion to duty and do nothing unbecoming of a Govt. servant.

5, That with regard to the statements made in paragraph 4.7 of the application, the respondents beg to state that the Disciplinary Authority has arrived at the conclusion after thoroughly examining of all aspect of the case. Every Govt. servant is bound to maintain absolute integrity in his service. In the instant case the applicant has admitted the forgery of signature in the store ledgers/invoices. How can ~~he~~ be continued in the service for wrongly authenticating the receipt and issue columns of ledger for which he is not competent authority.

6. That with regard to the statements made in paragraph 4.8 of the application, the respondents beg to state that the applicant had forged the signature of Superior Officers and this fact has been proved not only by his own admission during the course of Inquiry but also by verification of handwriting from competent authority. Also the applicant definitely had ill motives, otherwise he would have put his own signature in the issue column of the consumable items register instead of forging the signatures of his Superior Officers in the pretext of obeying the Instructions of O & M Reports. In page 16 of the O.A. the applicant clearly admitted that irregularities has been done but trying to hide misdeed as simple "irregularities" and not "misconduct" which is not tenable. It only indicates committing grave offence and trying to prove that he is correct.

7. That with regard to the statements made in paragraph 4.9 of the application, the respondents beg to state that since the time the applicant took over the charge of stores, it was his sole responsibility for proper accounting of stores as well as maintaining the relevant ledgers/invoices and therefore, his effort to shift responsibility to others is not tenable. However, the Surveyor General of India being the Appellate Authority passed the order, rejecting the appeal after examining all pros and cons of the case.

8. That with regard to the statements made in paragraph 4.11 of the application, the respondent beg to state that the Appellate Authority has passed the Appeal Order in accordance with the provisions laid down in relevant CCS(CCA) Rules, 1965.

9. That with regard to the statements made in paragraph 4.12 of the application, the respondents beg to state that the applicant though prefer an appeal which was rejected by the Appellate Authority after due consideration but not preferred any review petition, therefore it may be stated that full channel has not been exhausted.

10. That with regard to the statements made in paragraph 5.1 of the application, the respondents beg to state that as per Hon'ble Tribunal Order, de-novo Inquiry was conducted to provide natural justice to the applicant. All opportunities were provided. The verification of signature was got done by a competent third agency for maintaining impartiality.

11. That with regard to the statements made in paragraph 5.2 of the application, the respondents beg to state that while imposing penalty the Disciplinary Authority considered all aspect of the case as per the relevant provisions of CCS(CCA) Rules, 1965.

12. That with regard to the statements made in paragraph 5.3 of the application, the respondents beg to state that the allegation made in this para is incorrect. All the list of witnesses were properly examined during the course of Inquiry. It is also evident from the facts that no complaint either from the applicant or from his Defence Assistant was lodged during the course of Inquiry & to this effect.

13. That with regard to the statements made in paragraph 5.4 of the application, the respondents beg to state that there is no variation of findings of the Inquiry Officer in his report. Only the amount towards loss of stores has been reduced in the Second Proceeding but the charge of misappropriation of store items remained the same. The inquiry was done in a very thorough and deliberate manner.

14. That with regard to the statements made in paragraph 5.5 of the application, the respondents beg to state that the inquiry was done in a very fair manner. The applicant used to issue stores without observing stores procedures and he used to never bother the accountability of store items issued unauthorisedly here and there.

During the store verification items were not found and so he used to forge the signature of senior officer. However, the Inquiry Report was submitted after considering all records both oral and written, alongwith the signature forgery report submitted by a third agency.

15. That with regard to the statements made in paragraph 5.6 of the application, the respondents beg to state that forging of Signature of other officials has been fully proved, not only through his own admission during the course of Inquiry but also confirmed through verification of signatures from competent authority. The Q&A Inspection Report, 1992 had given the instructions to take the signature of the Competent Authorities against issue and receipt columns of the store ledger which were lacking due to negligence of the Storekeeper who is the applicant here but never instructed/ advised him to forge signature of Competent Authorities in the pretext of complying the orders. This only shows the ulterior motive of the individual with a view to prove that his misdeed is correct.

16. That with regard to the statements made in paragraph 5.7 of the application, the respondent beg to state that forgery of any nature is a serious misconduct as per the CCS Conduct Rules, 1964. It reflects the adverse integrity of a person.

17. That with regard to the statements made in paragraph 5.8 of the application, the respondents beg to state that the Disciplinary Authority has passed the order of penalty after considering all aspect of the case. The applicant could have been dismissed from service due to his misdeed but the Disciplinary Authority considering his past services & took a lenient view and awarded the punishment of "Compulsory Retirement" keeping in mind that the applicant should get all the pensionary benefits.

18. That with regard to the statements made in paragraph 5.9 of the application, the respondent beg to state that question of disagreement does not arise since the charges have been proved beyond doubt although the amount of loss towards store items was reduced.

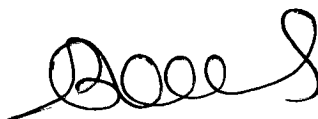
19. That with regard to the statements made in paragraph 5.10 of the application, the respondents beg to state that the applicant has failed to maintain the proviso of Rule-3(1)(i), (ii) & (iii) of CCS conduct Rules through misappropriation of Govt. stores as well as forging the signatures of Superior Officer and this cannot be defined as simple mistake with honest motives.

20. That with regard to the statements made in paragraph 5.11 and 5.12 of the application, the respondents beg to state that both the Disciplinary Authority and Appellate Authority have passed the order after going through the full fact of the case and considering all aspect.
21. That with regard to the statements made in paragraph 5.13 & 5.14 of the application, the respondent beg to state that the Appellate Authority has passed the order of penalty after considering all aspect of the case.
22. That with regard to the statements made in paragraph 5.15 of the application, the respondents beg to state that Omission and Commission made by the applicant is completely in violation of CCS Conduct Rules, which every Govt. servant should abide by.
23. That with regard to the statements made in paragraph 5.16 of the application, the respondent beg to state that penalty was imposed after observing all the formalities as required by CCS (CCA) Rules, 1965.
24. That with regard to the statements made in paragraph 5.17 of the application, the respondent beg to reiterate the statements made in paragraph 21.
25. That with regard to the statements made in paragraph 6 of the application, the respondent beg to state that the applicant has not preferred any review petition though he appealed to the Appellate Authority which was reject after due consideration.
26. That the respondents have no comment to the statements made in paragraph 7 of the application.
27. That with regard to the statements made in paragraph 8.1 to 9.1 of the application, the respondent beg to state that the subject O.A. is liable to be dismissed on the ground that the applicant being a Govt. servant has violated the proviso^d Rule-3(1)(i), (ii) and (iii) of CCS Conduct Rules through his actions i.e. misappropriation of Govt. store, lack of devotion to duty, showing negligence to Govt. duty, forging of signatures of higher authority to hide his misdeed.
28. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

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

I, Brig. B.D. Sharma, presently working as Director, Meghalaya and Arunachal Pradesh, GDO, Survey of India, Malki, Shillong being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1, 3 & 26 of the application are true to my knowledge and belief, these made in paragraphs 2, 4-25 & 27 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 14th day of March, 2005 at Shillong



Deponent

(Brig. B. D. Sharma)
Director (M & A. P., GDO)
Survey of India
Shillong—793001

Central Administrative Tribunal
27 JUL 2005
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:-

O.A. No. 213 of 2004

Shri Hrangtling Sangawia

-Vs-

Union of India and Others.

-And-

In the matter of:-

Rejoinder submitted by the
applicants in reply to the written
statements submitted by the
respondents.

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

1. That your applicant carefully gone through the written statement filed by the Respondents number 1, 2 and 3 in O.A. 213/2004 and understood the contents thereof. The applicant does not admit any of the averments made therein except which are borne on records.
2. That with regard to the statements made in paragraph 2, 4, 5 and 6 are not correct and the said contentions are specifically denied, the very statements that the applicant has misappropriated an amount of Rs. 60,128.91 paise is contrary to their own records and findings given to the Inquiry Officer. The report of the Board of Inquiry to the effect that there was a shortage of materials to the extent of Rs. 1,62,991/- is totally false and misleading. The said report has been prepared with a deliberate

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Filed by applicant
through Subrata Nath
Advocate
27.07.05

intention for initiation of a disciplinary proceeding as per their own findings since particularly after their first inquiry report the shortage has come down to Rs. 60,128.91/- from the alleged shortage of Rs. 1,62,991/- given by the Board of Inquiry. Fortunately or unfortunately the allegation of shortage of store material again come down to Rs. 13,221/- when the first penalty order was set aside by this learned Tribunal with the liberty to the respondents to conduct a de novo inquiry. Therefore, it appears that allegation leveled by the Board of Inquiry against the applicant for shortage of store material to the extent of Rs. 1,62,991/- has been done without physical verification.

Therefore, it is a case of shortage of store material but not a case of misappropriation as alleged in the written statement as well as in the charge sheet and the inquiry report. The applicant has further given a detailed accounts of the store materials regarding alleged shortage of store material to the extent of Rs. 13,221/- but in his reply against the inquiry report as well as in his appeal preferred before the appellate authority, but unfortunately the said explanation was not dealt with either by the Disciplinary Authority or by the Appellate Authority and on that score alone the order of penalty as well as the impugned appellate order is liable to be set aside and quashed. The allegation of mishandling and negligence does not fall within the definition of misconduct for the purpose of disciplinary proceeding. It is fairly admitted by the Disciplinary Authority that most of store materials were located and traced out as such the allegation of misappropriation is not at all applicable in the instant case of the applicant.

So far allegation of forgery contented in paragraph 5 and 6 of the written statement in fact dealt by the Hon'ble Tribunal in its earlier proceeding in paragraph 3 of the judgment and order dated 22.08.2001, wherein the Hon'ble Tribunal has observed as follows:-

"The respondent authority concluded the inquiry process by the said inquiry officers. That apart, in our view the enquiry conducted was in violation of the principles of natural justice. The respondent authority relied upon the alleged admissions of the applicant, seemingly made before the Court of Enquiry. However, those materials which contained the admissions were not furnished."

In the subsequent proceeding also the disciplinary authority failed to establish such alleged admissions of forgery of signature of higher authorities committed by the applicant and as such the allegation of forgery is not sustainable. It is further submitted that mere negligence or misplacing of store material does not call for initiation of a disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965. In this regard applicant like to rely upon the Judgments and order dated 18.06.2004 passed in O.A No. 237/2003, by this Hon'ble Tribunal wherein this Hon'ble Tribunal held that merely because of irregularity or negligence of a Govt. employee cannot be held guilty of misconduct. The applicant further relies on the judgment and order dated 11.02.2005 passed in W.P. (C) No. 3170 of 2002 (Rajab Uddin Ahmed -Vs- Numaligarh Refinery Ltd & Ors.) by the Hon'ble Gauhati High Court, reported in G.I.T 2005 (1) 376.

(Copy of the judgment and order 18.06.2004 passed in O.A No. 237/2003 and judgment and order dated 11.02.05 passed in W.P. (C) No. 3170/02 are enclosed as Annexure- A & B respectively).

3. That the applicant categorically denies the contention raised in para 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the written statement and reiterates the statement made in original application. And the allegations or contention raised in the aforesaid paragraphs has been specifically dealt in preceding paragraph of rejoinder.

4. That the applicant categorically denies the correctness made in paragraph 17, 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 and further reiterates the statement made in the original application. And the same were elaborately explained in paragraph 2 and 3 of the rejoinder. It is a case relating to accounting the store materials and mere shortage of certain item from the store materials which is not properly verified and computed cannot be a ground for initiation of a disciplinary proceeding under Rules 14 of the CCS (CCA) Rules, 1965 as well as in imposition of penalty to the extent of compulsory retirement from service. The very basis on which i.e. the report of the board of enquiry which submitted the report of shortage of store materials is false and misleading and on that score alone the memorandum of charge sheet, order of penalty as well as the order of Appellate authority are liable to be set aside and quashed.

In the facts and circumstances stated above, the Original Application deserves to be allowed with cost.

2. v.

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VERIFICATION

I, Shri Hrangtline , Son of Sri Sailkhuaia , aged about 55 years, Resident of two Brother's Home, Poktieh, Nongthymai, Shillong is the applicant in the instant Original Application duly authorized to verify the statements made in the rejoinder, do hereby verify that the statements made in paragraph 1 to 4 are true to my knowledge and I have not suppressed any material facts.

And I sign this verification on the 25th day of July 2005.

Hrangtling Saipawia

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Annexure-A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.237 of 2003

Date of decision: This the 18th day of June 2004

The Hon'ble Smt Bharati Ray, Judicial Member

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

Shri Dilip Kumar Rabidas
S/o Late Jarua Rabidas,
Working as Junior Superintendent (Stores),
Office of the Government Medical Stores Depot,
P.O. Gopinath Nagar, Guwahati.Applicant
By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Chaudhury.

- versus -

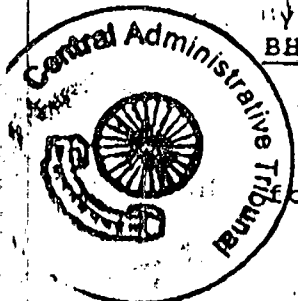
1. The Union of India, represented by the
Secretary,
Government of India,
Ministry of Health and Family Welfare,
New Delhi.
2. The Director General of Health Services,
Niman Bhawan, New Delhi.
3. The Assistant Director General (MS),
Government Medical Stores Depot,
Gopinath Nagar, Guwahati.
4. The Joint Director,
Central Government Health Scheme &
in-charge Government Medical Stores Depot,
Guwahati (Disciplinary Authority),
Gopinath Nagar, Guwahati.Respondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

Shri Dilip Kumar Rabidas
S/o Late Jarua Rabidas,
Working as Junior Superintendent (Stores),
Office of the Government Medical Stores Depot,
P.O. Gopinath Nagar, Guwahati.Applicant
By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Chaudhury.

BHARATI RAY, JUDICIAL MEMBER

This application has been filed seeking the following reliefs:

- (i) To set aside the memorandum of charge sheet dated 12.05.1997, impugned order of penalty dated 12.12.2002 and the impugned appellate order dated 22.08.2003.
- (ii) To direct the Appellate Authority to condone the delay in preferring the appeal and further to direct the Appellate Authority to pass reasoned order on merit of the appeal.



*Affected
By Advocate*

iii) To direct the respondents to promote the applicant to the post of Senior Superintendent (Stores) at least from the date of promotion of his immediate juniors with all consequential benefits.

iv. Costs of the application

v. Any other relief(s) to which the applicant is entitled to.

2. The undisputed facts of the case are that:

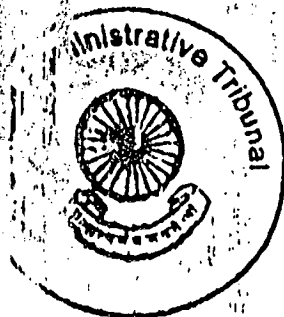
While the applicant was working as Junior Superintendent, Government Medical Stores Depot, Guwahati, a surprise check of stock of medicines was conducted by the Central Bureau of Investigation (CBI for short) authority on 11.7.1996 and the following discrepancies were found:

"a) Shortage of 53,770 nos. of Tab. Pyrimethamine Sulphadoxine Combination (250mg) valued Rs.51,081.50 in NMEP Section.

b) As per declaration in Bincard No.67204, the stock of tablet Pyrimethamine Sulphadoxine Combination 250 mg, should be 18,83,570 nos. But in physical stock verification the same was found only 18,29,000 nos. and thus there was a shortage of 53,770 nos. tab. under the possession of Shri B.K. Rabidas."

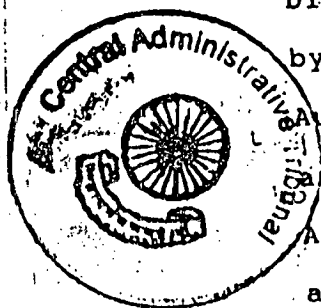
However, on the next day, i.e. on 12.7.1996 the untraced quantity of medicine was traced out and reported by the applicant to the Head Office and was also reported to the CBI, Guwahati on the very day. But, 460 nos. of tablets of Pyrimethamine Sulphadoxine combination (250mg) could not be traced out, the cost of which is Rs.437/-. The Assistant Director General (MS), Government Medical Stores Depot, Guwahati vide Memorandum bearing letter No.ADMN/164/DKR/92 dated 12.5.1997 proposed to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The charges levelled against the applicant is as under:

"While Shri Dilip Kr. Rabidas was posted and functioning as junior Supdt. in National Malaria Eradication Programme of Government Medical Store Depot, Guwahati during 1996 failed to maintain absolute integrity and devotion to duty for which



53,770 nos. of tab. Pyri methamine Sulphadoxine combination (250mg) valued at Rs.51,081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.7.96 in National Malaria Eradication Programme Store Section and thereby by the above acts, he contravened the provision of Rule 3(1)(2) of CCS (Conduct) Rules, 1964."

3. After receipt of the aforesaid charge memo dated 12.5.1997 the applicant submitted a detailed reply on 21.5.1997 denying the allegations contained in the article of charge and further showed the detailed position of medicines as on 11.7.1996. However, it was admittedly mentioned by the applicant that there were altogether 18,83,570 nos. of tablets available in the stock as on 11.7.1996 and on physical verification 18,83,110 nos. of tablets were found in good condition and 460 nos. of tablets, value of which was Rs.437/- was detected to be short which could not be found in the stock. It is also explained by the applicant in the reply to the charge memo that during the relevant period maximum quantity of UIP/CSSM(KTTS) stores were received, but due to insufficient accommodation in the Depot all medicines were kept in a scattered way and even in the corridor of the complex. The applicant prayed before the authority to consider the above facts sympathetically. The applicant in his reply has also assured that in future he would take more care for proper maintenance of the stock. Thereafter, an enquiry was conducted by Dr H.K. Sonowal, CMO, CGHS Dispensary No.3, Guwahati and the enquiry report submitted by him was sent to the applicant by the Disciplinary Authority alongwith the O.M. dated 3.12.2002, which is annexed as Annexure-III to the O.A. The Disciplinary Authority vide its memo dated 3.12.2002 informed the applicant to make a representation against the enquiry report, if any, within fifteen days of the receipt of the



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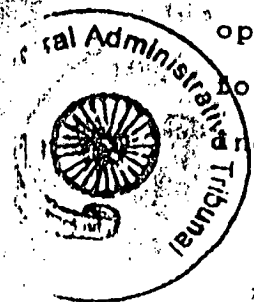
said memo, failing which it would be presumed that the applicant had no representation to make and orders would be passed against him. Accordingly the applicant sent his reply to the said memo on 9.12.2002, wherein he requested the authority to make recovery from his salary for adjustment of the shortage quantity of medicine found in the stock. The said reply is enclosed as Annexure-IV to the O.A. The Joint Director, CGHS- respondent 4, thereafter issued the impugned order dated 12.12.2002 in the name of the President, whereby a penalty of reduction of pay by one stage was imposed on the applicant for a period of one year with effect from 1.1.2003 with the stipulation that during that period the applicant would not be eligible to earn increment and on expiry of the period the reduction will not have the effect of postponing his future increment of pay. A copy of the said order is enclosed as Annexure-V. Although the order was issued in the name of the President and there was no opportunity given to the applicant and there was nothing mentioned to prefer any appeal, the applicant preferred an appeal on 10.6.2003 to the Director General of Health Services, which was, however, rejected by the Director General, Health Services, on the ground that the appeal was made after a lapse of six months and without satisfactory reasons for the delay in preferring the appeal, the appeal was rejected, Annexure-VII.

4. Being aggrieved by the charge memo dated 12.5.1997 and the order of penalty dated 12.12.2002 and the order of the Director General dated 22.8.2003 the applicant has approached this Tribunal seeking the reliefs stated above.

5. Mr M. Chanda, learned counsel for the applicant, strenuously argued that when the Inquiry Officer in his



report did never held that the charges were partially proved and only suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding, the Disciplinary Authority was not justified in saying that the Inquiry Officer in his findings has said that the charges had been partially proved. He further added that when it was categorically held by the Disciplinary Authority that only minor mistake had been committed, there was no reason to hold that the applicant is guilty of misconduct for the purpose of initiating disciplinary proceedings. Therefore, the Disciplinary Authority was not justified in imposing any penalty upon the applicant taking recourse to Rule 14 of the CCS (CCA) Rules, 1965. The learned counsel for the applicant further submitted that when there was no proposal made by the Inquiry Officer to impose any penalty in its report and when there was only a suggestion as mentioned above, the Disciplinary Authority without giving the applicant any opportunity to defend his case could not have imposed the penalty and that the order dated 12.12.2002 issued by the Disciplinary Authority is violative of the principles of natural justice. In this context, he has placed reliance on a judgment of the Supreme Court in the case of State Bank of India and others Vs. K.P. Narayanan Kutty, reported in (2003) 2 SCC 449, wherein it was held that it is the duty of the punishing authority when treating as fully proved the charges found by the enquiry officer to be partly proved, to afford opportunity to the delinquent employee irrespective of whether or not some prejudice is shown to have been caused by denial of such opportunity. It is the contention of the learned counsel for the applicant that since in the present case the Inquiry Officer did not hold that the charges were



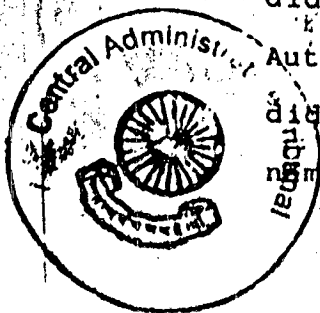
partially proved or proved and has not made any proposal to impose any punishment, the principles laid down by the Hon'ble Supreme Court in the above case applies on the case in hand and therefore the applicant is entitled to get the relief prayed for. 120

5.5. The learned counsel for the respondents submitted that although the applicant had the opportunity to prefer his appeal against the order passed by respondent 4, but he did not avail of the said opportunity by filing the appeal in time. In fact, the applicant preferred his appeal after the expiry of the time schedule and the same was rejected by the Director General of Health Services on the ground of delay. The learned counsel for the respondents, however, could not enlighten the position as to why the order dated 12.12.2002 was issued in the name of the President when the applicant, admittedly, is a Group 'C' officer. The learned counsel for the respondents could also not explain as to whether there was any scope of preferring appeal when the penalty order was issued in the name of the President.

6. Heard the learned counsel for the parties. We have gone through the pleadings and the materials placed before us. We have also gone through the case relied upon by the learned counsel for the applicant. A perusal of the enquiry report would show that no proposal had been made by the Inquiry Officer to impose any penalty against the charged official, i.e. the applicant herein. It is seen from the findings of the Inquiry Officer that the quantity that could not be traced on the date of verification, i.e. 11.7.1996 could be traced out on the next day, i.e. on 12.7.1996, but only 460 nos. of tablets were not traced out which cost Rs.437/-, in which context the Inquiry Officer remarked that the 460 tablets which could not be traced out



was worth Rs.437/- only which itself in store accounting procedure is considered to be a very meagre amount, i.e. less than 0.9% of the traced quantity of medicine and finally the Inquiry Officer suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding. It is also noticed that the respondent 4 in O.M. dated 3.12.2002 (Annexure-III) advised the applicant to make representation to the enquiry report without mentioning anything about any possibility of imposing any penalty to enable the applicant to defend his case accordingly which in our view violated the principles of natural justice. As already mentioned above the learned counsel for the respondents could not explain as to why the order was passed by respondent 4 in the name of the President and in case the order is of the President, where is the scope of preferring appeal? We find that the appeal preferred by the applicant was rejected by the Director General of Health Services on the ground of delay in submitting the appeal. We find force in the contention of the learned counsel for the applicant that when the order of penalty was issued by the Joint Director and the Director General is not the next higher authority, therefore, the Director General is not the competent authority to act as the Appellate Authority and reject the appeal preferred by the applicant. Therefore, the order of the Director General of Health Services dated 22.8.2003 is not sustainable in the eye of law and is liable to be ~~rejected~~ ^{quashed}. It is also noticed that the Appellate Authority did not consider the crucial point that the Appellate Authority while rejecting the appeal on the ground of delay did not notice that the penalty order was issued in the name of the President and therefore there was no scope to



prefer any appeal and it was also not considered as to whether the order could be passed in the name of the President when the charged officer is not a gazetted officer. Therefore, the Appellate Authority did not apply its mind and has passed an order which is not sustainable in law.

7. The next question to be considered is whether the allegation constituted misconduct in the eye of law. A close reading of the article of charge, the findings of the Inquiry Officer and the order of the Disciplinary Authority would only show that the Inquiry Officer as well as the Disciplinary Authority noticed that a minor mistake has been committed by the applicant. The suggestion of the Inquiry Officer to the applicant to make necessary correction in the Bin Card by rectifying the mistake to avoid unnecessary misunderstanding would go on to show that at no point of time the Inquiry Officer as well as the Disciplinary Authority came to the conclusion to hold that there was any ill motive behind the action/inaction on the part of the applicant in committing the minor mistake which would constitute misconduct. In fact, nowhere in the charge memo or in the finding of the Inquiry Officer as well as in the order of the Disciplinary Authority, misconduct has been alleged, noticed and/or established. Therefore, we find considerable force in the contention of the learned counsel for the applicant that in view of the allegation made against the applicant in the charge memo read with the statement of imputation, the findings of the Inquiry Officer and the order of the Disciplinary Authority, it is very much clear that the applicant can be held to be guilty of negligence in keeping the medicines properly which



resulted in the loss of Rs.437/- which is again considered, according to the Inquiry Officer a meagre amount, i.e. less than 0.9% of the traced quantity of medicines and also has been noticed by the Disciplinary Authority as minor mistake committed by the applicant. Therefore, there is no reason to say that the applicant was guilty of any misconduct for the purpose of initiating disciplinary proceeding. In this context the learned counsel for the applicant placed reliance on the judgment of the Hyderabad Bench of the Tribunal in G. Buddappa Vs. Union of India and others (O.A.No.198 of 2000) decided on 12.7.2001, wherein it was observed that mere negligence does not constitute misconduct and that no charge memo can be issued in absence of a misconduct. In this context we have also gone through the definition of misconduct in Stroud's judicial dictionary (1986 Fifth Edition) which is as under:

"misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes, do not constitute such misconduct."

The Central Administrative Tribunal, Hyderabad Bench, in the said judgment, referred by the applicant, has also considered the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. J. Ahmed, reported in 1979 SLJ 308 (SC) in which the Hon'ble Supreme Court observed, inter alia as under:

"It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."



8. In view of the above discussion and the contention of the learned counsel for the applicant mentioned above and the judgments discussed above, we are of the view that there is nothing in the charge memo or in the findings of the Inquiry Officer or in the order of the Disciplinary Authority to hold that the applicant was guilty of any misconduct. A loss of Rs.437/- that was due to the applicant's negligence would not constitute misconduct when there is no ulterior motive behind such failure on the part of the applicant in taking care of the medicines and keeping them in order in the store room. We, therefore, hold that since the applicant is not guilty of any misconduct, the respondents were not justified initiating the disciplinary by issuing the charge memo under letter dated 12.5.1997 and therefore the charge memo is liable to be set aside.

9. In view of the irregularities pointed out above, we hold that the charge memo dated 12.5.1997 and the orders dated 12.12.2002 and 22.8.2003 issued by respondent 4 and the Director General, Health Services, respectively are not sustainable in the eye of law. Accordingly, they are quashed and set aside.

10. In the result, the O.A. is allowed with no order as to costs.

Sd/MEMBER(J)
Sd/MEMBER(Adn)



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Section Officer (J)
CA. T. GUWAHATI RANCH
Guwahati-781005
23/6/04

ported in AIR 1991 SC 2088 in support of his case. From perusal of the said judgment i.e. All. Manipur Regular Post Vacancies Substitute Teachers Assn. (supra), it has been seen beyond reasonable doubt that the Apex Court had not laid down any law for regularization of adhoc service but the Apex Court passed judgment & order in the peculiar facts and circumstances mentioned in that case for regularizing the service of substitute teachers.

10. For the reasons above said we are of the considered view that in the admitted facts and circumstances of the case of the present case, natural justice would only be an empty formality in issuing the impugned order for canceling the irregular substitute appointments of the appellants. Therefore, we are of the affirmed view that the impugned judgment and order of the learned Single Judge is not called for inference. Accordingly writ appeal is dismissed. No costs.

2005 (1) GLT 376

(BEFORE RANJAN GOGOI, J.)

RAJAB UDDIN AHMED

...PETITIONER

-VS.-

NUMALIGARH REFINERY LTD. & ORS.

...RESPONDENTS

W.P. (C) No. 3170 of 2002

Decided on 11.2.2005

Service Law—Disciplinary proceeding—Charge of misappropriation of money—Penalty of dismissal from service—Findings of the enquiry officer and acceptance of the same by the disciplinary authority—Test of preponderance of probability—Misappropriation requires

a very high degree of proof even in a disciplinary proceeding—Rules permitting benefit of adjustment to be given to the petitioner on the basis of bills and vouchers found acceptable by the employer—Certain claims of adjustment made by the petitioner were not accepted by the employer—Possibility that had such claims been allowed the amount due would have been wiped out, not ruled out—Sequence of events raising doubt in the mind of the Court whether misappropriation had really taken place—Order of dismissal set aside—Direction given to reinstate the petitioner. ...Para 16, 17

The unexplained cash which the petitioner is alleged to have misappropriated, could really be a consequence of differences over settlement of accounts between the parties. Any settlement of accounts could leave room for disagreement and/or doubt. Misappropriation, on the other hand, would require a very high degree of proof even in a disciplinary proceeding. That in the present case the benefit of allowable adjustment was given to the petitioner on the basis of bills and vouchers as found acceptable by the employer and that there were certain claims of adjustment made by the petitioner which were not accepted by the employer, is a significant fact that cannot be overlooked alongwith the fact that had the said claims been allowed, the amount due would have stood wiped out. The sequence of events raises considerable doubt in the mind of the Court as to whether misappropriation had really taken place. There may have been a shortfall in cash and the petitioner may have failed to receive due recognition or approval of certain claims of adjustment made by him. But that would not be sufficient to hold that the allegation of misappropriation has been proved so as to invite the extreme penalty of dismissal from service. In such a situation, the Court is of the considered view that the weight of the materials on record would not reasonably permit

the court to hold that the charge of misappropriation has been brought home against the writ petitioner.

...Para 16

Advocates appeared for the Petitioner :
Mr. A. S. Choudhury, Mr. R. Majumdar &
Mr. I. Hussain.

Advocate appeared for the Respondents :
Mr. S. N. Sarma.

JUDGMENT & ORDER

R. GOGOI, J.—

An order-dated 31.7.2001 passed by the Advisor (HR), Numaligarh Refinery Limited, dismissing the writ petitioner from service has been put to challenge in the present writ application.

2. The facts relevant to the present adjudication, as revealed by the pleadings of the contesting parties and the other materials placed on record, may, in brief be recited hereunder :

The petitioner, after due selection, was appointed as a Graduate Engineer Trainee (Mechanical) in the Numaligarh Refinery Limited (hereinafter referred to as NRL) by an order dated 7.8.1998. Immediately, after his appointment, the petitioner was seconded (deputed) to render service in the I.B.P. Company Limited, a co-promoter of NRL. Thereafter, by an order dated 3.11.1998, the petitioner was appointed in the post of Officer (Retail) in the Company owned and Company operated Retail Outlet at Numaligarh. According to the employer of the petitioner, in the course of a visit and inspection by the Additional Divisional Manager of IBP Company, it was found that for the period April, 1999 to August, 1999, the relevant records of the retail outlet showing the cash sales were not being maintained. Accordingly, the petitioner, by a letter dated 5.9.1999, was in-

formed to update the records. According to the petitioner's employer, the petitioner did not carry out the aforesaid instructions and when a second team of officers had gone to the retail outlet to carry out a reconciliation of the accounts, the non-availability of the records was again evident for which reason, the petitioner was asked to produce all the relevant records within a period of 24 hours. According to the petitioner's employer, the petitioner, on 23.11.99, appeared before the inspecting team and admitted the commission of several irregularities and illegalities including misappropriation of money and the petitioner had further agreed to reimburse the company a sum of Rs. 40,000/-. The aforesaid admission of the petitioner was made in writing on 23.11.1999. Thereafter, the petitioner's employer by a communication dated 24.11.99, informed the Advisor (HR) NRL of the commission of the illegalities and irregularities by the petitioner including the admission/confession of guilt made by him. The authority of the NRL was also requested to file an F.I.R. with the police in this regard. Thereafter, on the same day, i.e., 24.11.99, an F.I.R. was filed before the Officer-in-Charge of the Golaghat Police Station and on the basis thereof, Golaghat Police Station Case No. 325/99 under Section 408 IPC was registered. Immediately, thereafter, i.e., on 26.11.99, a letter was issued by the Additional Divisional Manager, Guwahati Division, IBP Company Limited informing the petitioner that the reconciliation of the accounts of the retail outlet during the period 1.4.99 to 22.11.99 had revealed that the petitioner is guilty of gross negligence of duty with regard to maintenance of statutory records besides

Advocate

being guilty of misappropriation of funds and fabrication of dubious records. Allegations of carrying out different jobs in the retail outlet and incurring expenditure in connection therewith without taking prior approval, was also brought against the petitioner. By the communication dated 26.11.99, the petitioner was further informed that during the period in question, i.e., 1.4.99 to 22.11.99, the discrepancy in the accounts was to the extent of Rs. 2,25,717.53 and that out of the said amount, the records could satisfactorily account for adjustment of a sum of Rs. 1,28,762.20. The difference between the two figures, i.e., Rs. 96,955.33 was claimed to be due from the petitioner. The petitioner was further informed that the reconciliation of accounts and the figures computed on that basis were provisional and that any further amount found to be recoverable might be added to the amount already quantified.

3. The petitioner submitted a reply denying the allegations recorded in the letter dated 26.11.99. The authority not being satisfied issued a formal charge-sheet dated 21.12.1999 to the petitioner stating that the inspection of the accounts of the Retail Outlet at Numaligarh on 23.11.1999 for the period 1.4.1999 to 22.11.1999 had revealed an unexplained amount of Rs. 2,25,717.53 and that on adjustment of a sum of Rs. 1,28,762.20 for jobs carried out by the petitioner, a balance amount of Rs. 96,955.33 remained unexplained. The petitioner was alleged to have misappropriated the said amount. In the charge sheet issued to the petitioner, it was also alleged that the petitioner had failed to maintain the daily sales register,

density register, cash register etc. and that he had also indulged in fabrication of dubious records to cover up the misappropriation committed by him. In particular, fabrication of the daily sales register and the daily cash sales book was mentioned in the charge sheet issued. Incurring of expenditures without prior approval and relinquishment of the control of the safe containing cash was also alleged against the petitioner. On the said facts, commissions of the following misconduct were alleged:

- a. Theft, fraud, forgery, embezzlement, misappropriation, dishonesty in connection with the business or property of the company or of property of another person within the premises of the company.
- b. Acting in a manner prejudicial to the interest of the company.
- c. Neglect of work or negligence in the performance of duty including malingering of slowing down of work.
- d. Breach of rules duly notified or violation of procedures laid down in connection with the company's business.
- e. Commissioning of any act subversive of discipline or good behaviour.
- f. Non-observance of any safety precautions or rules on the subject.
- g. Tampering with or unauthorized destruction of the official records of the company."

4. The petitioner was directed to submit his written explanation to the charges levelled within 10 days from the date of receipt of the charge-memo. By the charge-memo dated 21.12.1999, the petitioner was also put under suspension pending enquiry.

5. The petitioner submitted his reply to the charges levelled by the charge-memo dated 21.12.99 denying all the charges and stating the detailed facts and circumstances in which

the petitioner contended the allegations brought against him to be baseless. The trend of the defence taken in the written statement filed by the petitioner appears to be that the amount alleged to have been misappropriated as mentioned in the charge-memo dated 21.12.99 was liable to be further adjusted under different heads of legitimate expenses incurred by the petitioner in connection with the discharge of his official duties. It was contended that on such adjustments being made in a proper manner, no amount will be due from the petitioner, as alleged in the show cause notice. The allegations of non-maintenance of accounts, tampering with the official records, negligence etc. were specifically denied by the petitioner.

6. Thereafter, the respondents not being satisfied with the explanation submitted by the petitioner, decided to hold an enquiry and appoint an enquiry officer to go into the charges levelled against the petitioner. The aforesaid appointment of the enquiry officer was made by an order-dated 20.4.2000. While the matter was thus situated, the IBP Company Limited issued a communication-dated 22.5.2000 to the petitioner amending the figures of unexplained cash, the amount liable to be adjusted and the amount due from the petitioner. As per the said communication dated 22.5.2000, the unexplained cash was quantified at Rs. 3,37,821.06 and the amount liable to be adjusted was worked out at Rs. 1,69,683.65. The amount due from the petitioner after adjustment was calculated at Rs. 1,68,137.41. The petitioner, by the communication-dated 22.5.2000, was called upon to arrange for payment of the aforesaid

amount of Rs. 1,68,137.41. No amendment of the charge-memo dated 21.12.1999 was, however, carried out by the Respondents in the light of the figures contained in the communication-dated 22.5.2000. The petitioner, in response to the letter-dated 22.5.2000, submitted his reply dated 5.6.2000 denying that the amount of Rs. 1,68,137.41 was due from him.

7. Thereafter, the enquiry into the charges levelled against the petitioner proceeded and as it appears from the records of the said enquiry, as placed before the Court, 3 witnesses were examined by the Respondents in support of the charges levelled. A large number of documents were adduced by the respondents and some documents were also brought on the record of the enquiry by the petitioner. The petitioner actively participated in the enquiry and cross-examined the witnesses examined by the Respondents. Thereafter, the enquiry officer submitted his report dated 1.6.2001 holding all the charges except charge Nos. F and G, as extracted earlier, to be proved against the petitioner. The report of enquiry was furnished to the petitioner along with a show cause notice and on consideration of the reply submitted by the petitioner thereto, the Advisor (HR) NRL Limited thought it proper to pass the impugned order dated 31.7.2001 dismissing the petitioner from service. Aggrieved, the present petition has been filed.

8. I have heard Shri As Choudhury, learned senior counsel for the writ petitioner and Shri S N Sarma, learned senior counsel for the Respondents.

9. Shri Choudhury, learned senior coun-

set for the petitioner, while assailing the order dated 31.7.01 dismissing the writ petitioner from service, at the outset, had placed before the Court the relevant documents showing that in the police case registered in respect of the same allegations against the writ petitioner, i.e., Golaghat PS Case No. 325/99, the investigating officer had submitted a final report exonerating the writ petitioner and the said final report has since been accepted by the competent Criminal Court. Learned counsel has, therefore, argued that the charges brought by the memo dated 21.12.99 on the same facts would have no legs to stand. Arguing further, learned counsel for the petitioner has contended that the enquiry held against the writ petitioner on the basis of the charge-memo dated 21.12.99 must be held by the Court to be vitiated in law and the consequential action taken on the basis of report of enquiry submitted must accordingly be interfered with by this Court. Shri Choudhury has contended that the gravamen of the charges levelled against the petitioner is misappropriations of money belonging to IBP Company Limited. Curiously, the amount of money alleged to have been misappropriated had changed from time to time. In the charge memo dated 21.12.99, the petitioner is alleged to have misappropriated an amount of Rs. 96,955.33. Thereafter, the amount had been enhanced to Rs. 1,68,137.41 without, however, formally amending the charge. The enquiry officer, in his report, found the petitioner guilty of misappropriation of an amount of Rs. 60,0001.03. Shri Choudhury, by placing before the Court, a letter dated 2.2.2002 (Annexure-20 to the reply affidavit of the pe-

tioner) has pointed out that even subsequent to the dismissal of the petitioner, the figure had been changed to Rs. 31,927.43 by giving the petitioner the benefit of the amount liable to be adjusted against the permissible testing/handling loss. In such circumstances, Shri Choudhury has contended that the petitioner cannot be held to be guilty of misappropriation, as the Respondents, themselves are not sure of the amount allegedly misappropriated by the petitioner. Pointing out the different stands taken by the Respondents with regard to the figures, as noticed above, Shri Choudhury has argued that the allegations levelled, really raise a question of settlement of accounts and merely because on such settlement some amount is found to be due misappropriation will not logically follow. Misappropriation having not been established, the other charges brought against the petitioner, has to necessarily fall through, it is argued. Two of the charges having been found not to be proved by the enquiry officer himself, Shri Choudhury has contended that the order of dismissal is legally infirm and needs to be appropriately interfered with by this Court.

10. Arguing further Shri Choudhury has submitted that in any event the enquiry held against the petitioner is vitiated in law, inasmuch as, the petitioner had not been furnished along with the charge memo dated 21.12.1999 a list of documents and list of witnesses on the basis of which the charges were to be proved. The petitioner was not informed of his right to have the services of a defence assistant, which, according to the learned counsel, would have the effect of vitiating the enquiry. That apart, it is contended

that there has been no consideration of the petitioner's case as submitted by him in the reply to the show-cause notice issued to the petitioner, either by the enquiry officer or by the disciplinary authority. Lastly, it is contended by Shri Choudhury that under Schedule I Part-III of the Conduct, Discipline and Appeal Rules for Management Staff as in force in NRL Ltd. the power of dismissal is vested in the Functional Director/Executive Director and not in the Advisor (HR), who had passed the impugned order of dismissal dated 31.7.2001.

11. The arguments advanced by Shri Choudhury, learned senior counsel for the petitioner has been sought to be refuted by Shri S N Sarma, learned senior counsel for the Respondents. Learned counsel for the Respondents has argued that the failure to furnish to the petitioner the list of documents and the list of witnesses along with the charge memo and the absence of a defence assistant would not, ipso facto, vitiate the enquiry unless prejudice is shown to have been caused. In the present case, the petitioner fully participated in the enquiry and, therefore, he cannot have any complaint in this regard. Shri Sarma by relying on an office Order dated 25.11.99 (Annexure-H to the affidavit of the respondents) has submitted that the Power of the Executive Director as the disciplinary authority had been delegated to the Advisor (HR) by a decision of the Board as contemplated under Rule 19 of part-III of the Discipline and Appeal Rules, and therefore, the Advisor (HR). NRL was competent and authorized to impose the punishment of dismissal on the writ petitioner.

12. Shri Sarma, learned counsel for the Respondents has further argued that the amounts under different heads including the amount alleged to have been misappropriated as mentioned in the charge memo dated 21.12.99 were tentative in nature as full reconciliation of the accounts were in progress. Such reconciliation led to alteration in the figures mentioned. Shri Sarma has contended that the aforesaid alterations had not caused any prejudice to the petitioner as the petitioner was continuously informed, at all relevant times, whenever the figures were altered by the Respondents. The petitioner knew the charge against him and the case that he was required to meet and, therefore, merely because alterations in the figures as mentioned in the charge memo had taken place the same will not vitiate the enquiry. Shri Sarma has submitted that the charges against the petitioner were held to be proved after a full-fledged and detailed enquiry in course of which oral and documentary evidence were led and exchanged by the rival parties. Placing the records of the enquiry before the Court, in original, Shri Sarma has submitted that it is not for the writ Court to sit in judgment over the decision of the enquiry officer and the disciplinary authority and this Court will not convert itself into a Court of Appeal on findings of fact recorded by the enquiry officer and the disciplinary authority. The petitioner having been given full opportunity to contest the case against him, the limited scrutiny of this Court must come to an end and the order of dismissal must be upheld.

13. Having noticed the rival arguments advanced, the Court would like to proceed

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to analyze the same.

The power of the Writ Court to interfere with orders of punishment imposed by the disciplinary authority after holding a full-fledged enquiry into the charges levelled against a delinquent should not require any elaborate discussion in view of the virtually settled position of the law in this regard. Ordinarily, the Writ Court will not reappraise the evidence adduced in the enquiry held or substitute its views for those of the decision maker. The conclusion reached must normally be allowed to prevail unless the conclusion has been reached in flagrant violation of the basic principles of procedural fairness thereby effecting the right of the delinquent to a fair opportunity to defend himself. Another situation where interference would undoubtedly be called for is where the decision maker's conclusion is diametrically opposed to what is disclosed by the weight of the evidence on record. It must, however, be emphasized herein that the above, situations are by no means exhaustive. After all, the contours of the permissible area of interference under Article 226 of the Constitution is the outcome of judicial restraint and not judicial inability or incapacity. In the last resort, it is the satisfaction of the Court with regard to the conclusion reached that would be determinative of the decision as to whether interference should be made.

14. Having noticed the principles governing the exercise of the writ power and before adverting to the main contentious issues in the present case, it may be convenient for the Court to deal with certain subsidiary issues raised on behalf of the petitioner. The docu-

ments on record amply demonstrate that the power of the disciplinary authority, i.e., the Executive Director had indeed been delegated to the Advisor (HR) NRL Ltd. by the Office Order dated 25.11.99. In view of the clear delegation of powers, there can be little doubt that the Advisor (HR) was competent to impose the punishment in question. Though the Discipline and Appeal Rules in force in NRL Ltd require the Disciplinary Authority to communicate to the delinquent, along with the charge memo, a list of documents and the list of witnesses and the delinquent, in course of the enquiry, has the right to have the assistance of a defence assistant, departures from the aforesaid requirements would not automatically invalidate the enquiry unless prejudice is shown to have been caused to the delinquent in defending himself in the enquiry. In the present case, prejudice suffered by the petitioner on any of the above counts has not been satisfactorily explained to the Court. In such a situation, the above grounds urged in support of the challenge made cannot have the Court's approval.

15. The contentions advanced on behalf of the petitioner that as the police case registered against the petitioner had ended in a final report, the disciplinary proceeding must also necessarily fall through, cannot be accepted as dehors the criminal investigation that may be initiated in respect of a particular act or acts of a delinquent, the employer must always be understood to have the right to initiate a disciplinary proceeding against the delinquent employee in respect of the same act(s) and bring the proceeding to its logical conclusion.

16. This would bring the Court to a consideration of the main charge i.e. misappropriation brought against the petitioner which has been held to be proved both by the Enquiry Officer and the Disciplinary Authority. The charge of misappropriation levelled against the petitioner proceeds on the basis that verification of the accounts during the relevant period revealed certain unexplained amounts of cash shortage. The records also reveal the petitioner to be entitled to the benefit of adjustment of certain amounts either on account of expenditure incurred by him or on account of other reasons. After giving the petitioner the benefit of such adjustment, on the basis of bills and vouchers available, there still remained an unexplained amount which has been held by the enquiry officer and subsequently by the disciplinary authority, to be capable of explanation only by taking the allegation of misappropriation to be proved. In the elaborate recital of facts, contained hereinabove, it has been noticed that initially the amount alleged to have been misappropriated stood at Rs. 96,955.33. Thereafter, the figures of unexplained cash and the allowable benefit of adjustment went up considerably and the amount misappropriated also stood enhanced to Rs. 1,68,137.41. Though the aforesaid alterations in the figures were not formally incorporated by an amendment of the charges brought, if the petitioner was otherwise informed of the said alteration and he knew of the altered figures being the subject matter of the enquiry in progress, the aforesaid lapse on the part of the disciplinary authority cannot be understood to be fatal. In the present case, the petitioner was informed

of the aforesaid alteration of the figures. But the above facts, by themselves, will not be determinative of the question raised for two significant reasons.

First of all, in the communication dated 22.5.2000 by which the petitioner was informed of the alteration in the figures of the different amounts, it is mentioned that the petitioner is entitled to the benefit adjustment of a sum of Rs. 1,09,195.20 on account of various expenses incurred by him as per bills/vouchers available and acceptable. Taking into account other items of expenditures incurred by the petitioner in connection with telephone, fax, Xerox charges and the amount deposited by the petitioner amounting to Rs. 40,000/- the petitioner was held to be entitled to the benefit of adjustment to the extent of Rs. 1,69,683.05 against the total unexplained amount of Rs. 3,37,821.06. On the aforesaid basis, the amount due from the petitioner was worked out and altered to Rs. 1,68,137.41. The enquiry officer, in his report, found the amount due from the petitioner not at Rs. 1,68,137.41 but the same was worked out at Rs. 1,69,196.23 on the basis of Ext. 43 proved in the enquiry. Thereafter, the enquiry officer considered the claim of the petitioner for adjustment of Rs. 1,25,962.20 and held that the IBP Ltd had agreed that the petitioner is entitled to the claim of adjustment of Rs. 1,09,195.20. Subtracting the aforesaid amount of Rs. 1,09,195.20 from the amount found due by the Enquiry Officer i.e. Rs. 1,69,196.23 the amount of shortfall was worked out to be Rs. 60,001.03 by the Enquiry Officer. Not only a new amount has been found short/due, misappropriation of the

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Same has been held to be a logical consequence merely because the said amount remained unaccounted after giving the petitioner the benefit of all allowable adjustments. There is an obvious error in the aforesaid computation made by the enquiry officer which perhaps has escaped the attention of the disciplinary authority. The amount due from the petitioner i.e. Rs. 1,68,137.41 or Rs. 1,69,196.23, as the case may be, was worked out after giving the petitioner the benefit of Rs. 1,09,195.20. There was therefore no scope for the Enquiry Officer to again give to the petitioner the benefit of the said figure of Rs. 1,09,195.20 as benefit of the same was already given. Viewed from the aforesaid perspective, the amount i.e., Rs. 60,001.03 found to be due by the Enquiry Officer in his report is obviously incorrect; the amount should have been on the higher side. The enquiry report, therefore, displays a patent lack of application of mind, notwithstanding which, if the matter had rested at that, there could have been no occasion for the Court to interfere. But there is a subsequent event that had taken place, which is reflected in the letter dated 2.2.02 of the IBP Company to the in-charge of the Numaligarh Police Out post (Annexure-20 to the petitioner's reply affidavit) wherein, after everything was over, the company had informed the police authority that the petitioner is entitled to a sum of Rs. 1,36,109.98 on account of permissible testing/handling loss. Obviously, the aforesaid entitlement of the petitioner was not considered either by the enquiry officer or by the disciplinary authority prior to his dismissal from service. If the petitioner is given the ben-

efit of the said amount, which benefit the Court is of the view, must be given to the petitioner, the amount stands reduced according to the respondents themselves to Rs. 31,927.43. The above facts are sufficiently indicative of the fact that the unexplained cash which the petitioner is alleged to have misappropriated, could really be a consequence of differences over settlement of accounts between the parties. Any settlement of accounts could leave room for disagreement and/or doubt. Misappropriation, on the other hand, would require a very high degree of proof even in a disciplinary proceeding. That in the present case the benefit of allowable adjustment was given to the petitioner on the basis of bills and vouchers as found acceptable by the employer and that there were certain claims of adjustment made by the petitioner which were not accepted by the employer, is a significant fact that cannot be overlooked along with the fact that had the said claims been allowed, the amount due would have stood wiped out. The sequence of events narrated above raises considerable doubt in the mind of the Court as to whether misappropriation had really taken place. There may have been a shortfall in cash and the petitioner may have failed to receive due recognition or approval of certain claims of adjustment made by him. But that would not be sufficient to hold that the allegation of misappropriation has been proved so as to invite the extreme penalty of dismissal from service. In such a situation, the Court is of the considered view that the weight of the materials on record would not reasonably permit the court to hold that the charge of misappropriation has been brought home against

the writ petitioner. The rest of the charges really being consequential to the charge of misappropriation must therefore, necessarily fall through. In this regard, however specific notice must be taken of charge 'C' i.e. "neglect of work or neglect of performance of duties..." which have been held to be proved against the petitioner. No material has been disclosed as to how the petitioner has been negligent in the performance of duties. Consequently, this Court is of the view that the aforesaid charge must also fail.

17. Consequently and in view of the foregoing discussions, this writ petition has to be allowed. Accordingly, the impugned order of dismissal dated 31.7.2001 is set aside and quashed. The petitioner be reinstated in service forthwith with such back wages as the disciplinary authority may compute after holding a separate proceeding in this regard, a direction that has been necessitated in the absence of any material on record to enable the Court to discern any acceptable principle for grant of back wages.

2005 (1) GLT 385
(BEFORE D.BISWAS, J.)
HEM CHANDRA BHUYAN
... PETITIONER
- VS -
STATE OF ASSAM & ORS.

... RESPONDENTS
Writ Petition (C) No. 6618 of 2001
Decided on 20.08.2004
(A) Service Law—Assam Engineering (P.W.D.) Services Rules, 1978— Rule 13— Does not lay down any criteria for Selection for the purpose of promotion— Criteria formulated by the State by way

of Policy—In the absence of rules providing for such a criteria, held, the state is competent to formulate a criteria by way of policy—Power to formulate such a policy can be traced to executive power of the state under Article 162 of the Constitution. ...Para 5

(B) Service Law— Promotion— Vacancies arising in a particular year have to be filled in conformity with the criteria in force at that point of time and not on the basis of subsequent policy— Amended criteria for selection cannot be applied for making selection to the vacancies that occurred prior to coming of the amended criteria.

(1983) 3 SCC 284 followed. ...Para 5

(C) Service Law— Promotion— Petitioner, at serial No.2 of the Select List, could not be promoted as the Select List was set aside— In the subsequent list, the State took into consideration the amended qualifying criteria which came into existence meanwhile and the petitioner placed at serial No.9— Challenge to subsequent list—Held: Amended criteria for selection could not be taken into account for making selection to the vacancies that occurred before the selection criteria was amended.

- | Cases referred : Chronological | Paras |
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| 1. (1983) 3 SCC 284 : Y.V. Rangaiah & ors. vs. J. Sreenivasa Rao & ors. | ... 6 |
| 2. AIR 1990 SC 1277 : Shri Sitaram Sugar Co. Ltd. vs. Union of India | ... 5 |
| 3. (1990) 3 SCC 157 : N.T. Devin Katti & ors. vs. Karnataka Public Service Commission & ors. | ... 6 |
| 4. AIR 1991 Kant. 205 : Pratibha vs. State of Karnataka | ... 5 |
| 5. (1997) 10 SCC 419 : State of Rajasthan vs. R. Dayal & ors. | ... 6 |