

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No.
E.P/M.A No. 52/05

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SECTION OFFICER (Judl.)

19/11

FORM No.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

Org.App/Misc.Petn/Cont.Petn/Rev.Appl.....

✓ In O.A. 260/2004

Name of the Applicant(s) S. K. Sen

Name of the Respondent(s) No. 2

Advocate for the Applicant M. P. K. Roy, Sr. Charabany
Miss G. Das

Counsel for the Railway/C.G.S.C. Addl. CGSC


OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
<p>This application is in form is filed/C.F. Rs. 50/- deposited vide IPO RD No. 115928 Dated 2-11-04 L. K. Sen</p> <p>Dy. Registrar</p> <p>Steps taken.</p> <p>9/11/04</p> <p>Received copy of order dt 10/11/04 for the applicant for the Charabany</p>	10.11.04.	<p>Present: Hon'ble Mr. Justice R.K. Batta Vice-Chairman. Hon'ble Mr. K. V. Prahladan, Administrative Member.</p> <p>Heard learned counsel for the parties.</p> <p>The applicant has filed an appeal against the order of Compulsory retirement under Rule 23 of CCS(CCA) Rules 1965 before the appellate authority on 19.4.2004. The said appeal is pending. In our opinion the application can be disposed of by giving direction to the appellate authority, Respondent No. 2 to dispose of the appeal within the given time frame. Accordingly, we direct the respondent No. 2 to dispose of the appeal dated 19.4.2004 filed by the applicant within a period of 3 months from the date of receipt of this order. A copy of this order duly authenticated by the Deputy Registrar and shall be handed over to Sr. CGSC within three days for onwards transmission to Respondent No. 2.</p>


contd/- R.L.

24.11.04

Copy of the order
has been sent to
The Dy. Secy. for
the time to the Dy.
C.G.S.C. and to the
Respondent 2, by post.

10.11.04. Application is disposed of in the afore-
said terms. The Respondent No.2 shall
file compliance report before this Tribunal
at the end of three months and the matter be
placed on Board for purpose of compliance
report. The matter is otherwise disposed
of.


Member


Vice-Chairman

lm

6.4.2005 Present: The Hon'ble Mr. Justice G. Sivarajan,
Vice-Chairman.

This case is posted today for report-
ing compliance of the direction issued in
the final order dated 10.11.2004. Ms. U. Das,
learned Addl. C.G.S.C. has placed before the
Bench a copy of the order dated 8.2.2005
passed by the Surveyor General of India
(respondent no.2 in the O.A.) and submitted
that the ~~application~~ direction has already
been complied with.

In the circumstances the matter is
closed. Copy of the order be kept in the
file.


Vice-Chairman

Received.
Usha Das.
Addl. C.G.S.C.
7/4/05

bb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI.

O.A. NO. 260 OF 2004

- BETWEEN -

Shri Subrato Kumar Sen,
Surveyor.

.... Applicant.

- A N D -

Union of India & Others,

.... Respondents.

DETAILS OF APPLICATION :

1. Particulars of the Applicant :-

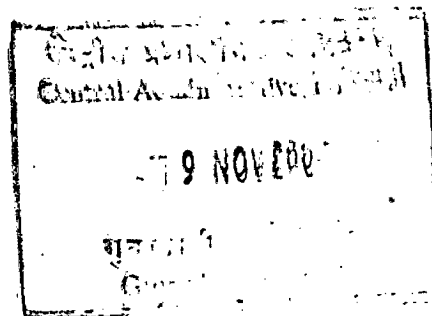
Shri Subrato Kumar Sen,
Surveyour,
(Under compulsory retirement),
Son of Late S.K. Sen,
Erstwhile No. 80 (P) Party (NEC),
(Now Assam & Nagaland GDC,
(Shillong Wing), Lower Harisava,
P.O. Shillong - 793 004,
District East Khasi Hills,
Meghalaya.

contd.... p/2.

Filed by the Applicant
Subrato K. Sen.

Through
Mr. Chakraborty
Smt. Jyoti
Advocate
9.11.04

S.K. Sen



2. Particulars of the Respondents :-

1) Union of India

represented by the Secretary to the
Govt. of India, Ministry of Science
and Technology, New Delhi.

2) The Surveyor General of India

Hathibarkala, Dehradun.

3) The Director,

Survey of India,
Meghalaya & Arunachal Pradesh,
GDC, Malki, Shillong- 01.

4) The Director,

Survey of India, Assam & Nagaland, GDC
Ganeshguri, Guwahati

3. Particulars of order against which application
is made :

Order dated 31.3.2004 passed by the Director,
Survey of India,
Meghalaya & Arunachal Pradesh,
GDC, Malki, Shillong - 01.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter
of the order against which he wants redressal
is within the Jurisdiction of the Tribunal.

contd.... p/3.

S.K. San.

5. Limitation :

The applicant further declares that the application is ~~was~~ within the period of Limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the Case :

MOST RESPECTFULLY STATES :-

6.1. That the applicant till recently was working as a Surveyor in the Erstwhile No. 80 (P) Party (NEC) now A & N GDC (Shillong Wing), Shillong. By an order passed by the Director Survey of India, Meghalaya & Arunachal Pradesh GDC, the applicant was most illegally compulsorily retired from service.

6.2. That by a memorandum dated 13.7.2001, the Director, NEC, proposed to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules 1965 on the following allegations of misconduct :-

(a) That while assigned in field duty in Arunachal Pradesh during 1996-97 to assist Shri U.N. Mishra, Camp Officer 29 Party (NEC), the applicant gave instructions to 8 verifiers of his camp to show 8 porters on their muster rolls against the authorized strength of 4 porters by adding names of 4 fictitious porters which caused financial irregularities in the said camp (ARTICLE - I).

contd.... p/4.

- (b) That while performing the above duty, the applicant gave an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in that muster roll, (ARTICLE-II).
- (c) That while engaged in the above field work, the applicant had misappropriated Govt. money amounting to Rs. 30/- by raising inflated amount towards repair of vehicle (ARTICLE-III).

A copy of the Memo of charges ^{dated 13.7.2001} is annexed as ANNEXURE 'A' to this application.

- 6.3. That on receipt of the above memorandum of charges dated 13.7.2001, the applicant by an application dated 17.7.2001, prayed for furnishing him all the relevant documents mentioned in Annexure III and IV to the said memorandum at his own cost in order to enable him to know the basis of the said charges and file his written statement of defence.

A copy of the application dated 17.7.2001 is annexed as ANNEXURE 'B' to this application.

- 6.4. That after the said application dated 17.7.2001, the disciplinary authority vide letter dated - 26.7.2001 refused, as not possible, to furnish

contd.... p/5.

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those documents to the applicant in breach of the principles of natural justice denying him the opportunity to reply to the charges in an affective manner which the applicant found to be unclear. But since the memorandum dated - 13.7.2001, contained a definite timeframe for reply and the applicant had an apprehension that the proposed enquiry may go ex-parte against him, he had to file his written statement without perusing those documents on 3.8.2001. The nature of the allegations made in the memo of charges without full particulars had left the applicant to only guess the material particulars on which the charges were sought to be established. In the said written statement of defence the applicant however specifically denied all the article of charges as under :-

" At the outset I would like to submit the charges as leveled against me is not correct and I have been made a victim of professional jealousy and misfortune. Be it as may, while denying the charges framed against me and statement of imputation of misconduct, I would like to give my reply as follows :-"

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A copy of the letter dated 26.7.2001
and the Written Statement^{dated 3.8.2001} is annexed
as ANNEXURE 'C' & 'D' to this
application.

- 6.5. That the applicant at this stage deems it proper to mention that the authority simultaneously proposed to draw-up departmental proceedings against R.K. Meena, Superintending Surveyor, O/C. No. 83 Party, U.N. Mishra, Superintending Surveyor, O/C. No. 12 Drawing Office and 8 (eight) verifiers viz. Sri D.N. Dev, D.C. Bhandari, J.P. Chakraborty, J. Kharmujai, L. Rajwar, N.G. Das, P.K. Roy and S.P. Roy ~~applicant~~ in respect of the same incident out of which the charges against the applicant is drawn. Since the memo of charges drawn against the applicant contained an allegation that the applicant had instructed the verifiers to engage 4 extra porters and the engagement of 4 extra porters is factually correct who were engaged under orders of the Camp Officer (which were later proved during enquiry) without proper sanction by the Director, the applicant was under an impression/presumption, particularly in absence of any document furnished to him, that the authority has got some prima-facie materials against his said superior

contd.... p/7.

officers and therefore to take his own defence the applicant has to make some surmises in his written statement as an abundant caution and stated inter-alia that he carried out orders of the superiors for engaging 4 extra porters and if any financial irregularities had occurred for such extra engagement, the same can not be attributed to the applicant.

6.6. That the disciplinary authority however having found that the applicant has denied all the charges, decided to hold a departmental enquiry into the said allegations and appointed Shri S.C. Jarodia, Commissioner of Departmental inquiries, Central Vigilance Commission, Govt. of India as Inquiry Officer to inquire into the various allegations made against the applicant and the above named officers and verifiers. Shri G.C. Bairagi, Deputy Director, Director of Map Publication, Survey of India, Dehradun was appointed as the Presenting Officer, both by order dated 11.9.2001. Shri Bairagi was however, later replaced by Brig. R. N.B. Varma, Dy. Surveyor General, EZ, Survey of India, Kolkata. The applicant was made as departmental witness in the departmental inquiries against the verifiers, but the applicant's application dated 12.9.2002 and 18.9.2002 for dispensing with his deposition in the said inquiries on

contd.... p/8.

ground of prejudice, was however, not entertained by the Disciplinary authority and the Inquiry Officer.

A copy of the application dated 18.9.2002 is annexed as ANNEXURE 'E' to this application.

6.7. That the applicant states that thereafter the inquiry in respect of the applicant was held and out of 7 listed witnesses 5 (five) witnesses, viz. Shri R.K. Meena, U.N. Mishra, P.K. Roy, D.N. Deb and Shri J. Kharmujai made their depositions, the other 2 (two) witnesses however did not turn-up. Some documentary evidences were sought to be proved during the enquiry. The allegations brought against the applicant being wholly baseless, none of the said witnesses said anything against the applicant to prove the charges. Not a single document which were sought to be proved during the enquiry could establish any nexus even remotely between the alleged misconduct and the applicant. In his deposition SW-1, R.K. Meena, has stated that as per scale the authorized strength of porters was 72, but 40 porters were initially recruited and additional 32 porters, were required for shifting the camp from one place to another and therefore extra porters were engaged by him and

contd.... p/9.

in his cross examination he has specifically stated that he asked the applicant (Shri S.K. Sen) that if situation requires more porters will be required to engaged in the field in addition to 40 porters already given, In his deposition SW-2, U.N. Mishra has stated "Officer-in-Charge had also given verbal instruction to S.K. Sen to engage 4 additional porters for each verifiers." To a pointed question by the Presenting Officer as to whether he heard anything about offer of financial gain given by Shri Sen, ACO for adding fictitious name of porters in the muster roll, the SW-2 has specifically said, "No, I did not hear any such thing." SW-3, Shri P.K. Roy, SW-4, Shri D.N. Deb and SW-5 Shri J. Kharmujai have stated in their depositions that 4 ~~exp~~ extra porters were allotted to them by the Camp Officer and payment were also made by the Camp Officer. All of the said witnesses, who made depositions on behalf of the authority denied the contents of Exhibit S-11 and S-14 purported to be their statements in the preliminary enquiry which were sought to be proved against the appellant. The witnesses also specifically denied having received offer of any financial gain from the appellant. All the above evidences goes to show that none of the charges drawn

contd.... p/10.

against the appellant could be proved during enquiry. The appellant was also put questions by the Inquiry Officer separately.

Copies of the depositions made by the witnesses and the appellant are annexed as ANNEXURE 'F' 'G', 'H', 'I', 'J' & 'K' to this application.

6.8 That after recording of evidences, the Inquiry Officer asked both the Presenting Officer and the appellant to submit a written brief which were accordingly filed before the Inquiry Officer. In his written brief argument the applicant specifically pointed out that there is not a single evidence to link the applicant to the alleged misconduct and the appellant further explained the circumstance under which he had to submit his written statement without perusing the relevant documents which were denied to the appellant. However, the Presenting Officer having noticed that the charges drawn against the appellant could not be proved during enquiry by ~~any~~ any evidence, sought to rely on an alleged preliminary enquiry and the written statement, though the applicant was never confronted with the said documents during the enquiry. The Presenting-

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contd.... p/11.

Officer has also stated in his written brief that "C.O. has denied his statement given during preliminary enquiry to the Board of Officers and stated that was done under pressure/coercion." But these statements of the Presenting Officer are absolutely beyond the record of the disciplinary proceedings of the applicant. The applicant was never put any question nor confronted with any record of the preliminary enquiry or the written statement in his disciplinary proceeding as would be evident from the depositions annexed as Annexures 'F' to 'K' to this application. Moreover, the applicant never admitted any of the charges in his written statement and for such denial itself the departmental Enquiry was ordered.

- 6.9. That the Inquiry Officer ultimately submitted his inquiry report on 24.6.2003 and found that from the depositions made by the 5 witnesses nothing could be proved against the applicant but dubbed the said witnesses as 'Co-accused in the same case', though in a departmental proceeding the term 'Co-accused' is

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absolutely unknown. The Inquiry Officer however, having found that no charge drawn against the applicant could be proved during enquiry, went back to the written statement of the applicant and by accepting the plea of the Presenting Officer mechanically gave a finding that C.O. could not produce any evidence of 'use of pressure' and 'coercion' against him. As stated earlier the Presenting Officer in his written brief has stated that the "C.O. has denied his statement given during preliminary inquiry to the Board of officers and stated that this was done under pressure/coercion" though the same was absolutely beyond record of the instant departmental proceeding ^{of} the applicant. The Inquiry officer ultimately without any proof whatsoever, has held that "This goes to prove that C.O. had given oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork. Therefore, the allegation leveled against the C.O. stands proved" and accordingly held the Article of charge I as proved. Curiously enough the Inquiry officer, with the same set of evidence/record found that the Article of charge No. II of giving

contd.... p/13.

"an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls; as not proved. Therefore when the allegation of giving offer of financial gain of Rs. 1500/- for inclusion of 4 extra fictitious porters' was held to be not proved in Article of charge-II, how could the Inquiry officer found giving 'oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork' in Article of charges I to be proved on the same set of evidences. The Inquiry Officer also found Article of charge No.III as not proved for want of evidence although the statements made by the applicant in his written statement of defence were in respect of all the charge and not in respect of Article of charge No. I alone. The findings of the Inquiry officer were therefore wholly perverse and only based on extraneous materials. The Inquiry officer even based his finding on some materials not proved during inquiry.

6.10. That the disciplinary authority thereafter without taking any decision himself as required under the law sought for advise

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of the Central Vigilance Commission under whose authority and control the Commissioner of Departmental Inquiries and the Inquiry officer of the applicant functioned and on receipt of their advice decided to impose the punishment of compulsory retirement and while forwarding the Inquiry Report and the advice of the CVC dated 22.10.2003 asked for making representation by the applicant within 15 days vide letter dated 4.2.2004, though the same was a mere formality. The applicant on receipt of the same submitted his written representation on 23.2.2004 in which he has specifically pleaded that since there is no evidence to prove the charges drawn against him, and since the same inquiry officer with similar allegations and same set of evidence against the verifiers found that "whatever documentary or oral evidence brought before him are not sufficient to prove that the charged officer added 4 (four) fictitious names of porters in their muster rolls and thereby made some financial irregularities," and since the disciplinary authority has accepted the said finding and exonerated the said verifiers vide order dated 18.11.2003, the same disciplinary authority, can not treat the case of the applicant differently and arbitrariness most particularly when none

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contd.... p/15.

of the charge drawn against the applicant could be proved by any other evidence. The applicant had also cited some legal authorities in support of his case. But the disciplinary authority without discussing the evidences on record and without considering specific plea of the applicant in this regard, relied on certain extraneous materials and held that the applicant has admitted his charge not only during the course of 'preliminary inquiry' but also in his written statement submitted against the charge sheet. The applicant in this regard submits that the finding of the disciplinary authority are based on wholly extraneous materials and the applicant was never confronted with such materials and no record of 'preliminary enquiry' as referred to above was ever brought/proved during the course of inquiry. The applicant's plea that the records of alleged admission made in the preliminary inquiry did not form part of the record of the present Disciplinary Inquiry was held to be not tenable on the plea that the statement of verifiers made during the course of preliminary inquiry formed the part of documents for the regular inquiry without explaining as to how the applicant could admit the charge in the "statement of verifiers made during the course of their preliminary inquiry."

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That apart even all the said verifiers in clear terms denied and disowned any such statement made in their preliminary inquiry. Therefore it is apparent that the Disciplinary authority has given the said finding of guilt in respect of the applicant with a prefixed mind to punish/victimize the applicant even without proving the Article of charge No. I. Though the Disciplinary authority at the beginning of paragraph 3 of the said punishment order has clearly admitted that the applicant did not plead himself guilty of the charges framed against him in Article of Charge I, II and III and hence decided to hold an enquiry, yet when nothing could be proved during enquiry, the entire enquiry proceeding has been rendered as nugatory by going back to the written statement and by deliberately misinterpreting the same and relying on alleged preliminary enquiry held that the applicant had admitted the charges. If the disciplinary authority would have found the applicant admitted the charge, then there would have been no question of holding any enquiry and it is only because, the applicant did not admit the charge, the enquiry was held as contemplated under the rule. When the authority has decided to hold an enquiry in respect of charges found to be

contd.... p/17.

not admitted, it is the result of the enquiry and/or proof during the enquiry which can be the basis of any punishment and ~~the~~ material not before such enquiry as alleged can be relevant to impose any punishment. But the disciplinary authority on the basis of the above wholly perverse finding of the Inquiry officer and bringing out a new case against the applicant, imposed the punishment of compulsory retirement from service with effect from 31.3.2004 in a most illegal and unfair manner. It would be pertinent to mention here that the applicant continued to work till 5.4.2004 on which date he was served with the order purportedly passed on 31.3.2004. If the order really was passed on 31.3.2004, the same would have been served on the applicant on 31.3.2004 itself. But since the Director, Meghalaya & Arunachal Pradesh, Shillong cased to remain the applicant's Disciplinary authority from 1.4.2004, and would have been under the disciplinary control & Director, Assam & ~~the~~ ~~Nagaland~~ GDC, Guwahati, the applicant reasonably believes that, lifting the veil, would reveal that the order was passed only on 5.4.2004 giving a back date as 31.3.2004; since the decision to impose punishment even without evidence

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was a predetermined decision of the disciplinary authority. The disciplinary authority even did not wait for the result of the disciplinary enquiry in respect of Shri R.K. Meena and Shri U.N. Mishra to come out.

Copies of the Inquiry Report dated 24.6.2003, ^{representation dated 23.2.2004} Letter dated 22.10.2003, 4.2.2004, copy of the punishment order dated 31.3.2004 and order dated 18.11.2003 in respect of one of the verifiers viz. Shri N.G. Das exonerating him from the similar charges are annexed as ANNEXURE 'L', 'M', 'N', 'O', & 'P' to the application.

6.11. That the applicant states that the authority has not only exonerated all the verifiers against whom similar disciplinary proceedings were drawn on similar nature of allegations and enquired into by the same Inquiry officers, but also promoted Shri U.N. Mishra to a higher position on temporary basis. The applicant alone was treated in a most discriminatory manner. Moreover, the applicant's Assured Career Progression/promotion was also not considered which was long due to him and the applicant by a representation dated 15.3.2004 pointed out to the authority during the

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contd.... p/19.

pendency of the departmental proceedings that many of his juniors were promoted without considering his case illegally. But the same yeilded no result.

A copy of the said representation dated 15.3.2004 is annexed as ANNEXURE 'Q' to this application.

- 6.12. That the applicant ultimately filed an appeal under Rule 23 of the CCS(CCA) Rule 1965 before the Surveyor General of India on 19.4.2004. But the said appellate-authority did not consider the same till date and therefore, the applicant is left with no other remedy other than approaching this Hon'ble Tribunal by filing the application under Section 19 of the Administrative Tribunal Act.

A copy of the appeal is annexed as ANNEXURE 'R' to this application.

7) G R O U N D S :-

- 7.1. For that the impugned order of punishment dated 31.3.2004 passed by the Disciplinary authority being based on no evidence at-all, the same is unsustainable in law and is liable to be set-aside.

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contd.... p/20.

7.2. For that the Inquiry Officer and the Disciplinary authority after having found that the charges drawn against the applicant could not be proved by any legal evidence, relied on some extreneous materials which were never allowed to be confronted with by the applicant during the enquiry and the same being violative of the principles of natural justice, the punishment order which is based on the same extreneous materials, is unsustainable in law and is liable to be set-aside.

7.3. For that when there was not a single evidence to link the applicant with the alleged misconduct, the Disciplinary authority ought to have dropped the proceedings against the applicant exonerating him from all the charges and grant him all the consequential promotional and other benefits.

7.4. For that the Disciplinary authority at all stages denied the applicant reasonable opportunity to defend himself. The charges drawn were not denifine and were all unclear and the basis of the charges drawn having not been disclosed, the applicant prayed for copies of the documents relied on by the authority to enable the applicant to submit his written statement. But the

S. K. Sen

same were denied to the applicant. The applicant had to submit his written statement by making some guess work and the authority took advantage of the same at the end of the enquiry after failing to prove the charges. The authority also forced the applicant to be a witness against himself despite written protest by the applicant. The whole enquiry therefore proceeded in a defective manner and in breach of the procedural safeguard guaranteed to a Govt. Servant and the punishment being based on the said defective enquiry can not be sustained and is liable to be set-aside.

- 7.5. For that the Disciplinary authority ~~had~~ already decided to impose punishment of compulsory Retirement even before asking for a representation against the Inquiry Report would be evident from the letter of the CVC accepting his views. That apart the second stage advice as sought for from the CVC was wholly de-hors the rule since after submission of the Inquiry report by the Inquiry officer, the Disciplinary authority was only required to apply his mind as the findings of the Inquiry Officer and if he finds any blameworthy act on the part of the applicant on the basis of the evidences
- S. K. Sen*

on record, obtain representation from the applicant and not from the CVC under whose authority the Inquiry officer made the inquiry.

- 7.6. For that the law as settled by the Apex Court is that admission not made specifically in reply to a charge can not be taken into account for penalizing a Govt. Servant or the punishment can only be based on clear and unambiguous admission of guilt. Since the applicant's written statement of defence would show that he has made no admission of any charge far less admission of guilt which is even admitted by the disciplinary authority, punishment based on any statement made by the applicant is wholly uncalled-for and is unsustainable in law and therefore the same is liable to be set-aside.
- 7.7. For that even assuming but not admitting that there is any material to hold the charge No. 1 as proved, the extream punishment of compulsory Retirement inflicted on the applicant is highly disproportionate and the applicant believes that the same would definitely shock the judicial conscience, since admittedly the other allegation of inclusion of fictitious porters is found to be not proved by the Inquiry Officer.

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7.8. For that the disciplinary authority before passing the impugned order of punishment did not apply his independent mind on the findings on the Inquiry officer in relation to other evidences on record and sought for the decision of the Central Vigilance Commission, which has no authority decide either on the merits of the enquiry or on the quantum of punishment which is wholly within the domain of the disciplinary authority and since the punishment is ~~alone~~ based on the order/advise of the Central Vigilance Commission, the punishment imposed is wholly ~~vitated~~ and without jurisdiction and as such unsustainable in law.

7.9. For that when the charges and the evidences are same and conducted by the same enquiry officer, the authority ought not to have singled out the applicant and impose punishment only to the applicant exonerating others in an illegal, arbitrary and in a discriminatory manner.

7.10. For that the appellate authority mechanically agreed to the order of punishment passed by the disciplinary authority ^{by remaining silent} and did not even consider the appeal filed by the applicant in an illegal and arbitrary manner.

S. K. Sam

7.11. For that the law as settled by the Hon'ble Supreme Court is that the preliminary inquiry report is only to decide and assess whether it would be necessary to take any disciplinary action against any delinquent officer and it does not form any foundation for passing any order of punishment. Even otherwise when the alleged preliminary enquiry report was not furnished to the applicant and not confronted with during enquiry, imposing any punishment basing upon the same is violative of the principle of natural justice.

7.12. For that in any view of the matter the impugned punishment order dated 31.3.2004 passed by the disciplinary authority is unsustainable in law and is liable to be set-aside.

8) Details of the remedies exhausted :

The applicant declares that he has exhausted all the remedies available to him and he has no other remedy other than filing the instant application U/S. 19 of the Administrative Tribunal Act.

9) Matters not pending with any other Court :

The applicant declares that the instant matter is not taken in any Court of law for adjudication.

S. K. Sen

10) P R A Y E R :

In the premises aforesaid it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to admit this application call for records, issue notice on the respondents and on hearing the parties :-

- i) Set aside the order dated 31-3-2004 passed by the Director, Survey of India, Meghalaya & Arunachal Pradesh GDC, Malki, Shillong-01 (Annexure '0').
- ii) Direct the respondents particularly the respondent No. 3 to reinstate the applicant to his own post of Surveyor and grant him all consequential benefit including promotional benefit which was due to him.

11) INTERIM RELIEF PRAYED :

Further be pleased to pass an interim order that pendency of this Original Application may not be a bar to consider the appeal filed by the applicant on 19.4.2004 before the respondent No. 2 in his favour.

12) Particulars of Postal Order in respect of the application :

Postal Order No. : 209 115928

Date : 02.11.04

contd.... p/26.

Issued from : GPO, Guwahati
Payable at : Guwahati

13) Documents :

As mentioned in the Index.

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

I, Shri Subrato Kumar Sen, Surveyor, son of Late S.K. Sen, aged about 52 years, presently (under compulsory retirement) Erstwhile No. 80 (P) Party (NEC), (Now Assam & Nagaland, GDC, (Shillong Wind) Lower Harisava, P.O. Shillong - 793 004, District East Khasi Hills, Meghalaya, do hereby verify that the contents of paragraphs 1 to 5, 6.1 to 6.6 6.9 to 6.12, 8, & 9 are true to my knowledge and those made in paragraphs 6.7, 6.8 are true to my information derived from records and the rest are my humble submissions before this Hon'ble Tribunal and I sign this Verification to-day the 9th day of November 2004 at Guwahati

Subrato K. Sen.
Applicant.

CONFIDENTIAL

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
SHILLONG 793 001 (MEGHALAYA)
Dated: the 13 July 2001

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri S.K. Sen, Surveyor of No.80(P) Party(NEC), Survey of India, Shillong under rule 14 of the Central Civil Services (Classification, Control & Appeal) Rule, 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 is proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri S.K. Sen, Surveyor 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 the article of charge.

4. Shri S.K. Sen is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of 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 S.K. Sen, Surveyor 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 Sen 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)

DIRECTOR, NORTH EASTERN CIRCLE.

To
✓ Shri S.K. Sen
Surveyor,
No. 80(P) Party(NEC)

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

Recd. to
be there copy
S.K. Sen
App'd
8.11.04
S.K. Chakraborty
Advocate
8.11.04

Statement of Articles of charge framed against Shri S.K. Sen, Surveyor, No.80 (P) Party (NEC), Survey of India, Shillong.

Article-I

That Shri S.K. Sen, Surveyor while posted in No.29 Party (NEC) during the field season 1996-97 was assigned field duty in Arunachal Pradesh. He was appointed as Assistant Camp Officer in Camp No.I to assist Shri U.N. Mishra the then Deputy Superintending Surveyor and the Camp Officer of the said Camp.

Shri S.K. Sen while performing the duties of Assistant Camp Officer in the said camp gave instructions to 8 verifier of his camp to show 8 porters on their muster rolls against the authorised strength of 4 porters by adding names of 4 fictitious porters which caused financial irregularities in the said camp.

Thus by his above act the said Shri S.K. Sen, Surveyor exhibited conduct unbecoming of a Govt. Servant thereby violated Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri S.K. Sen, Surveyor while performing the duties of Assistant Camp Officer in the Camp No.I of No. 29 Party (NEC) during field season 1996-97 gave an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls.

Thus by his above act the said Shri S.K. Sen, Surveyor exhibited conduct unbecoming of a Govt. Servant thereby violated Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules, 1964.

Article-III

The said Shri S.K. Sen, Surveyor who was appointed Assistant Camp Officer in the field Camp of No. 29 Party (NEC) during the field season 1996-97, while engaged in field work had misappropriated Govt. money amounting to Rs.30/- (Rupees thirty only) by raising inflated amount towards repair of vehicle.

By his above action, Shri S.K. Sen, Surveyor failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3 (1)(i) & (iii) of CCS (Conduct) Rules, 1964.

Statement of imputation of misconduct or misbehavior in support of articles of charge framed against Shri S.K. Sen, Surveyor, No.80 (P) Party (NEC), Shillong.

Article-I

That the said Shri S.K. Sen, Surveyor while working in No. 29 Party (NEC) was appointed as Assistant Camp Officer in Camp No. 1 during field season 1996-97.

While functioning as Assistant Camp Officer in Arunachal Pradesh during January 1997 Shri S.K. Sen visited to the camp of following 8 verifiers on 14th - 16th January 1997 and asked them to show in the muster rolls, 4 extra fictitious porters who were not at all engaged on field work in addition to 4 authorised porters already engaged on the work. These instructions were given by the Assistant Camp Officer without any written order of his CO/OC party.

- | | | | |
|----|-----------------------|----|------------------------------|
| 1. | Shri D.N. Dev | -- | P/Tr. Grade-II and Verifier. |
| 2. | Shri D.C. Bhandari | -- | P/Tr. Grade-II and Verifier. |
| 3. | Shri S.P. Roy | -- | P/Tr. Grade-II and Verifier. |
| 4. | Shri L. Rajwar | -- | P/Tr. Grade-II and Verifier. |
| 5. | Shri J.P. Chakraborty | -- | P/Tr. Grade-II and Verifier. |
| 6. | Shri J. Kharmujai | -- | P/Tr. Grade-II and Verifier. |
| 7. | Shri P.K. Roy | -- | P/Tr. Grade-II and Verifier. |
| 8. | Shri N.G. Das | -- | P/Tr. Grade-II and Verifier. |

Accordingly in compliance of the orders of the Assistant Camp Officer 7 verifier shown 4 fictitious porters in their muster rolls as engaged in the work for the period of 16-01-1997 to 28-02-1997 and Shri N.G. Das the 8th verifier shown 4 fictitious porters engaged in the work from 16-01-1997 to 31-01-1997. This resulted a financial irregularity in the said camp.

Thus Shri S.K. Sen failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant and thereby violating Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules 1964.

Article-II

That the said Shri S.K. Sen surveyor while functioning as Assistant Camp Officer in Camp No.-1 of No. 29 Party (NEC) during field season 1996-97 had offered a financial gain of Rs. 1500/- to each of the 8 verifier for making entries of 4 fictitious porters in their muster roll for the period of 16-01-1997 to 28-02-1997 by adjusting the amount of Rs. 1500/- against their field contgt. Advance.

Thus, Shri S.K. Sen failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. Servant thereby violating Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules 1964.

Article-III

The said Shri S.K. Sen, Surveyor while engaged in field work submitted false voucher against repair of Govt. vehicle. On 14-01-1997, Camp jeep was repaired at an actual expenditure of Rs.50/- but Shri Sen prepared the voucher for Rs.80/-. Thus Shri S.K. Sen, Surveyor made misappropriation of govt. money amounting to Rs.30/- for his personal gain.

By his above action, Shri S.K. Sen, Surveyor failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3 (1)(i) & (iii) of CCS (Conduct) Rules, 1964

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ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI S.K. SEN, SURVEYOR OF NO.80(P) PARTY(NEC), SURVEY OF INDIA, SHILLONG IS PROPOSED TO BE SUSTAINED.

1. Bill No.346/FVC dated 15.1.97, 10/FVC dated 3.4.97, 11/FVC dated 4.4.97, 371/FVC dated 5.2.97 and 457/FVC dated 27.3.97 of No.29 Party(NEC), Shillong.
2. Contingent Bill No.UNM-13 dated 21.4.97, UNM-12 dated 31.3.97, UNM-15 dated 19.5.97 and UNM/15(a) dated 19.5.97 in respect of Shri U.N. Mishra, then D.S.S. and Camp Officer.
3. Statement made by the verifiers during the course of Preliminary Inquiry.

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST SHRI S.K. SEN, SURVEYOR OF NO.80(P) PARTY(NEC), SURVEY OF INDIA, SHILLONG IS PROPOSED TO BE SUSTAINED.

1. Shri R.K. Meena, Suptdg. Surveyor, O.C. No.2 Party(WC)
2. Shri U.N. Mishra, Suptdg. Surveyor, O.C. No.5 Party(NEC), Shillong
3. Shri D.C. Bhandari, P/Tr. Gde.II of No.5 Party(NEC), Shillong
4. Shri P.K. Roy, S.K. Gde.II of No.12 D.O.(NEC), Shillong
5. Shri D.N. Dev, P/Tr. Gde.II of No.12 Party(NEC), Shillong
6. Shri N.G. Das, P/Tr. Gde.II of No.12 Party(NEC), Shillong
7. Shri J. Kharmujai, P/Tr. Gde.II of No.29 Party(NEC), Shillong

To
The Director North Eastern Circle
Survey of India
Shillong.

(Changang 0-0-100 80 (P) Party)

Sub: - Supply of Copy of Annexure III and Annexure IV of
Statement of Article of Charged framed against me.

Sir,

I am in receipt of your Memorandum of asking me file my written statement within 10 days from the date of receipt of the memorandum in respect of Article of charges accompanied therewith.

As it appears from the Annexure III and Annexure IV enclosed in the memorandum and Article of charges that the allegation against me is based on certain documents and statement of witnesses copy of which is not supplied to me. In absence of relevant documents mentioned in those Annexure it is not possible on my Part to file the Written statement as asked for, hence I fervently request your good self to supply me copy of all the documents mentioned in the Annexure III and IV at my cost, at your earliest in order to enable me to file my written statement in respect charge leveled against me within the specified period of 10 days to be reckoned from the date of supply of those documents.

Thanking you

13.5.11
17-7-2001

(S.K.Sen)80 (P) party

certified to be
true copy
S.K.Sen
Applicant
8.11.07
S.K. Chakrabarty
Advocate
8.11.07

18/10/01
(S.B. Chakrabarty) 05

32-
CONFIDENTIAL

ANNEXURE 'C'

NO. C 10 /A-20(SKS)

SURVEY OF INDIA
NO. 80(P) PARTY (NEC)
SHILLONG-1.

DATED THE 26th JULY, 01.

To,

✓
Shri. S.K. Sen,
Surveyor,
No. 80(P) Party (NEC).

SUB: SUPPLY OF COPY OF ANNEXURE III AND IV OF THE STATEMENT
OF ARTICLE OF CHARGE FRAMED AGAINST SHRI. S.K. SEN, SURVEYOR.

REF: DNEC's No. C-235/3-A-305 dt. 24-7-2001.

With reference to the above mentioned subject, it is to inform you that since the scheme of Rule 14 of CCS (CCA) Rules, 1965 contemplates that the statement of defence submitted under sub-rule 5(a) may be limited to admitting or denying the charges communicated to the delinquent officer, it is not possible to accede to your request made vide your application dt. 17-7-2001. ✓

However, you may get the full opportunity to inspect the listed documents during the course of inquiry as and when held.

26.7.01.
(S.B. KHARBANGAR)
OFFICER SURVEYOR
O.C. NO. 80(P) PARTY (NEC)
SHILLONG.

Copy to: D.N.E.C., for information, please.

BN/

Certified to be true
copy
S.K. Sen.

Applicant
8.11.04
S.K. Sen
Advocate
8.11.04

To
The Director
Survey of India
North Eastern Circle Office
Shillong Meghalaya
(Through Proper Channel)

Sub: - Written statement in Defence

Sir,

Your office memorandum no C- 210/3-A-305 dated 13th July 20001 along with Statement of Articles of charges and statement of imputation of misconduct /misbehavior in support of Article of Charges, is to hand, through which I have been directed to file my statement in defence which I do as follows.

At the out set I would like submit that the charges as leveled against me is not correct and I have been made a victim of professional jealousy and misfortune. Be it as may, while denying the Article of Charges framed against me and statement of imputation of misconduct I would like to give my reply as follows:-

Reply to Article of Charges as per Annexure I of Memorandum

Article I & Article II Since the charges leveled in Article I and Article II are interrelated I may be allowed to submit by statement in defence in common.

It is Alleged that while during the filed Session 1996-1997 I as an Assistant Camp Officer in Camp No 1 instructed 8 verifiers of the camp, to show the name of 4 fictitious porters to cause financial irregularities and thus I have violated Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules 1964.

It is respectfully submitted that the allegation as leveled against me is totally unfounded and incorrect so far I am concern. It is an admitted position that I was appointed as Assistant Camp Officer in Camp No 1 to assist Shri Mishra the then Deputy Superintending Surveyor and the Camp Officer of the Said Camp. Therefore my duties as Assistant Camp Officer was restricted to assist the Deputy Superintending Surveyor and the camp Officer only, and by all means and implications I was to carry out their order and not to act independently without their directions, and accordingly in the instant case I actually carried out the order of my superiors, whatever they time to time instructed me to

certified to
be true
S.K. Sen
8.11.04
Advocate
8.11.04

Copy

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Under circumstances, in my functioning as an Assistant Camp Officer, I had no option but to do and carryout their orders, in order to avoid insubordinations and unnecessary complication.

Since it was an order of my superior officer I had no other choice, but to carry out the same. It may be noted here that if the allegation as leveled against me that I of my own without any order of my superiors had instructed 8 verifiers of my camp to show 8 porters instead of authorized strength of 4 (four), than there would have been a complain from the Deputy superintending Surveyor and the Camp Officer, in absence of such complaint it goes to show my bonafide and my innocence that I have only executed the order of my superior.

Obviously my involvement into the matter may apparently sound as of a accomplice, since there was no written order of my superior in this regard, but in reality I supported them under complaining circumstances in order to reach to the root of conspiracy and accordingly I carried out their order without objection. However when I refused to take any ^{illegal} financial benefit from them, they Considered my presence in the camp unsafe and ultimately I was directed to return to the Party Head Quarter and that too, prior to completion of my filed completion formalities.

Bill of those fictitious Porters was passed by Camp Officer and Officer in charge of the 29 Party. That itself proves their involvement in the case. Had there been no verbal order to include fictitious porters the Camp Officer should not have passed the bill of said porters. Therefore if any financial irregularities caused in the instant case it is none but my superior officers, whose instructions I have carried out as an assistant Camp Officer.

It is pertinent to mention here that for any financial irregularities as alleged against me, there is no iota of evidence that I am a beneficiary of the irregularities and any financial benefit is given to me. For an offence of financial irregularities it is essential ingredients that benefit of such irregularities, how small it may be, should be passed to the incumbent and should have been received. In this case there is no evidence that I am also an ultimate beneficiary of the irregularities and obtained any pecuniary benefit.

The Central Civil Service (Conduct) Rules 1964 Rule 3 (1) (i) & (ii) provides that Every Government Servant shall at all times – (i) maintain absolute integrity (iii) do

C. L. D.

35

nothing which is unbecoming of Government Servant. As I verily believe, in the instant case, I have maintained my full integrity and did nothing which is unbecoming of a Government Servant. Your kind attention in this regard may be drawn that it is I who reported the matter at the first instance to the higher authority immediately after my arrival from camp. Had I not informed this to the higher authority a serious misconduct of Camp Officer and other would not have been known to any one. Which fact establishes my integrity and my functioning as sincere Government servant.

Article III As regard allegation that I have misappropriated Govt. money amounting to Rs 30/- (Thirty only) by raising inflated amount towards repair of vehicle, in this connection I beg to submit that an amount of Rs 80/- (eighty) in connection with repairing of the vehicle paid to the mechanic through Shir Gobardhan Ram son of S. Ram Khalasi now posted in NECO, after obtaining receipt from him (copy of receipt is enclosed) and therefore the allegation of misappropriation of Rs 30/- (Thirty) is not correct and hence denied by me.

Since I was not supplied with the copies of documents mentioned in Annexure III and Annexure IV, I hereby reserve my right of filing additional written statement in defence as and when required.

In the circumstances it is therefore requested that you may be kind enough to drop the charges against me for which act of kindness as in duty bound shall ever pray.

Yours faithfully

(S.K. Sen)

No 80 Party (NEC)

Dated, Shillong

The 3rd May 67

S.K. Sen

I could not produce properly
in my M.S. dated 3-5-67
because —
1) Listed documents were not
supplied to me before I reply
to it (already mentioned in my M.S.)
2) B.S. could not recall everything
after a gap of 5 yrs.

To,

Shri S.C. Jarodia,
Enquiry Officer,
C.V.C.
New Delhi.

Sub:- witness

Sir,

Ref. to your order dt. 22.8.02 and my appeal addressed to Director, N.E.C. survey of India, Shillong (my disciplinary authority) copy attached herewith, I beg to appeal before you the following facts for your kind and sympathetic consideration.

That Sir, it will be difficult for me to answer those questions which are related to my charge, because in answering those questions would prejudice me in my own departmental enquiry. It will definitely effect the merit of my case.

Therefore, I am requesting your kind honour to consider my case sympathetically for which I shall remain grateful and obliged.

Thanking you,

Yours faithfully,

(S. R. SEN)

Surveyor,
Survey of India,
Shillong.

certified to be true
copy Dated 18/9/2002.

S.K. Sen.
Applicant
8.11.04
S.K. Advocate
8.11.04

13/11/04

-37-

No. N1/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor,
Survey of India, North Eastern Circle, Shillong

SW-1

SHILLONG

20.5.2003

Deposition of Shri RK Meena, Superintending Surveyor, Officer in Charge, No.83 Party,
Western Circle, Survey of India, Jaipur.

Examination-in-Chief

Q.1. Please give your brief introduction?

Ans. I am RK Meena, presently working as Superintending Surveyor, Officer In Charge
No.83 Party, Western Circle, Survey of India, Jaipur. During 1996-97 I was working as
Officer in Charge No.29 Party, NEC, Survey of India, Shillong.

Q.2 What was the strength of the porters in the Camp of Arunachal Pradesh during 1996-1997?

Ans. As per the scale the authorised strength was 72 and we recruited only 40 porters.

Q.3 If 72 was the authorised strength then why did you recruit only 40 porters?

Ans. I thought that the strength of 40 would be initially sufficient to carry out the work.

Q.4 For additional 32 porters did you obtain the sanction from Director North Eastern Circle?

Ans. No. I could not contact the Director so his permission could not be obtained.

Q.5 Are you competent to recruit extra 32 porters without the specific approval of the Director as OC Party?

Ans. I am not competent. But for the shifting of the camp from one place to another the
extra porters were engaged.

Shyama
21/5/03
certified to be
true copy
S.K. Sen
Applicant
8.11.04
S.K. Chakraborty
Advocate
8.11.04

Q.6 Whether the shifting of camps taking place every day?

Ans. No. At times porters were also remain idle but the porters cannot be engaged immediately so they remain idle. They will be utilised for other miscellaneous work.

Q.7 Was it not essential for you obtain the approval of the Director for the engagement of extra 32 porters?

Ans. It was essential but could not communicate to the Director. So his permission could not be obtained.

Cross-Examination

Q.1 Did you ask Shri S.K. Sen about the strength of the porters?

Ans. Yes. I had discussed the issue with him.

Q.2 What was the discussion between you and Shri SK Sen?

Ans. I asked Shri SK Sen that 40 porters have already given. You go and start the work and if situation requires more porters will be engaged in the field.

Re-Examination NIL.

RO&AAC

[Signature]
Witness

[Signature]
Inquiry Officer

S. K. Sen

No.NI/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor,
Survey of India, North Eastern Circle, Shillong.

SHILLONG

20.5.2003

Deposition of Shri UN Mishra, Superintending Surveyor, Officer in Charge, No.12

Drawing Office, North Eastern Circle, Shillong.

SW-2

Examination-in-Chief

Q.1 Please give your brief introduction?

Ans. I am UN Mishra, presently working as Superintending Surveyor, Officer In Charge No.12 Drawing Office, North Eastern Circle, Shillong. During 1996-97 I was working as Camp Officer in No.29 Party under the administrative control of Shri RK Meena, who working as Officer in Charge, No.29 Party, NEC, Survey of India, Shillong.

Q.2 Was any administrative instructions issued to your Camp by your OC(Officer -in-Charge)?

Ans: No.

Q.3 As Camp Officer why did you not insist that all the 72 porters were engaged in Party Head quarters instead of engaging balance 32 porters in the field ?

Ans: All the porters were not required initially. Secondly local are required to show the path to the survey party. Engagement of the remaining porters were necessary to keep harmonious relationship with the local people. Engagement of local porters is at time necessity for the smooth conduct of work.

Copy filed to 20/5/03
be there
S.K. Sen
App'd
S.K. Sen
8.11.04
Advocate
8.11.04

43 (8)

4 - 40 -

Q4 Did you get any kind of approval from your OC Party to engage extra porters in your camp?

Ans: Officer-in-Charge verbally instructed me to engage 4 additional porters for each
verifiers. Officer-in-Charge had also given verbal instruction to Mr SK Sen for engaging
4 additional porters for each verifiers

Q5 Whether this verbal instruction of Officer-in-Charge was conveyed to verifiers by Shri SK Sen?

Ans: Yes, it is within my knowledge.

Q6 Did you hear anything about offer of financial gain given by Shri Sen, ACO for adding fictitious names of porters in the muster roll?

Ans: No, I did not hear any such thing.

Q7 Who supervise the repair of vehicle in the Camp?

Ans: It is the Camp officers responsibility to supervise and monitor the repair work of the vehicle. When Camp Officer is not available, Asstt. Camp Officer (ACO) supervise the repair work.

Q8 How was the correctness of the bill presented against repair ensured?

Ans: Since there was hardly any repair in my camp, there was no such occasion to verify the genuineness of the bill.

Cross-Examination : NIL

RO&AAC

Witness

Inquiry Officer

S. K. Sen

ANNEXURE - 'E'

44 (24)

5 - H1-

ANNEXURE 'H'

No.NI/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor,
Survey of India, North Eastern Circle, Shillong.

SHILLONG
20.5.2003

Deposition of Shri PK Roy, Store Keeper Grade-II, No.12, Drawing Office, Survey of
India, North Eastern Circle, Shillong.

SW-3

Examination-in-Chief

Q.1 Please give your introduction?

Ans. My name is PK Roy, Store Keeper, Grade-II, No.12, Drawing Office, Survey of
India, North Eastern Circle, Shillong.

During 1996-1997 I was working as Plantabler Grade-II, No.29 Party, Survey of
India, North Eastern Circle, Shillong.

Q.2 As Planetabler what are your duties and responsibilities?

Ans: My duty is to survey the field.

Q3. Do you engage Porters while carrying out survey?

Ans: This is done by Camp officer.

Q4. Please see Exhibit S-11, do you confirm and own this statement?

Ans: I disown this statement.

Q5. Why did you sign the statement?

copy
certified to be true
S.K. Sen
Applicant
S.K. Sen
Advocate
S.K. Sen

Ans: Since I was nervous, I signed the statement.

Q6. Are you nervous at present also?

Ans: No.

Q7. Who allotted you the squad of porters and how many of them?

Ans: Camp Officer. Eight porters were allotted.

Q8. Who maintained the muster roll?

Ans: I myself maintained the muster roll.

Q9. Who made payment of porters wages?

Ans: Camp Officer.

Q10. Did you check back whether their dues were paid correctly?

Ans: This was not my job. The payment was made directly by Camp Officer.

Q11. Who discharged your squad porters at the close of the Camp?

Ans: Camp Officer.

Q12. Before they were discharged from your camp did you ensure that their dues were Paid fully as per rates and attendance?

Ans: It is not my job.

Q13. How did you manage to pay enhance rate of their wages after discharging them?

Ans: I do not know.

Q14. The porters who were engaged in your squad are recruited at Shillong?

Ans: I do not recollect.

Q15. Did any porters were recruited in your camp?

Ans: I do not know

2/2/2013

Q16. The porters were from Camp Headquarters location. Did they complain to you that they were not paid bus fare?

Ans: No.

Q17. Did your CK received the wages when you returned to Camp Headquarters.

Ans: Yes, it was paid.

Q18. Were you aware that reimbursement of contingent bills had not come from PHQ at the time of discharge of your porters and camp orderlies?

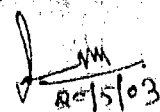
Ans: Only Camp Orderly's payment was made and others I do not know.

Q19. Was there any offer of financial gain from your Camp Officer or ACO?

Ans: No.

Cross- Examination: NIL.

RO&AAC


15/03

Witness


Inquiry Officer

15/03

S.K. Sen

No. NI/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor,
Survey of India, North Eastern Circle, Shillong.

SHILLONG
20.5.2003

SW-4

Deposition of Shri DN Dev, Plantable Grade-II, No.12 Party, North Eastern Circle,
Survey of India, Shillong.

Examination-in-Chief

Q.1 Please give your brief introduction?

Ans. I am DN Dev, Plantable Grade No.12 Party, NE Circle, Survey of India, Shillong.

I was working in the capacity since 1980.

Q.2 You were working in Shri UN Mishra's Camp?

Ans. Yes.

Q3. Please see Exhibit No. S-12 and confirm whether you own the contents of the
statement signed by you?

Ans: No.

Q4. How many porters did you have?

Ans: Eight.

Q5. Who supplied you the porters?

Ans: Camp Officer supplied me the porters.

Q6. Who had been paying for your porters and camp orderly?

20/5/03
Copy filed to be there copy
S.K. Sen
Applicant
B. 11.05
S.K. Chakraborty
Advocate
B. 11.05

Ans: Camp Officer.

Q7. You were maintaining muster roll of your porters. Did you check whether their payment were made correctly?

Ans: Since they did not made any complaint to me, therefore I presume that their payment were made correctly.

Q8. Whether your whole squad was recruited at Shillong.

Ans: Four out of eight were recruited at Shillong and remaining four were recruited locally in the field area.

Q9. Did you join your camp right from beginning?

Ans: Yes.

Q10. Before moving to your area of work further local porters were engaged. Did you aware of it?

Ans: No.

Q11. How many porters you had?

Ans: Initially four porters were given and out of them one was absconded, then five were added to my squad by Camp Officer.

Q12. Whether these additional 5 recruits were local porters?

Ans: Yes.

Q13. On completion of work, when you returned to Camp Headquarter who discharged the porters?

Ans: Camp Officer.

Q14. Who made their payment?

Ans: Camp officer at the close of Camp

1806/
20/5/03

Q15. How was the enhanced rate of wages were paid to porters after discharging them?

Ans. I do not know.

Q16. Whether porters were paid bus fare at the time of discharge?

Ans. I do not know.

Q17. Did you know that reimbursement of contingent bills had not come to your camp headquarters at the time of discharge of porters. Then how was payment organized?

Ans. I do not know.

Cross-Examination : NIL.

RO&AAC

Witness

Inquiry Officer

No. NI/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor,
Survey of India, North Eastern Circle, Shillong

SW-5

SHILLONG

20.5.2003

Deposition of Shri J. Kharmujai, Plantabler Grade-II, No.29 Party, North Eastern
Circle, Survey of India, Shillong
Examination-in-Chief

Q.1 Please give your introduction?

Ans. I am J. Kharmujai, Plantabler Grade-II, No.29, Party, NEC, Survey of India.

During 1996-1997 I was working in the same post.

Q.2 Please see Ex.S.14 which is your statement dated 30th April,1997. Do you confirm
and own this statement?

Ans. I deny the contents of the statement.

Q.3 Why did you sign?

Ans. I signed. Simply because Director asked me to sign.

Q.4 Since When did you maintain muster roll of eight porters in your squad?

Ans. From the very beginning of my field work.

Q.5 Did you engage extra four porters(other than those recruited at Shillong) in your
Camp Headquarters?

Ans: I did not recruit.

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App'd
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S.K. Chakraborty
8.11.07

Q6. Who was making payment to your porters?

Ans: Camp Officer

Q7. On closure of field work did you ensure that they were paid their dues before discharge?

Ans: I do not know

Q8. Who was maintaining the muster roll?

Ans: I maintained the muster roll

Q9. Why you did not ensure their payment?

Ans: It was being done by C.O.

Q10. Did they get their bus fair to go back home?

Ans: I do not know.

Q11. Did they complain to you?

Ans: No.

Q12. How did you ensure that they get their enhanced rate of wages correctly even after discharge?

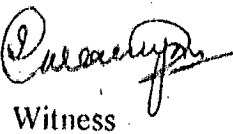
Ans: I do not know.

Q13. Did you maintain a cash book in your camp?

Ans: I maintained cash book for minor expenses out of my contingency.

Cross- Examination : Nil

RO&AAC


Witness


Inquiry Officer 27/5/03

S.K. Sen

No.NI/SCJ/66
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Shri SK Sen, Surveyor, Survey of India, North Eastern Circle, Shillong - GENERAL EXAMINATION.

SHILLONG

21.5.2003

Q1. As Assistant Camp officer what was the nature of duties you were required to perform in the camp?

Ans: My duty was to assist Camp Officer both in Technical and Administrative matter

Q2. Did you receive only verbal orders from OC and CO? If so how did you manage to execute the order and report back.

Ans: I have received only verbal orders from Camp Officer.

Q3. Were you associated in recruitment of porters done at Shillong. Being an experience field hand what assistance did you provide to your Camp Officer designate before setting out for camp?

Ans: Yes, I was associated with the recruitment of porters. I have also provided assistance to my CO regarding collection of stores and organisation of camps

Q4. Did the Camp officer carry out entire recruitment without any assistance from you and others in the camp HQ?

Ans: Initial 40 porters were recruited in PHQ under my assistance.

Q5. How many local porters came for selection and approximately how many were selected at Shillong?

Ans: I do not remember how many appeared for recruitment rally but 40 were selected out of them.

Q6. Being Assistant Camp Officer in the field with very inexperienced camp officer, how did you find working relation with your immediate superior?

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S.K. Sen
Applicant
8.11.07
S. R. Chakraborty
8.11.07

Ans: It was just professional relation.

Q7. Was there any occasion when you resorted to reporting to OC Party directly and receiving orders for smooth functioning of camp activity?

Ans: There was no such occasion.

Q8. Did you like your camp officer objecting on your role with extra liberty and freedom with which you worked?

Ans: No extra liberty or freedom was given to me.

Q9. Now tell us in brief how porters were selected in the camp on arrival from Shillong?

Ans: During OC's first inspection, requirement of extra porters was discussed by CO with OC in presence of me and accordingly OC instructed CO to recruit extra porters.

Q10. Who supplied these personnel to your camp in such large number shortly after arrival in the area?

Ans: It was arranged locally.

Q11. Was there any labour contractor utilized for this purpose?

Ans: No.

Q12. As 'ACO' what role did you play in selection of porter for your camp personnel?

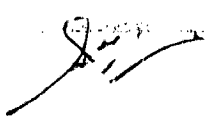
Ans: Initial recruitment was done by me at Shillong.

Q13. Did you consult any Govt agency for your requirement of additional 32 porters engaged in the area particularly inside the area of inner line.

Ans: No.

Q14. It has been stated that the camp officer used to make payments to all porters himself. Why did he not take your assistance in this regard as the terrain did not permit a single person to complete this job alone by himself?

Ans: I do not know.



Q15. Did you ever volunteer to help CO in disbursement of dues/ cash meant for 8 detachments spread over vast area?

Ans: No.

Q16. On completion of jobs when field hands started returning to camp Head quarters, in what sequence did you organize the discharge of their porters?

Ans: I was not involved in discharging them.

Q17. When the Camp officer was away to WALONG for inspection on 14.1.97, camp vehicle was repaired for which you presented the voucher to CO for claiming in contingent bill as stated by him. The amount of this bill No. UNM/7(Ex.S.15) was disallowed being exaggerated by Rs. 30/-. How did you obtain such receipt for repair of the camp vehicle?

Ans: Since there was no workshop one mechanic from PWD Deptt. arranged by Shri Govardhan Ram, Khalasi, repaired the vehicle at the Camp and demanded Rs. 80/- which was paid through the said khalasi and the amount was charged in O.34 account.

RO&AAC


CHARGED OFFICER


INQUIRY OFFICER

S.K. Son

ANNEXURE 5 "L"

Confidential

No. NI/SCJ/66(71)
Government of India
Central Vigilance Commission

Subject:- Departmental Inquiry against Sh. S.K. Sen, Surveyor, Survey of India, Shillong.

REPORT

1. INTRODUCTION

1.1 I was appointed as the Inquiry Officer vide Order No. C-284/3-A-305 dated 11th Sep. 2001 issued by Sh. T.K. Bandyopadhyay, Director, North Eastern Circle, Survey of India, North Eastern Circle Office, Post Box No. 89, Shillong - 793 001 (MEGHALAYA). Sh. G.C. Bairagi, Superintendent Surveyor, OC No. 30 (P) Party (EC), Survey of India, Kolkata was initially appointed as Presenting Officer vide order C-285/3-A-305 dated 11th Sep. 2001 issued by Sh. T.K. Bandyopadhyay, Director, North Eastern Circle, Survey of India, North Eastern Circle Office, Post Box No. 89, Shillong - 793 001 (MEGHALAYA). Brig. RNB Verma, Deputy Surveyor General, Eastern Zone, Survey of India, Kolkata was nominated as substitute Presenting Officer vice Shri G.C. Bairagi.

1.2 The Preliminary Hearing in this case was held on 21.12.2001 at New Delhi. Regular Hearing in this case was held on 20th and 21st May, 2003 at Shillong. On 20.5.2003, 14 prosecution documents were taken on record and marked as Ex.S.1 to Ex.S.14. On 20.5.03, the PO introduced one more prosecution document which was marked as Ex.S-15. Out of the 7 prosecution witnesses listed in Annexure-III, evidence of 5 prosecution witnesses (SW-1 to SW-5) were taken on record. Other prosecution witnesses remained absent in the Inquiry and no communication was received from any of these prosecution witnesses. With this the prosecution case was closed. The CO filed his written statement of defence with a copy to the PO. The hearing was adjourned to 21.05.2003. On 21.5.2003, the defence case was

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for V.C.
8.11.07

taken up. The CO did not cite any defence document. CO did not examine any defence witness. The CO did not offer himself as his own defence witness. I examined the CO generally. With this the oral hearing in this case was concluded. Written briefs from the PO and CO were received on 05.06.2003 and 16.6.03 respectively.

2.0 Article of Charge

2.1 A copy of the article of charge is annexed as Annexure 'A'.

3.0 Assessment of Evidence

3.1 Article-I

3.2 Case of the Prosecution

3.3 P.O. stated that Shri S.K. Sen, CO, during his deposition before the Inquiry Officer, CDI, CVC on 20.5.03/21.5.03 stated that his statement recorded during Preliminary Inquiry by Board of Officers was done under pressure/coercion. Hence he denies the statement recorded as his own. Shri S.K. Sen, C.O. had attended the preliminary inquiry and spent over 2 hours and 45 minutes in Director's chamber for giving his well considered replies, recorded by another Group 'A' Officer in whose presence the statement were made by him. Nothing is available on record that Shri Sen subsequently approached his higher-up to protest against any pressure exerted at him at the time of Preliminary Inquiry.

3.4 Shri S.K. Sen, Surveyor, C.O., on receipt of Charge-Sheet communicated to him under DNEC's letter No. 210/3-A-305 dated 13.7.2001 submitted his written representation dated 03.08.2001 denying the charges. In this representation Shri Sen has re-confirmed many statements which he made before Preliminary Inquiry Board. Thus, his statement now made before Inquiry Officer is aimed at concealing the facts of this case which is within his knowledge. He has laboured hard to mislead the present Inquiry by not revealing the truth as brought out by him earlier in his own written statement and forwarded to his superiors through his official channel. Hence his claim of pressure exerted at the time of Preliminary Inquiry is not tenable.

3.5 PO stated that the Preliminary Inquiry carried out by a well-constituted board of officers forms the basis of present Inquiry. Hence facts brought out by Shri Sen during Preliminary Inquiry and again in his representation, dated 3.8.2001 cannot be ignored being his own written statement made. Shri Sen's feigning ignorance of many events now and contradicting his own earlier statements, amounts to telling lies deliberately. Shri S.K. Sen's deposition and denying his statement now further makes him liable to disciplinary action.

3.6 Shri S.K. Sen, C.O. in his written representation dated 3.8.2001 has made the following :-

"Obviously my involvement into the matter may apparently sound as of an accomplice, since there was no written order of my superior in this regard, but in reality I supported them under compelling circumstances in order to reach to the root of conspiracy and accordingly I carried out their order without objection."

3.7 Shri S.K. Sen, C.O. also confesses his involvement in showing of 4 fictitious porters in the squads as alleged, through his statement made in the same representation which reads as under :-

"Since it was an order of my superior officer, I had no other choice but to carry out the same."

3.8 In the same representation, Shri Sen, C.O. also states as under:-

"Your kind attention in this regard may be drawn that it is I who reported that matter at the first instance to the higher authority immediately after my arrival from camp."

3.9 All these statements made by Shri S.K. Sen, C.O. confirms without any doubt that he possessed detailed information of entire episode of Hayuliang Camp where he was employed as Assistant Camp Officer and remained fully involved in organising fictitious porters to be shown on the strength of squads.



3.10 In the light of what is stated above by Shri Sen, in his representation dated 3.8.2001 addressed to DNEC, the facts brought out before Preliminary Inquiry on 30.4.1997 from 10.00 hours to 12.45 hours is confirmed and is a re-confirmation of his statement. His statement made on 30.4.97 before Preliminary Inquiry Board of officers, thus, remains sacrosanct even after denial by Shri Sen subsequently on any pretext.

3.11 Active involvement of Shri S.K. Sen, Surveyor in incorporating 4 fictitious porters in the squad of each field hand, who maintained muster roll of porters can be seen in the statement made before Preliminary Inquiry Board on page No.3 wherein he replies to Question No.15 posed before him.

3.12 Shri Sen had been persistently requesting his O.C. for increase in the strength of porters for each squad although he was not the camp officer whose concern should have been this.

3.13 As ACO, Shri S.K. Sen's extra interest in getting verbal approval for additional porters for camp personnel on the pretext of difficult terrain, hostility etc. is intriguing as this subject was none of his concern at all in his capacity of ACO. His insisting/discussing this matter repeatedly before leaving PHQ and during inspection tour of O.C. Party in the Camp (when even the Camp Officer does not consider it appropriate to rake up the point of employment of extra porters) is with ulterior motives.

3.14 Initially O.C. No.29 Party preferred to take time to think and give well-considered opinion instead of giving outright reply. However, Shri Sen's persistent dwelling upon the point of additional porters in each squad, has finally forced the O.C. to allow him to execute his scheme of showing 4 fictitious porters in each squad in preference of personal gains.

3.15 O.C. No.29 Party appeared to have realised the futility of engagement of more porters but due to persistent endeavour of ACO, finally he succumbed to the idea advanced by a seasoned Surveyor who could mislead him to believe in his skill of managing irregular acts.

3.16 In his own confession in reply to Question No.15 in last but one para, Shri Sen admits the methodology of propagating the verbal instructions attributed to his OC's instruction.

3.17 Shri R.K. Meena, SW-1, in cross-examination Question No.2 confirms having permitted Shri Sen, ACO to engage more porters if situation requires. Though there is no evidence available to justify necessity of engaging extra porters felt by either squads-in-charge or by the Camp Officer, ACO happily went about adding the names of fictitious porters in muster rolls of each squad.

3.18 Shri U.N. Mishra, SW-2, in reply to Question No.5 confirms that Shri Sen conveyed the verbal instructions to all verifiers, although they had not insisted for increasing the strength of porters in their squads.

3.19 Shri D.N. Dev, SW-4, in his deposition in reply to Question No.10, replies in negative when asked if further local porters were engaged before moving to his area of work. Then how could his squad strength increase without adding the names of fictitious porters.

3.20 Shri Sen during General Examination on 21.5.03 makes contradictory reply about receiving verbal order from Camp Officer whereas he himself confirms in written statement about having received verbal approval from his Officer-in-Charge of Party after repeatedly insisting on the point of increase in the number of porters for each squad.

3.21 Though Shri Sen had carried out recruitment of 40 porters at Shillong for his camp, there is no record to show that he did recruit any porter at Hayuliang Camp. After receiving verbal approval for engaging additional porters Shri Sen hurriedly visited the detachments deployed in the area to ensure that squad strength is increased to 8 porters by incorporating the names of fictitious porters.

3.22 In order to keep the interest of local tribal populations protected and to guard against any exploitation, bulk local porters inside Innerline area are engaged with the knowledge of Labour Commissioner/DC's office who

maintain their details unlike in the plains. Shri Sen's reply at Question No.10, therefore, is far from truth. His reply to Question No.13 further confirms his action and points towards fictitious porters shown. Article I thus stands proved.

3.23 **Article-II**

3.24 P.O. stated that Shri S.K. Sen's persistent pressure on O.C. Party to allow increase in the strength of porters in each squad of field hand was with specific motive. It is strange that the field hands working did not ever request for increase in their strength of porters on the grounds of hostility as brought out by Shri Sen to his O.C. Party or on the ground of difficult terrain. Shri Sen's action of conveying increase in strength of porters in squads in absence of any written orders, is on lurement offered which kept individual field hands quiet on the issue. Though financial gratitude is difficult to substantiate but strange silence of all field hands who maintained muster rolls much beyond authorised strength, is intriguing.

3.25 Shri D.C. Bhandari, Planetabler Gde.II who deposed for preliminary inquiry also confirmed receipt of Rs.1500/- for the act of showing additional 4 fictitious names of porters in the muster roll maintained by him.

3.26 Shri Bhandari did not attend the Inquiry being absent on that day.

3.27 The Article II thus stand proved.

3.28 **ARTICLE - III**

3.29 PO stated that Shri S.K. Sen, C.O. incurred expenses on repair of camp jeep tyre/tube during the period when the Camp Officer had gone away to WALONG for inspection. Sub-voucher prepared by Shri S.K. Sen, as the regular receipt was not obtainable, on form 0.34 (Acc.) in lieu of cash memo, showed Rs.80/- spent by Shri Sen duly certified by him and accordingly accepted by the Camp Officer and entertained in the bill.

3.30 During processing this claim was restricted to Rs.50/- by disallowing Rs.30/- extra claimed. On the day when expenditure was

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incurred, in the absence of Camp Officer, Shri Sen got the repairs done. For inflating this bill of repairs, therefore, Shri Sen alone remains responsible and answerable to his Camp Officer.

3.31 The Article III thus stand proved.

3.32 **Case of the Defence (Article-I, II & III)**

3.33 C.O. stated that on receipt of the Memorandum of Charges, he prayed for furnishing him the documents relied upon in framing the said charges for his inspection. But the same was denied to him in gross violation of the principle of natural justice. The same was denied vide D.N.E.C.'s letter No. C-235/3-A-305 dated 24.7.2001 intimating therein that the CCS (CCA) Rules, 1965 does not contemplate furnishing the said documents. This apparently is misinterpreted and the purport of the same is misconstrued. But the said documents was supplied to him only when the Inquiry Officer directed the Presenting Officer to furnish the same. But the fact remains that he had to submit his written statement without knowing the basis of the allegation sought to be proved against him.

3.34 Since the Memorandum of charges contained a definite time - frame for reply, he had to submit the reply even without pursuing the said documents relied upon without knowing the basis on which the said charges were drawn. However, while submitting his written statement he denied all the charges as being totally unfounded and incorrect.

3.35 C.O. stated that after receipt of his written statement, the Disciplinary authority apparently was satisfied that the charges contained in the memorandum dated 13.7.2001 were not admitted by him and therefore ordered for holding an enquiry in respect of all the charges. It is, therefore, the proof in respect of the said charges during the enquiry, which can be the only basis for imposing any penalty and not otherwise.

3.36 C.O. stated that although list of witnesses annexed as ANNEXURE 'IV' to the Memorandum of charges contained the names of as many as 7 witnesses, by whom the article of charges was proposed to be

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sustained, but only 5 witnesses appeared. However, none of the 5 witnesses who deposed before the Inquiry Officer, has said anything to substantiate the charges. On the contrary, the said witnesses categorically stated that the verifiers were having 8 porters, who worked in the camp, as supplied to them by the Camp Officer and that there was no offer of any financial gain from him. There was no documentary evidence either to support the charges drawn against him. The allegation of misappropriating Rs.30/- by raising the inflated amount towards repair of vehicle is without any basis at all. He submitted a voucher along with his written statement, the veracity of which was never put to question and remained uncontroverted. The authority also could not substantiate the allegation by any oral or documentary evidence independently.

3.37 All the charges are, therefore, baseless having no foundation at all and with the evidences led during enquiry, no reasonable person or a man of prudent thought, would hold the charges to be proved.

3.38 Having failed to substantiate the charges by any evidence whatsoever, the Presenting Officer, by submitting his written brief, has sought to bring some extraneous materials to make out a new case against him, even by suggesting further disciplinary action which is absolutely uncalled for and without jurisdiction. Although the P.O. fairly stated in his written brief that C.O. in his written statement dated 3.8.2001, denied the charges, but by picking up some lines from his written statement, without realizing under what circumstances and what context the same was stated, came to a finding that his statements confirms detailed information of the entire episode and he remained fully involved in organizing fictitious porters etc. He submitted that his written statement has to be considered in the background that he submitted the same without perusing any of the documents relied upon by the authority in framing the charges and his statements were based only of the presumption that the authority has got some prima-facie materials against his superior officers and in absence of any

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documents, being supplied to him. He only had to make conjecture as an abundant caution to take his own defence. The said statement cannot be construed, under any stretch of imagination, to be his confession or his possessing any information whatsoever in the imaginary episode of Hayullang Camp, alleged or otherwise. When the allegation of engaging of 8 fictitious porters were not proved and there is no lota of evidence whatsoever in support of the said allegation, his said statement is of no consequence whatsoever.

3.39 The PO, in his written brief has also stated that he took extra interest in getting verbal approval for additional porters for the Camp. Apart from the fact that this was not the charge against him, even the said allegation is without any basis as would be evident from the following facts: -

- i) In the deposition of Sh. U.N. Mishra in the enquiry against Sh. D.C. Bhandari verifier, on 18.9.02 in cross-examination (question No.2) Sh. U.N. Mishra stated that the said verifier informed O.C. that, he can not manage to work with 4 (four) porters which was also appreciated by Sh. U.N. Mishra. It is only after that the O.C. granted extra 4 porters.
- ii) The verifiers apart from informing Camp Officer also informed him on their requirement which he felt to be just and reasonable. As per Survey of India Hand Book of Topography chapter II Appendix VIII, page No.76, Vth edn., the authorized strength of each verifiers is 10. This is worth to mention that Nos.9 and 12 Party have also carried out the survey work in the same season in a place of much lower height than ours. They also worked with 8 porters for each verifier. This was also within the knowledge of the then Director, Survey of India, N.E.C., who visited the area and inspected the work.

3.40 The P.O. has sought to rely on alleged preliminary statements in an attempt to substantiate the charges. But the same were disputed by each of the witnesses and as such the same has to be held as non-existent in the eye of law and, therefore, the same cannot form the basis of any punishment. That apart, the said preliminary statements did not in any

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manner, form part of the charges drawn against him and cannot, therefore, be acted upon.

3.41 In view of the facts and circumstances stated above, the charges drawn against him are liable to be dropped.

3.42 Findings of the Inquiry Officer

3.43 Article-I

3.44 It has been alleged that Sh. S.K. Sen, C.O. gave instructions to 8 verifiers of his camp between 14 and 16th Jan. 1997 to show 4 extra fictitious porters in the Muster Rolls in addition to 4 authorised porters already engaged on the work. These instructions were given by the C.O. without any written order from his Camp Officer or O.C. Party. Accordingly, in compliance of these orders, 7 verifiers showed 4 fictitious porters in their Muster Rolls from 16.1.97 to 28.2.97 and Sh. N.G. Das, the 8th verifier showed 4 fictitious porters in the Muster Roll from 16.1.97 to 31.1.97.

3.45 P.O. has cited Ex.S-1 to Ex.S-15 in support of this charges. Ex.S-10 to Ex.S-14 are the statements of S/Sh. D.C. Bhandari, P.K. Roy, D.N. Dev, N.G. Das and J. Kharmujai respectively. P.O. has stated that the C.O. has denied his statement given during preliminary inquiry to the Board of Officers and stated that this was done under pressure/coercion. P.O. has also stated that the C.O. had spent over 2 hours 45 minutes in the Director's chamber for giving his statement during preliminary inquiry and there is no evidence on record that he made any complaint or showed any protest against the alleged pressure/coercion used on him by the Director during the preliminary inquiry. Therefore, this is only an after thought to cover up his lapses.

3.46 P.O. has also stated that the C.O. in his written representation dated 3.8.01 confirmed having given his statement before the preliminary Inquiry Board. Therefore, his present statement is aimed at concealing the facts and mislead the inquiry. Hence, his claim of alleged coercion / pressure

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exerted on him during the preliminary inquiry is not tenable. P.O. further stated that the C.O. in his written representation dated 3.8.01 has clearly admitted his role as of an accomplice and confessed his involvement in the engagement of 4 fictitious porters in the squads as it was on the orders of his Superior Officer and he had no other choice but to carry out the same. In his statement dated 3.8.01, the C.O. had stated that it is he who reported the matter at the first instance to the higher authorities. Sh. R.K. Meena, SW-1 while answering Question no. 2 in the Cross-Examination confirmed having permitted Sh. S.K. Sen, C.O. to engage more porters if situation requires. Even SW-2 in reply to question no. 5 confirmed that Sh. Sen, C.O. conveyed the verbal instructions to all verifiers. Further, SW-4 in reply to question no. 10 informed in negative when asked if further local porters were engaged before moving to his area of work.

3.47 C.O. in his representation dated 3.8.01 has clearly admitted that he had no option but to carry out the orders of his Superior Officers although there was no written order from his superiors in this regard. He had also stated that the bill of fictitious porters was passed by the Camp Officer and Officer-in-Charge of 29 Party. Therefore, any financial irregularity committed is done by his senior officers and not by him. C.O., in his defence, has stated that he had submitted his written statement without knowing the basis of the allegation. He has also stated that the prosecution could produce only 5 witnesses against the 7 mentioned in the charge-sheet and has said nothing to substantiate the charges.

3.48 I have gone through the oral as well as documentary evidence produced before me both by the prosecution and defence particularly the statements given by the 5 witnesses who appeared before me for depositions. As a matter of fact, all these 5 witnesses are also co-accused in the same case and it seems all of them have joined hands not to give evidence against one another. In fact, they were so tight-lipped during deposition that it was quite evident that they did not want to reveal any truth

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during the inquiry. But C.O. himself had admitted and confessed this fact in his written representation dated 3.8.01 which is sufficient to prove the allegation. C.O. could not produce any evidence of use of pressure or coercion against him. This goes to prove that the C.O. had given oral instructions to all the verifiers to show 4 extra fictitious porters in their Muster Rolls without actually engaging them in the field-work. Therefore, the allegation levelled against the C.O. stands proved.

3.49 Article-II

3.50 It has been alleged that Sh. S.K. Sen, C.O. gave an offer of financial gain of Rs.1,500/- to all the 8 verifiers for inclusion of 4 extra fictitious porters in their Muster Rolls. P.O., in support of this allegation, has stated that Sh. P.K. Roy, Plantabler Grade-II and Sh. D.C. Bhandari, Plantabler Grade-II during the preliminary inquiry held on 28.4.97 stated that lurement of Rs.1,500/- was offered to them by Sh. Sen, C.O. This statement has, however, been disowned during the present inquiry but his action of increasing the strength of porters to 8 by adding 4 fictitious names of porters without any authority, points fingers towards this allegation. C.C., in his brief, has denied this allegation completely. It is seen from the oral and documentary evidences brought before me that there is no evidence and record to prove this allegation. PO has only cited the statements of Sh. P.K. Roy, Plantabler Grade-II and Sh. D.C. Bhandari, Plantabler Grade-II given by them during the preliminary inquiry of this case on 28.4.97. Sh. P.K. Roy, SW-3 has, however, disowned his own statement dated 28.4.97 given during Preliminary Inquiry. Sh. D.C. Bhandari, Plantabler remained absent during the inquiry. The other witnesses who appeared before me did not endorse the allegation levelled in this article. Hence, this allegation does not stand proved.

3.51 Article -III

3.52 It has been alleged that Sh. S.K. Sen, CO mis-appropriated the Government money amounting to Rs.30 by raising inflated amount towards repair of vehicle. Sh. Sen is alleged to have submitted false voucher against

repair of Government vehicle. On 14.1.97, the camp jeep was repaired at an actual expenditure of Rs.50 but, Sh. Sen prepared the voucher for Rs.80 and mis-appropriated Government money amounting to Rs.30 for his personal gain.

3.53 P.O. in support of this charge has cited Ex.S-15 and stated that the C.O. had incurred expenses on repair of camp jeep, tire/tube during the period when the Camp Officer was away to WALONG for inspection. The sub-voucher prepared by the C.O. on form 0.34 (ACC) in lieu of cash memo, showed Rs.80 spent by him and duly certified by him and accordingly accepted by the Camp Officer and entertained in the bill. During processing, this claim was restricted to Rs.50 by disallowing Rs.30 extra claimed. PO has stated that for inflating this bill, CO alone is responsible and answerable to the Camp Officer.

3.54 C.O., in his defence, has stated that the allegation of mis-appropriating Rs.30/- by raising the inflated amount towards repair of vehicle is without any basis at all. He submitted a voucher along with his written statement, the veracity of which was never put to question. Further, the authority could not substantiate the allegation by any oral or documentary evidence independently. A perusal of the oral and documentary evidence brought-forth during the inquiry would indicate that the prosecution could not produce sufficient evidence to prove that the bill of Rs.80/- given by the C.O. for repair of the vehicle was an inflated one. It is not clear how the bill was restricted to Rs.50/- and what is the basis for deducting Rs.30/- out of this amount. This is no explanation./ justification offered by the prosecution in this regard. Since, the prosecution could not produce sufficient evidence in support of this allegation, the charge levelled against the C.O. does not stand proved.

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4.0

FINDINGS

4.1

Article-I

: Proved.

4.2

Article-II

: Not proved.

4.3

Article-III

: Not proved.

(S.C. Jarodia)

Inquiry Officer &

Commissioner for Departmental Inquiries

New Delhi

24.06.2003

S.K. Sen

66-
No.000/SCT/003
Government of India
Central Vigilance Commission

Satarkta Bhavan,
Block-A, GPO Complex,
INA, New Delhi, the

12.2 OCT 2003

OFFICE MEMORANDUM

Sub:- Disciplinary inquiry against Sh.S.K.Sen Surveyor, Survey of India, Shillong.

D/o Science & Technology may please refer to their U.O.Note No.C-14012/01/99-Vig dated 9-10-003 on the subject cited above.

2. The Commission examined the inquiry report and the comments of the DA therein and accept the findings of the IO. Further, the Commission, in agreement with the DA, would advise for imposition of stiff major penalty of "Compulsory Retirement" on Sh.S.K.Sen.

3. Case records are returned herewith and action taken in pursuance of Commission's advice may be initiated.

(PHILIP BARA)
UNDER SECRETARY

✓
D/o Science & Technology,
(Dr. Laxman Prasad, Scientist "G"),
Technology Bhawan,
New Mehrauli Road,
New Delhi-110 016.

✓
Certified to be Encl. As above
S.K. Sen
Applicor
8.11.07
S.K. Chakraborty
8.11.07

0364-224937
GRAM: "SURNOREAST"
FAX 0364-224937
E-Mail soil@sanchernet.in



NORTH EASTERN CIRCLE OFFICE
POST BOX NO. #89
MALKI, SHILLONG - 793 001
MEGHALAYA, INDIA

SURVEY OF INDIA
CONFIDENTIAL

No. C-11/13-A-305 Dated the 04 Feb 2004

To

✓ Shri S.K. Sen,
Surveyor
Erstwhile No.80(P) Party(NEC)
Now, Meghalaya & Arunachal Pradesh GDC
Shillong.

[Through Shri B. Niranjana, Superintending Surveyor,
erstwhile O.C. No.80(P) Party(NEC)]

Sub: DEPARTMENTAL INQUIRY AGAINST SHRI S.K. SEN, SURVEYOR
SURVEY OF INDIA, SHILLONG.

Ref: In continuation of this Office letter No.C-284/3-A-305 dated 11 Sept 2001

The report of the Inquiry Officer is enclosed alongwith a copy of second stage advice of CVC received vide their O.M. No.000/SCT/003 dated 22.10.2003. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter.

Encl: As above.

*certified to be true
S.K. Sen*

*Applied
8.11.04*

*S.K. Sen
8.11.04*

4/2/04
(B.D. SHRAMA) BRIGADIER,
DIRECTOR,
MEGHALAYA & ARUNACHAL PRADESH GDC
(DISCIPLINARY AUTHORITY)

To,

Dated: 23-02-04

The Director,
Survey of India,
Meghalaya & Arunachal Pradesh, G.O.C.
Shillong.

(Through the Superintending Surveyor, 80 party,
Survey of India, Shillong).

Sub:-Representation/Submissions by Shri S.K. Sen
Surveyor against Inquiry Report dated 24.6.2003,
Submitted by the Inquiry Officer in the
Disciplinary Inquiry drawn against him.

Sir,

With reference to your Memo No. C-41/ 3-A-305
dated 4.2.2004 on the above noted Subject, I have the
honour to submit as follows:-

1. That by a Memorandum dated 13.7.2004, a
departmental proceedings with three article of
charges were drawn against me. In paragraph 2 of the
said memorandum, I was informed that an enquiry will
be held only in respect of article of charge as is
not admitted. In my written statement in defence
dated 3.8.2001 I denied the said charges specifically
as under:-

"At the outset I would like to submit that the
charges as leveled against me is not correct and I
have been made a victim of professional jealousy and
misfortune. Be it as may, while denying the Article
of charges framed against me and statement of
imputation of misconduct I would like to give my
reply as follows:-"

Coertified to
be true
S.K. Sen.
Applicant
8.11.07
S.K.

Chakraborty
8.11.07

Therefore, in terms of the provisions of rule 14 of CCS (CIA) Rules 1965, Inquiry Officer was appointed to enquire into the charges drawn against me.

2. In order to prove the charges the authority has cited as many as 7 witnesses and 15 number of documents. Five witnesses being SW-1 to SW-5 appeared before the Inquiry Officer and made their depositions. No attempt was made to bring the remaining 2 witnesses for deposition.

3. The Inquiry Officer after examination of the witnesses asked the parties to submit a written argument and both the presenting officer and I submitted the same accordingly.

4. The Inquiry Officer in para 3. 48 of the Inquiry report has given a finding that "all these five witnesses are also co-accused in the same case and it seems all of them had joined hands not to give evidence against one another. In fact, they were so tight-lipped during deposition, it was quite evident that they did not want to reveal any truth during the inquiry." Three of the five witnesses viz. SW-3 to SW-5 are the 'verifiers' and the allegation against me is that I instructed the verifiers to show 8 porters in their muster rolls against the authorized strength of 4 porters by adding the names of 4 fictitious porters which caused financial irregularity in the said camp. The said verifiers therefore were also similarly charged in the departmental

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x3

proceedings separately drawn against them with the same allegation of adding the name of 4 fictitious porters in their master rolls making some financial irregularities. It would be curious to note that the Inquiry Officer who inquired into the charges drawn against me, was also the Inquiry Officer to inquire into the charges of the said verifiers. Some set of evidences were led in the said inquiry. But in his inquiry report in respect of the said verifiers the Inquiry Officer has given a different finding, saying that whatever documentary or oral evidence brought before him are not sufficient to prove that the charged officers added 4 (four) fictitious names of porters in their muster rolls and thereby made some financial irregularities. Pursuant to the said inquiry report against the verifiers the disciplinary authority sought for the second stage advice of CVC and on the basis of the said inquiry report and the advice of CVC, exonerated the said verifiers vide order dated 18-11-2003. Therefore, the disciplinary authority may not take a different view in my case only because the Inquiry officer and for that matter the CVC has given different findings against me not supported by any evidence whatsoever. Taking a different view and imposing punishment in a pursuance thereof on me would be highly discriminatory and violative of the provisions of Article 14 of the Constitution of India.

A copy of the order dated 18-11-2003 passed in respect of Sri H.G. Das, one of the 8

Contd/-

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verifiers is annexed for favour of your kind perusal.

5. The Inquiry Officer found that the charges could not be proved by any evidence. But on the basis of alleged 'admission, on the written statement, has found 'sufficient' to prove the allegation only in respect of charge No. 1. The Supreme Court in a recent decision reported in (2002) of Sec. 142 (Sher Bahadur -Vs - Union of India) has held "that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged mis-conduct and the charged Officer, is no evidence in law. The mere fact that the Enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry," would not in principle satisfy the rule of sufficiency in evidence." Conjectures and surmises or suspicious cannot be equated with proof. In Nand Kishore -Vs.- State of Bihar, (AIR 1978 SC 1277,) the Hon'ble Supreme Court while laying down the law of sufficiency of evidence, has held that the "disciplinary proceedings before domestic Tribunal are of Quasi- Judicial character; therefore, the minimum requirement of 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

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respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiry." In my case no witness SW-1 to SW - 5 has said that I instructed the 8 verifiers to show 8 porters on their master rolls against the authorized strength of 4 porters by adding names of 4 fictitious porters which caused financial irregularities in the camp. There is also not a single documentary evidence in support thereof either.

6. Rule 14 (1) of the CCS (CCA) Rules- 1965 provides that no order imposing any of the penalties specified in Clauses (V) to (IX) of Rule II will be made except after an inquiry held, as far as may be, in the manner provided etc. and Sub-rule 5 of the rule *ibid* provides that on receipt of the written statement of defence, the disciplinary authority would enquire into the article of charges as are not admitted. A conjoint reading of the said rules manifests that it is the inquiry and the result thereof which can form the basis of any punishment and not otherwise. If a manner is provided in the rule for doing certain thing, the same should be done in the said manner or not at all. Sub-Rule 9 of rule 14 also provides that if the Govt. servant who has not admitted any of the article of charges in written statement of defence and appears before the inquiry authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty of any article of charges, the inquiry authority shall record the plea, sign the record and obtain the

Contd/-

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signature of the Govt. servant thereon and shall return the finding of guilt in respect of those article of charges to which the Govt. - servant pleads guilty. I did not plead Guilty in respect of any of the charges before the Inquiry officer and therefore, the Inquiry officer proceeded with the enquiry asking the presenting officer to lead evidences in support of the charges and ultimately not a single evidence either documentary or oral could be found /proved to substantiate the allegations brought against me. By seeking to make the written statement as the basis of punishment now, the whole enquiry proceeding is sought to be rendered as otiose and nugatory.

7. Since the inquiry officer found that the charges drawn against me could not be substantiated by any evidence, he ought to have held the charges No. 1 as 'not proved' in the similar manner by which other two charges (i.e. Charge No. II and III) have been held to be not proved. But, The Inquiry officer in a most unfair and unreasonable manner has held the charge No. I as proved apparently by accepting the plea of the Presenting officer, in the written argument that I admitted the charges in my written statement though the same is factually incorrect. The written argument of the presenting officer which is based wholly on extraneous materials, weighed heavily with the inquiry officer, would be evident from the fact that the inquiry officer in his inquiry report has discussed more on the said written argument than on any evidence. The Supreme Court in Jogdish Prasad Saxena -Vs- State of M.P. (AIR 1961 SC 1070) has held

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that admissions not made specifically in reply to a charge sheet cannot be taken into account for penalizing a Govt. Servant and punishment can only be based on clear or unambiguous admission of guilt. My written statement of defence would make it clear that I have made no admission of any allegation far less admissions of guilt.

8. The statements made by me in written statement of defence are consistent and also finds support from the evidence of SW-1 to SW-5. In my written statement of defence as against Article of charges No. I and II, I have stated that I have carried out the order of my superiors indicating that they have directed me to convey their orders for recruitment of 4 extra porters which was factually found to be correct and proved. I have not stated in my written statement that I instructed the verifiers to show the name of 4 fictitious porters to cause financial irregularities and by no stretch of imagination my statement in the written statement can be dubbed as admission. All the witnesses SW-1 to SW-5 have stated that it was the OC (SW-1) who has given the directions to recruit 4 extra porters. When the SW-1 and SW-2, as my superior officers have given me directions to convey to the verifiers for recruitment of 4 extra porters, how can I deny the said fact in my written statement. The verifiers in their depositions also confirmed this fact. The statements made by me with reference to the charge No. I and II indicating that the fact of conveying direction of the camp officer for recruitment of 4 extra porters also was proved during

Contd/.

enquiry. I reiterate that I have never admitted that I instructed verifiers for showing 4 fictitious names which was also not proved either during my enquiry or during enquiry in respect of verifiers. The Inquiry officer has also found the same to be not proved and therefore held the verifiers as not guilty and I was also found to be not guilty in respect of charge No. 11 when charge NO 11 is found to be not proved, how can charge No. 1 which is inter-related be found to be proved. Since my case stands on the same footing as that of the verifiers, equity and justice demands that I should also be exonerated from the charges like the verifiers. The submission of written statement of defence is a stage before formal enquiry. Disciplinary enquiry is not an empty formality and the rule of procedural safeguard should be scrupulously followed in each case. But I was never confronted with the written statement during the enquiry and now at the end of the enquiry it is misapplied and misinterpreted and sought to be made the sole basis of proposed major punishment in breach of the principles of natural justice. Written argument is submitted by the Presenting officer without any factual foundation and the Inquiry officer while coming to his finding in respect of charge No. 1 has relied upon the same without applying his mind to the facts and circumstances of the case and the evidences on record. While discussing the case of the prosecution in para 3.3. of the Inquiry Report, it was stated that I made statements on 20-5-2003/21.5.2003 during my depositions before the Inquiry officer that this

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statement recorded during preliminary inquiry by Board of Officers was done under pressure coercion " and again in his finding in para 3.45 the Inquiry Officer reiterated the same and held that "P.O. has also stated that the C.O. had spent over 2 hours 45 minutes in the Directors chamber for giving his statement during preliminary inquiry and there is no evidence on record that he made any complaint or showed any protest against the alleged pressure/coercion used on him by the Director during the preliminary Inquiry. Apart from the fact that I have never made any such statement on 20-5-2003/21-5-2003 as would be evident from the minutes furnished to the parties, even the said alleged record of preliminary enquiry did not form part of record of the present disciplinary enquiry and are extraneous matter and matters absolutely de-hors the charge. The enquiry officer while giving his finding was however influenced by the said statement of the Presenting Officer and therefore has held in para 3.48 that the C.O. could not produce any evidence of use of pressure of coercion against him." The Inquiry Officer in his finding did not say which fact I have admitted or confessed before coming to the finding of sufficiency of proof of the allegation. The findings are therefore wholly perverse and as such can not form the basis of any punishment far less the major punishment of compulsory retirement.

9. I have put on 72 years of unblemished service in the Survey of India and now at the end of my service career if the proposed major punishment is inflicted

on me on the basis of some unfounded allegations and a perverse finding of the Inquiry Officer and the recommendation of the CVC, de-hors the rule, my entire family, who are all depended on me would be ruined.

I would therefore request you to be kind enough to look into the facts and circumstances of the case in its proper perspective exonerate me from the charges brought against me for the ends of justice.

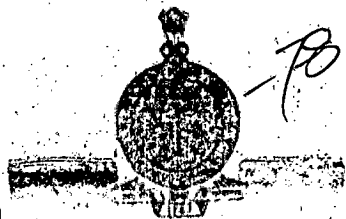
And for which act of your kindness I shall remain ever grateful to you.

Yours faithfully,

(S.K. Sen)

Surveyor, No. 80 party.
Survey of India,
Meghalaya & Arunachal
Pradesh,
G.D.C.
Shillong.

0364-224937
GRAM: "SURNOREAST"
FAX 0364-224937
E-Mail soil@sancharnet.in



ANNEXURE 0 81
MEGHALAYA & ARUNACHAL
PRADESH GDC
POST BOX NO. #89
MALKI, SHILLONG - 793 001

SURVEY OF INDIA
CONFIDENTIAL

No.C-116/3-A-305 Dated the 31 March 2004

ORDER

WHEREAS a Memorandum No.C-210/3-A-305 dated 13 July, 2001 proposing to hold an Inquiry against Shri S.K. Sen, Surveyor of erstwhile No.80(P) Party(NEC), Survey of India, Shillong under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was served on Shri S.K. Sen;

WHEREAS undermentioned statement of articles of charge (Annexure I) was enclosed with the abovementioned Memorandum:-

ARTICLE I

That the said Shri S.K. Sen, Surveyor while posted in No.29 Party(NEC) during the field season 1996-97 was assigned field duty in Arunachal Pradesh. He was appointed as Assistant Camp Officer in Camp No.1 to assist Shri U.N. Mishra, the then Deputy Superintending Surveyor and the Camp Officer of the said Camp.

Shri S.K. Sen while performing the duties of Assistant Camp Officer in the said camp gave instructions to 8 verifiers of his camp to show 8 porters on their muster rolls against the authorised strength of 4 porters, by adding names of 4 fictitious porters which caused financial irregularities in the said camp.

Thus by his above act the said Shri S.K. Sen, Surveyor exhibited conduct unbecoming of a Govt. servant, thereby violated Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE II

That the said Shri S.K. Sen, Surveyor while performing the duties of Assistant Camp Officer in the Camp No.1 of No.29 Party(NEC) during field season 1996-97 gave an offer of financial gain of Rs.1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls.

Thus by his above act, the said Shri S.K. Sen, Surveyor exhibited conduct unbecoming of a Govt. servant, thereby violated Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE III

The said Shri S.K. Sen, Surveyor who was appointed Assistant Camp Officer in the field Camp of No.29 Party(NEC) during the field season 1996-97, while engaged in field work had misappropriated Govt. money amounting to Rs.30/- (Rupees thirty only) by raising inflated amount towards repair of vehicle.

Contd.... p/2

Certified to
be true
S.K. Sen
Applicant
8.11.04
S.K. Advokat
8.11.04

By his above action, Shri S.K. Sen, Surveyor failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

2. From the imputations of misconduct or misbehaviour issued under Memorandum No.C-210/3-A-305 dated 13 July, 2001, it may be seen that while functioning as Assistant Camp Officer in Arunachal Pradesh during January 1997 Shri S.K Sen visited to the Camp of following 8 verifiers on 14th-16th January, 1997 and asked them to show in the muster rolls 4 extra fictitious porters who were not at all engaged on field work, in addition to 4 authorised porters already engaged on the work. These instructions were given by the Assistant Camp Officer without any written order of his CO/OC party.

- | | | |
|----|-----------------------|------------------------------|
| 1. | Shri D.N. Dev | -P/Tr. Grade II and Verifier |
| 2. | Shri D.C. Bhandari | -P/Tr. Grade II and Verifier |
| 3. | Shri S.P. Roy | -P/Tr. Grade II and Verifier |
| 4. | Shri L. Rajwar | -P/Tr. Grade II and Verifier |
| 5. | Shri J.P. Chakraborty | -P/Tr. Grade II and Verifier |
| 6. | Shri J. Khamujai | -P/Tr. Grade II and Verifier |
| 7. | Shri P.K. Roy | -P/Tr. Grade II and Verifier |
| 8. | Shri N.G. Das | -P/Tr. Grade II and Verifier |

Accordingly, in compliance of the orders of the Assistant Camp Officer, 7 verifier shown 4 fictitious porters in their muster rolls as engaged in the work for the period from 16.01.1997 to 28.02.1997 and Shri N.G. Das the 8th verifier shown 4 fictitious porters engaged in the work from 16.01.1997 to 31.01.1997. This resulted a financial irregularity in the said camp.

Thus Shri S.K. Sen failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violating Rule (1)(i) and (iii) of CCS (Conduct) Rules, 1964.

As per the charge contained in Article II, the said Shri S.K. Sen, Surveyor while functioning as Assistant Camp Officer in Camp No.1 of No.29 Party(NEC) during field season 1996-97 had offered a financial gain of Rs.1500/- to each of the 8 verifiers for making entries of 4 fictitious porters in their muster roll for the period from 16.01.1997 to 28.02.1997 by adjusting the amount of Rs.1500/- against their field contgt. advance.

Thus, Shri S.K. Sen failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant thereby violating Rule 3(1)(i) & (iii) of CCS (Conduct) Rules 1964.

As per the charge contained in Article III, the said Shri S.K. Sen, Surveyor while engaged in field work submitted false voucher against repair of Govt. vehicle. On 14.01.1997, Camp jeep was repaired at an actual expenditure of Rs.50/- but Shri Sen prepared the voucher for Rs.80/-. Thus Shri S.K. Sen, Surveyor made misappropriation of govt. money amounting to Rs.30/- for his personal gain.

By his above action, Shri S.K. Sen, Surveyor failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

Contd....p/3

3. In the aforesaid Memorandum, Shri Sen was directed to submit within 10(ten) days of receipt of the Memorandum a written statement of defence and also to state whether he desired to be heard in person. Shri Sen had submitted one written statement of defence on 03 August, 2001 wherein he had pleaded himself not guilty of the charges framed against him vide Article I, II & III. However, it was decided by the Department to hold a detailed inquiry to be conducted by the Central Vigilance Commission to determine the gravity of offence committed by Shri S.K. Sen, Surveyor. Accordingly, the inquiry was conducted by the Commissioner of Departmental Inquiries of Central Vigilance Commission. The Inquiry Report was submitted by the Inquiry Officer on 24.06.2003 wherein the charge framed against Shri S.K. Sen vide Article I enclosed with the Memorandum has been proved but the charges framed vide Article II and III, enclosed with the Memorandum has not been proved due to lack of substantial documentary and oral evidence. The Inquiry Report was sent to CVC for second stage advice. After receiving back the Inquiry Report from CVC alongwith its second stage advice, a copy of the Inquiry Report was supplied to Shri S.K. Sen, Surveyor asking him to submit his representation/submission, if any, within 15 days of receipt of the letter. Accordingly, Shri Sen has submitted his representation. In his written submission, Shri Sen pleaded not guilty of the charge levelled against him vide Article I of the aforesaid Memorandum which has been already proved through Inquiry. Shri Sen wanted to justify his pleading on the ground that since the verifiers who were also involved in the same disciplinary case have been acquitted from the charge on the ground of non-availability of sufficient oral or documentary proof to establish the charge framed against them, therefore Disciplinary Authority should not take different view in his case and he should also be acquitted on the same ground from the charge framed against him. But his plea is not tenable since Shri Sen is the person who had reported the matter of financial irregularities occurred in the Field Camp, at the first instance to the higher authority and he himself clearly admitted his charge not only during the course of Preliminary Inquiry but also in his written statement submitted against the Charge Sheet, though on the pretext of carrying out the orders of his superior officers, without producing any evidence. In support of his admission he also stated in his written statement that bill of those fictitious porters were passed by the Camp Officer and the O.C. Unit, which proves that fictitious porters were shown in the Muster Rolls.

Again his plea that records of his admission made in the Preliminary Inquiry did not form part of record of the present Disciplinary Inquiry is also not tenable since the statement of verifiers made during the course of Preliminary Inquiry formed the part of documents for the regular inquiry.

Therefore Shri Sen's plea that the charge contained in Article I of the Memorandum has been proved without any evidence is unfounded as statement made by him during Preliminary Inquiry as well as his clear admission made in the written statement is sufficient to prove the charge.

However, the charges framed by Articles II & III of the Memorandum could not be proved due to non-availability of sufficient oral or documentary evidences.

4. In the second stage advice, the Central Vigilance Commission has accepted the findings of the Inquiry Officer and advised for imposition of stiff major penalty of "Compulsory Retirement" on Shri S.K. Sen, Surveyor.

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4-81-

5. Having gone through the full facts of the case and also after going through the available documentary evidences as well as the reports of Inquiry Officer, the undersigned has accepted the findings of the Inquiry Officer and has fully agreed with the advice of Central Vigilance Commission.

6. In view of above, the undersigned is in full agreement with the findings of the Inquiry Officer and in accordance with the advice of the Central Vigilance Commission, hereby impose the following penalty on Shri S.K. Sen, Surveyor of erstwhile No.80(P) Party(NEC), now called Assam & Nagaland GDC (Shillong Wing).

"Compulsory Retirement" with effect from date of issue of this order.

B. D. Shrama
31.03.04
(B.D. SHRAMA) BRIGADIER,
DIRECTOR,
MEGHALAYA & ARUNACHAL PRADESH GDC
(DISCIPLINARY AUTHORITY)

To

✓ Shri S.K. Sen,
Surveyor,
Erstwhile No.80(P) Party(NEC)
[Now A&N GDC (Shillong Wing)]
Shillong.

[Through erstwhile O.C. No.80(P) Party(NEC),
now called Assam & Nagaland GDC
(Shillong Wing)]

Copy to: The Director, Assam & Nagaland GDC, Guwahati.

S.K. Sen

CONFIDENTIAL

No. C-359/4-A-799

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
POST BOX NO.89
SHILLONG- 793 001 (MEGHALAYA)

Dated, the 18 Nov., 2003

ORDER

WHEREAS a Memorandum No. C- 218/ 4-A-799 dated 13 July' 2001 proposing to hold an inquiry against Shri N.G.Das, Planetabler, Grade II of No.29 Party(NEC) now posted in No.80(P) Party(NEC), Survey of India, Shillong, under Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 was served on Shri N.G.Das.

WHEREAS undermentioned statement of article of charge (Annexure-I) was enclosed with the abovementioned Memorandum:-

ARTICLE - I

The said Shri N.G.Das, P/Tr. Gde.II, while posted in No.29 Party(NEC) during the field season 1996-97 was assigned field duty in Arunachal Pradesh and accordingly he proceeded to field alongwith Camp I under the Camp Officer Shri U.N.Mishra, then Deputy Superintending Surveyor.

While engaged in field work, the said Shri N.G.Das prepared muster rolls adding 4 (four) fictitious porters who were not at all employed for Govt. work and thereby misappropriated Govt. money amounting to Rs.3,304/- (Rupees three thousand, three hundred and four only).

By his above action, Shri N.G.Das, Planetabler Grade II failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt servant, thereby violating Rule 3(1) (i) & (iii) of CCS (Conduct) Rules, 1964.

2. From the statement of imputations of misconduct or misbehaviour issued under Memorandum No. C- 218/ 4-A-799 dated 13 July' 2001, it may be seen that the said Shri N.G.Das, Planetabler Grade II while posted in No.29 Party(NEC), Survey of India, Shillong proceeded on field duty during the field season 1996-97 alongwith Camp I under the Camp Officer Shri U.N.Mishra, then Deputy Superintending Surveyor.

The said Shri N.G.Das while engaged in field work prepared muster rolls for porters wherein 4 (four) numbers of fictitious porters were added. He raised an amount of Rs. 3,304/- (Rupees three thousand, three hundred and four only) showing wages paid to 4 (four) numbers of porters @ Rs. 1600/- p.m. for the period from 16.1.97 to 31.1.97 whereas these porters were not at all employed for Govt. work and thereby Shri N.G.Das misappropriated Govt. money for his personal gain.

By his above action, Shri N.G.Das, Planetabler Grade II failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3 (1) (i) & (iii) of CCS (Conduct) Rules, 1964.

Copy to be sent to S.K. Saw
Applicant
8.11.03
S.K. Saw
8.11.03

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3. In the aforesaid Memorandum Shri Das was directed to submit within 10(ten) days of receipt of the Memorandum a written statement of defence and also to state whether he desired to be heard in person. Shri Das had submitted one written statement of defence on 01 August, 2001 wherein he had pleaded himself not guilty of the charge framed against him in Article I. However, it was decided by the Department to hold a detailed inquiry to be conducted by the Central Vigilance Commission to determine the gravity of offence committed by Shri N.G.Das, Planetabler Grade II. Accordingly the inquiry was conducted by the Commissioner of Departmental Inquiries of Central Vigilance Commission. The inquiry report was submitted by the Inquiry Officer on 13 December, 2002 wherein the charge framed against Shri N.G.Das, Planetabler Grade II has not been proved for want of any substantial documentary or oral evidence. The Inquiry Officer observed that whatever documentary or oral evidence brought before him are not sufficient to prove that the Charged Officer had added 4 (four) fictitious names of porters in the muster roll and thereby made some financial irregularities.

4. The Inquiry report was sent for second stage advise of the Central Vigilance Commission. The Commission has accepted the findings of the Inquiry Officer and advised exoneration of charge against Shri N.G.Das, Planetabler Grade II.

5. Having gone through the full facts of the case and also after going through the available documentary evidences as well as report of the Inquiry Officer, the undersigned has accepted the findings of the Inquiry Officer and is fully agreed with the advise of the C.V.C.

6. In view of above, the undersigned is in full agreement with the findings of the Inquiry Officer and in accordance with the advise of the Central Vigilance Commission, hereby exonerate Shri N.G.Das, Planetabler Grade II, now posted in No.80(P) Party(NEC), Survey of India, Shillong from the charge framed against him vide this Office Memorandum No.C- 218/4-A-799 dated 13 July 2001.


18.11.03

(B.D.SHARMA)BRIGADIER,
DIRECTOR, NORTH EASTERN CIRCLE
(DISCIPLINARY AUTHORITY)

To

✓ Shri N.G.Das,
Planetabler Grade II
No. 80(P) Party(NEC)

{through O.C.No. 80 (P) Party(NEC)}

S.K. Sen

To

The Surveyor General of India,
Survey of India, Dehra Dun.

(Through Proper Channel)

Sub: ASSURED CARRIER PROGRESSION/PROMOTION GRANTING OF :

Ref: My representation dated 30-05-2001.

Sir,

Once again I like to draw your kind attention to your letter No.C-1975/1902(ACP) Surveyor dated 02-05-2001 and, my subsequent representation under reference, I have the honour to request you to consider my first A.C.P., which I have been deprived of for a long period.

Moreover, the recent promotion to Group 'B' Service granted vide your letter No. C-536/707 dt.27-01-2004 to many of my juniors have given jolt and surprised to note that once again I was deprived of my legitimate benefit.

In view of the above you are requested to look into the matter and sort out the difference occurred between me and my batch mate for not granting the benefit in due time.

Thanking you,

Yours faithfully,

Dated, Shillong.
The 15th March, 2004.

(S.K. SEN)

Surveyor,
No.80(P) Party(NEC).

Certified to be true copy
S.K. Sen.
Applicant
S.K. Sen.
11.07
11.07

ANNEXURE "D"

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BEFORE THE SURVEYOR GENERAL OF INDIA
HATHIBARKALA : DEHRADUN

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

(Shillong Wing)

IN THE MATTER OF :-

An Appeal under Rule 23 of the CCS
(CCA) Rule 1963 against Order dated
31.3.2004 passed by the 'Disciplinary
Authority' illegally imposing punishment
of compulsory retirement on the
appellant.

— A ID —

IN THE MATTER OF :-

Shri Subrato Kumar Sen,

Surveyor,

(under compulsory retirement)

Erstwhile No. 80 (P) Party (NEC),

(Now Assam & Nagaland (D))

(Shillong Wing), Lower Harisava,

P.O. Shillong - 793 004,

Dist. East Khasi Hills,

Meghalaya.

..... Appellant

The humble appeal of the appellant
abovenamed.

Subrato K. Sen
19-04-2004

Certified to be
true copy
S. K. Sen
Applicant
8.11.07
S. K. Chakraborty
Advocate
8.11.07

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MOST RESPECTFULLY STATES:

1. That the appellant till recently was working as a Surveyor in the Erstwhile No. 80 (P) Party (NEC) now A & N GDC (Shillong Wing), Shillong. By an order passed by the Director Survey of India, Meghalaya & Arunachal Pradesh GDC, the appellant was most illegally compulsorily retired from service.
2. That by a memorandum dated 13.7.2001, the Director, NEC, proposed to hold an enquiry against the appellant under Rule 14 of the CCS (CCA) Rules 1965 on the following allegations of misconduct: -
 - (a) That while assigned in field duty in Arunachal Pradesh during 1996-97 to assist Shri U. N. Mishra, Camp Officer 29 Party (NEC), the appellant gave instructions to 8 verifiers of his camp to show 8 porters on their muster rolls against the authorized strength of 4 porters by adding names of 4 fictitious porters which caused financial irregularities in the said camp. (ARTICLE I).
 - (b) That while performing the above duty, the appellant gave an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in that muster roll. (ARTICLE II).
 - (c) That while engaged in the above fieldwork, the appellant had misappropriated Govt. money amounting to Rs. 30/- by raising inflated amount towards repair of vehicle. (ARTICLE III).
3. That on receipt of the above memorandum of charges dated 13.7.2001, the appellant by an application dated 17.7.2001, prayed for

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furnishing him all the relevant documents mentioned in Annexure III and IV to the said memorandum at his own cost in order to enable him to know the basis of the said charges and file his written statement of defence.

4. That after the said application dated 17.7.2001, the disciplinary authority refused as not possible to furnish those documents to the appellant in breach of the principles of natural justice denying him the opportunity to reply to the charges in an effective manner which the appellant found to be unclear. But since the memorandum dated 13.7.2001, contained a definite timeframe for reply and the appellant had an apprehension that the proposed enquiry may go ex-parte against him, he had to file his written statement without perusing those documents on 3.8.2001. The nature of the allegations made in the memo of charges without full particulars had left the appellant to only guess the material particulars on which the charges were sought to be established. In the said written statement of defence the appellant however specifically denied all the article of charges as under: -

"At the outset I would like to submit the charges as leveled against me is not correct and I have been made a victim of professional jealousy and misfortune. Be it as may, while denying the charges framed against me and statement of imputation of misconduct, I would like to give my reply as follows: -

5. That the appellant at this stage deems it proper to mention that the authority simultaneously proposed to draw-up departmental

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proceedings against R. K. Meena, Superintending Surveyor, O/C. No. 83 Party, U. N. Mishra, Superintending Surveyor, O/C. No. 12 Drawing Office and 8 (eight) verifiers viz. Sri D. N. Dev, D. C. Bhandari, J. P. Chakraborty, J. Kharmujai, L. Rajwar, N. G. Das, P. K. Roy and S. P. Roy appellant in respect of the same incident out of which the charges against the appellant is drawn. Therefore since the memo of charges drawn against the appellant contained an allegation that the appellant had instructed the verifiers to engage 4 extra porters and the engagement of 4 extra porters is factually correct who were engaged under orders of the Camp Officer (which were later proved during enquiry) without proper sanction by the Director, the appellant was under an impression/presumption, particularly in absence of any document furnished to him, that the authority has got some prima-facie materials against his said superior officers and therefore to take his own defence the appellant had to make some surmises in his written statement as an abundant caution and stated inter-alia that he carried out orders of the superiors for engaging 4 extra porters and if any financial irregularities had occurred for such extra engagement the same appellant can not be attributed to the appellant.

6. That the disciplinary authority however having found that the appellant has denied all the charges, decided to hold a departmental enquiry into the said allegations and appointed Shri S. C. Jarodia, Commissioner of Departmental inquiries, Central Vigilance Commission, Govt. of India as Inquiry Officer to inquire into the various allegations made against the appellant and also appointed Shri C. C. Bairagi, Deputy Director, Director of Map Publication,

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Survey of India, Dehradun as the presenting officer, both by order dated 11.9.2001. Shri-Bairagi also however, later replaced by Brig. R. N. B. Varma, Dy. Surveyor General, EZ, Survey of India, Kolkata. The appellant was made as departmental witness in the departmental inquiries against the verifiers, but the appellant's application dated 12.9.2002 for dispensing with his deposition in the said inquiries on ground of prejudice, was however, not entertained by the Inquiry Officer.

7. That the appellant states that thereafter the inquiry in respect of the appellant was held and out of 7 listed witnesses, 5 (five) witnesses, viz. Shri R. K. Meena, U. N. Mishra, P. K. Roy, D. N. Deb and Shri J. Kharmujai made their depositions, the other 2 (two) witnesses however did not turn up. Some documentary evidences were sought to be proved during the enquiry. The allegations brought against the appellant being wholly baseless, none of the said witnesses said anything against the appellant in respect of the charges. Not a single document which were sought to be proved during the enquiry could establish any nexus even remotely between the alleged misconduct and the appellant. In his deposition SW-1, R. K. Meena, has stated that as per scale the authorized strength of porters was 72, but 40 porters were initially recruited and additional 32 porters, were required for shifting the camp from one place to another and therefore extra porters were engaged by him and in his cross-examination he has specifically stated that he asked the appellant (Shri S. K. Son) that if situation requires more porters will be required to engaged in the field in addition to 40 porters already given. In his deposition SW-2, U.N. Mishra has stated "Officer-in-

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Charge had also given verbal instruction to S. K. Sen to engage 4 additional porters for each verifiers. To a pointed question by the Presenting Officer as to whether he heard anything about offer of financial gain given by Shri Sen, ACO for adding fictitious name of porters in the muster roll, the SW-2 has specifically said, "No, I did not hear any such thing". SW-3 Shri P. K. Roy, SW-4 Shri D. N. Deb and SW-5 Shri J. Kharimujai have stated in their depositions that 4 extra porters were allotted to them by the Camp Officer and payment were also made by the Camp Officer. All of the said witnesses, who made depositions on behalf of the authority denied the contents of Exhibit S-11, S-12 and S-14 purported to be their statements in the preliminary enquiry which were sought to be proved against the appellant. The witnesses also specifically denied having received offer of any financial gain from the appellant. All the above evidences goes to show that none of the charges drawn against the appellant could be proved during enquiry. The appellant was also put questions by the Inquiry Officer separately

Copies of the depositions made by the witnesses and the appellant are annexed as ANNEXURE 'A', 'B', 'C', 'D', 'E' and 'F' to this appeal.

8. That after recording of evidences, the Inquiry Officer asked both the Presenting Officer and the appellant to submit a written brief which were accordingly filed before the Inquiry Officer. In his written argument the appellant specifically pointed out that there is not a single evidence to link the appellant to the alleged misconduct and the appellant further explained the circumstances under which he had to submit his written statement without perusing the relevant

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documents which were denied to the appellant. However, the Presenting Officer having noticed that the charges drawn against the appellant could not be proved during enquiry by any evidence, sought to rely on an alleged preliminary enquiry and the written statement, though the appellant was never confronted with the said documents during the enquiry. The Presenting Officer has also stated in his written brief that "C.O. has denied his statement given during preliminary enquiry to the Board of Officers and stated that was done under pressure/coercion". But these statements of the Presenting Officer are absolutely beyond the record of the disciplinary proceedings of the appellant. The appellant was never put any question nor confronted with any record of the preliminary enquiry on the written statement in his disciplinary proceeding as would be evident from the depositions annexed as Annexures 'A' to 'F' to this appeal.

9. That the Inquiry officer ultimately submitted his inquiry report and found that from the depositions made by the 5 witnesses nothing could be proved against the appellant but dubbed the said witnesses as 'Co-accused in the same case', though in a departmental proceeding the term 'Co-accused' is absolutely unknown. The Inquiry officer however, having found that no charge drawn against the appellant could be proved during enquiry, went back to the written statement of the appellant and by accepting the plea of the Presenting Officer mechanically gave a finding that C.O. could not produce any evidence of 'use of pressure' and 'coercion' against him. As stated earlier the Presenting Officer in his written brief has stated that the "C.O. has denied his statement given during

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preliminary inquiry to the Board of officers and stated that this was done under pressure/coercion, though the same was absolutely beyond record of the instant departmental proceeding the appellant. The Inquiry officer ultimately without any proof whatsoever, has held that "This goes to prove that C.O. had given oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork. Therefore, the allegation leveled against the C.O. stands proved" and accordingly held the Article of charge I as proved. Curiously enough the Inquiry officer, with the same of evidence/record found that the Article of charge no. II of giving an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls as not proved. Therefore when the allegation of giving offer of financial gain of Rs. 1500/- for inclusion of 4 extra fictitious porters was held to be not proved in Article of charge II, ^{how} ~~has~~ could the Inquiry officer found giving oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork in Article of charges I to be proved on the same set of evidences on record. The Inquiry officer also found Article of charge III as not proved for want of evidence although the statements made by the appellant, in his written statement of defence were in respect of all the charge and not in respect of Article of charge no. I alone. The findings of the Inquiry officer were therefore wholly perverse and only based on extraneous materials. The Inquiry officer even biased his finding on some materials not proved during inquiry.

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10. That the disciplinary authority thereafter without taking any decision himself as required under the law sought for advise of the Central Vigilance Commission under whose authority and control the Commissioner of Departmental Inquiries and the Inquiry officer of the appellant functioned and on their advice decided to impose the extreme penalty of compulsory retirement and forwarded a copy of the said inquiry report on 4.2.2004 to the appellant for making representation. The appellant on receipt of the same submitted his written representation on 23.2.2004 in which he has specifically pleaded that since there is no evidence to prove the charges drawn against him, and since the same inquiry officer with similar allegations and same set of evidence against the verifiers found that "whatever documentary or oral evidence brought before him" are not sufficient to prove that the charged officer added 4 (four) fictitious names of porters in their muster rolls and thereby made some financial irregularities, and since the disciplinary authority has accepted the said finding and exonerated the said verifiers vide order dated 18.11.2003, the same disciplinary authority, can not treat the case of the appellant differently, most particularly when none of the charge drawn against the appellant could be proved by any other evidence. The appellant had also cited some legal authorities in support of his case. But the disciplinary authority without discussing the evidences on record and without considering specific plea of the appellant in this regard, relied in certain extraneous materials and held that the appellant has admitted his charge not only during the course of 'preliminary inquiry' but also in his written statement submitted against the charge sheet. The appellant in this regard submits that the finding of the disciplinary

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authority, are based on wholly extraneous materials and the appellant was never confronted with such materials and no record of 'preliminary enquiry' as referred to above was even brought/proved during the course of inquiry. The appellants plea that the records of alleged admission made in the preliminary inquiry did not form part of the record of the present Disciplinary Inquiry was held to be not tenable on the plea that the statement of verifiers made during the course of preliminary inquiry formed the part of documents for the regular inquiry without explaining as to how the appellant could admit the charge in the "Statement of verifiers made during the course of their preliminary inquiry". That apart even all the said verifiers in clear terms denied and disowned any such statement made in their preliminary inquiry. Therefore it is apparent that the Disciplinary authority has given the said finding of guilt in respect of the appellant with a prefixed mind to punish/ victimize the appellant even without proving the Article of charge I. Though the Disciplinary authority at the beginning of paragraph 3 of the said punishment order has clearly admitted that the appellant did not plead himself guilty of the charges framed against him in Article of Charge I, II and III and hence decided to hold an enquiry, yet when nothing could be proved during enquiry, the entire enquiry proceeding has been rendered as nugatory by going back to the written statement and by deliberately misinterpreting the same and relying on alleged preliminary enquiry held that the appellant has admitted the charges. If the disciplinary authority would have found the appellant admitted the charge, then there would have been no question of holding any enquiry and it is only because, the appellant did not

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admit the charge, the enquiry was held as contemplated under the rule. When the authority has decided to hold an enquiry in respect of charges found to be not admitted, it is the result of the enquiry and/or proof during the enquiry which can be the basis of any punishment and no material before such enquiry as alleged can be relevant to impose any punishment. But the disciplinary authority on the basis of the above wholly perverse finding of the Inquiry officer and bringing out a new case against the appellant imposed the punishment of compulsory retirement from service with effect from 31.3.2004 in a most illegal and unfair manner. It would be pertinent to mention here that the appellant continued to work till 5.4.2004 on which date he was served with the order purportedly passed on 31.3.2004. If the order really was passed on 31.3.2004, the same would have been served on the appellant 31.3.2004 itself. But since the Director, Meghalaya & Arunachal Pradesh, Shillong ceased to remain the appellant's Disciplinary authority from 1.4.2004, and would have been under the disciplinary control & Director, Assam & Arunachal Pradesh GDC, Guwahati, the appellant reasonably believes that the order was passed only as 5.4.2004 giving a back date as 31.3.2004; since the decision to impose punishment even without evidence was a predetermined decision of the disciplinary authority. The disciplinary authority even did not wait for the result of the disciplinary enquiry in respect of Shri R. K. Meena and Shri U.N. Mishra to come out.

Copy of the punishment order dated 31.3.2004 and the order dated 18.11.2003 in respect of one of the verifiers viz. Shri N. G. Das

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exonerating him from the charges are annexed as Annexure 'G' and 'H' to the appeal.

11. That the appellant therefore submits that the order passed by the Disciplinary authority imposing the extreme major punishment of Compulsory Retirement was based as no evidence at all and the authority while inflicting the same on the appellant relied on same extraneous materials without giving any opportunity to the appellant to controvert and/or confront with the same during the enquiry. The alleged admission in preliminary enquiry were never proved during enquiry nor formed part of the Memorandum of charge issued to the appellant and as such the same can not form the foundation to inflict any punishment, far less the major punishment of compulsory retirement in violation of the principle of natural justice. The Inquiry officer himself found that no witnesses made any deposition against the appellant but by misinterpreting the statements in the written statement deliberately held the same to be 'sufficient' to prove the allegation, although the Supreme Court in (2002) 7 SCC 142 (Sher Bahadur - Vs - Union of India) has held that "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Conjectures and surmises or suspicions cannot be equated with proof. In Nand Kishore - Vs - State of Bihar (AIR 1978 SC 1277) the Hon'ble Supreme Court while laying down the law of sufficiency of evidence has held that the "disciplinary proceedings before domestic Tribunal are of Quasi - Judicial character, therefore, the minimum requirement of rules of natural justice is

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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. Suspicion cannot be allowed to take place of proof even in domestic inquiry. In Jogdish Prasad Saxena - vs - State of MP (AIR 1961 SC 1070) the Supreme Court has held that admission not made specifically in reply to a charge sheet cannot be taken into account for penalizing a Govt. Servant and punishment can only be based on clear or unambiguous admission of guilt. The appellant's written statement of defence would show that he has made no admission of any charge far less admission of guilt. Even the Disciplinary authority has admitted this fact in paragraph 3 of the impugned order of punishment by holding that for such denial, a departmental enquiry was ordered. But at the end of the enquiry when no charge could be proved, took a different view and made it as a basis for punishment even by relying on the documents of the same alleged preliminary enquiry in breach of the principles of natural justice. Even assuming that the allegations of instructing 8 verifiers is found to be beyond rule, the allegation of inclusion of fictitious porters having admittedly been not proved, the extreme punishment of Compulsory Retirement is shockingly disproportionate and unreasonable. In fact the punishment imposed amount to removal from service and is vitiated by non-observance of principles of natural justice, irrational procedure impropriety and perversity apart from the same being disproportionate as stated above.

In the premises it is humbly prayed that
the authority may be graciously pleased to

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call for the records of the disciplinary proceedings and look into the case of the appellant in its proper perspective and set aside the order dated 31.3.2004 passed by the Disciplinary Authority and pass necessary orders for immediate reinstatement of the appellant back to the service with all financial and other benefits AND for which act of your kindness the appellant shall ever pray.

Dated, Shillong,
The 19th April 2004

Humble appellant

Subrata Kr. Sen.
19-04-2004
(Subrata Kr. Sen)

Surveyor

(Under Compulsory Retirement)

Erstwhile No. 80 (P) Party (NEC),
(Now Assam & Nagaland GDC,
(Shillong Wing), Lower Harisava,
P.O. Shillong - 793 004,
Dist. East Khasi Hills, Meghalaya.

Advance Copy forwarded to the Surveyor General of India, Hathibarkala, Dehradun, for favour of his kind needful action.

Subrata Kr. Sen.
(Subrata Kr. Sen)

Surveyor

(Under Compulsory Retirement)

Erstwhile No. 80 (P) Party (NEC),
(Now Assam & Nagaland GDC,
(Shillong Wing), Lower Harisava,
P.O. Shillong - 793 004,
Dist. East Khasi Hills, Meghalaya.