

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 326/2005

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. O.A. 326/2005 Pg. 1 to.
2. Judgment/Order dtd. 03/01/2006 Pg. 1 to. 3 Disposed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 326/05 Pg. 1 to. 106
5. E.P/M.P. Pg. to.
6. R.A/C.P. Pg. to.
7. W.S. Pg. to.
8. Rejoinder Pg. to.
9. Reply Pg. to.
10. Any other Papers. Pg. 1 to. 5
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. @
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH.

ORDER SHEET

Original Application No. 326/65

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Sudhangshu Chakraborty

Respondent(s) U. O. T. Joms

Advocate for the Applicants Mr. G. K. Bhattacharjee

Mr. B. Chaudhury

SSG

Advocate for the Respondent(s) J. L. Sarkar Rly St. Counsel

Note's of the Registry Date

Order of the Tribunal

3.1.06

Judgment delivered in open

Court. Kept in separate sheets.

Application is disposed of.

Member

Vice-Chairman

application is filed
 is filed/C P. No. 317846
 depo. No. 260317846
 No. 30.12.05

1m

Dy. Registrar

17.1.06

Copy of the Judgment
 has been sent to the
 office. for issuing
 the same to the applicant
 as well as to the Rly.
 Standing counsel on
 the record.

Received a true copy
 B. Chaudhury
 Adv.
 8.2.06

Contd.

CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

O.A. No. 326 of 2005

DATE OF DECISION: 03.01.2006.

Shri Sudhangshu Chakraborty.

APPLICANT(S)

Mr G.K. Bhattcharjee
Mr. B. Choudhury

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Ors

RESPONDENT(S)

Dr. J.L. Sarkar

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE G. SIVARAJAN VICE-CHAIRMAN
HON'BLE MR. N.D. DAYAL, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

G. Sivaranjan

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.326 of 2005.

Date of order: This the 3rd Day of January, 2006.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN.
HON'BLE MR.N.D.DAYAL, ADMINISTRATIVE MEMBER.

Shri Sudhangshu Chakraborty,
S/o./ Late Sudhir Chandra Chakraborty,
Asst. Material Manager Depot.
N.F.Railway, Katihar, Bihar.

Applicant.

By Advocate Mr.G.K.Bhattacharyya Mr.B.Choudhury.

-Versus-

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

2. General Manager(Personnel)
N.F.Railway,
Maligaon, Guwahati

3. Controller of Stores,
N.F.Railway, Maligaon, Guwahati.

4. Chief workshop Manager,
N.F.Railway, Dibrugarh

5. District Controller of Stores.
N.F.Railway, Dibrugarh.
Now re-designated as
Senior Material Manager-Depot.
N.F.Railway, Dibrugarh.

Respondents.

By Advocate Dr.J.L.Sarkar, Railway counsel.

ORDER(ORAL)

SIVARAJAN,J.(V.C.):

Heard Mr. G. K. Bhattacharyya learned Senior counsel for the applicant and Dr.J. L. Sarkar learned Railway Standing counsel appearing for the Respondents.

We have also perused the impugned order passed pursuant to the direction issued by the Hon'ble Gauhati High Court in W.P. (C) No.7248 of 2001. On perusal of the Division Bench judgment we find

64

that the Hon'ble Gauhati High Court has passed an order interfering with the final order passed by this Tribunal on 28.3.2001 in O.A.No.236 of 1998 to the limited extent setting aside the order dated 30.12.1997 of appellate authority, by remitted the matter to the appellate authority for a De novo decision uninfluenced by any report or views of the Vigilance department in the matter. It is also observed "we further make it clear that what has been emphasized in the present order is that the appellate authority will now re-do the exercise by applying its own independent mind in the matter on the basis of the materials available on record." The impugned order dated 9.8.05 (Annexure 15) reads as:

"The appeal, enquiry report and the order of Disciplinary Authority have been gone through very carefully by the Competent Authority and the following speaking order passed by CWM/DEWS.

No new factual materials have been found to consider the case and the order issued by the Disciplinary Authority stands."

This dispose of the directive issued by the Hon'ble High Court, Guwahati on WP (No.7248) 01/MC/GHY."

The appellate authority says that he has passed a speaking order. What is spoken is that "no new factual materials have been found to consider the case".

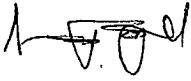
2. Dr.J.L.Sarkar learned standing counsel for the Railways submits that since the matter is coming for admission he will ascertain from the appellate authority as to circumstances under which this type of order has been passed. The Standing counsel also submits that notice of motion may be issued in that regard. We do not think it is necessary to ascertain from the appellate authority as to the circumstance under which this type of order has been issued. Even if a show cause notice is issued to the respondent the impugned order in the present form

lpt

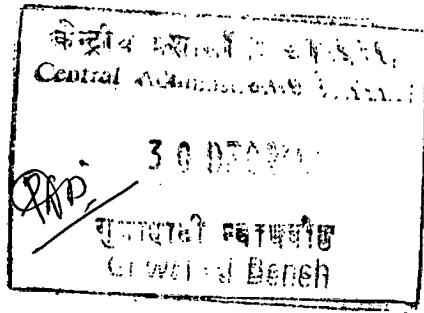
can not be sustained. It can only protract the proceedings which originated some where in 1991. That apart Rule 22 of Railway Servant Disciplinary and Appeal Rules 1968, Sub Rule (2) thereof specifically provides that in the case of an appeal against the order imposing any of the penalties specified in Rule 6 or enhancing any penalty the appellate authority shall consider the matters specified in Rule 22(2) of the Rules particularly clauses (a) an (b). Admittedly no such exercise has been done by the appellate authority. That apart, as already noted by us as per the direction issued by the Hon'ble High Court the appellate authority has to apply his independent mind in the matter on the basis of the materials available on record while disposing of the appeal. No such exercise is seen done. In that sense the impugned order is a cryptic one.

3. In the circumstances we do not think it necessary to issue notice to the respondents. The impugned order cannot be sustained on this short ground. We accordingly, quash the impugned order without going into the merits of the case. We direct the appellate authority to consider the appeal remitted by the Hon'ble Gauhati High Court with reference to the provision of Rule 22 (2) mentioned above and in the light of the specific direction issued by the Gauhati High Court and in this order. This will be done within a period of two months from the date of receipt of this order.

The O.A. is disposed of as above at the admission stage itself. The applicant will produce the copy of the order before the appellate authority for compliance.


(N.D.DAYAL)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE-CHAIRMAN



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

O. A. NO. 326 /2005.

Shri Sudhangshu Chakraborty.

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

L I S T O F D A T E S

01.06.73 : Joined railway service as Clerk. In appreciation of his good service record the appellant was promoted and at present he is posted at Katihar as Asst. Material Manager-Depot.

07.11.91 : While posted as Depot Store Keeper under Respondent No. 5 the appellant alongwith another submitted a joint report to Respondent No. 5 that 6 pieces of Bronge Ingots were missing from the stacks of godown No. 9 of 05 ward.
(Annexure - I, at page No. 25).

On inspection by the Respondent No. 5 it was detected that one C.I. Sheet and the expanded metal cover below the C.I. Sheet roof of godown 9 and 10 was forced open.

12.11.91 : The Respondent No. 5 nominated a one man fact - finding enquiry committee.

04.05.92 : Enquiry Report submitted to Respondent No. 5.
(Annexure - II at Page No. 27).

25.11.91 : As directed by Respondent No. 5, Sri U.N. Bhuyan DSK-I (Stock) conducted physical verification of stocks of godown No. 8, 9 and 10 of 05 ward.

Contd....

06.01.92 : Sri U.N. Bhuyan submitted his report stating that shortage were detected and further stated that the godowns needed thorough repair.
(Annexure - III, at Page No.30).

16/27.10.92 : The Respondent No. 5 served a memorandum of charge to the appellant alleging that he caused a total loss of Rs. 2,19,782.78 to the railway. Application applied for inspection of documents but there was no response.

15.12.92 : Applicant was placed under suspension w.e.f. 16.12.92.

12.06.93 : Respondent No. 5 cancelled the charge sheet dated 16/27.10.92 issued to the appellant in view of the fact that the case has been taken up by C.B.I. as per letter dated 10.06.93.
(Para No. 7, at Page No.7).

14.06.93 : Surprisingly within one day of cancellation the Respondent No. 5 issued a fresh major penalty charge sheet alleging misappropriation of various ingots alongwith Sri Bhabatosh Chakraborty, DSK-I, N.F. Rialway, Dibrugarh.
(Para No. 8, at Page No.7- Annexure - IV, at Page No.32)

20.07.94 : Respondent No. 5 revoked the suspension order.

20.09.94 : Respondent No. 5 issued a corrigendum to the effect that the word "misappropriated" appearing in chargesheet dated 14.06.93 be read as "mis-managed".

17.10.94 : Respondent No. 5 appointed Sri K.C. Choudhury, Inspector, C.B.I. as Presenting Officer before the Enquiry Officer.

20.02.95 : After inspecting of documents the appellant submitted his written statement denying the charges.
(Annexure - V, at Page No.38)
Contd....

20.07.95 : Respondent No. 5 appointed Sri K. Saha, Enquiry Officer, N.F. Railway, Head quarter as Enquiry Officer replacing the earlier one appointed vide memo dated 17.10.94.

25.06.96 : Inspector, R.P.F., Dibrugarh intimated the Respondent No. 5 that some depot watchmen under the Respondent No. 5 has been arrested while they were pifering some valuable Railway Brass materials.

(Annexure - VI, at Page No.39)

26.06.96 : Inspector, R.P.F. furnished a list of seized materials to Respondent No. 5 in connection with arrests made on 25.06.96.

(Annexure - VII, at Page No.40).

As the proceeding was unduly delayed by the authorities the appellant filed O.A. 256/96.

14.02.97 : Hon'ble Tribunal disposed of the O.A. directing the authorities to complete the disciplinary proceeding within 4 months from 14.02.97.

23.05.97 : Respondent No. 5 appointed Sri L. Hangshing, Inspector C.B.I. as presenting Officer.

Out of the 11 documents allowed by the Enquiry Officer from 26 documents prayed by the appellant for copies only 5 documents were furnished to him which caused great prejudice.

12.06.97 : Enquiry was concluded and Presenting Officer and Defence Assistant were directed to submit their written brief.

18.09.97 : Respondents filed a miscellaneous petition in O.A. 256/96 praying for extension of time to implement the order dated 14.02.97 and the same was allowed.

24.09.97 : Enquiry Officer submitted his report.

Contd....

14.10.97 : Copy of the enquiry report was delivered to the appellant with instruction to file representation against the same.
(Para No. 19, at page No. 12
Annexure - VIII, at Page No. 41).

04.11.97 : Applicant submitted his representation against the enquiry report.
(Annexure - IX, page No. 6).

20.12.97 : Applicant was found guilty of charge and the impugned penalty order was issued.
(Para No. 22 at page No. 13
Annexure - X, at Page No. 84).

27.12.97 : Filed departmental appeal before Respondent No. 4.
(Annexure - XI, at page No. 26)

On making enquiry about the outcome of his appeal the appellant came to know that Respondent No. 4 has exonerated him but instead of communicating him the same was forwarded to C.V.C.

08.08.98 : Appellate authority modified the impugned penalty order.
(Para No. 25, ^{Page 15}
Annexure - XII, at page No. 89).

28.03.01 : Being aggrieved the appellant filed O.A. 236/98 before this Tribunal assailing the order dated 20.12.97 and 08.08.98 and the Hon'ble Tribunal after hearing set aside the order dated 08.08.98 and further directing the Respondents to communicate the appellant the order that exonerated him.
(Para No. 26 at Page No. 15
Annexure - XIII, at Page No. 91).

Respondents went on appeal before the Hon'ble Gauhati High Court and the same was registered and numbered as W.P.(C) No. 7248/01.

Contd....

29.03.05 : Hon'ble Gauhati High Court after hearing set aside the judgment and order dated 28.03.01 passed by this Hon'ble Tribunal and further held that the appellate order dated 08.08.98 is not legally valid and thereafter remitted the matter back to the appellate authority for ^{de novo} ~~a/~~ decision on the basis of the material available on record.

(Para No. 28, at page No. 16.
Annexure - XIV, at Page No. 22)

09.08.05 : Applicant has now received this order whereby his appeal was rejected and the order of disciplinary authority was confirmed.

(Para No. 29, at page No. 17
Annexure - XV, at Page No. 18).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI

(An Application under section 19 of the Administrative
Tribunal Act, 1985)

O. A. NO. 326 /2005.

Shri Sudhangshu Chakraborty,
S/o Late Sudhir Chandra Chakraborty,
Asst. Material Manager Depot,
N.F. Railway, Katihar, Bihar.

..... Applicant.

- Versus -

1. Union of India

Representated by the General
Manager, N.F. Railway,
Maligaon, Guwahati.

2. General Manager (Personnel)

N.F. Railway,
Maligaon, Guwahati.

3. Controller of Stores,

N.F. Railway, Maligaon, Guwahati.

4. Chief Workshop Manager,

N.F. Railway, Dibrugarh.

Contd....

Chakraborty
Sudhangshu Chakraborty
Filed by the applicant
through Biplab Chandra Chakraborty
30.12.05

5. District Controller of Stores

N.F. Railway, Dibrugarh

now re-designated as

Senior Material Manager-Depot,

N.F. Railway, Dibrugarh.

..... Respondents.

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

(i) Order dated 20.12.97 passed by the Respondent No. 5 and communicated in his office memorandum No. E/S/57(S) dated 20.12.97 whereby the applicant was reduced to the lowest stage in his present scale of pay for a period of 3 (Three) years with cumulative effect and during this period the applicant would not earn his annual increment. In addition to this, it was further ordered that the pecuniary loss caused to the Railway Administration which was estimated to be Rs. 60,637.26 be recovered from the pay of the applicant in 36 (Thirty Six) equal instalments while the proportionate amount to be recovered from the applicant, being the loss of Branze Ingots estimated at Rs. 87,919.77 after finalisation of the proceedings similarly initiated against Shri Bhabatosh Chakraborty who has the joint custodian of stores as DSK-I/R with the applicant.

(ii) Appellate order dated nil passed by the Respondent No. 4 and communicated by the Respondent No. 5 vide office memorandum No. E/S/57(S) dated 09.08.05 whereby the appellate authority rejected the appeal dated 27.12.97 submitted by the applicant without proper application of mind to the facts of the case and confirming the order issued by the Disciplinary Authority.

Contd....

Bhabatosh Chakraborty

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of this Tribunal.

3. LIMITATION :

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

4. FACTS OF THE CASE :

1. That the applicant joined the Railway Service as a Clerk on 01.06.73 and posted to the office of the then Assistant Controller of Stores, N.F. Railway, Dibrugarh. By dint of hard work, the applicant earned his promotion, in 1978, to the rank of Senior Clerk and posted to the same office. In appreciation of good service record, the applicant was further promoted, in 1981, to the rank of Ward Keeper which was subsequently redesignated as Depot Store Keeper (DSK-III in short). In February, 1983, the applicant was specially selected for service in Vigilance Organisation of the N.F. Railway and posted as the Senior Vigilance Inspector (Stores) under the Chief Vigilance Officer, N.F. Railway, Maligaon where the applicant worked till December, 1988. On completion of his tenure in the Vigilance Organisation, as stated above, the applicant was transferred and posted to the office of the District Controller of Stores, N.F. Railway, Dibrugarh now redesignated as Senior Material Manager - Depot, N.F. Railway, Dibrugarh, where he joined in the last part of December, 1988 as DSK-III and and at present the applicant is posted at Katihar as Asstt.

Contd....

Dibrugarh

Material Manager - Depot. Since the date of his joining service, the applicant has been discharging his duties honestly, sincerely and to the best of his ability and there has been no occasion when he was ever communicated any adverse remark in the Annual Confidential Report or otherwise. In fact, the authority granted several money rewards to the applicant in appreciation of his commendable services during the tenure in the Vigilance Organisation.

2. That while functioning as the DSK - III in the office of the Respondent No. 5, the applicant, on 07.11.91 submitted a joint report along with Shri Bhabatosh Chakraborty, DSK-I who was incharge of receipt of stores addressed to the Respondent No. 5 to the effect that six pieces of Bronze Ingot from all the stacks containing 50 (Fifty) pieces were missing from the godown No. 9 of 05 ward and it was detected by the applicant and Shri Bhabatosh Chakraborty, DSK-I while opening the said godown on 07.11.91 jointly for taking out 2 (Two) pieces of Bronze Ingot from the godown as ordered by the Respondent No. 5. On hearing hue and cry raised by the Railway Officials collected at the spot, the Respondent No. 5 visited the spot at about 2.30 pm and conducted a spot enquiry himself to find out the possible pilferage of the stores. During a rough inspection conducted by the Respondent No. 5 in presence of many Railway Officials, it was detected that one C.I. sheet on the roof of godown 9 and 10 was forced open from the backside and the expanded metal cover below the C.I. sheet roof also forced open. The Respondent No. 5, thereafter called for a carpenter and got the expanded metal roof repaired by fixing wooden plank.

Contd....

Senakabir

Copy of the said report dated 07.11.91
is annexed herewith and marked as
ANNEXURE - I.

3. That the Respondent No. 5, with reference to the joint report dated 07.11.91 submitted by the applicant and Shri Bhabatosh Chakraborty, DSK-I(R) by his office memorandum No. S/ DCOS/91/Policy dated 12.11.91 nominated Shri J.N. Saikia, DSK-I(R) for conducting a fact-finding enquiry as to the theft of valuable items from 05 strong room by opening the C.I. sheet from the backside. The fact finding report was to be submitted to the Respondent No. 5 within 15 days from the date of receipt of the said memorandum. In pursuance of the said order, Shri Saikia submitted his report to the Respondent No. 5 on 04.05.92.

Copy of the report dated 04.05.92 is
annexed herewith and marked as
ANNEXURE II.

4. That as directed by the Respondent No. 5 vide his office memorandum dated 25.11.91, Shri U.N. Bhuyan, DSK-I(Stock), conducted a physical verification of stock, on 25.11.91, 05.12.91, 12.12.91 and from 14.12.91 to 23.12.91 in godown No. 8, 9 and 10 of 05 ward. He submitted his report on 06.01.92 wherein it was stated that shortages were detected in respect of Tin Ingots, Copper Ingots, Gun Metal Ingots (class - II) and rejected Bronze Ingots. The report further clarified that "the strong room godown of 05 ward needs thorough repair. Moreover, the present system of covering roof by C.I. sheet may please be replaced by full pucca (R.C.C.) system to avoid problems of

Contd....

Bhabatosh Chakraborty

theft, pilferage etc. However, some minor repairs are done by the DSK/05 (applicant) himself as a temporary measure to protect the stores".

Copy of said verification report dated
06.01.92 is annexed herewith and marked
as ANNEXURE - III.

5. That thereafter the Respondent No. 5 served a memorandum of charge dated 16/27.10.92 whereby the applicant was informed that he intended to hold an enquiry under Rule - 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The article of charge (Annexure - I) and the statement of imputation of misconduct or misbehaviour were annexed with the said memorandum of charge. The lists of documents and witnesses by whom the article of charge were going to be sustained were also annexed therein. The main allegation levelled against the applicant was that he caused a total loss of Rs. 2,19,782.72 to the Railway Administration by not maintaining devotion to duty and conducted himself in a manner unbecoming of a Govt. (Railway) servant. The applicant was directed to submit his written statement in defence within 10 days from the date of receipt of the memorandum of charges. On receipt of the memorandum, the applicant prayed for inspection/copies of the documents specified in Annexure - III therein but there was no response from the disciplinary authority in this regard.

6. That the Respondent No. 5, by his office memorandum No. E/S/57(S) dated 15.12.92 placed the applicant under suspension w.e.f. 16.12.92 (F.N.) pending drawal of disciplinary proceedings against him.

Contd....

Amritpal Singh

7. That the Respondent No. 5 by his office memorandum No. E/S/57(S) dated 12.06.93, cancelled the major penalty charge-sheet dated 16/27.10.92 issued to the applicant in terms of confidential letter No. Z/Vig/94/210/92 dated 10.06.93 from the Chief Vigilance Officer, N.F. Railway, Maligaon in view of the fact that the case had been taken up by the Central Bureau of Investigation (C.B.I. in short).
8. That surprisingly, immediately after one day of cancellation of the charge - sheet dated 16/27.10.92, as stated above, the Respondent No. 5, issued a major penalty charge-sheet afresh, by his office memorandum No. E/S/57(S) dated 14.06.93, to the applicant under Rule - 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The allegations/charge levelled against the applicant were that he, while functioning as the DSK-III, N. F. Railway, Dibrugarh during 1991-92 failed to maintain absolute integrity and devotion to his duties in as much as he misappropriated Bronze Ingots weighing 2230.900 Kgs valued Rs. 87,919.77 alongwith Shri Bhabatosh Chakraborty, DSK-I, N.F. Railway, Dibrugarh. The applicant further misappropriated Tin Ingots weighing 309.200 Kg valued Rs. 56,725.83, Copper Ingots weighing 25.800 Kgs valued Rs. 2287.43 and Gun Metal Ingots weighing 23.200 Kgs valued Rs. 1624.00.

The article of charge and the imputation of misconduct were annexed with the charge memorandum. A list of documents by which, and a list of witnesses by whom the articles of charge were proposed to be sustained were also annexed therein. The applicant was directed to submit his written statement in defence within 10 days from the date of receipt of the memorandum.

Contd....



Copy of the said memorandum dated 14.06.93 is annexed herewith and marked as ANNEXURE - IV.

9. That the Respondent No. 5, by his office memorandum No. E/S/57(S) dated 19.07.94, revoked the order of suspension dated 15.12.92 with effect from 20.07.94. The Respondent No. 5 by his office memorandum dated 20.09.94 issued a corrigendum to the effect that the word misappropriated appearing in the article of charge of Annexure - I to the charge sheet dated 14.06.93 be read as "mis-managed".
10. That on 17.10.94, the Respondent No. 5, by his office memorandum No. E/S/57(S) dated 17.10.94, appointed Shri K.C. Choudhury, Inspector, C.B.I., Guwahati as the Presenting Officer to present the case of the disciplinary authority before the Enquiry Officer.
11. That the applicant, on 20.02.95, after inspection of the listed documents on 14.02.95 in the office of the C.B.I., Shillong, as allowed by the Respondent No. 5, submitted his written statement in defence to the Respondent No. 5 denying the charges/allegations levelled against the applicant. The applicant further prayed that he be given an opportunity of being heard if the authorities wanted to proceed with the enquiry. The applicant nominated Shri A. Lal, Retired A.P.O. as his defence assistant. These documents were earlier seized in connection with R.C. 7(A)92-SHG. The applicant subsequently came to know that the aforesaid case pending investigation with the C.B.I. was returned in Final Report as sufficient evidence was not forthcoming. The Central Bureau of Investigation, however, advised the Railway authorities to initiate departmental action against the applicant. *Contd....*



A copy of the written statement
in defence dated 20.02.95 is
annexed herewith and marked as
ANNEXURE - V.

12. That thereafter, the Respondent No. 5, by his office memorandum No. E/S/57(S) dated 20.07.95, appointed Shri Kamalendu Saha, Enquiry Officer, N.F. Railway, Head Quarter, as the Enquiry Officer to conduct the proceedings against the applicant in place of Shri A.K. Ganguli who was earlier appointed as the Enquiry Officer vide memorandum of even number dated 17.10.94.
13. That the Inspector, Railway Police Force, Dibrugarh Railway Workshop, by his letter dated 25.06.96, intimated the Respondent No. 5 that three depot watchmen under the Respondent No. 5 namely, Thanu Ram Chutia, Bhola Shah and Gautam Das were arrested on 24.06.96 in connection with Dibrugarh Railway Police Force Case No. 1 (6) 96 under section 3 (A) of the Railway Properties (Unlawful Possession) Act., while they were pilfering some valuable Railway Brass materials through the man hole adjacent to the main gate No. 2 of Store Depot under Respondent No. 5. The accused persons failed to produce any document to support the possession of such Railway materials. They were forwarded in custody on 25.06.96 to the Railway Magistrate, Tinsukia Court. It was also reported that Anil Das and Dilip Das, who were working as watchmen in the Depot fled away under the cover of darkness. The Respondent No. 5 was requested to direct the absconding watchmen, namely Anil Das and Dilip Das, to spare and direct them to report to the Inspector, Railway Police Force,

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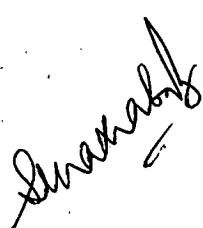
Senakhat

Dibrugarh for doing the needful. A copy of the said letter was also endorsed to the Deputy Chief Mechanical and necessary action. By another letter dated 26.06.96 the Railway Police Force Inspector furnished a list of seized materials to the Respondent No. 5, as desired by him.

Copies of the letters dated 25.06.96 and 26.06.96 are annexed herewith and marked as ANNEXURE - VI & VII respectively.

14. That the applicant became frustrated as the authorities failed to complete the proceedings initiated against him and the completion process became unduly delayed against prescribed time - limits. The applicant, being aggrieved, filed an application in December, 1996 before the Hon'ble Central Administrative Tribunal, Guwahati Bench which was registered as case No. O.A. 256/96. The Hon'ble Tribunal, by order dated 14.02.97, disposed of the application with a direction to the respondents to dispose of the pending disciplinary proceedings as early as possible, at any rate within a period of 4 months from 14.02.97.
15. That thereafter, the Respondents No. 5 by his office memorandum dated 23.05.97, appointed Shri L. Hangshing, Inspector, C.B.I. as the Presenting Officer.
16. That the applicant had specified 26 documents as relevant for his defence and prayed for copies of the same but, surprisingly, the Enquiry Officer allowed only 11 (Eleven) documents without recording any reason. Out of these 11 (Eleven)

Contd....



documents already allowed by the Enquiry Officer, the applicant was furnished with copies of only 5 documents and the copies of the remaining 6 documents could not be furnished due to non-availability which had caused immense prejudice to his defence.

17. That the Enquiry Officer concluded the Enquiry on 12.06.97. The Presenting Officer was directed to submit his written brief to the Enquiry Officer with a copy to the Defence Assistant within 7 days. On receipt of the same, the Defence Assistant was asked to submit his brief to the Enquiry Officer within 7 days from the date of receipt of the written brief from the Presenting Officer.

Accordingly, the Presenting Officer submitted his written brief to the Enquiry Officer supporting the case for the authority but it did not state as to how the delinquent official mismanaged the alleged shortages. The Defence Assistant, in turn submitted his written brief to the Enquiry Officer in support of the defence of the delinquent official raising various salient points for the defence of the delinquent.

18. That thereafter, the respondents filed a Miscellaneous petition No. 174/94 (O.A. 256/96) before the Guwahati Bench of the Central Administrative Tribunal praying for extension of time to implement the order dated 14.02.97 passed by the Hon'ble Tribunal in O.A. No. 256/96. The Hon'ble Tribunal by order dated 18.09.97 allowed 3 months time from 18.09.97 to implement the order dated 14.02.97 and the M.P. was accordingly disposed of.

Contd....

Senanah

- 12 -

19. That the Enquiry Officer submitted his report on 24.09.97 to the Disciplinary Authority on completion of the enquiry and the Respondent No. 5, by his office memorandum No. E/S/ 57(S) dated 14.10.97, furnished a copy of the same to the appellant with instruction to file representation against it within 15 days from the date of receipt of the report. The applicant received the same on 15.10.97.

It appears from the report that the Enquiry Officer summoned Shri K.C. Choudhury, Deputy Superintendent of Police/Central Bureau of Investigation, Guwahati and Shri A.K. Saha, Deputy Superintendent of Police/Central Bureau of Investigation, Gaugtak "Court Witnesses" (C.W. in short) although no such provision has been made in the prescribed Rule. The Enquiry Officer exceeded his jurisdiction by exercising jurisdiction vested in the disciplinary authority.

The Enquiry Officer admitted that out of 11 documents allowed to be called for, only 5 (Five) documents were made available and the remaining 6 (Six) documents were not made available as these were not available which caused great prejudice to the defence of the applicant.

The Enquiry Officer recorded a finding that the shortage of the materials is due to the mismanagement on the part of the charged official although no evidence worth its name is available on record. The Enquiry Officer based his finding only on conjecture that no clue was available for shortage but it can be taken that since there was no clue for theft, both the custodians were responsible for such shortage but no allegation in this respect against the custodians had been made.

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Sengarababu

The Enquiry Report was prepared in vioalton of Rule 9 (25) of the Rules. The report was not a reasoned one establishing co-relation between the evidence on record and the findings arrived at by the Enquiry Officer. Just setting out the names of the witnesses and annexing their evidence to the orders without discussing and spelling out reasons for preferring a particular evidence against the other would not be sufficient.

Copy of the said Enquiry Report dated
24.09.97 is annexed herewith and
marked as ANNEXURE - VIII.

20. That as directed, the applicant duly submitted his representation on 04.11.97 to the Respondent No. 5 assailing the findings arrived at by the Enquiry Officer raising vairous grounds/contentions.

Copy of the representation dated
04.11.97 is annexed herewith and
marked as ANNEXURE - IX.

21. That the Special Judicial (Railway) Magistrate, Tinsukia delivered the Judgment on 18.12.97 in Dibrugarh Railway Police Force case No. 1(6) 96 under section 3(A) of the Railway Properties (Unlawful Possession) Act., whereby two accused persons, namely, Dilip Das and Anil Das (both were watchmen under Respondent No. 5) were convicted.
22. That the applicant was shocked and surprised when he received the impugned order dated 20.12.97 passed by the Respondent No. 5 whereby the applicant, having been found

Contd....

Subarnabati

guilty of the charge levelled against him, was reduced, by way of penalty, to the lowest stage in his present scale of pay for a period of 3 years with cumulative effect and during this period, the applicant would not earn his annual increment. In addition to this, it was further ordered that the pecuniary loss caused to the Railway Administration which was estimated at Rs. 60,637.26 be recovered from the pay of the applicant in 36 equal installments which the proportionate amount to be recovered from the applicant, being the loss of Bronze Ingot estimated at Rs. 87,919.77 after the finalisation of the proceedings similarly initiated against Shri Bhabatosh Chakraborty who was the Joint Custodian of Stores as DSK-I/R with the applicant.

Copy of the said impugned order
dated 20.12.97 is annexed herewith
and marked as ANNEXURE - X.

23. That being highly aggrieved the applicant preferred an appeal on 27.12.97, before the Respondent No. 4 challenging the order of penalty, as stated above, by the Respondent No. 5 raising various grounds/pleas.

Copy of the said appeal is annexed
herewith and marked as
ANNEXURE - XI.

24. That the applicant begs to state that on making enquiries about the outcome of his appeal he come to know that the Deputy Chief Mechanical Engineer (Workshop), N.F. Railway, Dibrugah now re-designated as Chief Workshop Manager,

Contd....

Shenababu

N.F. Railway Dibrugarh i.e. Respondent No. 4 had exonerated the applicant from the charge levelled against him and that he had passed a speaking order on the appeal petition but instead of communicating the order it was forwarded to the Deputy Chief Vigilance Officer, Stores, Maligaon for his acceptance and approval.

25. That the applicant, thereafter, received the appellate order dated nil communicated by the Respondent No. 5 in his office Memorandum No. E/S/57 (S) dated 08.08.98 whereby the appellate authority (Respondent No. 4), in consideration of the condition of the strong room, modified the order of penalty dated 20.12.97 imposed on the applicant by the disciplinary authority (Respondent No. 5) by reducing the pay of the applicant to the lower stage in his present scale of pay for a period of 1 (One) year with cumulative effect and the pecuniary loss to be recovered from the applicant in terms of the order passed by the Respondent No. 5.

Being aggrieved, the applicant filed O.A. No. 236/98 before this Hon'ble Tribunal assailing the orders dated 20.12.97 and dated 08.08.98.

Copy of the order dated 08.08.98 is
annexed herewith and marked as
ANNEXURE - XII.

26. That this Hon'ble Tribunal after hearing the parties and on perusal of the records, by judgment and order dated 28.03.01 allowed the original application by setting aside the order of the appellate authority with a further direction to communicate the order/note of the appellate authority by the which the applicant was exonerated from the charges. *Contd....*

Sengalab

Copy of the said judgment dated
28.03.01 is annexed herewith and
marked as ANNEXURE - XIII.

27. That the Respondents then went on appeal before the Hon'ble Gauhati High Court by filing a writ petition assailing the judgment and order dated 28.03.01 passed by this Hon'ble Tribunal and the writ petition was registered and numbered as W.P.(C) No. 7248/01.
28. That the Hon'ble Gauhati High Court after hearing the parties passed judgment and order dated 29.03.05 setting aside the judgment and order dated 28.03.01 passed by the Hon'ble Tribunal directing the Respondents to communicate the first order of the appellate authority dated 30.12.97 and further held that the second appellate order dated 08.08.98 would not be legally valid as the appellate authority did not apply its independent mind in the matter and merely produced the views of the Vigilance department as revealed from the records and further held that since in view of the above observations there was no valid order of the appellate authority in force, the Hon'ble High Court remitted the matter back to the appellate authority for denovo decision by applying its own independent mind in the matter on the basis of the material available on record uninfluenced by any views or report on the matter and to pass order within a period of 3 (Three) months.

Copy of the judgment and order dated
29.03.05 is annexed herewith and
marked as ANNEXURE - XIV.

Contd....

Sehgal

29. That the applicant has now on 18.08.05 received the impugned order No. E/S/57 (S) dated 09.08.05 communicated by the Respondent No. 5 whereby the Respondent No. 4 rejecting the appeal dated 27.12.97 of the applicant by stating that no new factual materials have been found to consider the case and the order issued by the disciplinary authority stands.

Copy of the impugned order dated
09.08.05 is annexed herewith and
marked as ANNEXURE - XV.

5. **GROUND FOR RELIEF WITH LEGAL PROVISIONS :**

I. For that, the disciplinary authority initiated the instant proceedings on the recommendation of the Central Bureau of Investigation and the authority, in reality, did not form its own prime facie opinion but was influenced by the findings of the Central Bureau of Investigation and having accepted such findings, the disciplinary authority issued the charge-sheet dated 14.06.93 after cancelling the earlier sheet dated 16/27.10.92 on extraneous considerations without recording cogent reasons and without proper application of mind and as such the charge-sheet and consequent imposition of the penalty basing on such illegal charge-sheet are bad in law and liable to set aside.

II. For that, the charge levelled against the applicant are vague and lacking in material particulars which caused great prejudice to the defence of the applicant during the enquiry and as such the imposition of penalty on the basis of such an illegal charge-sheet is bad in law and liable to be set aside.

Contd....

Subrahmanyam

III. For that, the Enquiry Officer, allowed only 11 (Eleven) defence documents although the applicant specified 26 defence documents and the Enquiry Officer did not record any reason to that effect. Out of 11 (Eleven) documents allowed by the Enquiry Officer, only 5 (Five) documents were produced for inspection of the applicant and the remaining 6 (Six) documents could not be furnished to the applicant on the ground of non - availability and such refusal had clearly amounted to denial of reasonable opportunity to the applicant to defend his case before the Enquiry Officer and as such the entire proceedings including the penalty imposed on the applicant are bad in law and is liable to set aside.

IV. For that, the Enquiry Officer committed a serious illegality by summoning witnesses to depose before him although such witnesses were not cited by the disciplinary authority as witnesses in the relevant annexure to the charge - sheet and such a step caused serious prejudice to the cause of the applicant during the enquiry and as such the entire proceedings resulting in the imposing of the penalty on the applicant are bad in law and liable to set aside.

V. For that, the Enquiry Officer submitted the enquiry report in flagrant violation of the Rule 9 (25) of the Rules and as such the penalty imposed on the applicant on the basis of such a vitiated enquiry report is bad in law and liable to be set aside.

VI. For that, in the facts and circumstances of the case, the authorities are alone responsible for inordinate delay in concluding the proceedings against the applicant in violation of the time schedule prescribed in the Rules and as such the entire proceedings are bad in law and liable to be set aside.

Contd....

Subrahmanyam

VII. For that, the authorities committed an illegality by ordering a fact finding enquiry as to the shortage of stores detected instead of lodging an FIR with police/R.P.F. for conducting a investigation when the facts and circumstances of the case warranted a thorough investigation by the competent police authority and that not having been done, the entire proceedings are bad in law and liable to be set aside.

VIII. For that, it is clearly a case of no evidence on record to justify imposition of any penalty on the applicant specially when the enquiry report did not discuss various points raised in written brief and spell out the evidence which supported that the loss was caused due to mismanagement on the part of the applicant and as such the impugned order of penalty imposed on the applicant is bad in law and liable to be set aside.

IX. For that, the impugned order of penalty is grossly disproportionate in the given facts of the case and as such the order of penalty imposed on the applicant is violative of the provisions of Article 14 of the Constitution of India.

X. For that, the appellate authority is required to consider and decide the appeal on merit after considering the contentions raised in the appeal by passing a speaking order and in the instant case, that not having been done, the impugned appellate order is bad in law and liable to be set aside.

XI. For that, the impugned appellate order has been passed in a routine and mechanical way without reflecting any independent application of mind and as such the appellate order is bad in law and liable to be set aside.

Contd....

Sehakab

- 20 -

XII. For that, the appellate authority is required to examine, while disposing of the appeal preferred by the applicant, whether the procedure laid down in the Rules for conducting such enquiries has complied with and if not, whether such non-compliance has resulted in violation of any provision of the constitution or failure of justice and that not having been done, the appellate order and the order of penalty are bad in law and liable to be set aside.

XIII. For that, the appellate authority is also required to examine whether the findings of the disciplinary authority in imposing the penalty on the applicant are based on evidence on record and sustainable and that not having done, after marshalling evidence on record to sustain the findings of the disciplinary authority, the appellate order and the order of penalty are bad in law and liable to be set aside.

XIV. For that, it is apparent from the appellate order that the appellate authority has issued the appellate order dated 09.08.2005 abruptly without independent application of mind to the facts of the case and points raised by the appellant in order to avoid the complexity of the case which is bad in law and as such the same is liable to be quashed and set aside.

XV. For that, considering the facts and circumstances of the case the penalty imposed is too severe and is disproportionate as two punishments have been inflicted upon the applicant and as such the orders are bad in law and liable to be set aside.

XVI. For that, the authority should have lodged an FIR with the police or directed the custodians to do so when it was detected that one C.I. Sheet over the roof of godown No. 9 and 10 of
Contd....

Subrahmanyam

0.5 ward was forced open from the back side and the roof of the sub - godown covered by expanded metal for proper investigation and that not having been done, the action of the authority in fixing responsibility for the loss of stores arbitrarily is bad in law and liable to be set aside.

XVII. For that, the evidence on record clearly indicated that miscreants can commit theft by the hole removing the C.I. Sheet and the expanded metal even without tampering with the seals on the lock and the authorities committed an illegality by completely ignoring this aspect of the matter and as such the action of the authority in fixing responsibility on the appellate is bad in law and liable to be set aside.

XVIII For that, in any view of the matter, the impugned order of penalty and the appellate order are bad in law and liable to be set aside.

6. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant filed an appeal before the appellate authority challenging the impugned order of penalty and the same was disposed of by the appellate authority by its order dated 09.08.05.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant further declares that he had previously filed an application numbered O.A. 236/98 regarding the matter in respect of which this application has been made but the judgment and order of this Hon'ble Tribunal has been
Contd....

Devarakonda

interfered with by the Hon'ble Gauhati High Court on appeal made by the respondent directing the appellate authority to take a *denovo* decision from the appeal stage.

8. RELIEF SOUGHT :

It is, therefore prayed that Your Lordships' would be pleased to admit this application, call for the entire records of the case ask the Respondents to showcause as to why the impugned order dated 20.12.97 passed by the Respondent No. 5 and appellate order dated nil communicated by the Respondent No. 5 vide his letter No. E/S/57(S) dated 09.08.05 should not be set aside and quashed and after perusing the causes shown, if any and hearing the parties set aside and quash the impugned order of penalty dated 20.12.97 (Annexure - X) and the appellate order communicated by the Respondent No. 5 in his letter dated 09.08.2005 (Annexure XV) and/or pass any other order or orders as Your Lordships may deem fit and proper.

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

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Sankar

9. INTERIM ORDER, IF ANY, PRAYED FOR :

It is, further prayed that pending disposal of this application Your Lordships would be pleased to stay the operation of the order dated 20.12.97 (Annexure - X) and the appellate order communicated by the Respondent No. 5 in his letter dated 09.08.2005 (Annexure XV) and/or pass any other order or orders as Your Lordships may deem fit and proper.

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

10. NOT APPLICABLE :

**11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN
RESPECT OF THE APPLICATION FEE :**

(i) I.P.O. No. 26G 317846
(ii) Date of issue : 30.12.05
(iii) Issued by : Ganthali Post Office

12. LIST OF ENCLOSURES :

As stated in the Index.

Contd....

Subrahmanyam

VERIFICATION

I, SHRI SUDHANGSHU CHAKRABORTY, son of Late Sudhir Chandra Chakraborty, aged about 53 years, Asst. Material Manager Depot, N.F. Railway, Katihar, Bihar, verify that the contents of paragraphs 1, 2, 5, 6, 7, 12, 15, 16, 17, 21, 24 and 27 are true to my personal knowledge and those in paragraphs 3, 18, 9, 10, 11, 13, 14, 18, 19, 20, 22, 23, 25, 26, 28 and 29 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 30th day of December, 2005 at Guwahati.

Date : 30.12.05

Place : GUWAHATI

Sudhangshu Chakraborty

Signature of the applicant.

ANNEXURE - I
(TYPED COPY)

To,

DCOS/DBRT

Sub : Theft of valuable items from 05-strong room by opening the C.I. Sheet from the back side.

Sir,

With due respect we want to bring the following few lines for initiating necessary investigation to approached the culprits and bring them to book.

That Sir, a quantity of 18842.5 kgs = 2538 pcs of rejected Bronge Ingots were kept in Strong Room No. 9 of 05 ward after completing departmental verification which was completed on 02.11.91 jointly sealed by Sri B. Chakraborty, DSK/I/R and Sri Sudhangshu Chakraborty, DSK/11/05 on 02.11.91. These were kept in equal stacks of 50 pcs. each and in 3 loose stacks and 93 broken piece in a basket cane cooly as detailed below.

50 pcs x 16	-1	= 799 pcs.
50 pcs x 12	+33	= 633 pcs.
50 pcs x 8		= 400 pcs.
50 pcs x 12	+13	<u>= 613 pcs.</u>
		<u>2445</u>
93 broken pieces in basket.	93	
		<u>2538</u>

These were counted several times by DSK/ISri B. Chakraborty, DSK/II Sri S. Chakraborty and ex-DSK/ISri M.N. Chetia (for handing over charged) before the godown was sealed on 02.11.91.

That Sir, on date i.e. 07.11.91 at 2.30 pm when the seal was broken to open the godown to bring out two pieces of Bronge ingots as per your verval order to send the same to N.T.H. Alipore against your letter No. S/272/4 dated 07.11.91 it was detected that 6 pcs. of Bronge Ingots from all the stack of 50 pcs. have been missing. Immediately a hue and cry has been raised by all who were present at the site and your honour has been informed of the incident and immedately you have come to the spot. You conducted on the spot enquiry to find out the possible pilgerage spot.

Contd....

- 2 -

And no clue has been detected at the first sight, a thorough search has been conducted under your supervision in presence of Sri B. Chakraborty, Sri S. Chakraborty, Sri Ranjit Sengupta DSK/III, Sri Moidur Rahman Hd. Clerk, Sri J.N. Saikia DSK/I/R and others culminating into the detection that one C.I. Sheet over the roof of godown nos. 9 and 10 has been forced opened from the back side and the expanded metal cover below the C.I. Sheet roof of the godown has also been forced opened and kept as it was.

Subsequently your kindself have taken the pain of calling the carpenter and have got the expanded metal roof repaired with wooden planks.

That Sir, at first sight it has been revealed that the miscreants have removed 6 pcs of Bronge Ingots from each lot of 50 pcs and some pieces of Tin Ingots have been removed. As there are many other highly valuable items in the godown arrangement for verification of all the items in those strong rooms may kindly be made.

That Sir, incidently it may be mentioned that shortage of 1807.30 kgs = 237 pcs was detected after weighment of the same item which was completed on 02.11.91 during the process of handing over charge by Sri M.N. Chetia, ex - DSK/I/R due to his superannuation. No reason for the shortage could be ascertained at that time. The dexterity of the miscreants might have prevented in ascertaining the actual reason for the shortage.

We would pray to you to investigate both the incidents simultenously which may help in busting a racket to ensure a permanent seal of the pilgerage.

You are also requested to arrange for a complete pucca strong room 12' x 20' with shutter door in the main godown of 05 section for keeping the high value item safely after verification as mentioned above so that recurrances of such incidents could be restrained in future.

Dated Dibrugarh.
The 7th Nov. 91.

Yours faithfully,

Sd/- B. Chakraborty, DSK/I/DBRT.
Sd/- S. Chakraborty, DSK/05.

Attested by
Choudhury
Adv.

34

ANNEXURE - II
(TYPED COPY)

S/11/DSK/G dated 02.05.92.

To,

DCOS/DBRT

Sub : Theft of valuable items from 05-strong room by opening the C.I. Sheet from the back side.

Ref. : 1. Theft report dated 07.11.91. submitted by Shri S. Chakraborty, DSK/05 and Shri B. Chakraborty, DSK/I/R.
2. Your letter No. S/DCOS/91/Policy dated 12.11.91.

I have examined the following materials/documents -

1. Theft report dated 07.11.91 submitted by Shri B. Chakraborty, DSK/05 and Shri B. Chakraborty, DSK/I/R.
2. Departmental verification report No. S/DCOS/Policy/91 dated 06.01.92 submitted by Shri U.N. Bhuyan, DSK/I/Stock.
3. Stock Sheet No. 1/Stock Sheet/SV/91 dated 25.11.91.
4. Stock Sheet No. 2/Stock Sheet/SV/91 dated 05.12.91.
5. Stock Sheet No. 3/Stock Sheet/SV/91 dated 12.12.91.
6. Seal label dated 07.11.91 signed by Shri S. Chakraborty, DSK/05 and Sri B. Chakraborty, DSK/I/R.
7. Joint tally book of Bronge Ingot at Strong room No. 9 of 05 ward from 14.12.91 to 23.12.91 signed by Shri U.N. Bhuyan, DSK/I/R.
8. COS/MLG's P.O. NO. E/91/73/0113/OT/109/00927 dated 20.03.74.
9. DSK/NBQ's DTI No. 44/04/1378/2 dated 29.06.82.
10. Joint Tally Book of verification of item pertaining to 05 ward signed by Sri S. Chakraborty, DSK/05 U.N. Bhuyan, DSK/I/Stock.

The following vital points may be taken into consideration while deciding the future course of action for loss of administration value amounting to Rs. 1,48,557.03.

No. 1. Shortage of Tin Ingot to P.L. No. 91160017 vide stock sheet No. 1/stock sheet/SV/91 dated 25.11.91 is 309.22 kgs value Rs. 183.46 per kg comes to $(309.200 \times 183.46) = \text{Rs. } 56,725.83$.

No. 2. Shortage of 25.800 kgs of copper ingot to P.L. No. 91100057 vide stock sheet No. 2/stock sheet/SV/91 dated 5.12.91. value at Rs. 88.66 per kg comes to $(25,800 \times 88.66) = \text{Rs. } 2287.43$

No. 3 Shortage of 23.200 kg Gun Metal ingot CIII to P.L. No. 91090040 vide stock sheet No. 3/stock sheet/SV/91 dated 12.12.91 value Rs. 76.00 per kgs. comes to $(23,200 \times 76.00) = 1624.00$.

Contd....

- 2 -

No. 4 shortage of Rejected Bronge Ingot unclassified is 2230.900 kg (291 pcs) as per verification report submitted by Shri U.N. Bhuyan DSK/I/Stock vide No. S/DCOS/Policy/91 dated 06.01.92 (Item 1 & 3) value @ Rs. 39.41 per kg comes to $(2230.900 \times 39.41) = \text{Rs. } 87919.77$.

No. 5. Thus total value of item No. 1 to 4 $(56725.83 + 2287.43 + 1624.00 + 87919.77) = 148557.03$.

N.B. The rate of Rejected Bronge Ingot Rs. 39.41 kg taken into account as whichever is higher basis inconnection with COS/MLG's P.O. and DCOS/NBQ's DTI as referred above.

No. 6. It is confirmed from the theft report dated 07.11.91 submitted by Shri S. Chakraborty, DSK/05 and Shri B. Chakraborty, DSK/I/R that the godown was sealed jointly on 02.11.91 after handling over charge by Shri M.N. Chetia, Ex - DSK/I.

No. 7. It is also confirmed from the theft report the incident detected on 07.11.91 at about 2.30 pm while opening the strong room No. 9.

No. 8. It is also confirmed from the theft report as no clue has been detected at the first sight subsequently at through search conducted by DCOS/DBRT himself in presence of Shri B. Chakraborty, DSK/I/R, Shri S. Chakraborty, DSK/05, R. Sengupta, DSK/06, J.N. Saikia, DSK/I/R, Muidur Rahman, Hd. Clerk/G, S. Chakraborty, Sr. Clerk/G and detected that one C.I. Sheet over the roof the godown No. 9 & 10 has been forced opened from the back side and expanded metal cover below the C.I. Sheet roof of the godown has also been forced opened and kept as it was. The feasibility of happening over the roof approximately 15' ft. height is a thoughtful one as there was no sigh at the C.I. Sheet of the roof.

No. 9. It is confirmed from the theft report that they have mentioned godown No. 9 & 10 but they did not mention godown No. 8.

No. 10 From the verification report of Shri U.N. Bhuyan dated 06.01.92, he had verified 22 items out of which 18 items found non-discrepant and 4 (four) items found discrepant. These 22 items belong to strong room No. 9 & 10 asstated in the theft report. Sri Bhuyan in his report has not mentioned any where specified room No. but all along mentioned strong godown of 05.

No. 11. How strong room No. 8 come into picture is a matter thoughtful one.

No. 12. In respect of item No. 1, 2 & 3 Shri S. Chakraborty DSK/05 is full custodian of materials in strong room No. 8, 9 & 10 and keys of the strong rooms were with Shri S. Chakraborty, DSK/05.

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- 3 -

No. 13. In respect of item No. 4 the consignment was without accountal and thereby Shri B. Chakraborty, is the custodian of the materials only.

No. 14. The strong room No.9 of 05 ward is under the custody of DSK/05.

No. 15. The keys of the strong room No. 05 ward was with Sri S. Chakraborty, DSK/05.

No. 16 Duplicate keys of the godowns and strong room remained with DSK/05 and he deposited those only on 14.01.92 vide his report dated 14.01.92.

DSK/G/DBRT.

Copy to DSK/R/I for information, guidance and to keep the copy in the Bronge Ingot case please.

Sd/- J.N. Saikia
dated 04.05.92
DSK/G/DBRT

Attested by
B. Chakraborty

Office of the
Distt. Controller of Stores,
N.F.Railway, Dibrugarh.

No. S/DCOS/Policy/91 dt. 6.1.92.

To
DCOS/N.F.Rly/DBRT.

Sub: Verification of non-ferrous materials containing in
Strong godown of 05 Ward.

Ref: Your L/No. S/DCOS/Pharmacy/91 dt. 25.11.91.

.....

In reference to your above, the verification of the Strong godown of 05 Ward was conducted on & from 25.12.91 and concluded on 23.12.91. In the said godown I verified 22 (twenty two) items in total and result submitted as follows.

Items verified have no difference in ground balance.

1. P.L.NO. 91050388. 1). Brass Round 45 mm	Accounted under S/Sheet No. 3/Stock Sheet/DV/91 dt. 3.12.91.
" " 91040280. 2). Brass Hex 36 mm	Accounted under S/Sheet No. 4/Stock Sheet/DB/91 dt. 4.12.91.
" " 91104257. 3). Copper Sheet 1.6 mm	Accounted under S/Sheet No. 5/Stock Sheet/DV/91 dt. 11.12.91.
" " 91105061. 4). Copper Rod 10 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91106138. 5). Copper Rod 25 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91106084. 6). Copper Rod 20 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91040267. 7). Brass Hex 32 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91110075. 8). Lead Ingot	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91050431. 9). Brass Round 50 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91170035. 10). Zinc Ingot	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91040255. 11). Brass Hex 30 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91050091. 12). Brass Round 12 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91050182. 13). -do- 22 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91106102. 14). Copper Rod 22 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91040127. 15). Brass Hex 17 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91040050. 16). -do- 8 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91040206. 17). -do- 24 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.
" " 91106151. 18). Copper Rod 27 mm	Accounted under S/Sheet No. 6/Stock Sheet/DV/91 dt. 12.12.91.

2. Items Verified have difference in ground balance of 05 Ward.

P.L.No. 91160017. 1). Tin Ingot. 309.200 kgs. @ Rs. 183.46 per kg. found short and accounted under S/Sheet No. 1/Stock Sheet/SV/91 dt. 25.11.91.
" " 91100057. 2). Copper Ingot: 25.800 kgs. @ Rs. 88.66 per kg found short and accounted under Stock Sheet No. 2/Stock-Sheet/DV/91 dt. 5.12.91.
" " 91000040. 3). Gun metal Ingot. Cl.II. 23.200 kgs & Rs. 76/- per kg found short and accounted under S/Sheet No. 7/Stock Sheet/DB/91 dt. 12.12.91.

3. Items verified having discrepancy in ground balance of 'R' Section kept in 05 Strong Godown.

1. Rejected Bronze Ingot (unclassified) :-

The original weight of the items received from Sri M.N. Chetia, Ex. DSK/I/R by Shri Rhabatosh Chakraborty, DSK/I/R is 18842.500 kgs. against 2538 pieces of Ingot including 93 broken pieces.

After verification, the ground balance found 16611.600 kgs. against 2247 pieces of Ingot including 93 broken pieces. Thus - Total shortage is 2230.900 kgs. against 291 pieces.

On opening the godown (Strong) 05 Ward for verification of specially rejected unclassified Bronze Ingot pertaining to Receipt Section the door of the godown was found properly sealed and locked under joint signature of Shri B.Chakraborty, DSK/I/R and Shri Sudhangshu Chakraborty, DSK/II/05.

The godown were opened in presence of Shri Chakraborty of 07 and Chakraborty of 05 daily and the label has been kept by Shri Bhabatosh Chakraborty (jointly signed) during verification. The verification of unclassified Bronze Ingot started on 14.12.91 and concluded on 25.12.91. On the day of last verification i.e., 23.12.91 the godown is kept under lock and key jointly sealed and labelled by Shri Sudhangshu Chakraborty and Shri Bhabatosh Chakraborty. The Ingot pieces are arranged as under duly wrapped and sealed with wire by DSK/I/R.

44	pcs	x	12	row	+	13	=	541	pcs.	
44	"	x	20	row	+	13	=	913	"	
44	"	x	14	"			=	616	"	
41	"	x	1				=	41	"	
43	"	x	1				=	43	"	
Broken								=	93	" (In cane basket)

2247 pcs.
Weighing 16611.600 kgs.

Tally of every item pertaining to 05 Ward is maintained and signed by jointly by DSK/05 and DSK/I/R

Tally of item concerning 07 Ward keeping in 05 Ward is maintained and jointly signed by DSK/05, DSK/07 and DSK/I/Stock in tally book/in safe custody of DSK/I/S after verification. /kept

In course of verification it is observed that the Strong Godown of 05 Ward needs thorough repair. Moreover, the present system of covering roof by C.I. Sheet may please be replaced by full pucca (RCC) system to avoid problems of theft, pilfer etc. However, some minor repairs are done by DSK/05 by himself as a temporary measures to protect the Stores.

This staff submitted on the day of 24th Dec./91 for your perusal and necessary action as desired.

Copy to :- 1. DSK/I/R (Shri J.N.Saikia)
2. DSK/I/R (Shri B.Chakraborty)
3. DSK/05 (Shri S.Chakraborty)
4. DSK/I/Stock

For information and necessary action.

Sd/-U.N.Bhuyan.
DSK/I/Stock
as verifier.

Attested by
Bhoudhury.
Adv.

STANDARD FORM NO. 5

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

No. E/S/57 (S)

DCOS/N.F.Rly./DBRR

(Name of the Railway Administration).

Place of issue) DIRT

Dated 14/6/ 19 93

MEMORANDUM

The President/Railway Board/undersigned propose(s) to hold an Inquiry against Shri Sudhangshu Chakraborty under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. 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 mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents which, and a list of witnesses by whom, the articles of charges are proposed to be substantiated are also enclosed (Annexure III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

2. Shri Sudhangshu Chakraborty is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of the Memorandum. For this purpose he should contact** immediately,

3. Shri Sudhangshu Chakraborty is further informed that if he so desires, take the assistance of any other railway servant or official of Railway Trade Union (who satisfies the requirement of rule 9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official(s), Shri Sudhangshu Chakraborty should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the "undertaking" should be furnished to the undersigned General Manager § Railway along with the nomination.

4. Shri Sudhangshu Chakraborty is hereby directed to submit to the undersigned (through General Manager § Railway) a written statement of his defence (which should reach the said G.M.) within 10 days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also:-

- (a) to state whether he wishes to be heard in person and
- (b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence.

Cntd...2.

Rule 9
6/6/93
General Manager

: 2 :

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

7. The attention of Shri Sudhangshu Chakraborty is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service and the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Sudhangshu Chakraborty is aware of such representation and that if has been made at his instance action will be taken against him for violation of Rule 20 of the Railway services (conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

④ Encls : One

(SIGNATURE)

(L.N. Bharali)

Name and Designation of Competent Authority.

DCOS/DBRT

To Shri Sudhangshu Chakraborty

DSK/III (Designation)

DBRT (Place)

(a) Copy to Shri J.N. Saikia, DSK/I/G (Name & Designation of the lending authority) for information.
Strike out whichever is not applicable.

* To be deleted if copies are given/not given with the Memorandum as the case may be.

**Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the Investigating Authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of documents to enable that authority being mentioned in the draft Memorandum.

\$\$Where the President is the disciplinary authority.

§ To be retained where President of the Rly. Board is the competent authority.

④ To be issued wherever applicable - See Rule 16(I) of the RS(DA) Rules, 1968 - Not to be inserted in the copy sent to the railway servant.

Copy to Dy.CVO(S)/ MLC, for information with reference to his confidential letter no. Z/44g/94/2/10/92 dated 10th June/1993. and 29.12.92.

Article of charge

While Shri Sudhangshu Chakraborty was posted and functioning as DSK/III, N. F. Railway, Dibrugarh during the year 1991-92, he failed to maintain absolute integrity and devotion to his duty as much as he (misappropriated) Bronze Ingots Weighing 12230.900 Kgs. valued Rs. 87919.77 along with Shri Bhabatosh Chakraborty, DSK/I, N.F. Rly., Dibrugarh. He further (misappropriated) Tin Ingots Weighing 309.200 Kgs. valued Rs. 36,725.83. Copper Ingots Weighing 25.800 Kgs. valued Rs. 2207.43 and Gun metal Ingots Weighing 23.200 Kgs. valued Rs. 1624.00 and thereby the above acts Shri Sudhangshu Chakraborty contravened the provision of Rule 3, (1) (12 & (11) of Rly. Service and (conduct) Rules, 1966.

ANNEXURE-II

It is alleged that Shri Sudhangshu Chakraborty was posted and functioning as DSK/III in the office of the DCOS, N. F. Rly., Dibrugarh in the year 1991-92.

It is alleged that Bronze Ingots belonging to Ward no. 05 was kept in Ward 05 of which Shri Sudhangshu Chakraborty was in-charge. On superannuation of Shri M.N. Chetia, DSK/I Shri Sudhangshu Chakraborty became joint custodian alongwith Shri Bhabatosh Chakraborty, incharge of Ward 07 in respect of Bronze Ingots.

It is alleged that after physical verification of the Bronze Ingots kept in 05 Ward in presence of both Shri Sudhangshu Chakraborty and Shri Bhabatosh Chakraborty, that door of the strong room was locked and sealed under the joint signatures of the both custodians on 2/11/91 and the key was retained with Shri Sudhangshu Chakraborty.

It is alleged that on 7/11/91 when the DCOS, Dibrugarh ordered sending of few Bronze Ingots to National Test House, Alipur, the door of the strong room was opened in presence of the both Shri Sudhangshu Chakraborty and Shri Bhabatosh Chakraborty. On opening of the door 1000 Kgs. of Bronze Ingots were found missing.

It is alleged that on receipt of the missing report DCOS Dibrugarh ordered verification of stock of Ward by Shri J.N. Bhuyan, DSK/I, Dibrugarh. He also appointed Shri J.N. Sankha, DSK/I, Dibrugarh for fact finding.

It is alleged that during verification of the said stock between 14/12/91 and 23/12/91 in presence of both

Conld...2.

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Shri Sudhangshu Chakraborty and Shri Bhabatosh Chakraborty, Bronze ingot weighing 1230.900 Kgs. valued Rs. 87,919.77 was found short for which Shri Sudhangshu Chakraborty and Shri Bhabatosh Chakraborty was joint custodians.

It is alleged that during the said verification Tin ingots weighing 309.200 Kgs. valued Rs. 56725.83, Copper ingot weighing 25.000 Kgs valued Rs. 2287.48 and Gun metal ingots weighing 23,200 Kgs. valued Rs. 1624.00 were also found short for which Shri Sudhangshu Chakraborty was the sole custodian.

It is alleged that Shri Sudhangshu Chakraborty tried to give an impression that the shortage was due to theft committed by some unknown culprits, but the possibility of the fact was ruled out by the report submitted by Shri J.N. Saikia, fact finding officer.

Thereby the above acts of Shri Sudhangshu Chakraborty DSK-III office of the DCOS, N.F. Rly. Dibrugarh contravened the provisions of rule 3(1) (i) & (ii) of Rly. service (Conduct) Rule, 1966.

10/14/6193
DCCS/DBRT

Calendar of evidence (Documentary)

✓ 1. Tally Book for Depot Verification for 07 ward from 29-12-89 to 2.11.91.

This will prove that ~~xx~~ as on 2.11.91 there was a balance of 18842.50 Kg. of Rejected Bronze ingots is 2538 pieces in 05 ward which was accepted by both A-1 and A-2.

✓ 2. Field Book for Deptt. verification concerning to DSK/Stock Dibrugarh maintained by Shri U.N.Bhuyan.

This will prove the shortage were detected by Shri U.N.Bhuyan during verification from 14.12.91 to 23.12.91.

✓ 3. Ledger Card No. 91/05/45) page No. 10 in respect of Copper Ingots.

Sl. No. 3 to 5 will ~~xx~~ prove the shortages during verification from 14.12.91 to 23.12.91.

✓ 4. Ledger Card No. 91/05/43 (Page No. 4) in respect of Gun metal.

✓ 5. Ledger card No. 91/05/30 (Page No. 18) in respect of Tin Ingots.

Sl. No. 6 to 8 will prove the cost of the materials.

✓ 6. SFR Page No. 209 for Nov/91 in respect of Copper Ingots.

This will prove that Shri J.N.Saikia was appointed Fact finding officer regarding shortages of materials.

✓ 7. SFR page No. 183 for January '92 in respect of Tin Ingots.

✓ 8. Position of stock item for Dec/91 in respect of Gun metal.

This will prove that Shri Saikia did not agree that the shortage was due to theft.

✓ 9. Verification report of Shri U.N.Bhuyan dt. 6.1.92 in respect of non-ferrous materials containing in godown of 05 ward.

✓ 10. Letter No. S/DCOS/91/Policy dated 12.11.91 of DCOS, Dibrugarh.

✓ 11. Report of S/11/DSK/G Dtd. 2.5.92 of Shri J.N. Saikia.

This will prove that at the time of opening the door the seal on the labels were intact.

✓ 12. Seal label of Strong Room No. 9 of 05 ward dt. 7.11.91 and 8.11.91 jointly signed by S.Chakraborty & B.Chakraborty.

Contd. 4.

13. Depot transfer issue Note
Not Enq/04/1378/2 dt.
29.6.82. This will prove the cost
of Bronze Ingots.

14. Handing over/taking over charge
report of Sri M.N.Chetia and
Sri B. Chakraborty, dt.4.11.91.

15. Report of theft submitted by
Sri B.Chakraborty and Shri
S. Chakraborty dt. 7.11.91
addressed to DCOS. *45*

16. Report of theft by Sri. S.Chakraborty
dt. 9.1.92 in respect of Tin Ingots.

ANNEXURE-IV

Calendar of Evidence (Oral)

1. Sri J.N.Saikia, DSK-I
N. F. Rly. Dibrugarh.

He will prove that
Sri S.Chakraborty and Shri
B. Chakraborty were joint
custodians of Bronze Ingots
and Sri S. Chakraborty
was the sole custodian in
respect of other items.

2. Sri U.N.Bhuyan,
DSK/I/DBRT
(Retired)

He will also prove the amount
of shortage found during
the verification of stock.

He will further prove that
there was no possibility of
theft.

Attested by
Boudhury
Adv.

14/6/93
DCOS/DBRT

To
DCOS/DBRT,
N.F.Railway.

W

Sub: Defence against the Memorandum No. E/S/57 (S)
dated 14.6.95.

.....

Sir,

Most respectfully I beg to state that I have gone through the prosecution documents vide Annexure-III of the Memorandum mentioned above at CBI/Shillong Office on 14.2.95 and I totally deny the charges levelled against me.

If, in case your honour is not agreed to exonerate me from the charges I am ready to attend the DAR enquiry for oral evidence and I nominate Sri A.Lal, APO (Reta)/KIR (presently residing in the New Mymensingh Railway Colony, Qtr.No. L/5/B, Katihar) to be summan to attend the DAR for assisting me as defence counsel whose consent letter has already been sent to you under Regd. with A/D post Srl No. 3600 dated 16.2.95 from Katihar Head Post Office.

With best regards,

Dated, Dibrugarh.

the 20th Feb.'95.

Yours faithfully,

Sd/- S.Chakraborty.
DSk/III/DBRT.

.....

Received by

Sd/- N.Namasudra, OS/II/Gen
for, Distt. Controller of Stores.

N.F.Railway, Dibrugarh.

(Office Seal)

Attested by
Choudhury
Adv.

ANNEXURE - VI

No. DPWS/1 (6) 16 RP (UP)/96

Office of the,
IPF/P/DBWS.

To,
DCOS/Store/DBRT
N.F.RLY.

Sub : Arrest of depot watchmen DCOS/DBRT in C/W RP(UP)
Act. case and forwarded to court.

Ref. : This post L/No. DPWS/1 (6) RP(UP) dated 24.06.96.

In reference to above I like to inform you that the following depot watchmen of DCOS/DBRT were arrested on 24.06.96 while gate adjacent to the main gate No. 2 of DCOS/DBRT and a case has been registered at this post vide No. 1(6) 96U/S 3(a) RP (UP) Act. 66 as they failed to produce any legal document or satisfactory reply for the possession of the said Rly. property from the store. The arrested persons forwarded to the Hon'ble Special Railway Magistrate Tinsukia Court for judicial custody. Two identified accused namely (1) Anil Das watchman and (2) Dilip Das watchmen managed to fled away inside the store side under the cover of darkness.

The following accused persons were forwarded to the court on 25.06.96.

1. Sri Thanu Ram Chutia, Watchman.
2. Sri Bhola Shah, Watchman.
3. Sri Gautom Das, Watchman.

And the following persons were absconding (1) Sri Anil Das, watchman
(2) Sri Dilip Das, watchman.

Therefore requested kindly spare and direct the above absconders to the undersigned to record their statement in C/W the case and arrest them to face trial in the court of law.

This is for information and necessary action please.

Sd/- Illegible.
Dated : 25.06.96.
IPF/DBWS

Copy to : Dy. CME/DBWS for kind information
and similar action please.

IPF/DBWS

Attested by
Chowdhury
Adv.

ANNEXURE - VII

No. DPWS/1 (6) 16 RP (UP)/96

Office of the,
Insp/RPF/DBWS.

To,
DCOS/DBRT
N. F. RLY.

Sub : List of seized materials.

I would to inform you that the following Railway Brass Materials were seized by me from the possession of accused person Thanu Ram Chutia, Bhola Shah and Gautam Das in connection with the post case No. 1 (6) 96 U/S 3 (a) RP (UP) Act, 66 and forwarded the accused person the court for jail custody. The seized materials are given below as desired by you.

1. Brass bearing cell for axle box made of brass used in ICF coaching of Railway = 13 nos out of which 07 bearing mark of body (i) A 136 (ii) 1840 AX (iii) WC 127
(iv) CIR 7 X 5½, 144, 1277, P. 55 (v) A 558 (vi) B SV 80
(vii) O.R. WC 7 x 5½ 1279.
2. Crown Broken piece = 1 No.
3. Wearing piece used in ICF Coaches of Railway = 1 No.
4. Steam valve pressure Nut = 1 No.
5. Loco Engine Whistle valve Nut in different size = 3 Nos.
6. Steam Engine spindle = 1 No.
7. Mud seal used in place of metal seal for tempering lockseals of different godowns of DCOS/DBRT. Seal bearing marks (i) DSK/06, (ii) DSK/8 total 6 Nos.
8. Frame with hacksaw blade = 1 No.
9. Drain Cock = 1 No.
10. Screw Driver = 1 No.
11. Plus = 1 No.
12. Hammer with handle = 1 No.
13. Iron Nail = 1 No. about 2½

This is for information and n/a please.

Sd/- Illegible.
Dated : 26.06.96.
IPF/DBWS

Attested by
Bhola Shah
Adv.

Confidential

Office of the
Distt. Controller of Stores,
N. F. Railway, Dibrugarh.

NO. E/S/57 (S)

Dt. 14.10.97

Shri S. Chakraborty,
DSK/III/Chasing.

Sub : Submission of final defence
in CBI case No. RC-7(h)/92-SIG.

Ref : SF-5 No. E/S/57 (S) dt. 14.6.93.

Inquiry report of Enquiry Officer/HQ/MLG in 58 pages is enclosed herewith for submission of your final defence if any within 15 days from the date of receipt of this letter, failing which decision will be taken by the Disciplinary Authority on the basis of enquiry report itself.

Enclo:One Inquiry Report.

DCOS/DEBRT
14/09/04

Copy to :- 1. Dy.COS/IC/ILG
2. Dy.CVO/s/ILG
3. Law Officer/ILG
4. APO/Legal cell/ILG

DCOS/DBRT

Received
at 15.00 hrs
Saturday
15/10/97
S. S. 1.00. Book, classic

10222

N.F. RAILWAY

Second Copy

Report of the departmental enquiry in a CBI
case No. RC-7(A)/92-SHG against Shri Sudhangshu
Chakraborty, DSK/III/DBRT vide DCOS/DBRT's
Memorandum of charge No. E/S/57(s) dt 14/6/93.

.....

I N D E X

<u>Chapter</u>		<u>Page</u>
I:	Introduction	... 1 - 4
II:	Article of charge	... 4
III:	Examination of evidence	... 4 - 6
IV:	Reasons for Findings	... 6 - 26
V:	Findings	... 26
I)	Proceedings of the enquiry as recorded	... 27 - 58
ii)	Prosecution documents, Court documents, C.O's Final Brief, P.O's Written Brief & D.C.'s Written Brief. (Meant for DA only)	... 59 - 86

N.F.RAILWAY

Report of the departmental enquiry
in a CBI case No. RC-7(A)/92-SHG
against Shri Sudhangshu Chakraborty,
DSK/III/DBRT vide DCOS/DBRT's Memo-
randum of charge No. E/S/57(S) dated
14/6/93.

....

Chapter-I: INTRODUCTION

- i) DCOS/DBRT in exercise of the power of a Disciplinary Authority nominated the undersigned to act as I.O. in the above departmental case under rule No. 9(2) of RS(D&A)Rules' 1968 in terms of the order No. E/S/57(S) dt. 20/7/95 in cancellation of the order dt. 17/10/94 under which Shri A.K. Ganguly, the then EO/HQ was nominated as a P.O. to find the truth or otherwise into the charge/allegation levelled against the defendant, Shri Sudhangshu Chakraborty, DSK/III/DBRT.
- ii) Shri Sudhangshu Chakraborty, DSK/III/DBRT, C.O. nominated Shri A. Lal, Ex.APO/KIR to assist him as D.C. in the enquiry as he was afforded facility vide para-3 of the memorandum of the charge.
- iii) The D.A. appointed Shri K.C. Choudhury, IOP/CBI/GHY Unit as P.O. originally but ~~Shri K.C. Choudhury~~ thereafter in supersession to the earlier order appointed Shri P. Roy, IOP/CBI/SHG as P.O. vide his order No. RC-7(A)/92-SHG dt. 26/9/95. Consequent on the transfer of Shri P. Roy, IOP/CBI/SHG from ~~the~~ the branch, Shri T. Thangzalian, IOP/CBI/Shillong unit was appointed as P.O. vide DCOS/DBRT's order dt. 11/4/96. Thereafter, as a result of transfer of Shri T. Thangzalian, the D.A. i.e. DCOS/DBRT further appointed Shri L. Hangshing, IOP/CBI/ACB/GHY as P.O. vide his order No. 7(A)/92-SHG dt. 23/5/97.
- iv) The preliminary hearing fixed on 14/8/95 in the chamber of the EO/HQ when defence attended but the then appointed P.O. Shri K.C. Choudhury, IOP/CBI/ACB/GHY did not turn up on the ground that his name was cited as prosecution witness, hence he cannot act as P.O. On scrutiny, the relevant papers of the instant DAR case by the EO/HQ, it was revealed that he was not cited as PW by the D.A. but Shri Choudhury partially associated with the investigation of the case. On this technical ground, Shri Choudhury cannot act as P.O. in this instant case as per extant rule. However, preliminary enquiry held on 16/2/96 at TSK Rly. Retiring room when the defendant stated that he already inspected the listed documents vide annexure-III but he did not receive the copies of the listed documents. The P.O., Shri P. Roy informed that the documents in question were not readily available with him. However, he stated that the documents will be supplied to the defence through DCOS/DBRT.
- v) The first sitting of the regular hearing held on 26/11/96 at Rly. Retiring room/TSK when the defendant Shri Sudhangshu Chakraborty attended the enquiry

contd...2.

without his nominated D.C., Shri A.Lal, Ex.APO/KIR. At the starting, the defendant requested for adjournment on the ground of absence of his nominated D.C. but this was not agreed to by the EO/HQ on the ground that his nominated D.C. was informed officially, since nothing has been received from his nominated D.C., the enquiry cannot be adjourned. In terms of Rly.Bd's L/No.E(D&A)1969 RG 6-38 dt.13/2/1970 only one adjournment may be granted on the ground of counsel's inability to attend enquiry on account of his sickness only. However, in order to afford reasonable opportunity and natural justice to the defence, the EO agreed to examine the PW-1 & 2 and kept reserve for cross-examination by the nominated D.C. in the next sitting. The copies/extracts of all the listed documents vide annexure-III were taken by the defendant. Regarding genuineness/authenticity of the listed documents, the defendant stated that since all these official documents reg. these documents there is no any dispute. On his admission these documents are taken in record as PD-1 to PD-16. On receiving the listed documents the defence wanted to produce some staff and Ex.staff as his defence witnesses and produced a list of 26 documents as his defence documents. The EO examined and agreed to call before the enquiry, the following staff/ex-staff as his defence witnesses:-

1) Shri R.R. Sengupta, DSK/II under DCOS/DBRT (DW-1)
 2) " Hiralal Panika, Ex.Dy.Jamandar " (DW-2)
 3) " Ramdhani Goala, Ex.Hd.Jamandar " (DW-3)

Out of the 26 documents as sought for as defence documents by the defendant, the EO on examination agreed to call 11 documents sl. No. 1 to 12 except item No. 4 as his defence documents from DCOS/DBRT I.e. D.A. who should be the custodian of such documents. The EO also decided 2 to call Shri K.C. Choudhury, IOP/CBI/ACB/GHY as CW-1 since from record, it revealed that he partially investigated the case in order to find the truth. Subsequently, the EO also decided to call Shri A.K. Saha, IOP/CBI/ACB/SHG now DSP/Gangtok who investigated the case. But ultimately despite of all efforts he did not turn up and EO/HQ had to drop him. His evidences was essential in order to find the truth. ~~xxxxxxxxxxxxxxxxxxxxxx~~ The P.O. also requested to call him as prosecution witness but since D.A. did not keep him as PW, the E.O. noticed that Shri Saha investigated the matter and hence his appearance before the enquiry is very much important to find the truth. Accordingly, the E.O. called him as Court witness but ultimately dropped as he did not turn up. The statement of Shri K. Choudhury, IOP/CBI/ACB/GHY now DSP/CBI/GHY 2 (CW-1) is taken as CD-2 and his report SP/CBI/ACB/SHG dt. 25/3/92 taken as CD-1 during enquiry. These documents produced by the D.O. during regular hearing before the enquiry.

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Further regular hearing held from 26/5/97 to 28/5/97 when the D.C. mainly cross-examined the PW-1 & 2. The examination ~~was~~ of PW-1 & 2 was completed on 26/11/96. Since D.C. did not turn up on that date, the cross-examination to PW-1 & 2 were kept reserved. These opportunity was afforded to the defence in view of the natural justice and reasonable opportunity to the defence.

Further regular hearing held on 11/6/97 when DW-1 and CW-1 were examined and cross-examined as per extant procedure. DW-2 & 3 did not turn up and they have been dropped with the consent of the defence.

Further regular hearing held on 12/6/97 when Shri A.K.Saha, IOP/CBI/ACB/SHG(now DSP/Gangtok) was dropped ultimately as he ~~xx~~ did not turn up before the enquiry despite of all efforts. He was called as CW-2.

The defence documents were called/~~xx~~ from the D.A. but D.A. out of 11 documents only 5 documents sent to EO/HQ. Rest documents were not available with him. However, the defence agreed and produced these documents before the enquiry. The C.O. was asked to submit his oral or written final defence on the concluding date of regular hearing. The defendant opted for submitting the written defence and accordingly, Shri Chakraborty ~~xx~~ C.O. submitted his written defence.

With the completion of the direct examination of the defendant by the undersigned, the enquiry came to close on 12/6/97 when the P.O. was asked to submit his written brief within 7 days from 12/6/97 endorsing a copy to the D.C. The D.C. was also asked to submit his final brief, on receipt of the P.O.'s written brief within next 7 days to the undersigned. The P.O. and the D.C. accordingly submitted their written brief. The report of the enquiry inclusive of the day~~x~~ to day proceedings, P.O. & DC's brief run into 82 pages in all. The original copies of the final brief of D.C and P.O. attached to the first copy which is meant for the D.A. only.

vi) The C.O. filed OA No. 256/96 before the Hon'ble CAT/Guahati. The Hon'ble CAT/Guahati heard the case on 14/2/97 and disposed the original application with the direction to the respondent to dispose of the departmental proceedings as early as possible at any rate within the period 4(four) months from 14/2/97. With the further direction that applicant must participate in the departmental proceedings and if the applicant fails to participate, the authority shall be at liberty to proceed ex parte. The E.O. on receipt the copy of the XXR of GM/Law/MLG from DCOS/DBRT on 31/3/97 fixed the regular hearing from 26/5/97 to 28/5/97 vide his letter No. Z/CON/CBI/609 dt. 31/3/97 and took all out efforts to finalise the enquiry at an earliest.

Although, the enquiry concluded within the stipulated period of 4(four) months x in view of Hon'ble CAT/GHY's direction, the GM/Law/MLG and APO/Legal Cell were requested vide EO/HQ's C/L No.2/CON/CBI/609 dt.3/6/97 to ~~make~~ make prayer before the Hon'ble CAT/GHY ~~sitting for~~ atleast 3 months more time. ~~xxxxxxxxxxxxxxxxxxxxxx~~

Chapter-III ARTICLE OF CHARGE

The distinct article of charge levelled against the defendant, Shri Sudhangshu Chakraborty, DSK/III under DCOS/DBRT stands as under:-

" While Shri Sudhangshu Chakraborty was posted and functioning as DSK/III, N.F.Railway, Dibrugarh during the year 1991-92, he failed to maintain absolute integrity and devotion to his in as much as he mis-managed Bronze ingots weighing 2230.900 Kgs valued Rs.87919.77 along with Shri Bhabatosh Chakraborty, DSK/I, N.F.Railway, Dibrugarh. He further mis-managed Tin ingots weighing 309.200 Kgs. valued Rs.56,725.83. Copper ingots weighing 25.800 Kgs. valued Rs.2287.43 and Gun metal ingots weighing 23,200 Kgs valued Rs.1624.00 and thereby the above acts Shri Sudhangshu Chakraborty contravened the provision of Rule-3(1) (i) & (ii) of Rly. Service and ~~Conduct~~ Rules 1966."

~~xxGM(P)/
NF.Rly/MLG's~~

X

Originally, in the charge the word 'Misappropriation' was used but subsequently DCOS/DBRT ~~xxxxxxxx~~ (D.A.) vide his corrigendum No.E/B/87(S) dt.20/9/94 addressed to Shri Sudhangshu Chakraborty, DSK/III/DBRT, the word 'Mis-managed' instead of 'Mis-appropriated' has been used. This change has been made subsequently as per ~~RlyxxRlyxx~~ instruction. The ~~RlyxxRlyxx~~ circular is that the word 'Mis-appropriation' ~~xxxxxxxxxx~~ ~~xxxxxxxxxx~~ should be avoided as the said word is used in criminal offence. In departmental case such word should be avoided. ~~xxGM(P)/MLG's~~ circular No.DAC-334/E/74/0/Pt.XII(C) dt.23/9/78).

The supporting allegation in proof of the above charge is contained in Annexure-II of the memorandum of charge which is not reproduced for the sake of avoiding repetition. The D.A. may refer to the relevant annexure of the memorandum of charge for better appreciation, if considered ~~necessary~~ necessary.

Chapter-III: EXAMINATION OF EVIDENCES

The D.A. has quoted 16 (Sixteen) pieces of documentary evidences (PD-1 to PD-16) and two prosecution witnesses to sustain the charge against the defendant. Regarding genuineness/authenticity of the documents cited in the annexure-III of the memorandum of charge, the defence did not raise any objection against any of them. On admission by the defence these were taken on record as prosecution documents as per seriality i.e. PD-1 to PD-96. The statements recorded of PW-1 & 2 have been taken as additional PDs- 17 and 18.

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The defendant on the other hand, has sought for the oral evidences of Shri R.R.Sengupta, DSK/II under

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DCOS/DBRT (DW-1), Shri Hiralal Panika, Ex.Duty Jamandar under DCOS/DBRT (DW-2), and Shri Ramdhani Goalal, Ex.Hd.Jamandar, under DCOS/DBRT (DW-3) as his defence witnesses and submitted a list of 26 (twenty six) documents as his defence documents. The E.O. examined and allowed ~~xxx~~ all the defence witnesses and 11(eleven) defence documents from Sl.No.1 to 12 except item No.4 of the list submitted by the defendant ~~xxx~~. On examining of the relevancy. All efforts were taken so that the defence witnesses may attend before the enquiry but DW-2 & 3 did not turn up ultimately and hence dropped the DW-2 & 3 with the consent of the defence. Similarly, ~~xxx~~ 11 nos. defence documents were requisitioned from the custodian of the documents i.e. DCOS/Panika (D.A.). Out of which, the following documents furnished by the D.A. under his ~~xxx~~ C/L No.S/11/CORR/DAR/CBI/97 dt.2/6/97:-

- ✓ i) S/Sheet No.1/Stock sheet/DV/91-92 dt.25/11/91 (DD-1)
- ✓ ii) S/Sheet No.2/Stock sheet/DV/91-92 dt.5/12/91 (DD-2)
- ✓ iii) S/Sheet No.7/Stock sheet/DV/91-92 dt.12/12/91 (DD-3)
- ✓ iv) Appeal of Shri S.Chakraborty dt.6/3/90 (DD-4)

On persuasion further by the EO/HQ, DCOS/DBRT vide confd1. L/No.S/11/CON/CORRES/DAR/CBI/97 dt.27/5/97 furnished the representation of Shri S.Chakraborty. DSK/III/DBRT dt.11/11/91 addressed to DCOS/DBRT under which, the Joint memorandum of some staff including Shri S.Chakraborty, C.O. ~~xxx~~ addressed to COS/MLG ~~xxx~~ copies endorsed to two recognised unions was included. These documents taken as DD-5, The DCOS/DBRT (D.A.) furnished all the documents with proper attestation and rest 6 documents could not furnish as the said documents were not ~~xxx~~ connected. The D.A., although intimated vide his above mentioned C/No. dt.27/5/97 to have the copies of the rest documents from the C.O. as all the said documents are the appeals stated to be submitted by the C.O. ~~xxx~~ but such documents without rooted through the custodian/controlling officer cannot be taken as authenticated. Although the C.O. stated that the copies of ~~xxx~~ such appeals were very much available with him. All the reasonable opportunity as far as practicable were extended to the C.O. in view of ~~xxx~~ natural justice. The defence did not raise any objection regarding rest defence documents sought for.

Shri K.Choudhury, whose statement was recorded on 21/8/92 and who submitted a report on 25/3/92 to SP/CBI/SHG in connection with the instant case and D.A. did not keep him as Prosecution witness ~~xxx~~ vide annexure-IV of the memorandum of charge, the E.O. felt that his evidence is very important to find the truth and hence kept him as CW-1. The ~~xxx~~ recorded statement of Shri K.Choudhury, IOP/CBI/GHY now DSP/CBI/GHY is taken as CD-2 and his report dt.25/3/92 as CD-1 which were exhibited ~~xxx~~ during the enquiry.

The P.O. submitted the request to call Shri A.K. Saha, IOP/CBI/ACB/SHC now DSP/Gangtok as PW as he investigated the case and one of the vital witness. The matter was examined by the E.O. and in order to find the truth he decided to call him as CW-2 but despite of all efforts he did not turn up and ultimately he was dropped.

CW-1, Shri K. Choudhury attended before the enquiry on 11/6/97 when the E.O. asked him certain clarification questions. P.O. did not cross-examination to CW-1. The D.C. took the facility of cross-examination to the CW-1 which was afforded to the defence in view of the natural justice and reasonable opportunity.

Chapter-IV:

REASONS FOR FINDINGS

On examination PD-1 (Exhibit-4) the following points come into the light:-

PD-1 is the tally book for departmental verification for 07 ward from 29/12/89 to 2/11/91.

Stock Reconciliation Book

i) The rejected bronze ingot and gun metal, which was kept in the sub-godown no. 9 of 05 ward. The custodian of the bronze ingot and gun metal (rejected and unclassified) was actually DSK/1/R of 07 ward. Since the rejected bronze ingot was kept under sub-godown No. 9 of 05 ward, the DSK 05 and DSK/1/R were jointly custodian. The account verification of the rejected bronze ingot was done from 16/5/90 to 23/5/90 by Shri M.M. Chakraborty, the then ISA/DBRT and found the stock as 2775 pcs. = 20640.800 Kg. The tally book was signed jointly by the then DSK/I/R, Shri M.N. Chetia, the then ISA/DBRT, Shri N.M. Chakraborty and Shri S. Chakraborty, DSK/III 05 ward.

ii) It is further revealed that the whole materials was again reweighted on 28/10/91, 2/11/91. The reweight conducted by Shri U.N. Bhuyan, DSK/I/Stock while going to hand over the charge of the materials to Shri B. Chakraborty, DSK/I and found 2538 pcs. = 18842.5 Kg. the tally book was signed jointly by Shri U.N. Bhuyan, Shri B. Chakraborty, DSK/I and Shri S. Chakraborty, DSK/III 05 ward. In presence of Shri M.N. Chetia who hand over the charge of the materials to Shri B. Chakraborty due to his superannuation of his service. While reweighting from 28/10/91 to 2/11/91, 243 pcs. = 1807.5 Kg was found short.

On examination PD-14 (Exhibit-3) it is revealed that Shri M.N. Chetia, DSK/I/R handed over the charge to Shri B. Chakraborty, DSK/I on 4/11/91 due to superannuation.

It is revealed from the relevant papers of the DAR case and also from the documentary and oral evidences that sub-godown No.8, 9 & 10 were situated in the 05 ward under the custody of Shri S.Chakraborty, DSK/III 05 ward. The rejected bronze ingot and gun metal-II which were ~~xxx~~ under the custody of Shri M.N. Chetia, Ex.DSK/I/R and thereafter on his super-annuation, Shri B.Chakraborty, ~~xxx~~ became the custodian of the said materials being DSK/I/R. Since the rejected bronze ingot and gun metal-II were kept under in sub-godown No.9 of 05 ward, the joint custodian of the said materials were Shri S.Chakraborty being the incharge of 05 ward and Shri M.N. Chetia, Ex.DSK/I/R till his superannuation from service upto 31/10/91 and thereafter the joint custodian were Shri B.Chakraborty and Shri S.Chakraborty.

As per procedure, ~~xxx~~ the sub-godown No.8 & 10 of 05 ward were kept under locks and seal label with signature of the custodian i.e. S.Chakraborty, DSK/III and the sub-godown No.9 was being locked and sealed label with the joint signature of Shri S.Chakraborty and Shri M.N. Chetia till 31/10/91 i.e. up to ~~xxx~~ superannuation date of his superannuation and thereafter the sub-godown No.9 was used to keep under lock and seal label under joint signature of the custodians i.e. of Shri S.Chakraborty, DSK/III of 05 ward and Shri B.Chakraborty, DSK/I/R. The ~~xxx~~ custodian, Shri S.Chakraborty keeps the duplicate keys of the sub-godown No.8, 9 & 10 in his own key box maintained in the 05 ward and cannot be opened without his permission in respect of sub-godown No.8 & 10 and in respect of sub-godown No.9 ~~xxx~~ without the presence of joint custodian i.e. DSK/I and DSK/III. The ~~xxx~~ Sub-godown No.9 has to open in presence of the joint custodian and also closed ~~xxx~~ as because after locking the lock has to be sealed and signed jointly on the label.

It is very much important that the rejected bronze ingot and Gun metal of sub-godown No.9 from 16/90 to 29/90 was verified during the accounts verification by Shri N.H.Chakraborty, ISA/DBRT when the stock was 2775 pcs = 20640.800 when Shri S.Chakraborty, DSK/III 05 and Shri M.N.Chetia, DSK/I/R were the joint custodian. But while handing over the charge by Shri M.N.Chetia the then DSK/I/R to Shri B.Chakraborty during handing over the charge on superannuation, again bronze ingot (rejected) was reweighted 237 pcs/1807.300 Kg. was found short. In this case joint custodian were Shri M.N.Chetia and Shri S.Chakraborty no clue was available for shortage but it ~~xxx~~ can be taken that since there was no clue for theft both the custodian were responsible for such shortage but no allegation in this respect ~~xxx~~ against the custodians ~~xxx~~ had been made, although it is revealed that the shortage of bronze ingot ~~xxx~~ after reweight from 28/10/91 to 2/11/91 while handing over the charge by Shri M.N. Chetia to Shri B.Chakraborty ~~xxx~~ as a result of mismanagement/leakage. ~~of the joint custodian. ~~xxx~~~~ The charge against the C.O., Shri S.Chakraborty, DSK/III not against the shortage of the rejected bronze ~~xxx~~ ingot of the said period but it is very much pertinent to indicate that for such shortage there must be some

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responsibility for such shortage when there was no any clue of theft or any sign of broken of the godown. During re-weight from 28/10/91 to 2/11/91 simply it is appeared that there were shortage of 237 pcs. of bronze ingot (1807.300 kg.) In comparison to the position of accounts verification of rejected bronze ingot and Gun metal of Sub-godown No.9 in under 05 ward when total nos. of bronze ingot was 2775 pcs. = 20640.800 Kg. (Verification made as per PD-1 from 16/5/90 to 22/5/90) these indicates clearly that some mis-management also exists for which both the custodian are responsible. Ofcourse, this is not the subject matter in relation to the charge levelled against the C.O. but the fact said fact will reveal that there was some leakage/mis-management in respect of the rejected bronze ingot of sub-godown No-9 of 05 ward when the retd. custodian i.e. Mr. Chetia ~~xxxx~~ might also involve along with the C.O.

On examining PD-15 i.e. the joint theft report made by both the custodian of the rejected bronze ingot (kept under sub-godown No.9 of 05 ward i.e. Shri B. Chakraborty, DSK/I/DBRT and Shri S. Chakraborty, DSK/III dt. 7/11/91. The following fact revealed

- a) A quantity of ~~xx~~ 18842.5 Kg = 2538 pcs. of rejected bronze ~~xxxx~~ ingot were kept at strong room ~~xxxx~~ (sub-godown) No.9 of 05 ward after completing departmental verification on 2/11/91 and jointly sealed by Shri B. Chakraborty, DSK/I/R and Shri S. Chakraborty, DSK/III of 05 ward on the said date i.e. on 2/11/91. Both the joint custodian i.e. Shri B. Chakraborty, DSK/I/R & C.O. counted the bronze ingot several times before locked sub-godown No.9. ~~xxxxxxxxxxxxxx~~ ~~xxxx~~
- b) On 7/11/91 at 2-30 P.M. when the sealed of the sub-godown was broken by them as per DCOS/DBRT's verbal order for bringing two pieces of bronze ingot they detected jointed that 6 (Six) pcs. of bronze ingot from the stack were missing. As per the said theft report, the matter was informed to DCOS/DBRT ~~xxxxxx~~ who came and verified the matter along with ~~x~~ both the custodian and some other staff of DCOS/DBRT. At the first sight as per the said theft report, ~~xxxx~~ no clue for missing of the bronze ingot were detected but ultimately as indicated in the said theft report one CI sheet over the roof of the godown No.9 & 10 was detected to have been forced opened from the back side and the expanded metal cover below the CI sheet roof of the godown was also detected to be forced opened. It is also indicated in the said theft report that the DCOS/DBRT ~~xxxxxxxx~~ arranged to repair the expanded roof. In the joint theft report, they also requested to DCOS/DBRT to make arrangement for verification of all items of the strong room (Sub-godown) as because the godown were full of highly valuable items. They also stated in the theft report that during handing over the charge by Shri M.N. Chetia, Ex.DSK/I/R ~~xx~~ due to his superannuation after weightment on 2/11/91 237 pcs = 1807.30 Kg. of bronze ingot was detected short. The joint report ~~xxxx~~ dt. 7/11/91 was made

to their controlling officer i.e. DCOS/DBRT with the prayer to investigate both the incident of shortage of bronze ingot in order to ensure permanent sealing of the pilferage. But it is very essential to mention here that in the theft report there was no any clue/~~any~~ sign of breakage in the wall or any where except force opened on one CI sheet over the roof of godown No. 9 & 10 ~~and~~ from the back side. In the penultimate para of theft report, they of course requested to arrange for a complete pucca strong room with shutter door in the main godown of 05 ~~XXXXXX~~ ward for keeping the high value item safely etc. etc.

No FIR was lodged to the nearest Police station by the custodians which was very essential for ~~XXXXXX~~ bringing the truth. The DCOS/PNO also did not lodge any FIR on receipt the said report. On examination of PD-9 (Exh-12) it is revealed that Shri U.N.Bhuyan, DSK/I/Stock (PW-2) as per DCOS/DBRT's order ~~XXXXXX~~ conducted ~~XXXXXX~~ verification of the strong godown of 05 ward ~~from 14/12/91 to 23/12/91~~ and verified 22 items. In the PD-9, the items in respect of ~~XXXXXX~~ difference in ground bl. of 05 ward were found are following:-

- i) Tin ingot - 309.200 Kgs. found short an accounted under S/Sheet No. 1/Stock/Sheet/DV/91 dt. 25/11/91 (PL No. 91160017). Rate of Tin ingot as indicated is ~~XXXXXX~~ @ 183.46 per Kg.
- ii) Copper ingot - 25.800 Kg. found short ~~XXXXXX~~ an accounted under S/Sheet No. 2/Stock sheet/DV/91 dt. 5/12/91 (PL No. 91100057). Rate of copper ingot @ Rs. 88.66 per Kg.
- iii) Gun metal ingot CL-II-~~XXXXXX~~ 23.200 Kg. found short and accounted under S/Sheet No. 7/Stock sheet/DV/91 dt. 12/12/91.

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Beside the above, discrepancy/ground bl. of rejected bronze ingot (unclassified) of 05 ward was detected. As per the said PD-9 in second page under Sl.No.3 it has been indicated that the weight of the bronze ingot received ~~XXXXXX~~ from Shri M.N. Chetia, Ex.DSK/I/R by Shri B.Chakraborty, DSK/I/R was 18842.500 Kg. against 2538 pcs. of ingot including 93 broken pieces. After verification, the ground bl. of the said item was found 16611.600 Kg. against 2247 pcs of ingot including 93 broken pcs. i.e. total shortage after verification by U.N. Bhuyan (PW-2) was 2230.900 Kg. It is also revealed from the PD-9 (Exh.12) that on opening the godown of 05 ward for verification of the rejected unclassified ingot pertaining to receipt section the door was found properly sealed and locked under joint signature of Shri B.Chakraborty, DSK/I/R and Shri S.Chakraborty, DSK/III of 05 ward. PW-2 verified the unclassified bronze ingot when the godown was opened in presence of Shri B.Chakraborty of 07 ward and Shri S.Chakraborty of 05 ward daily from 14/12/91 to ~~XXXXXX~~ 23/12/91. After verification the godown was kept under lock and key jointly sealed and label by Shri S.Chakraborty and Shri B.Chakraborty. In the verification report, PW-2 stressed for thorough repair of 05 ward and also stressed for RCC system of the

of the 05 ward replacing CI sheet on the roof. During ~~xxxxxx~~ examination of PW-2 on 26/11/96 by the P.O., he confirmed his recorded statement dt.17/8/92 (additional PD-18/Exh.2) In reply to Qn.No.1 of P.O. he stated that he completed the verification in respect of copper ingot, Tin ingot and gun metal between 25/11/91 to 2 12/12/91 and completed the verification of bronze ingot (unclassified) from 14/12/91 to 23/12/91.

On examination PD-11 (Exh-6), the following points revealed:-

- 1) As per order of DCOS/DBRT vide PD-10 (Exh-5) Shri J.N.Saikia, PW-1 made the fact finding enquiry. During fact finding enquiry, he examined PD-15 (joints theft report dt.7/11/91), departmental verification report No.S/DCOS/Policy/91 dt.6/1/92 (PD-9) Stock sheet No. 1/Stock sheet/SV/91 dt.25/11/91, ~~xxxx~~ Stock sheet No.2/Stock sheet/SV/91 dt.5/12/91, stock sheet No.3/Stock sheet/SV/91 dt.12/12/91 (all the above three stock sheet, the C.G. wanted as ~~xxxxxx~~ his defence documents No.DD-1, 2 & 3 which ~~xxx~~ were allowed by the E.O. and ultimately produced during the enquiry, seal label dt.7/11/91 signed by Shri S.Chakraborty, DSK/III of 05 ward and Shri B.Chakraborty, DSK/I/R joint tally book of bronze ingot at strong room No.9 of 05 ward and other relevant documents in connection with shortage of 309.200 Kg. tin ingot (PL No.91160017) vide stock sheet No.1/Stock sheet/SV/91 dt.25/11/91, shortage of 25.800 kg of copper ingot (PL No. 91100057) vide stock sheet No.2/Stock sheet/SV/91 dt.5/12/91, shortage of 23.200 Kg. gun metal ingot CL-II (PL No.91090040) vide stock sheet No.3/Stock sheet/SV/91 dt.12/12/91 and shortage of rejected bronze ingot unclassified-2230.900 Kg. = 291 pcs. as per verification report submitted by Shri U.N. Bhuyan, (PW-2) vide No.S/DCOS/Policy/91 In PD-11, the following points revealed:-
 - i) Total loss of administration for the above shortage is ~~xxxxxx~~ to the tune of Rs.148,557.00
 - ii) The godown was sealed jointly by Shri S. Chakraborty, DSK/III/05 and Shri B.Chakraborty, DSK/I/R, after handing over the charge by Shri M.N.Chetia, DSK/I/R,
 - iii) Incident detected on 7/11/91 at about 2-30 P.M. while opening the strong room No.9 as per theft report (PD-15).
 - iv) At the first sight no clue could be detected as per theft report (PD-5). Thereafter, after thorough search conducted by DCOS/DBRT himself in presence of joint custodian of sub-godown No-9 of 05 ward i.e. B.Chakraborty, DSK/~~xxxx~~ I/R and C.O., Shri J.N. Saikia, DSK/I/G (PD-1) and some other staff of DCOS/DBRT detected that one CI sheet over the roof of ~~xx~~ sub-godown No.9 & 10 forced opened from the back side and expanded metal over below the CI sheet of the godown ~~xxx~~ was also forced opened and kept as it was. PWx ~~xxx~~ PWx

In the fact finding report (PD-11) Exh.6, the following points PW-1 has indicated specifically:-

- a) The feasibility of happening over the roof approx. 15' hight is a thoughtful ~~law~~ as there was no sign of theft or CI sheet of the roof.
- b) In respect of Tin ingot, copper ingot and gun metal Shri S.Chakraborty, DSK/05 ward was full custodian of materials in strong room No.8, 9 & 10 and keys of the strong rooms were Shri S.Chakraborty, DSK/05 ward, C.O.
- c) Rejected bronze ingot without accountal and Shri B.Chakraborty, DSK/I/R was the custodian of the materials only. (But as per evidence, it is revealed that bronze ingot was kept at strong room No.9 of 05 ward under Shri S.Chakraborty, C.O. - This fact, ofcourse not indicated ~~at~~ at PD-11/Exh-6). The strong room No.9 of 05 ward was under the custody of Shri S.Chakraborty, DSK/III/05 and the keys of the said strong room (Strong room No.9) was Shri Chakraborty.
- d) Duplicate keys of the godown of the strong room were with Shri S.Chakraborty, DSK/III/05 which he deposited on 14/1/92. ~~xxxxxxxxxx~~ Beside the above at PD-11 (Exh.6) it has also been indicated that at PD-15 i.e. the joint report to DCOS/DBRT by the C.O. and Shri B.Chakraborty, DSK/I/R dt. 7/11/91 ~~xxxx~~ there was no mention of strong room No.8 only strong room No.9 & 10 were mentioned. ~~xxxxxxxxxx~~
The recorded statement of PW-1 dt. 17/8/92 (additional PD-17 Exh.1), contents of which he confirmed during examination by P.O. on 26/11/96 ~~xxxx~~ in reply to the question put by P.O. The PW-1 specifically confirmed that the contents correct self-explanatory and need not be repeated. On examination, the recorded ~~statement~~ it is revealed that bronze ingot belonging to receipt section of 07 ward and kept in the strong room of 05 ward since 1976. Since then whenever incharge of 05 ward transferred, the new incumbent took over the charge of strong room containing the bronze ingot. During 1990-91, Shri M.N. Chetia, DSK/I was incharge of receipt sec. of 07 ward and Shri S.Chakraborty, was incharge of 05 ward. The strong room containing bronze ingot is locked and sealed under joint signatures of both the persons (incharge of 07 ward and incharge of 05 ward). The door is always opened in presence of both the incharges, either of them cannot open the door without ~~temp~~ preparing the seal of the ~~xxxx~~ door bearing joint signatures.

In 1991, Shri M.N. Chetia retd. from service and Shri B.Chakraborty took over the charge of receipt sec. of 07 ward. While taking over of charge of 07 ward, bronze ingot kept of 05 ward were got weight by in presence of Shri B.Chakraborty and ~~xxxx~~ Shri S.Chakraborty from 28/10/91 to 2/11/91. ~~xxxxxxxxxx~~ During the said varification, shortage of the following materials of 05 ward was found as under:-

- 12 -

<u>Sl.No.</u>	<u>Name of material</u>	<u>Weight</u>	<u>Value</u>
1.	Bronze Ingots	2230.900 Kgs	87,919.77
2.	Tin Ingots	309.200 "	56,725.83
3.	Copper Ingots	25.800 "	2,287.43
4.	Gun Metal Ingots	23.200 "	1,624.00
Total value 1,48,557.03			

In his ~~xx~~ recorded statement he also confirmed that in regard to bronze ingot, Shri B.Chakraborty and Shri S Chakraborty were joint custodian and as regard Tin ingot, Copper ingot and gun metal, Shri S.Chakraborty was the sole custodian. Further, in reply to question ~~xxx~~ whether he thinks that the materials could have been stolen by some miscreants, he categorically stated that the stores are guarded by Chowkidar at night who covered the front area of 05 ward. Back side of the store is on the workshop side which is guarded by RPF. The height of the Tin roof of the store is about 15'. Although, it was noticed that a part of ~~x~~ the CI sheet of the roof towards workshop side was loose, it is not possible for any miscreants to remove materials from inside strong room. It is ~~not~~ feasible to remove materials through roof by escaping notice of RPF or chowkidar. The entire store area is surrounded by high walls.

The D.C. ~~xxx~~ did not turn up on 26/11/96 during regular hearing. ~~xxx~~ No information for his absence was intimated. ~~xxx~~ However, ~~xxx~~ examination of PW-1 & 2 was done by P.O. and in view of natural justice and reasonable opportunity, the cross-examination of PW-1 & 2 by the D.C. were kept reserved so that during subsequent date they may be cross-examine by D.C. This opportunity was afforded to the C.O. on his request. But during cross-examination in 27/5/97, PW-1 given some contradictory reply. ~~xxx~~ In reply to qn. No.22 of D.C. he stated that the godowns under DCOS/DBRT including 05 ward was built by British prior to Second World war. Since then there was no major repair of the building including godown and sub-godown. After the incident of 05 ward, the buildings, godown and subgodowns have been repaired on the instruction of Divnl. Security Commander/LMG and ~~x~~ of DyCME/DBWS and also in connection with verdict of spl. Judge/GHY etc. etc. which again in reply to clarification qn. put by E.O. to PW-1 (in reply to Qn. No.5) he confirmed that the heavy materials like bronze ingot 291 pcs = 2230.900 Kgs., Tin ~~xxx~~ ingot = 309.200, Copper Ingots 25.800 Kgs and Gun Metal Ingots = 23.200 Kgs can be theft through the roof which quite contradictory from his earlier report ~~PD-11~~, (Exh-6) and his oral evidence during examination by P.O. on 26/11/96. During the re-examination of P.O. on 27/5/97, the P.O. stated that in earlier statement (additional PD-17) and evidences produced on ~~xx~~ 26/11/96 under which he stated that it is not possible by a miscreants to take the materials from the godown through the roof which is about 15' height escaping notice of RPF and Chowkidar whereas on 26/5/97 he made contradictory statement of himself ~~xx~~ in reply to clarification qn. No.5 of E.O. He was asked whether his statement of 26/5/97 is correct or earlier statement of PD-17 is correct. In reply PW-1, stated that his statement on 26/5/97 is correct which indicates that he deviated from

contd....13.

his earlier statement ~~additional~~ PD-17 and fact finding report (PD-11) P.O. made an submission before the E.O. that the statements of PW-1 is quite contradictory and deviation of his earlier statement and evidence dt. 26/11/96 and requested for declaring ~~him~~ PW-1 as 'hostile' witness. The E.O. examined and considering his nature of evidence which was quite contradictory and declared ~~him~~ PW-1 is a 'hostile' witness. The PW-2 also during cross-examination by the D.C. on 27/5/97 in reply to Qn. No. 3 stated that the godowns under DCOS/DBRT were built during British era and the condition was very diplorable. In reply to Qn. No. 4, he stated that there is a narrow passage in between ~~workshop~~ and no watchman ~~was~~ provided because it cannot watch due to narrow passage and there is possibility of criminal trespass. During re-examination by the P.O. in reply to Qn. No. 2, PW-2 stated that the distance of the godown wall and workshop wall is about 6' again in reply to Qn. No. 3, he stated that the height of the boundary wall of the workshop in the back side of godown is 6' to 7'. In reply to Qn. No. 4 he confirmed that the RPF staff were posted in the workshop campus but he cannot say whether they were deputed in the workshop. In reply to Qn. No. 5, he also confirmed that the stores have watch and ward staff ~~and~~ ~~they~~ are regularly allotted in different beats ~~and~~ in three shifts, each shift is of 8 hrs. All the above ~~and~~ reply were Qn. No. 2 to 5 during re-examination by P.O.

PD-2 (Exh-8) that there was a shortage of ~~excreta~~ excreting excreta detected by PW-2 during verification from 14/12/91 to 23/12/91. In reply to clarification qn. No. 3 of E.O., he confirmed that Shri S. Chakraborty and himself (PW-2) signed in the PD-2 i.e. field book.

On examining PD-2 (Exh-8) It is revealed that shortage of the materials of 05 ward were detected by Shri U.N. Bhuyan, (PD-2) during verification from 14/12/91 to 23/12/91. On examination PU-3 (Exh-9), PU-4 (Exh-10), PU-5 (Exh-11) it is revealed that the shortage of Copper ingot = 25.800 Kg., Gun metal=23.200 Kg, and Tin ingot = 309.200 Kg. respectively were detected as shortage by PU-2 during verification from 14/12/91 to 23/12/91. ~~xx~~ Further on examining PU-6,7 & 8 the cost of the materials,copper ingot, tin ingot & gun metals are revealed. On examination of PU-16, it is revealed that Shri S.Chakraborty, C.u. on 9/1/92 made a theft report to UCOS/DBRT endorsing copy to DSK/I/R and DSK/I/S that after opening the main godown of 05 ward while a normal check was conducted the stacks of tin ingot were found in disturbed condition for which he mentioned that he informed DSK/I/G, DSK/I/R, DSK/I/S and to UCOS when ~~xx~~ they visited the site and after inspection found ten pieces of tin ingot ~~for~~ shortage in stock which as per opinion might only be pulled out through wretched doors of the godown No.8 and finally may be pass out after opening the CI sheet as no other defects could be tressed out at that time. In the said report he mentioned mainly regarding the diplorable condition of the godown. Although, as per the charged framed against Shri S.Chakraborty, missing of 10 pieces of tin ingot ~~is~~ is not included ~~xx~~ not subject matter of enquiry. But some important points came to the light on the related documents that Shri K.Choudhury, IOP/CBI/GHY now OSP/CBI/GHY verified the matter at UCOS/DBRT's office on 13/3/92. Shri Choudhury was called as PW-1 in order to find the truth accordingly he produced his evidence on 11/6/97. His recorded statement dt.21/8/92 (CD-2) and his report bearing no.CUN/15/92-SHG/GU/590 dt.25/3/92 produced by the P.U. On examination, the recorded statement of PW-1 (CD-2) it is revealed that he stated that his ~~is~~ L/No CUN/15/92-SHG/GU/590 dt.25/3/92 should be treated as a part of his statement. In his recorded statement on 21/8/92, he stated that a physical inspection of the godown was made by him and he observed that it was quite impossible on the part of ~~some~~ one to enter inside the store through the roof and steal 10 pcs. of tin ingots weighing 30/35 kgs. each. In this connection from the theft report of Shri S.Chakraborty, C.U.(PD-16) it is revealed that weight of one pc. of tin ingot is 29.7 Kg. (10 pcs tin i-got = 297 Kg.) On examining CD-1 it revealed that Shri Choudhury, PW-1 verified the UCOS office on 13/3/92 where he mentioned that a departmental verification of the stock of 05 ward was conducted ~~xx~~ from 25/10/91 to 23/12/91 and the following shortages were detected:-

- i) Rejected bronze ingot (unclassified) - 2230.900 Kg. against 291 pcs. valued Rs.78,050/- (appr.) @ Rs.35/- ~~xx~~ per Kg.
- ii) Tin ingot - 300.200 Kg. (as per PU-11) 309.200 Kg.) valued Rs.55038.00 (appr.) @ Rs.183.46.
- iii) Copper ingot - 25.800 Kg. @ Rs.88.66 per Kg. valued Rs.4200 and
- iv) Gun & metal ingot - 23.200 kg @ Rs.70 per kg. valued 1100.00 (approx.)

Further in his report (CD-1) he has indicated that during enquiry he found that Shri Chakraborty, DSK/05 ward in month of Jan/92 ~~xx~~ lodged an FIR at Dibrugarh PS to effect that 10 pcs of tin ingot weighing 30/35 kg. each valued Rs.18346.00 was stolen from the store by some unknown culprits through the roof of the godown.

CW-1 in his report (CD-1) at second page also indicated that on physical inspection of the godown on 13/3/92 he found that it is quite impossible on the part of one to enter inside the store through the roof and stoke 10 pcs. of tin ingot weighing 30/35 kg. each. Further, the RPF men were posted there for duty during the night hours.

The defendant, Shri Chakraborty during ~~preliminary~~ enquiry when he was afforded the opportunity to produce oral and documentary evidence for sake of his self-defence in view of natural justice and reasonable opportunity, he furnished the names of defence witnesses, out of ~~which~~ whom only Shri R.R. Sengupta, DSK/II under DCOS/DBRT (DW-1) produced his evidence during regular hearing. In reply to Qn.No.2 of the D.C., he stated that when he visited on 7/1/91 along with DCOS/DBRT and others they noticed that the CI sheet on the roof of godown No.9 was loose fitting. The DCOS then called the carpenter, Shri Gopal Majumdar and rectified the loose fitting. Again in reply to Qn.No.3, he stated that he noticed that one corner of the expanded metal of godown No.9 was forcibly opened by the Khalasi who was present on 7/11/91 along with DCOS DW-1 and others. In reply to Qn.No.5, the DW-1 confirmed that the condition of the strong godown No.8, 9 & 10 of 05 ward is very wretched. In reply to Qn.No.6, reg. practice of disposal of key in vogue reg. opening and closing of the depot, he stated that as per procedure while opening the main godown under each DSK, the respective DSKs have to take the keys from DSK/G/DBRT under clear signature in the key register. Thereafter, DSK has opened sub-godown under him, the keys of the said sub-godown were in the respective key box under each DSK. The said key box with keys of the sub-godown under each DSK has to be sealed with gunnybag and with the signature on the paper fix with gunnybag with concerned DSKs. The lock of each sub-godown under each DSK are also to be kept sealed with gunnybag and paper ~~slip~~ slip on which respective DSKs ~~have~~ also to be put the signature at the time of closing. Similarly, at the time of opening, the respective DSK has to be opened the sub-godown by him only. In reply to Qn.No.8, he confirmed that he thinks that there was possibility of criminal interference for taking the materials from the godown by the unknown culprits on 7/11/91. In reply to Qn.No.9, he stated that the distance between the boundary ~~of~~ wall of Dy.CME/DBWS workshop and sub-godown No.8, 9 & 10 is about 3 to 4 feet. ~~Maxima~~ DW-1 also in reply to Qn.No.10 stated that the hight of the boundary wall is approx. 6' to 7'. In reply to Qn.No.11, ~~of~~ D.C., he stated that there are 2 keys meant for each godown and sub-godown, one key for main godown is deposited to the DSK/G/DBRT after closing the respective godown. The said key to be taken from DSK/G/DBRT at the time of opening the main godown with clear signature in the key register by the custodian. The number-2 key of the respective godown are kept with DCOS/DBRT. Similarly, number one key of respective sub-godown are kept with the respective custodian under his key box with proper sealing and with the signature of the custodian. The locks of the respective godown under each word are kept with proper sealing and signature of the custodian and can be opened normally by the custodian. The number two keys of the respective sub-godown are kept with DCOS/DBRT. In reply to Qn.No.1 of P.O., DW-1 stated that ~~is~~ as DSK/G/DBRT he is the overall incharge of DBRT depot. Again in reply to Qn.No.6 of P.O.

he confirmed that except loose fitting of CI sheets of sub-godown-9 and expanded metal below the roof one corner which was also noticed as loose fitting, no other damage in the godown had seen. Again in reply to Qn.No.10 of P.O. he confirmed that beside broken expanded metal and loose fitting of CI sheets on the roof of the godown No.9 & 10, he did not notice any other sign of theft like foot prints, sign of placing any ladder on the ground etc.

On examination of DD-1 to DD-3, it is seen that these are the stock verification sheets in respect of tin ingot, copper ingot & gun metal ingot class-II verified by PW-2 as per order of DCOS/DBRT after having the theft report ~~xxx~~ by C.O. and Shri B.Chakraborty, DSK/I/DBRT from which it is revealed that tin ingot were found short-309.200 kg, copper ingot-25.800kg and gun metal ingot Cl-II 23.200 kg. ~~xxx~~ duly signed by PW-2 and Shri S.Chakraborty (C.O.) being the custodian of the said materials. The defence documents DD-1,2 & 3 is also revealed from the PD-9 (Exh-12) and PD-11 (exh-6) so, from the defence documents i.e. DD-1, 2 & 3 shortage of the materials of 05 ward is confirmed. On examination DD-4, 5 it is revealed that the C.O. submitted representation to his controlling officer reg. ~~xxx~~ condition of his 05 ward and sub-godowns and requested for immediate repairing. In ~~xxx~~ joint theft report ~~xxx~~ (PD-15) ~~xxx~~ it was requested to make the complete pucca strong room with shutter door in the main godown of 05 ward etc.etc. In PD-9, PW-2 in the penultimate para also stressed for repairing 05 ward by RCC system. PW-1 ~~xxx~~ although in his report/PD-11 (at exh-6) and during his evidence confirmed his report PD-11 (at the time of examination by P.O.) discused theft over the roof but during cross-examination by the D.C. and also during clarification questions, stated that the ~~xxx~~ godown under 05 ward ~~xxx~~ are of British era and theft may be done by the culprits. Similarly, PW-2 also during cross-examination and clarification questions of P.O., stated that condition of the 05 ward and sub-godown No.8, 9 & 10 of said ward is of British time and hence the ~~xxx~~ criminal may theft the materials from the said godown. On 12/6/97 in view of natural justice as per extant provision, the C.O. was asked to ~~xxx~~ opt whether he likes to ~~xxx~~ submit his defence in written or oral when defendant submitted his written defence in which he denied the charges framed against him. In his said defence also he has indicated that the condition of the godown was delapidated for which he ~~xxx~~ had requested in ~~xxx~~ written for repairing in number of times. He confirmed that DCOS/DBRT ~~xxx~~ arrange to repair by one ~~xxx~~ contractor on 7/11/91 i.e. the date of detected of the theft. He also stated that it has been established beyond doubt that there was possibility of theft committed by unknown culprits etc. etc.

Further in reply to ~~xxx~~ question ~~xxx~~ No.1 of EO, Shri Chakraborty, (C.O.) confirmed that he worked as DSK/III of 05 ward from last part of Dec/88 to May/92. Again in reply to Qn.No.4, he replied that from Feb/83 to First part of Dec/88 he was posted in the Vigilance organisation in the capacity of Sr.VI/Stores so, he cannot say anything reg. the theft report during the said period ~~xxx~~ at 05 ward. In reply to Qn.No.8, he stated that he was not the custodian of bronze ingot which was kept in sub-godown No.9. However, the materials ~~xxx~~ in question were lying in sub-godown No.9 of 05 ward since 1976 being un-disposed and un-accounted ~~xxx~~ for being the rejected materials. In reply to Qn.No.12, he confirmed that beneath the roof of ~~xxx~~ sub-godown No.8,9 & 10 there were expanded metal and gaps of three feet in between

Expanded metalx cover and place between sub-godown No. 8 & 9. The brick wall approx. 7' height. In reply to Qn.No.15 when he was asked that for his own safety being custodian of 05 ward, it was his primary duty to lodge FIR to the nearest Police station, he stated that he did not lodge FIR as depot officer instructed to all DSKs not to submit any report to OC/RPF, OC/GRPF and OC/ local police. This contention of the CO cannot be agreed because being custodian, in case of any loss of theft of Rly. property, he should lodge FIR of his own safety. If any ~~order~~ such order of depot officer that should be supported with documentary & evidence.

PE-12 (Exh-7) i.e. the seal lebal of strong room No.9 of 05 ward dt. 7/11/91 and 8/11/91 jointly signed by ~~Shri~~ Shri S.Chakraborty, C.O. and Shri B.Chakraborty, DSK/I/R. On examination of the documents, it is revealed that at the time of opening of the store, the seal on the lebals with the signatures of ~~the~~ Shri S.Chakraborty and B.Chakraborty were available which proved that the doors of the sub-godown No.9 of 05 ward were ~~not~~ not opened by any other person/ staff.

On summarising the evidences revealed from the prosecution documents, prosecution witnesses, defence documents, defence witnesses, court documents, court witnesses and the evidence of the C.O. ~~being regular hearing~~, the following matter came into the light:-

- 1) Shri S.Chakraborty, C.O. was the custodian of 05 ward under which sub-godowns No.8,9 & 10 were situated. Shri Chakraborty was posted as DSK/III/DBRT from the last part of Dec/88 to May/92. 05 ward was ~~the~~ ^{under} custody of DSK/III/DBRT. ~~as per the existing system~~ The unclassified bronze ingot(rejected) was actually under the custody of DSK/I/R of 07 ward. Till 31/10/91 Shri M.N. Chetia, Ex.DSK/I/R was the custodian of 07 ward. But on his retirement, Shri B.Chakraborty became the custodian of 07 ward. From PD-14 (Exh.3) It is revealed that the charge of the said 07 ward was handed over by Shri M.N. Chetia to Shri B.Chakraborty w.e.f. ~~2~~ 2/11/91 and became the custodian of 07 ward. The bronze ingot & unclassified (rejected) was actually under 07 ward but the said materials was kept under sub-godown No.9 of 05 ward since 1976 and hence the bronze ingot unclassified (rejected) were under the joint custody of DSK/I/R being the incharge of 07 ward and DSK/III/DBRT being the incharge of 05 ward. Similarly, gun metal ingot (Cl-II) was under the custody of DSK/I/R of 07 ward ~~by~~ since the said materials are also kept under sub-godown-9 of 05 ward both DSK/I/R and DSK/III were the ~~joint~~ joint custodian of the said materials. On examination PD-1 (Exh-4) it is revealed that accounts verification of the rejected bronze ingot and gun metal kept in the sub-godown No.9 were made from 16/5/90 to 29/5/90 by Shri N.M.Chakraborty, the then ISA/DBRT and found the stock as 2775 pcs = 20640.800 kgs. The tally book (PD-1)- Exh-4 were jointly signed by Shri N.M.Chakraborty, ISA/DBRT, S/Shri M.N. Chetia, DSK/I/R and S.Chakraborty, DSK/III 05 ward. As per procedure ingogue, the ~~the~~ strong room No.9 was duly locked and ~~the~~ sealed and lebal were signed by the joint custodian, Shri M.N. Chetia, the then DSK/I/R, and Shri Chakraborty, DSK/III/05 ward. The keys ~~were~~ of the sub-godown No.9 was with Shri S.Chakraborty, DSK/III as per procedure. In connection with superannuation

of Shri M.N.Chetia, Ex.DSK/I/R, While handing over the charge to Shri B.Chakraborty as DSK/I/R (PD-14) Exh-3, the ~~loss~~ of rejected bronze ingot and gun metal kept in the sub-godown No.9 inside the 05 ward were reweighted from 28/10/91 to 2/11/91 in presence of Shri M.N.Chetia, DSK/I/R, Shri S. Chakraborty, DSK/III 05 ward and Shri B.Chakraborty DSK/I/R (incumbent) and found shortage of 237 pcs = 1807.30 kgs vide PD-15 and ground bl. as on 2/11/91 was 2538 pcs. = ~~288x42502x500~~ 18842.500 kgs (PD-1/ Exh-4 & PD-15) when ~~these~~ shortages detected, ~~when~~ ~~xxxxxxxxxxxxxxxxxxxxxx~~ no clue was available for such shortage. The sub-godown No.9 ~~xxxxxxxx~~ were locked, ~~xxxxxxxx~~ sealed and lebal were signed by Shri M.N.Chetia and Shri S.Chakraborty and opened ~~in~~ by them as per procedure. Although, ~~these~~ shortages is not come under the perview of enquiry as per the article of charge but this will lead to take inference that there were some mis-management and for such shortage ~~for~~ which both the then custodians were responsible. As per procedure and being the ~~xxxxxxxxxxxxxxxx~~ joint custodian, the locked of sub-godown No.9 had to be locked, sealed & lebal signed by the both custodian at the time of closing the door and ~~xxxx~~ also at the time of opening the doors.

ii) From PB-15, it is revealed that after departmental verification while handing over the charge to Shri B.Chakraborty, DSK/I/R by Shri M.N.Chetia, ~~2538~~ 2538 pcs. including 93 broken pcs. were found under sub-godown No.9 and ~~xxxx~~ the sub-godown were kept under locked jointly sealed by Shri B.Chakraborty, DSK/I/R and Shri S.Chakraborty, DSK/III 05 ward. As per procedure, the sealed lebal were signed both ~~in~~ by the joint custodian. ~~xxxx~~ In the PD-15, it was indicated specifically that the bronze ingot were counted several times by DSK/I/R, Shri B.Chakraborty, Shri S.Chakraborty, DSK/III and Shri M.N. Chetia, Ex.DSK/I/R. Before the ~~xxxxxxxx~~ sub-godown- was sealed on 2/11/91 ~~on 7/11/91~~ Thereafter, the seal was broken at 2-30 P.M./ by the ~~on 7/11/91~~ joint custodian, Shri B.Chakraborty, DSK/I/R and Shri S.Chakraborty, DSK/III and opened the godown to bring out two pcs of bronze ingot as per DCOS/DBRT's verbal order to send the same to NTR/Alipur as per DCOS's letter No.S/272/4 dt. 7/11/91 and detected that 6 pcs. of bronze ingot from the stack of 28 50 pcs were missing, The matter was informed to the controlling officer, DCOS/DBRT who came to the spot. ~~xxxx~~ As no clue was detected as the first sight, a thorough search was conducted under the supervision of DCOS/DBRT in presence of Shri B.Chakraborty, R.Sengupta, ~~xxxx~~ and Shri S.Chakraborty, C.O. and some other staff when it was detected that one CI sheet over the roof of the godown No.9 and 10 were ~~x~~ force opened from the back side and expanded metal covered below the ~~xxxxxxxx~~ CI sheets roof of the godown was also force opened and kept at it was. Thereafter, DCOS called the carpenter and arrange to repair the expanded metal roof with wooden planks. The C.O. in his ~~xxxxxxxx~~ final brief on 12/6/97 also indicated specifically that carpenter repaired on 7/11/91 itself. DCOS/DBRT thereafter arrange to verify the materials containing in strong godown N 05 ward by DSK/I/S, Shri U.N. Bhuyan. Accordingly, Shri Bhuyan, (PW-2) verified the materials of 05 ward and found shortage in respect of the following materials:-

- 1) Tin ingot 309.200 kg. @ Rs.183.46 per Kg. accounted under S/Sheet No.1/Stock sheet/ SV/91 dt.25/11/91.
- ii) Copper ingot 25,800 kg. @ Rs.88.66 per Kg. accounted under S/Sheet No.2/Stock sheet/ EW/91 dt.5/12/91.
- iii) Gun metal ingot @ CI-II - 23.200 kg @ Rs.70 per Kg. accounted under S/Sheet No.7/Stock sheet/DB/91 dt.12/12/91.
- iv) Rejected bronze ingot (unclassified) found 2230.900 kg against 291 pcs. (Details at PD-9/ Exh-12).

It is revealed from PD-15 that CI sheet over the roof of the godown No.9 & 10 were found force opened from the back side and the expanded metal cover below the CI sheet roof & was also force opened. Since, all the sub-godown No.8, 9 & 10 were covered with expanded metal and the sub-godowns were separated with wall, the materials at room No.8 i.e. Tin ingot were not missing particularly from 2/11/91 to 7/11/91. The shortage although after verification vide PD-9 Exh-12 found, ~~xx~~ it reveals that ~~xx~~ missing ~~xx~~ of Tin ingot 309.200 kg. is either before 2/11/91 or after but ~~xxxxxxxxxx~~ before verification by PW-2. But it is evident from the above that shortage of bronze ingot ~~xxxxxxxxxx~~ unclassified (rejected) of sub-godown No.9 of 05 ward between 2/11/91 to 7/11/91 prior to 2.30 P.M. The shortage of Copper ingot kept at sub-godown No.10 may be prior to 2/11/91 or between ~~xx~~ 2/11/91 to 7/11/91 prior to 2-30 P.M. or after 7/11/91 but prior to stock verification by PW-2. The PW-1 made a fact finding enquiry vide PD-11(Exh-6) under which he has specially indicated & from the theft report (PD-15) as no clue was detected in the first sight but subsequently thorough search provided by DCOS/DBRT ~~xx~~ himself in presence of Shri B. Chakraborty, DSK/I/R, Shri S. Chakraborty, DSK/III 05 ward, ~~xx~~ Shri R. Sengupta, DSK/05, Shri J.N. & Saikia, DSK/I/G, and some other staff and ~~xx~~ defected that one CI sheet over the roof of the sub-godown No.9 and 10 force opened from the back side and expanded covered below ~~xx~~ CI sheet roof ~~xx~~ of the godown also force opened and kept as it was. The feasibility of happenings over the roof approx-15' height & is a thoughtful one as there was no sign of theft at CI sheet of roof. At the theft report PD-15, the joint custodian mentioned godown No-9 & 10 but they did not mention godown No.8. Hence, the godown No.8 how came into the picture is a matter of thoughtful. In his recorded statement PW-1 stated that the stores are guarded by Chowkidars at night. They covered the front area of 05 ward. back side of the store is on the workshop side which is guarded by RPF. The height of the tin roof of the store is about 15'. Although, it was noticed that a part of the CI sheet of the roof towards workshop side was loose, it is not possible for any miscreants to remove the materials from ~~xxxxxxxxxx~~ inside the strong room.

contd....20.

It is not feasible to remove materials through roof by escaping notice of RPF and of Chowkidar. The entire store area is surrounded by high wall. The PW-1 confirmed his statement during examination on 26/11/96 but during cross-examination by D.C., clarification question of E.O. and re-examination during P.O. he made some different statement and deviated from his earlier ~~saying~~ and on the ~~1/~~ ^{9/} ~~featuring~~ submission of P.O., he was declared hostile witness ultimately on 23/3/97. The CW-1 vide his recorded statement CD-2 ~~confirmed~~ stated that it was quite impossible on the part of some one to enter ~~xxx~~ inside the store through the roof and ~~xxx~~ steal 10 pcs of tin ingot weighing 30/35 kg each. Although, shortage of 10 pcs tin ingot as indicated as CD-1 & 2 does not come under the perview of enquiry which was made in connection with FIR lodged subsequently vide PD-15 theft report dt. 9/1/92. In CD-1, it was indicated that RPF men were posted ~~xxx~~ during on duty on night hour. Reg. shortage of rejected bronze ingot (unclassified) = 2230.900 kg., tin ingot 309.200, copper ingot 25.800 kg and Gun metal 23.200 kg were also indicated at CD-1 which is relevant as per the article of charge.

So far sub-godown No.9 is concerned where is unclassified bronze ingot (rejected) and Gun metal (cl-II) Shri S.Chakraborty, DSK-III and Shri B. Chakraborty, DSK/I/R were the custodians. The ~~xxx~~ Sub-Godown No.9 was kept under lock and key ~~lebal~~ signed by the both custodians. The keys of the said godown ~~xxx~~ was use to keep with Shri S.Chakraborty, ~~being~~ DSK/III being the custodian of 05 ward. The key had to keep ~~xxx~~ in the key box inside the ~~xx~~ 05 ward. The doors of the sub-godown No.9 have to open and close in presence of the joint custodian. None could open it without tempering the seal of the sub-godown. Similarly, sub-godown No.8 & 10 was sealed and locked and signed on the ~~lebal~~ by the custodian i.e. Shri S. Chakraborty being the custodian of 05 ward. The DW-1 in reply to Qn.No.11 of the D.C., ~~xxx~~ has confirmed the procedure. In the said reply, he, ofcourse, stated that one key of main godown i.e. of 05 ward to be deposited to DSK/G/DBRT and to be taken ~~xx~~ from DSK/G/DBRT at the time opening of the godown. In his reply, he has stated that the duplicate keys of respective sub-godowns kept with DCOS/DBRT. The C.O. in reply to clarification Qn.No.9 of I.O. ~~is~~ confirmed the procedure. In the instant DAR case, CO or defence witness did not ~~bring~~ bring any evidence or allegation that the materials of sub-godown No.8, 9 & 10 were sought by opening by the duplicate keys which might be with DCOS/DBRT so far sub-godowns are concerns or the duplicate key of the main godown available with DSK/G/DBRT. ~~xx~~ From the PD-15, it is clear that on 7/11/91 only the clue was available ~~xx~~ that one CI sheet over the roof of sub-godown No.9 & 10 were force open and the expanded metal below the roof was also noticed force opened so it is evident that there was no other clue for shortage. But during regular hearing

contd....21..

neither the C.O. nor any witness ~~available~~ produced any evidence that shortage of the above materials through the roof which is 15' height from the ground level. It is fact that CO repeatedly in his defence documents No. 2 4 & 5 and also during regular hearing even in his final 2 brief on 12/6/97 plead that the condition of the 05 ward including sub-godown No. 8, 9 & 10 were wretched condition. The DW-1 in reply to Qn. No. 5 of D.C. also confirmed that the condition of the sub-godowns No. 8, 9 & 10 of 05 ward is very much wretched. PW-2 in his verification report at PD-9 (Exh-12) also stressed for pucca RCC building of 05 ward. In the regular hearing PW-2 stated that the ~~building~~ 05 ward is of British era, in reply to Qn. No. 3 of D.C. Although, PW-1 in his report at PD-11 (Exh-6) stated that there is no sign of theft CI sheet of roof. Moreover, there was no other clue but during cross-examination he also stressed reg. the wretched condition of the sub-godown. Although, all of the above witnesses including ~~stressed~~ C.O. reg. the condition of the 05 ward including the sub-godown No. 10 but it is evidence that there was no any sign of break at any part of the said godown and sub-godown except one CI sheet on the roof and expanded metal of sub-godown No. 9 & 10. Hence, it is ~~xx~~ established that the shortage of the materials ~~is~~ not due to the ~~maximum~~ wretched condition of 05 ward including sub-godown No. 8, 9 & 10. Moreover, the copper ingot which was kept under sub-godown No. 8 of 05 ward is not involved in connection with the shortage as reported vide PD-15 as only sub-godown No. 9 & 10 at best ~~may~~ might be involved. Although, as per PD-15, the CI sheet of sub-godown No. 9&10 ~~maximum~~ was stated to be forced open and beneath the CI sheet expanded metal were also loose but from the above evidence, it is absurd that any culprits/miscreants might took the materials through the roof which is of 15' height (CI sheets), below the CI sheets the sub-godown No. 8, 9 & 10 were covered with expanded metal. Each sub-godown is separated with brick wall. The C.O. in reply to clarification Qn. No. 10 & 11 confirmed the matter, Behind the sub-godown No. 8, 9 & 10 ~~brick~~ wall, there is only three to four feet space and thereafter the wall of the Dy.CME/Workshop (boundary wall). In reply to Qn. No. 9, DW-1 confirmed the space ~~xx~~ available between DCOS/DBRT and Dy.CME workshop as 3 to 4 feet approx. Again in reply to Qn. No. 10, he confirmed that the height of the boundary wall is 6 to 7 feet. From the PD-9(Exh-12) it is revealed that the total shortage of bronze ingot (rejected) is 2230.900 kg against 291 pcs. i.e. each pcs. about 7 and 1/2 Kg. From PD-15, it is clear that bronze ingot (rejected) was ~~kept~~ reweighted and ~~x~~ total quantity was 18842.500 kgs. = 2538 pcs. which was jointly locked sealed and kept in sub-godown No. 9 of 05 ward. ~~Labels on seal~~ were signed by the C.O. and Shri B.Chakraborty on 2/11/91. Thereafter, they opened on 7/11/91 at 2-30 hrs. and on going through the condition made theft report jointly by the both. Thereafter, on verification on 14/12/91 to 23/12/91 by the PW-2 found shortage of bronze ingot 2230.900 kg. against 291 pcs. beside

contd...22.

Tin ingot, copper ingot & Gun ingot (Cl-II) as stated above. It is crystal clear that specially bronze ingot were missing from 2/11/91 to 7/11/91 before 2-30 P.M. Gun metal (Cl-II) = ~~222~~ 23.200 kg. and copper ingot = 25.800 kg may also ~~be~~ might be missing between 2/11/91 to 7/11/91 or prior or after the said period as these materials were in sub-godown No.9 & 10. Tin ingot 309.200 kg. was in the sub-godown No.8 as revealed from PD-11 (Exh-6) and CD-1. As per PD-15, there was no clue reg. shortage of tin ingot. It is ~~quite~~ not possible to take the materials of such huge quantity and weight through the roof of 15'. A huge arrangement is required such as ladder, truck and a group of persons within short period without the notice of chowkidars of DCOS/DERT and RPF of Dy.CME/DBWS office. These heavy materials cannot be taken by any miscreants through bare hands. As it is indicated by the defence and the PWs ~~in~~ during cross-examination of D.C. and clarification question of I.O. that ~~there~~ space between the boundary ~~wall~~ wall of the workshop and boundary wall of sub-godown No.8, 9 10 is about 3 to 4 feet distance. Hence, any vehicle for taking such heavy materials must be within the area of Dy.CME/DBWS area i.e. after the boundary wall. It is also proved that the leakage/mis-management so far the materials of ~~8~~ sub-godown No-9 was prior to 2/11/91 when the joint custodian were Shri M.N.Chetia and Shri S.Chakraborty because at the time of handing over bronze ingot (rejected) 237 pcs = 1807 kg were found short (PD-15) again from the CD-1 and CD-2, it is revealed that 10 pcs of tin ingot about 350 kg. ~~X~~ were found short which was absolutely in the custody of the Shri S. Chakraborty (C.O.) in both the cases there were no clue ~~as~~ ~~reg.~~ broken condition of the sub-godown No.8. It is revealed that the shortage of the materials of the bronze ingot not only between 2/11/91 to 7/11/91 but prior to 2/11/91 also. Similarly, it might be that ~~that~~ the shortage of copper ingot = 25.800 kg, Tin ingot = 309.200 kg. and Gun ingot = 23.200 kg might be between ~~be~~ 2/11/91 to 7/11/91 or may ~~be~~ might be prior to the said period or after the said period before stock verification between 14/12/91 to 23/12/91 (PD-9/Exh-12) The bronze ingot under the above circumstances is revealed ~~was~~ shortage ~~was~~ from sub-godown No.9 of 05 ward, the joint custody of which ~~was~~ C.O. and Shri S.Chakraborty as the opening and closing of the said sub-godown ~~was~~ was only possible in presence of both the custodian. The said materials were found shortage due to the mis-management and it is revealed that such shortage was possible only through the ~~sub-godown~~ main doors of 05 ward. The materials of sub-godowns No.8 & 10 i.e. copper ingot and tin ingot ~~was~~ etc. were only possible ~~be~~ through the doors of sub-godowns No.8 & 10 and main door of 05 ward ~~be~~ which were under the absolute custody of Shri S.Chakraborty, C.O.

No. 9 &

From the above documentary, oral and ~~x~~ circumstantial evidences, it is revealed that the bronze ingot 2230.900 Kg. valued Rs.87919.77 from Sub-godown No.9 and other materials like Tin ingot 309.200 kg valued Rs.56725.83, copper ingot weighing 25.800 kg valued Rs.2287.43 and gun metal ingot weighing 23.200 kg valued Rs.1624.00 from sub-godown No.8, 9 & 10 were short. All the above sub-godowns were under 05 ward and Shri S.Chakraborty, DSK/III (C.O.) was the custodian. Ofcourse, so far bronze ingot of sub-godown No.9 of 05 ward is concerned the joint custodian was Shri S.Chakraborty, C.O. and Shri B.Chakraborty, DSK/I/R were the joint custodian.

It is also revealed that bronze ingot of sub-godown No.9 of 05 ward 2230 Kg against 291 pcs was short from the period 2/11/91 to 7/11/91 upto 2-30 P.M. because after reweight inconnection with handing over the charge by Shri M.N.Chetia, Ex.DSK/I/R to Shri B.Chakraborty, new incumbent. The ground balance was ~~xxxxxxxxxxxxxx~~ 18842.500 kg against 2538 pcs. of bronze ingot including 93 broken pcs. and the sub-godown No.9 was locked, sealed and jointly signed on the lebal. Thereafter, the said godown was opened only on 7/11/91 at 2-30 hrs. by the joint custodian only.

The other materials i.e. copper ingot, tin ingot and gun metal was found short during stock verification from 14/12/91 to 23/12/91. It is fact that actual shortage of bronze ingot came to the light only after stock verification vide PD-9/Exh-12.

Earlier also the bronze ingot was found short while handing over the charge by Shri M.N. Chetia to Shri B.Chakraborty because from PD-1 (Exh-4) it is revealed that from 16/5/90 to 23/5/90 after accounts verification of the rejected bronze ingot 2775 pcs. = 20640.800 kg was kept under sub-godown No.9 of 05 ward. The joint custodian at that time was Shri M.N. Chetia, DSK/I/R and Shri S.Chakraborty, DSK/III as per extant provision, the sub-godown No.9 was sealed, locked and lebal signed the joint custodian. But thereafter, during reweight from 28/10/91 to 2/11/91 in connection with handing over charge by Shri M.N. Chetia to Shri B.Chakraborty ~~xxxxxxxxxxxxxx~~ while superannuation from service found shortage of 1807.300 kg when there was no clue of theft was alleged. It is crystal clear that prior to handing over the charge there was also leakage/ mis-management on the part of the joint custodian. These shortages although not as per the article ~~x~~ of charge framed against the C.O. but it leads to the conclusion that prior to incident detected on 7/11/91 there was leakage due to mis-manggement.

Again from PD-16 and CD-1 & 2, it also revealed that tin ingot from sub-godown No.8 of 05 ward, the custodian of which also was Shri S.Chakraborty, C.O. This shortage also not included in the charge but this incident also ~~xxxx~~ helps to take conclusion that there was some leakage/

mis-management at sub-godown No.8 of 05 ward in which Shri S.Chakraborty, C.O. was the absolute custodian.

From the PD-15, ~~and~~ PD-11 (Exh.6) & PD-9 (Exh-12) it is revealed that beside bronze ingot the other materials like copper ingot, gun metal, and tin ingot were short. Tin ingot was in sub.godown No.8 hence, tin ingot specially was not short ~~as~~ in connection with ~~with~~ joint theft report (PD-15). The shortage may be earlier or before stock verification from 14/12/91 to 23/12/91. The other materials may be ~~in~~ during 2/11/91 to 7/11/91 up to 2-30 P.M. or may be prior to the above period or after before stock verification from 14/12/91 to 23/12/91.

From the above, it is clear that shortage ~~was~~ of the above materials not all on a sudden but there was long practice and a ~~in~~ result of such heavy shortage.

Now the question is how the shortage of such heavy materials from 05 ward. On analysis the following factors had to be considered:-

- 1) Whether such shortage ~~was~~ due to wretched condition of the sub-godown No.8, 9 & 10 of 05 ward, The C.O. in his final defence and his earlier representation before the DCOS/DBRT ~~and~~ and COS/MLG (DD-4 & 5) stressed reg. the wretched condition and also requested repeatedly for Pucca construction of the sub-godown No.8, 9 & 10 of 05 ward. PW-1 also stressed reg. the wretched condition. PW-2 in his verification report (PD-9~~1~~/Exh-12) under ~~the~~ the penultimate para stressed for RR RCC Type building. During evidence he stated that the godowns ~~are~~ of British era. PW-1 in his recorded statement additional PD-17 and at PD-11/ Exh-6 indicated that theft from the said godowns of 05 ward is impossible. ~~But~~ During his examination he confirmed ~~that~~ the matter. But all on a sudden during cross-examination he made some contradictory statements. He also indicated at the later stage of his evidence that the sub-godowns of 05 ward of British time and of ~~the~~ wretched condition. But since there was no clue or sign of break of the ~~maximum~~ sub-godowns (PD-15~~1~~ and PD-11/ Exh-6) except forced open of one CI sheet-over the roof of room No.9 and 10 and below the roof the one side of the expanded metal was found loose at the time of detection by DCOS/DBRT ~~and~~ along with other officials. This indicates clearly that shortage was not due to the wretched condition of the sub-godowns ~~of~~ of 05 ward.
- 2) Although, on the roof of sub-godown No.9 & 10 after having theft report (PD-15), DCOS/DBRT along with his office staff detected that one CI sheet was forced open and below the roof ~~that~~ one corner of the expanded metal was loose

which was repaired on 7/11/91 by a carpenter vide final brief dt.12/6/91 of C.O. but during regular hearing the defence did not take any ~~any~~ step of ~~any~~ able to produce any evidence either documentary or oral to prove that the materials were stolen through the roof of sub-godown No.9 & 10. Only DW-1, PW-2 and PW-1 (in the later stage during cross-examination by D.C., clarification question of E.O. and at the time of re-examination P.O.) stated that miscreants may take away the materials through the roof. The undersigned is not convinced on ~~any~~ such statements. Even C.O. also take the same plea. But it is absolutely impossible for any miscreants to take away the such heavy materials through the roof of 15' height. Below the the roof there was covering of the sub-godowns of 05 ward by expanded metal. The back side of the walls of sub-godowns No.8, 9 & 10 is only 3 to 4 feet space as per the evidences of PW-1, 2, DW-1 and C.O. & and thereafter, the boundary wall of Dy.CME/DBWS workshop. Such heavy materials cannot be taken by any miscreants through ~~any~~ bare hands. Truck, ladder and group of persons are required. Moreover, such heavy materials cannot be stolen within ~~any~~ short time, atleast minimum 4 to 5 days or more are required. Without the notice of chowkidars and RPF personals of Dy.CME/DBWS workshop, it is not possible to take away such heavy materials. Since, back side of the ~~any~~ godowns is very limited space (3 to 4 feet as per the evidence), the truck had to be ~~any~~ placed within the campus of Dy.CME/DBWS workshop i.e. back side of the godowns after the boundary wall between the said godowns and workshop. Normally, for the sake of argument on the basis of the evidences of DW-1, C.O. and PW-1 it is taken that miscreants can take away the materials, in that case some RPF staff or chowkidare or any staff should have been produced by the defence in order to prove the same. But in this case ~~any~~ the defence did not take any effort to establish the matter. From the above facts, it is clear that taking away the such heavy materials is not possible by any miscreants under the above circumstances. It seems that ~~any~~ the forced open of the C/S sheet and expanded metal is only the trick of the miscreants to divert the attention.

iii) In view of the above, it is only possible to take away the materials from sub-godown No.8 & 10 of 05 ward, the custodian of which was absolutely Shri S.Chakraborty, C.O. through the doors which were locked, sealed and signed on the lebal by himself and the doors could not be possible to open except himself without tempering the seal. The materials might be missing during long period due to mis-management by the C.O. Similarly, the materials of sub-godown No.9 of 05 ward where the unclassified bronze ingot (rejected) were kept and the joint custodian of the said materials were Shri B.Chakraborty, DSK/I/R and Shri S.Chakraborty, C.O. were found short is possible due to mis-management of the custodians and it is very much possible that the shortage of the said materials through the doors of the sub-godowns No.9 & of the main doors of 05 ward.

The doors of the sub-godown No.9 ^{46,12} definitely opened and closed by the joint custodians and between 2/11/91 to 7/11/91 upto 2-30 P.M. the shortage of bronze ingot of 2230.900 kg against 291 pcs. were occurred during the said period due to mis-management of the custodians. It is agreed that D.A. also failed ~~xxxxxxxxxx~~ to keep any evidence in order to prove that the shortage of the said materials were through the doors of the sub-godown No.9 of 05 ward, PD-12 (Exh-7) indicates that the doors were opened and closed by the custodians as per the system in vogue. From the available evidences including ~~xx~~ circumstantial evidences on preponderance on probability the conclusion is that the shortage of the materials is due to mis-management on the part of C.O. In this particular case, the total amount involved in Rs. 1,48,557.03 vide PD-11/Exh-6. The amount may be less because the rate of bronze ingot (rejected) as calculated may ~~xx~~ not be accurate as ~~xx~~ pleaded by the defence ~~x~~ but the amount is not only the main criteria but it is proved beyond doubt that the materials as stated was short at sub-godown No.9, 9 & 10 of 05 ward.

Chapter-V:

FINDINGS

In the light of the fact and evidences available as presented in the foregoing paragraphs and also on the basis of the preponderance on probability in this case, the article of charge levelled against the defendant, Shri S.Chakraborty, DSK/III under DCOS/DBRT is established.

Dated: 24/9/97

24/9/97
(K. Saha)
Enquiry Officer/HQ
N.P.Rly., Maligaon

Attested by
Biswabhusan
Adv.

(TYPED COPY)

ANNEXURE -IX

To,

The Disstt. Controller of Stores,
N.F. Railway :: Dibrugrah.

Sub : Submission of Representation.

Ref. : Your confidential L/No. E/S/57 (S) dated 14.10.97.

Sir,

In my representation I beg to lay before your honour the following facts of my case insanguine of getting your sympathetic consideration and natural justice.

1. That the findings submitted by the Enquiry Officer/HQ/N.F. Railway/Maligaon dated 24.09.97 is based on no evidence at all. The EO was fully arbitrary and carpicious and thereby violated the principle decided by the Supreme Court reported in AIR 1964 SC 364, AIR 1965 SC 247. Hence, this entire findings should be quashed in all fairness of things and justice.
2. Your kind attention is invited to page No. 26 of the findings given by EO that he has agreed that 'DA also failed to keep any evidence in order to prove that the shortage of the said materials were through the doors of the Sub - Godown'. If this contention is taken as criteria for deciding the issue in such case, findings given by EO is contradictory. On this mere ground the entire findings is collapsed. EO has also blamed to DA, which he has no jurisdiction.
3. The EO has opined that materials were found shortage due to mis-management of the undersigned but what were the mis-management on the part of the undersigned has not been detailed by the EO. More over the workings, it is clear that the EO was the eye witness. In such case, he can not act as judge as per provision laid down in the constitution. This proves that the EO was Biased in the said case.
4. The EO can not impart personnal knowledge of the fact of the case while enquiring in to the charges against the Govt. servant. He must based his findings on the evidence on record but EO has not done so. This is violation of the ingredients decided by the Supreme Court reported in AIR 1958 SC 86. *Contd....*

- 2 -

5. Despite these there was a nominated PO but the EO put the questions which may be in the nature of cross-examination and some of the questions may appears to be the leading questions. The EO has no jurisdiction to put leading questions. Natural justice is not merely a question of form but of substances. The questions put by EO to witnesses were in the shape of cross-examination. *He has also violated the norms of Madras High Court detailed in 1970 II LLJ 201.*
6. The EO gravelled beyond the charge. If the Memorandum No. E/S/57 (S) dated 14.06.93 revised on 20.09.94 is connected, the charge was mis-managed but no where in analysing the evidence EO has mentioned the evidence tendered in course of DAR enquiry. All the PW-1, PW-2 and DW-1, tendered the evidence which precisely proves that the prosecution has failed to prove the charge against the undersigned beyond all reasonable doubt. This matter has already been mentioned in the brief but the EO kept mum on the issue, which obviously proves that there was *no say of the EO.*
7. That the DAR proceedings is quasi-judicial character, the basis of preponderance of probability is there but no where it was laid down in the DAR that the evidence tendered by witnesses can ruled. This is a rudimentary principle which I feel unknown to the EO.
8. The EO can not omit from consideration any materials from the record. It is a duty of the EO to consider all the materials which had been brought on record. The EO performed the quasi judicial duty and he is bound to consider all materials on record and come to a fair findings. (G.P. Govel - Vs - UOI 1965 BLT 16 BD).
- 8.1 The PW-1 who conducted the fact findings enquiry has mentioned in his report No. S/11/DSK/G dated 02.05.92 (PD-11) that DCOS/DBRT in presence of DSK detected one C.I. Sheet over the roof of godown No. 9 and 10 has been forced opened from the back side and expanded metal cover below the C.I. Sheet, roof of the godown has also been forced opened and kept as it was. This fact has been corroborated in course of cross-examination of PW-1 Shri J.N. Saikia. In this context your attention is invited to reply to Q. No. 5 put to him by the nominated DC at page No. 7 of the proceedings. It has also been

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- 3 -

supported by DW-1 Sri R.R. Sengupta vide his answer to question No. 3 at page No. 22 of the proceedings. These proves that it was a theft case for which the undersigned submitted the theft report to DCOS/DBRT on 07.11.91 (PD-15). This is one of the major evidence which has been taken into consideration by EO, the reason of which is unknown. This also proves that the *materials evidence which had come in course of DAR enquiry* has not been considered by the EO while giving his findings. In this connection your attention is invited towards the judgment of the Supreme Court reported in AIR 1965 SC 202, AIR 1967 DLP 243 and AIR 1954 SC 51. Wherein it has been mentioned that the witnesses which are essential to unfold the narrative must off course be called by the prosecution whether their testimony is for or against the prosecution itself and therefore even such witness are not reliable, the prosecution is bound to produce them. The PW-1, PW-2 and DW - 1 tender the evidences which does not support the prosecution case and stated that it *was a theft case. This very important point has not been evaluated by the EO.*

- 8.2 Your attention is also invited to DD-1, 2 and 3 wherein it can be seen clearly that all three Departmental Stock-Sheets were prepared by PW-2 Sri U.N. Bhuyan who considered the said incident as a theft case and Sri L.N. Bharali the then DCOS/DRBT has detected the said theft case on 07.11.91 after getting the theft report from the undersigned vide PD-15, this has also been supported by Sri Bhuyan PW-2 in reply to Q.No. 11 during the cross-examination by the nominated DC at page No. 15 of the proceeding. DW - 1 Sri Sengupta also supported the said aspect vide answer to Q.No. 4 at page No. 22 of the proceedings. Sri Saikia PW-1 has also agreed to it vide answer to Q. No. 9 at page No. 8 of the proceedings. But it could not be understood as to why this very important fact proved as a theft case had been side track by the EO, in his report. It is clearly indicated the biasness of the EO.
- 8.3 In course of cross examination Sri Saikia, PW-1 has categorically stated vide ans. to Q. No. 3 at page No. 7 of the proceedings that the search was conducted by DCOS/DBRT along with a team on 7.11.91. On being asked, why such a theft case was not given to police or RPF by DCOS/DBRT, PW-1 replied vide ans. to question No. 6 at page No. 7 of the proceedings, that, it was up to DCOS/DBRT.

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- 4 -

8.4 Sri Saikia, PW-1 has also stated vide ans. to Q.No. 14 at page no. 8 of the proceedings that the godown were forcibly opened by the miscreants. It proves clearly that it was a criminal interference, which can not be ruled out. Sri Sengupta, DW-1 has also agreed to it vide answer to Q. No. 8 at page No. 23 of the proceedings. Sri Bhuyan, PW-2 also supported the same vide ans. to Q. No. 4 at page No. 14 of the proceedings during the cross examination by the DC.

8.5 Sri Saikia, PW-1 has also clarified in reply to Q. No. 5 at page No. 9 of the proceedings that it was able to theft of these heavy materials such as 291 pcs. tin ingots about 8 kg, moreover as per PD-11 tin ingots, Copper and Gun metal ingots about 309.200 kg 25.800 kg and 23.200 kg respectively.

But due to biasness the EO has not taken the vital evidence mentioned at para 8 to 8.5 in support of the defence.

8.6 Sri Saikia, PW-1 has also pointed out to EO vide ans. Q.No. 6 at page No. 10 of the preceedings that in his original report at PD-11, it ans mentioned that the C.I. Sheet roof of the godown was forced opened and the roof of the sub - godown covered by expanded metal was also/forced opened and no clue of theft found except these. Particularly at day time since the duty of the depot staff comments from morning 6.30 hrs to 16 hrs with one hour lunch break there was no scope of theft of stores during day time. All the shortages arround 2, 5 MT theft during the night.

8.6.1 Sri Saikia, PW - 1 has also stated vide ans. to Q No. 7 provided at page No. 10 of the proceedings that the ward and watch staff was proceeded at DBRT stores depot to watch the materials and godown around the dayand night. Specially in the night the Ward and Watch staff not able to watch main godowns of the store depot at the southern side of the godown (backside of sub-godown No. 8, 9 and 10) even there is no passage provided by the Administration in these areas of the godown to go around by the watchman. It is a clear picture that no watch and ward staff was provided at the back side of the sub - godown No. 8, 9, and 10 of 05 ward. As a result of which the criminal can easily enter the sub godown from the back side for the purpose of theft and the then DCOS/DBRT has done nothing as a preventive measure. This is completely administrative lapses for which the undersigned is not responsible at all.

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- 5 -

8.7 That Sir, the condition of the godowns were very dilapidated which had also been established by Sri Saikia, PW-1 vide answer to Qn. No. 22 at page No. 12 of the proceedings during the cross examination by DC. The PW-1 has opined that the godowns and buildings at the time of incident of 05 - ward was quite insecure.

8.7.1 Here Sir, I would like to draw your kind attention to the evidence tendered by Sri U.N. Bhuyan PW-2 vide his answer to Qn. No. 3 at page No. 14 of the proceedings that the said building of 05 ward was of British era and the godown which was called strong room for keeping of non- ferrous items are extremely deplorable condition. This has also been pointed out in his verification report at PD-9. But it has been overlooked by the EO.

8.8. It has been mentioned that the tally sheet PD-10 which were signed by the undersigned as a token of witness as per verbal orders of the then DSOS/DBRT but the EO had surprisingly given the reason for findings at chapter - IV at page no. 6 that reweighment conducted by Sri U.N. Bhuyan, DSK/I/Stock while going to handover the charge to Sri B. Chakraborty during the period from 28.10.91 to 02.11.91, which is not based on facts. As because, Sri Bhuyan PW-2 had never conducted the reweighment nor handed over the charge of the materials in question to Sri B. Chakraborty during the material period. The EO had wrongly submitted the reasons for findings. This aspect had to be scrutinised by your honour while giving the final decision.

8.9. That Sir, In course of enquiry on 14.08.95 at MLG, the EO pointed out at page No. 1 of the proceedings that Sri K.C. Choudhury IOP/CB/GHY has partially associated with the investigation of the said case but in course of examination by EO, Sri Chowdhury CW-1 categorically denied vide answer to Qn. No. 5 at page No. 27 of the proceedings and also stated that the relevant case was investigated by Sri A.K. Saha the then IOP/CBI/Shillong presently posted as DSP/CBI/Gangtok. More over it may be seen that EO decided to call Sri Chowdhury as court witness vide his proceedings at page No. 17 para - 3 but in course of enquiry Sri Chowdhury CW-1 has confirmed that he had not been called as CW (vide ans. to Q. No. 4 at page 27 of the proceedings). Hence the findings as well as the report of the EO is found to be baseless and not correct.

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- 6 -

9. The whole crux of the problem is that if there was no theft, why the then DCOS/DBRT called the deptt. carpenter and engaged him for repairing the godown etc. just after the reporting of the incident. It has also been agreed by PW-2 vide ans. to Q. No. 8 at page No. 14 of the proceedings, similarly DW-1 also agreed to vide his ans. to Qn. No. 2 at page No. 22 of the proceedings. This proves beyond any shadow of doubt that there was a incident of theft for which such repair was conducted on 7.11.91 that also after getting the theft report from the undersigned.
- 9.1 Over and above it may be clearly seen from PD-10 that the then DCOS/DBRT has also been agreed the said incident as "theft of valuable items from 05 strong room by opening the C.I. Sheet from the back side".
- 9.2 It may also be seen from DD-1, 2 and 3 that DCOS/DBRT himself accepted the said incident of 7.11.91 as a theft case under his signature over the office seal.
10. If there was any mis-management then why not a single witness either PW-1, PW-2 and/or DW-1 stated so. Here sir, I would like to draw your kind attention to a surprising fact that even during the period of regular hearing the EO biasly did not allow to cross - examination to PW-1, PW-2 and DW-1 on the very particular point of mis - management on the part of the undersigned, which will be evident as per the following facts :
 - 10.1 While the nominated DC put the question No. 23 at page No. 12 of the proceedings to PW - 1 regarding the mis-management of the undersigned, the EO raised his objection on the ground that PW-1 is not appropriate person on the issue of mis-management.
 - 10.2 Similarly the question of mis-management if any on the part of the undersigned has also been asked to PW-2 vide Qn. No. 2 at page No. 15 of the proceedings to find out the truth and here also the EO purposely disallowed the said question with the intention to suppress the facts.
 - 10.3 The nominated DC again put such a question of mis - management to DW-1 vide Qn - No. 12 at page No. 24 of the proceedings, to establish that there was no mis management on the part of the undersigned. Put strangely enough, the EO again

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raised his objection to this question and surprisingly stated that the question should be put to PW-1, to whom EO has has already been objected against DC's Qn. No. 23 at page No. 12 of the proceedings as mentioned earlier at para No. 10.1.

11. While the charge specifically meant for mis managed on the part of the undersigned which has also been agreed by the EO vide his report at chapter - III in page No. 4 , para No. 3, it could not be understood as to why EO raised his objection to that very particular question of mis-management to PW-1, PW-2 and DW-1 as clearly mentioned above vide para - 10 to 10.3. It is a clear case that EO has not provided the reasonable opportunity to the undersigned during the regular hearing by the way of disallowing the very important as well as relevant question.
 - 11.1 But, without having any evidence of the witnesses, the EO purposely established the charge of mis-management of the undersgined baselessly.
 - 11.2. On the otherhand it may be seen from PD - 9 that Sri U.N. Bhuyan who physically verified the materials as well as godowns has appreciated the fact that the undersigned had performed some minor repairing works for the protection of Railway materials which has also been corroborated during the cross-examine by the DC vide Qn. No. 13 at page No. 15 of the proceedings but all those vital points of evidence tendered by the witness (PW-2) neither considered nor brought to report by the EO.
 - 11.3 It is mentioned here that there was no mis-managemenet on the part of the undersigned. More over the undersigned tried his level best for protection of Railway materials. And during the material period the Manager of the DBRT Depot was the then DCOS/DBRT and the undersigned was not at all the manager. From the above para it proves that the EO has not applied his judicial mind while recording the findings.
12. In this particular case no reasonable opportunity facilities were given to the undersigned as inshrined in Article 311(2) of the Constitution.

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- 8 -

12.1 The following documents for the purpose of defence to refute the charge had not been made available despite repeated requests on the subject.

12.1.1 CO's Appeal dated 05.07.90.

12.1.2 The report submitted by Sri Hiralal Panika, the then Duty Jamadar dated 07.11.91 to DCOS/DBRT.

12.1.3 DY. COS/HQ/MLG's L/No. S/GL/47/12/2/pt-I dated 14.11.91.

12.1.4 Co's appeal dated 18.1.92 to DSK/1/DBRT.

12.4.5 DSK/1/DBRT's L/No. S/11/DSK/R & BK dated 18.1.92.

12.2. All the above documents were considered as relevant by the EO during regular hearing on 26.11.96 at TBK (page - 4 of the proceedings).

13. The following defence witnesses were not made available on the date of scheduled date of enquiry named Sri Hiralal Panika and Sri Ramdhani Goal. And the EO dropped the said witnesses on the ground that they were not attended and DC agreed to this, which is quite a lie. In this connection your attention is invited to Rly. Bd's No. E(D & A) 70 RG dated 6.5.70. It is obligatory to examined all the witnesses produce by the delinquent Rly. Servant. It would not be correct to refuse the examination any account but the EO had dropped the witnesses knowing fully well that the list of witnesses given by the CO will depose in favour of the defence. This indicated that the CO has not given fullest opportunity by the EO to defend the case. EO has not given the reason for not securing the attendance in doing so. All the witnesses were Railwaymen.

14. In reply to Q.No. 22 at page No. 12 of the proceedings the PW-1 stated that the special judge/GHY in respect of CBI case against retired DSK Sri D.D. Saikia against case No. 11 (C)/89 given verdict that the godown and buildings were quite insecured. The copy of the said judgement is placed as Annexure - A for your kind perusal. It is a vital document to prove that Sri P.C. Barpujari, Spl. Judge has recorded at page No. 10 and 11 that the godown of different wards of store were in very bad shape and were not fully protected from possible theft by miscreants and taking such advantages of bad godown condition, miscreants had committed thefts on a number of occasions and shortage in

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- 9 -

stock of various items in different wards were a common feature etc. But this vital documents of defence has been disallowed by the EO during the regular bearings on 26.11.96 at TSK purposely.

- 14.1 It may be seen from copy of the appeal dated 23.10.89 that the undersigned requested the then COS/MLG for removal/disposal of rejected bronze ingots of receipt section from 05-ward, copy endorsed to DSK and ISA/DBRT but with no effect. If the said materials of receipt section were shifted from 05-ward as per rules laid down at that period, the question of theft would not be happened as occurred on 07.11.91 and strangely enough that this vital document has also been disallowed by the EO as defence on 26.11.96 at TSK the copy of the said appeal is placed as Annexure - B to ascertain the factual position.
15. The EO has stated at page 25 of his findings that the materials might be missing during long period due to mis-management by the CO. But the charge should not be proved only on the basis of suspicion of the EO in DAR. The court has opined that the disciplinary proceedings against the Govt. Servant although technical, rule of criminal trial do not apply at mere suspicion. It should take place of prove (1969 Labour Industrial cases 896). Though a street prove is not required in the DAR case yet the preponderance should be such as to lead to a logical conclusion. Suspicion can not be a part of preponderance. The EO on this basis can not record the findings to make the civil servant as guilty of the charge.
16. In reply to Q. No. 9 up by EO at page No. 30 of the proceedings the undersigned clarified that the key of sub godown No. 9 used to deposit to DSK/1/G/DBRT along with the other keys after closing of the godowns which may also be confirmed from the key - register during the materials period).
17. The EO recorded in his findings at page No. 7 that the keys of sub godown No. 8, 9 and 10 were kept in the key box maintained in 05 - ward and can not be opened without the permission of the undersigned in case of godown No. 8 and 10 but in case of sub - godown No. 9 to be opened presence of joint custodian.
- 17.1 It is true that the keys of sub - godown Nos. 8 9 and 10 were kept in the key box maintained in 05-ward during the office hours

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- 10 -

but after closing the godowns all the keys of the godown are deposited to DRK/1/G/DBRT at the end of days work i.e. at 11 hrs. for 1st half period and at 16 hrs for 2nd half period similarly used to collect all the keys from the key box placed at DSK/1/G/DBRT at 6.30 hrs for the 1st half period and at 13 hrs against the 2nd half period and signed the key Register lying with DSK/1/G/DRBT with the mentioning of time for collection and depositing the keys of all the godowns.

- 17.2 In the said case the C.I. Sheet and expanded metal cover of the godown was forcibly opened from the back side by the criminal as pointed out at PD - 15 which has also been agreed by Pw - 1, Pw-2, DW-1 and then DCOS/DBRT (vide PD-10, DD-1, 2 and 3) so there was no temper of seal and lock in such case of 07.11.91. It is proved that the criminal has taken the stores from the godowns by opening the C.I. Sheet etc. from the back side without tempering the seal and lock. This analogy is reasonable than that of the analysis given by the EO.
18. In reply to EO's Qn. No. 5 at page - 9 of the proceedings, Sri Saikia, PW - 1 has clarified that it was possible on the part of the criminal to take away such heavy materials through the roof. But this vital evidence tendered by the PW-1 has been omitted by EO.
- 18.1 Similarly Sri U.N. Bhuyan, PW-2 also clarified to EO that these materials can be easily taken by the criminal vide his answer to Qn. No. 5 at page No. 16 of the proceedings.
- 18.2 Similarly DW-1 Sri RR. Sengupta has also clarified vide EO's Qn. No. 3 at page No. 25 of the proceedings, that such heavy materials can be stolen during the materials period.
19. Sir, I like to draw your kind attention to another surprising fact that all the above vital facts of the said case i.e. the evidences tendered by PW-1, PW-2 and DW-1 as mentioned at para No. 18 to 18.2 had been omitted by EO in his findings knowing fully well that it was a theft case and not a case of mis-management.
20. However the undersigned should be exonerated on the following grounds on the fair play and justice.

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- 11 -

20.1 The Article of Charge at Annexure - 1, The Statement of Imputation of charge at Annexure - II. The Calender of Evidence (Documentary) At annexure - III have not been signed by the DA which would be evident as per Memorandum No. E/S/57 (S) dated 14.06.93. As per extant rules the competent authority should sign in every page inclosed with the charge sheet, over the stamp of his own designation. But the extant procedure was not followed in the said case while issuing the chargesheet, to the undersigned.

20.2 While issuing the Memorandum, para -5 had been omitted which would be evident from the relevant Memorandum. So it is proved that the said memorandum was not issued in Standard Form No. 5.

20.3 It may be seen from the record that the undersigned submitted the defence statement to DCOS/DBRT on 20.02.95. And Sri K.C. Choudhury, the then IOP/CBI/GHY had already been nominated as the presenting Officer by DCOS/DBRT vide his L/No. E/S/57 (S) dated 17.10.94 i.e. prior to receipt the defence statement from the undersigned. But as per Bd's L/No. E. (D & A) 64 RG 6-36 dated 27.05.67, order of appointment of BO should be issued by the Disciplinary Authority only after the written statement of the defence of the Officer is received and considered and a decision is taken that an enquiry should be held. In the instant case the DA overlooked the Rly. Bld's direction and nominated the PO at much earlier date than the date of receipt of the defence statement.

20.4 It would be seen from the findings of the EO at page No. 1 that as many as three PO have been changed and finally Sri L. Hangshing, IOP/CBI/GHY nominated as the PO in the said case. In this connection I like to mention here that Sri L. Hanshing was only nominated but not appointed vide DCOS/DBRT's L/ No. RC No. 7 (A)/92-SHG dated 23.05.97 that also vide Standard Form No. 6. But as per extant rules this should be made vide standard form No. 8. The standard form No. 6 meant for Refusing Permission to inspect Documents, which is quite a separate issue and has got no relevancy for nomination of PO.

20.5 As per Bd's I/No. E(D & A) 69 RG 6-17 dated 08.01.71 the target period for finalising the disciplinary proceedings is 150 days.

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- 12 -

However in respect of SPE/Vigilance cases etc. are likely to retard the progress of the disciplinary proceedings but the Rly. Admn. should streamline the existing procedure with a view to eliminating delays, particularly at the stage of inspection of the documents by the delinquent official. But in the instant case while the Memorandum issued dates back to 14.06.93, the undersigned has been allowed to inspect the listed documents at shillong only on 14.02.95 i.e. after the lapse of 570 days (approx.) and this may be confirmed from the defence statement of the undersigned submitted on 20.02.95. It proves that neither the proceedings completed within 150 days nor allowed the undersigned to inspect the listed documents within the target period, by the Administration.

- 20.6 It may also be seen from DCOS/DBRT's L/No. RC No. 7 (A)/92SHG dated 16.09.96 that the copies of few listed documents were given to undersigned after getting from EO i.e. after a lapse of 38 months from the date of issue of Memorandum. It proves that the Administration did not take any interest to finalise the said case at the earliest.
- 20.7 As per Rly. Bd's L/No. E(D&A) 78 RG 6-11 dated 06.20.80, the Enquiry Officer should before commencing the Enquiry proceedings ensure that the procedure for issuing charge sheet etc. as laid down in the Discipline and Appeal Rules has been fully complied with but in the instant case the EO has not mentioned any irregularities in his findings, even after pointed out in the written brief. It proves that EO has not applied his judicial mind at the time of recording his findings.
- 20.8 It may be seen from the findings of the EO at page No. 21 dated 11.06.97 at MLG, that before starting the examination of Sri R.R. Sengupta, DW-1, EO issued a warning but in case of other prosecution and court witnesses, he had not done so. It clearly indicate that the EO was prejudice and taken the side of the prosecution.
- 20.9. It was a theft case for which ingots were found shortage in stock. This was not a case of mis-management on the part of the undersigned. Neither any prosecution witnesses nor the defence witness tendered such evidence of mis-management.

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- 13 -

20.10 The theft committed by unknown culprits, the possibility of which can not be ruled out.

20.11 As per evidence and report submitted by Sri Saikia PW-1, it proves that the said theft case of 7.11.91 was detected by the then DCOS/DBRT himself.

20.12 Sri C.N. Bhuyan, PW - 2 who had physically verified the materials and found shortage in stock arising out of theft of ingots for which the undersigned submitted the theft report on 07.11.91 (PD-15).

20.13 The opening of C.I. Sheet and expanded metal cover of sub-godowns from the back side and taking away of such heavy materials was possible as opined by PW-1, PW-2, DW-1 and clarified this as per their answer given to EO's question.

20.14 It has been established that it was a criminal interference so the then DCOS/DBRT called the departmental carpentor and got it repaired on 07.11.91.

20.15 The godowns were in deplorable condition being built during British Era and that too of the C.I. Sheet roof instead of RCC as pointed out by PW-2 vide his report PD-9.

20.16 The undersigned filed several appeals for repairing of godowns vide DD-4 and DD-5 but with no effect from the Administration.

20.17 The seal was intact as well as the label so the question of keys does not arise as the criminal entered from the back side of the roof and removed the materials in question.

20.18 The then DCOS/DBRT by signing the Departmental Stock Sheet vide DD-1, 2 and 3 has already been accepted the said incident of 07.11.91 as theft case detected by himself.

20.19 The FIR to local police/RPF would have been lodged by DCOS/DBRT or by CBI. I like to mention here that in another case of theft on 09.11.92 DCOS/DBRT himself lodged the FIR to local police after receipt the theft report from the undersigned PD-16. This has also been clarified by the CO vide EO's Qn. No. 15 at page No. 31 of the proceedings but EO had not mentioned the said aspect in the report while recording his findings. *Contd....*

-14 -

20.20 That instead of lodging FIR the then DCOS/DBRT repaired the godowns by the deptt. carpenter on 07.11.91. In this case FIR was invariably necessary.

20.21 Sri K.C. Chowdhury, DSP/CBI/GHY who has been called by EO as CW-1 has stated that neither he had investigated the said case nor lodged any FIR in the instance case. Hence the CO does not come in to the picture.

20.22 The Memorandum/Charge sheet originally issued on 14.6.93 which had been revised by issuing a corrigendum letter without giving a speaking order which is against the standing order of the Rly. Board issued in the year 1995. Previously it was misappropriation which revised to mis managed on 20.09.94. It was not mentioned any where by the DA regarding the reason of such revision. Hence EO had no jurisdiction to get it revised when EO was appointed by the DA vide L/No. E/S/57 (S) dated 20.07.95.

20.23 Sri J.N. Saikia, PW-1 was not at all Hostile as he has given full opportunity to PO for re-examine and cross examine which has also been agreed by EO vide his proceedings at page No. 13 but his opportunity of cross examine has not been availed by the PO hence the plea of hostile has no locus-standi. If the PW-1 was the hostile then why EO has evaluated his evidence as PW-1. EO would have dropped him on this reason as PW-1.

20.24 The EO has agreed in his report at page No. 26 that the amount may be less because of rejected bronge ingots. It may be seen from the report that EO has not mentioned the actual rate of rejected bronge ingots then how it could be possible on his part to find out the involvement of Rs. 1,48557-03 in the instance case.

20.25 It may be seen from the verification report of Sri U.N. Bhuyan (PD-9) who had physically verified the materials and the godowns has appreciated the fact that the undersigned had performed some minor repairing works for the protection of Rly. materials which has also been corroborated during the regular hearing on 27.05.97 vide answer to Qn. No. 13 at page No. 15. It clearly proves that the undersigned was not at all responsible for any sorts mis-management during the material period.

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- 15 -

In view of the above, your honour is requested to kindly let me off from the charge as it is not binding on the part of DA to accept the findings of EC that wrongly recorded. And for this kind act, the applicant shall remain ever grateful to your honour.

With best regards.

Enclo :

Annexure - A.

Annexure - B.

Dated, Dibrugarh.
the ____ Oct. 1997.

Yours faithfully

Received

Sd/- Illigble.

04.11.97

Seal

Distt. Controller of Stores
N.F. Railway Dibrugarh.

Sd/- Illigble.

(Sudhangshu Chakraborty)

DSK/Chasing.

S/Copy

Attested by
Boudhury
Adv.

Office of the
Distt. Controller of Stores,
N. F. Railway, Dibrugarh.

No. E/S/57 (S)
To

Dt. 20.12.97

✓ Shri Sudhangshu Chakraborty,
DSK/III/DBRT

Sub : N.I.P.

Ref : SF-5 No. E/S/57 (S) dated 14.6.93.

On careful examination of the case, the Enquiry Report and final defence submitted by the charged official, the undersigned being the Disciplinary Authority, has passed the following orders :-

Shri Sudhangshu Chakraborty, DSK/III/DBRT while functioning as DSK incharge of 05 ward and its strong room and having kept the materials as mentioned in the article of charges under his lock and keys, sealed by himself (sub-godown No. 8 & 10) and sealed jointly with Shri Bhabatosh Chakraborty, ex-DSK/I/DBRT sub-godown No. 9 was responsible for the safe custody of materials in strong room No. 8 and 10 and jointly responsible with Shri Bhabatosh chakraborty for strong room No. 9 and by causing loss of materials as alleged in the article of charges Shri Sudhangshu Chakraborty failed to maintain absolute integrity and devotion to duty.

The contention that the material was stolen by miscreant is unfounded and it was impossible to remove the material in bulk quantity from the height of more than 13 ft. by opening C.I. sheet of godown and then expanded metal roof of strong room without being noticed by Watchman and RPF who guard the workshop.

Hence Shri Sudhangshu Chakraborty, DSK/III/DBRT has been found guilty of the charges brought against him vide SF-5 No. E/S/57 (S) dated 14.6.93 and for this act of which, he is reduced to the lowest stage in his present scale and of pay for a period of 3 years with cumulative effect and during this period the employee will not earn his annual increment.

*Subroto
Bhattacharya
Advocate*

Contd...2.

In addition to this the pecuniary loss to the Railway Administration as mentioned in the article of charges will be recovered from his pay. He is fully responsible for the loss of Tin ingot, Copper ingot and gun metal ingot from the sub-godown No. 8 and 10 the value of which comes to Rs. 60,637.26 and jointly responsible with Shri Bhabatosh Chakraborty, Ex-DSK/I/DBRT for the loss of Bronze ingot valuing to Rs. 87,919.77 from the sub-godown No. 9. This amount of Rs. 60,637.26 will be recovered from the pay of Shri Sudhangshu Chakraborty in 36 equal instalments while the proportionate amount to be recovered from Shri Sudhangshu Chakraborty for the loss of bronze ingot as mentioned above will be ordered after the finalisation of SR-5 No. E/II/4 (a) dated 14.6.93 against Shri Bhabatosh Chakraborty who was joint custodian with Shri Sudhangshu Chakraborty.

An appeal lies with Dy.CME/DBWS within a period of 45 days.

(A. Varma)
DCOS/DBRT

Copy to :- 1. APO/DBWS for information and necessary action.
The above mentioned recovery may be made after the expiry of 45 days.
2. Dy.CME/DBWS.
3. WAO/DBRT
4. P/Case.
5. Dy CMO/C/MLC

(A. Varma)
DCOS/DBRT

Rec'd. 1/12/97
Bldg. 22/12/97
at 15.00 hrs

Rec'd.
Advocate
14.9.93

96

Confidential

The Deputy Chief Mechanical Engineer,
N.F.Railway. Workshop, Dibrugarh, Assam.
(Through DCOS/DBRT)

Sub: Submission of appeal for exoneration from the charge
of Mis-Managed vide DCOS/DBRT's Memo No. E/S/57 (S)
dated 14.6.93.

Ref: 1. DCOS/DBRT's L/No. E/S/57 (S) dated 14.10.97.
2. My statement of defence finally submitted on 4.11.97.
3. DCOS/DBRT's Letter of even No. dated 20.12.97.
4. EO/MLG's Report dated 24.9.97.

.....
Sir,

Most respectfully I beg to state the following few lines
for favour of your sympathetic consideration and natural justice.

That Sir, on scrutiny of EO/MLG's report dated 24.9.97 and
DCOS/DBRT'S NIP dated 20.12.97, it is revealed that neither the
EO/MLG nor the DCOS/DBRT have applied their mind during the recording
of their findings of the said case and without going through my defence
statements have ridiculously established the charge of 'Mis-Managed'

That Sir, both the EO/MLG and DCOS/DBRT have completely
ignored the fact that the then DCOS/DBRT had recorded (vide his L/NO.
S/DCOS/91/Policy dated 12.11.91 - PD.10) the said incident of 7.11.91
as 'theft of valuable items from 05-Strong room by opening the C.I. Shoot
from the back side'. (Copy enclosed)

More over the then DCOS/DBRT himself had detected the said
incident of 7.11.91 as a theft case in the presence of the several DSKs
and other officials (PD-15) which has also been agreed by all the
prosecution witnesses and defence witness in course of regular hearing
during the cross examination by D.C. and EO/MLG. And the then DCOS/DBRT
had also accepted the findings/reports of Shri U.N.Bhuyan, who physi-
cally verified the materials and prepared the departmental Stock Sheets
(BD-1,2 and 3), who confirmed the above incident as a clear case of theft
(copies enclosed).

That Sir, I not only repeatedly informed (DD-4 and 8) about
the wretched condition of the godown No. 8,9 and 10 of 05-section to my
higher authorityes which has been accepted by EO/MLG as well at page 24(.)
of his findings but also undertook some repairing works of the godowns
for the protection of the Railway properties which has also been appre-
ciated by Shri U.N.Bhuyan the then DSK/DBRT during his physical veri-
fication (PD-9). This act very clearly reflects my utmost sincerity and
devotion to duty and doubtlessly proves my integrity and commitment
towards fair management of the Railway Properties. (copies enclosed)

-87-

That Sir, while the charge was specifically meant for 'mismanaged' even then the EO/MLG purposefully disallowed the D.C. to ask any question relating to mis-managed to PW-1, PW-2 and DW-1 ~~and~~ thereby he has grossly deprived me from the reasonable opportunity of getting the natural justice.

48

Advocate
14.9.9

That Sir, as many as six defence documents which were considered as relevant by the EO/MLG have not been made available despite repeated request to refute the charge.

That Sir, the then DCOS/DBRMT had also suspended me in the said case w.e.f. 16.12.92 to 19.7.94 without showing any reason & subsequently engaged me in works on 14.5.93 and 15.5.93 even then he did not allow me to join duty w.e.f. 14.5.93 nor increased my subsistence allowances as per rules, the details may be seen from the enclosed appeals submitted by my wife to GM & others on 19.3.94.

That Sir, the contention of the EO/MLG is that 'the defence did not take any effort to establish the matter' that the miscreants can take away the materials (page No. 25 of the findings of the EO/MLG) which is nothing but a blatant lie. This is amply demonstrated by the fact that inspite of my repeated request the relevant document (complaint logged by Shri Hiralal Panika, the then Duty Jamader of 6.11.91 night shift) has not been supplied to me and both the watchmen ~~he~~. Shri Hiralal Panika and Sri Ramdhani Goala were not made available during the enquiry as defence witnesses to ascertain the truth, though both of them were considered as Defence Witnesses by the EO/MLG himself.

That Sir, though the EO/MLG has himself endorsed that 'it seems that the forced open of the C.I. Sheet and expanded metal is only the tricks of the miscreants to divert the attention' (Page No. 25, para-1) ironically enough he latter on concluded that the materials might be missing during long period due to mis-management by the C.O. (Page No. 25, para-2). From the above it is a clear case that EO/MLG did not apply his mind during recording his findings.

That Sir, the whole process of declaring the PW-1 (Sri J.N. Saikia) as 'hostile' is unconstitutional. With the earlier statements of PW-1 which suits the biased intention of the EO/MLG have been accepted by him (EO/MLG) but in the course of cross examination by the D.C. in regular hearing on 26/5/97 when the truth came out and the PW-1 categorically stated that his statements on the day (date 26/5/97) is correct (which clearly goes against the prosecution), the EO/MLG declared him (PW-1) as a hostile witness without even following the rules to declare the same. This clearly exposes the biased attitude of the EO/MLG in the instant case.

That Sir, all the prosecution witnesses and defence witness have also tendered their evidences during the course of the enquiry that

Contd .. 3.

The said incident of 7.11.91 is nothing but a theft case and the EO/MLG has also agreed that DA also failed to keep any evidence in order to prove that the shortage of the said materials were through the doors of the sub-godown No.9 of 05 Ward, PD-12 (exh-7) indicates that the doors were opened and closed by the custodians as per the system in vogue.

Besides the above mentioned few lines I would hereby like to draw the attention of your kind honour to the fact that from the very beginning of the present case the prescribed DAR Rules and Regulations have not been followed at all either by EO/MLG or by DCOS/DBRT (the details of such violations of the rules and regulations have been presented in my final defence statement dated 4.11.97 in 9 pages to DCOS/DBRT, a copy of which is enclosed herewith for your kind perusal).

In view of the above, I request your honour to kindly go through the case personally and confer natural justice by exonerating me from the charge of 'mis-managed' and quashing the NIP imposed by DCOS/DBRT vide his L/NO. E/S/57 (S) dated 20.12.97 on me, and for this act of yours I shall remain ever grateful to your honour. In this connection the necessary documents if required, may be asked for from the DOOS/DBRT.

With best regards,

Enclo: 15 copies of documents.

Dated, Dibrugarh.
the 27th. Dec. 1997.

Yours faithfully,
Sd/- S. Chakraborty, 27.12.97.

(Sudhangshu Chakraborty)
DSK/111 under DCOS/DBRT.

.....

*Attested
S. Chakraborty
Advocate*

M.
T.C
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A.R
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Office of the
Distt. Controller of Stores
N.F. Railway, Dibrugarh

No. E/S/57(S)
Dated 08.08.98

To,

Shri S. Chakraborty,
DSK/III/BRT Depot.

Sub : Major penalty charges under SF-5 No. E/S/57(S)
Dated 14.06.93

After carefully going through the enquiry report and other relevant papers the following observation has been made by DY. CME/DBWS.

(a) As per the facts brought out in the Enquiry report there was a Stock verification between 16.05.90 to 23.05.90 and the stock of rejected bronze ingot kept in Sub - Godown No. 9 of 05 ward was found to be 20640, 08kg. (2775 pieces). Later on, the stock verification of the same item was done on 28.10.91 to 02.11.91 and the stock was found to be 18842.05 kg. (2538 pieces) and there was a shortage of 18075.05 kg (243 pieces).

It has been reported that on 07.11.91 when sub-godown No. 9 of 05 ward was opened by Shri B. Chakraborty, DSK/I/R and Shri S. Chakraborty, DSK/III/R, a shortage of six pieces was detected. It is observed that the two custodians could detect a shortage of 6 pieces only out of total stock of 2538 pieces within a period of 5 days, but same Shri S. Chakraborty, DSK/III/05 ward could not detect the shortage of 237 pieces over a period of almost 1½ (one and half) years between the two stock verification in May'90 and in October'91.

(b) In the charge-sheet Shri S. Chakraborty, DSK/III/05 Ward has been charged for mismanaging bronze ingot weighing 2230.09 kg. It appears that major portion of this shortage took place during a period between May'90 upto October'91 when there was no report from the custodian. So, mismanagement on the part of Shri S. Chakraborty cannot be outrightly denied.

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- 2 -

(c) The godown is reported to be 15 ft. height. It is not understood how the material weighing more than 2000 kg. can be lifted through an opening in CI sheets placed on the top/near the top of the godown without the knowledge of custodians, watchman and other staff.

(d) Shri S. Chakraborty, DSK/III/05 has been charged with shortage of other non-ferrous item, i.e. 10 ingot 309.02 kg, copper ingot 25.08 kg, gunmetal ingot class - II 23.02 kg. These items were found to be short during stock verification from 14.12.91 to 23.12.91. But there appears to be no report regarding shortage of these items before it was detected at the time of stock verification.

(e) There was theft report for shortage from the strong room of 8, 9, 10 and 05 ward prior to Shri S. Chakraborty, DSK/III during the tenure of other DSK in-charge of 05 ward. Even though the condition of strong room was the same during their tenure also, so the possibility of mismanagement on the part of Shri S. Chakraborty cannot be ruled out.

In view of above observation, it is established that Shri S. Chakraborty, DSK/III is responsible for the shortage but considering the condition of the strong room the punishment is reviewed and his pay is reduced to the lower stage in his present scale of pay for a period of 1 (One) year with cumulative effect and the pecuniary loss be recovered as per disciplinary authority's order.

This is for information please.

Sd/- Illegible
DCOS/DBRT.

Copy to :

1. Dy. CVO/S/Maligaon.	for information please.
2. Dy. COS/IC/Maligaon.	
3. APO/Legal Cell/MLG.	

Sd/- Illegible
DCOS/DBRT.

Received
S.Chakraborty
11.08.98
at 15.00

Attested by
Bhattacharya
Adv.

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 236 of 1998.

Date of decision : This the 28th day of March, 2001.

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

Hon'ble Mr. K.K.Sharma, Member (A).

Sri Sudhangshu Chakraborty
Son of Late Sudhir Chandra Chakraborty,
Railway Quarter No. EL/49/B
Barbari Railway Colony,
Dibrugarh (Assam).

....Applicant

By Advocate Mr. G.K.Bhattacharyya, G.N.Das.

-vs-

1. Union of India (Represented by the General Manager, N.F.Railway, Maligaon, Guwahati.).
2. General Manager (Personel), N.F.Railway, Maligaon, Guwahati.
3. Controller of Stores, N.F.Railway, Maligaon, Guwahati.
4. Deputy Chief Mechanical Engineer, N.F.Railway (Workshop), Dibrugarh.
5. District Controller of Stores, N.F.Railway, Dibrugarh.

...Respondents

By Advocate Mr. J.L.Sarkar, Railway Counsel.

O R D E R (ORAL)

CHOWDHURY J. (V.C.).

This application has been filed under section 19 of the Administrative Tribunals Act and is directed against the order dated 20.12.1997 passed by the District Controller of Stores, Dibrugarh - Resondent No. 5 by which the emoluments of the applicant was reduced to the lowest stage of the pay scale for a period of three years with cumulative effect and for that

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period the applicant would not earn annual increment. In addition it was further ordered that pecuniary loss cause to the Railway which was quantified to Rs. 60,637.26 would be recovered from the pay of the applicant in thirty six equal instalments while the proportionate amount would be recovered from the applicant being the loss of Bronze Ingot estimated at Rs. 87,919.77 after finalisation of the proceedings similarly initiated against the applicant who was the joint custodian of stores as DSK-I/R with the applicant. By the Appellate Order dated 8.8.1999, passed by the Appellate Authority - Respondent No. 4 modified the order of penalty dated 20.12.1997 by reducing the pay of the applicant to the lower stage in his present scale of pay for a period of one year with cumulative effect and pecuniary loss was to be recovered from the applicant in terms of the order passed by the disciplinary authority in consideration of the condition of the strong room. The thumb nail case to the facts leading to the present proceeding are given hereunder :

A Disciplinary proceeding was initiated under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 against the applicant. A Memorandum dated 14.6.1993 was served on the application with the allegation of misappropriation of Railway properties entrusted to him as Depot Store Keeper in N.F. Railway, Dibrugarh. The applicant was charged for the contravention of the provision of Rule 3(1) (i) &(ii) of Railway Service and (Conduct) Rules, 1966. A full fledged enquiry was held. The Enquiry Officer submitted his report on 24.6.1997 holding the applicant guilty of the charges. The report of the Enquiry Officer was communicated to the applicant and the applicant submitted his say in his reply. The Disciplinary Authority by its order dated 20.12.97 accepting the report of the Enquiry Officer and found that the applicant was responsible for the safe custody of materials in

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strong room No. 8 and 10 and jointly responsible with Sri Bhabatosh Chakraborty for strong room No. 9 and by causing loss of materials mentioned in the article of charges and that the applicant failed to maintain absolute integrity and devotion to duty. Accordingly his pay was reduced to the lowest stage for a period of three years with cumulative effect and during that period the applicant would not earn his annual increment. The applicant preferred an appeal before the Appellate Authority challenging the order of penalty. On his appeal the applicant came to know that the respondent No. 4 had exonerated him from the charges levelled against him and he passed a speaking order on the said appeal. The Respondent No. 4 instead of communicating the appellate order forwarded the same to the Deputy Chief Vigilance Officer, Stores, Maligaon. The applicant was thereafter communicated the order passed by the respondent no. 4 on 8.8.1998 upholding the order of the disciplinary authority but modified the order of penalty. The Appellate Authority in its finding held that the applicant was responsible for the shortage but considering the condition of the strong room the punishment is reviewed and his pay is reduced to the lower stage in his present scale of pay for a period of one year with cumulative effect and the pecuniary loss to be recovered as per Disciplinary Authority's order. The legality of the order in this proceeding is challenged on numerous grounds. The applicant mainly stressed on the fact that he was duly exonerated by the competent authority and thereafter at the interference of the Vigilance Authority earlier order was revoked and a fresh Appellate Order was passed.

2. The respondents submitted its written statement denying and disputing the claim of the applicant. The respondents in its written statement did not dispute that the respondent no. 4 has exonerated the applicant from the charges

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levelled again him and the same was later on modified at the interaction of the Vigilance Officer. The respondents in its written statement stated that the Vigilance Department in the Railway is a department of the Railway, the vigilance works under the General Manager, Railway in case of theft, corruption, mismanagement likely to cause financial loss to the Railway has a role to play and the respondents have to work in co-ordination with the said Vigilance Department.

3. Mr. G.K. Bhattacharyya, learned counsel for the applicant amongst other mainly urged that the respondent No.4 fell into error in exercising his power not at his own and it is the Chief Vigilance Officer who interferred in his decision making

process. Mr. Bhattacharyya learned counsel further submitted

that respondent no. 4 was the appellate authority and he was

entrusted with the Appellate power. The respondent No.4 was to

exercise his power under the statute and the statute provided

the manner for consideration of appeal. In the Discipline and

Appeal Rules 1968 vigilance officer had no role in

consideration of the appeal. Mr. J.L.Sarkar, learned counsel

for the Railways submitted that when loss of public property

was concerned naturally in such matter vigilance department

was required to see as to whether there was any serious

lapse on the part of the concerned officer. The department of

vigilance is a part of the administration and therefore there

was no bar on the part of the Appellate Authority to consult

with the Vigilance departments and the Appellate Authority

passed a reasoned order. The Railway Servants Discipline &

Appeal Rules 198 in Part IV provides the procedure for major

penalty. In Part V provides the provision of Appeal. The

Appellate Authorities are prescribed under Section 19 of

that schedule and section 19 of the schedule and section 20

prescribed the priod of limitation and form and contents and

submmision of appeal indicated in Section 21 and 22.

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136

Provisions are made for consulting the Commission, namely, Union Public Service Commission in all cases where such consultations is necessary. The Rule does prescribed any provision for consultation with the vigilance commission. Mr. J.L.Sarkar, learned counsel for the Railways however submitted that rule also did not exclude such consultation and therefore it was open for the respondents to take aid and advice of the vigilance department. The contention of Mr. Sarkar is difficult to accept solely on the ground that no prohibition is made to consult the vigilance department. Since the rule do not provide for such consultation presumption is that consultation is excluded. The power to decide the appeal was entrusted to the Appellate Authority and not to the vigilance department. The discretion is solely conferred on the Appellate Authority and not to other authority and therefore the vigilance department could not have arrogated into the power of the Appellate Authority as is reflected in the instant case.

3. From the records produced before the Bench it reveals that the Appellate Authority passed a reasoned order on the appeal of the applicant on 30.12.1997. The Appellate Authority in its observation found that it was established beyond all doubts that there was every probability of theft of materials in question from 05-ward by the unknown miscreants in connivance with the Depot Watchman at night. The full text of the Appellate Authority order dated 30.12.1997 is reproduced below :

" On carefully going through the appeal and the details of the enquiry report the following observations have been noted :

1. It was apparent from the joint report of Depot Store Keepers dated 17.8.89 (SN-92) that due to deteriorated and unsafe condition of all the stocking godowns there was increasing tend of theft in the DBRT Stores Depot.

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2. No action appeared to have been taken by the Administration to repair the godowns as understood from CO's appeal to DCOS/DBRT, dated 6.3.90 (SN-97) and dated 11.11.91 (SN-93).

3. DCOS/DBRT on receipt of theft report on 7.11.91, submitted jointly by the CO and Sri B. chakraborty, DSK/I/DBRT, inspected the alleged godowns along with others, and detected on C.I. sheet over the roof of Godown No.9 and 10 of 05 Ward had been forced opened from the back side and the roof of the sub-godown covered by expanded metal was also found forced opened.

4. No FIR was lodged with the Police/RPF by DCOS/DBRT or directed the custodians to do so. Had it been done instantly it would have been possible to arrest the culprits.

5. Departmental fact finding enquiry by Sri J.N.Saikia, DSK/I/R was ordered on 12.11.91, i.e. after 5 days of reporting theft when some more clus other than those mentioned above might have been disappeared.

6. All the PW-1, PW-2, and DW-1 opined that there was possibility of criminal interference through the force opened roof sheet, during Cross-examination by DC and EO. DW-1 also confirmed vide his answer to Q. No. 7 at page No. 23 that theft can be occurred without tampering the seals on the locks.

7. PW-1 vide his answer to Q. No. 6 confirmed that there was no scope for theft during day time being working hours. According to him theft took place at Night.

8. It revealed from the answer to Q.No. 21, Page-1 by PW-1 (F.F. Enq. Officer) that no watch & ward staff under DCOS/DBRT was examined at the time of preliminary enquiry of subsequently.

9. The observations noted in S/No. 4 and 8 above are no doubt a lapse on the part of the Enquiry officials as well as a great lacuna to find out the truth of the case.

10. The defence witness named S/Sri Hiralal - Panika and Sri Ramdhani Goalal under DCOS/DBRT were not made available on the schedule date of Enquiry and E.O. dropped them on the ground that they did not attend the enquiry which should not have done by E.O. in view of giving reasonable opportunity to C.O. for defending his case.

11. The analysis of E.O. in respect of shortage of such heavy materials from 05-ward noted in the Eng. report at page 24 to 26 does not appear to be based on any documentary or oral evidence, rather contradictory.

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12. There are many instances of theft at DCOS/DBRT's store depot by the miscreants in connivance with the depot Watchmen, against one of such case three watchmen. S/Shri Bhula Shah, Sri Gautam Das and Sri Thanuram Chutia were red handed caught by IPF/DBWS while pilfering the valuable N.F. materials from DBRT store depot in June 1996. According to IPF/DBWS, their modus operandi was that the lock hinges of doors and boxes are meticulously broken, and once the goods have been taken out, these are put back in position, the wax seals are put on once again on the hinges. These forged seals made of clay, leave nothing for the chowkidars to be suspected. Eight such forged seals and lock breaking instruments have been recovered from the possession of the arrested three. They have been charged under Dibrugarh RPF case Section 3 (A) of the Railway properties (Unlawful Possession) Act, and still under suspension.

In view of the above observations, it has been established beyond all doubts that there was every probability of theft of materials in question from 05-ward by the unknown miscreants in connivance with the depot watchman at Night. Therefore the question of shortage of said materials due to mismanagement on the part of C.O. (Sri Sudhangshu Chakraborty, DSK/III) does not arise. Hence, C.O. is exonerated from the charge leveled against him vide SF-5 under reference."

The aforementioned order passed by the Appellate Authority on 30.12.1997 and was sent to Dy. CVO, Stores, Maligaon by communication No. M/CONDBRT/17 dated 4.3.1998 by the office of the Deputy Chief Mechanical Engineer, Dibrugarh, Workshop. By the aforementioned communication the order was sent to the Dy. Chief Vigilance Officer and he was requested to go through this speaking order passed by the Deputy Chief Mechanical Engineer and if acceptable the approval was to be given from his end for further action. Admittedly the order dated 8.8.98 was passed by the Appellate Authority which was manifestly inconsistent with the order dated 30.12.1997. The Appellate Authority in its order dated 30.12.1997 recorded its own reason for exonerating the applicant upon consideration of the materials on record, the evidence and gave its own evaluation. The vigilance department under the provisions of the Rule could not have acted as a super Appellate Authority or a Reviewing

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Authority. after passing of the final order on 30.12.1997 there could not have been any other order contrary to the order passed by the Appellate Order, save and except the procedure prescribed by the Rule. On that count alone the impugned order dated 8.8.1998 is set aside and quashed and the respondents are now directed to communicate the order dated 30.12.1997 and take necessary steps according to law.

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

SD/ VICE CHAIRMAN

SD/ MEMBER (ADM)



Certified to be true Copy
प्राप्ति प्रतिलिपि

25/3/2007
01/05/2007

Section Officer (S)
गोप्याल अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायिक शाखा
Guwahati Bench, Guwahati-8
गुवाहाटी न्यायिक शाखा, गुवाहाटी-8

25/3/2007
01/05/2007

Attested by
Anmolney
Jdr.

Date of application for the copy.

स्टाम्प और फोलिओ की अपेक्षित संख्या दूषित करने की निश्चित तारीख
Date fixed for no. of requisite number of stamps and folios.

अपेक्षित दिन पर और फोलिओ की तारीख
Date of delivery of the required stamps and folios.

तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी
Date on which the copy was ready for delivery.

आवेदक को प्रतिलिपि देने की तारीख
Date of making copy to the applicant.

04/4/05

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05/4/05

05/4/05

05/4/2005

-99-

ANNEXURE -XIV

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR;
TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO. 7248 OF 2001

1. Union of India,
Represented by the General Manager,
NF Railway,
Maligaon, Guwahati.

2. The General Manager (Personnel),
NF Railway, Maligaon, Guwahati.

3. The Controller of Stores,
NF Railway, Maligaon, Guwahati.

4. The Deputy Chief Mechanical Engineer,
NF Railway (Work Shop), Maligaon,
Guwahati.

5. The District Controller of Stores,
NF Railway, Dibrugarh.

.....PETITIONERS

-versus-

Shri Sudhangshu Chakraborty,
Son of Late Sudhir Chandra Chakraborty,
Railway Quarter No. EL/49/B,
Barbari Railway Colony,
Dibrugarh.

.....RESPONDENT

P R E S E N T
HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE RANJAN GOGOI.

For the petitioners : Mr S Sarma,
Advocate

For the respondent : Mr GK Bhattacharyya,
Mr B Chakraborty,
Mr B Choudhury,
Mr BM Chetri,
Advocates.

Date of hearing &
Judgment : 29.3.2005

Attested by
B Choudhury
Adv.

JUDGMENT & ORDER(ORAL)

Ranjan Gogoi, J

This writ petition has been filed by the Union of India and the authorities of the N.F. Railway, with its headquarters at Maligaon, challenging the order dated 28.3.2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No. 236/98. By the aforementioned judgment and order, the learned Tribunal has interfered with an order dated 8.8.98 passed by the appellate authority imposing on the respondent the penalty of stoppage of one increment with cumulative effect in modification of the penalty of stoppage of three increments with cumulative effect as imposed by the disciplinary authority. The learned Tribunal after causing interference as above, further directed that an earlier order of the appellate authority dated 30.12.97 exonerating the respondent in the writ petition i.e. the applicant before the learned Tribunal should be given effect to by the present writ petitioners.

2. The facts that would be necessary for this Court to appreciate the rival projections made in the writ petition may briefly be noticed at the outset.

A memorandum of charges dated 14.6.93 levelling, in essence, a charge of misappropriation of railway properties was served on the respondent/ applicant. Thereafter, by a corrigendum dated 20.9.94, the word 'misappropriation' appearing in the charge memo dated 14.6.93 was corrected to be read as 'mismanagement'. The respondent/applicant replied to the charges levelled and the said reply not having been found to be satisfactory, the disciplinary authority thought it appropriate to appoint an enquiry officer to enquire into the charges levelled. The respondent/applicant participated in the enquiry and on conclusion thereof, a report of enquiry dated 24.9.97 was submitted to the disciplinary authority holding the respondent/applicant to be guilty of all the charges levelled. The report of the enquiry officer was served on the respondent/applicant and on consideration of his reply, the disciplinary authority by the order dated 20.12.97 imposed the penalty of stoppage of three increments with cumulative effect. Aggrieved, the respondent/applicant filed an appeal under the Railway Service (Discipline & Appeal) Rules, 1968 against the

order of the disciplinary authority imposing the penalty in question. The appellate authority drew up an order dated 30.12.97, in which, on the grounds and reasons assigned, the appellate authority took the view that the charges levelled against the respondent/applicant must be held to be not proved and the respondent/applicant should be entitled to the benefit of being exonerated from the charges levelled. It must be noticed at this stage that the order of the appellate authority dated 30.12.97 was recorded in the file but the same was not communicated in any manner to the applicant/respondent as required under Rule 12 of the Discipline and Appeal Rules in force. Rather, after recording the aforesaid appellate order dated 30.12.97, the file along with the order was endorsed to the Deputy Chief Vigilance Officer for the views of the Vigilance Department in the matter. Thereafter, it appears that the Deputy Chief Vigilance Officer had submitted his views to the appellate authority by a communication dated 24.3.98. On receipt of the said views of the Deputy Chief Vigilance Officer, the appellate authority in purported consideration of the views expressed drew up a second order which was signed in the file on 5.8.98 and was communicated to the respondent/applicant on 8.8.98. In the order as recorded in the file and communicated to the respondent/applicant on the dates noticed above, the appellate authority after reproducing the text of the report of the Deputy Chief Vigilance Officer took the view that the applicant/respondent should be held guilty of the charges levelled and that in the facts and circumstances of the case, the punishment of penalty of stoppage of one increment with cumulative effect instead of three increments with cumulative effect as imposed by the disciplinary authority should be inflicted on the applicant/respondent.

3. Aggrieved by the aforesaid order dated 8.8.98 passed by the appellate authority, the respondent as applicant initiated a proceeding before the learned Tribunal calling into question the initial order of the disciplinary authority dated 20.12.97 as well as the appellate order dated 8.8.98 imposing the punishment as noticed by us.

4. The learned Tribunal on a consideration of the rival cases advanced by the contesting parties, took the view that as the appellate authority had already recorded an order on 30.12.97 exonerating the respondent/applicant of the charges levelled, the appellate authority could not have surrendered its

independent mind to the Vigilance Department of the Railways and the second order of the appellate authority dated 8.8.98 being the result of a virtual abdication of the powers of the appellate authority, the said order would have no legs to stand. Accordingly, the order of the appellate authority dated 8.8.98 was interfered with and directions were issued for implementation of the earlier order of the appellate authority dated 30.12.97. Aggrieved, the Union of India represented by the railway authorities are before this Court under Article 226 of the Constitution assailing the aforementioned view taken by the learned Tribunal as noticed by us.

5. We have heard Mr S Sarma, learned counsel appearing on behalf of the writ petitioners and Mr GK Bhattacharyya, learned senior counsel appearing on behalf of the respondent.

6. Mr Sarma, learned counsel for the writ petitioners in support of the challenge made, has contended that the initial order of the appellate authority dated 30.12.97 which has been directed to be implemented by the learned Tribunal was an order recorded and kept in the file but not communicated to the respondent/applicant so as to vest in the said respondent/applicant any right to claim any benefit under the aforesaid order dated 30.12.97. The learned counsel has contended that the order dated 30.12.97 not having been communicated to the party entitled to receive the same, the said order cannot be legally construed to be a live and valid order capable of being directed for implementation. Arguing further, the learned counsel submitted that in the present case in keeping with the practice prevailing in the Railways and as mismanagement of railway property had been alleged against the applicant/respondent, the appellate authority had thought it proper to take the views of the Vigilance Department in the matter. But the eventual conclusion reached as recorded in the impugned order dated 8.8.98 being the independent decision of the appellate authority, no infirmity is disclosed in the aforesaid order dated 8.8.98 so as to warrant any interference with the same. Mr Sarma has further submitted that the appellate authority by the order dated 8.8.98, on consideration of the totality of the facts and circumstances, had reduced the penalty from stoppage of three increments with cumulative effect to one increment with cumulative effect and

having regard to the totality of the materials on record, the punishment imposed would not justify any interference at the hands of the Court.

7. Controverting the submissions advanced on behalf of the writ petitioners, Mr GK Bhattacharyya, learned senior counsel for the respondent has submitted that the initial order dated 30.12.97 passed by the appellate authority having been signed by the said authority and the said order having assigned cogent reasons for reaching the conclusion that the respondent/applicant was innocent of the charges levelled, it is the aforesaid order which must be held to hold the field. In this regard, Mr Bhattacharyya has further submitted that under the provisions of the Railway Service (Discipline & Appeal) Rules, 1968, the appellate authority functions as a quasi-judicial authority and the exercise of appellate powers must be an independent exercise free from all external controls and influences. It is the disciplinary authority who is to judge the culpability of the delinquent employee and it is the appellate authority constituted under the Rules who is to determine the correctness of the views of the disciplinary authority. In the present case, reference of the matter to the Vigilance Department including the action of the appellate authority in forwarding the order dated 30.12.97 passed by it on the merits of the case to the Vigilance Department is not contemplated by the provisions of the Discipline and Appeal Rules and the said action is also foreign to law. The impugned order of the appellate authority dated 8.8.98 imposing penalty on the applicant/respondent having been passed at the behest of the Vigilance Department and there being no independent exercise of power by the appellate authority while recording the aforesaid order, the submission advanced is that this Court should uphold the order of the learned Tribunal in so far as interference with the order dated 8.8.98 is concerned and, thereafter, as a legally valid order was already holding the field i.e. the first order dated 30.12.97, additional directions recorded by the Tribunal for implementation of the said order dated 30.12.97 must also be upheld by the Court.

8. We have given our deep and anxious consideration to the rival contentions advanced by the learned counsel for the parties. The initial order dated 30.12.97 passed by the disciplinary authority recorded in the file and signed by the said authority was not communicated to the respondent/applicant. The necessity of communication of orders expressed in writing by the disciplinary

and appellate authority is something this is visualized under the Railway Service (Discipline & Appeal) Rules, 1968, particularly Rule 12 thereof. Even otherwise, an uncommunicated order kept in the file would have little legal consequence, inasmuch as, any right to have any such order enforced in law, can be recognised in an effected party only after communication of the same. In such a situation we are unable to agree with the contentions advanced by Mr. Bhattacharyya, learned senior counsel with regard to the validity of the first order of the appellate authority dated 30.12.97. In the facts noted by us, it is our considered view that the said order dated 30.12.97 cannot be construed to be of any legal significance.

9. The next point that has to be addressed by the Court is with regard to the tenability/sustainability of the second appellate order dated 8.8.98. At the outset it must be emphasized that if the disciplinary and appellate authority in the present case has taken the view that some consultation or reference of the matter is required to be made to the Vigilance Department, having regard to the nature of the charges levelled against the respondent/applicant, it will be difficult for us to hold that such consultation or reference of the matter to the Vigilance Department can be termed as irrelevant or extraneous. The decision relied on by the learned counsel for the respondent/applicant in the case of *Nagaraj Shivarao Karjagi -vs- Syndicate Bank, Head Office, Manipal and Another*, (1991) 3 SCC 219, does not lay down any law to the effect that such consultation or reference would be unauthorized. Rather, the views expressed by the Apex Court in the case of *Nagaraj Shivarao Karjagi* (supra) are to the effect that the report of the Central Vigilance Commission though would not be conclusive in the matter, may be considered by the disciplinary authority along with other materials by an independent application of mind. In the present case what has been noticed by us from the records in original as well as from a reading of the order dated 8.8.98 is that the appellate authority after receipt of the view of the Vigilance Wing, did not apply its independent mind in the matter and merely after reproduction of the views of the Vigilance had proceeded to hold the respondent/applicant liable for the charges in question. The conclusion has, indeed, been abrupt and no basis for the same save and except the views expressed by the Vigilance is discernible. There being, thus, no independent application of mind whatsoever by the appellate authority and the weight of the materials having indicated a virtual

abdication of its role and responsibility in the matter, no further persuasion is required for us to hold that the order dated 8.8.98 would not be legally sustainable and would call for our interference. To that extent the judgment passed by the learned Tribunal must be upheld.

10. The net result of the discussions that have preceded would give rise to a position where as on date there is no valid order of the appellate authority in force. Though the learned counsel for the respondent/applicant has repeatedly impressed upon us for a final culmination of the proceeding against the respondent/applicant at the present stage, we are unable to take the view that the present would be an appropriate case for a Writ Bench to perform the duties assigned to the disciplinary/ appellate authority. Therefore, while interfering with the order passed by the learned Tribunal to the extent that the order dated 30.12.97 of the appellate authority has been directed to be enforced, we cause remission of the matter to the appellate authority for a de novo decision uninfluenced by any report or views of the Vigilance Department in the matter. We further make it clear that what has been emphasised in the present order is that the appellate authority will now re-do the exercise by applying its own independent mind in the matter on the basis of the materials available on record. As the matter has been pending for long, we direct the appellate authority to complete the exercise within a period of three months from the date of receipt of a certified copy of this judgment.

11. Consequently, the writ petition shall stand allowed to the extent indicated above.

Sd/ Rangan Gogoi
Judge

Sd/ D. Biswas
Chief Justice (Acting)

Ret'd no 51495
dtg 05/11/05

CERTIFIED TO BE TRUE COPY

Attn: B. Patra, G. Chakraborty
Date: 05/11/05
Superintendent (or in his absence Section Officer)
On mail His Court
Received U.P. 76, Act 1, 1872

Received
05/11/05

CONFIDENTIAL

N. F. Railway.

Office of the
Sr. Materials Manager-Depot,
N. F. Railway/Dibrugarh.

No. E/S/57(S).

Dated : 09-08-2005.

To

Shri. S. Chakraborty,
MM/N.F.Rly/KIR.

Sub : NIP against SP-5 memo No. E/S/57(S) dated 14-6-93.

Ref : Your appeal dated 27-12-1997.

The appeal, enquiry report and the order of Disciplinary Authority have been gone through very carefully by the Competent Authority and the following speaking order is passed by CWM/BSWS.

"No new factual materials have been found to consider the case and the order issued by the Disciplinary Authority stands."

This dispose of the directive issued by the Hon'ble High Court, Guwahati on WP (No.7248) 01/MC/GHY.


(S. Saikia)
Sr. Materials Manager-D,
N. F. Railway/Dibrugarh.

Copy to : 1) COS/NFR/MLG.
2) GM/LAN/MLG.)
3) CPO/NFR/MLG.)
4) HRM/P/TSK.) for kind
5) CJM/Hon'ble/ ~~Guest~~ High Court, GHY.) information pl.
6) CWM/BSWS.)
7) APO/Legal Cell/MLG.)

Attested by
Boudhikay
Adv.

Sr. Materials Manager-D,
N. F. Railway/Dibrugarh.

Received
Shri Saikia
18/8/05
at DSRF
(on leave)