

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 76/2005

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... O.A Pg. 1 to 3
CP 8/07 order Pg. 1 to 3 65 CP closed 20.7.07

2. Judgment/Order dtd 22.10.9.2006 Pg. 1 to 16. months follow

3. Judgment & Order dtd Received from H.C/Supreme Court

4. O.A. 76/2005 Pg. 1 to 112

5. E.P/M.P. Pg. to

6. R.A/C.P. 8/07 Pg. 1 to 26

7. W.S. Pg. 1 to 8

8. Rejoinder..... Pg. to

9. Reply in Affidavit..... Pg. 1 to 9

10. Any other Papers..... Pg. to

11. Memo of Appearance.....

12. Additional Affidavit in CP 8/2007 Pg. 1 to 6

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....
High court order in CP 8/07 Pg. 1 to 5

SECTION OFFICER (Judl.)

Shahji

-20-

Annexure-1

NO.DCO(E)1/89/12770-12790

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS/GHAR MANTRALAYA

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ASSAM

G.S. ROAD, ULUBARI, GUWAHATI-781007

Dated Guwahati 5/12/90

To:

Shri/Smti Nripenda Das
Vill - Amiagon, P.O - Guwahati-31

As your name has been sponsored by the Employment Exchange, Guwahati for the post of Draftsman, you are hereby asked to appear before the undersigned for interview and map-drawing test etc. on 24/12/90 at 9.30 A.M. in the office of the Director of Census Operations, Assam, Ulubari, Guwahati-7 for consideration of your selection to the post.

You are to bring with you, your original educational certificate to prove your age etc.

You are also to bring with you map-drawing instruments for the test.

No T.A./D.A. will be admissible for attending the interview.

for him 5/12/90

(J. C. BHUYAN)
DEPUTY DIRECTOR OF CENSUS OPERATIONS
ASSAM : GUWAHATI : ONS.

ORDER SHEET

Original Application No. 76/05

Misc. Petition No. _____

Contempt petition No. _____

Review Application No. _____

Applicants. S.K. SenRespondents. M.U. AhmedAdvocates for the Applicant. P.K. Roy, S.K. Chakrabarty, Mrs. A. ChakrabartyAdvocates of the Respondents. M.U. Ahmed

Notes of the Registry	Dated	Order of the Tribunal
I. The application is in form is filed/C. F. for Rs. 50/- deposited vide CPC/BD No. 209/1600/11..... Dated 21.3.05. 11c Dy. Registrar 21/3/05 P.K.	22.03.2005	Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V. Prahladan Administrative Member. Heard Mr. P.K. Roy, learned counsel for the applicant and also Mr. M.U. Ahmed learned counsel for the respondents. The Respondents shall show cause as to why the application shall not be admitted for the records. List on 25.4.2005 for admission.
Step taken with envelope.	25.4.05.	25.4.05. The learned counsel for the Respondents submits that some more time is required to take instructions. Post the matter on 26.5.05 for Admission.
Notice & order sent to D/Section for issuing to resp. Nos. 1 to 4, by regd. A/D post. 23/3/05.	lm	23/3/05. Vice-Chairman

Notice duly served
on resp. No. 3-1

(Signature)

26.5.2005

Mr. M.U. Ahmed, learned Addl.

C.G.S.C. seeks some more time to
get instruction.

List on 8.6.2005.

K. V. Balakrishnan

Member

Office duly send on
R. m. 1, 3 & 4.L. Service awarded on
R. m. 2.

b6

3. no reply letter

03.06.2005

Heard Mr. P.K. Roy, learned
counsel for the applicants and
Mr. M.U. Ahmed, learned Addl. C.
G.S.C. for the respondents.The application is admitted.
written statement be filed on or
before 5.7.2005.

Post on 5.7.2005.

K. V. Balakrishnan

Member

Vice-Chairman

mb

5.7.2005

Mr. P.K. Roy, learned counsel
for the applicant is present. Mr.
M.U. Ahmed, learned Addl. C.G.S.C. for the respondents
submits that some more time is
required to file written statement.
Post on 17.8.2005. Written statement
in the meantime.

K. V. Balakrishnan

Vice-Chairman

mb

17.8.2005

Mr. M.U. Ahmed, learned Addl.
C.G.S.C. for the respondents submits
that written statement is being filed
today. Mr. P.K. Roy, learned counsel
for the applicant submits that
rejoinder ^{has} to be filed. post on
20.9.2005.

K. V. Balakrishnan

Member

Vice-Chairman

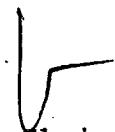
mb

No. Rejoinder has been
filed.

20.9.2005

22.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Judgment pronounced in open
Court, kept in separate sheets. The
Application is partly allowed. No order as
to costs.


Vice-Chairman

mb

*Received
31/10/06*

31/10/06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 76 of 2005

DATE OF DECISION 22.06.2006

Shri S.K.Sen Applicant/s
Mr.P.K.Roy Senior Advocate for the
..... Applicant/s.

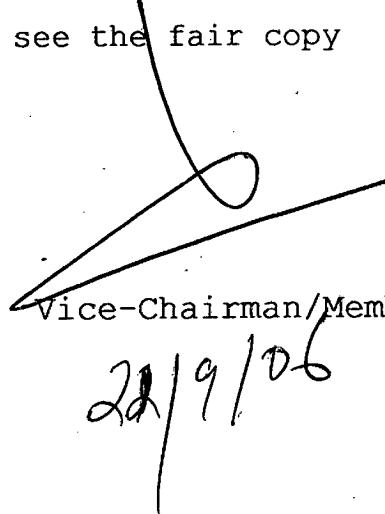
- Versus -
U.O.I. & Ors. Respondent/s
Mr. M.U.Ahmed, Addl.C.G.S.C. Advocate for the
..... Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice-Chairman/Member (A)

22/9/06

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 76 of 2005.

Date of Order: This, the 22nd day of September 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

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

..... Applicant.

By Advocates S/Shri P. K. Roy, S. K. Chakraborty,
Mrs.A.Chakraborty.

- Versus -

1. Union of India
Represented by the Secretary to the
Govt. of India, Ministry of Science
and Technology
New Delhi.
2. The Surveyor General of India
Hathibarkala, Dehradun.
3. The Director
Survey of India
Meghalaya & Arunachal Pradesh
GDC, Malki, Shillong-01.
4. The Director
Survey of India
Assam & Nagaland, GDC
Ganeshguri, Guwahati.

..... Respondents.

By Mr.M.U.Ahmed, Addl.C.G.S.C.

O R D E R

SACHIDANANDAN, K.V., (V.C.):

While working as a Surveyor in the Erstwhile No.80 (P) Party (NEC) now A & N GDC (Shillong Wing), Shillong, a memorandum dated 13.7.2001 was issued against the applicant whereby the Director, NEC, proposed to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation of misconduct on 3 charges and also directed him to submit his written statement of defence within ten days from the date of receipt of the said memorandum. On receipt of said memorandum, the applicant vide application dated 17.7.2001 prayed for supply of all the relevant documents on basis of which the alleged charges were leveled in order to file his written statement of defence. But the Disciplinary Authority, vide order dated 26.7.2001, refused to furnish the documents. Hence, without perusing the documents applicant filed his written statement of defence denying the charges leveled against him. The department also simultaneously proposed to initiate departmental proceedings against R.K.Meena, Superintending Surveyor, O/C. No.83 Party, U.N.Mishra, Superintending Surveyor, O/C. No.12 Drawing Office and 8 verifiers in respect of the same incident out of which charges against the applicant is drawn. In the written statement of defence he stated that he carried out the orders of the superiors for engaging 4 extra porters and

if any financial irregularities had occurred for such extra engagement, the same cannot be attributed to the applicant. The departmental enquiry was initiated against the applicant and he was made a departmental witness against the verifiers in the said enquiry, but the applicants' applications for dispensing with his deposition in the said inquiries on the ground of prejudice was not entertained. Out of 7 listed witnesses, 5 witnesses made their depositions, the others did not turn up. Written brief was submitted and according to the applicant there is no evidence to link the applicant into the alleged misconduct, and therefore, it is a case of NO EVIDENCE. The Enquiry Officer, having found that nothing could be proved in the enquiry, went back to the written statement of the applicant and by accepting the plea of the Presenting Officer mechanically gave a finding that C.O. could not produce any evidence for 'use of pressure' and 'coercion' against him. Consequently, the Disciplinary Authority, on the basis of finding of the Enquiry Officer, imposed the punishment of compulsory retirement from service w.e.f. 31.3.2004. The applicant did not plead himself guilty for all the charges framed against him. All the other delinquent employees against whom disciplinary proceedings were drawn on similar nature of allegations and enquired into by the same Enquiry Officers were exonerated and the applicant alone was treated in a most discriminatory manner. Applicant's ACP was also not

considered which was long due to him. The applicant by representation dated 15.3.2004 (Annexure-Q) pointed out to the authority that during the pendency of the departmental proceedings many of his juniors were promoted without considering his case illegally. The applicant filed an appeal before the Appellate Authority under Rule 23 of the CCS (CCA) Rules, 1965 before the Surveyor General of India on 19.4.2004. Since the appeal was not disposed of, he approached this Tribunal by way of O.A. No.260 of 2004 and this Tribunal vide order dated 10.11.2004 directed the Appellate Authority to dispose of the said appeal with a specified time frame. Pursuant to the aforesaid direction, the Appellate Authority vide order dated 2.5.2005 taking into consideration some irrelevant materials leaving aside the relevant materials, without appreciating the real grievance of the applicant confirmed the penalty of compulsory retirement passed by the Disciplinary Authority, applicant claimed. Being aggrieved by the said action of the respondents, the applicant has filed this O.A. seeking the following reliefs:-

- "i) Set-aside the order dated 31.3.2004 passed by the Director, Survey of India, Meghalaya & Arunachal Pradesh GDC, Malki, Shillong-01 (Annexure-O):
- ii) Set-aside the order dated 8.2.2005 passed by the Surveyor General of India (Annexure-T).
- iii) Direct the respondents particularly the Respondent No.3 to reinstate the applicant in his own post of Surveyor

and grant him all consequential benefit including promotional benefit which was due to him."

2. The respondents have filed a detailed reply statement submitting therein that the applicant gave instruction to 8 verifiers of his camp to show 8 porters in the Master Roll against the authorized strength of 4 porters, thus by adding names of 4 fictitious porters caused financial irregularities in the same camp. Moreover, the applicant also gave an offer of Rs.1500/- to each verifier for adding the names of 4 extra fictitious porters. Besides, the applicant, while was engaged in fieldwork, misappropriated government money by raising inflated amount towards repair of vehicle. Hence, a disciplinary case under Rule 14 of CCS (CCA) Rules, 1965 was initiated against him, chargesheet was served on him and in reply although he denied the charges leveled against him, he admitted his involvement in the case on the pretext that he was obeying the verbal orders of his superior officers. Enquiry was conducted, and out of three articles of charges, one was proved and on conclusion of the enquiry, penalty of compulsory retirement was imposed upon the applicant on 31.3.2004. Appeal was disposed of with due application of mind and the Appellate Authority did not find any justified reason to interfere with the decision of the Disciplinary Authority. The Enquiry Authority found the applicant guilty. The Disciplinary

Authority never refused to furnish the relevant documents to the applicant, rather he was conveyed that he would get full opportunity to inspect the listed documents during the course of enquiry. The applicant has attempted to nullify the admissions and disclosures made by him in the written statement of defence on the pretext of denial of documents for inspection, as narrations made in written defence had substantiated the charge. Non-availability of documents had no distant connection with the disclosures made in the written statement of defence, which are two separate issues. His request for dispensing with his deposition in the enquiry on the ground of prejudice was decided by the Enquiry Officer who hold the absolute discretion under Rule 22 (ii) & (iii) of CCS (CCA) Rules, 1965 to which no appeal lies. The charges against the applicant were proved by the statements given by the witnesses in the preliminary inquiry as well as the statement of defence dated 3.8.2001 submitted by him. The statements given by the witnesses in the preliminary enquiry were part of the memorandum issued to the applicant and his written statement of defence was also a part of the records of the disciplinary proceedings in which he admitted his offence very tactfully. Later on, the applicant disowned his statement in the regular enquiry on the plea that he had submitted his statement under pressure or without perusing the relevant documents. The verifiers were exonerated since the charges leveled

against them were not proved. Applicant's case cannot be equated with that of the verifiers since both the allegations and set of evidences were different. The penalty of compulsory retirement was imposed on the applicant after considering the gravity of offence committed by him, which was also upheld by the Appellate Authority, and therefore, it cannot be termed as disproportionate. Rather lenient view was taken since the applicant could have been dismissed from service. Therefore, the O.A. doest not stand on its legs and liable to be dismissed, claimed the respondents.

3. The applicant have filed a rejoinder reiterating the contentions made in the O.A. and further contended therein that to punish an employee based on any admission, if any, should be clear and unambiguous admission of charges and not "lead to admission of charges" as alleged. He further denied of making any admission. The statements which were made in the disciplinary proceedings against the verifiers, were found to be justified and relevant and the verifiers were exonerated from the charges framed against them, whereas the same statements made by the same verifiers in all the disciplinary proceedings including their own, were allegedly found to be hostile in applicant's case, which is discriminatory. The O.C., the Camp Officer of the 29 Party and the 8 verifiers were also involved in the same financial irregularities and

according to the Enquiry Officer, the said verifiers, O.C. and the Camp Officer including the applicant have joined hands together not to give evidence against each other and were tightlipped during deposition, but on the question of inflicting of punishment the authority singled out the applicant imposing the extreme and harsh punishment of compulsory retirement exonerating all the verifiers.

4. We have heard Mr.P.K.Roy, learned counsel for the applicant and Mr.M.U.Ahmed, learned Addl.C.G.S.C. for the respondents. Both the counsels have taken us to the various pleadings, materials and evidence placed on record. Mr. Roy argued that there are 29 persons and 8 verifiers along with the applicant allegedly involved in the financial irregularities, wherein the applicant was alone singled out for imposing a grave punishment of compulsory retirement from service, which is per se discriminatory and against Articles 14 and 16 of the Constitution of India. The applicant never made a categorical admission of guilt, which has been interpreted to be an admission by the Enquiry Officer. The Addl.C.G.S.C., on the other hand, persuasively argued that it was after a full-fledged enquiry, granting reasonable opportunities to the applicant, complying with due procedure the applicant was found guilty of charge and the Disciplinary Authority as well as the Appellate Authority with due application of mind imposed the punishment of

compulsory retirement from service upon him. The charges against the other delinquent employees were different and sets of evidences were also different, and therefore, it cannot be said to be discriminatory.

5. We have given due consideration to the pleadings, arguments and materials advanced by the counsel for the parties. For better elicitation, the articles of charges framed against the applicant is reproduced herein below:-

ARTICLE I

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

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

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

ARTICLE II

That the said Shri S.K.Sen, Surveyor while performing the duties of Assistant Camp Officer in the Camp No.1 of No.29 Party (NEC) during field season 1996-97 gave an offer of financial gain of Rs.1500/- to all

8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls.

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

ARTICLE III

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

After enquiry, out of the three articles of charges, Articles II and III were not proved. What is left out is Article-I of charge regarding instructing 8 verifiers to show 8 porters in their muster rolls against authorized strength of 4 porters, by adding 4 fictitious porters resulting in financial irregularities thereby the applicant failed to maintain absolute integrity acting in manner unbecoming of the Government servant in violation of Rule 3 (i) & (iii) of CCS (Conduct) Rules, 1964.

6. In a celebrated decision reported in **(1994) 6 SCC 651** in the case of **Tata Cellular vs. Union of India** the Hon'ble Supreme Court has stated that in judicial review Court/Tribunals are not sitting as Appellate Authority, what is to be looked into is not the decision, but the decision making process to be correct or not. On perusal of the records, materials available on record, we

find that reasonable opportunity was given to the applicant in defending his case and also natural justice had been complied with. Applicant's allegation that he was not given reasonable opportunity vide Annexure-B was also appropriately replied by the respondents vide Annexure-C. The case of the respondents is that in furtherance of the allegation received by the respondents, they have conducted preliminary enquiry in which the applicant has made a tacit admission that he was involved in the incident. For this purpose, the relevant paragraphs of the Written statement of defence filed by the applicant at Annexure-D is abstracted herein below:-

".....Therefore my duties as Assistant Camp Officer was restricted to assist the Deputy Superintending Surveyor and the Camp Officer only, and by all means and implications I was to carry out their order and not to act independently without their directions, and accordingly in the instant case I actually carried out the order of my superiors, whatever they time to-time instructed me to do.

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

..... Obviously my involvement into the matter may apparently sound as of a accomplice, since there was no written order of my superior in this regard, but in reality I supported them under complaining circumstances in order to reach to the root of conspiracy and accordingly I carried out their order without objection. However when I refused to take any financial benefit from them, they considered my presence in the camp unsafe and untimely I was directed to

return to the Party Head Quarter and that too, prior to completion of my filed completion formalities."

By this statement the applicant has taken shelter under the plea that the alleged mischief/overtact was done by him to carry out the orders of his superiors whenever they from time to time instructed since he cannot act independently without their directions. He further stated therein that he had no option but to carry out his superior's orders in order to avoid unnecessary complications. He also stated that his involvement in the matter was that of an accomplice, since there was no written order of his superior in this regard. This document was sent by the applicant to the Director, Survey of India, N.E. Circle Office. It is also borne out that this document was mentioned and given to the applicant along with the article of charges well before the enquiry. His contention that such a document cannot be made use of in a regular enquiry proceeding is of no consequence. When a copy of such document is supplied which is relevant and pertinent, it is for the defence to put such document to test by cross-examining or by controverting the same by evidence otherwise it will be presumed that such document is taken for granted. Though rule of evidence is not strictly applicable in an enquiry proceedings, it is common sense that any document furnished to a delinquent employee will be made use of against him in the regular

enquiry whether it is preliminary report or statement given earlier.

7. Though the applicant tried to take us to the various evidences produced by the defence witnesses and tried to convince us that their evidences are false, we are not inclined to look into those evidences since we are not sitting as Appellate Authority. The veracity of the proceedings narrows down to the aspect whether the statement made by the applicant in admitting his involvement in the alleged offence can be relied on in the absence of proper explanation. It is not the benefit of doubt but preponderance applies in a disciplinary enquiry. The applicant had already admitted his involvement in the alleged offence, now, he cannot retrieve from his original position and also cannot take the plea of other delinquents also should have been given the similar treatment. The charges against the verifiers and other delinquent employees are different to that of the applicant. To show the bonafides of the Enquiry Officer, the Enquiry Officer found that two charges were not proved against the applicant but only one charge was proved. Therefore, one cannot say that the enquiry proceedings is vitiated or hit by malafide or irregularities.

8. Mr.P.K.Roy, counsel for the applicant has relied various decisions including the decision reported in (2002) 7 SCC 142 in the case of **Sher Bahadur vs. Union of**

India & Others and argued that in enquiry proceedings requisite evidence must link the charged officer with the alleged misconduct, otherwise it will be a case of no evidence in law. On perusal of the facts of the cited case, we find that this decision is not squarely applicable in the present case, since there are ample evidences to link the applicant with the alleged misconduct. The Addl. C.G.S.C., on the other hand, has relied on a decision reported in **(2004) 8 SCC 218** in the case of **Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal** and contended that reinstatement cannot be taken into consideration by the Court unless and until the finding as to misconduct is not set aside. Reliance is also placed by Addl.C.G.S.C. to a decision reported in **(2002) 3 SCC 641** in the case of **State of U.P. and Others vs. Vijay Kumar Jain**. We are in respectful agreement with above decisions, but the facts of those referred cases are different to this present case. The **Sohan Lal's** case (supra) is for reinstatement and the later one discussed about F.R. 56(c) and 56(j). These are all different concepts not applicable in this case. Counsel for the applicant also drawn our attention to a decision reported in **2003 (8) SCC 9** in the case of **Dev Singh vs. Punjab Tourism Development Corporation Ltd. and Another** and argued that if penalty of dismissal shocks judicial conscience Court can mould the relief by awarding lesser

punishment. It is profitable to quote the following observations made by the Apex Court in the said case:-

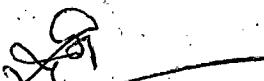
"In such a situation to award the extreme punishment of dismissal according to the learned counsel would not only amount to a disproportionate punishment but also should disturb the conscience of this Court. The learned counsel in support of his argument, that it is open to the superior court to interfere with the quantum of punishment in a given set of facts, has relied upon the judgments of this Court in the case of *Bhagat Ram v. State of H.P.*¹, *Ranjit Thakur v. Union of India*² and *U.P. SRTC v. Mahesh Kumar Mishra*³.

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the Disciplinary Authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

9. Considering the entire aspects and fact that even assuming allegation of misconduct is true fact, the conspiracy theory of involvement of other delinquent employees cannot be ruled out and exoneration of such employees on the ground of no evidence appears to be not justified and the tacit admission of the employee in the

written statement in the preliminary enquiry and its consequential evidence alone cannot be a reason for awarding major punishment of compulsory retirement from service. But considering the involvement of the applicant admitted by him and from such record since he cannot be equated with other delinquent employees, we are of the view that a lesser punishment of lowering three increments with no pay during the absented period but regularizing the said period notionally by adjusting with available leave, if any, for pensionary benefits will be sufficient in this case. For that purpose, we set aside the impugned order dated 31.3.2004 of penalty of compulsory retirement from service passed by the Disciplinary Authority as well as the order of the Appellate Authority dated 2.8.2005 and remit back the matter to the competent authority for imposing the said punishment and his reinstatement in service with notional benefits within a period of three months from the date of receipt of this order.

The Original Application is partly allowed as above. In the circumstances there is no order as to costs.


(GAUTAM RAY)
ADMINISTRATIVE MEMBER


(K.V. SACHIDANANDAN)
VICE CHAIRMAN

21 MAR 2005

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI.

O.A. NO. 76 OF 2005.

Shri Subrato Kumar Sen,
Surveyor. Applicant.

- Vs. -

Union of India & Ors,
.... Respondents.

LIST OF DATES

1) 13.7.2001 Memorandum of charges was served on the applicant by Director NEC, under Rule 14 of CCS (CCA) Rules, 1965.

(Annexure 'A' page 33).

2) 17.7.2001 Applicant by an application prayed for furnishing him all the relevant documents to enable him to know the said charges and to file written statement.

(Annexure 'B' Page 37).

3) 26.7.2001 The said application was rejected by the disciplinary authority.

(Annexure 'C' Page 38).

4) 3.8.2001 The applicant filed written statement without perusing those documents.

(Annexure 'D' Page 39).

5) 11.9.2001 The applicant having denied the charges, the Disciplinary authority appointed Shri S.C. Jarodia, Commissioner of Departmental Inquiries, Central Vigilance Commission, as Inquiry officer and G.C. Bairagi Deputy Director, Director of Map Publication Survey of India, Dehradun as Presenting Officer. Later Shri Bairagi was replaced by Brig. Varma, Dy. Surveyor General, EZ, Survey of India, Kolkata.

6) 12.9.2002 Since the applicant was made a departmental witness in the departmental proceeding against other employees on similar charges, he filed application for dispensing with his deposition in the said enquiry. But the same was not entertained by Disciplinary authority and Inquiry officer.

18.9.2002

(Application dtd. 18.9.2002
Annexure 'E' Page 42).

20.5.2003 The inquiry started with the deposition of the departmental witnesses and none of the witnesses who made depositions on behalf of the authority, (namely R.K. Meena - S.W.1, U.N. Mishra- S.W.2, Shri P.K. Roy - S.W. 3, Shri D.N. Deb- S.W.4 and J. Kharmujai S.W.-5) supported the charges. There was therefore no evidence in support of the charges drawn against the applicant.

(Deposition of S.W. 1 to S.W. 5 and applicant - Annexure F, G, H, I, J and K) X at page No. 43, 45, 47, 50 and 55 respectively.

7) 24.6.2003 Inquiry officer submitted his inquiry report. Having found that no charge drawn against the applicant could be proved during the enquiry, went back to the written statement and mechanically accepted the plea of Presenting Officer that the applicant admitted the charges in during an alleged preliminary Inquiry which was never a part of record. The Inquiry Officer submitted his report holding only charge No. 1 as proved.

(Annexure - L Page 58).

8) 4.2.2004 The Disciplinary authority as per advice of CVC dated 22.10.2003, forwarded the Inquiry Report and asked the applicant to make representation within 15 days. Disciplinary authority proposed a penalty of Compulsory retirement.

(Letter dtd. 22.10.03
Annexure - M Page 72).

(Letter dtd. 4.2.04
Annexure - N Page 7).

contd

9) 23.2.2004 Applicant submitted his written representation and pleaded that since there is no evidence to prove the charges drawn against him the punishment proposed cannot be inflicted on him. That apart on the same set of evidence, the same Inquiry officer held the other employees not guilty of the similar charges as drawn against them.

(Annexure - N (I) Page 74).

10) 31.3.2004 On the basis of a wholly perverse finding of the Inquiry officer, the Disciplinary authority imposed a punishment of compulsory retirement from service w.e.f. 31.3.2004.

(Annexure - O, Page 84).

11) 18.11.2003 Order exonerating Shri N.G. Das, Planetabular on the basis of the Inquiry report by the same Inquiry officer on similar charges and on the same set of evidence.

(Annexure - P Page 88).

12) 15.3.2004 Applicant's representation for promotion to the higher rank.

(Annexure Q at page 90).

13) 19.4.2004 The applicant filed an appeal under Rule 23 of CCS (CCA) Rule, 1965 before Surveyor General of India, the same having not been disposed of, the applicant filed O.A.M. 260/2004.

(Annexure- R; appeal dtd. 19.4.04, Page 91).

14) 10.11.2004 Order was passed by the Hon'ble Tribunal directing Appellate authority (Respondent - 2) to dispose the appeal within 3 months.

(Annexure - S page 105).

15) 8.2.2005 ✓ Appellate Authority confirmed the finding and penalty imposed by Disciplinary authority on 31.3.04.

(Annexure - T Page 107).

21 MAR 2005

গুৱাহাটী পৰিষেবা
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI

O.A. NO. 76 OF 2005.

Shri Subrato Kumar Sen,
Surveyor.

.... Applicant.

- VERSUS -

Union of India & Others,

.... Respondents.

I N D E X

Sl.No.	Description of Documents	Annexure	Page No.
1.	Original Application		1 to 32
2.	Annexure	A	33 to 36
3.	Annexure	B	37
4.	Annexure	C	38
5.	Annexure	D	39 to 41
6.	Annexure	E	42
7.	Annexure	F	43 to 44
8.	Annexure	G	45 to 46
9.	Annexure	H	47 to 49
10.	Annexure	I	50 to 52
11.	Annexure	J	53 to 57
12.	Annexure	K	55 to 57
13.	Annexure	L	58 to 71
14.	Annexure	M	72
15.	Annexure	N & N(I)	73 to 83
16.	Annexure	O	84 to 87
17.	Annexure	P	88 to 89
18.	Annexure	Q	90
19.	Annexure	R	91 to 107
20.	Annexure	S	105 to 106
21.	Annexure	T	107 to 112

Fixed by
Sanjay Kr. Chakraborty
for
21.3.2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI

Fixed by the Appellant
23
Ranjan
Sanjay for respondent
for cont
21.3.05

O.A. NO. 76 OF 2005.

- Between -

Shri Subrato Kumar Sen,
Surveyor.

... Applicant.

- And -

Union of India & Others,

... Respondents.

DETAILS OF APPLICATION

1) PARTICULARS OF THE APPLICANT :-

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

contd.... p/2.

[Signature]

2) PARTICULARS OF THE RESPONDENTS :-

1. Union of India
represented by the Secretary to the
Govt. of India, Ministry of Science
and Technology, New Delhi.
2. The Surveyor General of India,
Hathibarkala, Dehradun.
3. The Director,
Survey of India,
Meghalaya & Arunachal Pradesh,
GDC, Malki, Shillong - 01.
4. The Director,
Survey of India,
Assam & Nagaland, GDC,
Ganeshguri, Guwahati.

3) PARTICULARS OF ORDER AGAINST WHICH
APPLICATION IS MADE :

- a. Order dated 31.3.2004 passed by the
Director, Survey of India,
Meghalaya & Arunachal Pradesh, (Annexure 'O')
GDC, Malki, Shillong-01.
- b. Order dated 08.02.2005 passed by the
Surveyor General of India
(Annexure 'T' Page No.)

4) JURISDICTION OF THE TRIBUNAL :

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

5) LIMITATION :

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

6) FACTS OF THE CASE :

MOST RESPECTFULLY STATES :-

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

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

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

(b) That while performing the above duty, the applicant gave an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in that muster roll, (ARTICLE-II).

(c) That while engaged in the above field work, the applicant had misappropriated Govt. money amounting to Rs. 30/- by raising inflated amount towards repair of vehicle (ARTICLE-III).

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

contd.... p/5.

[Signature]

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

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

6.4. That after the said application dated 17.7.2001, the disciplinary authority vide letter dated - 26.7.2001 refused, as not possible, to furnish those documents to the applicant in breach of the principles of natural justice denying him the opportunity to reply to the charges in an affective manner which the applicant found to be unclear. But since the memorandum dated - 13.7.2001, contained a definite timeframe for reply and the applicant had an apprehension that the proposed enquiry may go ex-parte against him, he had to file his written statement without perusing those documents on - 3.8.2001. The nature of the allegations made in the memo of charges without full particulars

had left the applicant to only guess the material particulars on which the charges were sought to be established. In the said written statement of defence the applicant however specifically denied all the ~~xxxi~~ article of charges as under :-

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

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

6.5. That the applicant at this stage deems it proper to mention that the authority simultaneously proposed to draw-up departmental proceedings against R.K. Meena, Superintending Surveyor, O/C. No. 83 Party, U.N. Mishra, Superintending Surveyor, O/C. No. 12 Drawing Office and 8 (eight) verifiers viz. Shri D.N. Dev, D.C. Bhandari, J.P. Chakraborty,

J. Kharmujai, L. Rajwar, N.G. Das, P.K. Roy and S.P. Roy in respect of the same incident out of which the charges against the applicant is drawn. Since the memo of charges drawn against the applicant contained an allegation that the applicant had instructed the verifiers to engage 4 extra porters and the engagement of 4 extra porters is factually correct who were engaged under orders of the Camp Officer (which were later proved during enquiry) without proper sanction by the Director, the applicant was under an impression/presumption, particularly in absence of any document furnished to him, that the authority has got some prima-facie materials against his said superior officers and therefore to take his own defence the applicant had to make some surmises in his written statement as an abundant caution and stated inter-alia that he carried out orders of the superiors for engaging 4 extra porters and if any financial irregularities had occurred for such extra engagement, the same can not be attributed to the applicant.

6.6 That the disciplinary authority however having found that the applicant has denied all the charges, decided to hold a departmental enquiry into the said allegations and appointed

Shri S.C. Jarodia, Commissioner of Departmental inquiries, Central Vigilance Commission, Govt. of India as Inquiry Officer to inquire into the various allegations made against the applicant and the above named officers and verifiers Shri G.C. Bairagi, Deputy Director, Director of Map Publication, Survey of India, Dehradun was appointed as the Presenting Officer, both by order dated 11.9.2001. Shri Bairagi was however, later replaced by Brig. R.N.B. Varma, Dy. Surveyor General, EZ, Survey of India, Kolkata. The applicant was made as departmental witness in the departmental inquiries against the verifiers, but the applicant's application dated 12.9.2002 and 18.9.2002 for dispensing with his deposition in the said inquiries on ground of prejudice, was however, not entertained by the Disciplinary authority and the Inquiry Officer.

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

6.7. That the applicant states that thereafter the inquiry in respect of the applicant was held and out of 7 listed witnesses 5 (five) witnesses, viz. Shri R.K. Meena, U.N. Mishra, P.K. Roy, D.N. Deb and Shri J. Kharmujai made their

depositions, the other 2 (two) witnesses however did not turn-up. Some documentary evidences were sought to be proved during the enquiry. The allegations brought against the applicant being wholly baseless, none of the said witnesses said anything against the applicant to prove the charges. Not a single document which were sought to be proved during the enquiry could establish any nexus even remotely between the alleged misconduct and the applicant. In his deposition SW-1, R.K. Meena, has stated that as per scale the authorized strength of porters was 72, but 40 porters were initially recruited and additional 32 porters, were required for shifting the camp from one place to another and therefore extra porters were engaged by him and in his cross examination he has specifically stated that he asked the applicant (Shri S.K. Sen) that if situation requires more porters will be required to engage in the field in addition to 40 porters already given. In his deposition SW-2, U.N. Mishra has stated "Officer-in-charge had also given verbal instruction to S.K. Sen to engage 4 additional porters for each verifiers." To a pointed question by the Presenting Officer as to whether he heard anything about offer of financial gain given by Shri Sen, ACO for adding fictitious name of porters in the muster roll, the SW-2

has specifically said, "No, I did not hear any such thing." SW-3, Shri P.K. Roy, SW-4, Shri D.N. Deb and SW-5 Shri J. Kharmujai have stated in their depositions that 4 extra porters were allotted to them by the Camp Officer and payment were also made by the Camp Officer. All of the said witnesses, who made depositions on behalf of the authority denied the contents of Exhibit S-11 and S-14 purported to be their statements in the preliminary enquiry which were sought to be proved against the appellant. The witnesses also specifically denied having received offer of any ~~XXXXXX~~ financial gain from the appellant. All the above evidences goes to show that none of the charges drawn against the appellant could be proved during enquiry. The appellant was also put questions by the Inquiry Officer separately.

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

6.8. That after recording of evidences, the Inquiry Officer asked both the Presenting Officer and the appellant to submit a written brief which

were accordingly filed before the Inquiry Officer. In his written brief argument the applicant specifically pointed out that there is not a single evidence to link the applicant to the alleged misconduct and the appellant further explained the circumstance under which he had to submit his written statement without perusing the relevant documents which were denied to the appellant. However, the Presenting Officer having noticed that the charges drawn against the appellant could not be proved during enquiry by any evidence, sought to rely on an alleged preliminary enquiry and the written statement, though the applicant was never ^{made to} confront with the said documents during the enquiry. The Presenting Officer has also stated in his written brief that "C.O. has denied his statement given during preliminary enquiry to the Board of officers and stated that was done under pressure/coercion." But these statements of the Presenting Officer are absolutely beyond the record of the disciplinary proceedings of the applicant. The applicant was never put any question nor confronted with any record of the preliminary enquiry on the written statement in his disciplinary proceeding as would be evident from the depositions annexed

as Annexure 'F' to 'K' to this application. Moreover, the applicant never admitted any of the charges in his written statement and for such denial itself the departmental Enquiry was ordered.

6.9. That the Inquiry Officer ultimately submitted his inquiry report on 24.6.2003 and found that from the depositions made by the 5 witnesses nothing could be proved against the applicant but dubbed the said witnesses as 'Co-accused in the same case', though in a departmental proceeding the term 'Co-accused' is absolutely unknown. The Inquiry Officer however, having found that no charge drawn against the applicant could be proved during enquiry, went back to the written statement of the applicant and by accepting the plea of the Presenting Officer mechanically gave a finding that C.O. could not produce any evidence of 'use of pressure' and 'coercion' against him. As stated earlier the Presenting Officer in his written ~~XXXXXX~~ brief has stated that the "C.O. has denied his statement given during preliminary inquiry to the Board of Officers and stated that this was done under pressure/coercion" though the same was absolutely beyond record of the instant

departmental proceeding of the applicant. The Inquiry officer ultimately without any proof whatsoever, has held that "This goes to prove that C.O. had given oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork. Therefore, the allegation leveled against the C.O. stands proved" and accordingly held the Article of charge - I as proved. Curiously enough the Inquiry officer, with the same set of evidence/ record found that the Article of charge No. II of giving "an offer of financial gain of Rs.1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls, as not proved. Therefore when the allegation of giving offer of financial gain of Rs.1500/- for inclusion of 4 extra fictitious porters' was held to be not proved in Article of charge-II, how could the Inquiry officer found giving 'oral instructions to all the verifiers to show 4 extra fictitious porters in their muster rolls without actually engaging them in the fieldwork' in Article of charges I to be proved on the same set of evidences. The Inquiry Officer also found Article of charge No.III as not proved for want of evidence although the statements made by the applicant

in his written statement of defence were in respect of all the charge and not in respect of Article of charge No. I alone. The findings of the Inquiry officer were therefore wholly perverse and only based on extraneous materials. The Inquiry officer even based his finding on some materials not proved during inquiry.

6.10. That the disciplinary authority thereafter without taking any decision himself as required under the law sought for advise of the Central Vigilance Commission under whose authority and control the Commissioner of Departmental Inquiries and the Inquiry Officer of the applicant functioned and on receipt of their advice decided to impose the punishment of compulsory retirement and while forwarding the Inquiry Report and the advice of the CVC dated 22.10.2003 asked for making representation by the applicant within 15 days vide letter dated 4.2.2004, though the same was a mere formality. The applicant on receipt of the same submitted his written representation on 23.2.2004 in which he has specifically ~~as~~ pleaded that since there is no evidence to prove the charges drawn against him, and since the same inquiry officer with similar allegations and same set of

evidence against the verifiers found that "whatever documentary or oral evidence brought before him are not sufficient to prove that the charged officer added 4 (four) fictitious names of porters in their muster rolls and thereby made some financial irregularities," and since the disciplinary authority has accepted the said finding and exonerated the said verifiers vide order dated 18.11.2003, the same disciplinary authority, can not treat the case of the applicant differently and arbitrariness most particularly when none of the charge drawn against the applicant could be proved by any other evidence. The applicant had also cited some legal authorities in support of his case. But the disciplinary authority without discussing the evidences on record and without considering specific plea of the applicant in this regard, relied on certain extraneous materials and held that the applicant has admitted his charge not only during the course of 'preliminary inquiry' but also in his written statement submitted against the charge sheet. The applicant in this regard submits that the finding of the disciplinary authority are based on wholly extraneous materials and the applicant was never ^{seen} to confront.



with such materials and no record of 'preliminary enquiry' as referred to above was ever brought/ proved during the course of inquiry. The applicant's plea that the records of alleged admission made in the preliminary inquiry did not form part of the record of the present Disciplinary Inquiry was held to be not tenable on the plea that the statement of verifiers made during the course of preliminary inquiry formed the part of documents for the regular inquiry without explaining as to how the applicant could admit the charge in the "Statement of verifiers made during the course of their preliminary inquiry." That apart even all the said verifiers in clear terms denied and disowned any such statement made in their preliminary inquiry. Therefore it is apparent that the Disciplinary authority has given the said finding of guilt in respect of the applicant with a prefixed mind to punish/victimize the applicant even without proving the Article of charge No. I. Though the Disciplinary authority at the beginning of paragraph 3 of the said punishment order has clearly admitted that the applicant did not plead himself guilty of the charges framed against him in Article of charge - I, II and III and hence decided to

hold an enquiry, yet when nothing could be proved during enquiry, the entire enquiry proceeding has been rendered as nugatory by going back to the written statement and by deliberately misinterpreting the same and relying on alleged preliminary enquiry held that the applicant had admitted the charges. If the disciplinary authority would have found the applicant admitted the charge, then there would have been no question of holding any enquiry and it is only because, the applicant did not admit the charge, the enquiry was held as contemplated under the rule. When the authority has decided to hold an enquiry in respect of charges found to be not admitted, it is the result of the enquiry and/or proof during the enquiry which can be the basis of any punishment and materials not before such enquiry as alleged can be relevant to impose any punishment. But the disciplinary authority on the basis of the above wholly perverse finding of the Inquiry officer and bringing out a new case against the applicant, imposed the punishment of compulsory retirement from service with effect from 31.3.2004 in a most illegal and unfair manner. It would be pertinent to mention here that the applicant

continued to work till 5.4.2004 on which date he was served with the order purportedly passed on 31.3.2004. If the order really was passed on 31.3.2004, the same would have been served on the applicant on 31.3.2004 itself. But since the Director, Meghalaya & Arunachal Pradesh, Shillong cased to remain the applicant's Disciplinary authority from 1.4.2004, and would have been under the disciplinary control & Director, Assam & Nagaland GDC, Guwahati, the applicant reasonably believes that, lifting the veil, would reveal that the order was passed only on 5.4.2004 giving a back date as 31.3.2004; since the decision to impose punishment even without evidence was a predetermined decision of the disciplinary authority. The disciplinary authority even did not wait for the result of the disciplinary enquiry in respect of Shri R.K. Meena and Shri U.N. Mishra to come out.

Copies of the Inquiry Report dated 24.6.2003, Letter dated 22.10.2003, 4,2,2004, representation dated - 23.2.2004, copy of the punishment order dated 31.3.2004 and order dated 18.11.2003 in respect of one of the verifiers viz. Shri N.G. Das exonerating him from the similar charges are annexed

as ANNEXURE 'L', 'M', 'N', N(I), 'O'
& 'P' to the application.

6.11. That the applicant states that the authority has not only exonerated all the verifiers against whom similar disciplinary proceedings were drawn on similar nature of allegations and enquired into by the same Inquiry officers, but also promoted Shri U.N. Mishra to a higher position on temporary basis. The applicant alone was treated in a most disreminatory manner. Moreover, the applicant's Assured Career Progression/Promotion was also not considered which was long due to him and the applicant by a representation dated 15.3.2004 pointed out to the authority during the pendency of the departmental proceedings that many of his juniors were promoted without considering his case illegally. But the same yeilded no result.

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

6.12. That the applicant ultimately filed an appeal under Rule 23 of the CCS (CCA) Rule, 1965 before the Surveyor General of India on 19.4.04.

But the same having not been disposed of and the applicant having no other alternative remedy available to him, approached this Hon'ble Tribunal by filing O.A. No. 260 of 2004 and this Hon'ble Tribunal by the order dated 10.11.2004 was pleased to direct the Appellate Authority, the Respondent No. 2 therein to dispose-of the said appeal within a period of 3 months from the date of receipt of the order.

Copy of the appeal dated 19.4.2004 and the Order dated 10.11.2004 are annexed as ANNEXURE - R and S to this application.

6.13. That ultimately the Appellate Authority by taking into consideration of some irrelevant materials leaving aside the relevant materials, without appreciating the real grievance of the applicant and by committing serious illegality, confirmed the findings as well as the penalty of compulsory retirement passed by the disciplinary authority dated 31.3.2004. The said order was passed on 8.2.2005 and was forwarded to the applicant by the Director Assam and Nagaland G.D.C. Guwahati vide his letter dated 17.2.2005.

✓

Copy of the Order dtd. 8.2.2005 is annexed as ANNEXURE - T to this Application.

7) G R O U N D S :-

- 7.1. For that the impugned Order of punishment dated 31.3.2004 passed by the Disciplinary authority being based on no evidence at-all, the same is unsustainable in law and is liable to be set-aside.
- 7.2. For that the Inquiry Officer and the Disciplinary authority after having found that the charges drawn against the applicant could not be proved by any legal evidence, relied on some extraneous materials which were never allowed to be confronted with by the applicant during the enquiry and the same being violative of the principles of natural justice, the punishment order which is bases on the same extreaneous materials, is unsustainable in law and is liable to be set-aside.
- 7.3. For that when there was not a single evidence to link the applicant with the alleged misconduct, the Disciplinary authority ought to have dropped the proceedings against the applicant exonerating him from all the charges and grant him all the consequential promotional and other benefits.

7.4. For that the Disciplinary authority at all stages denied the applicant reasonable opportunity to defend himself. The charges drawn were not definite and were all unclear and the basis of the charges drawn having not been disclosed, the applicant prayed for copies of the documents relied on by the authority to enable the applicant to submit his written statement. But the same were denied to the applicant. The applicant had to submit his written statement by making some guess work and the authority took advantage of the same at the end of the enquiry after failing to prove the charges. The authority also forced the applicant to be a witness against himself despite written protest by the applicant. The whole enquiry therefore proceeded in a defective manner and in breach of the procedural safeguard guaranteed to a Govt. Servant and the punishment being based on the said defective enquiry can not be sustained and is liable to be set-aside.

7.5. For that the Disciplinary authority had already decided to impose punishment of compulsory Retirement even before asking for a representation against the Inquiry Report would be evident from the letter of the CVC accepting his views.

That apart the second stage advice as sought-for from the CVC was wholly de-hors the rule since after submission of the Inquiry report by the Inquiry officer, the Disciplinary authority was only required to apply his mind as the findings of the Inquiry Officer and if he finds any ~~mixamash~~ blameworthy act on the part of the applicant on the basis of the evidences on record, obtain representation from the applicant and not from the CVC under whose authority the Inquiry Officer made the inquiry.

7.6. For that the law as settled by the Apex Court is that admission not made specifically in reply to a charge can not be taken into account for penalizing a Govt. Servant or the punishment can only be based on clear and unambiguous admission of guilt. Since the applicant's written statement of defence would show that he has made no admission of any charge far less admission of guilt which is even admitted by the disciplinary authority, punishment based on any statement made by the applicant is wholly uncalled-for and is unsustainable in law and therefore the same is liable to be set-aside.



7.7. For that even assuming but not admitting that there is any material to hold the charge No.1 as proved, the extream punishment of compulsory Retirement inflicted on the applicant is highly disproportionate and the applicant believes that the same would definitely shock the judicial conscience, since admittedly the other allegation of inclusion of fictitious porters is found to be not proved by the Inquiry officer.

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

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

7.10. For that the Appellate Authority without appreciating the real grievance of the applicant and the reasons given in support thereof and without taking into consideration of the relevant materials, mechanically agreed to the findings of the Disciplinary authority while confirming the order of punishment and thereby acted in violation of the Rule 27 of the CCS (CCA) Rule, 1965 and as such the same is liable to be set-aside.

7.11. For that the Appellate authority without applying its mind to the provisions of law has held that for admitting or denying the charge in the written statement no inspection of document is necessary without appreciating that when the charges itself are vague and not definite the documents relied on in framing the charges would be necessary even to admit or deny the charges and now furnishing of the same would

definitely cause prejudice to the charged officer. That apart when the documents sought for were readily available with the authority, fairness in action demands that the same should be furnished to the charged employee and contrary there-of would vitiate the whole inquiry process.

7.12. For that when the non furnishing of the documents relied on before filing the written statement has caused substantial prejudice to the applicant and the written statement has been made the basis although by the authority for inflicting punishment by mis-interpreting the same, the punishment order cannot sustain for violation of the procedural safeguard and the same being fundamental and substantive apart from being mandatory in nature, ought to have been complied with.

7.13. For that the plea taken by the applicant in his written statement, though without inspection of documents, are not inconsistant with the evidences led during enquiry inasmuch as the charge of engaging 8 porters as against original 4, were admitted by all the witness and the admission if any, by the applicant in his written statement being the aforesaid admission

the punishment inflicted upon such admission of fact is wholly uncalled-for specially when engagements of extra porters in hilly terrain is always recognised by the authorities and have their sanction.

7.14. For that when the applicant while replying to the charges submitted his written statement jointly against charge No. 1 and 2 and the authority having found no 'admission' with regard to charge No. 2 by holding the applicant not guilty in respect thereof, the finding of alleged 'admission' with regard to charge No. 1 alone in ex-facie arbitrary and smacks malafide. The impugned order of punishment being based on the said finding, is unsustainable in law and liable to be set-aside.

7.15. For that the authorities have made gross error of law in relying on alleged preliminary statement of the applicant while inflicting the punishment and confirming the same without making it a part of the charge or the record of the enquiry in violation of the principles of Natural justice, rendering the impugned orders void in law.

7.16. For that the authorities have picked up some words and sentences of the written statement in isolation without considering the written statement as a whole in its true perspective only to punish the applicant in an illegal and unfair manner thereby made the whole departmental inquiry as nugatory rendering the impugned orders unsustainable in law.

7.17. For that while coming to the finding of guilt against the applicant the authority has relied on some imaginary statement allegedly made by the applicant that the applicant has "denied his statement given during preliminary inquiry to the board of officers and stated that this was done under pressure/coersion" which is a wholly perverse finding and doesnot form part of the record and since the punishment is based on such perverse finding, the same is not sustainable in law and is liable to be set-aside.

7.18. For that the statement made by the applicant in his written statement or even in the alleged proliminary enquiry were never discussed during the enquiry process to

enable the applicant to explain his position and when the charges were not proved during enquiry, the same has been made the basis in an illegal and unfair manner for inflicting the extreme punishment of compulsory retirement.

7.19. For that when the authority found that the alleged preliminary enquiry of the applicant didnot form part of the enquiry proceeding illegally taken a plea that the preliminary enquiry report of the verifier has formed part of the record without appreciating that the punishment order is based not on the preliminary enquiry report of the verifier but on the alleged statement in the preliminary enquiry report of the applicant which infact was nonexistent. Even the statement in the preliminary enquiry report made by the verifier was not proved during enquiry.

7.20. For that when the departmental proceedings ~~was~~ initiated aiming towards major penalty based on three Article of charges, even assuming but not admitting that the charge No. 1 has any foundation, the extreme penalty of compulsory retirement is not commensurable with the said alleged charge and is shockingly disproportionate.

7.21. For that the impugned orders suffers from gross illegality, irrationality, procedural impropriety apart from being disproportionate and unreasonable and as such the same is liable to be set-aside.

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

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

8) DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he has exhausted all the remedies available to him and he has

no other remedy other than filing the instant application U/S. 19 of the Administrative Tribunal Act.

9) MATTERS NOT PENDING WITH ANY OTHER COURT :

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

10) P R A Y E R :

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

- i) Set-aside the order dated 31.3.2004 passed by the Director, Survey of India, Meghalaya & Arunachal Pradesh GDC, Malki, Shillong-01 (Annexure - O).
- ii) Set-aside the order dated 8.2.2005 passed by the Surveyor General of India (Annexure-T).
- iii) Direct the respondents particularly the Respondent No. 3 to reinstate the applicant in his own post of Surveyor and grant him all consequential benefit including promotional benefit which was due to him.

11) PARTICULARS OF POSTAL ORDER IN RESPECT
OF THE APPLICATION :

Postal Order No. : 20 G/16 0011
Date : 21.3.2005
Issued from : G.P.O., Guwahati.
Payable at : Guwahati.

12) DOCUMENTS :

As mentioned in the Index.

VERIFICATION

I, Shri Subrato Kumar Sen, Surveyor, son of Late S.K. Sen, aged about 52 years, presently (under compulsory retirement) Erstwhile No.- 80 (P) Party (NEC), (Now Assam & Nagaland, GDC, (Shillong Wind) Lower Harisava, P.O. Shillong-793 004, District East Khasi Hills, Meghalaya, do hereby verify that the contents of paragraphs 1 to 5, 6.1 to 6.6, 6.9 to 6.13 are true to my knowledge and those made in paragraphs 6.7, 6.8 are true to my information derived from records and the rest are my humble submissions before this Hon'ble Tribunal and I sign this Verification to-day the 18th day of March 2005 at Guwahati.

Subrato K. Sen.
Applicant.

CONFIDENTIAL

NAC-210 13-A-305

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

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri S.K. Sen, Surveyor of No.80(P) Party(NEC), Survey of India, Shillong under rule 14 of the Central Civil Services (Classification, Control & Appeal) Rule, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of articles of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge is proposed to be sustained are also enclosed (Annexure III & IV).

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

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

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

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

6. The receipt of the Memorandum may be acknowledged.

to be
Certified to copy of
Certified to copy of
S.K. Sen 21.3.05
S.K. Sen 21.3.05

T. K. BANDYOPADHYAY
DIRECTOR, NORTH EASTERN CIRCLE.

To

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

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

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

Article-I

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

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

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

Article-II

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

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

Article-III

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

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

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

Article-I

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

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

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

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

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

Article-II

not found That the said Shri S.K. Sen surveyor while functioning as Assistant Camp Officer in Camp No.-I of No. 29 Party (NEC) during field season 1996-97 had offered a financial gain of Rs. 1500/- to each of the 8 verifier for making entries of 4 fictitious porters in their muster roll for the period of 16-01-1997 to 28-02-1997 by adjusting the amount of Rs. 1500/- against their field contgt. Advance.

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

Article-III

not found The said Shri S.K. Sen, Surveyor while engaged in field work submitted false voucher against repair of Govt. vehicle. On 14-01-1997, Camp jeep was repaired at an actual expenditure of Rs.50/- but Shri Sen prepared the voucher for Rs.80/-. Thus Shri S.K. Sen, Surveyor made misappropriation of govt. money amounting to Rs.30/- for his personal gain.

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

ANNEXURE-III

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

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

ANNEXURE-IV

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

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

To
The Director North Eastern Circle
Survey of India
Shillong.

(Chittig 80/80 (P) party)

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

Sir,

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

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

Thanking you

Yours faithfully,
(S.K.Sen)80 (P) party

Rec'd 3
18/3/05
Chittigong
(S.B.)

copy
to be free
certified by
S.K. Chittigong
21.3.05

Then we
revisit for
a

CONFIDENTIALNO. C 10 / 20 (SKS)SURVEY OF INDIA
NO. 80 (P) PARTY (NEC)
SHILLONG-1.DATED THE 26th JULY, 01.

To,

✓ Shri. S.K. Sen,
Surveyor,
No. 80 (P) Party (NEC).SUB: SUPPLY OF COPY OF ANNEXURE III AND IV OF THE STATEMENT
OF ARTICLE OF CHARGE FRAMED AGAINST SHRI. S.K. SEN, SURVEYOR.

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

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

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

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

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

BN/

copy to be done copy
copied to S.K. Chakraborty
Ansata
21.3.01

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

Sub: - Written statement in Defence

Sir,

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

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

Reply to Article of Charges as per Annexure I of Memorandum

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

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

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

*certified to be
certified true copy
S. K. Chakraborty
21/3/05*

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

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

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

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

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

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

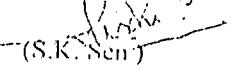
nothing which is unbecoming of Government Servant. As I verily believe, in the instant case, I have maintained my full integrity and did nothing which is unbecoming of a Government Servant. Your kind attention in this regard may be drawn that it is I who reported the matter at the first instance to the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

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

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

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

Yours faithfully


(S.K. Sen)
No 80 Party (NECO)

Dated, Shillong
The 3rd Aug. 1947

~~I stated in my statement dated 3-8-47
that~~

~~i) Listed documents were not
supplied to me before I reported
to the (already mentioned in my statement)~~

~~ii) I stated in my statement everything
of the above is true.~~

To,

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

Sub:- witness

Sir,

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

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

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

Thanking you,

Dated 18/9/2002.

certified to be true copy
S.K. Chakrabarty
Hans Sankar
21.3.05
Yours faithfully,
(S. R. SEN)
Surveyor,
Survey of India,
Shillong.

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

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

SW-1

SHILLONG

20.5.2003

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

Examination-in-Chief

Q.1 Please give your brief introduction?

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

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

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

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

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

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

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

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

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

*Copy given
21/3/03*

*Copy to be kept copy
S.K. Chakrabarty
21/3/03*

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

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

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

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

Cross-Examination

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

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

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

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

Re-Examination NIL.

RO&AAC


Bhupen
88/03
Witness

Inquiry Officer

20/7/03

Annexure - 'G'

3.

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

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

SHILLONG

20.5.2003

Deposition of Shri UN Mishra, Superintending Surveyor, Officer in Charge, No.12
Drawing Office, North Eastern Circle, Shillong.

SW-2

Examination-in-Chief

Q.1 Please give your brief introduction?

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

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

Ans. No.

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

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

20/5/03
Certified to be true copy
S.K. Chakrabarty
21.3.03

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

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

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

Ans: Yes, it is within my knowledge.

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

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

Q7. Who supervise the repair of vehicle in the Camp?

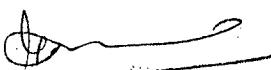
Ans: It is the Camp officers responsibility to supervise and monitor the repair work of the vehicle. When Camp Officer is not available, Asstt. Camp Officer (ACO) supervise the repair work.

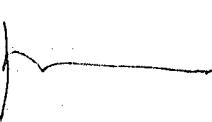
Q8. How was the correctness of the bill presented against repair ensured?

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

Cross-Examination : NIL

RO&AAC


Witness 2021-22


Inquiry Officer

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

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

SHILLONG

20.5.2003

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

SW-3

Examination-in-Chief

Q.1 Please give your introduction?

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

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

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

Ans. My duty is to survey the field.

Q.3 Do you engage Porters while carrying out survey?

Ans. This is done by Camp officer.

Q.4 Please see Exhibit S-11, do you confirm and own this statement?

Ans. I disown this statement.

Q.5 Why did you sign the statement?

copy to be given copy
certified to be true copy
S.K. Chakraborty
10/6/03
21/3/03

20/5/03

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

Q6. Are you nervous at present also?

Ans: No.

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

Ans: Camp Officer. Eight porters were allotted.

Q8. Who maintained the muster roll?

Ans: I myself maintained the muster roll.

Q9. Who made payment of porters' wages?

Ans: Camp Officer.

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

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

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

Ans: Camp Officer.

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

Ans: It is not my job.

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

Ans: I do not know.

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

Ans: I do not recollect.

Q15. Did any porters were recruited in your camp?

Ans: I do not know.

25
20503

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

Ans: No.

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

Ans: Yes, it was paid.

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

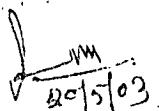
Ans: Only Camp Orderly's payment was made and others I do not know.

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

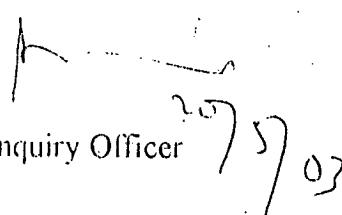
Ans: No.

Cross- Examination : NIL.

RO&AAC


20/5/03

Witness


20/5/03
Inquiry Officer

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

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

SHILLONG

20.5.2003

SW-4

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

Examination-in-Chief

Q.1 Please give your brief introduction?

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

I was working in the capacity since 1980.

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

Ans. Yes.

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

Ans. No.

Q4. How many porters did you have?

Ans. Eight.

Q5. Who supplied you the porters?

Ans. Camp Officer supplied me the porters.

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

certified to be true copy
S.K. Chakraborty
11.3.05

20/5/03

Ans: Camp Officer.

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

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

Q8. Whether your whole squad was recruited at Shillong.

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

Q9. Did you join your camp right from beginning?

Ans: Yes.

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

Ans: No.

Q11. How many porters you had?

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

Q12. Whether these additional 5 recruits were local porters?

Ans: Yes.

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

Ans: Camp Officer.

Q14. Who made their payment?

Ans: Camp officer at the close of Camp

20
20

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

Ans: I do not know.

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

Ans: I do not know.

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

Ans: I do not know.

Cross-Examination : NIL

RO&AAC

10
2015/03

Witness

Inquiry Officer

20
7/03

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

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

SW-5

SHILLONG

20.5.2003

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

Examination-in-Chief

Q.1 Please give your introduction?

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

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

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

Ans. I deny the contents of the statement.

Q.3 Why did you sign?

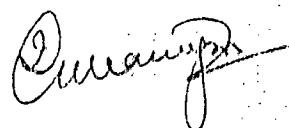
Ans. I signed. Simply because Director asked me to sign.

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

Ans. From the very beginning of my field work.

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

Ans. I did not recruit.



certified to be true copy
B.P. Chakraborty
21.3.03

Q6. Who was making payment to your porters?

Ans: Camp Officer

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

Ans: I do not know

Q8. Who was maintaining the muster roll?

Ans: I maintained the muster roll

Q9. Why you did not ensure their payment?

Ans: It was being done by C.O.

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

Ans: I do not know.

Q11. Did they complain to you?

Ans: No.

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

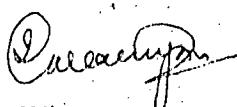
Ans: I do not know.

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

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

Cross- Examination : Nil

RO&AAC



Witness

Inquiry Officer

13

Annexure 'K'

13

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

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

SHILLONG

21.5.2003

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

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

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

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

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

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

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

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

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

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

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

certified to be true copy
S. K. Chakraborty
Hansdak
21.3.05

Ans: It was just professional relation.

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

Ans: There was no such occasion.

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

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

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

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

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

Ans: It was arranged locally.

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

Ans: No.

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

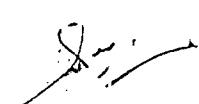
Ans: Initial recruitment was done by me at Shillong.

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

Ans: No.

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

Ans: I do not know.



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

Ans: No.

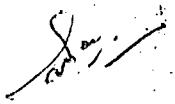
Q16. On completion of jobs when field hands started returning to camp Head quarters, in what sequence did you organize the discharge of their porters?

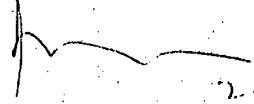
Ans: I was not involved in discharging them.

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

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

RO&AAC


CHARGED OFFICER


INQUIRY OFFICER

15/9/03

Confidential

No.N1/SCJ/66(71)
Government of India
Central Vigilance Commission

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

REPORT

1. INTRODUCTION

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

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

*certified to be true copy
S.K. Chakrabarty
Advocate
21.3.03*

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

2.0 Article of Charge

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

3.0 Assessment of Evidence

3.1 Article-I

3.2 Case of the Prosecution

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

*Shri S.K. Sen
in an
official
position
ever
exercised
any
pressure
on me*

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

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

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

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

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

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

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

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

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

3.10 In the light of what is stated above by Shri Sen, in his representation dated 3.8.2001 addressed to DNEC, the facts brought out before Preliminary Inquiry on 30.4.1997 from 10.00 hours to 12.15 hours is confirmed and is a re-confirmation of his statement. His statement made on 30.4.97 before Preliminary Inquiry Board of officers, thus, remains sacrosanct even after denial by Shri Sen subsequently on any pretext.

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

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

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

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

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

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

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

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

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

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

3.21 Though Shri Sen had carried out recruitment of 10 porters at Shillong for his camp, there is no record to show that he did recruit any porter at Hayuliang Camp. After receiving verbal approval for engaging additional porters Shri Sen hurriedly visited the detachments deployed in the area to ensure that squad strength is increased to 8 porters by incorporating the names of fictitious porters.

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

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

3.23 **Article-II**

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

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

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

3.27 The Article II thus stand proved.

3.28 **ARTICLE - III**

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

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

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

3.31 The Article III thus stand proved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.42 **Findings of the Inquiry Officer**

3.43 **Article-I**

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

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

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

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

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

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

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

3.49 Article-II

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

3.51 Article -III

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

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

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

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

4.0

FINDINGS

4.1	Article-I	: Proved.
4.2	Article-II	: Not proved.
4.3	Article-III	: Not proved.


(S.C. Jarodia)
Inquiry Officer &
Commissioner for Departmental Inquiries

New Delhi

24.06.2003

CONFIDENTIAL

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

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

12.2 OCT 2003

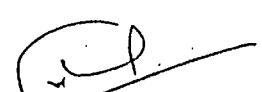
OFFICE MEMORANDUM

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

D/o Science & Technology may please refer to their U.O. Note No.C-14012/01/99-Vig dated 9-10-2003 on the subject cited above.

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

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

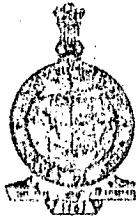

(PHILIP BARA)
UNDER SECRETARY

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

Enclosed as above.

*certified to be free copy
S.K. Chakrabarty
Received 21.3.05*

0364-224937
 GRAM: "SURNOREAST"
 FAX 0364-224937
 E-Mail soi1@sancharnet.in



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

SURVEY OF INDIA
CONFIDENTIAL

No.C-H1 13-A-305

Dated, the 04 Feb 2004

To

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

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

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

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

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

Encl: As above.

13029 A-121-4
 (B.D. SHRAMA) BRIGADIER,
 DIRECTOR,
 MEGHALAYA & ARUNACHAL PRADESH GDC
 (DISCIPLINARY AUTHORITY)

*certified to be free copy
 S.K. Chakrabarty
 21.3.05*

To,

Dated: 23-02-04

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

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

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

Sir,

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

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

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

certified to be true copy
certified to be true copy
S.K. Sen
Ans. off.
21.3.05

2
Therefore, in terms of the provisions of rule 14 of CCS (CCA) Rules 1965, Inquiry Officer was appointed to enquire into the charges drawn against me.

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

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

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

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

A copy of the order dated 18-11-2003 passed in respect of Smt. N.G. Pan, one of the 18

verifiers is annexed for favour of your kind perusal.

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

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

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

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

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

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

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

enquiry. I reiterate of that I have never admitted that I instructed verifiers for showing 4 fictitious names which was also not proved either during my enquiry or during enquiry in respect of verifiers. The Inquiry officer has also found the same to be not proved and therefore held the verifiers as not guilty and I was also found to be not guilty in respect of charge No. II when charge NO II is found to be not proved, how can charge No. I which is inter-related be found to be proved. Since my case stands on the same footing as that of the verifiers, equity and justice demands that I should also be exonerated from the charges like the verifiers. The submission of written statement of defence is a stage before formal enquiry. Disciplinary enquiry is not an empty formality and the rule of procedural safeguard should be scrupulously followed in each case. But I was never confronted with the written statement during the enquiry and now at the end of the enquiry it is misapplied and misinterpreted and sought to be made the sole basis of proposed major punishment in breach of the principles of natural justice. Written argument is submitted by the Presenting officer without any factual foundation and the Inquiry officer while coming to his finding in respect of charge No. I has relied upon the same without applying his mind to the facts and circumstances of the case and the evidence on record. While discussing the case of the prosecution in para 3.3. of the Inquiry Report, it was stated that I made statement on 20-6-2003/21.5.2003 during my deposition before the Inquiry officer that "his

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

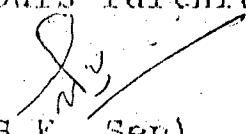
9. I have put in 32 years of distinguished service in the Survey of India and now at the end of my service greater than the proper major punishment is inflicted

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

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

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

Yours faithfully,


(B.K. Sen)
Surveyor, No. 80 party.
Survey of India,
Meghalaya & Arunachal
Pradesh,
G.D.C.
Shillong.

0364-224937
GRAM: "SURNOREAST"
FAX 0364-224937
E-Mail soi1@sancharnet.in

Annexure 10 - 84

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

SURVEY OF INDIA
CONFIDENTIAL

No.C- 116 / 3-A-305

Dated, the 31 March 2004

ORDER

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

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

ARTICLE I

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

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

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

ARTICLE II

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

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

ARTICLE III

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

Contd.... p/2

certified to be
true copy
S.K. Sen
21.3.04

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

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

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

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

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

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

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

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

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

-3-

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

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

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

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

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

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

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

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

B.D. Shrama
31.03.04

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

To

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

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

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

CONFIDENTIAL

No. C-359/4-A-799

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

Dated, the 18 Nov., 2003

ORDER

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

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

ARTICLE - I

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

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

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

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

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

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

*to be filed
certified to be copy
S. K. Chakrabarty
21.3.05*

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

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

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

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

 18-11-03

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

To

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

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

Annexure 'G'

-90-

To

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

(Through Proper Channel)

Sub: **ASSURED CARRIER PROGRESSION/PROMOTION GRANTING OF:**

Ref: My representation dated 30-05-2001.

Sir,

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

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

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

Thanking you,

Yours faithfully,

Dated, Shillong.
The 15th March, 2004.


(S.K. SEN)
Surveyor,
No.80(P) Party(NEC).

*Co-cited to be free copy
S.K. Sen
21-3-04*

BEFORE THE SURVEYOR GENERAL OF INDIA

HATHIBARKARA : DEHRADUN

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

(Shillong Wing)

IN THE MATTER OF

An Appeal under Rule 23 of the CCS
(CCA) Rule 1965 against Order dated
31.3.2004 passed by the 'Disciplinary
Authority' illegally imposing punishment
of compulsory retirement on the
appellant.

— AND —

IN THE MATTER OF

Shri Subrato Kumar Sen,
Surveyor,
(under compulsory retirement)
Erstwhile No. 80 (P) Party (NEC),

(Now Assam & Nagaland GDC,
(Shillong Wing), Lower Harisava,
P.O. Shillong - 793 004,

Dist. East Khasi Hills,
Meghalaya.

..... Appellant

The humble appeal of the appellant
abovenamed:-

*certified to be true
S.K. Mukherjee
21.3.05*

MOST RESPECTFULLY STATES:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

exonerating him from the charges are

annexed as Annexure 'G' and 'H' to the appeal.

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

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

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

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

Dated, Shillong,
The 19th April 2004

Humble appellant

Subrata Kr. Sen
19-04-2004

(Subrata Kr. Sen)

Surveyor

(Under Compulsory Retirement)

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

(Now Assam & Nagaland GDC,

(Shillong Wing), Lower Harisava,

P.O. Shillong - 793 004,

Dist. East Khasi Hills, Meghalaya.

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

Subrata Kr. Sen

(Subrata Kr. Sen)

Surveyor

(Under Compulsory Retirement)

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

(Now Assam & Nagaland GDC,

(Shillong Wing), Lower Harisava,

P.O. Shillong - 793 004,

Dist. East Khasi Hills, Meghalaya.

FORM NO. 4
(See Rule 44)

CENTRAL ADMINISTRATIVE TRIBUNAL
GURGAON BENCH

ORDER OF COURT

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

in O.A. 260/2004

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

Name of the Respondent(s) C.G.S.C.

Advocate for the Applicant Mr. P.K. Ray (a. character)

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

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
	10.11.04.	<p>present: Hon'ble Mr. Justice R.K. Batta Vice-Chairman.</p> <p>Hon'ble Mr. K. V. Prabhu, Administrative Member.</p> <p>Hard庭未出席 for the parties.</p> <p>The applicant has filed an appeal against the order - Compulsory retirement under Rule 23 of CCS(CE) Rules 1965 before the appellate authority on 19.4.2004. The said appeal is pending. In our opinion the application can be disposed of by giving direction to the appellate authority, Respondent No. 2, to dispose of the appeal within the given time frame. Accordingly, we direct the respondent No. 2 to dispose of the appeal dated 19.4.2004 filed by the applicant within a period of 3 months from the date of receipt of this order. A copy of this order duly authenticated by the Deputy Registrar and shall be handed over to Sr. C.G.S.C. within three days for onwards transmission to Respondent No. 2.</p> <p style="text-align: right;">(R.K. Batta)</p> <p><i>certified to be true copy S.K. Saini for 20.3.05</i></p>

O.A. 260 of 2004

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

sd/ VICE CHAIRMAN
sd/ MEMBER(Adm)

16/11/04
16/11/04
16/11/04

Annexure T
भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

-107-

तार : 'भृत्यर्वेषक'
Telegram : "SURVEYS"
बस य दूरभाष : 0091-135-744064
Fax-cum-Telephone : 0091-135-744064
ई-मेल : sgo@nde.vsnl.net.in
E-Mail : sgo@nde.vsnl.net.in

CONFIDENTIAL

महासर्वेक्षक का कार्यालय
SURVEYOR GENERAL'S OFFICE

डाक बक्स सं 37, POST BOX No.37,
देहरादून-248001 (उत्तरांचल) -भारत।
DEHRA DUN-248001 (Uttarakhand), INDIA

No.LC-9/1196-PF (S.K. Sen)/T-109

Dated: 08-02-2005

ORDER

This order is on appeal dated 19.4.2004 submitted by Shri Subrat Kumar Sen, Ex-Surveyor of erstwhile No.80(P) Party (NEC) Shillong under Rule 23 of CCS (CC&A) Rules, 1965 addressed to the Surveyor General of India against the following penalty imposed upon him by the Disciplinary Authority (Director, Meghalaya & Arunachal Pradesh GDC, Shillong) vide his order No.C-116/3-A-305 dated 31.3.2004:-

"Compulsory Retirement" (i.e. from 31.3.2004)

Briefly stated facts of the case are as follows:-

Shri S.K. Sen, Ex-Surveyor while posted in erstwhile No.29 Party (NEC) during the field season 1996-97 was assigned field duty in Arunanchal Pradesh. He was appointed as Assistant Camp Officer in Camp No.1 to assist Shri U.N. Mishra, then Deputy Superintending Surveyor and the Camp Officer of the said camp. While functioning as Assistant Camp Officer in Arunanchal Pradesh during January 1997, Shri S.K. Sen visited the detachments of following 8 verifiers during 14th-16th January, 1997 and gave instructions to 'show' in the 'muster rolls' 8 porters against the authorized strength of 4 porters by adding names of four fictitious porters.

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

These instructions were given by the Assistant Camp Officer without any written order of his Camp Officer / Officer-in-charge:

Accordingly, in compliance of the orders of the Assistant Camp Officer, 7 Verifiers shown 4 fictitious porters in their muster roll as engaged in the work for the period from 16.1.1997 to 28.2.1997 and Shri N.G. Das the 8th verifier shown 4 fictitious porters engaged in the work from 16.1.1997 to 31.1.1997; this resulted a financial irregularity in the said camp. Shri S.K. Sen, Assistant Camp Officer has also offered a financial gain of Rs.1500/- to each of the 8 verifiers for making entries of 4 fictitious porters in their muster roll for the period from 16.1.1997 to 28.2.1997 by adjusting the amount of Rs.1500/- against their field contingent advance.

*Certified to be
true copy
S.K. Sen
21.3.05*

The said Shri S.K. Sen, Surveyor also misappropriated Govt. money amounting to Rs.30/- for his personal gain by submitting false voucher against repair of Govt. vehicle. On 14.1.1997, Camp Jeep was repaired at an actual expenditure of Rs.50/- but Shri Sen prepared the voucher for Rs.80/-.

To ascertain the facts, a preliminary inquiry was conducted and thereafter a disciplinary case under Rule 14 of CCS(CC&A) Rules, 1965 was initiated against Shri S.K. Sen, Surveyor. A memorandum No. C-210/3-A-305 dated 13.07.2001 was served on Shri Sen. The articles of charge I, II and III framed against Shri S.K. Sen were as given below :

Article -I

Shri S.K. Sen, Surveyor while performing the duties of Asstt. Camp Officer, in the camp of No. 29 Party (NEC) during field season 1996-97 gave instructions to 8 verifiers to show 8 porters on their muster roll against the authorized strength of 4 porters by adding names of 4 fictitious porters which cause financial irregularities in the said camp.

Article - II

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

Article - III

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

Shri Sen had submitted the written statement of defence on 3rd August, 2001 wherein he had pleaded himself not guilty of the charges framed against him vide Article-I, II & III. On his denial of the charges, the Disciplinary Authority decided to hold inquiry and appointed, Commissioner of Departmental Inquiries, Central Vigilance Commission as Inquiry Officer. Accordingly, the inquiry was conducted by the Commissioner of Departmental Inquiries of Central Vigilance Commission. The inquiry report was submitted by the inquiry officer on 24.6.2003 wherein the charge framed against Shri S.K. Sen vide Article-I of the memorandum has been found proved but the charges framed vide Article-II & III of the memorandum have not proved due to lack of sufficient documentary and oral evidences. The inquiry report was supplied to Shri S.K. Sen, Surveyor asking him to submit his representation, if any, within 15 days of receipt of the inquiry report, accordingly Shri Sen submitted his representation. In his written submission Shri Sen pleaded not guilty of the charge leveled against him vide Article-I of the aforesaid memorandum and which stood proved in the inquiry.

The Central Vigilance Commission in its second stage advice concurred with the findings of the inquiry officer and penalty proposed by the Disciplinary Authority.

The Disciplinary Authority (Director, Meghalaya & Arunanchal Pradesh GDC) having been in full agreement with the findings of the inquiry officer and the advice of the Central Vigilance Commission, imposed the following penalty on Shri S.K. Sen, Surveyor of erstwhile No.80(P) Party (NEC) now Assam & Nagaland GDC (Shillong Wing) vide order No.C-116/3-A-305 dated 31.3.2004:

'Compulsory Retirement' (i.e. from 31.3.2004)

Being aggrieved by the above order of the Disciplinary Authority, Shri S.K. Sen, the appellant has submitted an appeal dated 19.4.2004 to the Surveyor General of India and requested for setting aside the impugned order.

Points raised by the appellant in his appeal dated 19.04.2004 are surmised as under :-

1. That on receipt of the charge sheet dated 13.7.2001 the appellant by an application dated 17.7.2001, prayed for furnishing him all the relevant documents mentioned in Annexure-III & IV, to the said memorandum to file his written statement of defence but the Disciplinary Authority refused to furnish those documents at this stage to the appellant which was a breach of the principles of natural justice. He had to file his written statement without pursuing above stated documents on 03.08.2001. This left the appellant to guess material particulars on which charges were sought to be established. The authority also drew up action simultaneously against his superiors in respect of the same incident and the appellant was under impression that some *prima facie* materials exist against the said superiors and therefore had made some surmises in his written statement in his own defence as a caution.
2. The appellant was made departmental witness in the departmental inquiries against 5 verifiers, but the appellant's application dated 12.9.2002 for dispensing with his deposition in the said inquiries on ground of prejudice, was not entertained by the inquiry officer.
3. That all the said verifiers disowned their statement made in the preliminary inquiry and nothing could be proved during the Inquiry, the entire Inquiry proceedings have been rendered as nugatory by going back to the written statement and by deliberately mis-interpreting the same and relying on preliminary inquiry. The record of the alleged admission made in the preliminary inquiry did not form part of the record of present disciplinary inquiry. Findings of Disciplinary Authority are based on wholly extraneous material. Punishment too is not based on evidences at all and the authority while inflicting the same on the appellant relied on some extraneous material without giving any opportunity to the appellant to confront with the same during the inquiry. The alleged admission in preliminary inquiry were never proved during the inquiry nor formed part of the memorandum of charge.
4. That punishment can only be based on clear or un-ambiguous admission of guilt. The appellant has not made admission of any charge in his written statement of defence. This fact has been admitted by Disciplinary Authority in para 3 of impugned order of punishment by holding that for such denial a departmental inquiry was ordered, but at the end of the inquiry when no charge could be proved took a different view and made it as a basis for the punishment.
5. That when the allegation of giving offer of financial gain of Rs. 1500/- was held to be not proved i.e. article of charge-II then how could Inquiry Officer found article of charge-I to be proved on the basis of same set of evidences on record.

6. That the same Inquiry Officer with similar allegation and same set of evidence against the verifiers found that

"whatever documentary or oral evidences brought before him are not sufficient to prove that the charged officer added four fictitious names of porters in their muster rolls and there-by made some financial irregularity."

and since the Disciplinary Authority accepted the said findings and exonerated the said verifiers vide order dated 18.11.2003 the same Disciplinary Authority cannot treat the case of the appellant differently particularly when charge could not be proved by any other evidence.

7. That the Disciplinary Authority sought for the Central Vigilance Commission under whose authority and control the CDI i.e. the Inquiry Officer functioned without taking any decision himself.

8. That the appellant continued to work till 05.04.2004, the date on which the order purportedly passed on 31.03.2004 was served. Had the order really been passed on 31.03.2004 the same would have been served on him on 31.03.2004 itself. The appellant believes that the order was passed on 05.04.2004 in back date. Since the Director, Meghalaya & Arunachal Pradesh GDC, Shillong ceased to be his Disciplinary Authority from 01.04.2004. The Disciplinary Authority also did not wait for the outcome of disciplinary inquiries against his superiors.

9. That the extreme punishment of compulsory retirement is shockingly disproportionate and unreasonable.

The undersigned carefully considered the whole case based on the documents, facts and points raised by the appellant and after careful examination keeping in view the following :-

- (i) Whether the procedure prescribed in the Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice;
- (ii) Whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and
- (iii) Whether penalty or the enhanced penalty imposed is adequate, inadequate or severe.

has arrived on findings as below.

Findings on the submissions made :-

1. The opportunity given under rule 14(4) of CCS (CC&A) Rules, 1965 is not intended for submission of any elaborate statement of defence but only to give an opportunity to the govt. servant to admit or deny the charges. For admitting and denying, no inspection of documents is necessary by the charged officer at

the stage of submission of his written statement. The Disciplinary Authority had not refused to supply the documents as stated by Shri Sen. The Disciplinary Authority only intimated the rule position and confirmed that full opportunity will be given to Shri Sen to inspect the documents during course of inquiry.

Shri Sen had attempted to nullify the admissions and disclosures made by him in the written defence on the pretext of denial of documents for inspection, as narrations made in written defence had substantiated the charge. Non-availability of documents had no distant connection with the disclosures made in the written defence and are two separate issues.

2. Charged Officer of one case may appear as witness in other case. The request of Shri Sen for dispensing with his deposition in the said inquiry on the ground of prejudice was decided by Inquiry Officer who hold the absolute discretion under rule 22 (ii) & (iii) of CCS(CC&A) Rules, 1965 to which no appeal lies.
3. Denial and disownment of a statement which was made in the preliminary inquiry without giving justifiable reasoning do not render the statement irrelevant in the regular inquiry. The statement made by verifiers in preliminary inquiry did form the part of records of the regular inquiry. The verifiers though disowned their statements in similar manner but had not given any justifiable reason for disowning their statements thus relevance of the statements cannot be simply ignored. In the statements given in the Preliminary Inquiry every verifier had admitted that Shri Sen was instrumental in instructing them to commit this irregularity. The claim of Shri Sen is totally incorrect that nothing could be proved during the inquiry. Article of charge-I stood proved against him. The claim of Shri Sen of having been considered the extraneous material during course of inquiry is also not correct. The statements given by the verifiers in the preliminary inquiry were part of the memorandum issued. Further his written statement of defence dated 03.08.2001 was also a part of the records of the disciplinary proceeding in which he himself had cited certain facts.
4. Shri Sen declared the charges leveled against him as incorrect in his written statement of defence dated 03.08.2001 however he had cited the following facts in the written statement of defence dated 03.08.2001 which lead to admission of article of charge-I :-

"Obviously my involvement into the matter may apparently sound as of an accomplice since there was no written order of my superior in this regard but in reality I supported them under complaining circumstances in order to reach to the root of the conspiracy and accordingly I carried out their order without objections. However, when I refuse to take any financial benefit from them they considered my presence in the camp unsafe...."

"Bill of those fictitious porters was passed by Camp Officer and Officer-in-charge of the No. 29 Party that itself prove their involvement in the case. Had there been no order to include fictitious porters the Camp Officer should not have passed the bill of said porters therefore if any financial irregularity caused in the instant case it is none but my superior officer whose instructions I have carried out as an Asstt. Camp Officer."

"..... it is I who reported the matter at the first instance to the higher authority after my arrival from camp. Had I not informed this to higher

authority a serious misconduct of Camp Officer and others would not have been known to anyone."

5. Each article of charge stands independent and articles of charge are to be substantiated separately on the basis of evidences. It is not adjudged by Inquiry Officer that article of charge-II is false. The only fact stated was that the sufficient evidences were not available before him to prove the charge.

6. The contention of Shri S.K. Sen is incorrect his disciplinary case cannot be equated with that of verifiers neither it has similar allegations nor set of evidences. Disciplinary proceedings of one case always stand different to that of any other and each case is decided on the basis of its own merits depending upon the evidences available.

7. Contention of Shri Sen is found false. Second stage advice of CVC was taken on the inquiry report alongwith the decision of the Disciplinary Authority.

8. The contention of Shri Sen that the order of punishment has been passed from back date is incorrect as order is found signed and issued on the same date i.e. 31.03.2004. Shri Sen himself has pointed out that the Director, Meghalaya & Arunachal Pradesh GDC, Shillong ceased to be the Disciplinary Authority w.e.f. 01.04.2004 understandably change of administrative setup and 3rd & 4th of April 2004 being holidays no abnormal delay had occurred.

9. The appellant stated in the instant appeal that the punishment awarded by the Disciplinary Authority is severe, disproportionate and unreasonable but considering the gravity of the offence committed the penalty of compulsory retirement imposed stands justified and is commensurate with the offence done and is not severe in any case.

Based on above findings and on going through all the facts and circumstances of this case and having applied my mind, the undersigned is of the considered view that the grounds adduced by Shri S.K. Sen, in his appeal are not sustainable. There is no justified ground to interfere with the decision of Disciplinary Authority.

Therefore, the undersigned in exercise of power conferred upon under rule 24(1) of CCS (CC&A) Rules, 1965 confirms the penalty of compulsory retirement (w.e.f. 31.03.2004) imposed on Shri S.K. Sen, Surveyor by the Disciplinary Authority. The appeal for reinstatement of Shri S.K. Sen, Ex-Surveyor of erstwhile No.80(P) Party (NEC), Survey of India, Shillong, is rejected.

The disposal of the above appeal also complies the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati order dated 10.11.2004 in OA No. 260 of 2004.

P. Nag
(Dr. P. NAG) 9/2/05
Surveyor General of India
(Respondent No.-2)

To

Shri S.K. Sen, } Through: The Director,
Ex-Surveyor } Assam & Nagaland GDC, Guwahati - 793001.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL



GUWAHATI BENCH

Guwahati Bench

IN THE MATTER OF:

O.A. No. 76/2005

Shri Subroto Kumar Sen

..... Applicant

- Versus -

Union of India & Others

..... Respondents

-AND-

IN THE MATTER OF:

Written statement submitted by the
Respondents No. 1 to 4.

WRITTEN STATEMENT

The humble Answering Respondents submit their
written statement.

1. (a) That I, Shri Harihar Mahapatra, Superintending Surveyor of Assam & Nagaland Geo Spatial Data Centre, Survey of India representing the Respondents No.4, I am acquainted with the facts and circumstances of the case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the respondents.
- (b) The application filed is unjust and unsustainable both on facts and in law. That the application is also hit by the principles of waiver, estoppels and acquiescence and liable to be dismissed.
- (c) That the any action taken by the Respondents was not stigmatic and some were for the sake of public interest and it can not be said that the decision taken by the Respondents, against the applicant had suffered from the vice of illegality.

BRIEF HISTORY OF THE CASE

That a case off financial irregularities was detected in the Field camp of erstwhile No. 29 Party (NEC) during the filed season of 1996-1997. A preliminary Inquiry was conducted to ascertain the facts and through the preliminary Inquiry it was revealed that Shri S.K. Sen, Surveyor alongwith the then O.C. of erstwhile No. 29 Party (NEC), Camp Officer and 8 (eight verifiers were allegedly involved in a case of financial irregularities occurred in the filed camp of erstwhile 29 party (NEC) during the filed season of 1996-1997. The applicant while posted in the erstwhile 29 Party (NEC) was appointed as Assistant Camp Officer in Camp 1 to assist Shri U.N. Mishra, Camp Officer, the Deputy Superintending Surveyor. While performing the duties of Assistant Camp Officer, the applicant gave instruction to 8

Motin Ud-Din Ahmed, M.A;B.Sc,LL.B
Addl. Central Govt. Standing Counsel
M. U. Ahmed, Addl. C. S.
Guwahati Bench.
17/9/05

verifiers of his camp to show 8 porters in the Muster Roll against the authorized strength of 4 porters, thus by adding names of 4 fictitious porters caused financial irregularities in the same camp. Moreover, the applicant also gave an offer of Rs.1500/- to each verifiers for adding the names of 4 extra fictitious porters. Apart from that the applicant, while engaged in field work misappropriated Government money by raising inflated amount towards repair of vehicle.

In view of above, a disciplinary case under Rule 14 of CCS (CCA) Rules, 1965 was initiated against the applicant. Charge sheet was served on the applicant. In reply against the charge sheets, the applicant although denied the charges leveled against the applicant but also admitted his involvement in the case on the pretext that the applicant was obeying the verbal orders of his superior officers. In this connection, an inquiry was conducted by Shri S. C. Jarodia, CDI of Central Vigilance Commission in accordance with SG's letter No.C21186/577-NEC dated 07 June, 2000 and No.C-3137/577-NEC dated 03-07-2001 and out of three articles, one article of charge has been proved. So, consequently as a result of the case, penalty of "Compulsory Retirement" was imposed on the applicant on 31st March, 2004.

Being aggrieved, the applicant has appealed to the Appellate Authority, i.e. the Surveyor General of India but the Appellate Authority did not find any reason to interfere with the decision of the Disciplinary Authority. Thereafter, the applicant approached this Hon'ble Tribunal and filed OA No.76/2005.

2. That with regard to the statements made in the paragraph 1 to 5 and 6.2 of the application, the Respondents/deponent have no comments being the particulars of the applicant and the matter of fact.
3. That with regard to the statements made in the paragraph 6.1 of the application, the answering respondents beg to submit that the punishment of Compulsory Retirement from Government service was imposed on the applicant guilty of charge by the Inquiry Authority through a regular inquiry and the Disciplinary Authority also agreed with the report of Inquiry. The Appellate Authority also found no justified reasons to interfere with the decision of the Disciplinary Authority.
4. That with regard to the statements made in paragraph 6.2 (a) to (c) of the application, it is submitted by the Respondents that the fact was admitted by the applicant in the preliminary inquiry report and later on charge was proved in the inquiry report conducted by CVC.
5. That with regard to the statements made in paragraph 6.4 of the application, the answering respondents beg to submit that the submission of the applicant is misleading. The applicant was never refused by the disciplinary authority to furnish the applicant relevant documents to know the basis of the charges framed against the applicant. Rather the applicant was conveyed that the applicant will get full opportunity to inspect the listed

documents during the course of inquiry as and when held. The Annexure - C submitted by the applicant is self explanatory to this effect.

The opportunity given under Rule 14 (4) of CCS (CCA) Rules, 1965 is not intended for submission of any elaborate statements of defense but only to give an opportunity to the government servant to admit or deny the charges. For admitting or denying of any charges official (CO) at the stage of submission of his written statement. The disciplinary authority had not refused supply the documents as stated by the applicant. The disciplinary authority only intimated him the rule position and confirmed that the full opportunity will be given to the applicant to inspect the relevant documents during the course of inquiry.

The CO was asked to specifically admit or deny the charges framed against the applicant. Therefore, the statement submitted by the applicant "The nature of allegations made in the memo of charges without full particulars had left the applicant to only guess the material particulars on which the charges were sought to be established" is a misleading statement. By this statement the applicant has attempted to nullify the admissions and disclosures made by the applicant in the written defense on Memorandum of Charges on the pretext of denial of documents for inspection, as narrations made in written defense had substantiated the charge. Non-availability of documents had no distant connection with the disclosures made in the written defense and are two separate issues.

6. That with regard to the statements made in the paragraph 6.5 of the application, the answering respondents beg to state that the applicant written statement of defense dated, 03-08-2001 lead to admission of charges drawn up against the applicant. Now the applicant is trying to mislead the Hon'ble Tribunal by the statement "..... The applicant had to make some surmise in his written statement". is his after thought to nullify the disclose, the applicant has made in his written statement defence. The applicant's submission in written defence had substantiated the charge. The Annexure -D of the application where the applicant stated that "..... I was carry out their order and not to act independently without their directions, and accordingly in the instant case actually carried out the order of my superior whatever they time-to-time instructed me to do" is the tacit confusion of the crime/guilt.

7. That with regard to the statements made in the paragraph 6.6 of the application, it is submitted by the applicant that the statement of the applicant is misleading and without any merit. CO of one case may appear as witness in other case. The request of the applicant for dispensing with his deposition in the said inquiry on the ground of prejudice was decided by Inquiry Officer (IO) who hold the absolute discretion under Rule 22 (ii) & (iii) of CCS (CCA) Rules, 1965 to which no appeal lies.

8. That with regard to the statements made in paragraph 6.7 of the application, the Respondents state that the submission of this paragraph is without any merit and therefore should be rejected. Denial and disownment of statement which was made in the preliminary

inquiry by the witnesses against the applicant without giving justifiable reasoning do not render the statement irrelevant in the subsequent regular inquiry. The statements made by the verifiers in the preliminary inquiry did form the part of records of the regular inquiry. The verifiers though disowned the statements in similar manner but had not given any justifiable reason for disowning their statements and thus relevance of these statements can not be simply ignored. In the statements given in the preliminary Inquiry, every witness had admitted that applicant was instrumental in instructing them to commit the irregularity. The claim of applicant is totally incorrect that nothing could be proved during the inquiry. The charges against the applicant were proved by the statements given by the witnesses in the preliminary inquiry and statement of defence dated 03-08-2001 submitted by the applicant.

9. That with regard to the statements made in paragraph 6.8 of the application, the respondents submit that the statements submitted by the applicant in this paragraph is without any merit and misleading statements to the Hon'ble Tribunal. The preliminary inquiry did form the part of records of the regular inquiry. In regular inquiry all the witnesses became hostile and they disowned the statements made by them to a constituent board of officers in the preliminary enquiry. The statements given by the witnesses in the preliminary inquiry were part of the memorandum issued to the applicant. Further the applicant's written statement of defense was also a part of the records of the disciplinary proceedings in which the applicant admitted his offence very tactfully. Later on the applicant disowned his statement in the regular inquiry on the plea that the applicant had submitted his statement under pressure or without perusing the relevant document is the deliberate attempt to mislead the court and therefore the statement should be rejected.

10. That with regard to the statements made in the paragraph 6.9 of the application, the Respondent beg to submit that the statements of the applicant "The findings of the Inquiry Officer were therefore wholly perverse and only based on extraneous materials" is not correct. The statements given by the applicant and witnesses in the preliminary inquiry were part of the memorandum issued to the applicant. Further the applicant's written statement of defense dated 03-08-2001 was also a part of the records of the disciplinary proceedings. Moreover, the verifiers who were also involved in the same case stated in their defense submission against the charge sheet that the applicant had instructed them to show 4 (four) fictitious porters in the muster roll. Therefore, the contention of the applicant that the findings of the Inquiry Officer were based on the extraneous materials is not correct, and liable to be rejected.

11. That with regard to the statements made in the paragraph 6.10 of the application, the Respondents submit that the statement of the applicant "That the disciplinary authority thereafter without taking any decision himself as required under the law sought for advice of the Central Vigilance Commission....." is found false. Second stage advice of CVC was taken on the Inquiry Report along with the decision of the Disciplinary Authority (DA). The statement of the applicant in this para "..... and since the Disciplinary Authority had accepted the said findings and exonerated the said verifiers vide order dated, 18-11-2003, the

same Disciplinary Authority can not treat the case of applicant differently." is incorrect. His disciplinary case cannot be equated with that of verifiers neither it has similar allegations nor set of evidences. Disciplinary proceedings of the one case always stand different to that of any other and each case is decided on the basis of its own merits depending upon the evidences available. Therefore, the applicant's statement that "the findings of the Disciplinary Authority are based on wholly extraneous materials and the applicant was never sought to confront with such materials and no record of 'preliminary inquiry' " is baseless and misleading statement to the Hon'ble Tribunal and liable to be rejected.

The contention of the applicant that the order of punishment has been passed from back date is incorrect as order is found to signed and issued on the same date, i.e. 31-03-2004. the applicant has himself pointed out that the Director, Meghalaya & Arunachal Pradesh GDC, Shillong ceased to be Disciplinary Authority w.e.f. 01-04-2004 understandably change of administrative set up and 3rd & 4th April, 2004 being holidays no abnormal delay had occurred.

12. That with regard to the statements made in the paragraph 6.11 of the application, the Respondents submit that the verifiers were exonerated that since charge leveled against them was not proved. Moreover, the disciplinary case of the applicant can not be equated with that of the verifiers since both the allegations and set of evidences were different. Shri U. N. Mishra had never been promoted to higher position on 'temporary basis' as mentioned by the applicant. Therefore, the submission is liable to be rejected. Applicant's another submission in this paragraph that his juniors were promoted illegally was also incorrect because all promotions are decided by a DPC on fulfillment of the applicable parameters and certain bench marks for the post.

13. That in reply to the statements made by the applicant in paragraph 6.12 of the application, the respondents beg to state that the appeal made to the Surveyor General of India by the applicant was disposed off in compliance with the order dated 10-12-2004 in O.A. No.260 of 2004 of this Hon'ble Tribunal.

14. That with regard to the statements made in the paragraph 6.13 of the application, the answering respondents submit that the appellate authority confirmed the penalty imposed on the applicant after going through all the facts and circumstances of the case and having fully applied his mind. Since, the grounds adduced by the applicant in his appeal application were not sustainable, therefore the appellate authority in exercise of power conferred under Rule 24 (1) of CCS (CCA) Rules, 1965 upheld the decision of the Disciplinary Authority. The contention of the applicant that the appellate authority "illegally, confirmed the findings as well as the penalty of compulsory retirement is baseless and liable to be rejected in absence of any merit.

15. That with regard to the statements made in the paragraph 7.1 of the application under the Head of Ground, the Respondents submit that the order of punishment was awarded to

the applicant based on facts, circumstances, statement of witnesses, his own written statement of defence and findings of the Inquiry Officer. Therefore, the ground as stated by the applicant that it is unsustainable in law is liable to be rejected.

16. That the statements made in paragraphs 7.2, 7.4, 7.5., 7.6., 7.8., 7.9., 7.10., 7.11 and 7.12 of the application are liable to be rejected due to the reply and /or comments given hereinabove by the respondents.

16. (a) That with regard to be statement made is paragraph 7.3 of the application, the Answering respondents, submit that the applicant was found to be guilty of charges by the IO and disciplinary authority has also accepted the findings of the inquiry report. Therefore the ground put forward by the applicant in this para is liable to be rejected.

17. That with regard to the statements made in the paragraph 7.7. of the application, the answering respondents submit that the Disciplinary Authority had imposed the penalty after considering the gravity of the offence committed by the applicant which was upheld by the Appellate Authority and thereof, it cannot be termed as disproportionate. Rather lenient view was taken since the applicant could have been dismissed is liable to be rejected.

18. That with regard to the statements made in the paragraph 7.13 and 7.14 of the application the Respondents beg to state that the ground is false. The written statement of the applicant and submission of witnesses proved the charges against the applicant and therefore it is liable top be rejected.

The applicant himself filed his statement of defence clubbing article of charges 1 and 2 and therefore the ground is liable to be rejected.

19. That the grounds mentioned is paragraphs 7.15 and 7.17 liable to be rejected due to the comments made by the Respondents against paragraph 6.9. herein as one and 7.16 after respectively.

20. That with regard to the statements made in the paragraph 7.16 and 7.18 of the application the Answering Respondents submit that the Inquiry Officer, Disciplinary Authority and appellate Authority had thoroughly gone through the contents of written defence statement, other relevant submission etc. very carefully and therefore the ground is liable to be rejected.

The applicant knew that he has given some statement in the Preliminary Inquiry and also has submitted his written statement of defence. How can now say that the preliminary inquiry report can not part of the regular inquiry. Therefore, the ground is liable to be rejected.

21. As already submitted is paragraph 6.9, the4 ground mentioned in paragraph 7.19 by the applicant is liable to be rejected.

22 As already submitted in paragraph 7.7. by the Respondents, the ground mentioned in paragraph 7.20 is liable to be rejected.

23. That with regard to the statements made in the paragraph 7.21, 7.22 and 7.23, the answering respondents submit that the impugned order was the outcome of the charges proved in the inquiry and other relevant submission / documents. Therefore, the ground is liable to be rejected.

The facts and circumstances of the case was revealed during preliminary inquiry. Later on the applicant and other witnesses made statement in the regular inquiry as per their mutual agreement and disowned all statements made by them during the course of Preliminary Inquiry. However, the facts remains that the applicant and the witnesses revealed the truth, which later on they disowned. Therefore, the ground is liable to be rejected.

The impugned order was the outcome of the charges proved in the inquiry and other relevant submission / documents. Therefore, the ground is liable to be rejected.

24. That with regard to the statements made in the paragraph 8 of the application relating to the remedies, the applicant has exhausted all the channels to redress his grievances. The applicant has made Secretary to the Government of India, Ministry of Science & Technology, New Delhi as one of the respondents but the applicant never applied to him to redress his grievances. Therefore, the instant application is liable to be rejected by the Hon'ble Tribunal.

25. That the respondents submit that the application is devoid of merit and as such the same is liable to be dismissed.

26. That this written statement is made bonafides and for the ends of justice and equity.

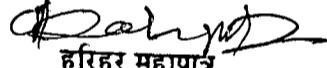
27. In the light the above comments, facts and circumstances of the case the prayer made by the applicant vide para 10 (i) to 10 (iii) are liable to be rejected. Since the statements made by the applicant are misleading, false and baseless. The application made before the Hon'ble Tribunal may be dismissed with costs.

148

VERIFICATION

I, Shri Harihar Mahapatra, Superintending Surveyor of Assam & Nagaland GDC, Guwahati, Survey of India being duly authorized and competent to sign this verification do hereby solemnly affirm that the statements made in paragraph 1, 2, 5, 6, 12, 14, 17, 18, 24, 29..... of the written statement are true to the best of my knowledge and belief, those made in paragraphs 3, 4, 13..... Being matters of record are true of my information derived there from and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 17th day of July, 2005.


हरिहर महापात्र
HARIHAR MAHAPATRA
अधीक्षक सर्वेक्षक
SUPERINTENDING SURVEYOR
असम एवं नागालैण्ड, जी.डी.सी.
ASSAM & NAGALAND, G.D.C.
भारतीय सर्वेक्षण विभाग, गुवाहाटी
SURVEY OF INDIA, GUWAHATI

20 SEP 2005

guwahati गुवाहाटी न्यायपाल
Gewahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Filed by the applicant
through
Mrs. A. Chakraborty
Advocate
20.9.05

IN THE MATTER OF :

O.A. No. 76/2005,

Shri Subroto Kumar Sen,

.... Applicant.

- Vs. -

Union of India & Ors.

.... Respondents.

- AND -

IN THE MATTER OF :

An affidavit-in-reply filed on

behalf of the applicant -
(Rejoinder)

AFFIDAVIT-IN-REPLY FILED ON BEHALF OF

THE APPLICANT :-

1) That I have been served with a copy of
Written Statement filed on behalf of respondent
No. 1 to 4 through my duly engaged counsel and
I have gone through the said written statement and
I have understood the contents thereof. Save and

contd.... p/2.

49

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

II : IN THE MATTER OF :

O.A. No. 76/2005,

Shri Subroto Kumar Sen,

..... Applicant.

- Vs. -

Union of India & Ors,

..... Respondent.

- AND -

III IN THE MATTER OF :

An Affidavit-in-reply filed on behalf
of the applicant.

III AFFIDAVIT-IN-REPLY FILED ON BEHALF OF THE APPLICANT :

I, Shri Subroto Kumar Sen, son of Late S.K. Sen,
aged about 52 years, presently residing at Lower
Harisava Para, Shillong and the applicant in O.A.
No. 76 of 2005, do hereby solemnly affirm and state
as follows :-

1) That I have been served with a copy of
Written Statement filed on behalf of respondent
No. 1 to 4 through my duly engaged counsel and
I have gone through the said written statement and
I have understood the contents thereof. Save and

except those statements which are specifically admitted in this affidavit-in-reply, all other contentions and statements made in the written statement shall be deemed to have been denied.

Statements which are not borne by records are also denied and disputed.

2) That the Respondents by giving a brief history of the case ~~of Camp~~ have stated in their written statement that pursuant to some preliminary enquiry it was revealed that the applicant along with the then O.C. of the Erstwhile No. 29 Party, (N.E.C.), Camp Officer and 8 Verifiers were allegedly involved in a case of financial irregularities occurred in the field camp etc. Based on the above allegations Disciplinary proceedings were initiated against the then O.C. Erstwhile 29 Party Shri R.K. Mina, Camp Officer, Shri U.N. Mishra and all the eight verifiers besides the applicant. The charges drawn against all those who were same and/or identical based on the allegations that the O.C. Shri Mina, the Camp Officer and Shri Misra had directed the applicant to instruct the verifiers to show 4 Nos. additional Porters in addition to 4 Nos. of porters originally allotted and the verifiers had accordingly shown 4 additional Porters against each, which according to the disciplinary

for

authority, were all fictitious resulting to the financial irregularities. It would be curious to note that proceedings against all the officers and verifiers were conducted simultaneously and during the proceedings against each it was proved that directions were factually given by the O.C. and Camp officer to the verifiers through the applicant to engage 4 additional porters, permissible under the Rule and the said 4 additional porters were actually engaged. But with the same finding based on the same set of evidences, while the 8 verifiers were exonerated from the charges, the O.C. and the Camp officer were only given minor punishments, the applicant was arbitrarily singled out by inflicting the extreme punishment of Compulsory retirement and the explanation now sought ~~MAXX~~ to be given in the written statement is that the allegation and evidences were unequal, which is wholly incorrect.

The applicant craves leave of this Hon'ble Tribunal to submit and place on record the copy of the order of the minor punishment of reduction of pay, inflicted on Shri U.N. Mishra, Camp Officer at the time of hearing.

3) That with regard to the statements made in paragraph 4 of the written statement, I deny the same and reiterate the statements made by me in paragraph

paragraph 6.2 of my application. I deny that the charges as detailed therein were proved in the inquiry and that the same were admitted in the preliminary inquiry as alleged. It is not understood as to how the authority signing verification in support of statement made in para 4, could say that the charges mentioned in 6.2 (b) and (c) were proved, which the disciplinary authority even did not find to be proved. The statement made therein being contrary to record, are wholly denied.

4) The statements made in paragraph 5 and 6 of the written statement are denied save and except those which are borne by the records. I reiterate that I was denied the opportunity to inspect the documents relied on and which the authority say formed the basis of the charges. The Respondents in their written statement have stated that while submitting reply I am only required to either admit or deny the charges and the written statement is not intended to be given for any elaborate statements of records. While the authority was fair enough to admit that I denied the charges in my written statement, but the disciplinary authority at the end of the enquiry when found that the charges were not proved, sought to pickup and rely on some of my statements by importing meaning of their own choice in it and not on the denial of charges. I deny

8/1

that I made any misleading statement in my application.

The statements made by me in paragraph 6.4 of my application were also made during the enquiry and are consistent which were fully established during enquiry. On the contrary the respondents after failing to prove the baseless charges drawn against me is now seeking to justify their illegal action by making incorrect statements in their written statement. I say that to punish an employee based on any admission, if any, should be clear and unambiguous admission of charges and not 'lead to admission of charges' as alleged. I however deny that my statement in any manner lead to admission of charges, let alone admission of charges.

5) That with regard to the statements made in paragraph 7, I deny and dispute the same and reiterate the statements made in para. 6.6 of my application.

6) That in response to the statements made in paragraph 8, and 9 of the written statement, I emphatically deny the same. I say that the enquiry officer did not find the charges drawn against me to be proved on the basis of the statements made by the verifiers in their preliminary enquiry. It would be curious to note that the authority in the proceedings drawn against me finds that the denial and disownment of

the statements made by the verifiers in the preliminary enquiry without giving justifiable reasons do not render the statements irrelevant, but the same statements which were made in the disciplinary proceedings against the verifiers, were found to be justified and relevant and the verifiers were exonerated from the charges drawn against them. The same verifiers who made the same statements in all the disciplinary proceedings including their ^{alleged} own are found to be hostile in my disciplinary inquiry alone. I say that the presenting officer had full opportunity to test the veracity of the statements made by the verifiers by cross-examination, if he would have found them to be really hostile and that having not been done, the authority cannot now take the above plea just to make a faint attempt to justify their illegal, arbitrary and unjustified action, by taking away the means of livelihood of the applicant.

7) That with regard to the statements made in para 10 of the written statement, I deny and dispute the same. I categorically deny that the verifiers who were involved in the same case stated in their defence submissions against the charge-sheet that the applicant had instructed them to show 4 fictitious porters in the Muster roll. I say

that the said statements have been made without any basis and not based on record.

8) That the statements made in paragraph 11 to 19 of the written statement I deny and dispute the same save and except those which are borne by the records. The Respondents while giving a brief history of the case have stated that apart from the applicant the O.C. and Camp Officer of the 29 party and also the 8 verifiers were involved in the same financial irregularities and according to the Inquiry Officer the said verifiers, O.C. and the Camp Officer including the applicant have joined hands not to give evidence against each other and were tight-lipped during ~~XXX~~ deposition. But on the question of inflicting of punishment, the authority arbitrarily singled out the applicant imposing the extreme and harsh punishment of compulsory retirement while setting all the verifiers free by holding that the charges were not proved and the two officers above the applicant i.e. the O.C. and the Camp Officer were only given minor punishment. In any event, therefore, the punishment inflicted on the applicant is illegal, arbitrary, unreasonable, irrational, disproportionate and therefore unsustainable in law and is liable to be set-aside. I say that, I was also illegally denied my due promotion.

Dev/

9) That the statements made in paragraph 20 to 27 of the written statement, are denied save and except those which are borne by records. I say that the alleged statements made in the preliminary enquiry didnot form part of the disciplinary proceedings. I was also ~~not~~ confronted with any statement made by me, ~~nor~~ I was ever asked to clarify the statements made by me in my written statement. Therefore, the disciplinary authority cannot impose any punishment based on any such alleged statement after having found that the charges drawn against me could not be proved by any legal evidence.


Verification

VERIFICATION

I, Shri Subroto Kumar Sen, son of Late S.K. Sen, aged about 52 years, presently residing at Lower Harisava Para, Shillong, the applicant in O.A. No. 76 of 2005, do hereby verify that the statements made in paragraph 1, 2 (part), 3 to 9 are true to my knowledge and those made in paragraph 2 (part) are true to my information derived from the record and the rest are my humble submission before this Hon'ble Court and I sign this Verification today the 20th day of September 2005 at Guwahati.

Subroto K.S. Sen.
Declarant.