

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

- 1. Original Application No. 109 / 2006
- 2. Misc Petition No. \_\_\_\_\_
- 3. Contempt Petition No. \_\_\_\_\_
- 4. Review Application No. \_\_\_\_\_

Applicant(s) K.C. Sarkar

Respondants U.O.I. Doss

Advocate for the Applicant(s) Mr. K.N. Choudhury, Sr. Adv. MS R.S. Choudhury,

Advocate for the Respondant(s) Ms. A. Karmakar & B. Paridit  
C.G.S.C. ....  
Railway Standing Counsel.

Notes of the Registry	Date	Order of the Tribunal
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11.5.2006 Present: The Hon'ble Shri K.V. Sachidanandan  
Vice-Chairman.

This application is in form  
is filed in Form No. 10/-  
deposited Rs. 100/-  
No. 266/326/163  
Dated 5.5.06

N. S. Choudhury  
Dy. Registrar 10.5.06

Steps taken

Please comply order  
dated 11.5.06.

NS  
12/5/06

The applicant who was working in the N.F. Railway as Principal, Zonal Training Centre, Alipurduar Junction has retired from service on 28.2.2002. A Disciplinary proceeding was initiated against the applicant and memorandum of charges was issued on him on 30.5.2001 on the allegation that while functioning as Principal of the said centre he had embezzled a sum of Rs.4000/- each from two candidates. On enquiry the charges against the applicant were substantiated and after his retirement the matter was referred to the UPSC. The UPSC, on consideration, found that the charges against the applicant were proved and suggested imposition of

Contd

11.5.2006

Notice & order sent  
to D/section for  
issuing to resp.  
nos. 1, 2, 5 & 6 by  
regd. A/D post.

18/5/06 D/No-528, 529, 532,  
533.  
Dt= 29/5/06.

Notice & order sent  
to D/section for  
issuing to resp.  
nos. 3, 4 by regd. A/D  
post.

19/5/06 Dt= 29/5/06.

3-6-06

① Service report awaited

② No. Wb has been billed

my

penalty of forfeiture of pension and gratuity on permanent basis upon him. Subsequently his pension has been stopped vice Annexures-L & M orders. Aggrieved by the aforesaid action the applicant has filed this O.A. challenging the enquiry report and the UPSC report on the ground that same are not done in terms of the procedure laid down and also the quantum of punishment on the ground that the same is disproportionate to the gravity of the offence.

Mrs. R.S.Choudhury, learned counsel appeared for the applicant and Dr.J.L.Sarkar, learned Railway Standing counsel represented the respondents.

Considering the issue involved in this case I am of the view that the O.A. has to be admitted and hence admitted. Four weeks time to the respondents to file reply statement and two weeks time thereafter is granted to the applicant to file rejoinder, if any.

Post on 6.6.2006.

Vice-Chairman

bb



OA 109/06

21.08.2006. Learned counsel for the respondents wanted time to file reply statement.

Post on 14.09.2006.

Vice-Chairman

mb

14.09.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

Dr. J.L. Sarkar, learned Standing Counsel for the Railways wanted time to file reply statement. Let it be done.

Post on 31.10.2006.

Vice-Chairman

/mb/

31.10.2006 post the matter on 29.10.2006 for filing of reply statement.

Vice-Chairman

bb

29.11.06. The learned counsel for the respondents wanted to file written statement. Let it be done. Post the matter on 1.1.07.

Vice-Chairman

lm

17.1.07. Several opportunity has been given to the counsel for the respondents. To-day also he has not file the written statement. However, one opportunity is given to the counsel for the respondents to file written statement as a last chance. Post the matter on 14.2.07.

Vice-Chairman

lm

13-9-06.

① No Wks has been filed.

mb

30-10-06

No Wks has been filed.

mb

28-11-06

No Wks has been filed.

mb

No Wks has been filed.



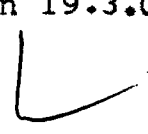
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16.1.07.

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Notes of the Registry	Date	Order of the Tribunal
<p>No rejoinder has been filed.</p> <p><u>23</u> 1.3.07.</p>	<p>14.02.2007</p>	<p>Learned counsel for the Applicant submits that he has got a copy of the reply statement and requests for time to file rejoinder. Let it be done within four weeks.</p> <p>Post on 16.3.2007.</p> <p></p> <p>Vice-Chairman</p>
<p>No rejoinder has been filed.</p> <p><u>24</u> 15.3.07.</p>	<p>/bb/ 16.3.07.</p> <p>lm</p>	<p>post the matter on 19.3.07 for filing rejoinder.</p> <p> Member</p> <p> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
<p>The case is ready for hearing.</p> <p><i>20.8.07</i></p>	<p>31.7.2007</p> <p>/bb/</p>	<p>Post the case for hearing on 21.08.2007. In the meantime Respondents are at liberty to take instruction on the rejoinder filed by the Applicant.</p> <p style="text-align: right;">✓</p> <p style="text-align: right;">Vice-Chairman</p>
	<p>21.8.2007</p> <p>/bb/</p>	<p>When the matter came up for hearing today, Mrs.R.S.Choudhury, learned counsel for the Applicant submitted that the since major punishment is imposed upon the Applicant, the matter pertains to Division Bench. But it is seen in Rule 144(c) Appendix 7 of the CAT Rules, Item No.9 declaring cases wherein it is stated that (a) major punishment- Dismissal/Removal/ Compulsory Retirement/ Reduction in rank, (b) minor punishment - other punishments (minor punishment taken S/B vide P.B. Order No.1/32/87/JA/Vol.II dated 4.4.2000) will come into Division Bench matters. Registry is directed to place the PB order No.1/32/87/JA/Vol.II dated 4.4.2000. Let the case be posted after two weeks to clarify the point.</p> <p style="text-align: right;">Post on 13.9.2007.</p> <p style="text-align: right;">✓</p> <p style="text-align: right;">Vice-Chairman</p>
<p><i>21.22.8.07</i></p> <p>As directed by the Honble Tribunal, the PB order No. 1/32/87/JA/Vol.II dt. 4.4.2000 is placed opposite.</p> <p style="text-align: center;">↓ forward</p> <p>the case is ready for hearing.</p> <p><i>10.6.21.9.07</i></p>	<p>/bb/</p>	

19.3.07. Counsel for the applicant has submitted that there is some inconvenience and he prays for adjournment. Two weeks time is granted to file rejoinder. Post the matter on 4.4.07.

*[Signature]*

Member

*[Signature]*

Vice-Chairman

3.4.07

no rejoinder filed.

LM

*[Signature]*

4.4.07.

Post the matter on 24.5.07.

No rejoinders have been filed.

23.5.07.

*[Signature]*  
Vice-Chairman.

24.5.07

When the matter came up for hearing the learned counsel for the respondents has submitted he has received the copy of the rejoinder and he wants to take instructions. Let it be done. Post the matter on 25.6.07.

*[Signature]*

Vice-Chairman

25.5.07

Rejoinder filed by the Applicant.

*[Signature]*

lm

WB and rejoinders filed by the parties.

22.6.07.

25.6.07.

Counsel for the Respondents wanted time to take instructions for rejoinder. Post the matter on 31.7.07.

*[Signature]*

Vice-Chairman

WB and rejoinders filed by the parties.

lm

30.7.07.

13.9.07

Counsel for the respondents submitted that this is a division Bench matter.

Post before the next Division Bench.

*[Signature]*

Vice-Chairman

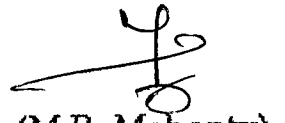
The case is ready for hearing.

8.4.08


09.04.2008

Call this matter on 08.05.2008. 36

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman


The case is ready for hearing. nkm


  
7.05.08.


08.05.2008

On the prayer of Mrs. Manisha khound, Advocate (representing the lawyers of the Applicant) This case stands adjourned and to be taken up on 14.05.2008.

The case is ready.

  
13.5.08

  
(Khushiram)  
Member(A)

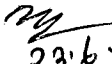
  
(M.R. Mohanty)  
Vice-Chairman

lm


14.05.2008

On the prayer of Mrs.M.Khound, learned counsel appearing for the Applicant this case stands adjourned to be taken up on 24.06.2008.

The case is ready for hearing.

  
23.6.08.

/bb/


  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

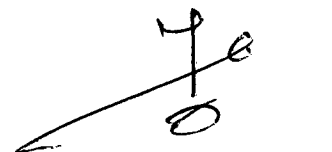
24.06.08

None appears for the Applicant nor the Applicant is present. Mr S.N.Tamuli, Advocate representing Dr J.L.Sarkar, learned Standing counsel for Railways however, is present.

The case is ready for hearing.

  
31.7.08.

Call this matter on 01.08.2008 for hearing.

  
(M.R. Mohanty)  
Vice-Chairman


- 9 -

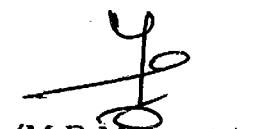
GA 109/06

7

01.08.08 Call this matter on 19.08.2008 for hearing.

The case is ready for hearing.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman


20  
18.08.2008


pg

19.08.2008 Heard Mrs R.S. Choudhury, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Counsel appearing for the Respondents/Railways, and perused the materials placed on record.

Reviewed  
Shankar  
For Railway S.C.  
4/9/08

Hearing concluded. Orders reserved.


  
(Khushiram)  
Member(A)

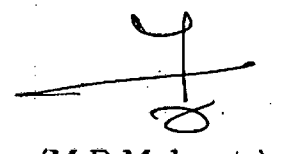
  
(M.R. Mohanty)  
Vice-Chairman

nk

28.08.2008 Judgment pronounced in open Court, kept in separate sheets. The Application is dismissed in terms of the order. No order as to costs.

Received copy of Judgment  
04/9/08  
M. Khamud  
on behalf  
of  
R.S. Choudhury  
Adv.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

pg

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

10

Original Application No. 109/2006.

DATE OF DECISION : 28-08-2008.

Shri Kshitish <sup>Chawla</sup> Kumar Sarkar  
..... Applicant/s

Mrs R. S. Choudhury  
..... Advocate for the  
Applicant/s

-Versus -

Union of India & Ors.  
..... Respondent/s

Dr. J.L. Sarkar, Railway standing counsel  
..... Advocate for the  
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, 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 their Lordships wish to see the fair copy of the judgment ? Yes/No.

Vice-Chairman/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 109/2006.

Date of Order : This the 28th Day of August, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Kshitish Chandra Sarkar,  
Resident of Quarter No.137/A,  
Gosala Railway Colony, Maligaon,  
Guwahati-781011,  
Kamrup, Assam.

.....Applicant

By Advocate Mrs R.S. Choudhury.

-Versus-

1. Union of India,  
Represented by the Secretary to the Govt. of India,  
Ministry of Railways,  
Railway Board, New Delhi.
2. Joint Secretary (E&P)  
Railway Board,  
Government of India,  
Ministry of Railways.
3. The General Manager (Construction)  
North East Frontier Railway,  
Maligaon, Guwahati-781011.
4. Deputy CPO/Construction,  
N.F.Railway, Maligaon,  
Guwahati-781011.
5. Shri M.r.Das, Retd. CPDE/SE, Railway  
Enquiry Officer,  
Resident of Mandalpara, Via Shyam Nagar,  
Dakshinpara,  
District North 24 Parganas,  
West Bengal.
6. The Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110011.  
Represented by its Chairman.

.....Respondents



By Mr J.L.Sarkar, Railway standing counsel.

ORDER

KHUSHIRAM, MEMBER(A)

The Applicant joined N.F.Railway as a Commercial Clerk in 1963 and superannuated from service on 28.02.2002. On 01.09.1998 (on receipt of reliable information to the effect that Shri K.C.Sarkar, the Applicant while working as Principal of Zonal Training Centre of N.F.Railway at Alipurduar was in the habit of collecting money from the trainees illegally against the supply of question papers along with their respective answers for the forthcoming examination to be held after the completion of their training courses) a surprise check by CBI was conducted in the chamber of the Applicant in the presence of the following persons.

- i) Shri R.K.Agarwal, Inspector of Police, CBI, SIG-SU.
- ii) Shri R.K.Das, Inspector of Police, CBI, SIG-SU
- iii) Shri A.K.Roychoudhury, R.S.O, CBI, SIG-SU
- iv) Shri B.K. Das, B.M., SBI, Alipurduar, College Halt.
- v) Shri Subashis Karmakar, Officer, SBI, Alipurduar
- vi) Shri Jayanta Kumar Das, C.C.Trainee, N.F.Railway, APDJ.

It was alleged that Applicant had disclosed question papers of the examination (to be held on 03.09.1998) for some monetary consideration. The team led by CBI seized certain manuscript from one Shri Jayanta Kumar Das, Trainee Commercial Clerk and, subsequently, on the check conducted in the office of the Applicant, an amount of Rs.8000/- (consisting of 80 pieces G.C notes of Rs.100/- denomination each) was recovered from the office Almirah of the Applicant. Shri Jayanta Kumar Das, in the presence of all (including

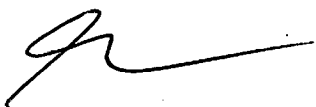


independent witnesses) had admitted that the said envelop with four thousand rupees of forty pieces of 100/- denomination were handed over to Shri K.C.Sarkar as demanded by him from Shri Amlan Bhadra and himself (J.K.Das). Regarding remaining Rs.4000/- he, however, could not say anything. Shri J.K.Das further explained that the Applicant (Shri K.C. Sarkar, Principal) had demanded Rs.2000/- each, from himself (J.K.Das) and Shri Amlan Bhadra for giving question papers along with their answers(in respect of the examination to be held on 03.09.1998) and also to ensure their passing/success in the examinations. The brown colour envelop containing Rs.8000/- had names of Sri J.K.Das and Shri Amlan Bhadra written. Both of them were going to appear in the forthcoming examination to be held on 03.09.1998. The said envelop has been seized and signed by all the concerned persons including the Applicant. During the surprise raid, while Vice Principal Shri D.K.Ghosh was also present. The hand written papers (along with answers) which were recovered from the possession of Shri Jayanta Kumar Das were shown to Shri D.K.Ghosh and asked to comment about the authorship of it; to which he stated that the question papers and also the answer sheets were written in capital letters but he could not say anything but he clarified that the same papers pertained to forthcoming commercial examination of 03.09.1998. He also clarified that Trainee C.C Shri Jayanta Kumar Das and Shri Amlan Bhadra were due to appear in the said Goods Train/Accounts written examination to be held on 03.09.1998. The questions papers and answers were received from the Applicant by



them after paying a sum of Rs.4000/- as demanded by him. Shri Jayanta Kumar Das said that questions papers and answer sheets were copied by himself and also Sri Amlan Bhadra under their respective hand writing and also informed that Rs.4000/- having been handed over by him to the Applicant as demanded by him after keeping the same in an envelope of brown colour containing their names written in his own handwriting. The Applicant was charge sheeted on 30.05.2001 and after examination of various documents, prosecution and defence witnesses, the charges were substantiated against him by the Enquiry Report dated 28.02.2003. Meanwhile the Applicant had superannuated and the case was referred to Union Public Service Commission (UPSC) for advice; which, vide recommendation dated 28.10.2005, advised imposition of a major penalty (of forfeiture of Pension and Gratuity on permanent basis) on the Applicant. The major penalty was imposed by the impugned order dated 27.12.2005 and the same was communicated to the Applicant on 06.02.2006. Aggrieved by the decision of the Respondents, the Applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act 1985 seeking mainly the following reliefs :-

- i) To set aside and quash the impugned recommendation dated 28.10.2005 issued under memo No.F.No.3/139/2005.S.I by the Under Secretary, Union Public Service Commission whereby a penalty of forfeiture of Pension and Gratuity on permanent basis has been imposed on the Applicant.
- ii) To set aside the consequential orders issued under Memo No.E(O)I-2004/PU-2/NF/51 dated 27.12.2005 and Z/SS/CON/DA/GAZ (KCS) dated 06.02.2006 whereby the Applicant has been intimated of such penalty being imposed upon him.



- iii) To set aside and quash the Disciplinary proceeding against the applicant in connection with the Memorandum of Charges issued on 30.05.2001 whereby the Applicant was charged of having taken illegal gratification.
- iv) To direct the Respondent Authorities to release Pension and Gratuity of the Applicant in view of the reliefs so granted above.

2. The Respondents have filed written statement stating that on a written complaint by one Shri Amlan Bhadra, Trainee Commercial Clerk, Zonal Training Centre, Alipurduar made to the CBI alleging demand of a bribe of Rs. 3000/- by the Applicant to ensure success in the forthcoming examination to be held on 03.09.1998, and that during surprise check by the CBI (on Applicant and another trainee Shri Jayanta Kumar Das) it received some manuscript of handwritten question papers and answer sheets, alleged to have been prepared by the Applicant. During surprise check (in the office chamber of the Applicant) an amount of Rs.8000/- was recovered from the almirah of the Applicant. The Applicant was posted as Principal of Zonal Training Centre at Alipurduar failed to ensure fairness in conducting the examination of trainee Commercial Clerks by disclosing the question papers of the examination to be held on 03.09.1998 at the Zonal Training Centre for monetary consideration of Rs.2000/- per candidate. He had also failed to give any suitable explanation about the money amounting to Rs. 8000/- recovered from his Almirah in an envelope with the names of two candidates of the said examination written on the top, Thus departmental enquiry was initiated against the Applicant and after completion of the departmental enquiry on the above charges and after consultation with the UPSC action was initiated against the



Applicant. It is stated that the Applicant had committed a serious misconduct and failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner which is unbecoming of a Government servant. The Respondents stated that the action was taken against the Applicant after following the due process of law and there is no violation of any rule and thus it cannot be termed as illegal, arbitrary or unfair.

The Respondents further stated that the power of the Tribunal regarding judicial review do not take into its ambit, the exercise of going into the truthfulness and correctness of the charges.

The charge of taking bribe from candidates for passing them in the examination has been proved against the applicant in the course of the inquiry. The charge was a serious one and the penalty imposed is commensurate with the gravity of charge proved against the applicant. Each case has to be dealt with and decided on its own merit considering the gravity and seriousness of the charges. The UPSC tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the Inquiry Officer, the evidence on record, representation of the charged officer etc. The advice of the Commission is self contained and self explanatory. There is no violation of Article 14, 16, and 21 of the Constitution.

3. We have heard Mrs R.S.Choudhury, learned counsel appearing for the Applicant and Dr J.L.Sarkar, learned Standing counsel for the Railways/Respondents. Mrs Choudhury, learned counsel



for the Applicant argued that during the enquiry the hand written question papers had neither been compared with the hand writing of the Applicant nor had it been sent to the hand writing expert for verification. The disciplinary authority did not appreciate the evidences properly and that while considering the Statements of PW-4 (Shri J.K.Das) the statement of the other PW-5 (Shri Amlan Bhadra) was improperly considered. It appears, the said PW-5 denied his knowledge of material instances; about which he reported earlier. She argued that the gravity of the matter not having been examined in its true and entire perspective, and the Respondents having failed to take any action against the Trainee Commercial Clerk (who gave illegal gratification to the Applicant in terms of the Prevention of Corruption Act 1988) the punishment imposed on the Applicant is disproportionate to the gravity of the offence. She submitted that the impugned action of the Respondents is grossly illegal, arbitrary, unfair, unreasonable and capricious and liable to be set aside. The learned counsel also pleaded that the Applicant having served for entire career unblemishly, he deserved leniency and was entitled to pension/retiral benefits. She pleaded further that the punishment meted out to Applicant is a harsh one and needed moderation and that this Tribunal can interfere in such matters and can modify the punishment suitably.

4. Dr J.L.Sarkar, learned Standing counsel for the Respondents, on the other hand, reiterated the reply submitted by the Respondents and justified the action of the Respondents; that the punishment awarded met the ends of justice and that cannot be termed



as arbitrary. He submitted that the admission of the Applicant about his involvement of receiving gratification has proved its culpability and from the entire episode it is apparent that the punishment is just and proper comparing to the quantum of charges. He stated that pension at the end of the service is granted for having rendered satisfactory service and the Applicant's service certainly was not satisfactory. Regarding proof of the charges, he also stated that in administrative law, proof of evidence are not as strict as are applicable in criminal cases and that, in the instant case, the basic question was the demand and acceptance of the gratification which was, virtually, admitted to by the Applicant and that consideration he received from the trainees (which was recovered from his own bag locked in his office almirah) is the proof of his involvement in the corrupt practices.


5. We have heard the arguments advanced by the learned counsel for both the parties and have perused the materials placed on record. This Tribunal is not the Appellate Authority to re-asses the evidence those were produced in the departmental enquiry. Thus, the arguments of the learned counsel appearing for the Applicant are bound to be over rules as they are not sustainable. Neither we can re-asses the evidence nor can interfere with the quantum of punishment. This view of ours get support from the case of *B.C.Chaturvedi vs. Union of India & Others* (reported in (1995) 6 SCC 750), relied on by the both side, in which case the Apex Court, at paragraph 12, held as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to



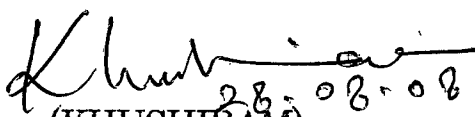
ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power to judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

In the cases of *Tara Chand Vyas vs. Chairman & Disciplinary Authority & Others*, (reported in (1997) 4 SCC 565) and *High Court of Judicature at Bombay through its Registrar vs. Udaysingh S/o Ganpatrao Naik Nimbalkar & Others*, (reported in (1997) 5 SCC 129) relied on by the learned Sr. Standing counsel for the Respondents, the Apex Court also held that Departmental Authorities are not like civil court and Disciplinary Proceeding is not a Criminal Trial and the doctrine of proof of beyond doubt has no application.



6. In the above view of the matter, there are no scope for us to interfere in the matter. We have not found any infirmity in the decision making process. Hence, this case, being devoid of any merit, is liable to be dismissed.

7. This case, accordingly, is dismissed. No costs.

  
(KHUSHIRAM)  
ADMINISTRATIVE MEMBER

  
(MANORANJAN MOHANTY)  
VICE CHAIRMAN

//pg//

## LIST OF DATES

File in Court on... 9/11/08
21 Court Officer

- 1963 The Applicant joined as Railway Commercial clerk and thereafter promoted to various posts.
- 1998 The Applicant was posted as Principal Zonal Training Centre (PZTC in short), Alipurduar Junction, NEF Railway.
- 01.09.1998 On alleged complain by one Sri Amlan Bhadra, a surprise check was conducted by the CBI in the office of the Applicant at about 15.00 hrs. Be it stated herein that around the same time the Applicant came back to his office and found some currency notes in an envelope inside his drawer. The CBI officials charged into his office and questioned him with regard to the same.
- A search was allegedly conducted on one Sri Jayanta Kr. Das, Trainee Commercial Clerk as well as on the same date by the CBI officials and some written question papers and answer sheets were recovered from him.
- The Applicant was subsequently charged with the allegation of having prepared the question papers for the post Training Examination of Trainee Commercial Clerk to be held on 03.09.1998.
- 02.09.1998 The Applicant vide his letter immediately informed the Chief safety Officer of NEF Railway.
- (Ann-A, Pg. 20)
- 01.12.1998 After a delay of more than 90 days, the CBI officials lodged an FIR with regard to the aforesaid subject matter.
- 21.12.1998 The Applicant was summoned by CBI for investigation and he was abused and harassed by them. He was also compelled to copy some question answer papers written in block letters which was produced at the time of surprise check on 01.09.1998.

- 22.12.1998 The Applicant informed the Chief Safety Officer, N.E Frontier Railway about the action of the CBI officials.  
(Ann-B, Pg. 21)
- 30.05.2001 After a lapse of almost 3 years, the Respondent No. 3 issued a Memorandum of Charges.  
(Ann-C, Pg. 22-27)
- 14.06.2001 The Applicant sent his Statement of Defence denying the charges.
- 10.07.2001 Since the essential documents were not provided to the Applicant, he submitted a reminded to the Authority.
- 30.08.2001 A corrigendum was issued by the Respondent No. 3 whereby certain charges were made in the original memorandum of Charges issued against the Applicant. ( This tantamount to issuance of fresh charge sheet and is barred by the Disciplinary and Appeal Rules, 1968)  
(Ann-D, Pg. 28)
- 28.02.2002 The Applicant in the meantime attained the age of superannuation.
- 24.04.2002 The Enquiry procedure commenced several witnesses were examined. The surprise check memorandum was produced before the Enquiry Officer.  
(Ann- E1 & E2, Pg. 29-32)
- 13.06.2002 The statements of Sri Amlan Bhadra i.e. Trainee Commercial Clerk was recorded as PW-5 and he categorically denied having knowledge about the incident and the fact that the Applicant had allegedly taken monetary consideration.  
(Ann-F, Pg. 33-34)
- 03.02.2003 After the conclusion of the Inquiry proceeding the presenting officer submitted his written proof.  
(Ann-G, Pg. 35-36).
- 09.02.2003 The Applicant submitted his defence written brief.

Pw 1 Basant K Das (Ex Br. Mgr. of SBI/Adr)

Pw 2 S. Karanakes (SBI)

Pw 3 Dillip K Ghosh (VP)

Pw 4 Jayant K Das (Trainee) Paid 4000/-

Pw 5 Anjan Bhadra (Compt.) retracted

Pw 6 CBI Inspector (Ajmerwal)

Pw 7 I.O. (CBI)

Pw 8 -

Dw 1

Dw 2

Dw 3

28.02.2003 The Enquiry officer submitted his enquiry report and came to the conclusion that the charges framed in the memorandum dated 30.05.2001 were substantiated.

(Ann-H (extract) Pg. 37).

03.12.2003 The Enquiry report was placed before the Central Vigilance Commission (CVC)  
12.10.2004 which authority recommended stiff major penalty. The said advice was forwarded to the Applicant on 12.10.2004.

(Ann-I, Pg. 38-39)

19.10.2004 On receipt of such recommendation of CVC, the Applicant submitted a representation.

(Ann-J, Pg. 40-42)

09.06.2005 The Secretary Ministry of Railways sought for the advice of the U.P.S.C.

28.10.2005 The UPSC vide impugned communication opined that the charges are proved and suggested the imposition of penalty of forfeiture of pension and gratuity on permanent basis.

(Ann-K, Pg. 43-48)

27.12.2005 Respondent No. 2 accordingly imposed the aforesaid penalty on the Applicant.

(Ann-L, Pg. 49-50)

06.02.2006 Both the orders of the U.P.S.C and the Respondent No. 2 imposing the said penalty were communicated to the Applicant.

(Ann-M, Pg. 51)

① No evidence?  
② witness supported the Def?  
③ Disproportionate

IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL, GUWAHATI BENCH

Q.A. No - 109/2008 25

K.C. SARKAR

- V -

U.O. 1 & ORS

The above case may come in the  
hearing list on 9/4/08.

~~Signature~~  
Advocate

~~Signature~~  
9/4

No. 1/32/87-JA(Vol. II) 13963/A

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

Faridkot House,  
Copernicus Marg,  
New Delhi-110 001.

Dated 04-04-2000

To,

The Registrar/Dy. Registrars,  
All outlying Benches of the Tribunal.

Sub: Issue of order of the Hon'ble Chairman under  
Sub Section (6) of Section 5 of the A.T. Act, 1985.

Sir,

I am directed to forward herewith a copy of the Order  
No. 1/32/87-JA(Vol. II) dated 04-04-2000 from Hon'ble the  
Chairman for information and necessary action.

Yours faithfully,

(D. E. RAJOO)  
DEPUTY REGISTRAR (J.A.)

Encl: As above

Copy forwarded to:-

1. PPS to the Hon'ble Chairman.
2. PS to Hon'ble Shri S.R. Adiga, Vice Chairman(A).
3. PS to Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman.
4. PS to Hon'ble Smt. Lakshmi Swaminathan, Member(J).
5. PS to Hon'ble Dr. A. Vedavalli, Member(J).
6. PS to Hon'ble Sh. V.K. Majotra, Member(A).
7. PS to Hon'ble Sh. Kuldip Singh, Member(J).
8. PS to Hon'ble Smt. Shanta Shastry, Member(A).
9. PS to the Registrar, C.A.T., Principal Bench.
10. PA to Joint Registrar, C.A.T., Principal Bench.
11. All Deputy Registrars/Dy. Director(Docu.), C.A.T., principal Bench.
12. Secretary Bar Association, C.A.T., Principal Bench.
13. AO/COs/SOs, C.A.T., Principal Bench.
14. Guard file.

2/12/2000

6-10/4

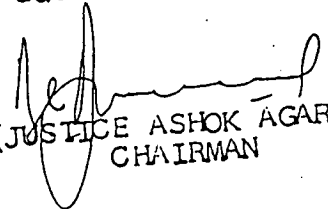
Ms Same  
2/12/2000

No.1/32/87-JA (Vol.II)  
केन्द्रीय प्रशासनिक अधिकरण  
CENTRAL ADMINISTRATIVE TRIBUNAL  
प्रधान न्यायपीठ, नई दिल्ली  
Principal Bench, New Delhi

Faridkot House, Copernicus Marg,  
New Delhi - 110 001  
Dated:-04.04.2000

ORDER

In exercise of the powers conferred by Sub Section (6) of Section 5 of the Administrative Tribunals Act, 1985, the following class of cases are added to the Schedule attached to the order of even number dated 18.12.1991 on which a Bench consisting of a Single Member shall exercise the jurisdiction, powers and authority of the Tribunal with immediate effect.

  
(JUSTICE ASHOK AGARWAL)  
CHAIRMAN

Schedule

15. Cases relating to direction to dispose of the representation.
16. Cases relating to voluntary retirement/resignation.
17. Cases relating to applications by Home Guards.
18. Cases relating to suspension - no review held.
19. Cases relating to minor penalties.
20. Cases relating to termination - temporary government servants.

# CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

G. A. R. 6

[See Rule 22 (1)]

RECEIPT

28

No. .... 1901

Date. .... 10/5/2006

Received from ..... K. C. Sarkar ..... with

Letter No. .... A 109/06 ..... dated ..... 20 .....

the sum of Rupees ..... Five only .....

In cash/by IPO .....  
by bank draft ..... on account of ..... Service charge for excess report .....

..... in payment of .....

Signature



Cashier

Rs. .... 5/-

29

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORIGINAL APPLICATION NO. 109/06

1. a) Name of the Applicant :- K.C. Sankar
- b) Respondants :- Union of India & Ors
- c) No. of Applicant(S) :- one
2. Is the application in the proper form :- Yes/No.
3. Whether name & description and address of the all papers been furnished in cause title :- Yes/No.
4. Has the application been duly signed and verified :- Yes/No.
5. Have the Copies duly signed :- Yes/No.
6. Have sufficient number of copies of the application been filed :- Yes/No.
7. Whether all the annexure parties are impleaded :- Yes/No.
8. Whether English translation of documents in the Language : Yes/No.
9. Is the application in time :- Yes/No.
10. Has the Vakalatnama/Memo of appearance/Authorisation is filed :- Yes/No.
11. Is the application by IFO/BD/For Rs: 5/- 266 328/63 dt 5-5-06
12. Has the application is maintainable :- Yes/No.
13. Has the Impugned order original duly attested been filed : Yes/No.
14. Has the legible copies of the annexures duly attested filed :- Yes/No.
15. Has the Index of documents been filed all available :- Yes/No.
16. Has the required number of enveloped bearing full address of the respondents been filed :- Yes/No.
17. Has the declaration as required by item 17 of the form :- Yes/No.
18. Whether the relief sought for arises out of the single :- Yes/No.
19. Whether the interim relief is prayed for :- Yes/No.
20. In case of condonation of delay is filed is it supported :- Yes/No.
21. Whether this Case can be heard by Single Bench/~~Division Bench~~:
22. Any other point :-
23. Result of the Scrutiny with initial of the Scrutiny clerk the application is in order :-

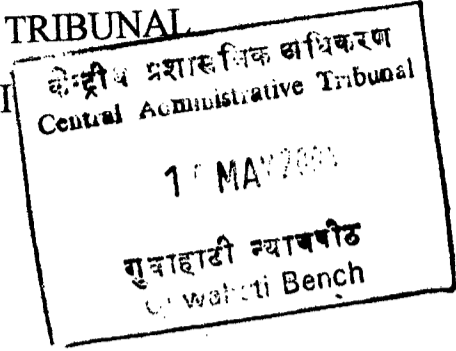
*this application is in form.*

N. Sankar  
10.5.06  
SECTION OFFICER (J)

DEPUTY REGISTRAR

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

O.A. No. 109 of 2006



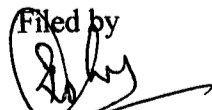
Shri Kshitish Chandra Sarkar . ... APPLICANT

- VERSUS -

Union of India & Ors. ... RESPONDENT

INDEX

<u>SL. NO.</u>	<u>PARTICULARS</u>	<u>PAGE</u>
1	Application	1-18
2	Verification	19
3	Annexure - A	20
4	Annexure - B	21
5	Annexure - C	22-27
6	Annexure - D	28
7	Annexure - E1	29-30
8	Annexure - E2	31-32
9	Annexure - F	33-34
10	Annexure - G	35-36
11	Annexure - H	37
12	Annexure - I	38-39
13	Annexure - J	40-42
14	Annexure - K	43-48
15	Annexure - L	49-50
16	Annexure - M	51

Filed by  
  
(Mrs. R. S. Chowdhury)  
Advocate

31

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

1 M  
গুৱাহাটী ন্যায্যপীঠ  
Guwahati Bench

Sri Kshitish Chandra Sarkar ... Applicant

-VERSUS-

Union of India & Ors. ... Respondents

SYNOPSIS

The Applicant herein had joined North East Frontier Railway as a Zonal Commercial Clerk on 02.06.1963 and retired from service on 28.02.2002. In the year 1998 an allegation was brought against him by one Sri Amlan Bhadra, a Trainee Commercial Clerk that he had failed to ensure fairness in conducting examination of Trainee Commercial Clerk at the Zonal Training Centre, Alipurduar Junction, where he was posted at the relevant time. It was alleged that the Applicant had disclosed question papers of the examination to be held on 03.09.1998 at the said center for some monetary consideration. On 01.09.1998 the Central Bureau of Investigation conducted a surprise check on one Sri Jayanta Kumar Das, another Trainee Commercial Clerk and seized certain manuscript question and answer papers from him. Subsequently, a check was also conducted in the Applicant's office and an amount of Rs.8,000/= (Rupees Eight thousand) only was recovered from the Almirah of the office. Thereafter, a memorandum of charges was issued against the Applicant on 30.05.2001 and the inquiry proceeding commenced from 24.04.2002. Several Prosecution and Defence witnesses were examined and the said Sri Amlan Bhadra during the inquiry proceeding denied any knowledge of any such complaint/incident. As such, it was a case of no evidence against the Applicant. However, the Inquiry Officer came to the conclusion in his inquiry report dated 28.02.2003 that the charges against the Applicant are substantiated. Accordingly, since the Applicant had superannuated in the meantime, his case was referred to the Union Public Service Commission for advice and vide impugned recommendation dated 28.10.2005 (Annexure - K), the Union Public Service Commission imposed a major penalty of forfeiture of Pension and Gratuity on permanent basis on the Applicant. The same was communicated to the Applicant vide impugned orders dated 27.12.2005 and 06.02.2006 (Annexure - L & M respectively). Being highly aggrieved by the impugned orders dated 28.10.2005, 27.12.2005 and 06.02.2006 as well as the Inquiry Proceeding, whereby the charges against the Applicant were held to be substantiated, the Applicant has preferred this Original Application challenging the legality and validity of the penalty of forfeiture of Pension and Gratuity on permanent basis, so imposed on the Applicant.

WB

**THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI**

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

FILED BY 32  
The Applicant -  
THROUGH:  
Mr. R. S. CHOWDHURY  
ADVOCATE  
9/5/06

**ORIGINAL APPLICATION NO. 109 OF 2006**

**BETWEEN**

Sri Kshitish Chandra Sarkar,  
Resident of Quarter No. 137/A,  
Gosala Railway Colony, Maligaon,  
Guwahati - 781 011,  
Kamrup, Assam.

**.....APPLICANT**

-AND-

1. The Union of India,  
Represented by the Secretary to the Govt. of India,  
Ministry of Railways, Railway Board, New Delhi.
2. Joint Secretary (E&P)  
Railway Board,  
Government of India,  
Ministry of Railway.
3. The General Manager (Construction)  
North East Frontier Railway,  
Maligaon, Guwahati - 781 011.
4. Deputy CPO/Construction  
Maligaon, North East Frontier Railways,  
Guwahati - 781 011
5. Shri M.R. Das, Retd. CPDE/SE, Railway  
Enquiry Officer,  
Resident of Mandalpara, Via-Shyam Nagar,  
Dakshinpara,  
District - North 24 Parganas,  
West Bengal.
6. The Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi - 110 011,  
Represented by its Chairman

**... RESPONDENTS**



## DETAILS OF APPLICATION

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

The Applicant is aggrieved by the advice of the Union Public Service Commission dated 28.10.2005 whereby the Commission has held that the penalty of forfeiture of Pension and Gratuity on permanent basis is imposed on the Applicant (Annexure – K). The Applicant is further aggrieved by the subsequent orders issued under memo No. E(O) I-2004/PU-2/NF/51 dated 27.12.2005 issued by the Respondent No.2 (Annexure-L) and memo No. Z/SS/CON/DA/GAZ (KCS) dated 06.02.2006 (Annexure-M) issued by the Respondent No.4 whereby the Applicant has been informed of such imposition of penalty. The Applicant is also aggrieved by the impugned Inquiry Report dated 28.02.2003 and the Disciplinary Proceedings whereby it has been held that the charges so brought against the Applicant are substantiated.

2. **JURISDICTION OF THE TRIBUNAL:**

The Applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. **LIMITATION:**

The Applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE :**

4.1 That, the Applicant states that he joined North East Frontier Railway as a Zonal Commercial Clerk on 2.06.1963 and was thereafter promoted to various posts and in the year 2002, the Applicant was posted under the General Manager (Construction)/MLG and was working in the senior scale under the said office from 10.09.2000 onwards. Be it stated herein that the Applicant retired from service on 28.02.2002. The Applicant states that during his entire service period he rendered sincere, honest and dedicated service to the department concerned.

4.2 That, while the Applicant was serving as Principal, Zonal Training Centre, Alipurduar Junction, North East Frontier Railway in the year 1998, an allegation was brought against him that he had failed to ensure fairness in



conducting the examination of Trainee Commercial Clerks at the said Centre. It was further alleged that the Applicant had disclosed question papers of the examination to be held on 03.09.1998 at the Zonal Training Centre for some monetary consideration. Be it further stated herein that one Sri Amlan Bhadra, who was a Trainee Commercial Clerk at the Zonal Training Centre, Alipurduar had written a complaint against the Applicant to the Inspector In-charge of Central Bureau of Investigation (herein after referred to as C.B.I. in short) alleging that the Applicant had demanded an amount of Rs.3,000/= (Rupees Three thousand) to declare him passed in the ensuing examination.

- 4.3 That, based on such allegation and the said written complaint lodged by Sri Amlan Bhadra, a surprise check was conducted by the C.B.I. and the personal search was also made on one Sri Jayanta Kumar Das, another Trainee Commercial Clerk at the said Institute at about 1500 hours on 01.09.1998. The Applicant herein states that at about 1500 hours on the said date he returned to his office chamber after completing the round during the post lunch period and he suddenly found a brown colour envelope inside his office drawer. On seeing the said envelope, the Applicant opened it and found some currency notes in it. The Applicant became perplexed to find some notes in his drawer and upon counting the currency notes, he found that it amounted to Rs.8,000/= (Rupees Eight thousand). Be it stated herein that the drawer of the office chamber's table of the Principal of Zonal Training Centre, Alipurduar Junction did not have a locking system and on considering the gravity of the situation, the Applicant decided to keep the money in the office Almirah of which the Applicant had the key before taking any action in the matter. However, even before the Applicant could enquire from his office/Instructors whether any one had any knowledge of the said money, some persons who introduced themselves as Check Team members of the C.B.I. came into his office and started questioning him. Subsequently, the amount of Rs.8,000/=, which the Applicant had kept inside the Almirah, was seized by the said personnel and allegations were made against the Applicant of having accepted monetary consideration. It was further noticed that in the corner of the envelope names of one Sri Jayanta Kumar Das and Sri Amlan Bhadra were written which had escaped the notice of the Applicant when he found the envelope. Be it stated herein that when the personal search was conducted on Sri Jayanta Kumar Das by the C.B.I. personnel, some manuscripts / hand written question papers and answer sheets were recovered from him which were alleged to have been prepared by the Applicant for the post training examination of Trainee Commercial Clerks in Zonal Training Centre, Alipurduar Junction, which was to be held on 03.09.1998.



- 4.4 That, subsequently the Applicant vide his letter dated 02.09.1998 under memo No. ATC/CCN/CBI/98 immediately informed the Chief Safety Officer of North East Frontier Railway, Maligaon regarding the surprise check by the C.B.I. officials and further intimated that the Trainee, named Sri Jayanta Kumar Das had, upon interrogation, declared that he has given some money to the Applicant. The Applicant further intimated through the said letter dated 02.09.1998 that despite vehement denial by the Applicant the C.B.I. Officials did not take note of his statements.

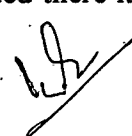
A copy of the said letter dated 02.09.1998 is annexed herewith and marked as ANNEXURE-A.

- 4.5. That, the Applicant subsequently came to learn from reliable sources that the Checked Team of C.B.I. lodged an F.I.R. on 01.12.1998 with regard to the aforesaid subject matter. Be it stated herein that the Prevention of Corruption Act, 1988 provides for registration of F.I.R. on the subject before conducting the check or on the day of the check positively. However, in the instant case, the C.B.I. lodged the F.I.R. only on 01.12.1998, i.e. after lapse of 90 days from the date of the check.

- 4.6 That, subsequently on 21.12.1998, the Applicant was once again summoned by the C.B.I. authorities for investigation and during such investigation, the C.B.I. Authorities misbehaved with the Applicant and abused and harassed him. It is also pertinent to state that during such investigation the officers compelled the Applicant to copy question and answer paper written in block letters, which was produced at the time of surprise check on 01.09.1998. The Applicant was forced to copy the same on the plea that the Applicant's handwriting had to be compared with the question and answer paper, which was recovered from the said Sri Jayanta Kumar Das on 01.09.1998. Immediately thereafter, vide his letter dated 22.12.1998 the Applicant informed the Chief Safety Officer, North East Frontier Railway, Maligaon regarding the said action of the C.B.I. Authorities.

A copy of the said letter dated 22.12.1998 is annexed herewith and marked as ANNEXURE-B.

- 4.7 That, subsequently the Applicant continued to render his services to the Department concerned and the Applicant was under the impression that finding no conclusive evidence against the baseless complaints of Sri Amlan Bhadra, the matter had rested there itself. However, to the utter shock of the



Applicant, the Respondent No.3 vide Memorandum issued under No. Z/SS/CON/DA/GAZ (KCS) dated 30.05.2001 informed the Applicant that an enquiry was going to be held against him and accordingly a statement of Article of Charges and a Statement of the imputations of misconduct / misbehaviour in support of such charges was served upon the Applicant for a list of documents by which and by a list of witnesses by whom the Article of Charges were proposed to be sustained were also enclosed therein. Be it stated herein that the said memorandum of charges under the Head, Article of Charges, stated that the Applicant failed to ensure fairness in conducting the examination of Trainee Commercial Clerks at the Zonal Training Centre, Alipurduar while functioning as the Principal of the said Centre. It was further alleged that the Applicant disclosed the question papers of the examination to be held on 03.09.1998 at the Zonal Training Centre for a monetary consideration of Rs. 4,000/= (Rupees Four thousand) per candidate and failed to give any tangible explanation about the recovery of sum of Rs. 8,000/= (Rupees Eight thousand) from his Office Almirah. Accordingly, it was alleged that the Applicant had failed to maintain absolute integrity and displayed a lack of devotion to duty.

A copy of the said Memorandum of Charges dated 30.05.2001 along with its enclosures is annexed herewith and marked as ANNEXURE - C.

- 4.8 That, the Applicant immediately thereafter on 14.06.2001 sent his Statement of Defence to the charge Memorandum dated 30.05.2001 denying the charges therein and further stated that certain other essential Relied Upon documents ought to be made available to him in order to defend his case properly. However, despite the elapse of more than a month, the authority took no action in this regard and accordingly the Applicant submitted another reminder on 10.07.2001 requesting for supply of the copies of the Relied Upon Documents.

The Applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the representations dated 14.06.2001 and 10.07.2001 as and when required during the course of Court proceedings.

- 4.9. That, to the utter shock and surprise of the Applicant, instead of providing him with the requisite documents as per his letters dated 14.06.2001 and 10.07.2001, the Respondent Authorities issued a corrigendum under memo



No. Z/SS/Con/GAZ (KCS) dated 30.08.2001 whereby certain changes were made in Annexures – 1, 2 and 3 of the Memorandum of Charge issued earlier. As per the corrigendum the amount of Rs.4,000/= in line 5 in Annexure-1 was to be read as Rs.2,000/= per candidate.

A copy of the said corrigendum dated 30.08.2001 is annexed herewith and marked as ANNEXURE – D.

Be it stated herein that subsequent to the Submission of Defence briefed on 14.06.2001 and 10.07.2001 by the Applicant, the corrigendum of the Charge Memorandum issued on 30.08.2001 tantamount to issuance of second/fresh Charge Sheet and the same is barred by Discipline And Appeal Rules, 1968 as applicable to the Railway employees. Therefore, the Applicant contends that the credibility of the Charge Memorandum stands lost.

- 4.10 That, subsequently preliminary hearing was held on 24.04.2002 and on the said date the Charged Officer (Applicant herein, referred to as C.O. in short) stated he would like to inspect the original relied upon documents. It was further decided that regular hearing would be held at South-Eastern Railway Head Quarter Inquiry Office at Calcutta. The next date of the inquiry was on 15.05.2002 on which date Sri Dilip Kumar Ghosh, who was the Vice-Principal, Zonal Training Centre, Alipurduar at the relevant point of time, was examined as Prosecution Witness No. 3. In his examination-in-chief, the said witness stated that he agreed with the contents of the memorandum dated 01.09.1998 prepared by the C.B.I. Check Team *except* for the manuscript of questions and answers shown in capital letters. The said witness categorically stated that he was not aware whether the said manuscript was written by the C.O. or not. However, the cross examination of the said witness could not be completed on the said date. On 16.05.2002, i.e. the next date of inquiry the examination in Chief of one Sri Barun Kumar Das, who was the Ex-Branch Manager, S.B.I., Alipurduar (who was an independent witness when the surprise check dated 01.09.1998 was conducted) was recorded as Prosecution Witness No.1 along with the examination in Chief of Sri Amlan Bhadra, the Ex-Trainee Commercial Clerk as Prosecution Witness No.5. Both the witnesses admitted the contents of the check memorandum dated 01.09.1998 on the said date the evidence of both the witnesses could not be completed.

Typed copies of the Surprise Check Memorandums dated 01.09.1998 which were exhibited as Document – P-7 and P-7/1



are annexed herewith and marked as  
**ANNEXURE – E 1 AND E 2.**

- 4.11 That, the next date of the inquiry was on 13.06.2002, on which date the inquiry was held at Zonal Training Centre, Alipurduar Junction. On the said date the evidences of Sri D. K. Ghosh, PW-3, Sri Amlan Bhadra, PW-5 and one Sri A. R. Roychoudhury, who was a member of the Check Team of the C.B.I. as PW-8 were recorded. The PW-8, i.e. Sri A. R. Roychoudhury in his evidence stated that he had not seen the counting of Rs.8,000/= (Rupees Eight thousand) by the C.B.I. Team since he was engaged in other works. The PW-5, i.e. Sri Amlan Bhadra was also cross examined by the C.O. on the said date. It is pertinent to state herein that on being asked by the C.O. with regard to his statement recorded in the office of the C.B.I., Siliguri on 21.12.1998 whether the said statement was accepted by him or not, the said Sri Amlan Bhadra replied "No". He was further asked by the C.O. that in the joint surprise check memorandum, it was mentioned that he had paid an amount of Rs.2,000/= (Rupees Two thousand) to Sri Jayanta Kumar Das, Trainee Commercial Clerk to pay to the C.O. He was asked to clarify whether he had paid any such amount or not, to which, said PW-5 categorically stated that "I cannot remember"

The Applicant humbly states that in view of the fact that the entire exercise of the C.B.I. Check Team was allegedly initiated at the behest of the alleged complaint by Sri Amlan Bhadra, his evidence during the Inquiry Proceeding and his denial of acknowledging any such instance is evident of the fact that the said exercise was carried out to malign the Applicant and with the sole intention of harming the Applicant.

A copy of the statement of Sri Amlan Bhadra, Ex-Trainee Commercial Clerk recorded on 13.06.2002 is annexed herewith and marked as **ANNEXURE – F.**

- 4.12 That, on 13.06.2002, the PW-4, Sri Jayanta Kumar Das, Ex-Trainee Commercial Clerk was also examined. In his examination-in-chief the PW-4 confirmed the contents of the memorandums dated 01.09.1998. During his cross-examination the PW-4 stated that he had paid Rs. 4000/= (Rupees Four thousand) to the Charged Officer and had given him the money in his drawer, however, could not recollect the details of the notes which he had given. He further stated that on 21.12.1998 when the C.B.I. had called them for further investigation, he had witnessed the C.B.I. people giving "Dhakka Dhakki" to the C.O.



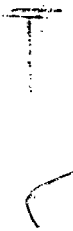
4.13 That, the next date of enquiry was fixed on 09.07.2002 on which date the evidence of Sri R. K. Das, who was the Inspector of C.B.I. and was a member of the Check Team on 01.09.1998, was recorded as PW-7. In his examination-in-chief, the PW-7 stated that the memorandums dated 01.09.1998 had been prepared by him and he further stated that the envelope containing a sum of Rs.8,000/= (Rupees Eight thousand) all of which were of hundred rupee denomination was recovered from the Almirah of the C.O. On being cross examined, the PW-7 stated that Sri Jayanta Kumar Das and Sri Amlan Bhadra had given Rs. 4,000/= (Rupees Four thousand) as alleged bribe amount and he had no idea how the amount became Rs. 8,000/=. He further stated that the numbers of the Govt. currency Notes had not been noted down by the C.B.I. Check Team. On 10.07.2002 evidence of the Defence Witness No. 1, i.e. Sri A. K. Tamang who was the Inspector of C.B.I., Gangtok Unit was recorded. Be it stated herein that the Defence Witness-1 conducted the follow up action/investigation of the case pursuant to the surprise check dated 01.09.1998 by the C.B.I. Check Team. However, no material information could be gathered from his evidence. This was perhaps due to the fact that the said Officer had done precious little in the name of investigation. Accordingly, the next dates of hearing were fixed on 30.07.2002 and 31.07.2002.

4.14 That, on the next date of hearing, i.e. 30.07.2002 the evidence of Sri R. K. Agarwal, the then Inspector, C.B.I., Siliguri Sub-division, was recorded as PW 6. In his examination-in-chief the said witness confirmed that on receipt of a complaint from Sri Amlan Bhadra, Trainee Commercial Clerk, the Check Team of the C.B.I. had conducted a surprise check in the office of the C.O. and an amount of Rs. 8,000/= (Rupees Eight thousand) was recovered from his office. In his cross-examination the said witness clearly stated that the Nos. of Govt. currency Notes were not recorded by any one. Further, he stated that he had not compared the actual question paper which was given on 03.09.1998 with the one which was recovered from Sri Jayanta Kumar Das on 01.09.1998. During his examination by the Inquiry Officer, the said witness further categorically stated that "Sri D. K. Ghosh, the Vice-Principal had stated that the document in question might have been written by Sri K. C. Sarkar" and further stated that he did not enquire from Sri Jayanta Kumar Das as to whether the manuscript of answer and question papers had been written by the C.O.

As such, it is evident that the entire exercise of the surprise check had been carried out on the basis of surmises and conjectures and the Applicant has been victimized despite want of proper evidences in this regard.

*WJ*

- 4.15 That, due to various difficulties, the next date of inquiry was held on 12.01.2002 on which date the evidence of PW 2, i.e. Sri S. Karmakar, who was working as an officer of S.B.I., Alipurduar Junction and who was a member of the Check Team on 01.09.1998, was recorded. In his examination-in-chief by the Inquiry Officer the said witness categorically stated that the Vice-Principal Sri D. K. Ghosh had stated that the question and answer papers in capital letters may have been written by the C.O. As such, the Applicant humbly states that the testimony of all the witnesses with regard to the handwriting in the manuscript question and answer papers was based on the testimony of Sri D. K. Ghosh, the Vice-Principal at the relevant point of time, who had, in fact, stated that the handwriting may or may not have been of the C.O. since he was not sure of the same.
- 4.16 That, on 13.11.2002 the cross-examination of Sri B. K. Das, the Chief Manager, S.B.I. was recorded as PW 1. In his cross examination, the C.O. categorically asked the said witness as to whether the date on the question paper (which appeared as 03.09.98 to be corrected by overwriting from 03.08.98) was verified in his presence with the original or not. To this, the said witness had categorically stated that the same was not verified in his presence. As such, it is evident that the question and answer papers which were seized from the PW-4, i.e. Sri Jayanta Kumar Das were dated 03.08.98 and the same had been corrected by over writing to 03.09.98 and this aspect of the matter was never taken into consideration by the Inquiry Officer or for that matter even the Investigating Officer. The same had led to various lacunae in the investigation as well as in the inquiry and has prejudiced the Applicant to his detriment.
- 4.17 That, on the next date of sitting, i.e. 06.01.2003 the evidences of Sri Sabyasachi Ganguly and Sri Jayanta Kumar Sen, Commercial Clerks, Defence Witness - 2 and 3 respectively were recorded and in their evidence the said witnesses categorically stated that during their tenure as trainee they had never heard from any one that by giving money as bribe, the post training examination could be passed.
- 4.18 That, on the next date of inquiry, i.e. 07.01.2003 the general examination of the C.O. was conducted by the Inquiry Officer and the same was further continued on 30.01.2003 as well. Be it stated herein that the C.O. had denied the charges leveled against him. The Presenting Officer was accordingly directed to submit his written proof within 7 (seven) days and the C.O. was directed to submit his written proof within 7 (seven) days from the date he received the copy of the proof of the Presenting Officer. Accordingly, the



Presenting Officer submitted his written proof on 03.02.2003 and the Applicant/C.O. immediately thereafter submitted his written proof on 09.02.2003.

Copy of the written proof so submitted by the Presenting Officer dated 03.02.2003 is annexed herewith and marked as ANNEXURE - G. The Applicant craves leave of this Hon'ble Tribunal to produce, refer to and rely upon the Defence written brief dated 09.02.2003.

- 4.19 That, subsequently, the Inquiry Officer vide inquiry report No. MRD/D&A/IQ/KCS dated 28.02.2003 submitted his inquiry report and after various discussions, the Inquiry Officer came to the finding/conclusion that the charges as framed in the memorandum dated 30.05.2001 against the Applicant / C.O. were substantiated.

A copy of the extract of the Inquiry Report dated 28.02.2003 is annexed herewith and marked as ANNEXURE - H. The Applicant further craves leave of this Hon'ble Tribunal to produce, refer to and rely upon the Inquiry Report dated 28.02.2003 during the course of the instant proceedings.

- 4.20 That, the Applicant states that subsequently the inquiry report was placed before the Central Vigilance Commission (C.V.C.) and it was noted that the Commission had advised imposition of a stiff major penalty on the Applicant vide C.V.C's ID note No. 0006/Rly/056 dated 03.12.2003. Be it stated herein that such an advice was passed on the fact that the charge of acceptance of illegal gratification had been conclusively proved in the inquiry report. It is further pertinent to mention that the said advice was forwarded to the Applicant only on 12.10.2004 vide letter under memo No. Z/SS/CON/DA/GAZ (KCS).

A copy of the said recommendation of the C.V.C. dated 03.12.2003 along with a copy of the letter dated 12.10.2004 forwarding the same is annexed herewith and marked as ANNEXURE - I.

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- 4.21 That, in response to the said recommendation, the Applicant immediately submitted his representation on 19.10.2004 wherein he relied upon the written proof dated 09.02.2003 and further stated, inter lia, that the acceptance of illegal gratification had not been conclusively proved by the Inquiry Officer and he further requested that in view of the fact that he had superannuated on 28.02.2002, his case should be considered sympathetically.

A copy of the said representation dated 19.10.2004 submitted by the Applicant is annexed herewith and marked as **ANNEXURE – J.**

- 4.22 That, however, the representation of the Applicant was not considered and the Disciplinary Authority took a provisional decision to impose a penalty of withholding of pension or Gratuity or both on the C.O. and accordingly, vide letter No. E (O) I-2004/PU-2/NF51 dated 09.06.2005, the Secretary to the Govt. of India, Ministry of Railways had sought for the advice of the Union Public Service Commission (herein after referred to as the UPSC in short) with regard to the disciplinary proceeding against the Applicant. After going through and perusing the case record of the C.O., the Commission vide letter under memo No. F.No.3/139/2005.S.I. dated 28.10.2005 opined that the charges against the C.O. are proved and further held that the ends of justice would be made if a penalty of forfeiture of C.O's pension and gratuity on permanent basis is imposed on him. In accordance thereof, the Respondent No. 2 vide impugned order vide memo No. E (O) I-2004/PU-2/NF/51 dated 27.12.2005 imposed a penalty of forfeiture of Pension and Gratuity on permanent basis on the C.O. Both the said orders dated 28.10.2005 of UPSC and 27.12.2005 of the Respondent No. 2 were communicated to the Applicant vide impugned letter under memo No. Z/SS/CON/DA/GAZ (KCS) dated 06.02.2006.

Copies of the impugned recommendation of the UPSC dated 28.10.2005, impugned orders dated 27.12.2005 and 06.02.2006 are annexed herewith and marked as **ANNEXURE – K, L & M** respectively.

- 4.23 That, the Applicant states that since the order of the penalty, so imposed, was passed under the hand of the President, and the Disciplinary and Appeal Rules applicable to the Railway employees do not envisage any appeal

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against such order, the Applicant has no other recourse but to approach this Hon'ble Tribunal for ventilating his grievance and demanding justice.

4.24 That, the Applicant further deems it essential to mention herein that whereas a penalty of the strictest order has been passed upon him, however, the two Trainee Commercial Clerks who had allegedly given illegal gratification to the C.O. (Applicant herein) have been let off to Scot free and in fact both the said Trainee Commercial Clerks are now working as regular employees under the Railways. Be it stated herein that law in this regard is very clear and unambiguous, and the Prevention of Corruption Act, 1988 categorically lays down that any person who gives illegal gratification is also liable to be punished as per provisions of the said Act. However, in the instant case, the said two witnesses have, in fact, been allowed to go Scot free making the Applicant herein the victim of the entire episode.

5. **GROUND'S FOR RELIEF/S WITH LEGAL PROVISIONS.**

5.1 For that the impugned recommendation dated 28.10.2005 and the impugned order of forfeiture of Pension and Gratuity on permanent basis dated 27.12.2005 has been passed in an unfair, unreasonable and capricious manner and in complete violation of the rights guaranteed to the Applicant under the Constitution of India.

5.2 For that the Investigating Officer failed in his duty in not verifying the question and answer papers, which were seized on 01.09.1998 with those, which had actually come in the examination on 03.09.1998. The I.O. did not give enough weightage to the fact that the Investigating Officer had in fact failed to verify the question papers that had come in the examination held on 03.09.1998 and the fact that the same were never compared with the ones that were seized from the said Sri Jayanta Kumar Das, which was a major error/lapse on the part of the Investigating Officer. That apart, no proper investigation was undertaken by the Investigating Officer to verify the handwriting on the said question and answer papers with that of the Applicant and as such, the same led to various lapses and lacunae in the investigation itself. Therefore, placing heavy reliance on the evidence of the investigating officer by the I.O. was not only unwarranted. but the same also prejudiced the Applicant gravely since a presumption was drawn against the Applicant. In view of the above, it is evident that the Inquiry proceedings were held in a biased manner with a predetermined mind against the Applicant and the same is, accordingly, vitiated and liable to be quashed.

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- 5.3 For that the Inquiry Officer failed to appreciate the fact that the PW No. 5, i.e. Sri Amlan Bhadra in his deposition recorded on 13.06.2002 had said that he could not remember paying Rs.2,000/= (Rupees Two thousand) to Sri Jayanta Kumar Das to pay to the C.O. and had further denied the fact that any statement was made by him before the C.B.I. authorities at Siliguri on 21.12.1998. Hence, it was a case of *no evidence* against the Applicant since the initial complaint was allegedly lodged by the same witness, i.e. PW 5. As such, the findings of the Inquiry Officer in this regard are vitiated and the consequential orders passed by the Disciplinary Authorities and the impugned recommendation of the UPSC is liable to be set aside and quashed.
- 5.4 For that the Inquiry Officer failed to take into consideration the fact that the handwriting of the Applicant was never verified at any point of time either during the investigation or subsequently thereto with the handwriting so found on the manuscript question and answer papers recovered from Sri Jayanta Kumar Das on 01.09.1998. Further, the fact that 80 (eighty) pieces of G.C. Notes of Rs.100/= denomination (i.e. Rs.8,000/=) were recovered from the Almirah, which could never be explained by the Investigating Officer or by any of the witnesses, was not taken into consideration by the I.O. As such, the entire inquiry proceeding was based on surmises and conjectures and the Inquiry Officer completely relied on the deposition of PW No.4 without taking into consideration the statements of the C.O. into account and came to the erroneous finding that the charges are substantiated against the Applicant. As such, the lopsided view taken by the Inquiry Officer vitiated the entire proceeding and the impugned orders dated 28.10.2005, 27.12.2005 and 06.02.2006 are liable to be interfered with by this Hon'ble Tribunal and accordingly set aside and quashed.
- 5.5 For, that the inquiry report as well as the decision of the disciplinary authorities and the UPSC are perverse in nature and are a result of non-application of mind to the relevant facts and circumstances of the case. Since finding of the Inquiry Officer is based partly on evidences and partly on surmises and conjectures, it would stand vitiated, as the rule of reasonable doubt is a rule of prudence. No action can be taken on the basis of mere belief or suspicion. As such, the impugned action on the part of the Respondent Authorities is not only illegal, arbitrary and malafide, but is also violative of Articles 14 and 16 of the Constitution of India.
- 5.6 For that, the Inquiry Officer as well as the Disciplinary Authorities at no point of time took into consideration the fact that the C.B.I. had never issued any charge sheet against the Applicant. The fact that the C.B.I. did not



deem it fit to file a charge sheet in the instant case makes it evident that there was no basis and/or evidence for proceeding against the Applicant and as such, the C.B.I. authorities concerned never took the case to Trial before a Special Court. This vital fact was completely and deliberately ignored by the Inquiry Officer as well as the Disciplinary Authority while issuing the impugned orders dated 28.10.2005, 27.11.2005 and 06.02.2006. As such, the same are liable to be set aside and quashed by this Hon'ble Tribunal.

- 5.7 For that, the Inquiry Officer and the Disciplinary Authorities erroneously appreciated the evidence and improperly applied the Rules. Whereas the statements of the PW 4 (Sri Jayanta Kumar Das) were completely taken into consideration, those of PW 5 (Sri Amlan Bhadra) were completely overlooked and disregarded, particularly, those statements wherein he had denied any acknowledgement of any such instance. As such, the same has resulted in a grave and serious prejudice to the Applicant in addition to the fact that such impugned actions smacks of malafide and is highly shocking to judicial conscience. Hence, this Hon'ble Tribunal, in exercise of its powers, may be pleased to set aside the impugned order of forfeiture of Pension and Gratuity on permanent basis and consequential orders thereto and grant appropriate relief to the Applicant.
- 5.8 For that, it was incumbent upon the Investigating Officer to have taken action with regard to the verification of the handwriting of the C.O. with that of the manuscript question and answer sheets, which were recovered, from the said Sri Jayanta Kumar Das. Considering the fact that entire case of the C.B.I. rested on such recovery of question and answer papers, the Investigating Officer failed in his duty in not verifying the same. Accordingly, the Inquiry Officer also ought to have given due weightage to this lapse on the part of the Investigating Officer. The same not having been done and the gravity of the matter not having been examined in its true and entire perspective, the same renders the allegations brought out against the Applicant/C.O. null and void.
- 5.9 For that, in the statements of the PW 5 (Sri Amlan Bhadra) which was allegedly recorded on 21.12.1998 by the C.B.I. Investigating Officer and which was heavily relied upon by the Inquiry Officer, it was specifically mentioned by Sri Amlan Bhadra "I remember one Sri Sabyasachi Ganduly who was a Trainee Commercial Clerk .....who was deliberately not passed in the examination because he did not pay any illegal gratification to the Principal ....." However, the said Sri Sabyasachi Ganguly, who was called as DW 2, had categorically stated in his evidence that he had never heard of any such payment of gratification for being declared passed in the

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examination at any point of time during his tenure. As such, it is evident that the Inquiry Officer as well as the Disciplinary Authorities acted in a predetermined manner and relied only on those facts, which fulfill their oblique motive rendering the entire proceeding vitiated. Hence, the same warrants interference by this Hon'ble Tribunal.

5.10 For that, the Disciplinary Authorities, prior to issuing the impugned order of forfeiture of Pension and Gratuity on permanent basis, ought to have taken into consideration that the Applicant rendered sincere and dedicated services to the department till he was stigmatized in the incident of alleged misdemeanor. Be it stated herein that in his inquiry report as well as in Daily Order Sheet of the inquiry, the Inquiry Officer himself has noted the conduct of the C.O. as "good" and has recorded the fact that the C.O. has co-operated in the inquiry proceedings at all stages. In view of the above, assuming but not admitting that the charges against the C.O. had been proved substantially, the Authorities ought not to have imposed such a severe penalty on the Applicant, particularly considering the quantum of gratification allegedly involved in the instant case. The same has resulted in grave prejudice being caused to the Applicant, which has led to severe hardship on the Applicant and his family members. As such, it is a fit case where Your Lordships may be pleased to intervene into the matter and provide adequate relief to the Applicant.

5.11 For that, it is a well settled principle of law that the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusions on penalty and impose some other penalty. However, it is also an equally well settled principle that if the punishment imposed by the Disciplinary/Appellate Authority is shocking to judicial conscience, the High Court/Tribunal can appropriately mould the relief, either by directing the Disciplinary/Appellate Authority to reconsider the penalty imposed or in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof. In the instant case, assuming but not admitting, that the charges levied against the Applicant were partially substantiated, the quantum of punishment imposed on the Applicant is disproportionate to the gravity of the offence. It is humbly stated that the charge was not so grave as to warrant the extreme penalty of forfeiture of Pension and Gratuity on permanent basis, specially when the other two persons involved in the case, i.e. PW 4 and PW 5, were not even proceeded against by the authorities. As such, the award of extreme penalty vide orders dated 28.10.2005, 27.12.2005 and 06.02.2006 are not only harsh, but the same are shocking to judicial conscience and accordingly liable to be quashed and set aside by this Hon'ble Tribunal.

5.12 For that, the provisions of the Prevention of Corruption Act, 1988 are unambiguous and categorically lay down even those persons who give illegal gratification are liable to be punished. As such, the imposition of such a severe penalty on the Applicant while allowing the two Trainee Commercial Clerks, i.e. Sri Jayanta Kumar Das and Sri Amlan Bhadra to go Scot free amounts to violation of the Applicant's fundamental rights in as much as the Applicant has been discriminated against and has not been granted equality before the law. After the charges against the Applicant have been deemed to be substantiated, it was incumbent upon the Respondent Authorities to have also taken appropriate action against the said two Trainee Commercial Clerks. However, the same not having been done renders the action taken against the Applicant arbitrary and discriminatory besides being violative of the provisions enshrined in the Constitution of India. As such, the same is liable to be interfered with by this Hon'ble Tribunal.

5.13 For that, it is evident that the impugned recommendation dated 28.10.2005 by the U.P.S.C. has been issued most mechanically without application of mind to the relevant factors. The reasons other than relevant and bonafide have been taken note of while issuing the said impugned recommendation. Under the circumstances, it is apparent that the said impugned action is grossly illegal, arbitrary, unfair, unreasonable and capricious. As such, the impugned recommendation and the consequent orders thereto are liable to be set aside and quashed.

5.14 For that, in the backdrop of the facts and circumstances that have been narrated herein above, it is apparent that the impugned action on the part of the Respondent Authorities in forfeiting Pension and Gratuity of the Applicant on permanent basis is clearly in violation of Articles 14, 16 and 21 of the Constitution of India in addition to being totally opposed to the settled principles of service jurisprudence.

6. **DETAILS OF REMEDIES EXHAUSTED:**

That the applicant declares that he has no other alternative and efficacious remedy available to him except by way of this instant application.

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

*h.B.*

That the applicant declares that no such application, writ petition or suit has been filed regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEFS SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application and notice be issued to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs:

- 8.1 Set aside and quash the impugned recommendation dated 28.10.2005 issued under Memo No. F.No.3/139/2005.S.I by the Under Secretary, Union Public Service Commission whereby a penalty of forfeiture of Pension and Gratuity on permanent basis has been imposed on the Applicant (Annexure-K).
- 8.2 Set aside the consequential orders issued under Memo Nos. E (O) I-2004/PU-2/NF/51 dated 27.12.2005 and Z/SS/CON/DA/GAZ (KCS) dated 06.02.2006 whereby the Applicant has been intimated of such penalty being imposed upon him (Annexure L & M respectively).
- 8.3 Set aside and quash the Disciplinary Proceeding against the Applicant in connection with the Memorandum of Charges issued on 30.05.2001 whereby the Applicant was charged of having taken illegal gratification.
- 8.4 Direct the Respondent Authorities to release Pension and Gratuity of the Applicant in view of the reliefs so granted above.
- 8.5 Costs of the application.
- 8.6 Any other relief(s) that the Applicant may be entitled to under the facts and circumstances and/or as may deem fit and proper by this Hon'ble Tribunal considering the facts and circumstances of the case..

9. PARTICULARS OF THE I.P.O.

- i. I.P.O. NO. : 266 324163  
ii. Date of Issue : 05-05-06.  
iii. Issued from : G.P.O, Aurohata.  
iv. Payable at :

10. DETAILS OF ENCLOSURES

As stated in the Index.

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VERIFICATION

I, Shri Kshitish Chandra Sarkar, son of Late Hridoy Ranjan Sarkar aged about 64 years, resident of Gosala Railway Colony, Quarter No. 137-A, Maligaon, Guwahati, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in Paragraphs 1 to 4.3, 4.4 (pt), 4.5 (pt), 4.6 (pt), 4.7 to 4.9, 4.10 (pt), 4.15 (pt), 4.16 (pt), 4.18, 4.21, 4.23, 4.24, 6 to 10 are true to my knowledge and those made in Paragraphs 4.4 (pt) to 4.6 (pt), 4.10 (pt), 4.11 to 4.14, 4.15 (pt) to 4.17 (pt), 4.19, 4.20, 4.22, are matters of records derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 10<sup>th</sup> day of May, 2006 at Guwahati.



Kshitish Ch. Sarkar

SIGNATURE OF THE APPLICANT

N. F. Railway.

Office of the  
Principal/ZIC/APDJ.

No. ZIC/007/CBI/98.

dt: 02/02/98.

To,  
The Chief Safety Officer,  
N.F. Railway/ Muligaon.

Sub: Surprise Check by CBI Officials.

On 01/02/98, after lunch, at about 14.45 hrs., I came to my chamber at ZIC. I opened my drawer for some papers and suddenly I found a thick envelop which I did not keep there. With utmost surprise, I opened it and discovered a bundle of hundred-rupee notes. I counted the money which amounted to Rs. 8,000/- (Rupees Eight thousand). I was shocked and quite at a loss about what to do. I decided to enquire about it and kept the money in my almirah under lock and key for safe custody. When I was about to leave my chamber to enquire about the money, suddenly some persons identified themselves to be CBI Officials entered into my chamber and asked me not to leave.

They interrogated me and searched my almirah and virtually everything. They got the envelop containing the money, counted it and questioned me about it. I answered them actually how and when I got it. They also brought a trainee named Shri Jayanta Das, Trainee C.C. and also interrogated him. On interrogation, he declared that he has given the money to me. I protested but CBI Official stopped me from asking him any question. That boy also produced a Question Paper and an answer script written in capital letter for the Grade (Initial) Examination scheduled to be held from 03/02/98 and told the CBI Officials that he received it from me. Which I vehemently denied because the question paper for the ensuing examination was not set at all. The hand writing of the produced question could not be recognised also. The CBI Officials also took the note of it as I said. They also recorded my statement. The Vice-Principal was also called by them and interrogated verbally. When the CBI Officials seized the money it was detected that the name of S/Shri Jayanta Das & Anilendra, both Trainee C.C., was written in a corner of the envelop which escaped my notice when I got it. At about 20.30 hrs. they left the ZIC. I have every doubt that I have been trapped.

This may please be recalled my telephonic conversation with you at 21.00 hrs. on 01/02/98. This is for your kind information and necessary action please.

*(K. C. Sarkar)*  
( K. C. Sarkar )  
Principal/ZIC/APDJ.

Certified to be true Copy

*(R. S. Choudhary)*  
Rekhee Srinath Choudhary  
ADVOCATE

Chief Safety Officer  
N.F.RLY- Maligaon

ANNEX- B

Date:-22/12/98

Sub :- Misbehavior

Ref :- CBI/SGUT's NO, NIL

Date:-18/12/98

ANNEXURE-B

Sir,

I was called for investigation at CBI office, <sup>Siliguri</sup> Siliguri on 21/12/98 at 10 hrs vide reference as above (Copy enclosed).

But, when I attended CBI Office at siliguri on 21/12/98, CBI \* Sri Agarwal started misbehave, abusing and harsh like anything in the name of investigation.

Lastly Sri Agarwal handed over me a question and answer written in Capital letter and forced me to copy the same which were produced at the time of surprise check on 1/9/98 at ZTC/APDJ on the plea to compare my hand writing with the handed over question and answer.

On being compelled I have copied the whole question and answer in capital letter as directed by CBI Sri Agarwal and the same is kept by CBI/SGUT. I afraid, there may be conspiracy and the question and answer which was copied by me, may produce to you for further enquiry hiding the original paper from which I was asked to copy.

This is for your kind information and action please.

<sup>18/12/98</sup>  
(K.C. Saha Sarkar)

Principal /ztc/apdj

Copy to

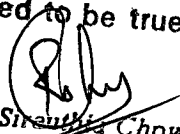
- 1. DY/CVO/t/MLG
- 2. Secretary Class-II Officer's AS Association.

} For information and  
and " N/A please.

(K.C. Sarkar)

Principal /ZTC/APDJ

Certified to be true Copy

  
Rakhee Sreষ্ঠi Chowdhury  
ADVOCATE

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE  
GENERAL MANAGER/CON  
MALIGAON.

No : Z/SS/Con/DA/GAZ(KCS)

Dated, 30.5.2001.

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri K. C. Sarkar, ex. Principal/ZTC/Alipurduar Jn. Now STM/Con/MLG under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charges is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

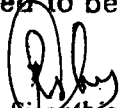
2. Shri K. C. Sarkar, STM/Con is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact Dy.CVO(T) N.F.Railway, Maligaon immediately on receipt of this Memorandum.

3. Shri K. C. Sarkar, STM/Con is further informed that he may, if he so desires, take the assistance of any other Railway Servant (who satisfies the requirements of Rule 9 (13) of the Railway Servants (Discipline & Appeal) Rules, 1968 for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s), Shri Sarkar should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned, along with the nomination.

4. Shri K. C. Sarkar, STM/Con is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents, if he desires to inspect documents, and also :

Contd. 2

Certified to be true Copy

  
Rakhee Sanyal Chowdhury  
ADVOCATE

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


5. Shri K. C. Sarkar, STM/Con is informed that an inquiry will be held only respect of those articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Shri K. C. Sarkar, STM/Con is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, or the order/directions issued in pursuance of the said rule, the Inquiring Authority may hold the Inquiry ex-parte.

7. The attention of Shri K. C. Sarkar, STM/Con is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966, under which no Railway Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service 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 K. C. Sarkar is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

Encl:- Annexure-I, II, III & IV

  
 (G. R. Madan) 20.5.07  
 General Manager/Con,  
 N.F.Railway, Maligaon.  
 General Manager (Construction).  
 N. F. Railway, Maligaon  
 Gauhati-11.

To  
 1. Shri K. C. Sarkar,  
 STM/Con/MLG

5

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGES AGAINST SHRI K.C. SARKAR, EX. PRINCIPAL/ZTC/ALIPURDUAR IN. NOW STM/CON.

Shri K. C. Sarkar, STM/Con while posted and functioning as Principal, Zonal Training Centre, Alipurduar failed to ensure fairness in conducting the examination of trainee CC's at the centre. Shri Sarkar, disclosed the question paper of the examination to be held on 3.9.1998. at the Zonal Training Centre for monitory consideration of Rs. 4000/- per candidate. 12000/-

Shri Sarkar failed to give any tangible explanation about the recovery from his office Almirah a sum of Rs. 8000/- in an envelop with names of two candidates of the examination written on top.

Thus Shri K.C. Sarkar failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby violated Rule 3.1 (i) (ii) & (iii) of Railway Service Conduct Rules, 1966.

*[Signature]*  
General Manager (Construction)  
N F Railway, Maligaon  
Gauhati-11.

*R/Ss/Com/588/694/2 (KCS) 21/5/01*  
*[Signature]*

54

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT/MISBEHAVIOUR AGAINST SHRI K.C. SARKAR, EX. PRINCIPAL /ZTC/ALIPURDUAR NOW SIM/CON/MLG

1 That Shri K. C. Sarkar was posted and functioning as Principal, Zonal Training Centre, N.E.Railway, Alipurduar during September, 1998.

2 That on 01.09.98 a surprise check was conducted by a team consisting the members of CBI/Siliguri Sub Unit, RSO/CBI/Siliguri and independent witnesses in the official chamber of Shri K.C. Sarkar, Principal, Zonal Training Centre, N.E.Railway, Alipurduar.

3 That during the surprise check a sum of Rs. 8000 G.C. Notes of 100 denomination were recovered from the Steel Almirah which was placed in the office chamber of Shri K.C. Sarkar.

4 That on 01.09.98 before conducting the surprise check in the office of Shri K.C. Sarkar, Principal, Zonal Training Centre, N.E.Railway, Alipurduar, one Shri Jayanta Kumar Das, Tr. CC, N.E.Railway, Alipurduar was intercepted by the checking team, while proceeding to the Zonal Training Centre, in a rickshaw.

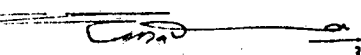
That the hand written (manuscript) question and answer papers so supplied by Shri K.C. Sarkar, Principal, Zonal Training Centre, N.E.Railway, Alipurduar and pertaining to the forthcoming examination scheduled to be held on 3.9.98 were recovered from the possession of said Shri Jayanta Kumar Das along with other papers.

That those manuscripts question and answer papers were supplied by Shri K.C.Sarkar, Principal, Zonal Training Centre, N.E.Railway, Alipurduar to Shri Jayanta Kumar Das, Tr. CC/MLG

That Shri Sarkar, Principal, ZTC had accepted a sum of Rs. 4000/- each from said Shri J.K. Das and Shri Amlan Bhadra through Shri J. K. Das in lieu of supplying manuscript question and answer papers to Shri J. K. Das and Shri Amlan Bhadra, both Tr. CC and candidates for the examination on 3.9.98.

Thus Shri K. C. Sarkar, Principal, Zonal Training Centre, N.E.Railway, Alipurduar failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner unbecoming of a Railway servant and thus committed gross misconduct.

Thus the said Shri Sarkar, Principal, ZTC contravened Rule 3.1 (i) (ii) & (iii) of Railway Service Conduct Rules, 1966.

  
General Manager (Construction) 20.5.00  
N. E. Railway, Maligaon  
Gauhati - 11

5

ANNEXURE-III

LIST OF DOCUMENTS.


- 1. ✓ Attendance Register of Tr.CC for the period 23.6.98 to 28.7.98 would show that Shri Amlan Bhadra and Shri Jayanta Kumar Das had attended the said training (Page No. 107 to 108).
- 2. ✓ Attendance Register of Tr. ASM/CC for goods for the period 29.7.98 to 4.9.98 would show that Shri Amlan Bhadra and Jayanta Kumar Das had attended the said training for the course of Goods. (Page No. 11 & 12).
- 3. ✓ Schedule of examination for the month of July, 1998 would show that examination for Goods tariff and Goods accounts was to be conducted on 3.9.98 ✓ and examination for coaching was to be conducted on 27.8.98 27.7.98.
- 4. ✓ Question papers of Tariff examination of Tr. ASM(Traffic) Apprentice and Commercial clerks initial course dated 27.7.98 would show that Shri Amlan Bhadra and Sri J. K. Das had appeared the said examination.
- 5. ✓ Question papers for goods and tariff and goods accounts both dated 3.9.98 would show that they are different from the manuscript question papers purported to have been prepared by Shri K. C. Sarkar.
- 6. ✓ Spare letter of Sri Amlan Bhadra and J. K. Das , both Tr.CC would show that they had appeared the said Trainee Course.
- 7. ✓ Two joint surprise check memorandum dated 1.9.98 would show that Shri K. C. Sarkar had accepted an illegal gratification of Rs. 4000/- and in lieu of that he had given the manuscript question papers and answer sheets for the forthcoming examination on 3.9.98 to Shri J.K. Das.
- 8. ✓ An envelop containing Rs. 8000/- would show that the above amount was recovered from the exclusive possession of Shri K.C. Sarkar and the said envelop contains the signatures of all the members of joint check and the names of Shri Amlan Bhadra and Shri Jayanta Kumar Das are written on the back of the envelop.
- 9. ✓ PE Registration report would show that his case was registered on 2.9.98 by Shri K. C. Sarkar.

For and on behalf of the Director  
 N. F. Bandyopadhyay  
 Director

ANNEXURE-IV

LIST OF WITNESSES.

- Pw-1. Shri Barun Kumar Das, Branch Manager, SBI, College Halt, Alipurduar. *Exam-in-charge completed. All - Crossed*
- Pw-2 11.02* ✓ Sri Subhasish Karmakar, Officer, SBI, College Halt, Alipurduar.
- Pw-3 13.* ✓ Sri Dilip Kumar Ghosh, Vice Principal, ZTC, Alipurduar. ✓
- Pw-4* ✓ Sri Jayanta Kumar Das, CC, N.F.Railway, Lunding, ex. Tr. CC, ZTC. ✓
- Pw-5 5.* ✓ Sri Amlan Bhadra, CC, Salakathi, N.F.Railway, ex. Tr. CC, ZTC. ✓
- Pw-6 6.* ✓ Sri R.K. Agarwal, Inspector, CBI, Siliguri Sub Unit. ✓
- Pw-7 7.* ✓ Sri R. K. Das, Inspector, CBI, Siliguri Sub Unit. ✓
- Pw-8 8.* ✓ Sri A.R. Roychowdhury, RSO, CBI, Siliguri Sub Unit. ✓
- 9. Sri M.L. Sharma, CBI. ACB, Calcutta. *Dropped the witnesses by P.O. on 13.11.02*

  
 General Manager (Construction)  
 N. F. Railway, Maligaon  
 Gauhati-11

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE  
GENERAL MANAGER/CON,  
MALIGAON.

CORRIGENDUM

To:  
Shri K. C. Sarkar,  
STM/Con/MLG

Sub: Major penalty DAR proceedings.

In reference to the subject cited above, it is hereby informed that in Annexure-I, Annexure-II and Annexure-III of Memorandum of Major Penalty No. Z/SS/Con/DA/GAZ(KCS) dt. 30.5.2001, the following modifications are made :

- Annexure-I : In line 5, Rs. 4000/- to be read as Rs. 2000/- per candidate.
- Annexure-II : In para 3 of item No. 5 Rs. 4000/- to be read as Rs. 2000/- each.
- Annexure-III : Against item No.3, the date of examination for coaching to be read as 27.7.98 instead of 27.8.98.

(G.R. Madan) 31.8.01  
General Manager/Con,  
N.F.Railway, Maligaon.

No. Z/SS/Con/DA/GAZ(KCS)

Dated, 30<sup>th</sup> August, 2001.

1. Dy.CVO/T/MLG for information. This is in reference to his letter No. Z/VIG/68/2/30/68 dt. 27.8.2001.

For General Manager/Con.

Recd  
16/8  
31/8  
STM

Certified to be true Copy

Rekhee Sircar  
ADVOCATE

(TYPED COPY)

ANNEXURE- E-1

SURPRISE CHECK MEMORANDUM

To-day, i.e. on 1-9-98 on receipt of a reliable information to the effect that Shri K. C. Sarkar, Principal, Zonal Training Centre, N. F. Rly., Alipurduar was in the habit of collecting money from the trainees illegally against the supply of question papers along with their respective answers for the forthcoming examination to be held after the completion of their training courses, a surprise check was conducted in the chamber of Shri K. C. Sarkar in the presence of the following persons between 1600 hrs to 1800 hrs.

- i) Shri R. K. Agarwal, Inspector of Police, CBI, SIG-SU.
- ii) Shri R. K. Das, Inspector of Police, CBI, SIG-SU.
- iii) Shri A. R. Roychoudhury, R.S.O., CBI, SIG-SU.
- iv) Shri B. K. Das, B.M., SBI, Alipurduar, College Halt.
- v) Shri Subashis Karmakar, Officer, SBI, Alipurduar.
- vi) Shri Jayanta Kumar Das, C. C. Trainee, N.F. Rly., APDJ

All the aforesaid persons arrived at the chamber of said Shri K. C. Sarkar and he was found present on duty. He was introduced with the members of the team and was apprised of the purpose of the visit.

In course of check a steel almirah of Delux Super make was checked and a bag of navy blue colour was found to contain one brown coloured envelope containing the names of Shri Jayanta Kumar Das, Tr. C.C. (LMG) and Amlan Bhadra, Tr. C.C. (APDJ). The said envelope contained 80 pieces G.C. notes of Rs.100/= each totaling to Rs.8,000/= (eight thousand only). counted by Shri B. K. Das (independent witness). Shri Jayanta Kumar Das in the presence of all including independent witnesses had admitted that the said envelope with four thousand rupees of forty pieces of 100/= denomination were handed over to Shri K. C. Sarkar as demanded by him from Shri Amlan Bhadra and himself (Jayanta Kumar Das). Regarding remaining Rs.4000/= he could not say anything. Shri Jayanta Kumar Das further explained that Shri K. C. Sarkar, Principal had demanded Rs.2000/= each from himself (J. K. Das) and Shri Amlan Bhadra for giving question papers along with their answers to be held on 3-9-98 (written exam) and also to ensure their passing/success in the forthcoming examinations.

Shri K. C. Sarkar when asked about the ground for possessing the envelope containing a sum of Rs.8000/= he did not offer any explanations. However, he confirmed that the names of the trainees i.e. Shri Jayanta Kumar Das, Tr. C.C.

(LMG) and Shri Amlan Bhadra, Tr. C.C. (APDJ) are written on the said envelope and the amount was exactly Rs.8,000/=. He also confirmed that both the trainees are going to appear in the forthcoming written examination to be held on 3-9-98. The said envelope has been signed by all the concerned persons including Shri K. C. Sarkar and was sealed properly. In course of surprise check Shri D. K. Ghosh, Vice Principal, Z.T.C., N.F. Rly., APDJ was also requested to remain present and accordingly he remained present. The handwritten question papers along with their answers dt. 3-9-98 recovered from the possession of Shri Jayanta Kumar Das were shown to Shri D. K. Ghosh and asked to comment about the authorship of it to which he stated that the question papers written in capital letters and also the answer sheets written in capital letters may have been written by Shri K. C. Sarkar, Principal, Z.T.C., N.F Rly., Alipurduar. Regarding remaining handwritten pages he could not say anything. Shri Ghosh further clarified that the said question papers and answer sheets pertained to forthcoming commercial examination to be held on 3-9-98.

Shri Ghosh also clarified that Shri Jayanta Kumar Das, Tr. C.C. (L.M.G.) and Amlan Bhadra, Tr. C.C. (APDJ) are due to appear in the forthcoming Goods written examination to be held on 3-9-98 and oral examination to be held on 4-9-98.

The said sealed envelope containing 80 pieces of Rs.100/= denomination each were handed over to Shri B. K. Das, B.M., SBI, Alipurduar under his proper acknowledgement for keeping the same in his safe custody and to produce the same as and when demanded by CBI or the competent Court of law.

No damage was caused to any person or property and no complaint was received from any quarters. The check conducted at 1800 hrs.

- |    |                         |                |
|----|-------------------------|----------------|
| 1) | Shri R. K. Agarwal      | Sd/- Illegible |
| 2) | Shri R. K. Das          | Sd/- Illegible |
| 3) | Shri A. R. Roychoudhury | Sd/- Illegible |
| 4) | Shri B. K. Das          | Sd/- Illegible |
| 5) | Shri S. Karmakar        | Sd/- Illegible |
| 6) | Shri D. K. Ghosh        | Sd/- Illegible |
| 7) | Shri J. K. Das          | Sd/- Illegible |
| 8) | Shri K. C. Sarkar       | Sd/- Illegible |

Attested  
Sd/- Illegible  
Seal

( TYPED COPY )

ANNEXURE- E-2

SURPRISE CHECK MEMORANDUM

Today i.e. on 1-9-98 on receipt of a secret information to the effect that Sri Jayanta Kr. Das Tr. C.C (L.M.G) at Z.T.C, N.F Rly Alipurduar Jn. had obtained question and answer papers for his forthcoming written examination to be held on 3-9-98 by paying a sum of Rs.4000/- (Rs.2000/- each for himself and Sri Amlan Bhadra) as demanded by Sri K.C. Sarkar, Principal Z.T.C Alipurduar, N.F. Rly for their success in the examination, a surprise check was conducted on Shri Jayanta Kumar Das while he was moving out in a Rikshaw from hospital road to Z.T.C., Alipurduar. The said Shri J. K. Das was challenged by the following team members who are as follows :

- 1) Shri R. K. Agarwal, I.O.P., CBI : SLG-SU
- 2) Shri R. K. Das, I.O.P., CBI SLG- SU
- 3) Shri A. R. Roychoudhury, P.S.O. , C.B.I. SLG- SU
- 4) Shri B. K. Das, B.M., SBI, Alipurduar, College Halt
- 5) Shri S. Karmakar, Officer, SBI, Alipurduar.

On being challenged that he does possess the question & answer papers for the forthcoming goods written examination to be held on 3-9-98, produced the following papers :

- 1) One handwritten question paper for Tarrif in two pages/sheets.
- 2) One handwritten question paper for goods accounts in two sheets.
- 3) One handwritten answer for the goods accounts (One sheet)
- 4) One question paper for goods accounts examination Tr. ASM Dt. 3.9.98 written in capital letters.
- 5) One handwritten answer sheet of goods accounts ((Double) written in Capital letters (One sheet).
- 6) One handwritten question paper for goods tarrif examination of Tr. ASM dt. 3.9.98 (One sheet)
- 7) One handwritten answer sheet of goods tarrif written in capital letters (One sheet).

On being asked about the source of the receipt of the aforesaid question & answer sheets for the forthcoming examination to be held on 3-9-98, Shri J. K. Das explained he had received the question and answer sheets written in capital letters from Shri K. C. Sarkar, Principal, Z.T.C., N. F. Rly., APDJ after paying a sum of Rs.4,000/= as demanded by him. He also explained that the question & answer sheets written in capital letters were copied by himself and Shri Amlal Bhadra, TR.C.C. (APDJ) under their respective handwriting for the tariff question & answer sheets and goods accounts question & answer sheets respectively. He had also informed the team the said amount of Rs.4,000/= was handed over to Shri K. C. Sarkar as demanded by him after keeping the same in an envelope of brown colour containing their names written in his own handwriting. He also confirmed that the said amount was handed over to Shri K. C. Sarkar in his chamber at about 1500 hrs. today.

After seizing the aforesaid documents, Shri Jayanta Kumar Das was brought to the Chamber of said Shri K. C. Sarkar, Principal, Z.T.C., N.F. Rly. Where said J. K. Das confirmed in front of the independent witnesses that he had handed over the said amount of Rs.4,000/= to Shri K. C. Sarkar for the receipt of question & answer sheets and also for ensuring their success/pass in the examination.

It is also to mention that due to incessant rain this surprise check memo was prepared in the chamber of said Shri K. C. Sarkar with the consent of the independent witnesses.

- |    |                         |                            |
|----|-------------------------|----------------------------|
| 1) | Shri R. K. Agarwal      | Sd/- Illegible<br>1.9.98   |
| 2) | Shri R. K. Das          | Sd/- Illegible<br>1.9.98   |
| 3) | Shri A. R. Roychoudhury | Sd/- Illegible<br>01.9.98  |
| 4) | Shri B. K. Das          | Sd/- Illegible<br>1.9.98   |
| 5) | Shri S. Karmakar        | Sd/- Illegible<br>01.09.98 |
| 6) | Shri J. K. Das          | Sd/- Illegible<br>1.9.98   |

*Key 2076*

Attested  
Sd/- Illegible  
29/6/2001  
Seal

13.5.02

CROSS -33-  
Shri Amlan Bhadra held on 13.6.02

ANNEXURE - F

DAD Inquiry in connection with DAR case against Shri K.C. Sarkar, the then Principal, ZTC/Alipurduar/NFR, since retired as STM/CON/HIG/W.P. Railway.

Zonal Training Centre/Alipurduar.

Dated: 13.06.2002.

The evidence/statement of Shri Amlan Bhadra, Ex. Trainee CC now IF/CC/Hasimara under DCM/APDJ. PW-5.

cross Exam. Shri Amlan Bhadra, PW-5 was examined by P.O. on 15.5.2002. However the examination of PW-5 could not be done by the Charged Officer since he (C.O.) stated that he would not be able to cross examine PW-5 unless the defence documents are made available to him for which a list of documents had already been furnished by him (C.O.).

Shri Amlan Bhadra, PW-5 is being cross examined by the Charged Officer now.

Q.1 Here is a photocopy produced before you the head line of which shows statement of Shri Amlan Bhadra recorded on 21.12.98 in the office of DSP/CBI/Siliguri Unit where the statement was started with the word my means you but no where in the statement I could find your signature no where in the statement. So may I know from you whether you will accept this HOD as your statement or not.

Ans- At this stage I.C. intervened and stated that such a question regarding the signature of a witness in a statement recorded by CBI investigating officer is not relevant. Under the CBI rules they are authorised to record the statement of any witness with or without the signature of the witness concerned. However they mentioned H.O.A.C.

C.O. is advised to cross examine PW-5 further if he so desires.

Q.2. Here is a photocopy said to be your statement recorded in the office of DSP/CBI/Siliguri on 21.12.98. Please go through the photocopy of so called statement and state whether at this stage you accept as your statement or not.

Ans- My statement No. is \_\_\_\_\_

Q-3. There is mentioned in the joint surprise check memorandum that you have paid Rupees Two thousand to Shri J.K. Das, Trainee CC to pay to Shri K.C. Sarkar the then Principal/ZTC/APDJ. Please state whether you have paid any such amount of Rupees two thousand to Shri J.K. Das or not.

Ans- I cannot remember.

13/6/02

REEXAMINATION OF P.O.

Shri Amlan Bhadra, may be declared as a Hostile witness as requested by P.O. since his statement is made different with the statement given by Shri Bhadra -PW-5 on 16.5.2002 i.e. last hearing held at Calcutta.

At this stage the defence counsel objected in declaration of PW- by the prosecution side whom they have relied upon without complying necessary rules of Railway Servant (D&A) Rule 1968. But so far this is knowledge is concern that if any statement of a witness differs from his earlier one the latest one is to be accepted authentic.

13/6/02

13/6/02

Certified to be true Copy

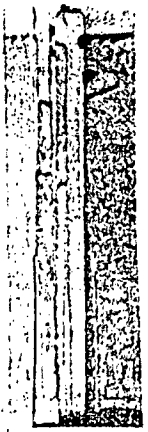
*[Signature]*

F. Khee Sirauthia Chowdhury  
ADVOCATE

Amlan  
13/6/02

13/6/02

65



Continued from page (1)

DMA inquiry in connection with the DAR case against Shri K.C. Sarkar the then Principal/ZIC/Alipurduar Jn. N.F. Railway since retired as STM/CON/MLG/N.F.Rly.

Para -5 One of the witnesses viz. Shri D.K. Ghosh, Ex. Vice Principal/ZIC/APDJ state that he had received his pass for undertaking his journey to attend the enquiry at Alipurduar at the last moment. GM/CON/NFR is requested to send the passes, to be ~~witnesses~~ eligible witnesses in time, in future.

The evidence statement of Shri A.R. Roy Chowdhury, RSO, Anlan Bhadra PW-5 and Dilip Kr. Ghosh, PW-3 was recorded.

With the recording of the evidence of statement of Shri A.R. Roy Chowdhury, P-8, Anlan Bhadra PW-5 and Dilip Kr. Ghosh, PW-3 is closed.

*Handwritten:* 13/6/02

*Handwritten:* Resulta  
8/6  
13/6/02

*Handwritten:* 13.6.2002

WRITTEN BRIEF SUBMITTED BY SHRI SISIR SEN GUPTA, CVT/MI APPOINTED AS PRESENTING OFFICER IN CONNECTION WITH THE DEPARTMENTAL ENQUIRY HELD AGAINST SHRI K.C. SARKAR EX.PRINCIPAL/ZTC/APDJ.

As ordered by I.O. vide order sheet dated 9.1.2003, P.Os brief is hereby submitted for the information of I.O. with a copy to C.O.

Eight prosecution witness, four defence witness attended in the enquiry, nine prosecution documents, marked as P-1 to P-9, five defence documents marked as D1 to D5 one court witness and four court documents were also produced/exhibited.

ARTICLE OF CHARGE:

Article of charge was framed against Shri K.C. Sarkar, Principal/ZTC/APDJ based on prosecution documents as listed in Annexure-III marked as P-1 to P-9 was examined. The charge stands established from the documents as well as from the deposition of all the prosecution witness and also one of the defence witness. Sri A.K. Tamang, Inspector/CBI/Gangtok who was also the Investigating Officer of the case.

Court document marked as C-2 is a complain made by one of the trainee CC of ZTC that Shri K.C. Sarkar, the then Principal/TTC/APDJ demanded an amount of Rs.3000/- to declare him as passed in the forthcoming examination. On the basis of this complain a joint surprise check was conducted on 1.9.98 just after paying the amount to the Principal by Sri J.K. Das, Tr.CC/ZTC and in lieu of the money Principal/ZTC/APDJ handed over some question and Answer paper of forth coming examination.

On the basis of prosecution document marked as P-7 and P-7/1, it is substantiated that the question and answer paper were recovered from Shri J.K. Das, Tr.CC and an amount of Rs.4000 was recovered from the office alimarah of Sri K.C. Sarkar, Principal/ZTC APDJ, which was in the chamber of Principal (C.O).

Sri J.K. Das in his deposition on 13.6.02 in reply to Q.1 admitted that the question and answer papers were recovered from his custody, and vide Q.No.15 Shri Das boldly stated that he himself had handed over Rs.4000/- to Shri K.C. Sarkar, Principal/ZTC vide Q.No.17(1-2) Shri Das also admitted that the amount of Rs.4000/- was kept by him in the drawer of Shri K.C. Sarkar, Principal, ZTC (C.O) when Shri Sarkar was present who asked him to keep the money in his drawer.

All the other prosecution witnesses, Shri Barun Kr. Das, Officer, SBI, Alipurduar Court marked as PW1, Shri Subhasis Karmakar Officer, SBI/Alipurduar Court marked as PW-2 attended as Independent witness admitted in their deposition on 13.11.02 and 12.11.02 respectively that the correctness of the contents of both the memorandum and also authenticates their signature, found available in both the memorandum.

Further two more witness Shri R.K. Das, Inspector, CBI marked as PW-7, Shri R.K. Agarwal, Inspector, CBI marked as PW-6 Shri D.K. Ghosh the then Vice Principal, ZTC/APDJ marked as PW-3 and Shri A.R. Roy Chowdhury the then RSO marked as PW-8 also admitted about the facts of the memorandum and authenticates their signature available in the memorandum marked as prosecution document P-7 and P-7/1.

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R. Khee Sirauthia Chowdhury  
ADVOCATE

Shri A.K. Tamang, Inspector, CBI/Gangtok who investigated the case, and attended as defence witness marked as DW-1 appeared before enquiry and in his deposition during examination by CO vide Q.No.4 admitted that the memorandum is completely correct. During re-examination by P.O. vide Q.No.1 Shri Tamang stated that he himself recorded the statement of S/Shri K.C. Sarkar, J.K. Das and Amal Bhadra and then the recorded statements were shown to them and read over. During examination by I.O vide Q.No.1 Shri Tamang stated that he was fully satisfied with the contents of the memorandum.

From the above deposition of a defence witness who admits the demanding and accepting the bribe money by Shri K.C. Sarkar, Principal/ZTC/APDJ in lieu of some question and answer paper established the fact and correctness of the Article of charge.

Vide daily order sheet No.9 dated 31.7.2002 item No.4 I.O desires to send the recovered Question and Answer papers in GEQD for verification of handwriting but C.O denied.

Further from the CO's letter addressed to the CSO/MLG marked as defence document No.4 wherein CO Shri K.C. Sarkar, Principal/ZTC admitted that -

- a) Shri Sarkar found the envelop in his drawer.
- b) He opened and found some G.C. notes.
- c) Counted the said G.C. notes and found 80 numbers of 100 rupees G.C. notes amounting to Rs.8000/-.
- d) He kept this in his steel almirah under safe custody.

Then in 2<sup>nd</sup> para of the said letter

- a) CBI team interrogated and searched the Almirah and virtually every thing.
- b) They got the envelop containing the money and counted.

From the above it is crystal clear that the information about the envelop containing the money was not disclosed by Shri K.C. Sarkar, Principal ZTC to the CBI team at all. While the CBI team could trace the same by searching.

Hence the evidences substantially shows that the bribe amount of Rs.8000/- was accepted by the Principal/ZTC in lieu of some question and answer paper, and the charge is established.

It is therefore, evident that the charge framed against Shri K.C. Sarkar, Principal ZTC/APDJ are established on the basis of documentary evidence, deposition of witnesses and other relative facts disclosed during the course of enquiry.

P.O's brief is submitted to Shri M.R. Das, Inquiry Officer Ex.CPDE for his information and necessary action please.

MS  
10

*[Handwritten Signature]*  
P.O. 3/2/03  
(S. SENGUPTA)  
Presenting Officer

**ANNEXURE - H**

**INQUIRY REPORT OF DAR CASE AGAINST SHRI K. C. SARKAR**

**28. FINDINGS.**

Having gone through all the recorded evidences, documents and considering all circumstantial evidences brought out during the inquiry proceedings, I have come to the conclusion that the charges as framed in Annexure - I of the Memorandum No. Z/SS//CON/DA/GAZ(KCS) dt. 30-05-2001 issued by General Manager, Northeast Frontier Railway, Maligaon, followed by the corrigendum of Charge Memorandum vide General Manager, Northeast Frontier Railway, Maligaon, Guwahati's No. Z/SS//CON/DA/GAZ (KCS) dt. 30-08-2001 against Shri K. C. Sarkar, the then Principal, Zonal Training Centre, NF Railway, Alipurduar Junction, since retired as STM/CON/N.F. RLY./MALIGAON is :-

Substantiated

Dated : 28.02.2003

Place : KOLKATA

2003

M. R. Das  
28.2.2003

**(M. R. DAS)**  
Inquiry Officer

&

**Retd. Chief Planning & Design Engineer,  
S. E. Railway, Garden Reach.**

- 102 -

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Rakhee

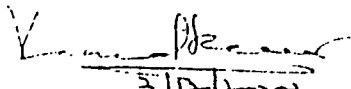
**Rakhee Sirauthia Chowdhury**  
ADVOCATE

CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

The Commission has perused the IO's report, DA's views and the connected records of the case. It is observed that the charge of acceptance of illegal gratification having been conclusively proved, the case warrants imposition of a stiff major penalty which is the norm in such cases of bribery. The Commission would, therefore, advise imposition of a stiff major penalty on Sh. K.C. Sarkar, Principal, ZTC.

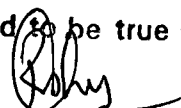
2. Action taken in pursuance of the Commission's advice may please be intimated.

  
(AVINOD KUMAR)  
UNDER SECRETARY

Railway Board (Shri Shiv Kumar, Advisor-Vig.)

CVC's I.D. Note No.0006/RLY/056 Dated: 03 DEC 2003

Certified to be true Copy

  
Rakhee Srauthia Chowdhury  
ADVOCATE

CONFIDENTIAL

72

NORTHEAST FRONTIER RAILWAY

Office of the  
General Manager/Con  
Maligaon, Guwahati-11.  
Dated: 12.10.2004

No. Z/SS/CON/DA/GAZ(KCS)

To  
Shri K.C. Sarkar,  
Retd. STM/Con,  
Maligaon, Guwahati-11.

Sub: Supply of CVC's Second Stage Advice on DAR proceedings.

Ref: Your letter No. Nil dated 04.10.2004.

Reference above, a copy of CVC's second stage advice is sent herewith as desired. You are requested to submit your representation at the earliest.

DA: One.

*Handwritten notes:*  
P...  
...

*Handwritten signature and date:*  
12/10/04  
(A. SAIKIA)  
Dy. CPO/Con  
For General Manager/Con

Certified to be true Copy

*Handwritten signature:*  
Rakhee Sirauthia Chowdhury  
ADVOCATE

Recd on 19/10/04

- 10 -

(211)

ANNEXURE - J

Dated: 19.10.04

The General Manager/CON  
&  
Disciplinary Authority,  
N.F. Railway/Maligaon

Sub: Final Representation on Enquiry Report vide Major Memorandum No. Z/SS/CON/DA/GAZ/(KCS) dated 30.5.2001 against Shri K.C. Sarkar, Retd. Principal/ZTC/APDJ.

Ref: Your Office letter No. Z/SS/CON/DA/GAZ(KCS) dated 17.9.2004 and 12.10.2004 (confidential).

Sir,

In obedience to your office letter cited under reference above, I do beseech your profound look to the following submission in the form of Final representation in connection with above cited Charge Memorandum.

1. (That Sir, ab initio, the undersigned not accepted the Enquiry Report submitted by Shri M.R. Das, (Retd. CPDE/S.E. Railway) Hon'ble Enquiry Officer. No where in his Report, the Hon'ble E.O. could establish the allegation beyond doubt. Further the demand and acceptance of money by CO as alleged has not been proved beyond doubt. During enquiry, Hon'ble EO also could not come to a conclusion that hand written manuscript question paper has been handed over to Shri J.K. Das, one of the trainees by the CO. The said so called manuscript hand written question paper has not been compared with the original one kept in the office of Principal/ZTC to establish the veracity of so called manuscript question paper. Further, Shri Amlan Bhadra (PW-5) contradicted his pre-recorded statement by disagreeing with contents of the statement. He is also the complainant in the case.

Shri Jayanta Kr. Sen (DW-3) stated vide Para 20.12.1(ii) & (iii) that he never heard anything adverse about said Shri Sarkar (CO) and there was no information with him that post-training examination can be passed only on giving bribe money to the Principal/ZTC/APDJ.

Contd...2

19.10.04  
MCA

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*Rakhee*  
Rakhee Sirauthia Chowdhary  
ADVOCATE

Shri Ranjit Mandal, another CC (DW-4) also stated that he had no information during his training at ZTC relating to post training examination by giving money to the Principal/ZTC/APDJ. Numbers of the Currency Note recovered worth Rs.8,000/- stated to be recovered from the Almirah has not been recorded either in Charge Sheet or in separate sheet to prove beyond doubt during enquiry that the said amount has been recovered from the custody of C.O. The Hon'ble E.O. over looked this vital aspect and simply based on oral evidence to sustain the recovery part.

As alleged that hand written manuscript so called question paper (written in capital letter) stated to be hand writing of CO has also not been proved by getting this examined by GEQD. The prosecution without verifying and examining the hand writing of CO by the said authority thrust upon the CO that the manuscript question paper has been written by him. Although vide para 25.4 of the report, EO pointed out that he proposed to get the handwriting of the C.O. examined by the GEQD to which PO agreed but CO expressed reservation.

During the enquiry stage, CO's proposed examination of handwriting by GEQD appears to be an over-stepping of his jurisdiction. The proper authority in this case to obtain examination report was the D.A. not the E.O. In this context, CO very rightly expressed his reservation in this regard.

Shri Amlan Bhadra, Comml. Clerk, the complainant who submitted a complaint to CBI, had withdrawn the complaint in writing at a later stage. Therefore, the merit of the case lost its credential.

In support of my aforesaid submission, I would like to enclose copy of the Defence Brief to your honour for kind perusal please.

By over looking the aforesaid facts and evidences, the Hon'ble EO proved the allegations.

It is revealed from the second stage advice of CVC that Commission has kindly perused the E.O.'s report, D.A.'s view and the connected records of the case and observed that the Charge of acceptance of illegal gratification having been conclusively proved. Sir, in the E.O.'s report, acceptance of said money has not been conclusively proved. Even though the Commission advised imposition of stiff Major penalty on me.

Sir, meanwhile, I have retired from services on superannuation on 28.2.2002 and due to pending finalisation of the aforesaid case, the DCRG and commutation has been withheld which caused considerable financial stringency to run the family and settlement thereof during post-retirement stage.

Sir, due to non-receipt of the said amount, I am not in a position even to help my son towards the further prosecution of his higher studies.

In view of the above, I would fervently request your kind honour to look into the case sympathetically and decide the case considering the financial instability faced by a poor, Railway Officer like me during Post-retirement stage and for which act of your kindness, I shall remain ever grateful to your honour, Sir.)

With regards,

Encl: Copy of Defence Brief.

Yours faithfully,

  
19.10.04  
(K. C. Sarkar)  
Retd. STM/CON/MLG

-43-

ANNEXURE - K

CONFIDENTIAL



ADVICE OF  
UNION PUBLIC SERVICE COMMISSION

IN THE  
DISCIPLINARY PROCEEDINGS

AGAINST

SIRI K.C. SARKAR, STM (RETD.).

MINISTRY OF RAILWAYS.

Certified to be true Copy

Rakhee Sirauthia Chowdhury  
ADVOCATE

-11- K

**CONFIDENTIAL**  
**F.No.3/139/2005.S.I**

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

नई दिल्ली - 110011  
New Delhi-110011

28 OCT 2005

The Secretary to the Government of India  
Ministry of Railways  
Railway Board  
New Delhi.

{Attention Shri K.K. Sharma, Joint Secretary(E&P)}

Subject: **Disciplinary proceedings against Shri K.C. Sarkar, Retd. STM/Con/NF Railway.**

Sir,

I am directed to refer to your letter No.E(O)I-2004/PU-2/NF/51 dated 9.6.2005 on the subject and to communicate the advice of the Commission as follows:

2. The Commission note that the General Manager/Con/NF Railway, Disciplinary Authority (DA) issued a Memorandum dated 30.5.2001 and corrigendum dated 30-8-2001 under Rule 9 of the Railway Servants (D&A) Rules, 1968 asking Shri K.C. Sarkar (hereinafter called the CO) to explain the following Article of Charge:

**ARTICLE OF CHARGE**

Shri K.C. Sarkar, STM/Con while posted and functioning as Principal, Zonal Training Centre, Alipurduar failed to ensure fairness in conducting the examination of trainee CCs at the centre. Shri Sarkar, disclosed the question paper of the examination to be held on 3.9.98. at the Zonal Training Centre for money consideration of Rs.2000/- per candidate.

*(Signature)*

Shri Sarkar failed to give any tangible explanation about the recovery from his office Almirah a sum of Rs. 8000/- in an envelope with names of two candidates of the examination written on top.

Thus Shri K.C. Sarkar failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby violated Rule 3.1(i)(ii) & (iii) of Railway Service Conduct Rules, 1966.

3. A statement of imputations of misconduct/misbehavior was also forwarded with the memo ibid. In his reply-dated 30.5.2001 CO denied the charges against him and as a result, a formal inquiry was held. The CO retired from service on 28.2.2002 and the proceedings are deemed to have continued under Rule 9 of Railway Services(Pension)Rules, 1993. The Inquiry Officer (IO) in his report dated 28.2.2003 held the charge as proved. A copy of the inquiry report was sent to the CO vide memo dated 17.9.2004 to enable him to make submissions, if any, to the findings of the IO. His representation dated 19.4.04 was duly considered. The President (DA) after taking into consideration the report of the IO, the facts of the case and representation submitted by the CO has taken the provisional decision to impose a penalty of withholding of pension or gratuity or both on CO. The case records have therefore been forwarded to the Commission for advice.

4. The case records have been examined carefully by the Commission and their observation are as under:

4.1. The Commission note that Shri K.C. Sarkar (CO) was posted as Principal, Zonal Training Centre, N.F. Railways, Alipurduar during September, 1998. During this time, CBI/ACB/CAL ~~CBI/ACB/CAL~~ received a verbal complaint followed by written confirmation from Shri Amalan Bhadra, Trainee C.C., undergoing training in ZTC, alleging that he had been asked on 1.9.98 to pay Rs. 3,000/- to Shri K.C. Sarkar (CO), for passing the examination held on completion of basic training of fresh recruits. On 1.9.98 Shri Jayanta Kumar Das, another Trainee C.C. was intercepted while he was moving out in a rickshaw from Hospital Road to ZTC/Alipurduar, and was found with some incriminating documents along with hand written question papers relating to trainees' examination scheduled to be held on 3.9.98.

4.2. The Commission further note that a surprise check was then conducted by a team consisting of members of CBI/Siliguri sub-unit, RSO/CBI/Siliguri, in the official chamber of the CO. A sum of Rs. 8000/- GC notes of denomination Rs.100/- each were recovered from the office almirah of the CO in the presence of

(16/10/04)

independent witnesses. The names of Shri Jayanta Kumar Das, Trainee C.C. and Amalan Bhadra, Trainee C.C. were written on the envelope. During interrogation of both the trainees it was confirmed that they had paid Rs. 2000/- each to the Principal for obtaining question and answer papers prior to commencement of examination. The CO could not offer any plausible explanation about the source of Rs.8000/- recovered from his office almirah.

4.3. The Commission also note that another raid was conducted by the CBI on Shri J.K. Das, Trainee Commercial Clerk, who was caught along with written question paper relating to trainees' examination scheduled to be held on 3.9.98. The CBI/ACB/Calcutta recommended initiation of Major Penalty proceedings against Shri K.C. Sarkar (CO).

5. The Commission observe that the charge against the CO is that "while posted and functioning as Principal, Zonal Training Centre, Alipurdar, he failed to ensure fairness in conducting the examination of trainee CC's at the centre, by disclosing the question paper of the examination to be held on 3.9.1998 at the Zonal Training Centre for monetary consideration of Rs. 4000/- per candidate. A sum of Rs.8000/- were recovered from CO's office almirah in an envelope bearing the name of two examinees i.e. J.K. Das and Amlan Bhadra. But he could not give any reasonable explanation for this recovery".

5.1 The Commission note that the case of the prosecution is that an amount of Rs. 4000/- was given by PW-4 Shri J.K. Das to the CO for the supply of question papers and answer sheets. PW-4 has admitted that he paid this sum to the CO at the rate of Rs. 2000 for each candidate and that the CO asked him to keep the money in the drawer of his table.

6. The Commission note that the CO has claimed that he found the envelope in the drawer of his office table when he returned from lunch and a post lunch round of the Institute. According to him he was perplexed and he kept the money in his office almirah, "for the safety of the notes, keeping in view the dignity of the educational institute". He thought he would inquire from his office about this money. But just as he was about to do so, the CBI team entered his chamber, stopped him from leaving his room and then recovered this amount from the almirah.

7. The Commission note that the CO has not denied the recovery of the money from his office almirah. The Commission feel that It was strange as to why the CO, if he was really surprised to find the notes in his drawer, took the money from the drawer and kept it in the almirah under lock and key? The Commission are of the view that he should have straightway called his PA, Peon and enquired from them

(Signature)

-17-

18

as to who entered his room in his absence and kept the money in his drawer. He should have immediately called the Vice Principal and other senior officers on the telephone and informed them about the happening. The Commission note that he took no action and instead put the amount quietly in his own almirah. At least, when the CBI team entered, he should have immediately handed over the envelope to them and told them the facts. On the contrary, he left it for the CBI team to make a search of his office chamber and then discover this amount hidden in his hand bag, inside his almirah.

7.1. The Commission observe that as a follow up action, the CBI recovered the question papers and answer sheets from PW-4 Shri J.K. Das, in a surprise check. When these sheets were shown to the Vice Principal, he stated that it may be in the CO's hand-writing but later Vice Principal Shri Dilip Kumar Ghosh PW-3 changed his version by stating that it may or may not be in the CO's hand writing. However, PW-4 admitted that he paid Rs. 4000/- for question paper and answer sheets to the CO in the CO's Office Chamber. It is also confirmed by the two independent witnesses, PW-1 Shri Barun Kumar Das, ex Branch Manager, SBI, Alipurduar and PW-2 Shri Subhasish Karmakar, Ex-Officer, SBI, Alipurduar that these manuscript question papers were indeed seized by the CBI team from PW-4 and that these papers related to Railway matters and were meant for an examination to be held on 3.9.98.

7.2. The Commission note that the lacuna in this case is that the handwriting in which the question papers were written was not verified from the Government Examiner of Questionable Documents (GEQD). In his defence brief, the CO agreed that since the matter was not referred to the GEQD, there is no proof that it was he who wrote the question papers; hence the charge is not authenticated. The CO, however had reservations about verification of the manuscript question papers from the GEQD, as pointed out in the daily order sheet No. 9 dated 31.7.2002. The Commission are of the view that this is a clear indication that he was afraid that the verification report may go against him, even though the papers handed over by him in lieu of the money, were subsequently different from the actual papers, as a result of the above case.

7.3. The Commission note that the seizure of question papers from PW-4 and PW 4's admission that he paid Rs. 4000 to the CO, the recovery of a sum of money from the steel almirah of the CO's office chamber (from inside the envelope on which PW-4 had himself written his name and the name of Shri Bhadra) are all clear evidence that the CO took money from the trainees in return for revealing the question papers to them. The Commission are therefore of the view that charge is proved beyond doubt against the CO.

(D) np

29

8. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the charges proved against Shri K.C. Sarkar, CO constitute grave misconduct and ends of justice would met if penalty of forfeiture of CO's pension and gratuity on permanent basis is imposed on him. They advise accordingly.

9. A copy of orders passed by the Ministry in this case may be endorsed for Commission's perusal and records.

10. The case records as per the list are enclosed, receipt of which may kindly be acknowledged.

Yours faithfully,



**(DINESH KUMAR)**  
**UNDER SECRETARY**

- Encl. 1. Two spare copies of this letter.  
2. Case records as per the list attached.

*Prasanna*  
*in accordance to file approval*

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

No. E(O)I-2004/PU-2/NF/51

New Delhi, dated 27.12.2005

ORDER

Disciplinary proceedings under Rule-9 of the Railway Servants (D&A) Rules, 1968 were initiated against Shri KC Sarkar, the then STM/Con/NF Railway (since retired) by the General Manager/Con/NF Railway under charge memorandum No. Z/SS/Con/DA/GAZ (KCS) dated 30.5.2001 (read with Corrigendum dated 30.8.2001) on the following charges:

"Shri KC Sarkar, STM/Con while posted and functioning as Principal, Zonal Training Centre, Alipurduar failed to ensure fairness in conducting the examination of trainee CCs at the centre. Shri Sarkar, disclosed the question paper of the examination to be held on 3.9.1998 at the Zonal Training Centre for monetary consideration of Rs. 2000/- per candidate.

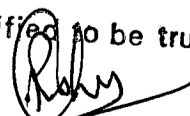
Shri Sarkar failed to give any tangible explanation about the recovery from his office Almirah a sum of Rs.8000/- in an envelop with names of two candidates of the examination written on top.

Thus Shri KC Sarkar failed to maintain absolute integrity, displayed lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby violated Rule-3.1 (i) (ii) & (iii) of Railway Service (Conduct) Rules, 1966."

2. After considering the defence statement dated 7.12.2001 of Shri Sarkar, wherein he denied the charges, General Manager remitted the case to inquiry and Shri MR Das, CPDE/SE Railway was appointed as Inquiry Officer to inquire into the charges framed against Shri Sarkar. The Inquiry Officer, in his report dated 28.2.2003, held the charges as substantiated against Shri Sarkar. As per procedure, a copy of the IO's report was served on Shri Sarkar enabling him to submit his representation there against. Shri Sarkar submitted his representation dated 19.10.2004 against IO's report.

Musham

Certified to be true Copy



Rakhee Sirauthia Chowdhary  
ADVOCATE

3. The above disciplinary proceedings instituted against Shri Sarkar under Rule-9 of the Railway Servant (D&A) Rules, 1968 before his retirement are deemed to have continued under Rule-9 of the Railway Services ( Pension) Rules, 1993 after his retirement on 28.2.2002.

4. As Shri Sarkar had retired in the meantime and the proposed penalty was not within General Manager's competence, General Manager forwarded the case to the President.

5. After giving careful consideration to the report and proceedings of inquiry, representation of Shri Sarkar on IO's report and other relevant records/aspects of the case, the President, in consultation with Union Public Service Commission, has come to the conclusion that the charges are proved beyond doubt against Shri KC Sarkar for the detailed reasons given in UPSC's letter No. F. No. 3/139/2005-SI dated 28.10.2005. Accepting the advice of UPSC and holding that the charges proved against Shri KC Sarkar, Retired STM/Con/NF Railway are indicative of commission of grave misconduct, the President has decided to impose a penalty of 'forfeiture of his pension and gratuity on permanent basis' on him. This is hereby done.

6. A copy of UPSC's letter No. F. No. 3/139/2005-SI dated 28.10.2005 containing their advice is enclosed is enclosed.

7. Shri KC Sarkar is required to acknowledge receipt of this order in writing.

By order and in the name of the President.

*K.K. Sharma*

( K.K. Sharma )  
Joint Secretary (E&P)  
Railway Board

Shri KC Sarkar,  
Retired STM/Con/  
NF Railway

NORTHEAST FRONTIER RAILWAY

CONFIDENTIAL

Office of the  
General Manager/Con  
Maligaon, Guwahati-11  
Dated: 06-02-2006

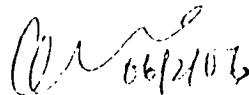
No. Z/SS/CON/DA/GAZ(KCS)

To  
Shri K.C. Sarker,  
Retd. STM/Con  
Rly. Bd. No. 127/11,  
C/o. Secy. Bldg.,  
Maligaon, Guwahati-11

**Sub: Sub: Disciplinary proceedings against Shri  
K.C.Sarkar, Retd.STM/Con/N.F.Railway.**

Railway Board's Order bearing No. E(O)I-2004/PU-2/NF/51 dated 27.12.2005 regarding imposition of penalty of forfeiture of pension and gratuity on permanent basis along with a copy of UPSC's advice bearing No.F.No.3/139/2005.S.I. dated 28<sup>th</sup> Oct/2005 is sent herewith for your information. Receipt of the same may be acknowledged in the enclosed format.

- DA: 1. Railway Board's letter.  
2. UPSC's advice letter  
3. Format.

  
(A. Saikia)  
Dy.CPO/Con  
For General Manager/Con

Copy forwarded for information and necessary action to :-

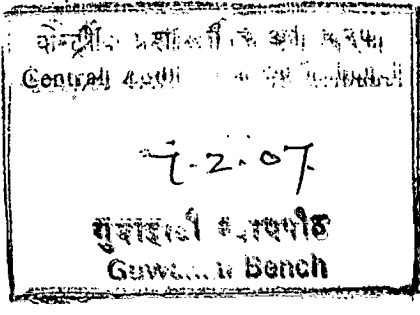
1. OS(P)/Con/MLG along with a copy of Rly. Board's order.

DA:As stated.

Dy.CPO/Con  
For General Manager/Con

Certified to be true Copy

  
Rakhee Sircaria Chowdhury  
ADVOCATE



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI**

**O.A. No.109/2006**

**Shri K.C. Sarkar**

**-----VS-----**

**U.O.I & ORS**

*Filed by the respondents  
Through S.N. Tamuli  
S.C. 7/02/07*

**Reply on behalf of Respondents to the above O.A.:**

The Respondents most respectfully beg to state that the Respondents have gone through the original application and understood the contents thereof.

The Respondent crave leave of this Hon'ble Tribunal to place on record the preliminary objections/submissions, for better appreciation of the case and in the interests of justice.

**Preliminary objections**

1. The Respondents submit that this application is not maintainable in law as the Applicant is requesting this Hon'ble Tribunal to re-assess the evidences on record and to come to a different conclusion which is not permissible in law as this Hon'ble Tribunal in its power of judicial review has not to re-assess the evidence as held by the Hon'ble Supreme Court in a catena of cases, including the case of Transport Commissioner V/s A. Radhakrishanan and the Hon'ble Tribunal is required only to see whether the procedure is properly followed in holding the enquiry and the principles of natural justice have been duly followed.

*Thameswar Daimari  
DY. Chief Engineer/C  
... 7/02/07*

2. The Respondents submit that the Hon'ble Tribunal's powers of judicial review do not take into its ambit the exercise of going into the truthfulness and correctness of the charges and the findings as held by the Hon'ble Supreme Court in the case of Transport commissioner V/s K.Ramamurthy and in the case of Registrar High Court of Bombay V/s S.S. Patil and other cases.

3. The Respondents submit that the Hon'ble Tribunal cannot be approached to act as a court of appeal so as to go into the facts of the case to arrive to a different conclusion as held by the Hon'ble Supreme Court in a catena of cases viz,

**Shri Parma Nanda Vs. State of Haryana & Ors.**  
**SLP (Civil) No.6998 of 1988.**

❖ The jurisdiction of the Tribunal to interfere with Disciplinary matters or punishment cannot be equated with an appellate jurisdiction.

❖ The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or perverse.

❖ If there has been an enquiry consistent with the rules and in accordance with the principles of Natural Justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority

Thanebwar Jainani  
 07. Chief Engineer (Civil)  
 P.O. Siroli, Muzaffarpur  
 N.W. Railway, Buldhana

❖ If the penalty can be lawfully imposed and is imposed on the proof of misconduct, the Tribunal has no power to substitute its own discretion.

❖ The adequacy the penalty, unless it is malafide, is not a matter for the Tribunals to be concerned with.

❖ The Tribunal also cannot interfere with the penalty if the conclusions of the Inquiry Officer or competent authority are based on evidence, some of which may be irrelevant or extraneous.

4. The Respondents further submit that this application is bad for mis-joinder of parties as the UPSC is not a necessary party. UPSC is only an advisory body and their advice had been sought in the case in accordance with the requirement of consultation with them as laid down in Article 320 (3) (c) of the Constitution of India read with Regulation 5 (1) of the UPSC (Exemption from Consultation) Regulations, 1958. As the cause of action complained against is the decision and order of the Government, the Commission have been impleaded in this case unnecessarily. 5. The Respondents are giving herein below the brief facts of the case for better and proper appreciation of the facts and the case against the Applicant and in the interests of Justice.

Thameswas Jainani

का मुखा अमितता/नि  
D.Y. Chief Engineer/Con/E  
पु. सी. रे. भा. ली. भा. वि.  
N. S. Railway, Calcutta

**Preliminary submission:**

6 Based on a written complaint by one Shri Amlan Bhadra, Trainee Commercial Clerk, Alipurduar, Zonal Training Centre to CBI alleging demand of a bribe of Rs. 3000/- by Shri K.C. Sarkar, the then Principal/Zonal Training Centre, Alipurduar, NF Railway for ensuring success in the ensuing post-training – final examination to be held on 03.09.98, a surprise check was conducted by CBI and a personal search was made of Shri Jayant Kumar Das, another trainee Commercial Clerk on 01.09.98 and another surprise check was conducted on the same day in the office chamber of Principal, Zonal Training Centre by CBI in the presence of independent witnesses (two Bank officers). The first surprise check involving the personal search of Sh. Jayant Kumar Das, Trainee Commercial Clerk by CBI revealed some manuscript handwritten question papers and answer sheets alleged to have been prepared by Sh. K.C. Sarkar for post-training examination of Sh. Jayant Kumar Das, Trainee Commercial Clerks to be held on 03.09.98 at the Zonal Training Centre. The surprise check conducted in the office chamber of the applicant led to recovery of Rs. 8,000/- from the steel almirah of the office chamber of the applicant. The money was found in an envelope, kept in the hand bag of the applicant in the almirah. The surprise check memorandum for the two surprise checks conducted on 01.09.98 were duly prepared and signed by the CBI officers making the check, the independent witnesses and the applicant. A Preliminary Enquiry was registered by CBI on 01.12.98 in the case.

Thaneswar Daimari

Chief Engineer/...

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representation thereagainst. The applicant submitted his representation dated 19.10.04 to the inquiry report.

9. After consideration of the applicant's representation on the I.O.'s report and all other relevant records, the General Manager forwarded the case to the President as the proposed penalty was not within his competence and also since the officer had retired on 28.02.02, the President was the Disciplinary Authority in the case. The President considered all relevant records of the case and after consultation with UPSC as per Constitutional requirements imposed the penalty of "**forfeiture of his pension and gratuity on permanent basis**" vide order dated 27.12.05.

10. The applicant has, thereafter, filed the subject O.A. in CAT/Guwahati challenging the advice of UPSC dated 28.10.05 and the penalty imposed on him vide order No. E(O)I-2004/Pu-2/NF/51 dated 8.8.2003.

11. Since the penalty was imposed on him by the Disciplinary Authority after consideration of the Inquiry Report, the applicant's representation thereagainst and all other relevant records, and the proceedings have been held in accordance with the statutory rules and the principle of natural justice and there having been no irregularity in the procedure, the subject O.A. is not sustainable and hence is liable to be dismissed.

**PARAWISE REPLY:**

12. With reference to para 4.1 of the O.A., it is submitted that the contents of the said para are not denied to the extent they are borne out by records.

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Dr. Chief Engineer/Co. 3  
पु. सी. रोड, गुवाहाटी.  
N. S. Railway, Guwahaty

13. With reference to para 4.2 and 4.3, it is submitted that based on the written complaint lodged by one Shri Amlan Bhadra, Trainee Commercial Clerk, Alipurduar, Zonal Training Centre with CBI alleging demand of a bribe of Rs. 3000/- by Shri K.C. Sarkar, the then Principal/Zonal Training Centre, Alipurduar, NF Railway for ensuring success in the ensuing post-training - final examination to be held on 03.09.98, a surprise check was conducted by CBI and a personal search was made of Shri Jayant Kumar Das, another trainee Commercial Clerk on 01.0.98 and another surprise check was conducted in the office chamber of Principal, Zonal Training Centre in the presence of two Bank Officers as independent witnesses. The first surprise check pertaining to personal search of Sh. Jayant Kumar Das, Trainee Commercial Clerk revealed some manuscript handwritten question papers and answer sheets alleged to have been prepared by Sh. K.C. Sarkar for post-training examination of Trainee Commercial Clerks to be held on 03.09.98 at Zonal training Centre. The surprise check conducted in the office chamber of the applicant led to recovery of Rs. 8,000/- from the steel almirah of the office chamber of the applicant. The money was kept in an envelope, which in turn was kept in the hand bag of the applicant in the almirah. The surprise check memorandum for the two surprise checks conducted on 01.09.98 were duly prepared and signed by the CBI officers, the independent witnesses and the applicant. A Preliminary Enquiry was registered by CBI on 01.12.98 in the case. Thereafter disciplinary proceedings under Rule 9 of Railway Servants (Disciplinary and Appeals) Rules, 1968 were initiated against the applicant. The charge against the

89  
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surprise check by the CBI leading to disciplinary proceedings by the Railway Administration against the applicant, the delay in lodging the FIR by the CBI has no relevance.

16. With reference to para 4.6., it is denied that the applicant was abused by the CBI on 21.12.98. In the course of the enquiry Shri A.K. Tamang, Inspector/CBI has denied that any such specimen of handwriting of the applicant was obtained on the relevant date by the CBI.

17. With reference to para 4.7, it is submitted that the averments made by the applicant are a matter of record.

18. With reference to para 4.8. and 4.9, it is submitted that all copies of RUDs were supplied to the applicant. Further, of the additional documents asked for by the applicant, two were supplied to him. Two of the other documents asked for by him were not available since CBI denied having collected them during the course of the enquiry. In respect of document at item 5 demanded by him, it was advised to him that this would be provided to him during the course of the enquiry. It is further submitted that all available documents were provided to the applicant and during the enquiry, the applicant was asked on the concluding day of the hearing i.e. 31.01.03 along with the prosecution side whether they wanted to add any more document or cite any more witness to which he has stated that nothing more was required. As such, the applicant is now barred from raising the issue regarding supply of documents after having accepted at the conclusion of the enquiry that all required documents had been supplied to him. In respect of the Corrigendum to the chargesheet issued by the Railways, it is submitted that some

91  
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typographical errors in the charge-sheet necessitated the issue of the corrigendum. The corrigendum merely corrected some figures and a date and has in no way, altered the charges or the tenor or ~~the character~~ of the memorandum. The issue of the corrigendum can, by no stretch of imagination, be taken to be issuance of a fresh charge-sheet, as averred by the applicant.

19. With reference to para 4.10, it is submitted that this is a matter of record.

20. With reference to para 4.11, it is submitted that merely the fact that Sh. Amlan Bhadra contradicted his earlier stand taken in the course of the inquiry whereby he had admitted his statement given to CBI does not alter the fact that he had made the initial complaint which was owned by him subsequently in the hearing on 16.5.02. Nor can the fact of recovery of money from the applicant and the manuscript of the questions and answer papers from Shri Jayant Kumar Das by the CBI in the presence of independent witnesses be nullified merely because he has later denied having made the statement.

21. With reference to para 4.12, it is submitted that the contents thereof are a matter of record.

22. With reference to para 4.13, the contents thereof are not denied to the extent that they are borne out by records. It is further submitted that it is a fact that a recovery of Rs. 8,000/- from an envelope contained in the hand bag of the applicant in the almirah in his chamber was made by the CBI team in the presence of independent witnesses. The fact of the amount having been recovered from the applicant's almirah has not been disputed at any point of time by the applicant or anybody else.

Thameswater Division  
 Chief Engineer  
 07. Chief Engineer  
 10. 11.02.2002

23. With reference to para 4.14, it is denied that the ~~surprise check has been conducted on the basis of surmises and conjectures~~ and that the applicant has been victimized. In so far as the comparison of actual question paper which was given on 03.09.98 with the one recovered from Sh. Jayant Kumar Das on 01.09.98, it is submitted that this point has been gone into by the Inquiry Officer in detail during the course of the inquiry. The comparison of the two question papers would not serve any purpose since firstly the question paper was only in the manuscript stage and leakage of any question paper would obviously necessitate a fresh question paper for the examination. In so far as the question of authorship of the manuscript is concerned, it is humbly submitted that if the applicant was so clear in his conscience about the authorship of the manuscript, he should have allowed its verification through GEQD when the IO had raised this point during the enquiry to which the prosecution side had also agreed, instead of now raising questions reg. the evidence of Sh. D.K. Ghosh, who was the Vice-Principal of the Zonal Training Centre at the relevant point of time.

24. With reference to para 4.16, it is submitted that the allegation of the non-verification of the over-writing leading to various lacunae in the investigation is a vague and non-specific averment. The averments in para 4.16 are not relevant to the establishment of the charges.

25. With reference to para 4.17 to para 4.19, it is submitted that these are a matter of record.

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 Jayant Kumar Das  
 Dy. Chief Examiners

Dy. Chief Examiners

26. With reference to para 4.20, it is submitted that a copy of the Central Vigilance Commission's advice was given to the Applicant when he asked for it. Central Vigilance Commission's advice on the inquiry report was taken as per established procedure. However, it is submitted in this context that the Commission's role is of an advisory nature and is not binding on the Disciplinary Authority who independently reaches his findings on the matter after consideration of all relevant documents. The charge against the applicant of taking of illegal gratification was of a very serious nature and stood proved in the course of the enquiry and the penalty imposed on the applicant by the Disciplinary Authority was in consonance with the gravity of the charge proved against him.

27. With reference to para 4.21, it is submitted that the applicant's averment that the acceptance of the illegal gratification had not been conclusively proved by the I.O. is incorrect. The charge stood conclusively proved in the I.O.'s report, in which he had discussed the evidence in great detail.

28. With reference to para 4.22, it is denied that the representation of the applicant was not considered by the Disciplinary Authority before imposing the penalty. The representation of the applicant was considered alongwith the I.O.'s report and other relevant documents and after consultation with the UPSC, the penalty was imposed on the applicant.

29. With reference to para 4.23 and 4.24, it is submitted that the action taken/not taken against the two trainee commercial clerks has no relevance to the charge against him.

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 Dy. Chief Engineer/C  
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Each case is dealt with and decided on its own merit taking into account gravity/seriousness of the charges.

**REPLY TO GROUNDS:**

30. With reference to para 5.1, it is submitted that penalty has been imposed on the applicant after following the procedure established by law.

31. With reference to para 5.2, it is submitted that the applicant's averment that the I.O. did not go into the issue of the verification of the question and answer papers which was seized on 01.09.98 with those which actually came in the examination 3.09.98 is incorrect. The I.O. went into the issue in detail and held that the charged officer's argument in this connection was not tenable since according to the charged officer's own admission question papers were not set at all before the check. The manuscripts would have been possibly used as question papers after being typed out had there been no CBI check. Also, as mentioned by the I.O. in his report, question papers which are leaked out cannot be used for the examination on a subsequent date for obvious reasons.

32. With reference to para 5.3, it is submitted that even though Shri Amlan Bhadra in his deposition recorded on 13.06.02 gave evasive answers and denied the complaint which he had earlier confirmed in the hearing on 16.5.02, there was adequate evidence against the applicant. The penalty has been imposed upon the applicant after following due procedure established by law. The Commission tendered its advice after a thorough, judicious and independent consideration of all the

95

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 Dy. Chief Engineer  
 Railway, Bangalore

relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, relevant documents, representations of the charged officer etc. The advice of the Commission is self-contained and self explanatory. The ground raised by the applicant is baseless.

33. With reference to para 5.4, it is submitted that extracts of para 4 of daily order sheet no. 9 dated 31.07.02 are reproduced below:

"The manuscript question papers and answer papers have been cited as defence documents D-1, D-2, D-2/1, D-2a/1, D-3, D-3/1, D-3a/1. These are alleged to have been written by CO. However, handwriting has not been verified through a handwriting expert. IO felt that these could be got verified by GEQD. PO does not have any objection to it. However, CO alleged that these are cooked up documents and they have reservation for such verification. While these will be deliberated upon in the further enquiry proceedings, the verification of hand writing by GEQD is dropped."

34. As clearly brought out from the extracts cited above, the manuscript question papers and answer papers alleged to have been written by the applicant were cited as defence documents. Since the handwriting had not been verified through a handwriting expert, the I.O. felt that these could be got verified by GEQD. The P.O. did not have any objection to it. However, the applicant alleged that these were cooked up documents and they had reservations about such verification, therefore the verification of handwriting by GEQD was dropped. After having

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objected to the verification by GEQD during the course of the inquiry, the applicant cannot raise this issue of verification again at this stage, having himself been responsible for non-verification of the handwriting by GEQD.

35. With reference to para 5.5, it is submitted that the point of 'reasonable doubt' raised by the applicant is not valid for disciplinary proceedings. The standard of proof required in disciplinary proceedings is preponderance of probability. It is denied that there has been any violation of Article 14 or 16 of Constitution of India.

36. With reference to para 5.6, it is submitted that it is not necessary that CBI undertakes prosecution in every case investigated by it. Depending on the evidence and the gravity of offence and the circumstances of the case, CBI may recommend prosecution and/or departmental proceedings and it is upto the competent authority to take a decision as to what action is merited in the case. It is further humbly submitted that the standard of proof required in departmental proceedings and in a prosecution case in court are different. While the case has to be proved beyond reasonable doubt in the court in a prosecution case, the standard of proof required in departmental proceedings is preponderance of probability.

37. With reference to para 5.7, it is submitted that it is evident from record that Shri Amlan Bhadra (PW-5) lodged an application before Inspector in-charge, CBI-ACB, Siliguri sub-unit (Annexure-1 of O.A.) on the basis of which the investigation was undertaken. It is denied that the I.O. and the Disciplinary

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 Dy. Chief Executive Officer  
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Authority erroneously interpreted the evidence and applied the rules.

38. With reference to para 5.8, it is submitted that the applicant objected to sending of the manuscripts to GEQD when suggested in the course of the inquiry by the I.O. as brought out hereinabove in para No.33 & 34 . As such, he is now barred from questioning the absence of verification of handwriting at this stage.

39. With reference to para 5.9, it is submitted that the evidence of Sh. Sabyasachi Ganguly (DW-2) was hearsay evidence only which did not change the complexion of the case against the applicant or the nature of evidence (both oral and documentary) against him. It is further submitted that the evidence has been weighed by the I.O. and the Disciplinary Authority before arriving at their findings.

40. With reference to para 5.10, it is submitted that the conduct of the applicant during the course of the inquiry, his co-operation with the I.O., his past good conduct as well as the quantum of gratification involved in the present case were duly kept in view along with the records of the proceedings and it was only after weighing all the relevant considerations that the impugned action was taken by the Competent Authority. The content of para 5.10 are thus without any substance and do not constitute a ground to sustain the present OA. The charge of bribery against a Govt. servant is a very serious one and when proved during the course of an inquiry held as per established law reflects on the integrity of the officer concerned. The quantum of gratification involved cannot be and is not a

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relevant factor in arriving at the penalty merited by an erring employee.

41. With reference to para 5.11, it is submitted that the penalty has been imposed on the applicant after following due procedure laid down under statutory rules and observing the principles of natural justice. The charge of taking bribe from candidates for passing them in the examination has been proved against the applicant in the course of the inquiry. The charge was a serious one and the penalty imposed is commensurate with the gravity of charge proved against the applicant. The applicant's averment regarding the penalty being shocking to judicial conscience is totally baseless and bereft of substance.

42. With reference to para 5.12, it is submitted that the applicant's averments regarding the two trainee commercial clerks do not absolve him of the charges against him and is irrelevant to the case against him. Each case has to be dealt with and decided on its own merit considering the gravity and seriousness of the charges.

43. With reference to para 5.13, it is submitted that the Commission tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, relevant documents, representations of the charged officer etc. The advice of the Commission is self-contained and self explanatory. The ground raised by the applicant is totally baseless.

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44. With reference to para 5.14, it is submitted that in view of the submissions made hereinabove the averment of the applicant regarding violation of the Article 14, 16 and 21 of the Constitution of India is absolutely baseless.

45. With reference to para 6 & 7, no comments are called for on the part of the Respondents.

46. With reference to para 8, the Respondents submit that the applicant has failed to make out any grounds for grant of any relief. In the facts and circumstances of the case the Respondents submit that this application is misconceived, misconstrued and not maintainable in law. It does not disclose any cause of action and even otherwise the applicant has failed to make out any case for grant of any relief. This application is therefore liable to be dismissed.

*(Thameswar Daimari)*  
 स. मुख्य अभियन्ता/नि.स.  
 Dy. Chief Engineer/Co. E  
 पू. सी. रेलवे, मालीग.  
 N. E. Railway, Maligaon  
 गुवाहाटी-781 011  
 Guwahati-781 011

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*Thameswar Daimari*  
 Dy. Chief Engineer  
 N. E. Railway  
 Maligaon  
 Guwahati-781 011

**VERIFICATION**

I, Shri Thaneswar Daimari, Son of Late P.C. Daimari aged about 50.....years, presently working as Dy. Chief Engineer/Con/G, N.F.Railway Construction Organization, Maligaon, Guwahati do hereby verify that statements in para 1 to 46 are true to my knowledge and that I have not suppressed any material facts.

I sign this verification this 10-1-07.....day of January/2007 at Guwahati.



Signature

(Thaneswar Daimari)

अध्यक्ष अभियंता/निर्माण  
Dy. Chief Engineer/Con/G  
सी० रेलवे, मालीगाँव  
Railway, Maligaon  
गुवाहाटी-781 011  
Guwahati-781 011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI  
BENCH

VAKALATNAMA

*K.C. Sarkar* Petitioners/Appealant

Versus

*U.O.I.* Respondents

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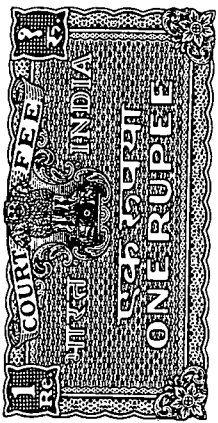
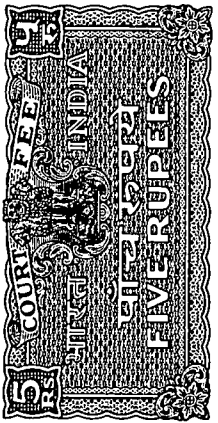
~~1/10~~ *Sri. Ambeswar Saikia*..... of the Northeast Frontier Railway Administration, who is also ex-officio authorized to act for and on behalf of the Union of India as representing the Northeast Frontier Railway Administration do hereby appoint and authorize *Sri. Dr. J. L. Sarkar, Sc./Rys.* to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India, to file and take back documents, to accept processes of the court to appoint and instruct Counsel, Advocate or pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/ appeal/ proceedings and to do all things incidental to such appearing, acting, applying, pleading and presenting for the Union of India/express SUBJECT NEVER THE LESS TO the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/Pleader or any Counsel, Advocate or pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defense/proceedings against all or any defendants / Respondents / appellants / plaintiffs / opposite parties or enter into agreement, settlement or compromise hereby the suit/appeal/proceedings is/are wholly or partly adjusted or refer all or any matter or matters arising out in dispute therein to arbitration PROVIDED THAT IN exceptional circumstances when there is not sufficient time to consult such appropriate officer of the Government of India and on omission to settle or compromise would be definitely prejudicial to the Interest of the Government of India, the said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal proceedings is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

I hereby agree to ratify all acts done by the aforesaid *Shri Dr. J. L. Sarkar, Sc./Rys.* in pursuance of the authority.

IN WITNESS WHEREOF THESE presents are duly executed for and on behalf of the Union of India this *Twenty six* day of *June*, 2006

*Ambeswar Saikia*  
23/6/06

उप मुख्य कार्याधिकारी (नि)  
Dy, Chief Personnel Officer (Con.)  
पू०सी० रेस, मालगाँव  
N.F, Railway, Maligaon  
गुवाहाटी-11  
Guwahati- 781011



NOTICE

63

From Dr. J.L. Sarkar  
S.C. Railways  
CA. T. Gussahati

7/2/09  
Date 24/1/07

To  
Mrs R.S. Choudhary  
Advocate.

Sub: W.S. in OA. 109/2006  
K.C. Sarkar-vs- UOI KORS

Dear Madam,

Please find enclosed herewith a copy of the W.S. in the above mentioned OA. This is for your kind information and necessary action.

With regards

Yours Sincerely

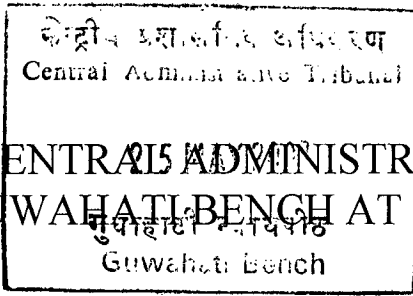
*[Signature]*

For Dr. J.L. Sarkar

Received

I undertake to  
to serve a copy  
on the above named  
advocate

*[Signature]*  
7/2/07



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

Original Application No. 109 of 2006

IN THE MATTER OF :

O.A. No.109 of 2006

Sri Kshitish Chandra Sarkar

... Applicant

-Versus-

Union of India & Ors.

... Respondents

-AND-

IN THE MATTER OF :

An Affidavit-in-Reply/Rejoinder filed on behalf of the Applicant against the Written Statement filed by the Respondents.

AFFIDAVIT-IN-REPLY/REJOINDER

I, Sri Kshitish Chandra Sarkar, son of Late Ranjan Sarkar, aged about 64 years, resident of Gosala Railway Colony, Quarter No. 137-A, Maligaon, Guwahati – 781 011 in the district of Kamrup, Assam, do hereby solemnly affirm and state as follows :

1. That, I am the Applicant in the instant case and as such, I am fully acquainted and well conversant with the facts and circumstances of the instant case,
2. That, a copy of the Written Statement filed on behalf of the Respondents in the aforesaid Original Application has been duly served upon me through my Counsel. I have gone through the same and understood the contents thereof. The statements and averments made in the Written Statement, which have not been specifically admitted herein below, shall be deemed to have been denied by the Deponent/Applicant.
3. That, the statements made in paragraphs 1, 2 and 3 of the Written Statement under the heading "Preliminary Objections" are categorically denied by the Applicant. The Deponent humbly submits that by way of the instant Original Application, the Deponent is not asking the Hon'ble Tribunal to re-appreciate evidence, but in fact, it

Filed by the Applicant  
Through  
R.S. Chowdhury  
Advocate 24/05/07

is the case of the Applicant the conclusion/findings reached by the Disciplinary Authorities holding the charges substantiated against the Applicant, are based on *no evidence*. The Applicant further states that the law regarding judicial review in cases of the Departmental Inquiry/Disciplinary proceedings is no longer *res integra* and in fact, the decisions cited by the Respondent authorities in their Written Statement have been diluted by various subsequent judgments of the Hon'ble Apex Court wherein it has been held that in appropriate cases, it would be within the jurisdiction of the Courts to alter punishment/penalties, if the same were shocking to judicial conscience. Hence, the statements made to the effect that the said "Original Application is not amenable in law" are categorically denied by the Applicant in *seriatim*.

4. That, while categorically denying the statements made in paragraph 4 of the Written Statement, the deponent humbly states that the statements made therein are grossly misconceived in view of the fact that the U.P.S.C. is not only an *appropriate party*, but, a *necessary party* notwithstanding the rule envisaged under Article 320(3)(c) of the Constitution of India. It would be an absurd proposition to even suggest that the U.P.S.C. cannot be made a party to the instant proceeding, after the U.P.S.C. having recommended that the Applicant deserves a major penalty, and the Disciplinary Authority, accordingly, having acted on the same. There is no prohibition in the Constitution that an authority envisaged under the Constitution cannot be made amenable to the jurisdiction of the Courts. As such, the Deponent categorically denies the statements made contrary thereto.
5. That, with regard to the statements made in paragraphs 5, 6, 7, 8, 9 and 10 of the Written Statement under the heading "Preliminary Submissions", the Deponent does not admit anything which is not borne out of records or which is inconsistent with/contrary to records of the case. In this regard, the Deponent further reiterates the statements and averments made in paragraphs from 4.1 to 4.21 of the Original Application.
6. That, the Deponent categorically denies the statements made in paragraph 11 of the Written Statement and reiterates the statements and averments made in paragraph 3 herein above. The Deponent further reiterates that the Inquiry Officer did not appreciate the gravity of the matter in its true and entire perspective and completely disregarded and overlooked the statements made by the PW-5 (Sri Amlan Bhadra, on the basis of whose alleged complaints the entire exercise was carried out and who, ultimately, denied any knowledge of any such instance), and hence, the findings of the Inquiry Officer in this regard were vitiated and the consequential order passed by the Disciplinary Authority and the impugned recommendations of the U.P.S.C. are

liable to be looked by this Hon'ble Tribunal, since it was a case of *no evidence* against the Applicant.

7. That, with regard to the statements made in paragraph 12 of the Written Statement against the caption "Parawise Reply", the Deponent has no comments to offer.
8. That, with regard to the statements made in paragraph 13 of the Written Statement, the Deponent does not admit anything, which is not borne out of records of the case and further reiterates the statements made in paragraphs 4.2 and 4.3 of the Original Application. Further, it is essential to note that as per the own admission of the authorities " a preliminary inquiry was registered by the C.B.I. on 01.12.1998 in the case". Hence, the contention of the Applicant, that this was not as per the norms/rules governing the field in this regard, is fortified.
9. That, with regard to the statements made in paragraph 14 of the Written Statement, the Deponent has no comments to offer.
10. That, while categorically denying the statements made in paragraph 15 of the Written Statement, the Deponent reiterates the statements made in paragraph 4.5 of the Original Application and the statements made in paragraph 8 herein above.
11. That, while categorically denying the statements made in paragraph 16 of the Written Statement, the Deponent humbly states that the Railway authorities are certainly not the competent authority to reply to the allegations made against the C.B.I. authorities and hence, the statements made in the said paragraph ought not to be given any regard. Further, the fact that the PW-4, i.e. Sri Jayanta Kumar Das, in his Examination-in-Chief on 21.12.1998 had stated that he had witnessed the C.B.I. people giving "*Dhakka Dhukki*" to the Deponent cannot be disregarded in any manner.
12. That, with regard to the statements made in paragraph 17 of the Written Statement, the Deponent has no comments to offer.
13. That, while categorically denying the statements made in paragraph 18 of the Written Statement, the Deponent reiterates the statements made in paragraphs 4.8 and 4.9 of the Original Application and further states that the lapses on the part of the authorities of not providing the Applicant with the requisite documents and further issuing the corrigendum gravely affected the defense of the Applicant during the inquiry proceedings.

14. That, with regard to the statements made in paragraph 19 of the Written Statement, the Deponent has no comments to offer.
15. That, while categorically denying the statements made in paragraph 20 of the Written Statement, the Deponent states that considering the fact that the entire exercise of carrying out the surprise check had been done at the instance of the PW-5, i.e. Sri Amlan Bhadra, and his denial of acknowledging any such incident is evident of the fact that the entire exercise was carried out to malign the Applicant. The Inquiry Officer ought not to have disregarded completely the statements of the PW-5, since he was the key witness in the entire exercise. Further, the fact that the money was recovered from the office of the Applicant reiterates the contention of the Applicant that the entire incident was manufactured to malign his dignity by some vested interests.
16. That, with regard to the statements made in paragraph 21 of the Written Statement, the Deponent states that the same are in direct contravention to the statements made in paragraph 16 of the Written Statement and as such, the authenticity of the statements made in both the paragraphs is doubtful.
17. That, with regard to the statements made in paragraph 22 of the Written Statement, the Deponent does not admit anything, which is not borne out of records of the case and further reiterates the statements made in paragraph 4.13 of the Original Application.
18. That, while categorically denying the statements made in paragraph 23 of the Written Statement, the Deponent humbly states that the Inquiry Officer, in a most biased and prejudicial manner, took into consideration only those aspects of the matter which were against the Deponent and the various lacunae which were evident overall the place and the unsubstantiated charges were taken note of. The Deponent further states that what ought to have been done by the authorities was a comparison of the question paper, which was alleged to have been disclosed by the Applicant with the question paper which was originally set for the examination. Such a comparison would have clearly revealed the allegation as substantiated. However, neither the Investigating Officer nor the Inquiry Officer deemed it fit to look into that aspect of the matter and hence, taking into consideration the statements of PW-6, i.e. Sri R.K. Agarwal, it cannot be denied that due weightage was not given to the statements of the relevant witnesses during the course of inquiry.

19. That, with regard to the statements made in paragraph 24 of the Written Statement, the Deponent reiterates the statements made in paragraph 18 herein above as well as the statements made in paragraph 4.16 of the Original Application.
20. That, with regard to the statements made in paragraph 25 of the Written Statement, the Deponent has no comments to offer.
21. That, with regard to the statements made in paragraph 26 of the Written Statement, the Deponent has no comments to offer. However, the Deponent deems it pertinent to mention herein that the penalty imposed on the Applicant by the Disciplinary Authority was not only prejudicial to the Applicant, but, was also shocking to judicial conscience.
22. That, the statements made in paragraph 27 of the Written Statement are controverted by the Deponent to the extent they are not borne out of records. Be it stated herein that the statements made in paragraph 4.21 of the Original Application were submission of the Original Application in his representation dated 19.10.2004.
23. That, with regard to the statements made in paragraph 28 of the Written Statement, the Deponent denies the same and further reiterates the statements and averments made in paragraph 4.22 of the Original Application.
24. That, while categorically denying the statements made in paragraph 29 of the Written Statement, the Deponent humbly states that it is a cardinal principle of law that if taking legal gratification is a crime, giving of such legal gratification is equally a crime. As such, the authorities have failed to understand the gravity of the matter and by stating that the same has no relevance to the charges against the Applicant, having in fact, shown the callous attitude, which was meted out to the Applicant, whereas, allowing the said two Trainee Commercial Clerks to go scot-free. It is apparent that the Applicant has been made the scapegoat in the entire matter and has been discriminated against in colourful exercise of powers conferred to the authorities. This Hon'ble Tribunal will, accordingly, look into the matter and grant appropriate relief to the Applicant as has been prayed for in the Original Application.
25. That, the reply to the grounds in paragraphs 30 and 31 of the Written Statement is denied by the Deponent and the Deponent once again reiterates the statements made in paragraph 18 herein above.
26. That, while categorically denying the statements made in paragraph 32 of the Written Statement, the Deponent states that while imposing the penalty of forfeiture of Pension and Gratuity of the Applicant on permanent basis, the Commission itself

noted that there were several lacunae in the case. It is once again reiterated that considering the fact that PW-5 had categorically denied any knowledge of the entire matter, which was a clear case of *no evidence* against the Deponent. Hence, the penalty imposed on the Deponent was biased and passed in a most arbitrary manner.

27. That, with regard to the statements made in paragraphs 33 and 34 of the Written Statement, the Deponent states that the duties assigned to an Inquiry Officer need not be spelt out by the Deponent. If the charged officer had reservation about verification of the manuscript question paper through handwriting expert, it was incumbent upon the Inquiry Officer as well as the Disciplinary Authority to have gone ahead with the same in the interest of justice and verified the handwriting. Without having done the same, the charge against the Applicant cannot be conclusively proved in any way, particularly, considering the fact that the PW-5 had disclaimed knowledge of any such incident and/or statement.
28. That, the Deponent categorically denies the statements made in paragraph 35 of the Written Statement. The Deponent humbly states that the basis for principle of 'preponderance of probabilities' would come into play only if some probabilities existed. The Deponent's case was that there was no evidence against him and hence, the question of 'preponderance of any probabilities' could not exist at all.
29. That, while denying the statements made in paragraphs 36 and 37 of the Written Statement, the Deponent reiterates the statements made in the foregoing paragraph (paragraph 28).
30. That, while denying the statements made in paragraph 38 of the Written Statement, the Deponent reiterates the statements made in paragraph 27 herein above.
31. That, while categorically denying the statements made in paragraph 39 of the Written Statement, the Deponent states that most of the statements of the Prosecution Witnesses were based on hearsay evidence and none of the witnesses could conclusively establish the involvement of the Applicant in the alleged episode in any manner, whatsoever. It is once again reiterated that the Inquiry Officer as well as the Disciplinary Authority have, for the reasons best known to them, acted in a most lopsided manner by giving undue weightage to lapses in the entire case.
32. That, while categorically denying the statements made in paragraphs 40 and 41 of the Written Statement, the Deponent reiterates the statements made in paragraphs 4.10 and 4.11 of the Original Application and further reiterates the statements made in paragraph 5.7 of the Original Application.

- 33. That, while categorically denying the statements made in paragraph 42 of the Written Statement, the Deponent humbly states that the authorities have once again failed to appreciate the fact that the equality before the law and the equal protection of the laws is a cardinal principle of our Constitution and hence, two yardsticks cannot be applied while rendering justice. The fact that one of the Trainee Commercial Clerks had, in fact, denied any acknowledge of the entire incident in his deposition before the Inquiry Officer, cannot be ignored by the authorities in a whimsical manner.
  
- 34. That, while denying the statements made in paragraphs 43, 44 and 46 of the Written Statement, the Deponent humbly states that in view of the facts and circumstances narrated herein above, the applicant is entitled to reliefs as sought for in the instant Original Application. The grounds averred thereto are good and tenable grounds and this Hon'ble Tribunal, in exercise of its jurisdiction, will set aside and quash the impugned orders detailed in the Original Application.
  
- 35. That, the statements made in this paragraph and in paragraphs *1 to 4, 5 (Partly), 7, 9, 10, 11(P), 12, 13(P), 14 to 16, 18 to 21, 22(P), 23 to 34* ..... are true to my knowledge and those made in paragraphs *5 (Partly), 6, 8, 11(P), 13(P), 17, 22(P)* ..... being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the *24<sup>th</sup>* day of May, 2007 at Guwahati.

*Ashish Ch. Sarma*

Identified by me :

DEPONENT

Advocate's Clerk.

111

**NOTICE**

Date : 24.05.2007

From: Mrs. R.S. Chowdhury  
Advocate

To : Mr. J. L. Sarkar,  
S.C., Railways

Sub : O.A. No. 106 of 2006

Shri Kshitish Chandra Sarkar

...Applicant

-VERSUS-

Union of India & Ors.

... Respondents

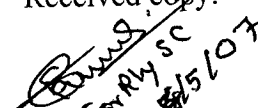
Sir,

Please find herewith a copy of the Affidavit-in-Reply/Rejoinder filed on behalf of the Applicant in the above noted case. Kindly acknowledge receipt of the same.



(Mrs. R. S. Chowdhury)  
Advocate

Received copy:

  
Advocate