

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 201/2006

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

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

1. Orders Sheet..... O.A Pg. 1 to 6
2. Judgment/Order dtd. 3/10/2008 Pg. 1 to 17. Alison 3rd
3. Judgment & Order dtd. Received from H.C/Supreme Court
High Court Appeal No 3432/06 pg 1 to 17
4. O.A..... Pg. to 32
5. E.P/M.P..... Pg. to
6. R.A/C.P..... Pg. to
7. W.S..... Pg. 1 to 12
8. Rejoinder..... Pg. 1 to 5
9. Reply..... Pg. to
10. Any other Papers..... Pg. to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 201/06
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) A. K. Chakraborty

Respondent(s) C. O. T. Toms

Advocate for the Applicant(s) M. Chanda, S. Naik
G. K. Chakraborty, Smti. U. Datta

Advocate for the Respondent(s) Sr.C.G.S.C. G. Baishya

Notice of the Registry	Date	Order of the Tribunal
Application No. <u>26 G 325956</u>	Date <u>12.8.06</u>	18.8.2006 Present: The Hon'ble Shri K. V. Sachidanandan Vice-Chairman.

MS 11.8.06

The claim of the applicant in the O.A. is that he was subjected to a disciplinary proceeding under Rule 14 of GCS (CCA) Rules, 1965 for making false claim in the ~~amount~~ amount. The Disciplinary Authority found him guilty and a punishment of reduction of pay to one stage for one year was imposed upon him. The appeal filed before the Appellate Authority was rejected. The Revision Petition also met with same fate. Hence, this O.A.

I have heard Mr. M. Chanda, learned counsel for the applicant. Mr. G. Baishya, learned Sr.C.G.S.C. represented the respondents.

Considering the issue involved and defence of the applicant is of 'no evidence', I am of the view that this O.A. has to be admitted. Accordingly, the O.A. is admitted. Six weeks time is granted to the respondents to file reply statement.

Contd
18.8.2006

Post the matter on 17.10.2006. It is also made clear that respondents will keep in readiness all the records pertaining enquiry proceedings at the time of hearing.

Vice-Chairman

3.11.06

Post after four weeks for filing written statement.

List on 7.12.06.

Vice-Chairman

Notice & Order Sent
to D/section for
issuing to resp. pg

nos. 1,2,3 & 5 by
regd. A ID post and
another resp. no-4
received issuing
to received by
hand.

07.12.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice - Chairman.

Learned Counsel for the
Respondents represented and submitted
that he may be granted four weeks time to
file reply statement. Post on 10.01.2007.

Vice-Chairman

/mb/

① Service report avcited 10.1.07.

Counsel for the respondents
wanted to file written statement.
Let it be done. Post the matter on
12.2.07.

Vice-Chairman

① Service report avcited.

② No Wks has been billeed. lm

20
8.12.06.

No Wks has been billeed.

20
9.1.07.

No Wks has been
billeed.

26.2.07
No Wks billeed.

20
9.2.07.

12.2.2007

As a matter of last chance
Mr.G.Baishya, learned Sr. C.G.S.C. is
granted further two weeks time to file reply
statement.

Post on 27.2.2007.

Vice-Chairman

(x3)
Q.A. 201 of 06

27.2.07

At the request of learned counsel for the Respondents further four weeks time is granted to file written statement as a last chance. Counsel for the applicant has submitted that matter relates to disciplinary proceedings. Post the matter on 21.3.07.

No Wts has been filed.

20.3.07.

1m

CL
Member

Vice-Chairman

21.3.07.

Counsel for the respondents has got some personal inconvenience. Post the matter on 13.4.07 for filing of written statement and further orders.

No Wts has been filed.

14.5.07

1m

Member

Vice-Chairman

16.5.07

15.5.2007

Written statement filed. Four weeks time granted to file rejoinder, if any.

Post the matter on 14.6.07.

Wts filed by the Respondents. page 1 to 12. Applicant's copy served.

Vice-Chairman

QD.

/pg/

No rejoinder has been filed.

14.6.2007

Post the case on 4.7.2007 granting the Applicant time to file rejoinder.

13.6.07.

Rejoinder not filed.

/bb/

Rejoinder not filed.

3.7.2007

Post the case on 17.7.2007 granting further two weeks time to file rejoinder.

16.7.07.

/bb/

Vice-Chairman

-4-

ff 201/06

17.7.2007

Written statement filed. 3 weeks time is granted to the applicant to file rejoinder.

Post on 9.8.07 for order.

Rejoinder not filed.


Vice-Chairman

~~19.9.07~~

pg

Rejoinder not filed.

20.9.07 2 weeks time is granted to file rejoinder to the applicant.

~~23~~
~~19.9.07~~

Post on 10.10.07 for order. Interim order will continue.

~~6.11.07~~

pg

~~01.10.07~~

PL comply



Rejoinder not filed.

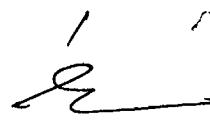
06.11.07.

Learned counsel for the applicant has filed rejoinder only yesterday on 5.11.07. Mr.G.Baishya, learned Sr.C.G.S.C. prays for time to take instructions on the rejoinder. Call this matter on 4.12.07.

5.11.07

Rejoinder submitted
by the Applicant.
Copy send -


Lm


Member(A)

3/11/07

- (1) This case is ready to hearing.
- (2) The meet. d. 10-10-07 typed wrongly instead of 6-11-07.
w/o 3) and rejoinder by

04.12.2007.

This old case of 2006 relates to
Disciplinary Proceedings.

Call this matter for final hearing on

11.12.2007.

10-12-07

The case is ready
for hearing as regard
wbs and refoinder
billed by the parties.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

Lm

22/12/07

11.12.2007 Heard Mr M. Chanda, learned
Counsel for the Applicant and Mr G.
Baishya, learned Sr. Standing Counsel for
the Union of India, in part.

Call this matter on 12.12.2007.

(G. Ray)
Member (A)

(M. R. Mohanty)
Vice-Chairman

nkm

12.12.2007 Heard Mr.M.Chanda, learned
counsel appearing for the Applicant and
Mr.G.Baishya, learned Sr. Standing counsel
appearing for the Respondents.

Hearing concluded. Judgment is
reserved.

(Gautam Ray)
Member (A)

(M.R.Mohanty)
Vice-Chairman

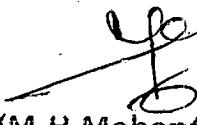
/bb/

31.01.2008

Judgment pronounced in open
 Court. Kept in separate sheets.
 Application is dismissed.

Received copy
 Gramda Prabhuji
 07.02.08


 (Khushiram)
 Member(A)


 (M.R. Mohanty)
 Vice-Chairman

Lm

-----Page Break-----

7.2.08
 C-Copy of the
 Judgment collected
 by the L/Adv. for
 the applicant on
 1.2.08 and a
 copy of the same
 handed over to the
 M.C.G. Sec. to day.

atk

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

ORIGINAL APPLICATION NO.201/2006

DATED THE 31st DAY OF January, 2008

HON'BLE MR. M.R. MOHANTY

VICE CHAIRMAN

HON'BLE MR. GAUTAM RAY

MEMBER (A)

Shri Arup Kumar Chakraborty,
S/o Shri Amal Kumar Chakraborty,
Working as Driller-in-Charge,
Central Ground Water Board,
Division VII,
Guwahati-24

Applicant

(By Advocate Mr. M. Chanda along
with Mr.S. Nath, Mr. G.N.
Chakraborty and Smt. U. Dutta)

vs.

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi 110001

2. The Chairman,
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad,
Haryana-121001

3. Director (Admn.) and V.O.
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad,
Haryana-121001

4. Regional Director,
Central Ground Water Board,
North Eastern Region,
Tarun Nagar,
Guwahati - 5

5. Executive Engineer,
Central Ground Water Board,
Padmapath, Zoo Road Tinali,
Guwahati-24

Respondents

(By Shri G. Baishya, SCGSC)

O R D E R

MR. GAUTAM RAY, MEMBER(A)

This Original Application under Section 19 of the Administrative Tribunals Act, 1985, has been filed seeking for the following reliefs:

"8.1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned charge sheet bearing letter No.1-102/2001-Vig.69 dated 26.02.2002 (Annexure-1), impugned order of penalty bearing letter No.1-162/2003-Vig.128 dated 05.05.2005 (Annexure 12A), impugned order dated 08.09.2005 (Annexure-12B), impugned appellate order dated 25/28.10.05 (Annexure-14) as well as impugned order of revisionary authority dated 21.04.2006 (Annexure-16).

8.2. That the Hon'ble Tribunal be pleased to direct the respondents to restore the pay of the applicant with all arrear monetary benefits.

8.3. Costs of the application.

8.4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

2. Briefly stated the facts of the case of the applicant are (a) that the applicant while working as Driller Incharge, Central Ground Water Board in

✓

Kolkata was proceeded with a major penalty proceeding under Rule 14 of the CCS (CCA) Rules, 1965 on the following Article of Charge:-

"That the said Sh.A.K. Chakraborty, DIC while functioning as DIC during the year 2000 preferred false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act Sh. A.K. Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a Government servant. Sh.A.K. Chakraborty has thus violated the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

A copy of the Memorandum No.1-102/2001-Vig.-69 dated 26.2.2002 enclosing the above mentioned Article of Charge is enclosed as 'Annexure-1' to this O.A. The Disciplinary Authority proposed to sustain the aforesaid Article of Charge by relying on 16 listed documents, as mentioned in 'Annexure-III' and 2 listed witnesses viz., S/Shri I.C. Gupta, ASK, CGWB, Div. XV, Kolkata and Kalasona Dhara, Cleaner, CGWB Div.XV, Kolkata, as indicated in Annexure-IV respectively to this O.A. The applicant submits that before initiation of the disciplinary proceedings, the applicant was served



with a Memo. dated 25.4.2001 asking his application regarding submission of bogus and fictitious TA claim for adjustment of his T.A. advance of Rs.2,900/- sanctioned to him. On receipt of the said Memo. dated 25.4.2001, the applicant tendered his apology vide his letter dated 7.5.2001 giving an explanation that he had submitted the TA bill inadvertently since he had left his personal diary at the work site at Patna. The applicant also states that he submitted a rectified T.A. bill along with his letter dated 7.5.2001. However, the Chairman, CGWB, the Disciplinary Authority, not being satisfied with the explanation given by the applicant issued the Memo. of Charge Sheet dated 26.2.2002 (supra). The applicant vide his reply dated 3.4.2002 stated that he had filled up the T.A. bill in a hurry, without consulting his personal diary which he left at the work site at Patna and further stated that a rectified T.A. bill for the period in question has already been submitted. A copy of the said reply of the applicant is enclosed as 'Annexure-2' to this O.A.

(b) The applicant further states that the Disciplinary Authority after considering the above

mentioned reply of the applicant dated 3.4.2002 came to the conclusion that the applicant admitted the alleged Article of Charge in his statement and, as such, imposed the following minor penalty, without holding any enquiry, vide order dated 2.6.2003, a copy of which is enclosed as 'Annexure-5' to this O.A.:-

"Reduction to a lower stage by reducing his 3 (three) increments in the time scale of pay for a period of 3 (three) years, without cumulative effect and not adversely effecting his pension."

(c) The Appellate Authority, vide its order dated 27.1.2004 set aside the order of penalty dated 2.6.2003 passed by the Disciplinary Authority and passed the following order:-

"i) That the Order issued by the Disciplinary Authority vide CGWB's Order No.1-102/2001-Vig.151 dated 02.06.2003 is set aside and the case is remanded back to the Disciplinary Authority i.e., Chairman, CGWB for getting the matter enquired into by appointing IO/PO under the rules.

ii) That the Disciplinary Authority should take an appropriate view regarding imposition of any penalty, if warranted, after following due procedures as laid down in the CCS (CCA) Rules, 1965."

A copy of the said Order of the Appellate Authority is enclosed as 'Annexure-8' to this O.A. Thereafter the Disciplinary Authority, in

compliance with the order of the Appellate Authority, appointed Inquiry Officer as well as the Presenting Officer in order to enquire into the matter. The inquiry was held on various dates and the applicant duly participated in the inquiry and prayed for examination of 3 (three) defence witnesses. In the said inquiry the applicant also appeared as his own witness and gave his statement before the Inquiry Officer. In his statement before the Inquiry the applicant stated that the T.A. Bill in question is genuine T.A. Bill and admitted that there was some error in the number of days mentioned when he was on tour. The applicant further stated that he filled up the TA bill while on leave at Hqrs. due to serious accident of his son and the bill was submitted relying on memory as he left his diary in the camp.

(d) The applicant further submits that the Presenting Officer in his brief discussed the Article of Charge in detail and came to the conclusion that the charged official committed an unintentional mistake and that the Head of Office could have passed the T.A. Bill on the basis of the rectified one after issuing a warning letter to the

AK

applicant and the matter could have been closed at the divisional level. The Presenting Officer also came to the conclusion that the then H.O.O. (Ex. Engineer) and the Reporting Officer (AEE) failed to follow the actual procedure to deal with such type of case resulting, not properly discharge their duties and responsibility. A copy of the said brief of the Presenting Officer is enclosed as 'Annexure-9' to this O.A. The applicant submits that in the inquiry proceeding none of the listed documents and state witnesses were examined either by the Presenting Officer or by the Inquiry Officer in order to sustain the proposed charge brought against the applicant. However, the applicant cross-examined the defence witnesses. It is the contention of the applicant that the Inquiry Officer without taking into consideration the evidence on record held the applicant guilty of the charge brought against him. The relevant portion of the findings of the Inquiry Officer in the Enquiry Report is quoted herein below:-

"IX. Findings

On the basis of Documentary and Oral evidence adduced in the case before me and in view of the reasons given above, I hereby find Sri A.K. Chakraborty, DIC VII, CGWB, Guwahati guilty of the charge of preferring



a false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back. Sri Chakraborty had claimed Daily Allowance for 42.7 days (written as 43.7 days by SPS in the TA bill, but as per the calculation it is 42.7 days) whereas he was actually in camp/transit for 38.7 days only."

A copy of the Inquiry Report dated 2.3.2005 is enclosed as 'Annexure-10' to this O.A.

(e) It is the further contention of the applicant that the applicant, after receipt of the above mentioned Inquiry Report, submitted a detailed representation to the Chairman, CGWB, Faridabad (Disciplinary Authority) on 7.4.2005 pointing out the various inconsistencies and categorically submitting that the Inquiry Officer's findings are contrary to the evidence recorded in the inquiry proceedings and also stating that there was a bonafide mistake committed in computing the number of working days while submitting the T.A. Bill in question which was preferred without consulting the diary and at a time when the applicant's son sustained serious head injuries. A copy of the representation of the applicant dated 7.4.2005 is enclosed as 'Annexure-11' to this O.A. The applicant thereafter states that the Disciplinary Authority without considering the



18
grounds raised by the applicant in his representation dated 7.4.2005 mechanically passed the impugned order bearing No.1-162/2003-Vig-128 dated 5.5.2005 and imposed the following penalty on the applicant under Rule 15 of the CCS (CCA) Rules, 1965:-

"Reduction to a lower stage by one stage in time scale of pay for one year with cumulative effect."

A copy of the said order dated 5.5.2005 of the Disciplinary Authority is enclosed as 'Annexure-12A to this O.A. Formal order of penalty in respect of the applicant pursuant to the order dated 5.5.2005 was issued on 8.9.2005, a copy of which is enclosed as 'Annexure-12B to this O.A. On 3.6.2005 the applicant preferred an appeal against the impugned order of penalty dated 5.5.2005. The applicant states that the Appellate Authority vide its order dated 25/28.10.2005 confirmed the order of penalty dated 5.5.2005 and rejected the appeal preferred by the applicant without following the procedure laid down in Rule 27 of the CCS(CCA) Rules, 1965 and none of the grounds raised by the applicant was

[Signature]

considered while rejecting the appeal. Copies of the appeal of the applicant dated 3.6.2005 and the Order of the Appellate Authority dated 25/28.10.2005 are enclosed as "Annexures 13 and 14" respectively to this O.A. It is the further contention of the applicant that he preferred a revision petition on 6.12.2005 and that the revisionary authority vide its order dated 21.4.2006 further confirmed the impugned order of penalty dated 5.5.2005 and the impugned appellate order dated 25/28.10.2005 without application of mind and also without considering the grounds raised by the applicant but only relying on the findings of the Disciplinary Authority as well as the Appellate Authority. Copies of the revision petition dated 6.12.2005 and the order of the revisionary authority are enclosed as 'Annexures-15 and 16' respectively to this O.A.

3. Questioning the Orders passed by the Disciplinary, Appellate and Revising Authority (supra), the Applicant has approached this Tribunal by filing the instant Original Application.

4. The respondents have contested the above Original Application by filing a counter reply. The respondents, interalia, have stated that the

applicant's statement that none of the listed documents and state witnesses were examined during the enquiry is false. From the daily order sheet dated 10.2.2005 of the enquiry it can be seen that the Inquiry Officer had directed inspection of prosecution documents which were subsequently brought on record with the consent of both the Presenting Officer and the charged official. The Inquiry Officer even permitted the defence documents as well as defence witnesses as brought by the applicant and their depositions were recorded, duly marked and considered. The applicant also offered himself as his own witness which was duly permitted. The respondents submit that since the depositions of the prosecution witnesses were not found relevant during the enquiry, the Inquiry Officer dropped them in the presence of the Presenting Officer and the charged official. The fact remains that the applicant perused, verified and examined all the documents mentioned in the present application. The respondents further state that the applicant's plea that there is a bonafide mistake in computation of days for daily allowance which cannot be termed as false TA bill, cannot be

AS

accepted as the applicant is a responsible gazetted officer and the responsibility of submission of correct TA bills rests with him. Moreover, the applicant submitted rectified bill only after a show cause notice was given to him by the Executive Engineer and he was directed to explain why disciplinary action should not be initiated against him. The respondents also submit that the Disciplinary Authority imposed the penalty after considering each point raised by the applicant in his representation. The Secretary(WR), who is the Appellate Authority, passed the order of confirmation of the penalty order after considering each and every point of the appeal of the applicant. The respondents further state that the opinion expressed by the Presenting Officer in his brief is purely his personal views and the Disciplinary Authority, who is an independent authority, is not bound by the superficial views of the Presenting Officer. The respondents also submit that as per the Administrative Tribunals Act the applicant is required to exhaust all the channels available for redressal of his grievances in Department before filing an application in the

Tribunal. As a matter of fact the applicant has not yet exercised the recourse of review petition as provided in the CCS(CCA) Rules. Lastly the respondents submit that in view of the facts and circumstances mentioned above, the applicant is not entitled to get any relief whatsoever as prayed for and the instant Original Application is liable to be dismissed.

5. Heard Mr. M. Chanda, learned counsel along with Mr. S. Nath, Mr. G.N. Chakraborty and Smt. U. Dutta, learned Advocates appearing for the applicant and Mr. G. Baishya, learned Senior Central Government Standing Counsel appearing for the respondents. We have gone through the pleadings of either parties and the material document produced before us.

6. It is the case of the applicant that it is admitted position that the applicant did not stay in camp/transit beyond 38.7 days, the bill in which he claimed D.A. for 42.7 days cannot be termed as a false bill. The same can at best be termed as a defective or irregular bill. Therefore, there cannot be any charge of preferring false bill framed against him, nor can such allegation be said



to have been proved against him. It is also the case of the applicant that the Disciplinary Authority as well as the Appellate Authority did not consider the aspect that neither Mr.I.C. Gupta nor Mr. Kalasona Dhar was examined in the Inquiry proceedings and even the listed witnesses were not examined in the Inquiry proceedings by the Inquiry Officer and the charges were held proved and the same was accepted by the disciplinary and the appellate authorities. It is, therefore, the contention of the Applicant that orders have been passed by the authority concerned mechanically.

7. From the material papers along with the Original Application we find that Ticket No.79441116 is one of the listed documents enclosed along with the Charge Memo. issued against the Applicant. From the Inquiry Officer's report we find the above mentioned two officials i.e., Mr. I.C. Gupta and Mr. Kalasona Dhar produced the Ticket bearing No.79441116 to show that the Applicant Mr. Chakraborty travelled along with them in Danapur Express on 24-10-2000 and the Eastern Railway, Kolkata confirmed that the names of the passengers who travelled on Ticket No.79441116 from



Patna to Howrah were Mr. A.K. Chakraborty, Mr. I.C. Gupta and Mr. Kalasona Dhar. It is not the case of the Applicant that he denied that he travelled along with them on Ticket No. 79441116 in Danapur Express on 24-10-2000 from Patna to Howrah. It is also seen from the Inquiry Officer's report that there was no 'State Witness'.

8. From the Order of the Appellate Authority we find that the authority has considered the points raised by the Applicant in his appeal. The Appellate Authority has noted that the Inquiring Authority had ordered inspection of Prosecution Documents which were subsequently brought on record on the consent of both the Presenting Officer and the CO (Applicant). The Inquiry Officer permitted the Defence Documents as well as the Defence Witnesses as brought by the Applicant and their depositions were recorded. Even the Applicant offered himself as his own witness which was duly permitted. In regard to the Prosecution Witnesses, it is noted by the Appellate Authority that they were dropped as they were not found relevant. It is, therefore, remarked by the Appellate Authority that had the Applicant made out any bearing and

[Handwritten signature]

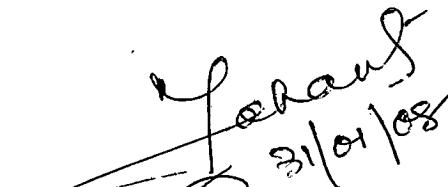
significance in calling the Prosecution Witnesses for examination/cross-examination, he could have impressed upon the Inquiry Officer at that point of time. He did not do so and preferred to sign the relevant documents. The Applicant could not show anything as to how he has been prejudiced for not examining the Prosecution Witnesses. Since the Applicant did not deny that he did not stay in camp/transit beyond 38.7 days and that he travelled with those two persons (supra) by Danapur Express on 24-10-2000 under Ticket No.79441116 from Patna to Howrah but claimed D.A. for 42.7 days we find no reason to say that by not examining them during Inquiry, any prejudice has been caused to the Applicant. The plea taken by the Applicant that in the above scenario i.e., when admittedly the Applicant did not stay in Patna beyond 38.7 days, the TA/DA bill submitted by him claiming 42.7 days' D.A. cannot be treated as false bill, the same can be treated as defective or irregular bill, has not been accepted by the Appellate Authority. This point has also been dealt with by the Appellate Authority in its order.



9. In view of the above, we find no reason to say that the Orders have been passed mechanically or without application of mind. The orders are speaking orders. We find no flaw in conducting the disciplinary proceeding. We, therefore, find no scope to interfere with the orders passed by the competent authorities in this disciplinary proceeding. Applicant is, therefore, not entitled to get the relief prayed for. The judgments relied upon by the Learned Counsel for the Applicant are not applicable in view of the above facts and circumstances.

10. The Original Application being devoid of merit is dismissed with no order as to costs.


(GAUTAM RAY)
MEMBER (A)


(M.R. MOHANTY)
VICE CHAIRMAN
31/01/08

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

WP (C) 3432 OF 2008

Shri Arup Kumar Chakraborty,
 S/o Sri Amal Kumar Chakraborty,
 Working as Driller-in-Charge,
 Central Ground Water Board, Division VII,
 Guwahati - 21.

- Writ petitioner
 - Versus -

1. The Union of India,
 Represented by the Secretary to the Government of India,
 Ministry of Water Resources, New Delhi - 110 001,
2. The Chairman,
 Central Ground Water Board,
 Ministry of Water Resources,
 NH-IV, Faridabad, Haryana - 121001,
3. The Director (Admn.) and V.O.,
 Central Ground Water Board,
 Ministry of Water Resources,
 NH-IV, Faridabad, Haryana - 121001,
4. The Regional Director,
 Central Ground Water Board,
 North Eastern Region,
 Tarun Nagar, Guwahati - 781005,
5. The Executive Engineer,
 Central Ground Water Board,
 Padmapath, Zoo Road Tinali,
 Guwahati - 781024.

- Respondents

BEFORE
HON'BLE MR. JUSTICE I. A. ANSARI
HON'BLE MRS. JUSTICE ANIMA HAZARIKA

Advocate present:

For the writ petitioner	:	Mr. S. Dutta, Mr. M. Chanda, Mr. S. Nath,
For the respondent	:	Ms. J. Huda, CGC,
Date of hearing	:	29.11.2012
Date of judgement	:	07.12.2012

JUDGMENT & ORDER

(Ansari, J)

The petitioner, while serving as a Drilling in-charge (in short, 'DIC'), Central Ground Water Board (in short, 'CGWB' (hereinafter referred to as the 'respondent Board'), Ministry of Central Water Resources, Division XV, Kolkata, submitted a travelling allowance bill (in short, 'TA bill') for the months of October and November, 2000. In the TA bill, so submitted, the petitioner had claimed, in respect of the month of October, 2000, travelling allowance (in short, 'TA') from 19.10.2000 to 29.10.2000.

2. Since, according to the respondent Board, it was detected that the petitioner had claimed TA for the period from 19.10.2000 to 29.10.2000, while he had actually left the camp on 24.10.2000 and ought not to have, therefore, claimed TA for the period from 24.10.2000 to 29.10.2000, the petitioner was served by the respondent Board with a Office Memo., dated 25.04.2001, intimating him and asking his reply regarding submission of bogus and fictitious TA bill. On receipt of the said Office Memo., the petitioner tendered his apology, vide his letter, dated 07.05.2001, giving an explanation that he had submitted the TA bill inadvertently since he had left his personal diary at the work site, at Patna, and with the said reply, dated 07.05.2001, the petitioner also submitted a rectified TA bill in respect of his said official tour. While apologizing by his reply to the said memorandum, the petitioner also admitted, as indicated hereinbefore, that he had already submitted rectified TA bills in the sense that he (i.e., the petitioner) had earlier

claimed TA from 19.10.2000 to 29.10.2000; whereas, he had actually left the camp on 24.10.2000 and the rectification of the TA bill, made by the petitioner, was that he modified his claim for TA bill for the period from 19.10.2000 to 24.10.2000 instead of 19.10.2000 to 29.10.2000.

3. As the petitioner's reply failed to satisfy the disciplinary authority, the petitioner was served with a Memorandum of Charge, dated 26.02.2002, directing him to show cause against the memorandum of charge, the allegation in the Memorandum of Charge being to the effect that the petitioner had made false and fictitious claim in his TA bill by claiming TA for the period from 25.10.2000 to 29.10.2000.

4. The Article of Charge read as under:

"That the said Sh. A.K. Chakraborty, DIC while functioning as DIC during the year 2000 preferred false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act Sh. A.K. Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a Government servant. Sh. A.K. Chakraborty, has thus violated the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

5. The imputation of misconduct, in respect of the Article of Charge aforementioned was, in brief, thus: (i) The petitioner, while working as DIC, in the respondent Board, took, on 11.10.2000, TA advance of Rs. 2,900/-, for undertaking official tour. However, the petitioner submitted his TA bill, for the months of October and November, 2000,

together, by his letter, dated 18.12.2000, for the journey performed by him from Kolkata to Patna and back. In this TA bill, the petitioner mentioned that he had started the journey from base camp on 17.10.2000 and reached Khajekala site, Patna, on 18.10.2000. The petitioner had also shown, in the said TA bill, that during the period from 19.10.2000 to 28.10.2000, he was on Khajekala site, Patna. As per the petitioner's said TA bill, he had started his journey from his worksite, at Khajekala, Patna, to Howrah station, on 29.10.2000, by Danapur Express and reached base camp on 30.10.2000. He, thus, claimed travelling allowance up to 29.10.2000 showing that he had left Khajekala site on 28.10.2000.

(ii) In the meanwhile, however, it was revealed that two persons, namely, I. C. Gupta and K. S. Dhara, who were on leave, had also travelled with the petitioner, on 24.10.2000, from Patna to Howrah in Sleeper class of Danapur Express. In order to ascertain the truth, the petitioner was requested, by letters dated 18.01.2001, and dated 08.03.2001, to confirm the names of the passengers, who had performed journey, on 24.10.2000, from Patna to Howrah, by Danapur Express, in Sleeper class in the railway coach, wherein the petitioner had also undertaken the journey as claimed by the petitioner. The petitioner replied that the passengers, who had travelled with him from Patna to Howrah, were A. K. Chakraborty (i.e., the petitioner himself), I. C. Gupta, and one K. S. Dhara.

(iii) Similarly, K. S. Dhara was also asked by the respondent Board, by letter dated 19.04.2001, to clarify whether he had left the

camp, at Khajekala, on 24.10.2000 (forenoon) or remained at the said site and, if he had left the camp, then, what was the means by which he had left the camp on 24.10.2000 (forenoon) and how many persons had left together ? In response to the letter, 19.04.2001, aforementioned, K. S. Dhara replied that he had left his worksite, at Patna, on 24.10.2000 (forenoon), to proceed on leave, and he had left Patna by Danapur Express accompanied by Sri A. K. Chakraborty (i.e., the petitioner) and Sri I. C. Gupta and that they all had travelled together right from Patna to Howrah in Sleeper class in the same coach.

(iv) The respondent Board also confirmed from the said Sri I. C. Gupta as to whether he had left the camp, on 24.10.2000, alone or in the company of others. In his reply, dated 08.05.2001, Sri Gupta, too, replied that on 24.10.2000, he had performed journey from Khajekala, Patna, to Howrah, by Danapur Express, accompanied by Sri A. K. Chakraborty (i.e., the petitioner) and Sri K. S. Dhara, cleaner.

(v) The above facts showed that the petitioner had, according to the respondent Board, claimed false and fictitious TA bill up to 29.10.2000, whereas, he had, actually, left the site, at Khajekala, Patna, on 24.10.2000, and that the petitioner, therefore, according to the respondent Board, tried to cover up the matter by submitting a rectified TA bill, which was, in the view of the respondent Board, the result of an after-thought. The respondent Board, therefore, alleged that the petitioner had failed to maintain absolute integrity and had violated the relevant rules.

(vi) The petitioner had, then, been served, as already indicated above, with a letter, dated 25.04.2001, informing him that he had submitted a false and fictitious TA bill for adjustment of TA advance of Rs. 2,900/- sanctioned to him to undertake the official journey and he was also directed to clarify as to why disciplinary proceeding should not be drawn against him.

6. On receipt of the memorandum of charge aforementioned, accompanied by a Statement of Imputation of Charge, as stated hereinbefore, the petitioner furnished his reply, by letter, dated 03.04.2002, wherein he submitted, as already indicated above, that he had prepared the TA bill, in question, in a hurry, while he was at his home, on leave, completely relying upon his memory inasmuch as the diary, wherein he used to record the details of his official tours, had been left at his work site, at Patna, and, hence, any error, if had taken place in his TA bills, the same had been inadvertent and unintentional. The petitioner further submitted, in his reply to the aforesaid memorandum of charge, that he had committed a *bona fide* mistake and assured the authority that such a thing would not be repeated in future.

7. As the reply of the petitioner to the memorandum of charge failed to convince the disciplinary authority, with regard to the correctness and genuineness of the petitioner's explanation, a penalty of reduction to lower stage was imposed, on the petitioner, by the respondent Board, by its order, dated 02.06.2005, by reducing the petitioner's three increments, in the time scale of pay, for the period of

three years, without cumulative effect and not adversely affecting his pension.

8. Aggrieved by the penalty, so imposed on him, the petitioner preferred an appeal before the Secretary to the Government of India, Ministry of Water Resources, i.e., appellate authority. The appellate authority passed an order, dated 27.01.2004, setting aside the order, dated 02.06.2003, aforementioned, which had been passed by the disciplinary authority, for, the appellate authority was of the view that the matter needed to be enquired into by appointing Inquiry Officer/Presenting Officer in terms of the Rules. The decision of the appellate authority was based on the fact that in his reply to the charge, the petitioner had not, in specific terms, admitted his guilt and, therefore, holding of an inquiry was necessary.

9. In compliance with the order of the appellate authority, respondent Board appointed Inquiry Officer as well as Presenting Officer, on 06.09.2004, to conduct inquiry against the petitioner on the charge of misconduct, which had been levelled against the petitioner for submission of false and fictitious TA bill.

10. At the inquiry, the Presenting Officer submitted his case in brief. The petitioner, then, in order to controvert the case of the disciplinary authority (i.e., the respondent Board), adduced evidence by examining three witnesses. On completion of the inquiry, the Inquiry Officer submitted his *inquiry report*, on 02.03.2005, wherein he recorded his finding as follows:

"He has singed the TA bill as well as the tour diary on 01.12.2000 and the covering letter on 18.12.2000. The pen used is the same in the TA bill and the Tour diary whereas it is different in the Covering letter. And as per his tour diary for the month of December 2000 (D-I), he was at Khajekala site, Patna on 01.12.2000. Even during the examination by the IO, when the SPS presented himself as his own witness, the SPS first stated that he had written the date on the TA bill & the Tour diary as 1.10.2K to 30.112K and the next date was 1.12.2K and it was written in that sense. And then in the answer to the next question by the IO, the SPS stated, "In tension it was wrongly written". Thus the SPS has himself contradicted his statement.

The SPS remembered even the minutest details regarding his various journeys filled in the TA bill in question. To quote some-

31.102K Dep Howrah 2105 hrs. And Arr. Patna on 01.11.2K, distance 543 kms.

7.112K Dep Khajekala site 0800 hrs by WB03A 6680 and Arr. Ranchi Div V 2030 hrs, distance 348 kms.

12.112K Dep Ranchi Div V 1100 hrs by WB03A 6680 and Arr. Khajekala site 2355 hrs, distance 360 kms.

As per the above, the SPS even remembered the vehicle number by which he travelled from Khajekala site to Ranchi and back as well as that while going to Patna the distance was 384 kms and while returning it was 360 kms. It is thus clear that the SPS did not fill up the TA bill by simply relying on memory.

Also the SPS has admitted that he committed a mistake, which was unintentional, and bonafide. Whereas he is on one hand saying that it was unintentional, in the same breath he is saying that the mistake was bonafide.

IX. FINDINGS

On the basis of Documentary and Oral evidence adduced in the case before me and in view of the reasons given above, I hereby find Sri A K Chakraborty, DIC, DIV VII, CGWB, Guwahati guilty of the charge of preferring a false TA claim for the months of October and November 2000 for his journey from Kolkata to Patna and back. Shri Chakraborty

had claimed Daily Allowance for 42.7 days (written as 43.7 days by the SPS in the TA bill, but as per the calculation it is 42.7) whereas he was actually in camp/transit for 38.7 days only".

11. The petitioner was, then, served with the *enquiry report* and he was given an opportunity to have his say in the matter. The petitioner accordingly furnished his reply by his letter, dated 07.04.2005. Having considered the entire matter, including the petitioner's reply to the *enquiry report*, the disciplinary authority, having reached the conclusion that the petitioner was guilty of having falsely claimed TA for 42.7 days, whereas he was, actually, in camp/transit for 38.7 days only, passed an order, on 05.05.2005, directing that the pay of the petitioner be reduced by one stage, from Rs. 10,000/- to Rs. 9,750/-, in the time scale of pay, for a period of one year w.e.f. the date of issue of the order (i.e., 05.05.2005) with further direction that on the expiry of the said period of one year, the reduction of pay would have the effect of postponing his future increments of pay.

12. Since the appeal, preferred by the petitioner, failed to yield result, which the petitioner had desired, the petitioner sought for revision of the decisions of the disciplinary authority and also the appellate authority. As the revision, too, failed, the petitioner approached the Central Administrative Tribunal, Guwahati Bench, by filing Original Application, which gave rise to OA No. 205 of 2006. By its order, dated 31.01.2008, as the learned Tribunal has dismissed the said Original Application by terming the same as devoid of merit, the petitioner is, now, before us with the present writ petition, made under

article 226 of the Constitution of India, impugning the order, dated 31.01.2008, passed by the learned Central Administrative Tribunal and also impugning the *charge-sheet*, dated 26.02.2002, the order of penalty, dated 05.05.2005, as well as the order, dated 28.10.2005, passed by the respondent Board.

13. We have heard Mr. S. Dutta, learned counsel for the petitioner. We have also heard Ms. J. Huda, learned Central Government Counsel, appearing for the respondents.

14. While considering the present writ petition, it may be noted that the petitioner, admittedly, submitted his TA Bill for the months of October, 2000, and November, 2000, together. In the month of October, the petitioner had claimed TA for the period commencing from 19.10.2000 and ending on 29.10.2000. On receiving the memorandum, containing the article of charge, the petitioner rectified the TA Bill by making the bill for the period from 19.10.2000 to 24.10.2000 in place of 19.10.2000 to 29.10.2000.

15. Thus, it is clear that the petitioner had claimed TA from 25th to 29th of October, 2000, which he was, otherwise, not entitled to claim. Whether the submission of the TA Bill, claiming TA from 19th October, 2000, to 29th October, 2000, was due to the petitioner's *bona fide* mistake and unintentional or the submission of the TA bill, as described hereinbefore, was intentional, deliberate and *mala fide*, was the core question for decision at the inquiry.

16. Having considered the materials on record, the inquiry officer came to the conclusion that the claim, made for the period from

19.10.2000 to 29.10.2000, was not unintentional and *bona fide*. The reasons, which the inquiry officer assigned, have already been reproduced above.

17. It needs to be, now, pointed out that in his representation, as against the *inquiry report*, the petitioner contended that the findings of the Inquiry Officer were perverse. It may be noted, in this regard, that in order to treat a finding, given by an inquiry officer, perverse, the finding has to be reached without any material in support of the finding, or wholly against the weight of the materials on record or in violation of law, which caused miscarriage of justice. A mere erroneous or wrong decision is not amenable to writ jurisdiction under Article 226 of the Constitution of India.

18. Having cautiously and minutely examined the reasons, which the Inquiry Officer as assigned, we do not find that the findings can be said to have been reached without any material on record or contrary to the material on record. In reaching this finding, there was no violation of law either inasmuch as the finding is consistent with the material on record. Even if there were two views possible and the Inquiry Officer has adopted one of these two views, this Court, while exercising its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would not act as an appellate authority and would not take a contrary view and interfere with the finding by substituting its own view in place of the view taken by the enquiry officer, particularly, when the finding cannot be said to be wholly

unreasonable, irrational, based on no material or wholly contrary to the materials on record.

19. It has been contended, on behalf of the petitioner, that the enquiry suffered from serious lapse of procedural requirements inasmuch as no witness was examined by, or on behalf of, the disciplinary authority and the relevant document, namely, the TA bill, in question, was not formally proved at the inquiry. It is, however, not in dispute that apart from the list of witnesses, a list of documents had also been submitted by the petitioner, which included the TA bill, in question.

20. While considering the above contention of the petitioner, it is of utmost importance to note that the contents of the TA bill, in question, were never in dispute in the sense that the petitioner had all along admitted that he had submitted TA bill for the period from 19.10.2000 to 29.10.2000 and he, upon receiving notice, as mentioned above, rectified his bill by claiming TA from 24.10.2000 to 29.10.2000. It becomes, therefore, crystal clear that notwithstanding the fact that the TA bill, in question, had not been exhibited or proved at the inquiry, by any officer, on behalf of the disciplinary authority, the contents of the TA bill, in question, remained undisputed.

21. In the circumstances, as indicated above, no prejudice can be said to have been caused to the petitioner. In fact, to a pointed query made by this Court, nothing could be submitted, on behalf of the petitioner, to show that the petitioner suffered any prejudice, because

of the fact that the TA bill, in question, had not been formally proved by bringing in any witness.

22. A disciplinary inquiry, one has to bear in mind, is essentially an inquiry for the purpose of determining the guilt or otherwise of the employee, who is proceeded against. The procedural safeguards are required to be adhered to so that no prejudice is caused to the employee, who faces the inquiry. What an inquiry, therefore, requires is fair play and transparency and not technical adherence to the relevant rules.

23. In the case at hand, there was no prejudice caused to the petitioner and, therefore, no miscarriage of justice took place. The lapse, on behalf of the disciplinary authority, to examine a witness for the purpose of proving the TA bill, in question, cannot be considered so serious a lapse that it can be held to have rendered the finding of the inquiry officer not sustainable in law. This apart, the finding of the inquiry officer can, by no means, be regarded perverse inasmuch as sufficient cogent reasons have been assigned in support of the conclusion, which the inquiry officer has, eventually, reached.

24. While considering the question as to whether the failure to bring a witness to produce the TA Bill, in question, was so serious a lapse, on the part of the disciplinary authority, that it rendered the finding of the inquiry officer not sustainable in law, it also needs to be noted, if we may reiterate, that the TA Bill, which forms the subject matter of inquiry, was never in dispute inasmuch as the petitioner admitted that he had, indeed, submitted TA Bill, in question. What the petitioner had

contended was that he had made a mistake in mentioning the date from 24th of October to 29 of October, 2000, and this mistake was unintentional and *bona fide*.

25. The only question, therefore, which remained to be answered by the inquiry officer, as already mentioned above, was whether the TA Bill, which the petitioner had submitted claiming TA from 19.10.2000 to 29.10.2000, was false. This apart, at the time of inquiry, the tour diary was asked for by, and furnished to, the petitioner and, hence, there is no scope to contend that the petitioner suffered from any prejudice. Moreover, and as has already been pointed out above, the petitioner adduced evidence by examining three witnesses. No prejudice or miscarriage of justice can, therefore, be said to have been taken place, when the petitioner has miserably failed to show as to what prejudice, if any, has been caused to him by not examining any witness, when the contents of the documents, which gave rise to the disciplinary proceeding against him, remained undisputed, unchallenged and not denied by him. The learned Tribunal, therefore, committed no error by refusing to interfere with the proceeding, which culminated into the impugned penalty.

26. In support of his contention that notwithstanding the fact that the TA Bill, in question, was admitted document, there ought to have been a witness, who ought to have produced the TA Bill at the time of inquiry. Mr. Dutta has referred to the case of **Roop Singh Negi vs Panjab National Bank and others, (2009) 2 SCC 570**, wherein inquiry officer had substantially relied upon the confession, which had

allegedly been made by the person, who faced the disciplinary proceeding.

27. While considering the case of **Roop Singh Negi** (supra), it needs to be noted that, in **Roop Singh Negi** (supra), the confession, which had, allegedly, been made by the person, who was proceeded against, was not admitted to be true and voluntary and, in the circumstances, it was obvious that without examining the relevant witnesses and without proving the relevant documents, in accordance with law, the inquiry could not have been concluded and the guilt of the employee could not have been determined; whereas, in the present case, the document, in question, which is the basis for proceeding against the petitioner, was, admittedly, submitted by the petitioner. In fact, the observations, appearing in paragraph 15 and 16 of the **Roop Singh Negi**'s case (supra), would bear this aspect, wherein the Supreme Court noted as under:

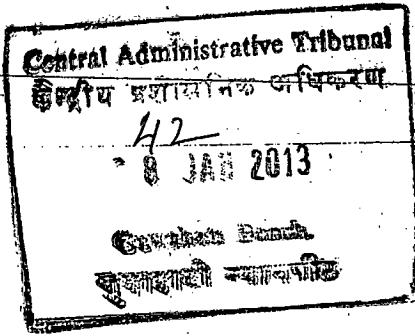
"16. In *Union of India v. H.C. Goel*, it was held (AIR pp. 369-70, paras 22-23)

'22.....The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged

against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind that the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test, which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him ? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence laid in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding, which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

(Emphasis supplied)



Page 17

28. Because of what have been discussed and pointed out above, we do not find any reason to interfere with the order impugned in this writ petition.

29. The writ petition, therefore, fails and the same shall accordingly stand dismissed.

30. No order as to costs.

Sd/-ANIMA HAZARIKA

JUDGE

Sd/-I.A. ANSARI

JUDGE

Memo No. HC. XXI..... 95 R M. Dtd. 4/1/13.....

Copy forwarded for information and necessary action to: -

1. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Ghy.- 5. He is requested to acknowledge the following case record (Part "A" File) alongwith the Original Judgment and Order Sheets of O.A. No. 201/2006. This has a reference to his letter No. 16 - 3/02 JA/395 Date: 21-05-2009.

Enclo.: O.A. No. 201/2006 Part "A" File with

Original Judgment - 17 Sheets
and Order Sheet - 3 Sheets.

By Order

asstt. registrar
Asstt. Registrar (J-II)
Gauhati High Court, Guwahati.

4/1/13

42

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 201 /2006

Shri Arup Kumar Chakraborty
-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 26.02.2002- That your applicant while working as Dealer Incharge, Central Ground Water Board at Kolkata, he was served with a memorandum of charge sheet bearing letter dated 26.02.2002 containing article of charge alleging submission of false T.A claim for the month of October and November, 2000 for his journey from Kolkata to Patna and back and thereby he has failed to maintain absolute integrity and has acted in violation of relevant provisions of Conduct Rules, 1965. (Annexure-1)
- 03.04.2002- Applicant submitted the reply denying the charges and further contended that it is a bonafide mistake in computing the number of working days claiming TA/DA since the bill for TA/DA was claimed without consulting the diary and further stated that rectified bill has already been submitted. (Annexure- 2)
- 26.04.2002- Administrative officer issued a memorandum dated 26.04.2002 asking the applicant either to accept or deny the charges framed against the applicant.
- 30.05.2002- Applicant submitted a reply specifically stating that he has committed a bonafide mistake in preferring a TA/DA bill in question and assured the authority that such thing could not be repeated in future.
- 02.06.2003- Chairman, CGWD imposed a minor penalty vide order dated 2.6.2003, whereby reduction is made to lower stage by reducing his three increments in the time scale of pay for a period of three years without cumulative effect and adversely affecting his pension. (Annexure-5)

Arup Kumar Chakraborty

- 12.08.2003- Applicant preferred an appeal on 12.08.2003 against the impugned order of penalty dated 2.6.2003.
- 09.10.2003- In pursuance of the order dated 2.6.2003 formally imposed a penalty of reduction of his basic pay by three stages from Rs. 9,500-8,750 in the time scale of Rs. 7,500-250-12,000 for a period of three years w.e.f 01.10.2003 without adversely affecting the pension.
(Annexure-7)
- 27.01.2004- Appellate authority while considered the appeal dated 12.08.2003 found irregularities, infirmities and defects in the impugned penalty order dated 02.06.2003 and accordingly set aside the order of penalty order dated 02.6.2003 and further observed that disciplinary authority should have taken an appropriate view for imposition of penalty if warranted after following due procedure laid down in CCS (CCA) rules 1965.
Pursuant to the order dated 27.1.2004 a further inquiry proceeding was conducted on 11.10.2004, 10.02.2005 and 11.02.2205.
The presenting officer has submitted his brief holding that the mistake committed by the charged official is unintentional in nature and the head of office could have settle the issue after issuing a warning letter to a charged official but the authority failed to follow the actual procedure, in other wards the presenting officer supported the contention raised by the applicant.
(Annexure-8 and 9)
- 02.03.2005- Inquiry officer submitted his report, which is contrary to the record of the inquiry and held that the charge brought the applicant is proved.
- 16.03.2005- Inquiry report served on the applicant directing him to submitted a representation if any within a period of 15 days.
- 07.04.2005- Detail representation submitted by the applicant pointing out the irregularities and infirmities and defects in the inquiry report.
- 05.05.2005- Penalty imposed by the disciplinary authority whereby reduction is made to a lower stage by one stage in time scale of pay for one year with cumulative effect without consulting the evidence recorded in the inquiry proceeding and also without discussing the evidence as required under the rule.
- 08.09.2005- Formal order of penalty issued in respect of the applicant pursuant to the order dated 05.05.2005.
- 03.06.2005- an appeal preferred by the applicant against the impugned order of penalty order dated 5.5.2005.

Arup Kumar Chakraborty

25/28.10.2005- Appellate authority confirmed the order of penalty dated 5.5.2005 and rejected the appeal preferred by the applicant without following the procedure laid down in rule 27 of the CCS (CCA) Rules 1965 and none of the grounds raised by the applicant was considered while rejecting the appeal.

06.12.2005, 21.04.2006- Applicant preferred a revision petition on 06.12.2005, the reversionary authority further confirmed the impugned order of penalty order dated 5.5.2005 and the impugned appellate order dated 25/28.10.2005 without application of mind and also considering the grounds raised by the applicant but heavily relied upon the findings of the disciplinary authority as well as appellate authority.

PRAYER

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned charge sheet bearing letter No. 1-102/2001-Vig. 69 dated 26.02.2002, impugned order of penalty bearing letter No. 1-162/2003-Vig-128 dated 05.05.05, impugned order dated 08.09.2005, impugned appellate order dated 25/28.10.05 as well as impugned order of revisionary authority dated 21.04.2006.
2. That the Hon'ble Tribunal be pleased to direct the respondents to restore the pay of the applicant with all arrear monetary benefits.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

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

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

21/12/0

Arup Kumar Chakraborty.

45

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 201 /2006

Shri Arup Kumar Chakraborty. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	---	Application	1-22
2.	---	Verification	-23-
3.	1	Copy of memorandum of charge sheet dated 26.02.02.	24 - 30
4.	2	Copy of reply dated 03.04.02	31 - 32
5.	3	Copy of letter dated 26.04.02.	- 33 -
6.	4	Copy of reply dated 30.05.02.	- 34 -
7.	5	Copy of order dated 02.06.03.	35 - 36
8.	6	Copy of appeal dated 12.08.03.	37 - 38
9.	7	Copy of order dated 09.10.03.	- 39 -
10.	8	Copy of appellate order dated 27.01.04.	40 - 43
11.	9	Copy of brief of presenting officer.	44 - 45
12.	10 (Series)	Copy of inquiry report dated 02.03.05 and memorandum dated 16.03.05.	46 - 59
13.	11	Copy of representation dated 07.04.05	60 - 62
14.	12 A	Copy of penalty order dated 05.05.05	63 - 65
15.	12 B	Copy of order dated 08.09.05.	- 66 -
16.	13	Copy of appeal dated 03.06.05	67 - 73
17.	14	Copy of appellate order dated 25/28.10.05	74 - 77
18.	15	Copy of revision petition dated 06.12.05.	78 - 79
19.	16	Copy of revisionary order dated 21.04.06.	80 - 82

Filed By:

Date:-

Advocate

Arup Kumar Chakraborty

46

1

Filed by the applicant
in the name of Shri Arup Kumar Chakraborty
10.05.2006

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 201 /2006

BETWEEN:

**Shri Arup Kumar Chakraborty,
S/o- Shri Amal Kumar Chakraborty,
Working as Driller-in-Charge,
Central Ground Water Board,
Division VII,
Guwahati- 24.**

Applicant.

-AND-

1. The Union of India,

Represented by Secretary to the
Government of India,
Ministry of Water Resource, *Shram Shakti Bhawan* ^{5r.}
New Delhi- 110001.

2. The Chairman,

Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad
Haryana- 121001.

3. Director (Admn.) and V.O

Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad
Haryana- 121001.

4. Regional Director,

Central Ground Water Board,
North Eastern Region,
Tarun Nagar.
Guwahati- 5.

5. Executive Engineer,

Central Ground Board,
Padmapath, Zoo Road Tinali,
Guwahati- 24.

..... Respondents.

Arup Kumar Chakraborty

DETAILS OF THE APPLICATION

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

This application is made against the impugned memorandum of charge sheet dated 26.02.2002, impugned penalty order dated 05.05.2005, impugned order dated 08.09.2005, impugned appellate order dated 25/28.10.05 as well as impugned order of revisionary authority dated 21.04.2006.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant while working as Drilling in-charge, Central Ground Water Board, Division XV, Kolkata, he was served with memorandum of charge sheet bearing letter No. 1-102/2001-Vig. 69 dated 26.02.2002. In the said article of charge it is alleged that during the year 2000 applicant preferred traveling allowance claim for the month of October and November 2000 for his journey from Kolkata to Patna and back and thereby he has failed to maintain absolute integrity and has acted in violation of relevant provision of Conduct Rules 1964. The said memorandum of charge sheet was issued to the applicant under the CCS (CCA) Rules 1965. It is

Arup Kumar Chakraborty

alleged in the imputation of misconduct that the applicant although left the work site on 24.10.2000 but he has claimed TA/DA upto 29.10.2000 which was confirmed from the Railway authority. Although applicant sought to cover up the matter by submitting rectified TA claim as an after thought and the applicant had submitted a bogus and fictitious TA claim for adjustment of his TA advance of Rs. 2900/- sanctioned to him to undertake the journey although 16 numbers of documents/letters received upon by the disciplinary authority as list of documents (Annexure- III) as well as 2 listed witnesses also relied upon by the disciplinary authority in order to sustain the proposed charges. The applicant after receipt of the memorandum of charge sheet he has submitted a reply dated 03.04.02 that the bill was submitted inadvertently without counseling his diary and a rectified TA bill was already submitted and also stated that the mistake is not intentional but due to inadvertence and prayed for exoneration from the charges.

Copy of the memorandum of charge sheet dated 26.02.02 and reply dated 03.04.02 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1 and 2 respectively.

- 4.3 That your applicant further begs to say that the administrative officer vide his office memorandum dated 26.04.02 advised the applicant either to accept or deny the charges framed against him. The applicant again vide his reply dated 30.05.02 specifically stated that he has committed a bonafide mistake and also assured that such things will not be repeated in future.

Copy of the letter dated 26.04.02 and reply dated 30.05.02 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3 and 4 respectively.

- 4.4 That the Chairman of the Central Ground Water Board vide his order bearing letter No. 1-102/2004-Vig-151 dated 02.06.2003 under Rule 11 of the

Arup Kumar Chakraborty

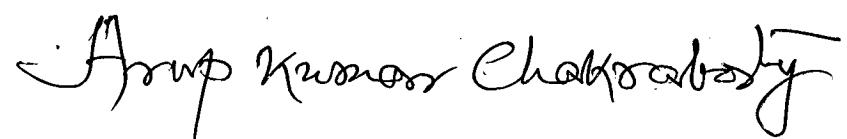
CCS (CCA) Rules 1965 imposed a minor penalty upon the applicant in the following manner:

"Reduction to a lower stage by reducing his 3 (three) increments in the time scale of pay for a period of 3 (three) years, without cumulative effect and not adversely effecting his pension" is imposed on Sh. A.K. Chakraborty, DIC."

In paragraph 3 of the order of disciplinary authority wrongly observed that the applicant in his defence statement dated 30.05.02 had admitted the charge and had requested for lenient view of his case and therefore the Chairman, Central Ground Water Board treating his defence statement dated 30.05.02 as admission of the charge imposed the aforesaid penalty upon the applicant whereas applicant in his reply/defence statement dated 30.05.02 has categorically stated that he has committed a mistake and assured the authority that such mistake will not be repeated in future.

Copy of the order dated 02.06.03 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 5.

- 4.5 That your applicant preferred an appeal on 12.08.2003 against the impugned order of penalty dated 02.06.03. In the said appeal the applicant specifically stated that the TA bill in question was filled in and submitted by him when he was on leave without consulting his personal diary since he had left the diary in the work site and as a result due to inadvertence some wrong entries occurred in the bill and accordingly applicant had offered his extension with all fairness and good faith and submitted the rectified TA bills. The applicant also given a detailed explanation of the other allegation referred in the impugned order regarding his past activities and the applicant prayed for exoneration of charges more so on the ground that the innocent mistake do not constitute misconduct. It is also pointed out in his appeal that necessary recoveries already made from his salaries



as per suggestion of the Executive Engineer who assured the matter would be closed in the event of recovery.

Copy of the appeal dated 12.08.03 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6.

- 4.6 That the Regional Director & Director (Admn.) in pursuance of order of penalty dated 02.06.03 formally imposed the penalty of reduction of his basic pay by three stages from Rs. 9,500-8,750/- in the time scale of Rs. 7,500-250-12,000 for a period of three years w.e.f. 01.10.2003 without cumulative effect and on the expiry of the period of three years his pay would be fixed at the stage of Rs. 10,250 w.e.f. 01.10.2006 without adversely affecting his pension, the said order of penalty is imposed by the order dated 09.10.2003.

Copy of the order dated 09.10.03 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 7.

- 4.7 That the Secretary to the Govt. of India, CGWB, i.e. the appellate authority while considering the appeal dated 12.08.03 it was observed in his appellate order dated 27.01.04 that the cardinal principle of departmental proceeding as envisaged in the CCS (CCA) Rules 1965 had not been followed by the disciplinary authority before imposing of the penalty upon the applicant when the inquiry under Rule 14 is mandatory in the event of denial of charges by the charges officer. It is further stated in the appellate order that in the instant case the appellant did not admit the charge specifically or unconditional since the appellant had termed the mistake as "unintentional" and "bona fide". Therefore, disciplinary authority should have considered the statement of the applicant as denial of charges and proper enquiry should have been get conducted by the disciplinary authority. Therefore, it is further held by the disciplinary authority that imposition of penalty upon the appellant without giving him sufficient and reasonable opportunity to advance his defence during the inquiry is not

Arup Kumar Chakrabarty

only unlawful, irregular and illegal but also against the provision of CCS (CCA) Rules 1965.

The disciplinary authority also further observed that the penalty imposed upon the applicant was defective and the same was imposed merely on the basis of past misconduct which was not cogent and sufficient justification to prove the instant misconduct and accordingly the penalty order dated 02.06.03 was liable to be set aside by the disciplinary authority while the case was recommended back by the disciplinary authority for getting the matter inquired into by appointing inquiry officer/presenting officer under the rules and it is also observed that the disciplinary authority should take an appropriate view regarding imposition of penalty if warranted after following due procedure laid down in CCS (CCA) Rules 1965.

Copy of the appellate order dated 27.01.04 is enclosed herewith as
Annexure- 8.

- 4.8 That the disciplinary authority pursuant to the order dated 27.01.04 appointed Shri Sushil Gupta, Superintending Hydro Geologist, Central Ground Water Board, UR, Dehradun as enquiry authority and Shri N.K Basumatary, Administrative Officer as presenting officer to present the case in support of Article of charges against the applicant vide order dated 06.09.04.
- 4.9 That it is stated that following the order dated 27.01.04 preliminary hearing was held as follows:

- 1) Preliminary hearing - 11.10.04
- 2) Regular hearing - 10.02.2005
- 3) Regular hearing - 11.02.2005
- 4) Receipt of brief of presenting officer- 21.02.05.
- 5) Receipt of Brief of SPS - 21.02.05.

Arup Kumar Chakraborty

The applicant duly participated in the inquiry proceeding and extended his best co-operation and the applicant also submitted list of documents and list of defence witnesses were examined in the proceeding.

4.10 That the presenting officer submitted his brief, in the said brief, the presenting officer has discussed the article of charge in detail and came to the conclusion that the charged official committed an unintentional mistake since he has prepared the TA bill in absence of tour diary and also came to the conclusion that the then Head of office could have passed the TA bill on the basis of rectified one after issuing a warning letter to the applicant and the matter could have been closed at the divisional level. The presenting officer is also of the opinion that the Head of office i.e. Executive Engineer and reporting officer failed to follow the actual procedure to deal with such type of case resulting not properly discharge their duties and responsibilities.

It is quite clear from the brief of the presenting officer that the applicant has not committed any deliberate mistake, therefore it can rightly be said that as per opinion of the presenting officer, the allegation of submission of false TA bill for the month of October and November 2000 for his journey from Kolkata to Patna and back is not sustainable in the eye of law rather the action of the applicant can be termed as irregularity on the part of the applicant while submitting his TA bill for the month of October and November 2000 and on that score alone the order initiating the disciplinary proceeding is highly arbitrary, unfair and illegal.

A copy of the brief of the presenting officer is enclosed herewith and marked as Annexure- 9.

4.11 That in the inquiry proceeding none of the listed documents and state witnesses were examined neither by the presenting officer nor by the inquiry officer in order to sustain the proposed charges brought against the applicant, it is mandatory on the part of the presenting officer to examine

Arup Kumar Chakraborty

the state witnesses and listed documents which was relied upon by the disciplinary authority. However, the applicant has cross examined the defence witnesses which would be evident from the report of the inquiry officer but is categorically submitted that not a singly listed documents out of the 16 documents were examined on behalf disciplinary authority. Surprisingly, neither Mr. I.C Gupta nor Mr. Kalasona Dhar were examined in the inquiry proceeding even the listed witnesses were not summoned by the inquiry officer for the reasons best known to him and thereby no attempt is made on the part of the disciplinary authority to sustain the proposed charges in the inquiry proceeding. However, the inquiry officer without taking into consideration the evidence on record, deliberately held that the applicant is guilty of the charge brought against him since the applicant while preferring a false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back, the applicant had claimed daily allowance for 42.7 days whereas he was actually in camp/transit for 38.7 days only. The relevant portion of the findings of the inquiry officer from the inquiry report is quoted below:

"IX. Findings

On the basis of Documentary and Oral evidence adduced in the case before me and in view of the reasons given above, I hereby find Sri A K Chakraborty, DIC VII, CGWB, Guwahati guilty of the charge of preferring a false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back. Sri Chakraborty had claimed Daily Allowance for 42.7 days (written as 43.7 days by SPS in the TA bill, but as per the calculation it is 42.7 days) whereas he was actually in camp/transit for 38.7 days only."

But surprisingly the inquiry officer while came to such findings against the applicant has simply relied upon certain documents and letters which were indicated in the list of documents but none of the documents

Arup Kumar Chakraborty

were examined as such the inquiry officer cannot take into consideration such documents and letters when analysis and assessment of evidence is made by the inquiry officer. But the inquiry officer also did not take into consideration the statement of the defence witnesses who were examined in the inquiry proceeding at the instance of the charged official i.e. the applicant. Moreover, none of the listed documents nor the listed witnesses were examined in the inquiry proceeding.

It is further submitted that on a careful reading of the findings of the inquiry officer it would be evident that the inquiry officer himself came to the conclusion that as per the alleged TA bill, the applicant had claimed daily allowance for 42.7 days whereas the applicant was actually in camp/transit for 38.7 days only. It is also admitted in the findings that although in the bill, it was written as 43.7 days but as per calculation it was 42.7 days. Therefore, it is crystal clear that the applicant had committed certain bonafide mistake while preferring the TA claim for the month of October and November 2000. Even the authority also admitted that the applicant was actually in camp/transit for 38.7 days. Therefore, such variation or mistake in preferring the TA bill with regard to computation of number of days for daily allowance cannot be termed as a false TA bill, more so when a rectified bill was immediately submitted by the applicant fairly admitting the bonafide mistake in preferring the earlier TA bill. Therefore, in the facts and circumstances as stated above does not warrant initiation of a disciplinary proceeding under Rule 14 of CCS (CCA) Rule, 1965.

Hence the findings of the inquiry officer is contrary to the record of the inquiry proceeding. More so, when the inquiry officer himself admitted that he was actually in camp/transit for 38.7 days only. As such the TA bill cannot be termed as a false bill. Moreover, even the disputed bill was never passed by the authority and no money was paid to the applicant with regard to the TA bill in question and as such Government was never cheated by the applicant at any point of time. Therefore, inquiry report

Arup Kumar Chakraborty

submitted by the inquiry officer vide his letter bearing No. SC/UR-ARC/inquiry/04-28 dated 02.03.05 which is contrary to the evidence recorded in the inquiry report is liable to be set aside and quashed.

Copies of the inquiry report dated 02.03.05 and office memorandum dated 16.03.05 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 10 (Series).

- 4.12 That your applicant immediately after receipt of the inquiry report submitted a detailed representation on 07.04.05 addressed to the Chairman, CGWB, Faridabad wherein the applicant pointed out the various inconsistencies and also categorically submitted that the inquiry report's findings is contrary to the evidence recorded in the inquiry proceeding and also stated that there was a bonafide mistake committed in computing the number of working days when claiming daily allowance for the month of October and November 2000 and the alleged bill was submitted without consulting the diary and at the time when his elder son sustained serious head injury but the authority proceeded against him by initiating a disciplinary proceeding under Rule 14 with the ulterior motive to put the applicant in great hardship and also with the intention to spoil his service carrier. The applicant categorically stated in his representation dated 07.04.05 that the inquiry officer did not confined himself to the materials and evidence recorded in the inquiry proceeding, otherwise the inquiry officer could not have held that the charges framed against the applicant was proved. The applicant also claimed that he had successfully demonstrated that the charge which was labeled against him was without any basis and no proceeding could have been initiated against him, on the face of evidence brought on record, it is case of no evidence and or insufficiency of evidence and the charge as labeled against could not have been held to be proved. There exists no evidence even remotely connected to charge labeled against him. The conclusions of the inquiry officer are solely bases on surmises and conjunctures. It is categorically submitted by

Arup Kumar Chakraborty

the applicant that the report of inquiry was influenced by the personal knowledge of the inquiry officer and findings of the inquiry officer that the charges have been proved would not in principle satisfy the rule of sufficient of evidence and finally the applicant prayed for exoneration from the charges labeled against him.

Copy of the representation dated 07.04.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 11.

- 4.13 That your applicant further begs to say that the disciplinary authority vide impugned order bearing letter No. 1-162/2003-Vig-128 dated 05.05.05, whereby without considering the grounds raised by the applicant raised by the applicant in his representation dated 07.04.05, mechanically imposed the penalty under Rule 15 of CCS (CCA) Rule 1965. In the said order of penalty pay of the applicant has been reduced by one stage from Rs. 10,000-9,750 in the time scale of pay for a period of 1 year w.e.f. date of issue of the order. It was further directed that on the expiry of this period the reduction will have the effect of postponing his future increments of pay. On a careful reading of the impugned penalty order dated 05.05.05, it appears that the disciplinary authority, totally failed to take into consideration the irregularities, inconsistencies and infirmities pointed out by the applicant in his representation dated 07.04.05 and the disciplinary authority also proceeded with the notion that the applicant has preferred a false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back and also failed to take into consideration and contention of the charged official that the applicant has committed a bonafide mistake in computation in claiming daily allowance in the TA bill in question. The disciplinary authority imposed the penalty upon the applicant solely on the ground that he was provided opportunity before imposition of penalty, but the disciplinary authority did not consider the evidence available on record of the inquiry proceeding and accordingly taken a contrary view by the disciplinary authority without looking into evidence on record in the

Amal Kumar Chakraborty

inquiry proceeding. The disciplinary authority also did not consider the fact that the TA bill in question is not a false TA bill even as per the findings of the inquiry officer because inquiry officer also admitted that the applicant was actually in Camp/transit for 38.7 days but he has preferred the claim for 42.7 days. The conclusion raised by the inquiry officer in his inquiry report, the act of the applicant at best may be termed as an irregularity which occurred due to negligence on the part of the applicant but such act or omission on the part of the applicant does not fall within the purview of misconduct for the purpose of initiation of a disciplinary proceeding and the disciplinary authority failed to take into consideration the aforesaid aspect of the matter.

The disciplinary authority in the impugned order of penalty failed to discuss the evidences on record which reached to the conclusion that the applicant is guilty of the charge labeled against him rather disciplinary authority simply discussed a technical point in para 7 regarding the date of submission of the TA bill when it is mandatory to discuss the evidences on record and on that ground alone the impugned order dated 05.05.05 is liable to be set aside and quashed.

The disciplinary authority also expressed an erroneous view that the reasons put forward by the applicant in support of his wrong TA claim are not tenable. The disciplinary authority also admitted in paragraph 9 of the impugned penalty order that the applicant is guilty of claiming DA for 42.7 days when he was actually in Camp/transit for 38.7 days only. In this connection it may be stated that even the said claim for 42.7 days was never entertained by the authority, however, the applicant submitted a rectified TA bill. Therefore, such act or omission on the part of the applicant does not fall within the purview of misconduct and as such question of imposition of penalty under the CCS (CCA) Rule does not warrant in the instant case of the applicant and on that score alone the impugned order dated 05.05.05 is liable to be set aside and quashed.

Arup Kumar Chakraborty

4.14 That the Director, Administration, CCWB, Faridabad thereafter passed a consequential order of penalty vide office order No. 781/2005 dated 08.09.05 in compliance with the impugned order dated 05.05.05.

Copy of the impugned penalty order dated 05.05.05 and impugned order dated 08.09.05 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 12 A & 12 B respectively.

4.15 That your applicant immediately after receipt of the penalty order dated 05.05.05 preferred an appeal to the appellate authority on 03.06.2005. In the said appeal the applicant pointed out various irregularities and infirmities of the proceeding and also contended that order of penalty have been imposed upon the applicant when there is no evidence available against the applicant the inquiry proceeding as such it is a case where penalty have been imposed when there is no evidence recorded against the applicant in the proceeding. The applicant brought paragraph 8 of the inquiry report as well as findings of the inquiry officer to the notice of the appellate authority wherein it would be evident that there are inconsistencies with the assessment of the evidence with the findings of the inquiry officer. The inquiry officer when made the assessment of the evidence has specifically observed that the charged official admitted that he committed a mistake which was unintentional but at the same time reached to the findings that the applicant is guilty of the charge of preferring a false TA claim while especially admitting the fact in his findings that the charged official preferred TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back for 42.7 days (written as 43.7 days) but the charged official was actually in Camp/transit for 38.7 days only. Therefore, it is quite clear even from the findings of the inquiry officer himself that the alleged TA bill in question is not false as alleged in the memorandum of charge sheet dated 26.02.2002 but the said bill may be termed as a defective bill or irregular bill when bonafide mistake is admitted by the applicant.

Arup Kumar Chakraborty

In the appeal the applicant categorically stated in paragraph 2 that none of the 16 listed documents and 2 listed witnesses, which were relied upon by the disciplinary authority for sustaining the proposed charges against the applicant were not examined and the 3 defence witnesses who were summoned and examined in the inquiry proceeding at the instance of the charged official i.e the applicant and deposition of those defence witnesses went in favour of the applicant which would be very much evident from the inquiry proceeding/daily order sheet and it is also pointed out by the applicant in his appeal that no where in the inquiry report it was stated by the inquiry officer that all listed documents and listed witnesses were examined rather inquiry officer categorically admitted that all defence witnesses have been examined and on that score alone the order of penalty dated 05.05.05 is liable to be set aside and quashed.

It is also categorically pointed out by the applicant that findings of the inquiry officer is self contradictory and the same is also contrary to the records of the inquiry proceeding and also pointed out that even the presenting officer in his written brief submitted to the inquiry officer rather goes to show that applicant cannot be held guilty of the charges labeled against him and the matter was not properly dealt with as required under the rule. It is also categorically pointed out in the appeal that on a mere perusal of the inquiry proceeding it would be evident that not a single evidence neither examined nor recorded against the applicant in the inquiry proceeding as such the evidences available in the inquiry proceeding does not support that the charge against the applicant is proved. Moreover, disciplinary authority no where discussed the evidence recorded in the inquiry proceeding but mechanically reached to the conclusion that the charges have been proved.

Copy of the appeal dated 03.06.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 13.

Arup Kumar Chakraborty

4.16 That the appellate authority vides its impugned appellate order No. 6/20/2003-Vig. dated 25/28.10.2005 whereby the impugned order has been passed in confirming the penalty imposed by the disciplinary authority. On a mere reading of the impugned order of appellate authority dated 25/28.10.05, it appears that the appellate authority blindly confirmed the order of penalty by the disciplinary authority without applying his mind independently and also did not follow the procedure laid down in Rule 27 (2) of the CCS (CCA) Rule 1965 while considering the appeal of the applicant. The relevant portion of the Rule 27 (2) of the CCS (CCA) Rule 1965 is quoted below for perusal of Hon'ble Court:

"27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

Jayup Kumar Chakraborty

- (i) confirming, enhancing, reducing, or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases."

On a careful reading of the impugned appellate order dated 25/28.10.05, it appears that the appellate authority did not consider the appeal in the light of the provision laid down in Rule 27 (2) (a) and (b) but mechanically uphold the order of disciplinary authority.

Interestingly while dealing with the appeal the appellate authority although specifically noted the contention raised by the applicant in his appeal and made an attempt to deal with those contention but surprisingly the appellate authority in very tactful manner dealt with those contention deliberately ignoring the evidence recorded in the inquiry proceeding and further made an attempt to give an impression in the impugned appellate order itself as if the appellate authority gone through the records of the inquiry proceeding but in fact appellate authority did not looked into the evidence recorded in the inquiry proceeding but made a deliberate attempt to justify the action of the disciplinary authority. It is emphatically stated that not a single listed document as well as the listed witness relied upon the disciplinary authority to sustain the proposed charges were examined in the inquiry proceeding, the respondents are put to strictest proof thereof. None of the contention raised by the applicant in his appeal was dealt by the appellate authority in the manner it was required. The applicant is very much confident if the record of the inquiry proceeding is produced it would be evident that not a single piece of evidence or deposition of the listed witness and listed documents were recorded in the inquiry proceeding

Arup Kumar Chakraborty

and on that score alone the impugned appellate order dated 25/28.10.05 is liable to be set aside and quashed.

The Hon'ble Court further be pleased to direct the respondents to produce the records of the inquiry proceeding at the time of hearing of the original application.

Copy of the impugned appellate order dated 25/28.10.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 14.

- 4.17 That your applicant preferred revision petition on 06.12.2005 before the revisionary authority under Rule 29 of the CCS (CCA) Rule 1965, raising similar grounds. However, the revisionary authority passed the impugned order bearing letter No. 6/20/2003-Vig. dated 21.04.2006 also confirmed the order of the disciplinary as well as the appellate authority rejecting the contention raised in the revision petition of the applicant. The revisionary authority while rejecting the revision petition has contended that relied upon prosecution documents were subsequently brought on record with the consent of the charged official and the rectified bill was submitted which is after thought. In this connection it may be stated that to examine the listed documents and listed witnesses is a responsibility cast upon the disciplinary authority and his representatives conducting the inquiry and those listed documents and listed witnesses were relied upon by the disciplinary authority to sustain the proposed charges against the applicant. Therefore, it is the duty of the presenting officer as well as the inquiry officer to get the listed documents and the listed witnesses to be examined in the inquiry proceeding in order to sustain the proposed charges since the disciplinary authority failed to get the listed documents and listed witnesses examined in the inquiry proceeding to sustain the proposed charges on that score alone the impugned order of penalty dated 05.05.05, appellate order dated 25/28.10.05 as well as revisionary order dated 21.04.06 are liable to be set aside and quashed.

Arup Kumar Chakraborty

Copy of the revision petition dated 06.12.05 and impugned revisionary order dated 21.04.06 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 15 and 16 respectively.

- 4.18 That it is stated that the very initiation of the disciplinary proceeding on the alleged ground of preferring a false TA bill for the month of October and November 2000 does warrant in the facts and situation of the case of the applicant as indicated above and the impugned penalty order dated 05.05.05 as well as the impugned appellate order dated 25/28.10.05 and impugned revisionary order dated 21.04.06 have been passed without consulting the evidence on record of the inquiry proceeding on record and without examining the listed documents as well as listed witnesses relied upon by the disciplinary authority in the inquiry proceeding as such impugned orders indicated above are liable to be set aside and quashed exonerating the applicant from the charges labeled against him.
- 4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the article of charge framed against the applicant vide memorandum dated 26.02.02 alleging submission of false TA claims for the month of October and November 2000 for his journey from Kolkata to Patna and back is not maintainable in view of the fact that the TA bill in question is not a false bill but there was a mistake in the bill regarding computation of the number of days as such the act or omission which occurred in preferring the same TA bill cannot be termed as false TA claims when the inquiry officer himself admitted in his inquiry report that the applicant had shown 42.7 days in the camp/transit in October and November 2000 whereas his actual stay was 38.7 days as proved during the inquiry. Therefore, such act or omission does not fall within the purview of misconduct for the purpose of initiation of disciplinary

Arup Kumar Chakraborty.

proceeding and such act or omission on the part of the applicant does not warrant initiation of a disciplinary proceeding under Rule 14 of the CCS (CCA) Rules 1965 and on that score alone the memorandum of charge sheet dated 26.02.02 is liable to be set aside and quashed.

- 5.2 For that, the applicant submitted a rectified TA bill immediately when such irregularity is brought to the notice of the applicant and also fairly admitted by the applicant that since the day when bill was submitted his elder son met with a serious head injury and the mistake occurred in preferring the TA claims is unintentional and the same is a bonafide mistake since the bill was submitted without consulting diary. The said fact was successfully established in the inquiry proceeding through deposition made by the defence witnesses while they were cross-examined.
- 5.3 For that, none of the listed documents and 2 listed witnesses relied upon by the disciplinary authority for sustaining the proposed charges were examined in the inquiry proceeding and even the inquiry officer did not make and attempt to summon the listed witnesses to appear before the inquiry proceeding and on that score alone the arbitrary order of imposition of penalty dated 05.05.05 issued by the disciplinary authority which was confirmed by the appellate authority and also by the revisionary authority are liable to be set aside and quashed.
- 5.4 For that, the inquiry officer in his inquiry report did not assign any reason for non-examination of the listed documents and listed witnesses relied upon by the disciplinary authority and also failed to discuss the evidences recorded in inquiry proceeding on the basis of deposition made by the defence witnesses.
- 5.5 For that the disciplinary authority totally failed to take into consideration the irregularities, inconsistencies and infirmities, pointed out by the

Abinash Kumar Chakraborty

- applicant in his representation dated 07.04.2005, while imposing penalty by the disciplinary authority dated 05.05.2005.
- 5.6 For that no evidence is discussed by the disciplinary authority independently applying his mind as required under the rule, but mechanically reached to the conclusion in the light of the decision of the inquiry officer.
- 5.7 For that the appellate authority totally did not consider the appeal of the applicant in the light of the provision laid down in Rule 27 (2) (a) and (b) but mechanically uphold the order of disciplinary authority.
- 5.8 For that appellate authority did not look into the evidence recorded into the inquiry proceeding but made a deliberate attempt to justify the action of the disciplinary authority.
- 5.9 For that not a single evidence was examined nor recorded against the applicant in the inquiry proceeding as such the evidence available into the inquiry proceeding does not support the charge brought against the applicant, on that score alone the impugned penalty order dated 05.05.2005 and the impugned appellate order dated 25/28.10.2005 as well as the impugned revisionary order dated 21.04.2006 are liable to be set aside and quashed.
- 5.10 For that the impugned order dated 21.04.2006 passed by the revisionary authority is cryptic, non-speaking and contrary to the evidence in the inquiry proceeding.
- 5.11 For that none of the grounds raised by the applicant in his appeal were considered by the appellate authority.
- 5.12 For that the infirmities pointed out by the appellate authorities in his earlier order dated 27.01.2004 where it was noticed that the disciplinary authority also this time did not explain the impugned order of penalty

Arup Kumar Chakraborty

and did not give any reason whatsoever for not accepting the written statement of defence which were explained by the applicant in a clear, cogent and transparent manner.

- 5.13 For that the brief of the presenting officer supports the contention raised by the applicant and the report of the inquiry officer is contrary to the brief submitted by the presenting officer and as such the report of the inquiry officer as well as the impugned penalty order dated 05.05.2005, impugned appellate order dated 25/28.10.2005 and the impugned order of revisionary authority dated 21.04.2006 is liable to be set aside and quashed.

6. Details of remedies exhausted.

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

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

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

Arup Kumar Chakraborty

- 3.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned charge sheet bearing letter No. 1-102/2001-Vig. 69 dated 26.02.2002 (Annexure- 1), impugned order of penalty bearing letter No. 1-162/2003-Vig-128 dated 05.05.2005 (Annexure- 12A), impugned order dated 08.09.2005 (Annexure- 12 B), impugned appellate order dated 25/28.10.05 (Annexure- 14) as well as impugned order of revisionary authority dated 21.04.2006 (Annexure- 16).
- 3.2 That the Hon'ble Tribunal be pleased to direct the respondents to restore the pay of the applicant with all arrear monetary benefits.
- 3.3 Costs of the application.
- 3.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

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

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10

11. Particulars of the I.P.O

- | | | |
|-------------------|---|----------------|
| i) I.P.O No. | : | 26 G 32 5956 |
| ii) Date of issue | : | 9.8.06 |
| iii) Issued from | : | G Po. Guwahati |
| iv) Payable at | : | G Po. Guwahati |

12. List of enclosures:

As given in the index.

Abup Kumar Chakraborty

VERIFICATION

I, Shri Arup Kumar Chakraborty, S/o- Shri Amol Kumar Chakraborty, aged about 42 years, working as Drilling Incharge, in the office of the Central Ground Water Board, Division VII, Guwahati-24, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 10th day of August 2006.

Arup Kumar Chakraborty

69

Registered
Confidential

No. 1-102/2001-Vg. - 69
Government of India,
Central Ground Water Board,
Ministry of Water Resources
NII-IV, Faridabad

Dated: 2-6-02101

Memorandum

The undersigned proposed to hold an inquiry against Shri A.K. Chakraborty, DIC, CGWB, Div. XV, Kolkata under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV).

Memorandum a written statement of his defense and also to state whether he desires to be heard in person.

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

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

5. Attention of Shri A.K. Chakraborty, DL is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representations is

Off West
from
Adinckra

2
received on his behalf from another person in respect of any matter dealt with in these proceeding it will be presumed that Shri A.K. Chakraborty is aware of such a representation and that it has been made at his instances and action will be taken against him for violation of Rule 20 of CCS (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

LH
(Dr. D.K. Chaddha)
Chairman

To

✓ Shri A.K. Chakraborty, DCO
CGWB, Div. XV, Kolkata.

Attested
Dutta
Advocate

(13)
Annexure-ISTATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI A.K.
CHAKRABORTY, DIC, CGWB, DIV. XV, KOLKATA.ARTICLE OF CHARGE

That the said Sh. A.K. Chakraborty, DIC while functioning as DIC during the year 2000 preferred false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act Sh. A.K. Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a Government servant. Sh. A.K. Chakraborty has thus violated the provisions of Rule 3(1) (i) and Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Attested
Muttu
Advocate

(17)

Annexure-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SH. A.K. CHAKRABORTY, DIC, CGWB, DIV. XV, KOLKATA.

That the said Sh. A.K. Chakraborty while functioning as DIC during the year 2000 was posted by Executive Engineer, Div. XV, Kolkata vide office order No. 283 of 2000 issued under letter No. 1-95/Div. XV/96/F.Govt.-82 to 25/9/2000 to Rig Unit No. DR/RS-88/83. In compliance to above said order Sh. A.K. Chakraborty intimated that he is proceeding to Patna to look after and taking charge of Rig No. DR/RS-88/83 and also applied for tour advance of Rs. 5000/- vide his application dated 9/10/2000. An amount of Rs. 2900/- was sanctioned to him as Tour advance vide Office Order No. 298 of 2000 issued under letter No. CGWB/Div. XV/TA Advance/2000-873 dated 10/10/2000. Sh. Chakraborty received payment of TA advance vide A/R No. 239 dated 11.10.2000.

Sh. A.K. Chakraborty submitted his TA cms for the month of October and November 2000 vide his letter dated 18/12/2000 for the journey performed by him from Kolkata to Patna and back. In his TA claims he has intimated that he started the journey from Base Camp on 17/10/2000 and reached the Khajekala site at Patna on 18/10/2000. From 19/10/2000 to 28/10/2000 he has shown the stay at Khajekala site Patna. Further as per his said TA bill he started the journey from Khajekala site, Patna to Howrah Station on 29/10/2000 by Danapur Express and reached the Camp on 30/10/2000. He has claimed daily allowance up to 29/10/2000 showing that he left Khajekala site at 18.00 hrs on

In the meantime it was revealed that two officials namely Sh. I.C. Gupta, ASK and Sh. Kalasona Dhara, Cleaner (posted at Khajekala) who were on leave also traveled with Sh. Chakraborty, DIC on 24/10/2000 from Patna to Howrah in sleeper class by Danapur Express. They have produced Ticket No. 79441116 to the effect.

To ascertain the facts and to verify the claims of Sh. Chakraborty, DIC reservation manager Eastern Railway, Kolkata was requested vide letter No. CGWB/Div. XV/TA/Actt/2000-1379 dated 18/2001 and letter No. Div. XV/TA/Actt/2000-1624 dated 8/3/2001 to confirm the names of passengers performed journey from Patna to Howrah by sleeper class on 24/10/2000 by Danapur Express under PNR No. 631-2738453, Ticket No. 79441116 in coach No. S-9, berth No. 11, 14 & 16. He was also requested to certify whether all the 3 berths mentioned in ticket were full and none of the passengers were dropped their journey from destination points i. Patna.

Chief General Manager (PM), Eastern Railway, Kolkata replied vide letter No. RSVN/Verification/ Pt-I dated 12/4/2001 that names of the passengers who traveled on ticket No. 79441116 from Patna to Howrah are A.K. Chakraborty, I.C. Gupta and K.S. Dhara.

Sh. Kalasona Dhara, Cleaner was also asked vide letter No. CGWB/Div. XV/TA/Actt/2000-85 dated 19/4/2001 to clarify whether on leave he left camp (Khajekala site) on 24/10/2000(AN) or remained in site. If he had left camp then by which means he left the camp on 24/10/2000(AN) and how many persons had left together. In reply to above vide letter dated 19/4/2001 that he had left site (Patna) on 24/10/2000(AN)

28-

23

(15)

to proceed on leave by Danapur Express accompanying Sh. A.K. Chakraborty, DIC and Sh. I.C. Gupta, ASK and they all traveled together by sleeper class right from Patna to Howrah.

Sh. A.K. Chakraborty, DIC was intimated vide Memo No. CGWB/Div. XV/TA/Act/2000-132 dated. 25/4/2001 that he had submitted a bogus and fictitious TA claim for adjustment of his TA advance of Rs. 2900/- sanctioned to him to undertake the journey. He was also directed to clarify why disciplinary proceeding should not be drawn against him.

Sh. A.K. Chakraborty, DIC in his reply vide letter dated. 7/5/2001 that he filled up his TA bill when he was on leave and stayed at home and his personal diary on which all the details about the tour was written at site (Pura). So inadvertently in hurry-scurry the same was filled up. He has apologized for the mistake and submitted rectified TA bill.

Sh. I.C. Gupta, ASK was also requested vide letter No. CGWB/Div. XV/TA/Act/2000/181 dated. 8/5/2001 to confirm whether he had left camp on 24/10/2000(AN) alone or in company of other employees. In his reply dated 8/5/2001 Sh. I.C. Gupta, ASK has stated that on 24/10/2000 from Khajekala site he had performed journey from Danapur Express from Patna to Howrah accompany with Sh. A.K. Chakraborty, DIC and Sh. Kalasona Dhara, Cleaner on one ticket.

Sh. A.K. Chakraborty has also stated on 10/10/2001 "he had filled the TA bill in hurry-scurry. He has further stated that on 18/12/2000 he had submitted the bill through a T.O. (D) of his unit and after submission of bill due to operation work pressure that was out of site of mind and at that time he had not realized about the mistake.

It is thus clearly established that Sh. A.K. Chakraborty has cheated the Government by claiming TA/ Daily up to 29/10/2000 whereas he had actually left site at Patna on 24/10/2001. Thereafter, he even tried to cover up the matter by submitting rectified TA Claim as an afterthought.

By his above acts Sh. A.K. Chakraborty DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a Govt. servant and has thus violated the Rule 3(I)(i) & Rule 3(I)(iii) of CCS (Conduct) Rules, 1964.

Attested
Munshi
Advocate

(16)

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH ARTICLE OF CHARGE FRAMED AGAINST SH.
A.K. CHAKRABORTY, DIC IS PROPOSED TO BE SUSTAINED

1. Office order No. 283 of 2000 issued under letter No. 1-95/Div.XV/96/F.Post-821 dated. 25/9/2000.
2. Application dated 9.10.2000 of Shri A.K Chakraborty.
3. Office Order No. 298 of 2000 issued under letter No. CGWB/Div.XV/TA Adv/2000-873 dated 10.10.2000.
4. Letter dated. 18.12.2000 of Shri A.K Chakraborty along with his TA Bill dated. 1.12.2000.
5. A.R No. 239 dated 11.10.2000 vide which Sh. Chakraborty received TA advance amounting to Rs. 2900/-.
6. Ticket No. 7944116
7. Letter No. CGWB/Div. XV/TA/Actu/2000-1379 dated. 18.1.2001.
8. Letter No. Div. XV/TA/Actu/2000-1624 dted. 8.3.2001.
9. Letter No. RSVN/Verification/Pf-1 dated 2.4.2001.
10. Letter No. CGWB/Div. XV/TA/Actcs/200-85 dated. 19.4.2001.
11. Letter dated. 19.4.2001 from Sh. Kalason Dhara, Cleaner.
12. Memo No. CGWB/Div.XV/TA/Actt/200-132 dated. 25/4/2001.
13. Letter dated. 7.5.2001 of Shri A.K. Chakraborty, DIC along with rectified TA Bill.
14. Letter No. CGWB/Div.XV/TA/Accts/200-181 dated. 8.5.2001.
15. Letter dated 8.5.2001 L.C. Gupta A.S.K.
16. Letter dated 10.10.2001 of Sh. A.K. Chakraborty.

Attested
Dutta
Advocate

(17)

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED
AGAINST SH. A.K. CHAKRABORTY, DIC IS PROPOSED TO BE SUSTAINED.

1. Sh. I.C. Gupta, ASK, CGWB, Div. XV, Kolkata.
2. Sh. Kalasona Dhara, Cleaner, CGWB, Div. XV, Kolkata

Substituted
Dutta
Advocate

MISC



NAGAON HPO (782001)
 F.E782112036IN
 T No:1, OP-Code:02
 HIRMAN, C G W BRO.
 RIDABAD, PIN:121001
 T/T K CHAKRABARTY, GHY-24
 Trans.
 1.00, 05/04/2002, 11:58

To
 The Chairman,
 Central Ground Water
 Ministry of Water Resources,
 NH-IV, Faridabad
 Haryana
 PIN-121001

(18)

Sub: Humble prayer against the charges.

Sir,

Most respectfully I beg to state that I have received on 27.3.2002 your
 Memorandum bearing No. 1-102/2001-Vig-69 dated 26.02.2002 and most
 humbly submit the following few lines before your honour for your kind and
 sympathetic considerations.

That Sir, I was shocked to note the contents of the aforesaid
 Memorandum and the charges stated therein pertaining to my T.A. claims for the
 month of October and November, 2000.

That Sir, I had undertaken the tour from Kolkata to Patna and back in the
 month of October-November 2000 as sanctioned and approved and submitted
 my T.A. Bill as referred to in the Memorandum aforesaid.

That Sir, I beg to submit that the T.A. Bill in question was filled in and
 submitted by me when I was on leave and staying at my home place. My
 personal Diary on which all the details about my tour were recorded was at site
 (Patna) and I filled up the T.A. Bill in a hurry simply relying on my memory which
 unfortunately led to my mistaken entries in the T.A. Bill, inadvertently and
 unknowingly.

That Sir, I could know about my mistakes subsequently when the matter
 was brought to my notice only and I had offered my explanations with all my fair

(13)

mind and good faith, without making any attempt to suppress the material facts whatsoever, and submitted a rectified T.A. Bill for the period in question.

That Sir, I beg to tender my unqualified and most humble submission that while submitting the alleged T.A. Bill, I did not have the slightest intention to either cheat the Government or to violate any Service Conduct Rules and I also could not foresee such a serious impact of my inadvertent mistakes which might eventually lead to my own detriment.

That Sir, I beg to state that I had never committed such mistake in the past and I honestly vouch and assure you that I will take all cares so that such mistakes do not occur in future, which in the instant case is first of its kind..

Under the circumstances stated above, I would earnestly pray your honour kindly to consider my mistakes most sympathetically and exonerate me from the charges labelled against me and for this act of your kindness I shall remain ever grateful to you.

Date : 03.04.2002

Yours faithfully,

(A.K.CHAKRABORTY)
Drillers In-charge
C.G.W.B: Division VII,
Guwahati

Subroto
Advocate

-33-

ANNEXURE - 3

38

Confidential

No. 1 102/2001-Vig. V^o :
Central Ground Water Board,
Ministry Of Water Resources,
NH 14, Faridabad.

(90)

Dated the 27/2/02

OFFICE MEMORANDUM

With reference to his defence statement submitted vide his letter dated 3.4.2002 Sh. A.K. Chakraborty, DIC, CGWB, Div.VII, Guwahati is hereby advised to accept or deny the charges framed against him vide memo. of even no. dated 26.2.2002 *in clear terms*. Further it is intimated that if he denies the charges then regular inquiry will be held in the matter. He is requested to submit his reply within 30(three) days of the receipt of this O.M.



(G.P. SHARMA)
Administrative Officer
For Dir(Admin) & VO

To

✓ Sh. A.K. Chakraborty, DIC
Central Ground Water Board,
Div.VII, Guwahati

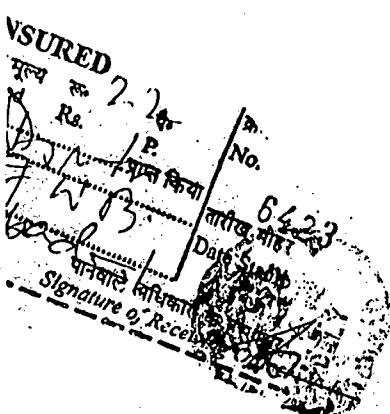
Copy to : The EE, CGWB, Div.VII, Guwahati with the request to hand over the attached sealed envelope to Sh. A.K. Chakraborty, DIC & send his dated acknowledgement to CGWB immediately.

✓ P.S. b. Chakraborty

(G.P. SHARMA)
Administrative Officer
For Dir(Admin) & VO

Re: C.G.W.B.
28/2/02
Attn:

Attested
Dutta
Advocate



Annexure-4

(Typed true Copy)

To,

The Director (Administration) & V.O
 Central Ground Water Board,
 New CGO Complex,
 NH, IV, Faridabad-121001.

Ref:- Your letter No. 1-102/2001-vig-127 dated 26.04.2002.

Sub:- Kind prayer for favour lenient view regarding bonafide unintentional mistake.

Sir,

Most respectfully, I beg to state that I have received your memorandum bearing No. 1/102/2001-Vig-127 dated 26.04.2002 on dated 28.05.2002 and most humbly submit the reply before your honour for your kind sympathetic consideration.

That Sir, I admit that I committed the mistake which was unintentional and bonafide. Therefore I pray your honour kindly favour me a lenient view for which I shall be ever grateful.

That Sir, I assure you that I will take all cares so that such things do not occur in future which in the instant case is first of its kind.

Dated 30.05.2002

Yours faithfully

Sd/- Illegible

(A.K.Chakraborty)
D.I.CCGWD, Division VII,
Guwahati-24


REGISTERED/CONFIDENTIAL

No. 1-102/2001-Vig. - 151

Govt of India

Ministry of Water Resources
Central Ground Water Board,
NHI-IV, Faridabad

(22)

1st - 21.12.2005

ORDER

WHEREAS disciplinary proceedings under Rule 14 of the CCS (CC&A) Rules, 1965 were initiated against Sh. A.K. Chakraborty, DIC, CGWB, Div. XV, Guwahati (now at Div. XVII, Guwahati) vide O.M. 1-102/2001-Vig. 69 dated 26.2.2002 on the following article of charge:-

Charge

That Sh. A.K. Chakraborty, while functioning as DIC in CGWB, Div. XV, Guwahati during the period 2000 preferred false TA claim for the month of October & November 2000 for his journey from Kolkata to Patna & back.

By his above act he has contravened the provisions of Rule 3(1)(i) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

2. WHEREAS a statement of imputation of misconduct or misbehavior in support of the Articles of charge framed against Sh. A.K. Chakraborty, DIC, a list of each of the documents and witnesses by which the articles of charge were proposed to be sustained were also enclosed with the above said O.M. dated 26.2.2002.

3. Sh. A.K. Chakraborty, DIC vide his defense statement dated 30.5.2002 has admitted the charge and has requested for lenient view in his case. He has further assured that he will take all care so that such things do not occur in future. Sh. Chakraborty, DIC has admitted the charge, therefore, it was decided not to appeal to Inquiring Authority in his case.

4. Earlier Sh. A.K. Chakraborty, DIC was charged under Rule 16 of CCS (CC&A) Rules, 1965 vide O.M. No. 1-25/99-Vig-372 dated 11.9.2000 for submitting four false bills of Rs. 500/- each totaling Rs. 2000/- towards dipping of mud pile and for submitting false bill of Rs. 440/- towards charging of new 12 volts battery. After considering his defense statement a lenient view was taken and a penalty of Ceasefire alongwith recovery of Rs. 2440/- was imposed on Sh. Chakraborty vide Order No. 1-25/99-Vig-113 dated 31.10.2000. Despite of this it has been observed that Sh. Chakraborty, DIC has still not mended his ways.

5. WHEREAS the disciplinary authority after examining the case with reference to the gravity & circumstances of the case has decided that ends of justice would be met if a penalty of

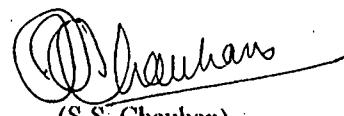
Adarsh
Advocate

Contd-2

Reduction to a lower stage by reducing his 3(three) increments in the time scale of pay for a period of 3(three) years, without cumulative effect and not adversely effecting his pension" is imposed on Sh. A.K. Chakraborty, DIC.

NOW, THEREFORE, the undersigned in exercise of the powers conferred by Rule 15 of CCS(CC&A) Rules, 1965 hereby imposes the abovesaid penalty on Sh. A.K. Chakraborty, DIC.

A copy of this Order may be placed in the CR Dossier of Sh. A.K. Chakraborty, DIC.


(S.S. Chauhan)
Chairman

✓ Sh. A.K. Chakraborty, DIC,
Central Ground Water Board,
Div. VII, Guwahati.

Attested
Muhammad
Advocate

Received on
16/6/03
Ansar
16/6/03

6

To,

The Secretary (W/R)
Ministry of Water Resources
Shram Shakti Bhawan
New Delhi- 110001

12/8/03

(24)

Sub : Humble Appeal against the "Order"

Sir,

Most respectfully I beg to state that I have received on 16-07-03 you "Order" bearing No.1-102/2001-vig-151 dated 02-06-03 and most humbly submit the following few lines before your honour for kind and sympathetic considerations.

1. That Sir, I was shocked to note the contents of the aforesaid "Order" and the charges stated therein pertaining to my T.A. claims for the month of October & January/2000.

That Sir, T.A. bill in question filled in and submitted by me when I was on leave staying at my home place. My Personal Diary (All the details about my tour work recorded) was at site. I filled up the T.A. Bill in hurry simply relying on my memory which unfortunately led to my mistaken entries, inadvertently and unknowingly.

That Sir, as and when the mistake was brought to my notice, I had offered my explanation with all my fair mind and good faith and submitted the rectified T.A. Bills.

On that time I never expect such a serious impact waiting for me for my inadvertent mistakes which eventually lead to my own detriment, as the such tiny matter used to / could be solve at Division level itself.

2. At last but one para of Order was expressed about false activity about digging pit and charging new battery. In that connection I submit the following few lines for kind realization and domain justice.

i. That Sir, Two nos. pit was digged against which Rs. 2000/- payment was made to the concerned party at Illambazar site, Dist. Birbhum, West Bengal of Rig unit DR.Web=69/27. The size of two pits were 12' x 12' x 6' each. To meet the expenditure within P.I. limit, volume of earth cutting split out in four parts and size were 12' x 12' x 3' each.

That Sir, same way Sri Ram Payera, DIC, (DR/Wab=69/27) at Maureshwar site Dist. Birbhum, West Bengal digged same size of pit with same amount from his P.I. by concerned party. The hand receipt was passed without any query by EE., CGWB, Div-XV, Kolkata. It is to inform you at your goodself Sir, Maureshwar EW was constructed before EW of Illambazar.

ii. That Sir, 12V19 Plates new battery was charged and the same was used in site pick up during shifting from Sainthia Hospital Compound to Illabazar site, Birbhum, W.B. The battery was charged at Sainthia Garage but due to non availability of cash memo or bill with them they managed to give the bills of M/S. Sadhu Tyre & Battery Works amounting Rs. 440/-

That Sir, In the both the cases Govt. money was utilize against proper and respected bonafied work in public interest & for urgent Govt. work.

Contd-2

After
Sat.
Power

---2---

(25)

That Sir, the letter Dated 19-03-99 the necessary recoveries made from my salaries was written as per the verbal suggestion of EE, CGWB, Div-XV, Kolkata. He assured me that if I write in that way, the matter was closed.

That Sir, on that above context, dispensation of justice was exacerbated, unwarranted & unexpected which are not aligned with the act, as the punishment was severe.

Misconduct arising from acts on negligence, error of judgement or innocent mistakes, do not constitute misconduct. (Stroud's Judicial Dictionary)

That Sir, Penalties must be commensurate with the gravity of misconduct. Severe punishment frustrated me badly & for future career also. My junior was already promoted to Asst. Ex. Eng. I already lost faithfulness on such types of judgement.

That Sir, I honestly vouch and assure you that I will take all cares, so that innocent mistakes do not occur in future, which is instant case is first of its kind in each above matter.

Under the circumstances stated above, I would earnestly pray your honour, kindly to consider my appeal most sympathetically and exonerate me from the penalties labeled against me and for this act of your kindness I shall remain ever grateful to you.

Yours faithfully,

(A.K.CHAKRABORTY)
DRILLER-IN-CHARGE
CGWB, DIV-VII
GUWAHATI

Copy To:-

ofc

1. The Member(SAM) & V.O. CGWB, NII-IV, Faridabad for information and necessary action please.

Attested
Maitta
Advocate

8/c

(A.K.CHAKRABORTY)
DRILLER-IN-CHARGE
CGWB, DIV-VII,
GUWAHATI

Attest 12/8/03

That Sir, the letter Dated 19-03-99 the necessary recoveries made from my salaries was written as per the verbal suggestion of EE, CGWB, Div-XV, Kolkata. He assured me that if I write in that way, the matter was closed.

That Sir, on that above context, dispensation of justice was exacerbated, unwarranted & unexpected which are not aligned with the act, as the punishment was severe.

Misconduct arising from acts on negligence, error of judgement or innocent mistakes, do not constitute misconduct. (Stroud's Judicial Dictionary)

That Sir, Penalties must be commensurate with the gravity of misconduct. Severe punishment frustrated me badly & for future career also. My junior was already promoted to Asst. Ex. Eng. I already lost faithfulness on such types of judgement.

That Sir, I honestly vouch and assure you that I will take all cares, so that innocent mistakes do not occur in future, which is instant case is first of its kind in each above matter.

Under the circumstances stated above, I would earnestly pray your honour, kindly to consider my appeal most sympathetically and exonerate me from the penalties labeled against me and for this act of your kindness I shall remain ever grateful to you.

Yours faithfully,

(A.K.CHAKRABORTY)
DRILLER-IN-CHARGE
CGWB, DIV-VII
GUWAHATI

Copy To:-

ofc

1. The Member(SAM) & V.O. CGWB, NII-IV, Faridabad for information and necessary action please.

Attested
Maitta
Advocate

8/c

(A.K.CHAKRABORTY)
DRILLER-IN-CHARGE
CGWB, DIV-VII,
GUWAHATI

Attest 12/8/03

Confidential / Regd. - 43

No.3-1068/96-Engg.Estt.

Government of India,

Central Ground Water Board,

NH-IV-Faridabad,

Haryana- 121 001.

(26)

84

Dated the 10.10.2003

OFFICE ORDER NO. 838 OF 2003.

In pursuance of Vig. Section Order issued under No. 1-102/2001-Vig.-151 dated 2.6.2003 to impose the penalty upon Sh. A.K.Chakraborty, Driller-in-charge, his basic pay is hereby reduced by three stage from Rs.9500/- to Rs.8750/- in the time scale of Rs.7500-250-12000 for a period of three years w.e.f. 1.10.2003 without cummulative effect i.e. on the expiry of a period of three years. His pay will be fixed at the stage of Rs.10250/- w.e.f. 1.10.2006. This penalty will not adversely effect the pension of Sh.A.K.Chakraborty.

(M. Mehta)
Regional Director & Director (Admin.)

Distribution :

1. Sh.A.K.Chakraborty, Driller-in-charge, CGWB, Div-VII, Guwahati
2. The Executive Engineer, CGWB, Div-VII, Guwahati.
3. The Admin. Officer (Vig.), CGWB, N.H.IV, Faridabad.
4. The Pay & Accounts Officer, CGWB, Faridabad.
5. Office Order File.
6. C.R. Folder.

*Attested
M. Mehta
Advocate*

No.6/20/2003-Vig.
Government of India
Ministry of Water Resources

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 27 January, 2004

(27)

O R D E R

WHEREAS, a penalty of 'reduction to a lower stage by reducing his 3(three) increments in the time scale of pay for a period of 3(three) years, without cumulative effect and not adversely effecting his pension" was imposed upon Shri A.K. Chakraborty, Driller-in Charge, Central Ground Water Board vide CGWB's Order No.1-102/2001-Vig.151, dated 02.06.2003

2. WHEREAS, aggrieved with the aforesaid order, the said Shri Chakraborty filed an appeal dated 12.08.2003, to the undersigned under Rule 23 of the CCS (CC&A) Rules, 1965, praying inter-alia for setting aside the said order of penalty dated 02.06.2003

3. AND WHEREAS, the said appeal filed by Shri Chakraborty was considered by the undersigned in his capacity as the Appellate Authority and observed as under:-

3.1 Disciplinary proceedings for major penalty under rule 14 of the CCS(CCA) Rules,1965 were initiated against Shri A.K. Chakraborty vide CGWB's Office Memorandum No. 1-102/2001-Vig.-69 dated 26.02.2002 for his alleged misconduct of false claim of TA bills which he submitted in the month of October / November, 2000 after performing his journey from Kolkata to Patna and back. In his written statement of defence dated 03.04.2002 to the said Office Memorandum, Shri Chakraborty inter-alia stated that the mistaken entries in the said TA bill were made by him because he was on leave and staying at home and he filled up the same relying on his memory without seeing his personal diary, in which all the details about his tour were recorded. Since he did not specifically admit or deny the charge in the said written statement of defence, the Board again

91

(25) 86

advised Shri Chakraborty to accept or deny the charge framed against him "*in clear terms*", vide their Office Memorandum dated 26.04.2002. Shri Chakraborty vide his letter dated 30.05.2002 had stated that "I admit that I committed the mistake which was unintentional and bona-fide." Considering the above statement as admittance of the above charge by Shri Chakraborty and also considering that in the past also a minor penalty of "censure" had been imposed upon him, the Disciplinary Authority imposed a penalty of "Reduction to a lower stage by reducing his three increments in the time scale of pay for a period of three years, without cumulative effect and not adversely effecting his pension" upon Shri Chakraborty, without holding any regular inquiry against him.

3.2 In his appeal dated 12.08.2003, Shri Chakraborty repeated his earlier submissions which he also made in his written statement of defence dated 03.04.2002 and *inter-alia* stated that the penalty imposed upon him is not commensurate with the gravity of misconduct and the mistake was done by him inadvertently and unknowingly as he filled up the TA bill in a hurry, relying on his memory without going through his personal diary.

3.3 It was observed by the undersigned that the cardinal principle of departmental proceedings as envisaged in the CCS (CC&A) Rules, 1965 had not been followed by the Disciplinary Authority before imposing the penalty upon the Appellant. In terms of provisions contained in the CCS (CC&A) Rules, 1965, if the CO denies the charge, the inquiry under Rule 14 is mandatory. However, in case, the CO accepts the charges, the DA will record his findings on the charge and decide imposition of one of the penalties. In the instant case, it is noticed that the so-called admittance of charge by the appellant was not in specific, cogent, unambiguous, unequivocal and unconditional terms. In his reply, the appellant had termed the mistake as "unintentional" and "bonafide", which by no stretch of imagination can be termed as acceptance of the charges by him. The said statement of the appellant should have been considered as denial of charges, and proper inquiry should have been got conducted by the Disciplinary Authority. Thus, imposition of the penalty upon Shri Chakraborty by the Disciplinary Authority without giving him sufficient and reasonable

opportunity to adduce his plea / defence during the inquiry, is not only unlawful, irregular and illegal but also against the provisions of the CCS(CCA) Rules.

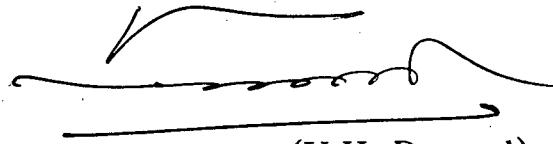
3.4 Besides, serious technical infirmities have been noticed in the CGWB's Order dated 2.6.2003 vide which the penalty was imposed upon Shri Chakraborty. It is noticed that the Disciplinary Authority in his note dated 3.5.2003 had imposed a minor penalty of withholding of three increments for three years upon Shri Chakraborty. However, while formally communicating the penalty to the CO vide CGWB's Order dated 2.6.2003, *a penalty of "reduction to a lower stage by reducing his three increments in the time scale of pay for a period of three years, without cumulating effect and not adversely effecting his pension was imposed on Shri A.K. Chakraborty, DIC".* The impact of the penalty imposed vide order dated 02.06.2003 was al-together different from that which was decided by the Disciplinary Authority. The undersigned has also noticed that the said order dated 2.6.2003 imposing the penalty upon Shri Chakraborty was not a reasoned and speaking one. Nowhere in the said order, the reasons for not accepting the written statements of defence were explained in a clear, cogent and transparent manner. In the order, the penalty was justified merely on the basis of the past misconducts committed by Shri Chakraborty for which a minor penalty of "Censure" with further order for recovery of Rs. 2440/- was imposed upon him vide CGWB's order dated 31.10.2000, which, in fact, was not cogent and sufficient justification to prove the instant misconduct.

4. NOW THEREFORE, after considering the totality of the circumstances and the fact that reasonable opportunity was not granted by the Disciplinary Authority to the appellant and also the fact that there were technical infirmities in the Order dated 2.6.2003 issued by the Disciplinary Authority, the undersigned, in exercise of the powers conferred upon him under Rule 27 of the CCS (CC&A) Rules, 1965, hereby orders as under-

- i) That the Order issued by the Disciplinary Authority vide CGWB's Order No. 1-102/2001-Vig.151 dated 02.06.2003 is set aside and the case is remanded back to the Disciplinary

Authority i.e Chairman, CGWB for getting the matter enquired into by appointing IO/PO under the rules.

- ii) That the Disciplinary Authority should take an appropriate view regarding imposition of any penalty, if warranted, after following due procedures as laid down in the CCS(CC&A) Rules, 1965.



(V.K. Duggal)

Secretary to the Government of India
& Appellate Authority

✓ Shri A.K. Chakraborty,
Driller-in charge,
Central Ground Water board,
Division-VII,
Guwahati
(Through Member (SAM) & VO, CGWB)

Attested
Dutta
Advocate

Received on
23/02/04
Anil
22/02/04

Brief of Presenting Officer Sri N.K.Basumatari (A.O.) in connection with Departmental Inquiry into charges framed against Sri A.K.Chakraborty vide office Memorandum No. 1-102/2001-Vig-69 dated 26.02.2002 and Inquiry being held under order No.1-62/2003-Vig-249 dated 06.09.2004 submitted to Inquiry Officer.

Name of Inquiry Officer: - Sri Sushil Gupta (Supdt HG & Inquiry Authority)
 CENTRAL GROUND WATER BOARD,
 2, Ankitpuram, GMS Road, Dehradun: - 248001.

1. Preliminary Hearing held on 11.10.2004.
2. Inspection of Documents by SPS held on 14.10.2004.
3. Demand given by SPS for Additional Document on 05.11.2004.
4. List of Defence witness given by the SPS with proper relevancy on 01.12.2004.
5. Inspection of Additional Documents by SPS on dated 22.12.2004.
6. Regular Hearing held on 10.02.2005 at 10.30 Hrs. to 11.02.2005 upto 12.00 Hrs.
7. Defense witness summoned & interrogated as follows :-
 - a) Sri Anjan Samanta (TOD), CGWB, Div-XV, Kolkata, at 12.30 Hrs.
 - b) Sri S.D.Shah (Retd. Asst. CGWB) at 14.30 Hrs.
 - c) Sri U.Gogoi (Sc-D), NER, CGWB, GIY-35 at 16.00 Hrs
8. Sri A.K.Chakraborty (SPS) appeared as self witness on 10.02.2005.

Observation in Details: -

- 1) The Article of charge mentioned in charge sheet (Annexure-I) should be written as "That the said Sri A.K.Chakraborty, DIC while functioning as DIC during the year 2000 preferred false TA claim for the month of October & November, 2000 for his journey from Patna to Kolkata." Inspite of Kolkata to Patna & back.
- 2) It is revealed from the statement(DW-1) of A.Samanta (TOD) the TA Bill (S-04) prepared / written on 18/12/2000 when the SPS on leave and submitted by Mr. Samanta TOD to the then Executive Engineer, CGWB, Division XV, Kolkata at his chamber.
- 3) From the prescription & report (AD-1 & AD-2) of x-ray (plate seen by me & IO)It is established that during that period the SPS had gone through great mental tension due to serious illness (Skull crack) of his elder son Sri Argha.Kamal.Chakraborty.
- 4) The TA Bill (S-04) which was submitted on 18.12.2000 was a genuine TA Bill, had some error in the number of days mentioned as SPS on tour Out of 43.7 days on tour, 5 days show as tour when SPS was actually in at HQs. The mistake was genuine as SPS written/prepared the TA Bill (S-04) in absence of his tour Diary which was left at field office at Khajekalle Pathia (mention in reply of the Memo (S-13) dated 25/4/2001) and in great mental tension as stated above.
- 5) Without verify / approval of Reporting Officer (the then AEE) the TA Bill (S-04) of SPS can not move to Account section for passing. It was a procedural mistake.
- 6) The Reporting officer (the then AEE) had not followed the actual office procedure in that case. Being Reporting officer he should enquire the matter at his level, by issuing memo/explanation to SPS not to pass on to his

*Afterwards
for reference*

- 7) The procedure followed by H.O.O./the then Executive Engineer is not correct to deal with such types of TA Bill (S-04) At first H.O.O. should issue the explanation call to person concerned, if he deny the fault then H.O.O. should inquire the matter through travelling authority and establish the vigilance case.
- 8) Railway authority (S-09) not confirmed whether SPS performed journey or not, But SPS voluntarily expressed his journey through his reply (S-13) of Memo dated 25.04.2001 in rectified TA Bill, proved his valued integrity without doubt.
- 9) Without waiting for the reply (S-13) of Memo dated 25.4.2001 from SPS, the H.O.O. (the then Ex. Engr.) Can not decide to forward the case to Director (Adm.), CGWB, Faridabad (S-12) which lead to avoided the path of natural justice.
- 10) Apologies reply of SPS with rectified TA Bill (S-13) against memo dated 25.4.2001, should given due waitage before initiate the case. But the same was not followed in this case by the then Ex. Engineer.
- 11) Halt & Journey of the rectified TA Bill (S-13) was genuine & correct submitted by SPS against reply of memo dated 25.4.2001 as doubted period was rectified.
- 12) Regarding mistake of the then D.A. (AD-3 to AD-5) during imposing the penalty to SPS & delay occurred for reinstall his basic pay & depute I.O./P.O. which is self-explanatory. I am not the authority to comments thereon but the same was documentary proved.

Conclusion:

- 1) The Mistake done by SPS was unintentional in nature, as any man may done the mistake at that condition, SPS had gone through during preparing /written the TA Bill (P.No.-04) in absence of tour diary.
- 2) The then H.O.O. may pass the TA Bill on the basis of rectified (S-13) one, after issuing a warning letter to SPS result the case might be Close at Divisional level.
- 3) The then H.O.O. (Ex. Engineer) & Reporting officer (AEE) fail to follow the actual procedure to deal with such type of case resulting, not properly discharge their duties & responsibility.

sd/-
(N.K. Basumatari, AO)
Presenting Officer

Attested
Abul Butta
Advocate
Copy To: - The SPS Sri A.K.Chakraborty, DIC CGWB, DiVII,
Guwahati-781024, for information & necessary action.

E. Bonneman
(N.K. Basumatari, AO)
Presenting Officer

TEL: OFF: 0135-272952
RES: 0135-2761048
FAX: 0135-2729525

MAIL: sushilanita@gmail@yahoo.com

To:
The Chairman
Central Ground Water Board
Baujal Bhawan, NH IV Faridabad

277/Div. Admin.

277/Div. of C.G.W.B.

277/Div. No 3046

Date: 9.3.05

-46- ANNEXURE → 10
CONFIDENTIAL/SPEEDPSO
NO. SG/UR-AKC/INQUIRY/04-28
CENTRAL GROUND WATER BOARD
UTTARANCHAL REGION
GOVERNMENT OF INDIA
MINISTRY OF WATER RESOURCES
2, ANKITPURAM, GMS ROAD
DEHRADUN 248 001
DATED 02.03.2005

Subject: Departmental Inquiry into charges framed against Sri A K Chakraborty, Driller-in-Charge, Div. VII, Guwahati vide O.M. No 1-102/2001-Vig-59 dated 26.02.02

Sir,

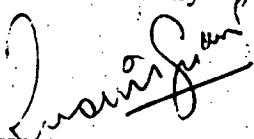
I was appointed by you under your Order No.1-162/2003-Vig-249 dated 06.09.2004

as the Inquiring Authority to inquire into the charges framed against Sri A K Chakraborty, Driller-in-Charge, Div. VII, Guwahati vide O.M. No 1-102/2001-Vig-69 dated 26.02.02.

I have since completed the Inquiry and on the basis of documentary and oral evidence adduced before me, prepared the Inquiry Report, which is forwarded to you for further necessary action.

The records pertaining to the Inquiry, including the Inquiry report, totaling 136 pages are enclosed as per attached list.

Yours faithfully


(SUSHIL GUPTA)
Supdt. HG. & Inquiring Authority

Encl : As Above

Attested
Dutta
Advocate

LIST OF RECORDS (ORIGINAL) ENCLOSED WITH THE INQUIRY REPORT

SN	DESCRIPTION OF DOCUMENT	PAGE NOS
1	Inquiry Report	1-10
2	Daily order sheet of preliminary hearing held on 11.10.2004	11-13
3	Daily order sheet of Regular hearing held on 10.2.2005	14-15
4	Daily order sheet of Regular hearing held on 11.2.2005	16
State Documents S-1 to S-18		
5.	Copy of Memorandum No.1-102/2001-vig-69, dated: 26.02.2002-	S1 17-22
6.	Copy of Defence statement dated: 30.05.02 submitted by A.K. Chakraborty, DIC	23 -S2
7.	Original office order No. 283 of 2000 issued under letter No.1-95/Div.XV/96/F.Post-821, dated: 25.09.2000	24 -S3
8.	Original application dated: 09.10.2000 of Shri Chakraborty.	-S4 25
9.	Original office order No.298 of 2000 issued under letter No. CGWB/Div.XV/TA Adv./2000-873, dated: 10.10.2000.	26 -S5
10.	Original letter dated 18.12.2000 of Shri Chakraborty along with his TA Bill dated 1.12.2000	27-36 -S6
11.	Original AR No.239 dated: 11.10.2000 vide which Shri Chakraborty received TA in advance of Rs. 2900/-	37 -S7
12.	Original Ticket No.79441156	-S8 38
13.	Original letter No. CGWP/Div.XV/TA/Acctt. /2000-1379, dated: 18.01.2001	39 -S9
14.	Original letter No. CGWB/Div.XV/TA/Acctt. /2000-1624, dated: 08.03.2001	40 -S10
15.	Original letter No.RSVN/Verification/Pt-1, dated: 12.04.2001	-S11 41
16.	Original letter No. CGWB/Div.XV/TA/Acctt. /2000-85, dated: 19.04.2001	42 -S12
17.	Original letter dated: 19.04.2001 from Shri Kalsona Dhara, cleaner	-S13 43
18.	Original Memo No. CGWB/Div.XV/TA/Acctt. /2000-132, dated: 25.04.2001	44-45 -S14
19.	Original letter dated: 07.05.2001 from Shri Chakraborty, DIC along with rectified TA Bill.	46-56 -S15
20.	Original letter No. CGWB/Div.XV/TA/Acctt. /2000-181, dated: 08.05.2001	57 -S16
21.	Original letter dated: 08.05.2001 from Shri C. Gupta ASK	-S17 58
22.	Original letter dated: 10.10.2001 of Shri Chakraborty, DIC.	-S18 59-61
DEFENSE DOCUMENT		
23	Tour Diary for Dec/2000 & movement diary of Shri Chakraborty, DIC & SPS	62-63 -D-1
OTHER DOCUMENTS		
24	Statement of Defense	64
25	Deposition of Defense Witness, Sri Anjan Samanta	- DWI 65-67

26	Deposition of Defense Witness, Sri S D Shah	DW2	68-70
27	Deposition of Defense Witness, Sri U Gogoi	DW3	71-74
28	Deposition of Defense Witness, Sri A K Chakraborty	DW4	75-78
29	Copy of X-Ray report Master Argha Kamal Chakraborty, dt. 14.12.2K	AD1	79
30	Copy of prescription of Dr N K Das dt 15.12.2000	AD2	80
31	Copy of order no 6/20/2003-Vig dt. 27.1.04	AD3	81-84
32	Copy of representation of Sri A K Chakraborty dt. 18.5.04	AD4	85
33	Copy of O.O No 409 of 2004 vide letter no 3-1068/96-Engg Estt-66 dt 2.6.04	AD5	86
34	Brief of Prosecuting Officer		87-89
35	Brief of Suspect Public Servant		90
36	Correspondence pertaining to the inquiry		91-136

Attested
Dutta
Advocate

INQUIRY REPORT
IN THE CASE AGAINST
SRI A K CHAKRABORTY, DRILLER-IN-CHARGE, DIV. VII,
CGWB, GUWAHATI

Under sub rule (2) of Rule 14 of CCS (CC&A) Rules 1965, I was appointed as the Inquiring Authority vide Memo no 1-162/2003-Vig-249 dated 6.9.2004 by the Chairman, Central Ground Water Board (CGWB), Faridabad, to inquire into the charges framed against Sri A K Chakraborty, Driller-In-Charge, Div. VII, CGWB, Guwahati vide Memo No 1-102/2001-Vig-69 dated 26.2.02. I have since completed the inquiry and on the basis of documentary and oral evidences adduced before me, have prepared the Inquiry Report as under:

I. DATES OF HEARING:

The entire proceedings were held in the office of the Regional Director, CGWB, NER, Guwahati. The Presenting Officer (PO) in the case, Sri N K Basumatari, Administrative Officer, CGWB, NER, Guwahati and the Suspect Public Servant (SPS) Sri A K Chakraborty, DIC, CGWB, Div VII, Guwahati participated in all the hearings from the beginning till the end. The important dates in the proceedings are as follows:

RECEIPT OF ORDERS FOR HOLDING INQUIRY:	14.09.2004
RECEIPT OF COPIES OF DOCUMENTS:	20.09.2004
PRELIMINARY HEARING:	11.10.2004
INSPECTION OF LISTED DOCUMENTS BY SPS:	14.10.2004
INSPECTION OF ADDITIONAL DOCUMENTS BY SPS:	22.12.2004
REGULAR HEARING:	10.02.05 AND 11.02.05
RECEIPT OF BRIEF OF PO	: 21.02.2005
RECEIPT OF BRIEF OF SPS	: 21.02.2005

Attested
Dutta
Advocate

II. ARTICLE OF CHARGE AND SUBSTANCE OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOR

The following article of charge has been framed against Sri A K Chakraborty, DIC, CGWB, Div VII, Guwahati:

"That the said, Sri A K Chakraborty, DIC, while functioning as DIC during the year 2000 preferred false TA claim for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act, Sri A K Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a government servant. Sri A K Chakraborty has thus violated the provisions of rule 3(l)(i) and rule 3(l)(iii) of CCS (Conduct) Rules 1964."

According to the statement of imputation of misconduct or misbehavior, Sri Chakraborty while working as DIC on Rig unit No DR/RS-88/83 took a TA advance of Rs 2900/- on 11.10.2000. Sri Chakraborty submitted his TA claim for the months of October and November 2000 for the journey performed by him from Kolkata to Patna (Khajekala site) and back. In this bill, Sri Chakraborty claimed that he started the journey from Khajekala site, Patna to Howrah station on 29.10.2000 and reached base camp on 30.10.2000. Sri Chakraborty has claimed the Daily allowance upto 29.10.2000. However, on the basis of statement of two officials, S/Sri I C Gupta, ASK and Kalasona Dhara, Cleaner, both posted at Khajekala site, as well as a railway ticket produced by these two officials, it was found that Sri Chakraborty had traveled with these two officials in Danapur Exp on 24.10.2000 from Patna to Howrah. The names of the passengers traveling on the ticket no 79441116, produced by these two officials, were got verified from the Eastern Railway, Kolkata. The ER confirmed that name of the passengers who traveled on ticket no 79441116 from Patna to Howrah were Sri A K Chakraverty, I C Gupta and K S Dhara.

When Sri Chakraborty was given a memo by the then Executive Engineer, CGWB, Kolkata as to why disciplinary proceedings should not be initiated against him for submitting a fictitious TA claim, he replied that he had filled the TA while on leave in a hurry. He also apologized in the letter and also submitted a rectified TA bill. It was thus established that Sri Chakraborty had cheated the government by claiming TA/Daily up to 29.10.2000 whereas he had actually left the camp on 24.10.2000.

*Subested
Bhutia
Advocate*

66

III. STAGES IN THE INQUIRY

The orders regarding appointment of the IO and PO were received on 14.9.04 and copies of the listed documents on 20.9.04. The Preliminary Hearing was held in the office of Regional Director CGWB, Guwahati on 11.10.04. During the Preliminary hearing, the Suspect Public Servant (SPS) did not specifically admit the charge and thus it was decided to hold Regular hearing after giving time for inspection of the listed documents by the SPS and also giving him an opportunity to seek any defense documents and witnesses. The SPS examined the listed documents to his satisfaction on 14.10.2004 and requested for one Additional document for his defense- "Tour diary for the month of December 2000". He also requested for three defense witnesses that were allowed by the undersigned. The additional document that was in the custody of Executive Engineer, CGWB, Kolkata was made available to the PO and it was inspected by the SPS on 22.12.04 to the satisfaction of the SPS. The date for Regular hearing was initially fixed for 11.1.2005 at Guwahati. However, due to some constraints it was postponed to 15.2.2005. However, the date of Regular hearing was changed once more, this time at the request of the SPS, to 10.2.2005. The Regular hearing was held in the office of Regional Director, CGWB, Guwahati on the 10th and 11th of February 2005 and the Oral hearing was declared to have been completed on 11th of February 2005. The SPS and the Presenting Officer were present during all the stages of the Inquiry proceedings. The SPS did not wish to have a Defense Assis ant.

IV. CASE OF THE DISCIPLINARY AUTHORITY

The PO took up the case on behalf of the Disciplinary Authority (DA) during the start of Regular hearing on 10.2.2005. The Listed documents were already inspected by the SPS to his satisfaction on 14.10.2004. The listed documents were produced by the PO during the start of regular hearing on 10.2.2005. Since the SPS did not have objection to any of the listed document, these were taken on record as S-1 to S-18. There were no state witnesses in support of the charge as per annexure III of the charge sheet. Since there were no state witnesses, this brought the case of DA to a close. Subsequently, the only additional document, "Tour Diary for the month of

Annex IV

December 2000", requested by the SPS and inspected by him to his satisfaction on 22.12.04 was also brought on record as D-1.

V. CASE OF THE DEFENDANT

1. Defense Statement

The SPS submitted his Statement of Defense on 10.2.05 after the close of the case on behalf of the DA. It states that he (SPS) was mentally disturbed on the date of submission of the TA bill in question. He will prove this through witnesses and documents. The SPS has also stated that procedure followed in passing /scrutinizing/doubting the TA claim was not followed. He has also leveled charges against the then Executive Engineer and Asstt. Ex Engineer to have intentionally tried to spoil his carrier by making a vigilance case.

2. Examination of Defense Witnesses

The SPS produced three witnesses, S/Sri Anjan Samanta, Sheo Dhani Shah and U Gogoi. The SPS offered himself also as his own witness. Though the relevance of the witnesses, S/Sri S D Shah and U Gogoi, was not considered to be directly connected to the case, it was allowed so that the SPS got full opportunity to defend his case. The depositions of these witnesses are placed as an Annexure to this report. The gist of deposition of each witness is as follows:

i. Sri Anjan Samanta, Technical Operator (Drilling), CGWB, Div XV, and Kolkata:

Sri Samanta was at the outset examined by the SPS. On being asked regarding his whereabouts on 18.12.2000, Sri Samanta stated that he was at base camp on 18.12.2000 and went to the house of Sri A K Chakraborty in the morning to see his son who was severely ill due to a crack in his skull on falling down from the bed. Sri Samanta also stated that Sri Chakraborty had given him the TA bill of October-November 2000 along with the covering letter to be submitted in the office and that he submitted the bill to the Executive Engineer in his chamber. On being asked by Sri Chakraborty whether he (Sri Chakraborty) prepared/wrote the TA bill in front of him (Sri Samanta), Sri Samanta replied, "Yes, actually I talk with his father and beside he filled up the same". On being asked regarding how he (Sri Chakraborty) felt that day, Sri Samanta said that he was in tension.

During cross-examination by the PO, Sri Samanta replied that he had handed over the said TA bill to Executive Engineer on 18.12.2000 who after writing something on the TA bill directed him to hand over the same in dispatch. Sri Samanta also informed during the cross-examination that he did not know whether Sri Chakraborty was on leave on 18.12.2000 or not.

The IO then subjected the witness to a general examination. On being asked whether he was sure that the TA bill filled up/written on 18.12.2000 was of Oct-Nov 2000, Sri Samanta replied "Yes, Sure". On being asked how he was sure, Sri Samanta replied "I asked Sri A K Chakraborty for which month you written /prepared the TA bill, he told me that for the month of Oct ,2K & Nov 2K".

The deposition of Sri Samanta is annexed as DW-1.

ii. Sri S D Shah, S/O Late Sri J Shah, Retired as Assistant from CGWB, Div VII, Guwahati on 31.10.2004

The questions that were raised by the SPS to the witness were pertaining only to the procedure that is generally followed in passing of a TA bill and also the action that the HOO should normally take while passing or getting a doubtful claim examined. There were no questions regarding the genuineness or otherwise of the TA bill in question. The PO and IO did not examine this witness.

The deposition of Sri Shah is annexed as DW-2.

iii. Sri U Gogoi, Scientist "D", CGWB, NER, Guwahati

The questions that were raised by the SPS to the witness were pertaining only to the procedure that is generally followed in passing of a TA bill and also the action that the Reporting officer and HOO should normally take while passing or getting a doubtful claim examined. There were no questions regarding the genuineness or otherwise of the TA bill in question. The witness also stated that since this was a very petty case, it was not required by the HOO to forward the case to higher authorities for making vigilance case. On being cross-examined by the PO regarding the

base on which the case is forwarded to HQ for vigilance, the witness replied "Misappropriation of Govt mons." The PO then asked as to what should be the amount to be treated as vigilance, to which the witness replied "No such limit is there". On being asked by the IO whether the HOO has powers to condone financial irregularity of any amount committed by a subordinate, the witness replied "NO"

The deposition of Sri Gogoi is annexed as DW-3.

iv. Sri A K Chakraborty, SPS and DIC, CGWB, Div VII, Guwahati

Sri A K Chakraborty, the SPS offered himself also as his own witness and first of all gave a statement. In this statement, the witness has stated that the article of charges mentioned in the charge sheet are not specific, cogent, unambiguous and unequivocal and not based on fact. He has further stated that the TA bill in question is a genuine TA bill and has some error in the number of days mentioned when he was on tour. The witness also stated that he filled up the TA bill while on leave at HQs due to serious accident (skull crack) of his son. He also did not have the tour diary, which was left in camp, and thus relied on memory. On coming to know of a wrong TA bill having been filled up by him, the witness states that he offered his explanation and also submitted a rectified TA bill. The witness has further argued that the proper procedure was not followed in dealing with the TA bill in question. He further states that "— I hope the above explanation is sufficient to prove the intentional, preoccupied mind & avoid the path of natural justice to frame the vigilance case against me by the then AEE and TE of CGWB, Div XV, Kolkata." The witness reiterates "I agree that I had committed mistake on preparing /writing of my TA bill which was unintentional & bonafide as in great tension (accident of my elder son) and on leave I had submitted the same as and when the mistake was brought to my notice had offered my explanation with all my fair mind and good faith and submitted the rectified TA bill on which the mistake was corrected in reply of Memo dated 25.4.01." The witness further stated the action taken by the Appellate authority on his

Debasis Saha

filling an appeal to him. The witness, in support of the above wanted to produce some additional documents, and since the PO did not have objection, these were allowed and are marked as AD1 to AD5.

During the cross-examination by the PO, the witness replied that it takes maximum one hour to fill up one TA bill. On being asked why the TA bill was submitted in hurry scurry, the witness stated that because the executive engineer was pressurizing to go to field and also the financial position was weak due the sudden accident of his son. The witness also stated that he forgot to bring the field notebook to base camp.

During the general examination by the IO, the witness stated he does not remember the order in which he wrote the particular TA bill but generally the tour diary is written first and then the TA bill is filled and finally the covering letter is written. To a question regarding the reason for the date mentioned on the TA bill and tour diary as 1.12.2000 while on the covering letter it was 18.12.2000, the witness replied that since the TA bill was for the period 1.10.2K to 30.11.2K, the date was written in that sense. On being again asked that generally the signatures are dated on the day they are actually done, the witness replied "In tension it was wrongly written".

The deposition of Sri Chakraborty is annexed as DW-4

After the depositions of all the witnesses, the PO was asked to file a written brief to the IO with a copy to the SPS by 11th Feb 2005 and the SPS was directed to file his brief within five days after the receipt of the brief of the PO. The IO received both the briefs on 21st Feb 2005.

VI. BRIEF OF THE PRESENTING OFFICER

The PO has concluded that the TA bill was prepared by the SPS under great mental tension due to the accident of his son and also without the help of his tour diary. The PO also writes that the then reporting officer and executive engineer have not followed the correct procedure while taking action on the TA bill in question. The PO finally concludes that the mistake done by the SPS was unintentional in nature and that the then IOO may have passed the rectified TA Bill after issuing a warning to

the SPS. The PO has also held that "The then HOO(Ex. Engineer) and reporting officer(AEE) fail to follow the actual procedure to deal with such type of cases resulting , not properly discharge their duties and responsibility".

The Brief of the PO is annexed with this report.

VII. BRIEF OF THE SUSPECT PUBLIC SERVANT

The SPS has, in his brief, mainly touched upon the statement of Sri U. Gogoi, defense witness, regarding the condonation of financial irregularity by the HOO. The SPS reiterates, " In my case it was established that unintentionally the mistake was committed by me which is bonafide".

VIII. ANALYSIS AND ASSESSMENT OF EVIDENCE

The documentary evidence, in support of the charges by the DA has not been challenged by the SPS. The Listed documents as follows speak in favor of the charge leveled by the DA:

S-2 : In this document , the SPS has admitted that he committed the mistake, which was unintentional and bonafide. Thus there is no denial about the false claim.

S-11: In this document, the Chief Commercial Manager (PM), Eastern Railway, Calcutta has given the following details (apart from many other) regarding PNR no 6312738453 : Name of passenger(s) : A K Chakraverty (M/35), Date of booking 20.10.2000, Journey details : from PNBE to HWH.

S-13 : This is a letter from Sri Kalasona Dhara, cleaner, stating that he along with Sri A K Chakraborty, DIC and IC Gupta, ASK, left site (Patna) on 24.10.2000 (AN)and traveled together by sleeper coach right from Patna to Howrah in Danapur Exp and the train reached Howrah on 25.10.2000 as scheduled.

S-17 : This is a letter from Sri IC Gupta, ASK, stating that he along with Sri A K Chakraborty, DIC and Sri Kalasona Dhara, cleaner, traveled together on one ticket from Patna to Howrah by Danapur Exp on 24.10.2000.

Amongst the defense witnesses produced by the SPS, the deposition of Sri Anjan Samanta, TOD and that of the SPS himself are only relevant, since the other two witnesses have not been examined by the SPS regarding the specific TA bill in question but only regarding the procedures. The charge leveled by the DA is regarding the submission of false TA claim and not the intention behind it by the SPS

Dinesh Kumar

or in following a particular procedure in dealing the TA bill by the then HOO and other officers/officials. Thus the analysis of evidence has been restricted to whether the TA bill submitted by the SPS is a false claim or not.

Sri Anjan Samanta has in his statement mentioned that Sri Chakraborty was preparing the TA bill while he (Sri Samanta) was talking to his (Sri Chakraborty) father. Also on being asked by the IO how was he sure that the TA bill filled up was of Oct-Nov 2000, Sri Samanta replied "I asked Sri A K Chakraborty for which month you written /prepared the TA bill, he told me that for the month of Oct, 2K & Nov 2K". The above statement of the witness clearly reflects that he had actually not seen Sri Chakraborty fill up the TA bill in question, since Sri Samanta was talking with the father of Sri Chakraborty when the latter was filling up the TA bill and secondly he found out for which month the TA bill was only after asking Sri Chakraborty about it.

Sri Chakraborty also offered himself as his own witness. He has admitted five days was shown as tour when he was actually at HQs. This he says occurred due to the fact that he left his tour diary in the field and the TA bill in question was filled up by relying on memory. Also that he was under great tension due to the accident of his son. However, the above argument is not wholly tenable because of the following factors:

- He has signed the TA bill as well as the tour diary on 1.12.2000 and the covering letter on 18.12.2000. The pen used is the same in the TA bill and the Tour diary whereas it is different in the Covering letter. And as per his tour diary for the month of December 2000 (D-1), he was at Khajekala site, Patna on 1.12.2000. Even during the examination by the IO when the SPS presented himself as his own witness, the SPS first stated that he had written the date on the TA bill & the Tour diary as 1.12.2000 and on the covering letter as 18.12.2000 since the TA bill was for 1.10.2K to 30.11.2K and the next date was 1.12.2K and it was written in that sense. And then in the answer to the next question by the IO, the SPS stated, "In tension it was wrongly written". Thus the SPS has himself contradicted his statement.
- The SPS remembered even the minutest details regarding his various journeys filled in the TA bill in question. To quote some-



- o 31.10.2K Dep. Howrah 2105 hrs. and Arr. Patna on 1.11.2K distance 543 kms.
- o 7.11.2K Dep. Khajekala site 0800 hrs by WB03 6680 and Arr. Ranchi Div. V 2030 hrs distance 384 kms.
- o 12.11.2K Dep. Ranchi Div. V 1100 hrs by WB03 6680 and Arr. Khajekala site 2355 hrs distance 360 kms.

As per the above, the SPS even remembered the vehicle number by which he traveled from Khajekala site to Ranchi and back as well as that while going to Patna the distance was 384 kms and while returning it was 360 kms. It is thus clear that the SPS did not fill up the TA bill by simply relying on memory.

Also the SPS has admitted that he committed a mistake, which was unintentional, and bonafide. Whereas he is on one hand saying that it was unintentional, in the same breath he is saying that the mistake was bonafide.

IX. FINDINGS

On the basis of Documentary and Oral evidence adduced in the case before me and in view of the reasons given above, I hereby find Sri A K Chakraborty, DIC, DIV VII, CGWB, Guwahati guilty of the charge of preferring a false TA claim for the months of October and November 2000 for his journey from Kolkata to Patna and back. Sri Chakraborty had claimed Daily Allowance for 42.7 days (written as 43.7 days by the SPS in the TA bill, but as per the calculation it is 42.7 days) whereas he was actually in camp/transit for 38.7 days only.

*Subested
Betta
Advocate*

Janardan

60
ANNEXURE → 10 (Series) 104

Registered
Confidential
No.1-162/2003-Vig-81
Govt. of India,
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad.

Dated 16/3/2005

OFFICE MEMORANDUM

Sh. Sushil Gupta, Supdt. HG, Central Ground Water Board, UR, Dehradun was appointed as Inquiring Authority vide Order dated 6.9.2004 to inquire into the charge framed against Sh. A.K. Chakraborty, DIC.

Sh. Sushil Gupta has submitted his inquiry report vide his letter No. SG/UR-AKC/Inquiry/04-28 dated 2.3.2005. A copy of the said report of the Inquiry Officer is enclosed herewith. Undersigned will take a suitable decision after considering the report. Sh. A.K. Chakraborty, DIC is hereby given an opportunity of making representation/submission if any, on the inquiry report within a period of 15 days of the receipt of this Office Memorandum.

Set 75
(Dr. Saleem Romani)
Chairman

✓ Sh. A.K. Chakraborty, DIC,
Central Ground Water Board,
Div.VII, Guwahati.

Copy to:

The Executive Engineer, Central Ground Water Board, Div.VII, Guwahati with the request to hand over the attached envelope to Sh. A.K. Chakraborty, DIC and sent his dated acknowledgement to this office.

*Received
On 24/3/05
Ans*
(Dr. Saleem Romani)
Chairman

*Attested
Bhutta
Advocate*

CONFIDENTIAL

No.AKC/Div-VII/INQ-TA/04-5
CGWB, Div-VII, GHY- 24

To,
 The Chairman,
 Central Ground Water Board,
 BHUJAL BHAVAN,
 NH-IV, Faridabad,
Haryana:- 121001

Dated :- 07.04.2005.

(Through proper channel)

Sub:- Representation against the Report submitted by the I.O. vide letter dated 02.03.2005.

Ref:- Your communication under letter No.1-162/2005. Vig-81 dated 16.03.2005.

Sir,

With due reference and profound submission, I beg to lay the following few lines, for your honor's for kind and sympathetic consideration.

1. That the issue involved in the departmental proceeding initiated against me pertains to the submission of a TA bill from my end for the months of October 2000 and November 2000. Before proceeding to contradict the findings as arrived by the I.O. in his report dated 2.3.05, it would be appropriate to narrate the back ground leading to the very initiation of proceedings against me and to show that no proceedings could have been unhealed basing on the fact as available.
 - a) That at the relevant point of time I was assigned the charge of the work being incited at Khaekala site (Patna) and I had during the month of October & November 2000 discharged my duties and responsibilities at the said work site, & Base camp as per the approved tour program.
 - b) On 18.12.04, When I was on leave due to injury sustained of my elder son, I had in hurry prepared the TA bill for the said period and had handed over to Mr. Anjan Samanta TO (D) for submission to the Executive Engineer. The said bill was prepared without referring to the tour diary, which I had left behind at the site. Poised thus, vide Memo dated 25.04.2001, basing on certain inconsistency in the said TA bill, The Executive Engineer had sought for my clarification and without ascertaining as to the reasons existing for the inconsistency that had crept into my said TA bills, a disciplinary proceedings was threatened to be drawn against me.
 - c) That on receipt of the said Memo, I verified the TA bills so submitted by me with the tour diary and on detecting the inconsistency therein I proceeded to submit a rectified bill on 7.5.2001. The rectified bill as submitted by me was prepared with reference to my tour diary.
 - d) That with the submission of the rectified bill, the matter ought to have laid to rest but for reasons best known, a departmental proceeding was initiated against me by issuance of a Memorandum dt. 26.02.2002. with the Article of charge (Annexure -I of the said Memorandum)
 - e) That it would be appropriate to state herein that the said Article of charge was framed against me without any basis in as much as. It is the accepted procedure that, while scrutiny of a TA bill if any doubt arises, an explanation is required to be called for from the person concerned and the person concerned in the event of rectifying the mistakes existing in the original bill, the bill is to be thereafter processed on its merits. In my case, the authorities at the divisional level had acted in the matter with over enthusiasm and without following the said procedure, decision was taken vide Memo dated 25.04.2001 to institute a vigilance case against me. Misconduct being committed by me in the matter of preparation of said TA bills was pre supposed by the divisional authorities.

Received
M/s
7/9/05

Attested
M/s
Advocate

- 61-
- (78) 106
- f) That there was no occasion for initiating the proceedings as initiated vide Memo dated 26.02.2002 in as much as with the submission of the rectified bill by me on 07.05.2001. The allegation of any existing against me lost its force. This is further fortified from the fact that I was not paid any amount against the TA bills submitted by me.
2. That a regular enquiry was held against me and therein I had successfully demonstrated that the charge as was leveled against me was without any basis and no proceedings could have been initiated against me. In the enquiry no witnesses was produced on behalf of the prosecution, while I had including myself examined four witnesses. The witnesses deposing before the I.O. brought on record materials highlighting the hollowness of the charge leveled against me. In this connection the relevant statements of witnesses deposing before the I.O. are reproduced herein below for ready reference :-

A.Samanta TO(D)----DW1----Question & Ans. No 3 to 7 asked by SPS
And 1 & 2 asked by I.O.

S.D.Shah (Ex-office Asst.)- DW2---- Question & Ans. No 1 and 5 asked by SPS
U.Gogoi (Sc.-D) -----DW3 ---- Question & Ans. No 3 asked by SPS
And 1 to 3 asked by P.O.

3. That on conclusion of the enquiry, the P.O. submitted the written brief wherein, it was admitted that at the relevant point of time i.e. the time of preparation of TA bill was under great mental stress and the mistake as existing in the TA bill dtd.18.12.2000. was a bonafide one. It was also highlighted that the mistake was genuine one and the same had crept into the said bill due to the absence of my tour diary and the mental tension suffered by me due to illness of my son.

The P.O. also admitted the manner and method in which the matter was dealt with was not proper, in paragraph 7(seven) has highlighted the procedure that ought to have been followed. On the basis of the point as highlighted in the said brief, P.O. record his conclusion.

4. That the I.O. in his report dated 2.03.05 has proceeded to hold the charges leveled against me as proved. Such a conclusion has been arrived at by the I.O. as regard the charges leveled against me without any basis and the same is perverse to the materials brought on record at the time of enquiry. On the face of evidence brought on record, it is a case of no evidence and /or insufficiency of evidence and the charge as leveled against me could not have been held to be proved. There exists no evidence, even remotely connected to charge leveled against me. The conclusions of the I.O. are solely based on **Surmises and Conjectures**.
5. That with a view to negate the materials brought on record by me refuting the allegations brought against undersigned, the I.O. has even brought his imagination into play with the view to fasten the charges on me. The manner and method the charge framed against me has been held to be proved goes to show that the enquiry was conducted not to unearth the truth behind the charges framed against me but for fastening the same on me.

The I.O. ignoring the evidence of Sri A.Samanta TO(D) who had in his examination by the I.O. clearly stated that I had prepared the bills in question on 18.12.2000. proceeded to disbelief the fact that I have prepared the bills on 18.12.2000.

The I.O. by highlighting certain details of the journey under taken by me proceeded to hold that I had not filled up the TA bill by simply relying on my memory. Such a conclusion is clearly unsustainable in as much as the distance between Howrah and Patna and also the number of the vehicle allotted to me one basic elementary thing, which a man / a DIC with minimum common sense would always recollect. The same by itself does not indicate that the mistake that had crept into the TA claim in question was an intentional one and has been so made with a view to misappropriation government money. It prove that report of inquiry be influenced by personal knowledge of I.O.

6. That it is settled principle that the expression 'sufficiency of evidence' postulates existence of some evidence, which links the charged officer with the misconduct, alleged against him. Evidence however voluminous, it may be, which is neither relevant in a broad sense nor establishes nexus between the alleged misconduct and the charged officer is no evidence in the eye of law. Conclusion of Inquiry officer that the charges have been proving would not in principle satisfy the Rule of sufficiency of evidence.

7. That in the case on hand leaves aside the need for sufficient evidence. There is no material available linking me with the charges framed against me. The Enquiry officer basing on the materials on record could not have held the charges framed against me as proven. As a result I.O. had not confined him to the record of inquiry.

8. That the finding arrive at by the I.O. has proceeded in the matter with predetermined mindset and with an approach of over enthusiasm. In the process he had forgotten the basic principle underlying a departmental proceeding is not similarly circumscribed as that of a criminal proceeding. But in the instant case having regard to the nature of charge involving a responsible officer. The enquiry officer ought to have been much careful in his approach instead of returning the finding of guilt on my part on the basis of his analysis of the evidence, which on the face of it are all presumptions with no conclusive evidence at all. As pointed out above, Ont. and Ont. it is a case of 'No evidence' and / or 'Insufficiency of evidence'. Based on such a finding I cannot be punished. Accordingly the charges leveled against me are required to be dropped / exonerate.

9. That already I have suffered a lot throughout the enquiry proceeding and I have faced great hardship and humiliation. My promotions have been withheld and the same has adversely affected my service career. I cannot even dream of committing the misconduct as has been charged on me. I have a long way to go in my service career. I am oath bound to serve the Government true to the expectation of the authorities. In the event of any punishment is imposed upon me in view of the findings as recorded by the I.O., the same will seriously tell upon, not only upon my service career, but will bring untold miseries to me and my family and I will be left high and dry with the consequence of humiliation in public life.

Under the circumstances stated above please relieve me from the mental agony through which I am passing all this years and thereby extend your protective hands over me. Which will provide with much needed mooring to my family members and me. I shall spare no pains to work upto your entire satisfaction and shall remain bound to your honours in deep gratitude. I would earnestly pray your honour kindly to consider my above statement/reply sympathetically and exonerate from the charges labeled against me and for this act of your kindness I shall remain ever grateful to you.

Kind anticipation with valued justice solicited at your end.

*Attested
Anupita
Advocate*

Thanking you,

Yours Faithfully,
A. K. Chakraborty
(A. K. Chakraborty)
D.I.C.
CCWB, Div: - VII, Cuwahaty

27/04/2005

77

108

Registered
Confidential
No.1-162/2003-Vig -128
Govt. of India,
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad.

Dated 5/5/2005

ORDER

WHEREAS disciplinary proceedings under Rule 14 of the CCS(CC&A) Rules, 1965 were instituted against Sh. A.K. Chakraborty, DIC, Central Ground Water Board, Div.VII, Guwahati vide this office Memo. No. 1-102/2001-Vig-69 dated 26.2.2002 on the following Article of charge:

Article of Charge

That the said Sh. A.K. Chakraborty, while functioning as DIC during the year 2000 preferred false TA claim for the month of October & November 2000 for his journey from Kolkata to Patna & back.

2. A statement of imputations of Misconduct or Misbehavior on which the Article of charge was based, together with a List of Documents by which and a List of Witnesses by whom, the charge was proposed to be sustained were also forwarded to him along with the above said Memo. Dated 26.2.2002.

3. After considering his defense statement submitted by him vide letters dated 3.4.2002 & 30.5.2002 a penalty of Reduction to a lower stage by three increments for three years without cumulative effect was imposed on him vide Order No. 1-102/2001-Vig-151 dated 2.6.2003.

4. Aggrieved by this order of penalty Sh. A.K. Chakraborty, DIC made an appeal to the Secretary (WR) vide his letter dated 12.8.2003. Secretary(WR) the Appellate Authority in this case vide Order No. 6/20/2003-Vig dated 27.1.2004 set aside the Order issued by the disciplinary authority vide Order No. 1-102/2001-Vig-151 dated 2.6.2003 and remanded the case back to the disciplinary authority for getting the matter inquired into by appointing IO/PO under the rules. Accordingly, Sh. Sushil Gupta, Superintending Hydrogeologist, Central Ground Water Board, UR, Dehradun was appointed as Inquiring Authority vide Order No. 1-162/2003-Vig-259 dated 14.9.2004.

5. AND WHEREAS the inquiring authority vide his Report No. SG/UR-AKC/INQUIRY/04-28 dated 2.3.2005 gave a finding that Sh. Chakraborty is guilty of the

Received on 16/5/05

*A. K. Chakraborty
M. W. P. 2005*

charge of preferring false TA claim for the month of October & November 2000 for his journey from Kolkata to Patna & back.

6. AND WHEREAS a copy of the report of inquiry was sent to Sh. Chakraborty vide this office O.M. No. 1-162/2003-Vig-81 dated 16.3.2005 and he was given an opportunity of making such submissions on the report of inquiry as he desired. His submissions on the report of inquiry were received vide his letter dated 7.4.2005. The said representation of Sh. Chakraborty has been carefully considered. In his representation he has repeated just two things. First 'that TA bill was prepared by him in a hurry without his tour diary, relying just on his memory and due to this certain discrepancies crept in his TA bill. He has stated that as such in spite of initiation of disciplinary proceedings he should have been given a chance to rectify the error.

Second, he has repeated the same rhetoric that the bill in question was filled up by him in a hurry as he was in mental tension due to illness of his son. He has also stated that no evidence exists, even remotely connected to charge leveled against him. He has conclude that he has already suffered a lot throughout the inquiry, his promotion has been withheld and same has affected his career so he may be exonerated of the charge framed against him'.

7. The points raised by him have been examined in the light of the records and it has been observed that he has signed the TA bill as well as the tour diary on 1.12.2000 and the covering letter on 18.12.2000. The pen used is the same in the TA bill and the tour diary whereas it is different in the Covering letter. And as per his tour diary for the month of December he was at Patna site on 1.12.2000. Even during the inquiry he has stated that he had written the date on the TA bill & Tour diary as 1.12.2000 and on the covering letter as 18.12.2000 since the TA bill was for 1.10.2000 to 30.11.2000 and the next date was 1.12.2000 and it was written in that sense. And then in his reply to next question he has stated, "in tension it was wrongly written". Thus Sh. Chakraborty has himself contradicted his statement.'

Sh. Chakraborty remembered even the minutest details like exact distance between two stations the vehicles Nos on which he traveled, regarding his various journeys filled in the TA bill in question I.O. has mentioned that Sh. Chakraborty remembered that while going to Patna the distance was 384 kms and while returning it was 360 kms. It is thus clear that he did not fill up the TA bill by simply relying on memory. Therefore, undersigned is of the opinion that the reasons put forward by Sh. Chakraborty in support of his filling up wrong TA claim are not tenable.

8. AND WHEREAS on careful consideration of the report of the inquiry officer and other records of the case in the light of the submissions made by Sh. Chakraborty in his observations on report of inquiry, the undersigned has decided to accept the findings of the inquiry officer.

9. NOW, THEREFORE, after considering the records of the inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Sh. A.K. Chakraborty, DIC is guilty of claiming D.A. for 42.7 days, whereas, he was actually in camp/transit for 38.7 days only. The undersigned is of the view that ends of justice would be met if the penalty of "Reduction to a lower stage by one stage in time scale of pay for one year with cumulative effect" is imposed on him.

(A)

10. It is, therefore, ordered that the pay of Sh. A.K. Chakraborty, DIC be reduced by one stage from Rs. 10,000/- to Rs. 9,750/- in the time scale of pay for a period of one year w.e.f. date of issue of this Order. It is further directed that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay".

11. Accordingly, undersigned in exercise of powers conferred by Rule 15 of CCS(CC&A) Rules, 1965 hereby imposes the above said penalty. A copy of this Order may be added to the CR Folder of Sh. A.K. Chakraborty, DIC.

Saleem Romani
(Dr. Saleem Romani)
Chairman

Sh. A.K. Chakraborty, DIC,
Central Ground Water Board,
Div. VII, Guwahati.

*Received on
16/05/05
Guru*

*Attested
Dutta
Advocate*

Confidential

No.3-1068/96-Engg.Estt. - 133

Government of India,
 Central Ground Water Board,
 Ministry of Water Resources,
 N.H. IV, Faridabad – 121001.

Dated:- 8.9.2005

OFFICE ORDER NO. 81 OF 2005.

After considering the record, enquiry, facts and circumstances of the case, the Competent Authority vide his order under letter No. 1-162/2003-Vig/128 dt. 5.5.2005, has come to the conclusion that Shri A.K. Chakraborty, DIC is guilty of claiming DA for 42.7 days, whereas, he was actually in camp/transit for 38.7 days only. The Competent Authority is of the view that ends of justice would be met if the penalty of Reduction to a lower stage by one stage in time scale of pay for one year with cumulative effect is imposed on him.

Therefore, the competent authority has ordered that the pay of Sh. A.K. Chakraborty, DIC be reduced by one stage from Rs.10000 to Rs.9750/- in the time scale of pay for a period of one year w.e.f. date of issue of order. It is further directed that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

Accordingly, Competent Authority in exercise of powers conferred by Rule 15 of CCS(CC&A) Rules, 1965 hereby imposes the above said penalty.



(S.K. Sinha)
 Director (Admn)

To ✓

Sh. A.K. Chakraborty,
 CGWB, Div.VII, Guwahati.

Copy to:-

1. The Executive Engineer, CGWB, Div.VII, Guwahati for immediate necessary action.
2. The Regional Director, CGWB, NER, Guwahati for information.
3. The Admn. Officer (Vig.), CGWB, CHQ, Faridabad for information.
4. The Pay and Accounts Officer, CGWB, CHQ, Faridabad.
5. Office order file.

Attested
 Bhutta
 Advocate

Received
 13/9/05
 (S.K. Sinha)
 Director (Admn)

13/9/05
 (S.K. Sinha)

To,

The Secretary (W/R)/Appellate Authority,
Ministry of Water Resources,
Sharam Shakti Bhawan,
New Delhi-110001.

(Through Proper Channel)

Sub:- An appeal against the order of penalty issued under letter confidential letter Number 1-162/2003-Vig-128 dated 03.05.2005.

Respected Sir,

I have duly received a copy of the order of penalty-dated 5.5.2005 and carefully gone through the same and understood the contents thereof.

I like to draw your kind attention on the following points:-

1. That Sir, on a mere reading of the Article of charge contained in the memorandum dated 26.02.02 it would be evident that the allegation of submission of false T.A claim for the month of October and November 2000 is contrary to the records of the inquiry proceeding as well as from the evidence, list of documents relied upon by the disciplinary authority in the memorandum of charge sheet. The relevant portion of the article of charge is quoted below:

"Article of Charge"

"That the said Sri A.K.Chakraborty, while functioning as DIC during the year 2000 preferred false T.A claim for the month of October and November 2000 for his journey from Kolkata to Patna and back."

Whereas conclusion reached by the presenting officer which is evident from his brief submitted to inquiry officer on 14.02.2005 are as follows:-

Conclusion

Attested
Bhutte
Advocate

Revised
4/6/05
03/06/05
25

- 1) The mistake done by SPS was unintentional in nature, as any man may done the mistake at that condition. SPS had gone through during preparing written written TA Bill (P.No.-04) in absence of tour diary.
- 2) The then H.O.O may pass the T.A bill on the basis of rectified (S-13) one, after issuing a warning letter to SPS result the case might be close at Divisional level.
- 3) The then H.O.O (Ex. Engineer) and Reporting Officer (AEE) fail to follow the actual procedure to deal with such type of case resulting, not properly discharged their duties and responsibility.

(N.K.Basumatari, AO)
Presenting Officer

That Sir, surprisingly on a mere reading of the inquiry report of the Inquiry Officer, more particularly relevant portion of Paragraph 8 containing analysis and assessment of evidence which says as follows:

" Also the SPS has admitted that he committed a mistake, which was unintentional, and bonafide, whereas he is one hand saying that it was unintentional, in the same grip he is saying that the mistake was bonafide".

And the findings reached by the Inquiry Officer, in his inquiry report are as follows:

" IX. FINDINGS

On the basis of Documentary and Oral evidence adduced in the case before me and in view of the reasons given above, I hereby find Sri A. K. Chakraborty, DIC, DIV VII, CGWB, Guwahati guilty of the charge of preferring a false TA claim for the months of October and November 2000 for his journey from Kolkata to Patna and back. Sri Chakraborty had claimed Daily Allowance for 42.7 days (written as 43.7 days by the SPS in the TA bill, but as per the

calculation it is 42.7 days) whereas he was actually in camp/transit for 38.7 days only."

Therefore, it is quite clear even from the findings of the Inquiry Officer himself that the alleged TA Bill in question is not false as alleged in the Memorandum of charge sheet dated 26.02.2002, as because it is the admitted position in the finding of the Inquiry Officer that the undersigned was actually in camp/transit for 38.7 days only but claim is made for 42.7 days; therefore, the TA bill in question cannot be termed as a false bill as alleged in the Memorandum of Charge sheet but the excess days shown in the said TA bill as best may be termed as a defective bill or irregular bill and more so when the undersigned fairly admitted the bonafide mistake.

In the circumstances stated above, even initiation of a proceeding under Rule 14 of the CCS (CCA) Rules does not call for in the instant case of the undersigned.

In this context I have also gone through the definition of misconduct in Stroud's Judicial Dictionary (1986 Fifth Edition) which is as under :

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

In the instant case of the undersigned the alleged irregularity has occurred due to a lapse on the part of the undersigned, which definitely would not constitute misconduct for the purpose of disciplinary proceeding.

In the Memorandum of charge sheet dated 26.02.2002 the following list of documents has been relied on by the departmental side by which alleged Article of Charges are proposed to be sustained against me:

"LIST OF DOCUMENTS BY WHICH ARTICLE OF CHARGE FRAMED AGAINST SH. A.K. CHAKRABORTY, DIC IS PROPOSED TO BE SUSTAINED.

1. Office order No. 283 of 2000 issued under letter No. 1-95/Div. XV/96/F. Post-821 dated 25/9/2000.
2. Application dated 9.10.2000 of Shri A.K. Chakraborty.
3. Office Order No. 298 of 2000 issued under letter No. CGWB/ Div. XV/TA Adv/2000-873 dated 10.10.2000.
4. Letter dated 18.12.2000 of Shri A.K. Chakraborty along with his TA Bill dated 1.12.2000.
5. A.R No. 239 dated 11.10.2000 vide which Sh. Chakraborty received TA advance amounting to Rs. 2900/-.
6. Ticket No. 7944116
7. Letter No. CGWB/Div. XV/TA/Actt/2000-1379 dated 18.1.2001.
8. Letter No. Div. XV/TA/Actt/2000-1624 dated 8.3.2001.
9. Letter No: RSVN/Verification/Pt-1 dated 12.4.2001
10. Letter No. CGWB/Div.XV/TA/Accts/2000-85 dated 19.4.2001.
11. Letter dated 19.4.2001 from Sh. Kalasona Dhara Cleaner. ✓
12. Memo No. CGWB/Div.XV/TA/Actt/2000-132 dated 25/4/2001.
13. Letter dated 7.5.2001 of Shri A.K. Chakraborty, DIC along with rectified TA Bill.
14. Letter No. CGWB/Div.XV/TA/Accts/2000-181 dated 8.5.2001.
15. Letter dated 8.5.2001 I.C. Gupta A.S.K.
16. Letter dated 10.10.2001 of Sh. A.K. Chakraborty.

Similarly following list of witnesses submitted by the prosecution side to sustain the alleged charges against me:

**"LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE
FRAMED AGAINST SH. A.K. CHAKRABORTY, DIC IS PROPOSED
TO BE SUSTAINED.**

- 71
1. Sh. I.C. Gupta, ASK, CGWB, Div. XV, Kolkata.
 2. Sh. Kalasona Dhara, Cleaner, CGWB, Div. XV, Kolkata. "

But surprisingly on a scrutiny of the daily order sheet of the Inquiry proceeding held on 11.10.2004, 10.02.2005 and also on 11.02.2005, it would be evident that not a single document relied on by the departmental side of their list of documents were examined in the inquiry proceeding and surprisingly not a single witness relied on by the departmental side neither summoned nor examined in the inquiry proceeding as required under the Rule 14 and 15 of the CCS (CCA) Rules 1965, which is a mandatory in nature and on that score alone the entire inquiry proceeding is liable to be set aside and quashed because of such infirmity.

That Sir, on a mere perusal of the daily order sheet of the inquiry proceeding held on 11.10.2004, 10.02.2005 and 11.02.2005 and the inquiry report it would be evident that only the defense witnesses namely; Shri Anjan Samanta, Shri S.D. Shah and Shri U. Gogoi have been examined in the inquiry proceeding by me and the deposition of those defense witnesses naturally went in my favour but surprisingly neither Mr. I.C. Gupta nor Mr. Kalasona Dhara, departmental witnesses were examined in the inquiry proceeding. It is needless to mention here that it is the duty of the prosecution side to examine the listed documents and prosecution witnesses for establishing the charges labeled against the undersigned but in the instant case the same has not been done as required under the Rule 14 and 15 of the CCS (CCA) Rules 1965.

That Sir, on a mere perusal of the inquiry report it would be evident that nowhere in the inquiry report it is stated that the listed documents and listed witnesses were examined in the inquiry proceeding rather the inquiry officer categorically admitted in his inquiry report that all the

defense witnesses has been examined. Therefore, on that score alone the entire proceeding is liable to be set aside and quashed.

5. That Sir, it is pertinent to mention here that whatever evidence or witnesses examined in the aforesaid inquiry proceeding those evidence rather establishes the innocence of the undersigned and not a single piece of evidence or deposition recorded in the said inquiry proceeding goes to establish the charges labeled against me. Even the presenting Officer in his written brief submitted to the Inquiry Officer rather goes to establish that the undersigned is innocent and cannot be held guilty of the charges labeled against me. Therefore, findings of the Inquiry Officer is self contradictory and the same is also contrary to the records of the inquiry proceedings. As such, the decision of the Disciplinary Authority to impose penalty upon me for the alleged misconduct vide order dated 05.05.2005 is highly arbitrary, unfair and illegal.
6. That Sir, I have submitted my detailed representation against the inquiry report on 07.04.2005 addressed to the Chairman, CGWD, Faridabad, Haryana but none of the grounds raised by me were discussed in the penalty order dated 05.05.2005.

It would further be evident from the order dated 05.05.2005 that the learned Disciplinary Authority nowhere discussed the evidence recorded in the inquiry proceeding but mechanically reached to the conclusion that the charges has been established. Surprisingly, the Disciplinary Authority without discussion of the evidence has decided to accept the findings of the Inquiry Officer. But no reason has been recorded either by the Inquiry Officer or by Disciplinary Authority for the disagreement arrived by the Presenting Officer in his brief submitted to the Inquiry Officer, wherein it is specifically held by the Presenting Officer that the mistake is unintentional but no discussion is made for arriving such findings.

7. The findings of I.O. is similar to the days which mentioned in the rectified TA bill, submitted in reply of memo dated 25/04/2001. The same was already mentioned by the P.O. in his brief dated 14/02/05 on point & para No.11.

8. The I.O. in his report dated 02.03.2005 in page No.9 & 10 expressed some supporting conclusion of his FINDINGS. Following some line for your due consideration:-

- a) During prepare/written of TA Bill, using two pen not constitute that the same was written earlier. The Defense witness Sri.A.Samanta (T.O.D.) clearly mentioned about the date of preparation/written the questioned TA Bill in his statement on dated 10/02/05. Above all the example/conclusion of I.O. not supported by any evidence.
- b) It is not difficult to recollect from the memory of own Govt. vehicle number in tension, as described by undersigned on his statement dated 10/02/05. In normal practice it is seen that own mobile number (consist of ten digit), telephone number (8digit), own vehicle number etc. can not be forgettable in tension as undersigned gone through. Above all, the vehicle deputed in site is for my Rig unit for exclusive Govt. use of undersigned and during the stay at Patna the same was not changed. So, the question of remembering the vehicle Number is not sustained as stated by I.O.
- c) Regarding recollecting the Kilometer run during Patna to Ranchi & back, it is to say that first time I had visited Ranchi from Patna by Govt. vehicle. It is the general practice of a DIC to keep in memory for future requirement / reference. The discussion with Executive Engineer Div-XV, Kolkata at his chamber on 13/12/2000 the distance of Patna to Ranchi & back was informed by me for his future reference as required by him. As a result the remembering the Kilometer traveled by Govt. vehicle automatically collected by undersigned.
- d) Whenever undersigned performed the journey to Kolkata from Patna/Patnasahib & back in official tour always availed Danapur Express for its best-suited arrival & departure timings vise-a-visa. Above all, most of the employee of DR/RS-88/83 belongs to West Bengal, they also availed this train for the same reason in official/personal journey which was reflected in their TA Bill. In every month I had to verify the TA Bill of all subordinate employees of DR/RS-88/83, which is one of the official duty of undersigned. Now the remembering of details about Danapur Express was explained.

It is categorically submitted that on a mere perusal of the inquiry proceeding it would be evident that not a single evidence neither examined nor recorded against the undersigned in the inquiry proceedings for establishing the charges of submission of false TA Bill against me. It is relevant to mention here that the memorandum of charge sheet issued against the undersigned are sought to be sustained through the relevant list of documents and list of witnesses enclosed with aforesaid memorandum of charge sheet, but unfortunately neither those documents nor the list of witnesses were examined by the Departmental side in the inquiry proceeding which is evident from the records of the inquiry proceeding and on that score the order of penalty liable to be cancelled.

Under the circumstances stated above, I would earnestly pray your honour, kindly to consider my appeal most sympathetically and exonerate me from the penalties labeled against me and for this act of your kindness I shall remain ever grateful to you.

Yours faithfully,

(A.K.CHAKRABORTY)
DRILLER-IN-CHARGE
CGWB, DIV-VII,
GUWAHATI

Copy To:-

1. The Chairman
and necessary action please.

CGWB, NH-IV, Faridabad, Information
(A.K.CHAKRABORTY)
D.I.C., CGWB, Div-VII, Guwahati-24

No.6/20/2003-Vig.
Government of India
Ministry of Water Resources

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 25th October, 2005
28th

ORDER

WHEREAS disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 were initiated against Shri A.K. Chakraborty, Driller-in-Charge, Central Ground Water Board vide CGWB's Memorandum No. 1/102/2001-Vig-69 dated 26.02.2002 on the following article of charge:

"that the said Shri A.K. Chakraborty while functioning as DIC during the year 2000 preferred false TA Claims for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act, Shri Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a govt. Servant. Shri A.K. Chakraborty has thus violated the provisions of Rule 3(1)(i) and 3(1)(iii) of the CCS(Conduct) Rules, 1964."

WHEREAS the Disciplinary Authority after considering the written statement(s) of defence submitted by the said official concluded the proceedings and imposed a penalty of 'reduction to a lower stage by reducing his 3(three) increments in the time scale of pay for a period of 3(three) years, without cumulative effect and not adversely affecting his pension' upon Shri A.K. Chakraborty vide CGWB's Order No.1-102/2001-Vig.151, dated 02.06.2003.

WHEREAS on an appeal dated 12.08.2003 from Shri A.K. Chakraborty, the Appellate Authority, vide Order of even number dated 27.01.2004, *inter alia* set aside the said Order of the Disciplinary Authority(Chairman, CGWB) and remanded the case back to the said Authority for taking appropriate view, if so warranted, after getting the matter inquired into by appointing IO/PO, as prescribed in the Rules.

WHEREAS the said Disciplinary Authority, after getting the matter inquired into through duly appointed Inquiring Authority, ordered, vide No.1-162/2003-Vig.128, dated 05.05.2005, that the pay of Shri A.K. Chakraborty, Driller-in-Charge, CGWB be reduced by one stage from Rs. 10,000/- to Rs. 9,750/- in the time scale of pay for a period of one year w.e.f date of issue of the Order. It was further ordered that on the expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay of Shri Chakraborty.

*Attested
M. D. D.
Advocate*

75

WHEREAS aggrieved with the aforesaid order, the said Shri Chakraborty filed an Appeal dated 03.06.2005 to the undersigned, praying inter-alia for exonerating him of the charges by setting aside the said Order of the Disciplinary Authority dated 05.05.2005. In his Appeal, Shri Chakraborty extended the following grounds;

- That the TA bill in question is not false but a defective one as alleged in the Memorandum of Charge dated 26.02.2002.
- That not a single document / witness relied upon by the prosecution were examined during the inquiry proceedings.
- That not a single piece of evidence or deposition recorded in the said inquiry establishes the charge levelled against him. Even the Presenting Officer in his written brief submitted to the Inquiry Officer observed the CO as innocent and not guilty of the charge levelled against him.
- That the Disciplinary Authority did not consider the submissions made in his written representation dated 7.4.2005. He also did not discuss the evidence recorded in the inquiry and mechanically reached to the conclusion that the charge has been established.
- That the findings of Inquiring Authority is similar to the days which mentioned in the rectified TA bill submitted in reply to Memo dated 25.04.2001.
- The basis of the findings of the Inquiring Authority that the CO did not fill up the TA bill by simply relying on memory is not correct.

WHEREAS the undersigned in his capacity as Appellate authority has considered the submissions made by the said Appellant and observed with reference to each of the above contentions, as under-

That the TA bill in question is not false but a defective one as alleged in the Memorandum of Charge dated 26.02.2002.

With reference to the above contention, it is noticed that the said officer had been charge-sheeted for preferring false claim impinging his integrity. Since the claim made by the Appellant in the impugned TA bill was not supported with the evidence and, rather found false and exaggerated during the regular Inquiry, the onus of preferring such bill rests on the Appellant. Therefore, the bogus and fictitious claims made in his bill cannot be mechanically termed otherwise as the motive behind preferring such bills amounts to defrauding of Govt. money, which directly impinges his integrity. Therefore, there is no aberration in the framing of the charge against him by the Disciplinary Authority.

That not a single document / witness relied upon by the prosecution were examined during the inquiry proceedings.

It is observed from the relevant records that the Inquiring Authority had ordered inspection of prosecution documents which were subsequently brought on records with the consent of both the Presenting Officer and the CO (Appellant). It is also noticed that the Inquiring Authority had permitted the Defence Documents as well as the Defence Witnesses as brought by the Appellant and their depositions were recorded, duly marked and considered for getting into the truth of the Charge. Even the Appellant offered himself as his own witness, which was duly permitted. It is also observed that since the

76 - 121

deposition of the prosecution witnesses were not found relevant during the inquiry, the Inquiring Authority dropped them, in the presence of the PO and Appellant. Had the Appellant made out any bearing and significance in calling the prosecution witnesses for examination/cross examination, he could have impressed upon the IO for the same or objected to the action of the Inquiring Authority at that point of time. But he preferred to sing the relevant DOS without any duress and coercion, which infers that he had no objection therefore. The above contention of the Appellant is, therefore, a mere afterthought and thus, cannot be given any credence.

That not a single piece of evidence or deposition recorded in the said inquiry established the charge levelled against him. Even the Presenting Officer in his written brief submitted to the Inquiry Officer observed the CO as innocent and not guilty of the charge levelled against him.

The above contention of the Appellant is contrary to the records. The analysis and assessment of the evidence by the Inquiring Authority and subsequently by the Disciplinary Authority clearly established that the Appellant had preferred a false Claim in his TA bill for the month of October and November, 2000. The CO had shown 42.7 day's stay in the transit/Camp whereas his actual stay was 38.7 days as proved during the inquiry. Therefore, the claim is false, which undoubtedly exposes the mala fide intention of the Appellant. As regards the opinion of the Presenting Officer in his written brief, it is observed that the general opinion of the said officer will in no way help the Appellant. The term of reference before the Inquiry was to find the veracity and truthfulness of the claim preferred by Shri Chakraborty. Therefore, the arguments put forth by the Presenting Officer are misplaced in so far as the charge is concerned. Moreover, the Disciplinary Authority is an independent authority and he is not expected to bind himself upon the superficial views of the Presenting Officer. Therefore, the decision of the Disciplinary Authority being it clear, cogent and unambiguous in all respect, cannot be interfered with.

That the disciplinary Authority did not consider the submissions made in his written representation dated 7.4.2005. He also did not discuss the evidence recorded in the inquiry and mechanically reached to the conclusion that the charge has been established.

It is evident from the penalty Order dated 5.5.2005 of the Disciplinary Authority that the written representation was considered carefully by him. It is stated in the Order that the CO (Appellant) had repeated the rhetoric. Since all the submissions were already considered by the Disciplinary Authority and were duly rejected before framing charge against him, the Disciplinary Authority accepted the findings of the Inquiring Authority and imposed the questioned penalty upon him. It is also noticed that the CO (Appellant) had brought the similar points in his defence during the inquiry proceedings which were duly examined by the Inquiring Authority before reaching his conclusion. The above plea is, therefore, contrary to the records and hence, cannot be relied upon.

That the findings of Inquiring Authority is similar to the days which mentioned in the rectified TA bill submitted in reply to Memo dated 25.04.2001.

The rectified TA bill as submitted by the Appellant has nothing to do with the instant case, the very basis of which is the earlier TA claim. It is clear from the records that the Appellant had preferred the said Bill with a sole motive to cover up his misconduct. It is an upshot of the Memorandum proposing Disciplinary action against him. Therefore, the above contention does not hold good and is rejected.

That the basis of the findings of the Inquiring Authority that the CO did not fill up the TA bill by simply relying on memory is not correct.

The Govt. servant is required to prefer his TA bills on the basis of the relevant records in his possession and not on the basis of his memory. In the event of his failure in not justifying the claims, the responsibility of falsity/inaccuracy totally rests on said Govt. Servant. On the same footing, the responsibility of exaggerated claim as made by Shri Chakraborty also lies on him irrespective of the reasons cited to that effect. If the Appellant was really in tension and not sure about the claims, he, before preferring the bill, could have consulted the relevant documents first. He was also at liberty to withdraw his TA bill afterwards but not at the instance of the Memorandum dated 25.04.2001 asking him to show cause as to why disciplinary proceedings should not be initiated against him for the misconduct. Therefore, his above submission is not reasonable and hence rejected.

AND WHEREAS in view of the facts narrated above, the undersigned has come to the conclusion that there is no merit in the Appeal preferred by Shri A.K. Chakraborty, Driller-in-Charge, Central Ground Water Board and is liable for rejection.

NOW THEREFORE in exercise of the powers conferred under Rule 27 of the CCS (CC&A) Rules, 1965, the undersigned being the Appellate Authority hereby rejects the Appeal dated 03.06.2005 of Shri A.K. Chakraborty, Driller-in-Charge, Central Ground Water Board and confirms the penalty already imposed upon him by the Disciplinary Authority i.e Chairman, CGWB vide his Order No. No.1-162/2003-Vig.128 dated 05.05.2005. It is ordered accordingly.


(J. Hari Narayan)
Secretary to the Government of India
& Appellate Authority

Shri A.K. Chakraborty,
Driller-in charge,
Central Ground Water Board,
Division-VII,
Guwahati
(Through Director(A) & VO, CGWB)

*Attested
M. Dutta
Advocate*

To,

The Revising Authority, Hon'ble Minister (W/R)
 Ministry of Water Resources
 Shram Shakti Bhawan,
 New Delhi- 110001

Dt = 06.12.05

Sub : Humble Appeal to Revise the "Order" of Appellate Authority.

Respected Sir,

Most respectfully I beg to state that I have received on 30.11.05 the "Order" bearing No.6/20/2003- Vig 25/28-10-05 of Hon'ble Appellate Authority and most humbly submit the following few lines before your honour for kind and sympathetic considerations for revising the same.

1. That Sir, I was shocked to note the contents of the aforesaid "Order" and the charges stated therein pertaining to my T.A. claims for the month of October & January/2000.

That Sir, T.A. bill in question filled in and submitted by me when I was on leave staying at my home place. My Personal Diary (All the details about my tour work recorded) was at site. I filled up the T.A. Bill in hurry simply relying on my memory which unfortunately led to my mistaken entries, inadvertently and unknowingly.

That Sir, as and when the mistake was brought to my notice, I had offered my explanation with all my fair mind and good faith and submitted the rectified T.A. Bills.

On that time I never expect such a serious impact waiting for me for my inadvertent mistakes which eventually lead to my own detriment, as the such tiny matter used to / could be solve at Division level itself.

2. That Sir, The Brief submitted by P.O. and the conclusion reached by him clearly describe the position of SPS. The mistake done by SPS, was bonafide & unintentional.
3. That Sir, The comment and decision of the "FINDINGS" by I.O. on dated 02/03/05 was not based on oral & documental evidence .There exist no evidence even remotely connected to charge level against me. The conclusion of I.O. are solely based on "Surmises & Conjunctions" Above all "Report of Inquiry be influenced .Oby personal knowledge of I.O.
4. That Sir, The conclusion of I.O. that the charges have been proving would not in Principle satisfy the Rule of sufficiency of evidence. As a result I.O. had not confined him to the record of enquiry.
5. That Sir, Punishment Order of D.A. vide letter No.1-162/2003-vig-151 dated 05/05/05 was Severe than the Order given vide letter No. 1-102/2001-vig-151 dated 02/06/03 as the financial loss in the later one Order was more.

That Sir, The mistake done by undersigned was bonafide & unintentional which was proved by the enquiry as the same was crept during the serious illness (Skull crack) of my elder son (Xerox & the report of the same were seen by I.O. & P.O.)

That Sir, I could know about my mistake subsequently when the matter was brought to my notice and I had offered my explanation with all my fair mind & good faith , without making any attempt to suppress the material facts whatever and submitted the rectified T.A. Bill for the period in question.

That Sir, I beg to tender my unqualified and most humble submission that while submitting the alleged T.A. Bill, I did not have the slightest intention to either cheat the

*Affected
For
private*

Govt. or to violate any service conduct rules. I also could not foresee such a serious impact of my inadvertent mistakes.

That Sir, That already I have suffered a lot throughout the enquiry proceeding and I have faced great hardship and humiliation. My promotions have been withheld and the same has adversely affected my service career. I cannot even dream of committing the misconduct as has been charged on me. I have a long way to go in my service career, I am oath bound to serve the Government true to the expectation of the authorities. In the event of any punishment is imposed upon me in view of the findings as recorded by the I.O., the same will seriously tell upon, not only upon my service career, but will bring untold miseries to me and my family and I will be left high and dry with the consequence of humiliation in public life.

123

Under the circumstances stated above please relieve me from the mental agony through which I am passing all this years and thereby extend your protective hands over me. Which will provide with much needed mooring to my family members and me. I shall spare no pains to work upto your entire satisfaction and shall remain bound to your honours in deep gratitude. I would earnestly pray your honour kindly to consider my above statement/reply sympathetically and exonerate from the charges leveled against me and for this act of your kindness I shall remain ever grateful to you.

Kind anticipation with valued justice solicited at your end.

Thanking you,

Yours Faithfully,

(A.K.Chakraborty)

D.I.C.

CGWB,Div:-VII,Guwahati

Copy to :- 1) The Appellate Authority, Secretary , Ministry of Water Resources, Shram Shakti Bhavan, New Delhi – 110001 for information.

2) The Chairman, CGWB, Bhujal Bhavan, Faridabad - 121001 for information.

M.C
Attested
Dutta
Advocate

(A.K.Chakraborty)
D.I.C.
CGWB,Div:-VII,Guwahati

No.6/20/2003-Vig.
 Government of India
 Ministry of Water Resources

Shram Shakti Bhawan,
 Rafi Marg, New Delhi,

Dtd: the 21st April, 2006

O R D E R

WHEREAS Shri A.K. Chakraborty, Driller-in-Charge, Central Ground Water Board was proceeded against by the Disciplinary Authority (Chairman, CGWB) for major penalty disciplinary action under Rule 14 of the CCS(CCA) Rules, 1965 on the following Article of Charge vide CGWB's Memorandum No. 1/102/2001-Vig-69 dated 26.02.2002;

"That the said Shri A.K. Chakraborty while functioning as DIC during the year 2000 preferred false TA Claims for the month of October and November 2000 for his journey from Kolkata to Patna and back.

By his above act, Shri Chakraborty, DIC has failed to maintain absolute integrity and has acted in a manner unbecoming of a govt. Servant. Shri A.K. Chakraborty has thus violated the provisions of Rule 3(1)(i) and 3(1)(iii) of the CCS(Conduct) Rules, 1964."

WHEREAS the said Disciplinary Authority concluded the proceedings on the basis of the defence statement of the said official and, thereafter, imposed a penalty of 'reduction to a lower stage by reducing his 3(three) increments in the time scale of pay for a period of 3(three) years, without cumulative effect and not adversely affecting his pension' upon Shri A.K. Chakraborty vide CGWB's Order No.1-102/2001-Vig.151, dated 02.06.2003.

WHEREAS upon considering an Appeal dated 12.08.2003 preferred by the said official, the Appellate Authority [Secretary, Ministry of Water Resources], vide Order of even number dated 27.01.2004, *inter alia* set aside the said Order of the Disciplinary Authority and remanded the case back to the said Authority for complying with the prescribed procedure as laid down in the Rules.

WHEREAS the Disciplinary Authority, in compliance with the above Order, got the charges inquired into through the Inquiring Authority and issued fresh Order vide No.1-162/2003-Vig.128, dated 05.05.2005. It was ordered therein that the pay of Shri A.K. Chakraborty, Driller-in-Charge, CGWB be reduced by one stage from Rs. 10,000/- to Rs. 9,750/- in the time scale of pay for a period of one year w.e.f date of issue of the Order. It was further ordered that on the expiry of the penalty period, the reduction will have the effect of postponing the future increments of pay of Shri Chakraborty.

*Amritpal Datta
 Advocate*

WHEREAS the said Shri Chakraborty filed an Appeal dated 03.06.2005 to the Appellate Authority praying *inter-alia* to set aside the aforesaid penalty Order of the Disciplinary Authority. The Appellate Authority after considering the facts and circumstances of the case found no force in the said Appeal and rejected the same. Thereafter, the said Authority passed a self-contained, speaking and reasoned Order of even number dated 28.10.2005 confirming the penalty imposed upon him by the Disciplinary Authority i.e Chairman, CGWB vide its Order No.1-162/2003-Vig.128 dated 05.05.2005.

WHEREAS She Chakraborty filed a Revision Petition dated 06.12.2005 to the President of India being his Revisionary Authority under Rule 29 of the CCS(CCA) Rules, 1965. While seeking relief and exoneration from the Charge, he *inter alia* pleaded before the said Authority that he had filled in the questioned TA bill in a hurry relying on the memory which led to mistaken entry, inadvertently and unknowingly. At the time of submission of the Bill, his personal Diary was not available with him. He further submitted that when the mistake was brought to his notice, he offered his explanation and submitted a rectified TA bill. The report of the Inquiry was influenced and not based on evidence. He also contended that the punishment is severe.

WHEREAS, the President of India considered his Petition with reference to the evidence vis a vis the entirety of the case and observed that the Petitioner was charge sheeted for preferring false TA claims impinging his integrity. The claims made in the questioned TA bill were found to be false and exaggerated during the course of proceedings. The said Authority observed that the responsibility of preferring such Bill lies with the Petitioner. A public servant is required to prefer his Bills/claims etc., on the basis of relevant records and thus, any failure to justify the claims, for whatever circumstances, is blameworthy. The Revisionary Authority found that the action of submitting rectified TA bills on his part was instanced and an afterthought as by the time his misdemeanour had already floored and he was issued a show cause notice to that effect. As regards his contention that Report of the Inquiry was influenced and not based on evidence, it is noticed that the Inquiring Authority had extended reasonable opportunity to him. The Records reveal that the IO ordered inspection of relied upon prosecution documents which were subsequently brought on records with the consent of the CO (Petitioner). The Inquiring Authority had permitted the Defence Documents as well as the Defence Witnesses as brought by the Petitioner. The analysis of evidence made by the Inquiry Officer and subsequently assayed by the Disciplinary Authority and the Appellate Authority establish that the Petitioner had submitted a false Bill by way of showing his stay in camp well in exaggeration than the actual ones. As such, the said Authority concluded that pleadings made in the Petition are bereft of merit. In so far as his contention that the punishment is severe is concerned, the President of India observed that the penalty imposed upon him is proportionate to the imputation proved against him questioning his integrity. The Petitioner has been found resorting to falsity with a sole view to gain him unlawfully, which is well enough to condemn his serious misconduct of dishonesty.

AND WHEREAS in light of the facts enumerated above, the Revisionary Authority concluded that there is no considerable substance in the said Petition of Shri A.K.

Chakraborty, Driller-in-Charge, Central Ground Water Board. As such, the Petitioner deserves no leniency.

NOW THEREFORE in exercise of the powers conferred under Rule 29 of the CCS (CC&A) Rules, 1965, the President of India being the Revisionary Authority hereby rejects the said Petition preferred by Shri A.K. Chakraborty, Driller-in-Charge, Central Ground Water Board. The penalty already imposed upon him by the Disciplinary Authority i.e Chairman, CGWB vide his Order No. No.1-162/2003-Vig.128 dated 05.05.2005 and subsequently upheld by the Appelate Authority vide his Order of even number dated 28.10.2005, is hereby confirmed. It is ordered accordingly.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)


 (A.K. SAXENA) 21/4/06
 Deputy Secretary to the Government of India
 & Chief Vigilance Officer

✓SHRI A.K. CHAKRABORTY,
 Driller-in charge,
 Central Ground Water Board,
 Division-VII,
 Guwahati
 (Through Director(A) & VO, CGWB)

*Attested
 Md. Dutta
 Advocate*

केन्द्रीय प्रशासनिक अधिकार राज्य
Central Administrative Tribunal

16 MAY 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI

Filed by
the respondent

Yours
Yours
Guwahati Bench

Since 15.5.07
122

D.A. No. 201 of 2006

Sri Arup Kr. Chakraborty

.....Applicant.

-VS-

Union of India & Ors.

.....Respondents.

The written statement on behalf of the
Respondents abovnamed :

WRITTEN STATEMENT OF THE RESPONDENTS.

MOST RESPECTFULLY SHEWETH

1. That with regard to the statement made in para-
graph 1,2,3 and 4.1 of the instant application the
answering respondents have no comment.

2. That with regard to the statements made in para-
graph 4.2, 4.3 and 4.4 of the application the respond-
ents beg to state that those are matter of records and
anything contrary to the records, the same are denied by
the respondents.

3. That with regard to the statement made in paragraph 4.5 of the instant application the answering respondents beg to state that the filing of appeal is a matter of record and respondents do not admit anything which is contrary to record. The applicant has stated that the then Executive Engineer who arrested him that the matter would be closed in the event of the recovery. However, there is no documentary evidence to support his claim.
4. That with regard to the statements made in paragraph 4.6 and 4.7 of the instant application the respondents beg to state that those are matter of records and anything which are not borne out of records are denied by the respondents.
5. That with regard to the statement made in paragraph 4.8 and 4.9 of the application the answering respondents beg to offer no comment.
6. That with regard to the statement made in paragraph 4.10 of the instant application the respondents beg to state that the opinions expressed by the Presenting officer in his brief are purely his personal views and disciplinary authority who is an independent authority is not expected to bind himself upon the superficial views of the Presenting officer.
7. That with regard to the statement made in paragraph 4.11 of the application the respondents beg to state that the same are false, fabricated and concocted.

hence denied. The applicant has given false statement that none of the listed documents and state witnesses were examined during the enquiry. From the daily order sheet dated 10/2/05 of the enquiry it is verified that Investigation Officer had ordered inspection of prosecution documents which were subsequently brought on records with the consent of both the P.O. & C.O.I.O. even permitted the defence documents as well as defence witnesses as brought by the applicant and their deposition were recorded, duly marked and considered forgetting into the truth of the charge. Even the applicant offered himself as his own witness, which was duly permitted. Since the depositions of the prosecution witnesses were not found relevant during the enquiry the Investigation Officer dropped them in the presence of Presenting Officer and Commanding Officer. Had Shri Chakraborty made out any bearing and significance in calling the prosecution witnesses for examination he could have impressed upon requested, asked for, prayed before the Investigation Officer for the same or objected to the action of the Investigation Officer at that point of time. Therefore, the contention of the applicant is just a mere after thought and not being made at an earliest point of time hence the same is liable to be rejected at this belated stage. The real stated of affair is that the applicant perused, verified, examined all the documents mentioned in the instant paragraph and now raised this technical issue to mislead the Hon'ble Tribunal.

[43]

The applicant's observation that there is bonafide mistake in computation of days for daily allowance cannot be termed as false TA bills should be given credence as he is a responsible Gazetted Officer and responsibility of submission of correct TA bills rest with him. Moreover, he submitted rectified bill only after a show cause notice was given to him by the Executive Engineer and he was directed to explain why disciplinary action should not be initiated against him.

Further it has been alleged that the Government has not been cheated as no money was paid to him. In this connection it is pointed out that TA amount of Rs. 2900/- was received by him in this regard.

8. That with regard to the statement made in paragraph 4.12 of the instant application the answering respondents beg to state that the applicant in his representation dated 7.4.05 to the Chairman has stated that he computed the number of days in a hurry without consulting his tour diary at atime when his son sustained head injury. In this context it is stated that what was the need to submit that bill in a hurry whereas he could have submitted the bill later after consulting his tour diary as the responsibility to submit the bill latter after consulting his tour diary as the responsibility to submit correct details in the bill rest with him. Further he had represented that the adopted procedure is to call the explanation when a mistake in the bill is noticed and thereafter after considering the reply the bill sholud be passed if the person concerned

rectified the mistake. This view point of Shri Chakrabarty as no relevance as there is no such rule or even procedure. Moreover, the applicant submitted rectified bill as an afterthought after a show cause notice was given to him by the H.O.O. Disciplinary Authority, initiated disciplinary proceedings after considering the full facts of the case as submission of false TS claims attracts provision of Rule 14 of the CCS(CC &A) Rule.

9. That with regard to the statement made in paragraph 4.13 of the instant application the respondents beg to state that those are untrue, false and incorrect and hence the same are denied. Disciplinary Authority has imposed the penalty after considering each point of his representation. Further at para 7 of the penalty order the technical point has been discussed to show that the applicant has given contradictory statement during the enquiry. It is denied that there is any irregularities, inconsistencies, infirmities whatsoever in the conducting of the departmental proceeding.

10. That with regard to the statement made in paragraph 4.14 of the application the respondents beg to state that those are matter of records and the respondents beg to offer no comment.

11. That with regard to the statement made in paragraph 4.15 of the application the respondent beg to state that the applicant has the same rhetoric that the bill was passed by him in a hurry and it is not a false TA bill rather a bill having irregularity. From the daily

order of the enquiry it is verified that I.O. had ordered inspection of prosecution documents which were subsequently brought on records with the consent of both the P.O. & C.O. I.O. even permitted the defense documents as well as defense witnesses as brought by the applicant and their deposition were recorded, duly marked and considered for getting into the truth of the charge. Even the applicant offered himself as his own witnesses, which was duly permitted. Since the deposition of the prosecution witnesses were not found relevant during the enquiry the I.O. dropped them, in the presence of P.O. and C.O. Had the applicant made out any bearing and significance in calling the prosecution witnesses for examination he could have impressed upon/requested the I.O. for the same or objected to the action of the I.O. at that point of time. Therefore, the contention of the applicant is just a mere afterthought.

12. That with regard to the statement except the C.G.S(CCA) Rule made in paragraph 4.16 of the application the respondents beg to state those are false, untrue and incorrect and hence denied by the respondents. Secretary(WR) who is the Appellate Authority passed the order of confirming the penalty after considering each and every point of the appeal of the applicant and contention of the applicant that no listed document or witnesses is wrong and baseless.

13. That with regard to the statement made in paragraph 4.17 of the instant application the respondents beg to state that those are untrue, false and baseless state-

ments and hence the same are denied. Revisionary Authority passed the order of confirming the penalty after considering each and every point of the petition of Shri Chakraborty and contention of Shri Chakraborty that no listed document or witness is examined is wrong as discussed earlier.

14. That with regard to the statement made in paragraph 4.18 of the application the respondents beg to state that those are untrue, false and incorrect, hence the same are denied.

15. That as regard to the statement made in para 4.19 the application the respondents beg to offer no comment.

16. That with regard to the statement made in paragraph 5.1 of the instant application the answering respondents beg to state that the applicant has maintained a line that his TA should not be termed as false TA bill and as this is not a misconduct, disciplinary proceedings should not have been initiated against him. It is stated that the applicant first submitted inflated TA bill of days more than actually he was on tour and when he was asked to explain why disciplinary proceedings should not be initiated against him he submitted rectified bill. Being a gazetted officer this is his responsibility to submit correct bill after verifying the dates. This clearly shows his malafide intention and this misconduct warrants disciplinary action.

[8]

17. That with regard to the statement made in paragraph-5.2 of the application the respondents beg to state that the appellant has repeated the same that he filled the bill in a hurry without consulting his tour diary at a time when his son sustained head injury. In this context it is stated that what was the need to submit the bill in a hurry whereas he could have submitted the bill later after consulting his tour diary as the responsibility to submit correct details in the bill rests with him.

18. That in respect of the statement made in paragraphs-5.3 and 5.4 of the application the respondents beg to state that the appellant has given false statement that none of the listed documents and state witnesses were examined during the inquiry. From the daily order sheet dated 10/2/2005 of the enquiry it is verified that I.O. had ordered inspection of prosecution documents which were subsequently brought on records with the consent of both the P.O. & C.O.I.O. even permitted the defense documents as well as defence witnesses as brought by the appellant and their depositions were recorded, duly marked and considered for getting into the truth of the charge. even Sh. Chakraborty offered himself as his own witness, which was duly permitted. Since the depositions of the prosecution witnesses were not found relevant during the enquiry the I.O. dropped them in the presence of P.O. and C.O. Had Sh. Chakraborty made out any bearing and significance in calling the prosecution witnesses for examination he could have impressed upon/requested the I.O. for the

[9]

same or objected to the action of the I.O. at that point of time. Therefore, the contention of the applicant is just a mere afterthought.

19. That with regard of the statement made in paragraphs-5.5 and 5.6 of the application the respondents beg to state that the Disciplinary authority had considered each point of his representation dated 7/4/2005 while imposing the penalty.

20. That with regard to the statement made in paragraphs- 5.7 and 5.8 of the application the respondents beg to state that the Secretary (WR) who is the Appellate Authority passed the Order of confirming the penalty after considering each and every point of the appeal of Sh. Chakraborty and contention of Sh. Chakraborty that no listed document or witness is examined is wrong as discussed earlier.

21. That with regard to the statement made in paragraph- 5.9 of the application the respondents beg to state that since the depositions of the prosecution witnesses were not found relevant during the enquiry the I.O. dropped them, in the presence of P.O. and C.O. Moreover, Sh. Chakraborty did not raise any objection during the enquiry.

22. That with regard to the statement made in paragraph- 5.10 of the application the respondents beg to state that the contention is baseless as the order of the appellate authority is self-contained and self-

[103]

speaking covering each and every point of appeal of Sh. Chakraborty.

23. That with regard to the statement made in paragraph- 5.11 of the application the respondents beg to state that each and every point of appeal of Sh. Chakraborty has been discussed in the order of the appellate authority.

24. That with regard to the statement made in paragraph- 5.12 of the application the respondents beg to state that the appellate authority in his order dated 27/1/2005 has directed the disciplinary authority not to consider the defense statement of Sh. Chakraborty as clear admittance of guilt as he had not accepted the charge clearly. So appellate authority had directed to conduct a regular enquiry after appointment of I.O/P.O. and accordingly I.O. & P.O. were appointed for conducting regular enquiry.

25. That with regard to the statement made in paragraph- 5.13 of the application the respondents beg to state that the opinion expressed by the P.O. in his brief are purely his personal views and disciplinary authority who is an independent authority is not expected to bind himself upon the superficial views of the P.O. The respondents further beg to submit that the ground set forth in the instant application are not tenable in law, as well as on facts and are liable to be dismissed.

26. That with regard to the statement made in paragraph-6 of the instant application the answering respondents beg to state that the applicant has declared that he has exhausted all the remedies available. In this connection it is mentioned that as per CAT Act the applicant is required to exhaust all the channels available for redressal of his grievances in Department before filing a petition in Tribunal. As a matter of fact the applicant has not yet exercised the recourse of Review petition provided in the CCS(CC&A) Rules. As such his action of moving Tribunal has not yet arrived at maturity in the light of CAT Act.

27. That with regard to the statement made in paragraph-7 of the instant application the answering respondents beg to state that those are within the personal knowledge of the applicant, hence beg to offer no comment.

28. That with regard to the statement made in paragraphs- 8 & 9 of the instant application the respondents beg to state that in view of the facts and circumstances mentioned above the applicant is not entitled to get any relief or interim relief as prayed for and the instant application is liable to be dismissed.

[123]

VERIFICATIONI, HIRANYA KUMAR DAS,

being authorised to hereby verify and declare that the statement made in this reply of contempt petition in para 1 to 28.....are true to my knowledge, these made in paraX..... being matter of records are true to my information and believe and I have not suppressed any material fact.

And I sign this verification on this May 15th day of May, 2007.

69/5.6
15/05/2007
 DEPONENT

(H. K. DAS)

EXECUTIVE ENGINEER

CGWB, DIV.VI

Ghy-24,

5 NOV 2003
गুৱাহাটী বিত্তকৰ্মসূচী
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

139
Filed by the applicant
through: S. N. B.
Advocate
05/11/2007

In the matter of:-

O.A. No. 201/2006

Shri Arup Kumar Chakraborty.

-Vs-

Union of India and Others.

-And-

In the matter of:-

Rejoinder submitted by the applicant
against the additional written statement
filed by the respondents.

The applicant above named most respectfully begs to state as follows: -

1. That with regard to the statements made in para 2, 3 and 4 of the written statement, the applicant begs to state that in his appeal dated 12.08.2003 he has already stated that the mistake in the T.A. bill in question was inadvertent for which a rectified bill has been submitted. Necessary recoveries have also been made from his salary to make good the losses and it is a fact that the Executive Engineer assured that the matter would be closed in the event of recovery of amount and only on that assurance the recovery was made.
2. That the applicant categorically denies the statements made in para 6 and 25 of the written statement and begs to state that the presenting officer's statement cannot be washed off and ignored on the vague plea that those are his personal views but it carries sufficient weight since he is an

- 5 NOV 2011

गुवाहाटी बैचायनी
Guwahati Bench

2 140

important authorized person in the enquiry proceeding, and the inquiry officer has to take stock of the facts presented by the presenting officer.

3. That the applicant categorically denies the statements made in para 7, 11, 12, 13, 18 and 21 of the written statement and begs to state that the respondents have fairly stated that since the depositions of the prosecution witnesses were not found relevant during the enquiry, the investigation officer dropped them which is strictly against the procedures established by law. None of the listed documents and state witnesses were examined during the enquiry which is mandatory for any enquiry proceedings. The enquiry officer drew his conclusion on superficial scrutiny of some selected documents only and his findings are not based on records. As such the findings of the enquiry officer are not sustainable and are liable to be set aside and quashed.
4. That the applicant categorically denies the statements made in para 8 and 9 of the written statement and begs to submit that as soon as the applicant could come to know of his inadvertent mistakes in his T.A bill, he had immediately submitted a rectified T.A bill which he explained in his representation dated 07.04.05 preferred before the Chairman. The applicant categorically stated in his said representation regarding the irregularities committed in the enquiry proceeding and further stated that the enquiry officer did not confine himself to the materials and evidences recorded in the enquiry proceedings but drew his conclusions on the basis of his personal experience.

Further, the disciplinary authority while imposing the penalty, did not consider the grounds raised by the applicant but simply acted on the biased enquiry report and imposed the penalty most mechanically and without any application of mind. The disciplinary authority totally failed to take into consideration the irregularities, inconsistencies and infirmities pointed out by the applicant in his representation dated 07.04.05.

5. That the applicant categorically denies the statements made in para 14 of the written statement and begs to reiterate that the penalty order dated

05.05.05 and the appellate order dated 25/28.10.03 and also the revisionary order dated 21.04.06 have been passed without consulting the evidences on record and without examining the listed documents as well as the listed witnesses relied upon by the disciplinary authority and as such the said orders indicated above are liable to be set aside and quashed.

6. That with regard to the statements made in para 16 and 17 of the written statement, the applicant begs to state that the applicant had already explained the circumstances under which some days of overstay was shown in the T.A bill in question which was simply an inadvertent mistake which cannot be construed as "misconduct" but a bonafide mistake only. The applicant also corrected his rectified bill as soon as it was brought to his notice.
7. That the applicant categorically denies the statements made in para 19, 20, 22 and 23 of the written statement and further begs to submit that the disciplinary authority and the appellate authority did not take into consideration the points raised by the applicant in his representation dated 07.04.2005 while imposing and confirming the penalty. Both the authorities failed to appreciate the relevant facts of the enquiry and the provision of Rule 27 (2) (a) and (b) and acted most mechanically and without any application of mind whatsoever.
8. That the applicant categorically denies the statements made in para 24 of the written statement and begs to state that the appellate authority in his order dated 27.01.2004 has specifically pointed out the infirmities in the disciplinary proceeding and has even observed that the penalty was imposed upon the applicant without observing the rules laid down under CCS (CCA) Rules 1965. As such the order of penalty is liable to be set aside and quashed.
9. That the applicant emphatically denies the statements made in para 26 and 28 of the written statement and begs to state that after issuance of the

- 5 NOV 2007

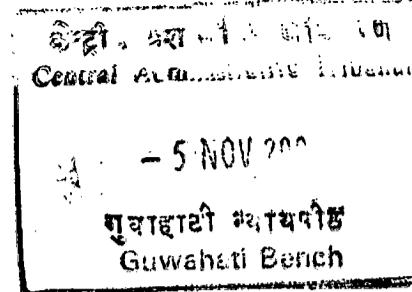
ગુજરાતી સરયદીઠ
Gujarati Saraydith

142

impugned appellate order dated 25/28.10.05 and revisionary order dated 21.04.2006 rejecting the prayer of the applicant, there remained no scope for the applicant to seek for departmental remedy any more which was adequately exhausted.

Situated thus, the applicant had no other remedy available to him for which he had to approach this Hon'ble Tribunal and he is entitled to get all the reliefs prayed and the O.A. deserves to be allowed with costs.

10. That under the facts and circumstances of the stated above, the Hon'ble Tribunal be pleased to allow the Original Application with costs.



VERIFICATION

I Shri Arup Kumar Chakraborty, S/o- Shri Amol Kumar Chakraborty, aged about 43 years, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 10 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 28th day of October 2007.

Arup Kumar Chakraborty

NOTICE

From:

S. Nath
Advocate

To:

Mr. G. Basihya,
S.C.C.

Sub:- Rejoinder or A. No. 201/2006

Sir, find please enclosed herewith a copy of the rejoinder which is being filed on today. This is for your information and necessary action.

Please acknowledge receipt.

Yours sincerely

S. Nath
Advocate

Received
G. Basihya
S.N. 07
(G. Basihya).