

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 287/07

2. Miscellaneous Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(s) A.K. Sarkar -VS- Union of India & Ors

Advocate for the Applicants:- K.N. Chandley, Ms. R.S. Chandley
Mr. N. Mahanta

Advocate for the Respondents:- Railway advocate

Notes of the Registry	Date	Order of the Tribunal
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20.9.07

The applicant joined Railway service in

1978 and holding various posts. After getting

promotion he was served as Senior Divisional

Accountant (Construction). When the applicant

was serving as Senior Section Officer certain

allegations were brought against him. Ultimately

memo of charges dated 23.9.03, 25.9.03, 28.10.03

and 31.10.03 were issued to him. The CBI had also

lodged 11 nos. of FIR against the applicant on the

basis of the above charges. Subsequently those 11

nos. of cases were amalgamated into three cases. The

contention of the applicant is that all the

proceedings initiated against the applicant are

based on the same grounds and same set of

charges. Therefore, the proceedings has to be

stayed. Aggrieved by the action of the

respondents he has filed this application with a

prayer to stay the departmental proceedings till

conclusion of the criminal proceedings against

him and also direct the authorities not to

finalise/conclude the disciplinary proceedings

initiated against him.

This application is in form
is filed in E. for Rs. 50/-

deposited vide IPO/BD

No. 326/04/0214

Dated 2.8.07

Registrar

Petitioner's copies for
issue notices are received
without envelopes. ~~And~~
undertaking given to
serve the service copy.

2
Heard Mr K.N.Choudhury, learned Senior counsel assisted by Mrs R.S.Choudhury for the applicant and Dr J.L.Sarkar, learned Railway standing counsel for the respondents.

When the matter came up learned counsel for the respondents submitted that the Hon'ble High Court vide order dated 15.2.05 passed in W.P.(C) No.1590/05 had directed the respondents to complete all the four proceedings within three months. Therefore, any order passed in this case probably may interfere with the earlier order passed by the High Court. He wants to take further instruction. Learned counsel for the applicant submitted that final order may not be imposed without the leave of this Tribunal. Post on 14.11.07 for further order.

By way of interim order this court directs that final outcome of the proceedings will not be imposed without the leave of this Tribunal.

Vice-Chairman

14.11.2007

Mrs.R.S.Choudhury, learned counsel for the Applicant is present. Dr.M.C.Sharma, learned counsel for the Railways, having filed vakalatnama for the Respondents, seeks some more time to obtain instruction in the matter.

In the aforesaid premises, notices be issued to the Respondents requiring them to file reply by 2nd January, 2008.

Call this matter on 02.01.2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

Pl. issue Notices
to the Respondents.

/bb/

Notice & order sent to 02.01.08
D/Section for issuing
to resp. nos. 1, 2 by
regd. A/D post

No Written Statement has been filed in
this case. Dr.M.C.Sarma, learned Railway
counsel appearing for the Respondents
prays for four weeks more time to file
Written Statement.

20/11/07. D/No-1459-1451
Dt= 20/11/07.

Call this matter on 01.02.2008 awaiting
reply from the Respondents.

Notice duly served

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

01.02.2008

No written statement has yet been filed
in this case by the Respondents.
Dr.M.C.Sarma, learned Railway Counsel
appearing for the Respondents undertakes
to file written statement well before 8th
February, 2008.

W/s not filed

Call this matter on 8th February,
2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

Written Statement
filed on behalf
of the respondents.

7.2.08

08.02.2008

Written statement has already been filed by the Respondents. Subject to the legal pleas to be examined at the time of final hearing, the case is admitted.

Rejoinder, if any, may be filed by the Applicant by 31st March, 2008.

Call this matter on 2nd April, 2008.

1.4.08

Rejoinder filed by the Applicant. copy saved.

(Khushiram)

Page Break

(M.R. Mohanty)

(Khushiram)

(M.R. Mohanty)

Member(A)

Vice-Chairman

The case is ready for hearing.

02.04.2008

On the prayer made on behalf of learned counsel appearing for the Applicant, call this matter on 21.05.2008.

1.4.08

The case is ready for hearing.

19.5.08

(Khushiram)

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

lm

21.05.2008

On the prayer of Mr.M.Mahanta, learned counsel appearing for the Applicant (made in presence of Dr.M.C.Sarma, learned Counsel for the Railways), hearing for this case is adjourned and to be taken up on 12th June, 2008.

Call this matter on 12.6.2008.

The case is ready for hearing.

11.6.08

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

lm

12.06.2008 On the prayer of Mr. M. Mahanta, learned counsel appearing for the Applicant (made in presence of Dr.M.C.Sarma, learned counsel for the Railways) hearing of this case stands adjourned to be taken up on 11.08.2008.

(Khushiram)
(Member(A))

(M.R.Mohanty)
Vice-Chairman

lm

The case is ready
for hearing.

8.08.08

11.08.2008 On the prayer of Mr. M. Mohanta, Advocate, representing the Applicant, call this matter on 2nd September, 2008 for hearing.

The case is ready
for hearing.

2.9.08

(M.R.Mohanty)
Vice-Chairman

lm

The case is ready
for hearing.

25.9.08

02.09.2008 It is prayed on behalf of the Applicant seeking an adjournment. However, Dr M.C. Sharma, learned Standing Counsel for the Railways, is present.

Call this matter on 26.09.2008.

(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman


nkm

077 257/07
26.09.08

Mr M. Mahanta, learned counsel for the Applicant seeks an adjournment on the ground that Sr. Advocate Mr K.N.Choudhury is not in a position to attend the Tribunal. Dr. M.C.Sarma, learned counsel appearing for the Respondents/Railways opposes the prayer. The Respondents have also filed M.P.124/08 voluntarily seeking leave of the Tribunal to complete the disciplinary proceeding pending against the Applicant. In the petition (M.P.124/08) it is stated that the Respondents have received the inquiry report against the applicant and the same is pending with the Disciplinary Authority, who could not take any decision due to the interim order passed by this Tribunal. Mr Mahanta seeks seeks a short adjournment till 03.10.08. While adjourning the matter till 03.10.2008 the Respondents/Railways/Dr Sarma is called upon to disclose the stage of the Disciplinary Proceeding.

Call this matter on 03.10.2008.



(S.N.Shukla)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

03.10.2008

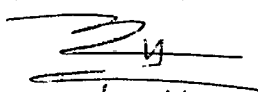
Call this matter on 11.11.2008 for hearing; when the Misc. Petition for vacation of interim order shall also be taken up.


(S.N.Shukla)
Member (A)



(M.R.Mohanty)
Vice-Chairman

/bb/

The case is ready
for hearing.


10.11.08


11.11.2008 On the prayer of Dr.M.C.Sarma,
learned counsel for the Railways, call this
matter on 8th December, 2008 for hearing.


(S.N.Shukla)
Member(A)


(M.R.Mohanty)
Vice-Chairman

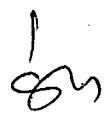
lm

The case is ready
for hearing.



5.12.08.

08.12.2008 Mr. M. Mahanta, learned counsel
for the Applicant and Dr. M.C. Sarma,
learned counsel for the Railways are
present.

Call this matter on 17th December,
2008.


(S.N.Shukla)
Member(A)

The case is ready.


16.12.08.

lm

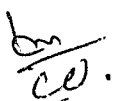
17.12.2008 Mr M. Mahanta, learned counsel for
the Applicant and Dr M.C.Sarma,
learned counsel for the Railways are
present.

Call this matter on 19.01.2009 for
hearing.


(S.N. Shukla)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

19.1.09 Bench is not available.
List on 22.3-09.

co.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No.257 of 2007

Sri Anil Kumar Sarkar

Applicant

Versus

Union of India & others

Respondents

Order dated 25.02.2009

Call this matter on 16.03.09 for hearing.

Send copies of this order to the Applicant
and the Respondents.

[M.R. Mohanty]
Vice-Chairman

cm

16.03.2009 With the consent of the parties' counsel
this case is directed to be listed on 25.03.2009
for hearing.

(A.K.Gaur)
Member (J)

/bb/

25.03.2009

Mr.M.Mahanta, learned counsel for the Applicant
states that Mr.K.N.Choudhury, Sr. Advocate is not
prepared to argue with the case today and as such he
prays for some time. Dr.M.C.Sarma, learned counsel for
the Railways submits written argument and the same is
placed on record. Learned counsel for the Applicant is
directed to submit written argument, if any, by the next
date.

List the case before the next Division Bench on
05.05.2009 for final disposal. It is made clear that the
case shall not be adjourned on the next date on any
ground whatsoever.

(Khushiram)
Member (A)

(A.K.Gaur)
Member (J)


/bb/

the case is ready
for hearing

24.05.09

O.A. 257/07 -9-

05.05.2009. Call this matter on 23rd June 2009
for hearing



(M.R. Mohanty)
Vice-Chairman

lm

14.05.2009 Dr.M.C.Sarma, learned counsel for the
Railways, prays to list this matter on
19.05.2009 before Division Bench. He
undertakes to inform the counsel for the
Applicant about his prayer for preponement
of the hearing of this case.

List this matter on 19.05.2009 for
hearing.

Lm


(M.R. Mohanty)
Vice-Chairman

19.05.2009 On the request of Dr.M.C.Sarma,
learned counsel for the Railways, this matter
has been listed to-day for hearing.

Learned counsel for the Applicant has
filed a letter of absence till 29th May 2009.

In the aforesaid premises, call this
matter on 23rd June 2009.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm


23.06.2009

On the request of learned counsel
for both the parties, call this matter on
24.07.2009 for hearing.



(M.R. Mohanty)
Vice-Chairman

/bb/

The case is ready
for hearing.


18.5.09

The case is ready
for hearing.


23.7.09

OA-257/2007

24.07.2009

On the prayer of learned counsel for both the parties, call this matter on 07.08.2009 for hearing.

The case is ready for hearing.

2
6.8.09.

/bb/

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

07.08.2009

Call this part heard matter on 13.09.2009.

The case is ready for hearing

2
12.8.09

/bb/

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

13.08.2009

For the reasons recorded separately, the O.A. stands dismissed as withdrawn.

17/8/09

Copy of judgment order dated 13/8/09 send to the D/section for issuing to the Applicant & Respondents by Regd. post
Free copies of the both side standing counsels by hand.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

D/No. 9695-9697 ^{Rem} 17/8/09
dtd 24/8/09

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A No. 257 of 2007

DATE OF DECISION: 13.08.2009

A.K.Sarkar

.....Applicant/s.

Mrs.R.S.Choudhury

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Dr.M.C.Sarma, Railway counsel

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR.MANORANJAN MOHANTY, VICE CHAIRMAN
THE HON'BLE MR.M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

4. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No
5. Whether to be referred to the Reporter or not? Yes/No
6. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Judgment delivered by


Vice-Chairman/Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 257 of 2007

Date of Order: This, the 13th Day of August, 2009

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

Sri Anil Kumar Sarkar
Senior AFA/T-I, N.F.Railway
Resident of T/Flat No.476/D
Nambari, Maligaon
Guwahati, Assam
PIN:- 781 011.

... Applicant.

By Mr.K.N.Choudhury, Sr. Advocate and Mrs.R.S.Choudhury and
Mr.M.Mahanta, Advocates

- Versus -

1. The Union of India
represented by the Secretary
to the Government of India
Ministry of Railways, Rail Bhawan
New Delhi .
2. The General Manager
North East Frontier Railway
Maligaon, Guwahati-11.

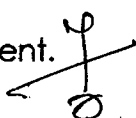
... Respondents.

By Dr. M.C.Sarma, Railway counsel.

ORAL ORDER
13/08/2009

MR.MANORANJAN MOHANTY, (V.C.):-

Mrs. Rakhi S. Choudhury, learned counsel appearing for the
Applicant is present. Dr.M.C.Sarma, learned counsel appearing for the
Railways is also present.



2. At the outset of hearing, Advocate for the Applicant has filed a memorandum, along with copy of the letter dated 12.08.2009 of the Applicant, seeking permission to withdraw this case. Copy of the said memorandum has already been seen by Dr.M.C.Sarma, learned counsel for the Railways.

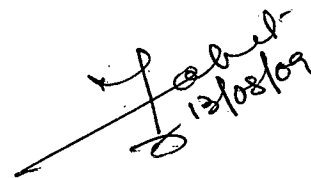
3. Heard. This case is permitted to be withdrawn and, accordingly, dismissed.

4. With the dismissal of this case, the interim order dated 20.09.2007 (passed in this case, restraining the Respondents from passing the final order in the departmental proceeding) hereby, stands vacated.

5. Send copies of this order to the Applicant and to the Respondents in the address given in the O.A. and free copies of this order be also supplied to the learned counsel for both the parties.



(M.K. CHATURVEDI)
ADMINISTRATIVE MEMBER



(MANORANJAN MOHANTY)
VICE-CHAIRMAN

OA (1902-2007) 9-25 1902-2007
is filed in the Central Administrative Tribunal
to be posted on 20.9.07.
19 SEP 2007
गुवाहाटी न्यायपीठ
Guwahati Bench
Sh. M. Mahanta, Advocate
19/9/07.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 257 /2007.

Sri Anil Kumar Sarkar

... Applicant .

- Mrs -

The Union of India & Ors.

... Respondents .

SYNOPSIS

The Applicant joined the Northern Railway as a Junior Clerk in the Office of the Dy Controller of Stores ,Shakurbasti on 4/11/1977 . Since joining , the Applicant had been promoted to various posts and presently serving as Senior AFA/T- I in the office of the Financial Adviser and chief Accounts Officer, N.F. Railway , Maligaon .During the period 1994-95 when the Applicant was serving as Asstt.Accounts Officer in Central Store Accounts (Bills) in the office of Financial Adviser and Chief Accounts Officer (Open Line) ,N.F.Railway ,Maligaon , he was entrusted with the duties and responsibilities of supervision of the entire works of the Central Store Accounts Sections including supervision of the bills of various firms involved in manufacturing and supplying of cast iron sleeper plates to N.F. Railway . It was in pursuance of the discharge of these duties that certain allegations were against him which ultimately culminated in the General Manager ,N.F.Railway, Maligaon issuing form Nos of memorandum of charges dtd.

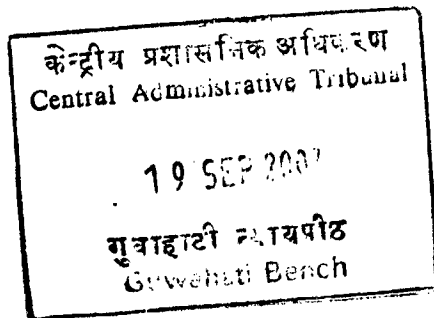
Contd ...p/2

13/08/03 , 13/8/03 , 1/9/03 and 5/11/03 . The CBI had also lodged ~~eelevant~~ nos , of FIRs against the Applicant on the basis of same set of charges against the Applicant during the period of 1997 - 2000 . Subsequently , the said eleven nos , cases were amalgamated into three cases . The Applicant is aggrieved by the decision of the Respondent Authorities in purporting to proceed with the departmental proceedings/ enquiries though criminal cases are pending against the Applicant , on the basis of same set of charges , before the Special Judge , CBI , Guwahati , Hence this Application.

Filed by -

MADHURYYA MAHANTA.

ADVOCATE.



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Anil Kumar Sarkar

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 257 OF 2007

Sri Sri Anil Kumar Sarkar

.....Applicant

-Vs-

The Union of India & Anr.

.....Respondents

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FILED BY

MADHURAYA MAHANTA.
ADVOCATE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. 257 OF 2007

BETWEEN

Sri Anil Kumar Sarkar
Senior AFA/T-I, N.F.Railway
Resident of T/Flat No. 476/D
Nambari, Maligaon,
Guwahati, Assam
PIN-781011

.....Applicant

-AND-

1) The Union of India

Represented by the Secretary to the Govt. of India
Ministry of Railways, Rail Bhawan,
New Delhi

2) The General Manager

North East Frontier Railway,
Maligaon,
Guwahati-11

.....Respondents

DETAILS OF THE APPLICATION

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

The Applicant is aggrieved by the decision of the Respondent
Authorities in purporting to proceed with the departmental

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Filed by the Applicant.
Mangal - Madhup - Mest.
Advent.
Anil Kumar Sarkar 19/9/07.

proceedings/enquiries though criminal cases are pending against the Applicant, on the same set of charges, before the Special Judge, CBI, Guwahati, which has prejudicially affected the Applicant.

2. JURISDICTION OF THE TRIBUNAL

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

3. LIMITATION

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

4. FACTS OF THE CASE

- 4.1 That the Applicant states that he joined Northern Railway as a Junior Clerk in the office of the Deputy Controller of Stores, Shakurbasti, Ranibagh on 4.11.1977. Since joining his services under the Railway authorities, the applicant had been promoted to various posts and presently he is serving as Senior AFA/T-I, in the office of Financial Adviser and Chief Accounts Officer, North East Frontier Railway, Maligaon. The Applicant states that during his entire service period he has rendered sincere, honest and dedicated service to the department concerned.

It is pertinent to mention herein that during his service tenure, the Applicant passed Appendix-II and Appendix-III examination held in the year 1983 and he was awarded cash prize under the sanction of the President for securing highest marks in Appendix-III examination.

- 4.2 That during the period 1994-95 when the Applicant was serving as Assistant Accounts Officer in Central Store Accounts (Bills) in the Office of the Financial Adviser and Chief Accounts Officer (Open Line), N.F.Railway, Maligaon, he was entrusted with the duties and responsibilities of supervision of the entire works of

Anil Kumar Sarma

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Sankar
Anil Kumar

the Central Store Accounts Sections, including supervision of the bills of various firms involved in manufacturing and supplying of cast iron sleeper plates to N.F.Railway. It was in pursuance of the discharge of these duties that certain allegations were made against him which ultimately culminated in the General Manager, N.F.Railway. Maligaon issuing four numbers of memoranda of charges namely

- (i) PNO/AD/RC-8 (A)/2000-SHG/AKS dated 13.8.03
- (ii) PNO/AD/RC-9 (A)/2000-SHG/AKS dated 13.8.03
- (iii) PNO/AD/RC-10 (A)/2000-SHG/AKS dated 01.09.03
- (iv) PNO/AD/RC-20, 21, 23 & 24 (A)/97-SHG/AKS dated 5.11.03

Copies of the relevant portions of memorandums of charges dated 13.8.03; 13.8.03, 1.9.03 and 5.11.03 are annexed herewith and marked as **Annexure A** **Colly.**

4.3 That the memorandum of charge issued against the Applicant vide PNO/AD/RC-8 (A)-2000-SHG/AKS dated 13.8.03 was for payment of freight charges on Vizag Steel Plant (hereinafter shortly referred to as VSP) s rate in favour of M/S Calcutta Iron & Engineering Ltd. as per circular issued by the Railway Board. The Article of charge framed against the Applicant by the said memorandum of charge reads as " Sri A.K.Sarkar failed to properly check the bills of M/S Calcutta Iron & Engineering Ltd., Calcutta for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for the whole quantity of 7,352.099 MT of C.I.S.P.s as claimed by the said firm, despite the fact that M/S Calcutta Iron & Engineering Co. was entitled to freight charges for allocated quantity of 3492.000 MTs of pig iron on VSP though the firm produced Xerox copies of vouchers/invoices for purchase of 5038.50 MT of pig iron from VSP, which resulted into wrongful loss of Rs. 28,17,872.27/- to N.F.Railway and corresponding wrongful gain to M/S Calcutta Iron & Engineering Co. Ltd".

4.4 That the memorandums of charge issued against the Applicant vide PNO/AD/RC-9 (A)/2000-SHG/AKS dated 13.8.03 was for payment of freight escalation and escalation of pig iron on VSPs rate in favour of M/S Kona Iron & Steel Company, Howrah as per circular issued by the Railway Board. The Article of charges framed against the Applicant reads as follows "**Article I-** Sri A.K.Sarkar failed to properly check the bills of M/S Kona Iron & Steel Company for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for the whole quantity of 1614.611 MT CISPs supplied to N.F.Railway amounting to Rs. 11,78,666.00/- (approx) without production of original vouchers of VSP showing purchase of pig iron; **Article II-** Sri A.K.Sarkar failed to properly check the bills of M/S Kona Iron & Steel Company for difference of escalations for VSP and IISCO pig iron and escalation of VSP pig iron @ Rs. 1,593.40 per MT for 460.611 MT amounting to Rs. 7,63,295/- passed and also issued payment cheque even though the Railway Board had not allocated pig iron to M/S Kona Iron & Steel Company for CISPs to be supplied to N.F.Railway and neither authorized the payment of difference; **Article III-** Sri A.K.Sarkar failed to properly check the bills of M/S Kona Iron & Steel Company for escalation of VSP pig iron for 1154.00 MT amounting to Rs. 15,65,848/- passed and also issued payment cheque though the Railway Board had not allocated pig iron to M/S Kona Iron & Steel Company for CISPs to be supplied to N.F.Railway, without production of original vouchers for purchase of pig iron from VSP."

4.5 That the memorandum of charge issued against the Applicant vide PNO/AD/RC-10 (A)/2000-SHG/AKS dated 1.9.03 was for payment of freight escalation on VSPs rate in favour of M/S Precision Casting and Engineering Works, Howrah as per circular issued by the Railway Board. The Article of charge framed against the Applicant vide the said memorandum of charge reads as "Sri A.K.Sarkar failed to properly check the bills of M/S Precision Casting and Engineering Works, Howrah for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for 796.687 MT of CISPs supplied

to N.F.Railway amounting to Rs. 5,91, 922/- against forged Xerox copies of VSP invoices without production of original vouchers, even though the Railway Board had not allocated pig iron to M/S Precision Casting and Engineering Works, Howrah for CISP's to be supplied to N.F.Railway."

4.6 That the memorandum of charge issued against the Applicant vide PNO/AD/RC-20, 21, 23 & 24 (A)/97-SHG/AKS dated 5.11.03 was for payment of escalation of pig iron on VSP's rate in favour M/S MPRP, M/S JDCF, M/S PEW and M/S BCEC as per circular issued by the Railway Board. The Article of charge framed against the Applicant vide the said memorandum of charge reads as-"Sri A.K.Sarkar while posted and functioning as Asstt. Accounts Officer/Central Stores Accounts, during the period 1993-95, in the office of the FA&CAO, N.F.Railway, Maligaon committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of his position, in as much as he passed fraudulently 07,15,12 & 04 No.s escalation bills based on increase of price of pig iron by Vizag Steel Plant (VSP) preferred by M/S Marcandy Prasad Radha Krishna Pvt. Ltd. (MPRP), M/S JD Casting Forging Pvt. Ltd. (JDCF), M/s Prakash Engineering Works (PEW) and M/S Beget Casting & Engineering Co. (BCEC) in terms of Railway Boards price circulars numbers Track/21/92/0103/7 dated 15.7.93, Track/21/92/0103/7 pig dated 29.9.93 and Track/21/92/0103/7 dated 20.4.95 for supply of CI Sleeper Plates to N.F.Railway against their respective contracts of tender no. Track 16 of 1990, even though relevant pig iron invoices of VSP were not attached/submitted alongwith the said bills in support of the claim, which were a must as per the conditions of the said circulars and thereby making fraudulent payments to the said firms M/S MPRP, M/S JDCF, M/S PEW and M/S BCEC for a total amount of Rs. 1,08, 02,235.00/-, Rs. 75,34,886.00/-, Rs. 37,76,853.00/- and Rs. 11,32,785.00/- respectively."

4.7 That the aforesaid four numbers of memorandums of charges were in regard to common cases of payment of escalated bills due to increase in price of pig iron by Vizag Steel Plant (VSP)

and escalated freight charges of pig iron of VSP. Pursuant to the issuance of the aforesaid four memorandums of charges, the Disciplinary Authority proposed to hold four numbers of different enquires against the Applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. On the basis of the said memorandums of charges four departmental proceedings were initiated against the Applicant at three different places i.e. Delhi, Kolkota and Guwahati and being aggrieved by such action of the authorities, the Applicant filed O.A.No. 29/05 before the Central Administrative Tribunal, Guwahati Bench for directions for amalgamation of the above four enquiries and for hearing at the Headquarters of N.F.Railways at Maligaon. However the Hon'ble Tribunal vide Order dated 15.2.05 was pleased to dismiss the O.A.No. 29/05.

- 4.8 That being aggrieved by the decision of the Hon'ble Tribunal the Applicant approached the Hon'ble Gauhati High Court by filing a writ petition challenging the Order dated 15.2.05, which was numbered as W.P.(C) No. 1591/05. The Hon'ble Gauhati High Court vide Order dated 9.3.05 was pleased to dispose of the same by directing that all the four proceedings were to be taken up for hearing at the headquarters of N.F.Railway at Maligaon. However since four different enquiry officers were appointed, the Applicant filed Review petition before the Hon'ble Gauhati High Court against the Order dated 9.3.05 and the same was disposed of with direction to the respondent authority to appoint only one officer to be the enquiry officer in all the four departmental proceedings to be completed preferably within a period of three months. It is pertinent to mention herein that in respect of the disciplinary proceedings initiated against the Applicant vide PNO/AD/RC-8 (A)/2000-SHG/AKS dated 13.8.03 and PNO/AD/RC-10 (A)/2000-SHG/AKS dated 01.09.03 the defence brief is submitted to the Investigating Officer. That in regard to the disciplinary proceedings initiated against the Applicant vide PNO/AD/RC-9 (A)/2000-SHG/AKS dated 13.8.03 the Presenting Officer has submitted his brief and the defence brief is yet to be submitted. Finally, in respect of the disciplinary proceedings initiated against the

Applicant vide PNO/AD/RC-20, 21, 23 & 24 (A)/97-SHG/AKS dated 5.11.03 the Presenting Officer has not submitted his brief till date.

The Applicant craves leave of this Hon'ble Tribunal to refer and rely upon the pleadings mentioned hereinabove/orders of the Hon'ble Court in the earlier cases, if so deemed essential by this Hon'ble Tribunal at the time of hearing.

4.9 That at this stage it would be pertinent to state that on the basis of the said irregularities allegedly committed by the Applicant eleven numbers of FIRs were also lodged by the Central Bureau Investigation based on purported source of information and accordingly cases were registered before the Superintendent of Police, Central Bureau Investigation (Anti Corruption Branch), Guwahati during the period 1997 to 2000, under Sections 120B/420 of Indian Penal Code and Section 13(1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988. Subsequently, the aforesaid eleven cases were amalgamated into three cases being numbered as Special Case No. 59/04, 60/04 and 62/04. It is brought to the notice of this Hon'ble Tribunal that the said three cases, which have been grounded on the same facts, are pending before the Special Judge, CBI, Guwahati and till that charges have not yet been framed against the Applicant. As pointed out above the subject matter of enquiry in the disciplinary proceedings and the criminal cases are same, in as much as, the disciplinary proceedings and the criminal cases have been grounded on the same set of facts.

Copies of some of the FIR's lodged against the Applicant are annexed herewith and marked as **Annexure B Colly**.

5. GROUND FOR RELIEF/S WITH LEGAL PROVISIONS

- 5.1 For that considering the fact that the Departmental Proceedings which have been initiated against the Applicant arises from the same cause of action, for which the criminal proceeding is also pending against the Applicant, it was incumbent upon the respondent authorities to stay the Departmental Proceeding pending the final decision of the case. Refusal to stay the departmental proceeding has gravely prejudiced the Applicant.
- 5.2 For that the Railway Authorities took note of irrelevant considerations in purporting to continue with the disciplinary proceedings simultaneously while criminal proceedings on the same set of facts are also pending against the Applicant. Unless the disciplinary proceedings are interdicted the Applicant would be highly prejudiced. Therefore, as pointed out by the Hon'ble Apex Court the issue needs to be appreciated having regard to the test of prejudice.
- 5.3 For that the Hon'ble Apex Court in a catena of decisions has held that while there can be no legal bar for simultaneous proceeding being taken up, yet there may be cases where it would be appropriate to defer departmental proceeding awaiting disposal of the criminal case, particularly when the criminal action taken and the disciplinary proceedings are grounded/based upon the same set of facts. Considering the fact that charges are yet to be framed against the Applicant in the criminal proceeding pending against him before the Special Judge, CBI, any adverse finding reached by the departmental authorities would adversely affect the rights of the Applicant and would cause great and serious prejudice to the Applicant.
- 5.4 For that, having regard to the fact that both the proceedings have been grounded on the same set of facts, it was incumbent upon the respondent departmental authorities to await the decision of the criminal proceeding, so that the defence of the Applicant in the criminal case may not be prejudiced. Not having done the same and proceeding with the departmental

proceedings, whereas charges are yet to be framed against the Applicant in the criminal proceeding before the Special Judge, CBI, has resulted in serious prejudice being caused to the Applicant and the action of the authority is therefore arbitrary, capricious and discriminatory and as such the same needs to be interfered with by this Hon'ble Tribunal and accordingly stayed.

- 5.5 For that it is evident that the action of the respondent authorities to continue with the departmental proceedings while charges are yet to be framed against the Applicant, has been taken mechanically without application of mind to the relevant factors and as such this Hon'ble Tribunal may be pleased to intervene in the matter and grant appropriate relief to the Applicant by staying the departmental proceedings.

6. DETAILS OF REMEDIES EXHAUSTED

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

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

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

8. RELEIF SOUGHT FOR

Under the facts and circumstances stated above, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to admit this application and notice be issued to the respondents to show cause as to why the releifs sought for by

the Applicant should not be granted, call for records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs:-

- 8.1 Direct the respondent authorities to stay the departmental proceedings/enquiries initiated against the Applicant vide memo no.s **a)** PNO/AD/RC-8 (A)-2000-SHG/AKS dated 13.8.03, **b)** PNO/AD/RC-9 (A)/2000-SHG/AKS dated 13.8.03, **c)** PNO/AD/RC-20, 21, 23 & 24 (A)/97-SHG/AKS dated 5.11.03 and **d)** PNO/AD/RC-10 (A)/2000-SHG/AKS dated 1.9.03, till the pendency of the criminal proceedings against the Applicant
- 8.2 To direct the respondent authorities not to finalise/conclude the disciplinary proceedings/enquiries initiated against the Applicant.
- 8.3 Any other relief(s) that the Applicant may be entitled to under the facts and circumstances and/or as may deem fit and proper by this Hon'ble Tribunal considering the facts and circumstances of the case.
- 8.4 Cost of the application.

9. PARTICULARS OF THE I.P.O

- i. I.P.O. NO.:
- ii .Date of Issue:
- iii. Issued From:
- iv. Payable at:

10. DETAILS OF ENCLOSURES

As stated in the index.

9-11-

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VERIFICATION

I, Sri Anil Kumar Sarkar, son of Sri Chandrakanta Sarkar, aged about 54 years, resident of Resident of T/Flat No. 476/D Nambari, Maligaon, Guwahati, Assam, Pin-781001, do hereby state and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1, 2, 3, 4.1(p), 4.9(p) & 6 to 10 —
_____ of the accompanying application are true to the best of my knowledge and those made in paragraphs 4.1(p), 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 & 4.9(p) above are true to my information derived from records and those made in paragraph 5 are true to my legal advice and rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 18th day of September, 2007 at Guwahati.

Anil Kumar Sarkar
DEPONENT

56-12-

ANNEXURE - A Colly

STANDARD FORM NO. 5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO. PNO/AD/RC-3(A)/2000-SHG/AKS

DATE: 13.08.03.

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri A.K. Sarkar, the then AAO/CSA now DFM/RNY under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

2. Shri A.K. Sarkar, the then AAO/CSA now DFM/RNY is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact undersigned, N.F. Railway, Maligaon, immediately on receipt of this Memorandum.

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

Contd to page -2.

Certified to be
true - copy
M. Mohanta
Adv.

Shri A.K. Sarkar, the then AAO/CSA now DRM/RNY

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

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

5. Shri A.K. Sarkar 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.

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

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

8. The receipt of this Memorandum may be acknowledged.

Encls:- Annexures- I, II, III, & IV.

(VIPAN NANDA)
GENERAL MANAGER
NF RAILWAY : MALIGAON

To
Shri/Smt. Shri A.K. Sarkar,
the then AAO/CSA now DRM/RNY.

(Through DRM/RNY)

Article of Charge framed against Shri A.K.Sarkar, DFM/RNY/NF Railway

That Shri A.K.Sarkar while functioning Asstt. Accts. Officer in CSA (Bills) in the office of the FA & CAO (Open Line) , N. F. Railway during 1994 committed gross misconduct in the matter of checking and passing the bills of M/s Kona Iron & Steel Company, Howrah in respect of the Railway Board's contract No.Track/21/91/0101/ 7/ POLICY dtd. 06/06/91 for manufacture and supply of Cast Iron Sleeper Plates (CISPs) to N. F. Railway in as much as;

Article - I

Shri A. K. Sarkar failed to properly check the bills of M/s. Kona Iron and Steel Co. for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for the whole quantity of 1614.611 MT CISPs supplied to N.F. Railway amounting to Rs.11,78,666.00 approx. without production of original vouchers of VSP showing purchase of pig iron.

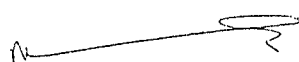
Article - II

Shri A. K. Sarkar failed to properly check the bills of M/s. Kona Iron and Steel Co. for difference of escalations for VSP and IISCO pig iron and escalation of VSP pig iron @Rs.1,593.40 per MT for 460.611 MT amounting to Rs.. 7,63,295/-, passed and also issued payment cheque even though the Railway Board had not allocated pig iron to M/s. Kona Iron and Steel Co. for C. I. S. Ps to be supplied to N. F. Railway and neither authorised the payment of difference.

Article - III

Shri A. K. Sarkar failed to properly check the bills of M/s. Kona Iron and Steel Co. for escalation of VSP pig iron for 1154.00 MT amounting to Rs.15,65,848/-, passed and also issued payment cheque , though the Railway Board had not allocated pig iron to M/s. Kona Iron and Steel Co. for C. I. S. Ps to be supplied to N. F. Railway, without production of original vouchers for purchase of pig iron from VSP.

Thus Shri A. K. Sarkar by his above said acts of omission and commission committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of public servant causing wrongful loss of Rs.35,07,809/- to N. F. Railway in contrvention of the provisions of Rule 3(1) (i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966.



Vipin Nanda
General Manager, NF Railway

-38-15-

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~~Annexure A~~

STANDARD FORM NO.5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO. FNO/AD/RC-9(A)/2000-SHG/AKS

DATE: 13.08.03

MEMORANDUM

The undersigned propose(s) to held an inquiry against Shri A.K.Sarkar, the then AAO/CSA now DFM/RNY under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Shri A.K.Sarkar, the then AAO/CSA now DFM/RNY is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact undersigned N.F.Railway, maligaon, immediately on receipt of this Memorandum.

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

Conf. []

4. Shri A.K. Sarkar, the then AAO/CSA now DEM/RNY is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents. If he desires to inspect documents, and also-

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

5. Shri A.K. Sarkar 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.

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

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

8. The receipt of this Memorandum may be acknowledged.

Encl:- Annexures- I, II, III, & IV.

(Sixteen pages)

(VIPAN NANDA)
General Manager
N.F. Railway/Maligaon

To
Shri/Smt. Shri A.K. Sarkar,
the then AAO/CSA now DEM/RNY

(Through DEM/RNY)

Annexure-I

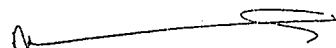
Article of Charge framed against Shri A.K.Sarkar, Divisional Finance
Manager, N.F. Railway, Rangiya

That Shri A.K.Sarkar, while functioning as Asstt. Accts. Officer in CSA (Bills) in the office of the FA&CAO (Open Line), N.F.Railway during 1994 committed gross misconduct in the matter of checking and passing the bills of M/S.Calcutta Iron & Engineering Co. Ltd., Calcutta in respect of the Railway Board's Contract No.Track-1/21/91/0101/7/50708 dated 15.7.91 for manufacture and supply of Cast Iron Sleeper Plates (CISPs) to N.F.Railway and other Railways in as much as;

Article-I

Shri A.K.Sarkar failed to properly check the bills of M/S.Calcutta Iron & Engineering Co. Ltd., Calcutta for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for the whole quantity of 7,352.099 MT of C.I.S.Ps as claimed by the said firm, despite the fact that M/S.Calcutta Iron & Engineering Co. was entitled to freight charges for allocated quantity of 3492.000 MTs of pig iron on VSP though the firm produced Xerox copies of vouchers/invoices for purchase of 5038.50 MT of pig iron from VSP, which resulted into wrongful loss of Rs.28,17,872.27 to N.F.Railway and corresponding wrongful gain to M/S.Calcutta Iron & Engineering Co. Ltd.

Thus Shri A.K.Sarkar by his above said acts of omission and commission committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of public servant causing wrongful loss of Rs.28,17,872.27 to N.F.Railway in contravention of the provisions of Rule 3(1) (i), (ii) and (iii) of Railway Service(Conduct) Rules, 1966.



(Vipin Nanda)
General Manager
N.F.Railway, Maligaon

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ANNEXURE A/3 39

STANDARD FORM NO.5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO. FHC/AD/RC-10(A)/2000-SHG/AKS

DATE: 01-09-03

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri A.K. Sarkar, the then AAO/CSA now DFM/RNY under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

2. Shri A.K. Sarkar, DFM/RNY is hereby informed that if he so desires, he can inspect and take extracts from the documents mentaioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact the undersigned, N.F.Railway, maligaon, immediately on receipt of this Memorandum.

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

Contd to page -2.

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Shri A. K. Sarkar, the then AAO/CSA, now DFM/RNY is directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also-

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

5. Shri A. K. Sarkar, DFM/RNY 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.

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

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

8. The receipt of this Memorandum may be acknowledged.

Enclo:- Annexures- I, II, III, & IV.

(Vipan Manda)
General Manager
N.F. Railway/ Maligaon.

To
Shri/Smt. A. K. Sarkar, the then AAO/CSA
now DFM/RNY, N.F. Railway.

(Through DFM/RNY).

Annexure-I

Article of charge framed against Sri A.K. Sarkar, Divisional Finance Manager, NF Railway, Rangiya

That Shri A.K.Sarkar while functioning Asstt. Acctts. Officer in CSA (Bills) in the office of the FA & CAO (Open Line) , N. F. Railway during 1994 committed gross misconduct in the matter of checking and passing the bills of M/s. Precision Casting & Engineering Works Howrah in respect of the Railway Board's contract No. Track - 1 / 21 / 91 / 0101 / 7 / 50762 dated 15.7.1991 for manufacture and supply of Cast Iron Sleeper Plates (CISPs) to N. F. Railway in as much as;

Article - 1

Shri A. K. Sarkar failed to properly check the bills of M/s. Precision Casting & Engineering Works Howrah for freight charges on VSP pig iron as announced by the Railway Board, passed the same and also issued payment cheque for 796.687 MT of C.I.S.Ps. supplied to N.F. Railway amounting to Rs.5,91,922/- against forged Xerox copies of VSP invoices without production of original vouchers, even though the Railway Board had not allocated pig iron to M/s. Precision Casting & Engineering Works Howrah for C. I. S. Ps to be supplied to N. F. Railway.

Thus Shri A. K. Sarkar by his above said acts of omission and commission committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of public servant causing wrongful loss of Rs.5,91,922/- to N. F. Railway in contravention of the provisions of Rule 3(1) (i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966.

N

Vipan Nanda
General Manager, NF Railway

-21- Annexure-A/2
42

STANDARD FORM NO.5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO. PNO/AD/RC-20,21,23 & 24(A)/
/97-SHG/AKS

DATE: 5-11-2003

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri A.K. Sarkar, the then AAO/CSA now DEM/RNY under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

2. Shri A.K. Sarkar, DEM/RNY is hereby informed that if he so desires, he can inspect and take extracts from the documents mentaioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact the undersigned, N.F. Railway, maligaon, immediately on receipt of this Memorandum.

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

- 1) Manikanda P.D. Radha Krishna P.D. P.T. D.D.
- 2) S.D. Chandra & Jozing P.D. D.D.
- 3) Brajesh Singh, works.
- 4) Rajesh Chandra Singh, works.

Contd to page -2.

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(2)

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

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

5. Shri A.K. Sarkar, DFM/RNY 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.

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

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

8. The receipt of this Memorandum may be acknowledged.

Enclo:- Annexures- I, II, III, & IV.

(Vipin Nanda)
General Manager
N.F. Railway/Maligaon

To
Shri/Smt. A.K. Sarkar, the then AAO/CSA
now DFM/RNY, N.F. Railway

(Through DFM/Rangia).

23-90

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Annexure-I

ARTICLE OF CHARGE AGAINST SHRI A.K. SARKAR, THE THEN ASSISTANT ACCOUNTS OFFICER/ CENTRAL STORES ACCOUNTS IN THE OFFICE OF THE FA&CAO, N.F. RLY, MALIGAON, NOW DIVISIONAL FINANCE MANAGER / RNY./ N.F. RLY.

Article of charge:

Sri A.K. Sarkar, while posted and functioning as Asstt. Accounts Officer/ Central Stores Accounts, during the period 1993-95, in the office of the FA&CAO, NF RLY, Maligaon committed gross misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of his position, in as much as he passed fraudulently 07,13,11 & 04 Nos. of escalation Bills based on increase of price of pig iron by Vizag Steel Plant (VSP) preferred by M/S. Marcandy Prasad Radha Krishna Prasad Pvt. Ltd. (M/S. MPRP) M/S. J.D. Casting and Forging Pvt. Ltd. (M/S. JD CF) M/S. Prakash Engineering Works (M/S. PEW) and M/S. Beget Casting and Engineering Co. (M/S. BCEC) in terms of Railway Board's price Circulars Nos. Track/21/92/0103/7 dtd. 15.7.93, Track/21/92/0103/7-pig dtd. 29.9.93 and Track/21/92/0103/7 dtd. 20.4.95, for supply of C.I. Sleeper Plates to NF Railway against their respective Contracts of Tender No. Track-16 of 1990, even though relevant pig iron invoices of VSP were not attached/submitted alongwith the said Bills in support of the claim, which were a must as per the conditions of the said Circulars and thereby making fraudulent payments to the said Firms M/S. MPRP, M/S. JD CF, M/S. PEW and M/S. BCEC for a total amount of Rs. 1,08,02,235.00, Rs. 75,34,886.00, Rs. 37,76,853.00 and Rs. 11,32,785.00 respectively.

Thus by the aforesaid acts of omissions and commissions, Sri A.K. Sarkar failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of his position and thereby contravened the provisions of Rule 3(1) (i) (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.

(V. Nanda)

Em/N.F. Rly

Certified to be
true copy
M. Mohanta
Adv

DELHI SPECIAL POLICE ESTABLISHMENT.....
 दिल्ली विशेष पुलिस स्थापना.....

प्रथम सूचना
FIRST INFORMATION REPORT

(दंड प्रक्रिया संहिता की धारा 154 के अधीन)
(Recorded u/s 154 Cr. P.C.)

Other No. BC 24(A)/97-SHG

रिपोर्ट करने का समय और तारीख
Date and time of Report...

30.12.97 at 1630 hrs.

Place of occurrence with State

Guwahati and other place(s)

Date and time of occurrence

1991-94.

Name of complainant or informant

Source

पुण्यात का विभाग
Office

U/s 120B/420 IPC & Sec. 13(1)(d)
r/w 13(2) PC Act'1988.

Name and address of the accused

- (1) Sri D.M. Bose, Dy. Chief Engineer (IR)
Dy. Chief Engineer (T.P.)
N.E. Rly., Maligaon.
- (2) Sh. D.K. Barua, S.O. (Accts)
C/o F.A. & C.A.O. (Store)
N.E. Rly., Maligaon.
- (3) Sh. A.K. Sarker, S.O. (Accts)
-do-
- (4) Sh. N.B. Barua, S.O. (Accts)
-do-
- (5) Sh. N. Sengupta, S.O. (Accts)
-do-
- (6) Proprietor/Partner, M/s Begat Casting
& Engineering Co. 76/18/2, Banaras Rd.
Belgachia, West Bengal, Howrah.

कार्रवाई का विवरण
Action taken **AC. 24(A)/87-SIG.**

तत्कालीन अधिकारी
Investigating Officer

Dr. G. Khamrang, h
Chal, Gauhati.

सूचना
INFORMATION

Information exists that Sh. D.M. Bose, Dy. CE (T.P.), N.F. Rly., Maligaon and S/Shri D.K. Barua, A.K. Sarker, N.B. Barua, N. Sengupta, all S.O. (Accts) C/o F.A. & C.A.O. (Store) N.F. Rly., Maligaon had entered into a criminal conspiracy with M/s Beget Casting & Engineering Co. 76/18/2, Banaras Road, Belgachia, Howrah, West Bengal, during the period 1991-97 and in pursuance of the said criminal conspiracy of the aforesaid officer (s) of N.F. Rly., Maligaon, Guwahati, Assam had misused their official position to show undue favour to the firm in the matter of payment of escalation price in connection with supply of C.I. (Cast Iron) sleeper to N.F. Rly., thereby causing double payment of Rs 75,000/- (approx) to the

...cntd 2/-...

Certified to be
true - copy.
M. Mohants.
Adv.

..... 2.....

suspect firm and corresponding loss to N.F. Rly., Guwahati.

Information also exists that N.F. Rly., Guwahati entered into a contract with M/s Beget Casting & Engineering Co., Howrah, vide No. 1/21/0101/7/50742 dtd. 16/7/91 for supply of 2303 (M.T.) by Metro Gauge (M.G.) sleeper made of Cast Iron to N.F. Rly. By a further agreement firm has to supply 2539 MT of B.G. Sleeper again to NF Rly. and the C.I. Sleeper was to be manufactured by the firm using 100% own material. As per Rly. Board supply condition of contract for the supply of C.I. Sleeper plate 1987 regarding procurement and supply of C.I. Sleeper shall entirely rest with the contractors.

In compliance with the Rly. Board order General Manager (Works) NF Rly issued separate orders giving consignees particulars for manufacture and supply of M.G. and B.G. Sleeper vide order No. 595 M.T. M.G. 60/R and 90/R vide No. W/68-7/167/91-92/W6-A dtd. 21.1.92 for supply of above sleeper by the firm. Accordingly, firm had supplied the materials to the consignee and had received the payments from the Rly. authority.

Information further exists that Rly. Board vide letter No. 2/21/91/0103/7/IISCO dtd. 22.4.92 that the escalation price of Pig-Iron is to be permitted on the basis of original purchase voucher of Pig-iron from the IISCO against the Rly. Board allocation which will be limited to the quantities of pig-iron allocated by Rly. Board to each manufacturer on IISCO for the manufacture and supply of C.I. Sleepers plates. On the basis of above order permitting claim for escalation, the firm had lodged their bills vide Nos BCEC/NFR/ESC/8/93-94 dtd. 16/2/94, BCEC/NFR/ESC/93-94 dtd. 19.4.93, BCEC/04/ESC/93-94 (Dt. not known), BCEC/03/ESC/93-94 dtd. 16.8.94, BCEC/02/ESC/93-94 dtd. 16.8.93, BCEC/NFR/ESC/94-95 dtd. 20/3/95, BCEC/NFR/ESC/95-96 dtd. 20.6.95, BCEC/NFR/9/93-94 dtd. 16.2.94, BCEC/ESC/03/93-94 dtd. 19.5.94, BCEC/ESC/01/93-94 dtd. 19.5.93, BCEC/ESC/02/93-94 dtd. 19.5.93, BCEC/NFR/ESC/92-93 dtd. 19.4.93, BCEC/ESC/93-94 dtd. 20.4.93, BCEC/ESC/06/94-95 dtd. 22/8/94, BCEC/NFR/ESC/03 to 05 dtd. 16.5.94, BCEC/NFR/94-95/ESC/01 dtd. 16.4.94. All the bills were passed and payments were made by the above Rly. Official(s).

Information further exists that Sh. B. Mazumder, Dy. Director (Track) Rly. Board issued Circular vide No. Track/21/92/103/7 dtd. 20.4.95 for escalation in VSP's price and permitted contractors claim VSP price escalation in connection with Pig-iron purchased from VSP.

On the basis of above Circular the firm had claimed escalation price stating that they had procured raw-materials from VSP for manufacture of C.I. Sleepers. The firm had claimed escalation with regard to VSP's increased rate on the basis of the differences between now VSP rate and IISCO rate. But for claiming and receiving any escalation price documentary evidence needs to be produced by the firm proving purchase of pig iron from the concerned steel plant. Though the firm put up such documentary evidence while claiming and receiving escalation for IISCO, it did not produce any such documentary evidence while claiming and receiving escalation for VSP price. However, payment has been made by the Rly. Official without any verification resulting wrongful loss to the Railways.

The aforesaid act of the Railway officials and the firm constitute an offence U/s 120B/420 I.P.C. and Sec. 13(1)(d) F/w 13 (2) P.C. Act, 1988. The case is endorsed to Sh. N. G. Khuntia, Dy. Commr. A.P. for investigation.

(BNS)

...oCo...

[Handwritten signature]
Superintendent of Police
C.R.I. & C.M. & C. & C.

विशेष पुलिस स्थापना
GUWAHATI
BRANCH
Beget (AKS)
Freight

प्रथम सूचना
FIRST INFORMATION REPORT

188

(दंड प्रक्रिया संहिता की धारा 154 के अधीन)
(Recorded u/s 154 Cr. P.C.)

18

क्यास नम्बर RC. 13(A)/99-SHG
Case No.

रिपोर्ट करने का समय और तारीख 20.9.99 at 4 PM
Date and time of Report

घटना-स्थल और राज्य का नाम
Place of occurrence with State
घटना का समय और तारीख
Date and time of occurrence
बिना या सूचना देने वाले का नाम और पता
Name of complainant or informant with address
कार्यालय का विवरण
Office

- Guwahati and other places
- During 1994-95
- Source
- U/s. 120B/420 IPC and Sec. 13(1)(d)r/w 13(2) of P.C. Act, 1988

4. Sh. A.K. Sarkar, SO/Acc. tts
O/o. F.A. and CAO (Stores)
N.F. Railway, Maligaon, Guwahati.
5. Sh. J. Baruah, Head Clerk,
Chief Engineer's office,
N.F. Railway, Maligaon, G
Guwahati.
6. Prop/Partner of M/s. Beget
Casting and Engineering Co.
(BCEC), Howrah.
Action taken: EE RC. 13(A)/99-SHG registered.

- (1) Sh. D.M. Bose,
Dy. Chief Engineer (TP)
N.F. Railway, Maligaon, Guwahati.
(2) Sh. N. Sengupta, SO/ACCTTS.
O/o. F.A. and CAO (Stores) N.F. Rly.,
Maligaon.
(3) Sh. D.K. Baruah, SO/Acctts.
O/o. F.A. and CAO (Stores)
N.F. Railway, Maligaon, Guwahati.

अन्वेषक अधिकारी
Investigating Officer B.S. Jha, Infr. CBI, Ghy.

सूचना
INFORMATION

Information exists that Sh. D.M. Bose, Dy. Chief Engineer (TP) N.F. Railway, Maligaon S/Sh. N. Sengupta, D.K. Baruah, A.K. Sarkar all Section officer/Acctts. and J. Baruah, Head Clerk, Chief Engineer's office, N.F. Railway, Maligaon had entered into a criminal conspiracy with M/s. Beget Casting and Engineering Company (BCEC), Howrah during 1994-95 and by misusing their official position showed undue favour to the firm, in the matter of freight charges in connection with supply of cast Iron (C.I) sleepers to various consignees in N.F. Railway, thereby causing wrongful gain of Rs. 2,68,166/- to the suspect firm and corresponding wrongful loss to the N.F. Railway, Maligaon, Guwahati.

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Information also exists that the Railway Board had awarded contract to TRACK/1/21/91/0101/50742 dated 16.7.91 to the said firm for manufacture and supply of C.I. sleepers to the various consignees in N.F. Railway. The sleepers were to be manufactured from Pig-iron purchased by the suppliers from steel plants under allotment order of Railway Board. The supplier was to use 100% own pig-irons, which the suppliers had to obtain from specified steel plants, as per the allotment order of the Railway Board. The cost of sleepers already included the transportation cost of pig-iron from the steel plant to the work site of the sleeper manufacturer.

As per Railway Board policy the price of the pig-iron is always taken to include the freight charge of the pig-iron itself. Further when the price of pig-iron itself was Rs. 6065/- per MT, this was held to include the pig-iron freight charge of Rs. 730/- per MT.

Information further exists that the said firm had referred to a letter of Railway Board dated 15.7.93, in demanding a further freight escalation of Rs. 730/- per MT. This was accepted by the N.F. Railway authorities, despite the fact that the pig-iron price which was paid by the component of Rs. 730/- per MT for pig-iron freight charge. But the Railway Board letter dated 15.7.93, that it only permit freight escalation of Rs. 63/- per MT; based on the increase in Railway freight of Rs. 55/- per MT; that too for the limited period of 1.4.92 to 18.5.92. And from 18.5.92 onwards pig-iron annex price was once again to become Rs. 730/- per MT.

Information further exists that the firm had submitted their bill Nos. (i) BCEC/NFR/ESC/94-95/6 dated 16.2.94 and (ii) BCEC/NFR/ESC/94-95/8 dated 22.8.94 for 367.351 MTs as freight charges towards supply of C.I. products amounting to Rs. 2,68,166/- which was accepted by Railway officer/officials and payment made.

The aforesaid act of the Railway official and the firm constitutes an offence U/s. 120B/420 IPC and 13(1)(d) R/W 13(2) of P.C. Act, 1988. The case is endorsed to Sh. B. S. Jha, *for investigation.*


Superintendent of Police
CBI (ACB) Guwahati.

DELHI SPECIAL POLICE ESTABLISHMENT..... शाखा
GURAHATI BRANCH..... BRANCH

प्रथम सूचना
FIRST INFORMATION REPORT

188

(दंड प्रक्रिया संहिता की धारा 154 के अधीन)
(Recorded u/s 154 Cr. P.C.)

20

दण्डन संख्या
Crime No.

RC.15(A)/99-540

रिपोर्ट करने का समय और तारीख
Date and time of Report

20/08/99 at 5pm

घटना-स्थल और राज्य का नाम
Place of occurrence with State

Guwahati and other place(s)

घटना का समय और तारीख
Date and time of occurrence

During 1994-95.

अभिज्ञानी या सूचना देने वाले का नाम और पता
Name of complainant or informant with address

Source

दण्डन का विवरण
Offence

U/s 120B/420 I.P.C. and Sec.13(1)(d) r/w13(2) of P.C.Act.
1988.

अभिज्ञानी का नाम और पता
Name and address of the accused

- (1) Shri.D.M.Bose,
Dy.Chief Engineer(TP),
N.F.Rly,Maligaon,Guwahati.
- (2) Shri.N.Sengupta,S.O.(Acotts)
O/o F.A.& C.A.O(Stores)N.F.Rly,
Maligaon.
- (3) Shri.D.K.Barua,S.O.(Acotts)
-do-
- (4) Shri.A.K.Sarkar,S.O.(Acotts)
-do-
- (5) Shri.J.Barua, Head Clerk,
Chief Engineers Office,N.F.Rly,
Maligaon, Guwahati.
- (6) Prop/Partner of M/s J.D.Castings
and Forging Pvt.Ltd.,53,Dr.Abani Dutta
Road, Howrah - 711101.

कार्रवाई का विवरण
Action taken.

Regd. RC.

अभ्युक्त अधिकारी
Investigating Officer

Shri.B.Sinha, h/y

CR, khy

सूचना
INFORMATION

Information exists that Shri.D.M.Bose,Dy.C.E.(T.P) N.F.Rly.
Maligaon and S/Shri.N.Sengupta,D.K.Barua,A.K.Sarkar all S.O(Acotts).
and J.Barua Head Clerk,Chief Engineers Office,N.F.Rly,Maligaon, had
entered into a criminal conspiracy with M/s J.D.Castings and Forging
Pvt.Ltd., 53,Dr.Abani Dutta Road,Howrah during 1994-95 and by mis-
using their official positions showed undue favour to the firm in the
matter of freight charges in c/w supply of cast iron (CI) sleepers

MOIPNLK-28/CBI/72-10-10-72-300 Pads.

pto...contd...2/-

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to various consignees in M.F.R. thereby causing wrongful gain of Rs. 20,91,933/- to the suspect firm and corresponding wrongful loss to the MFR, Maligaon, Guwahati.

Information also exists that the Railway Board had awarded contract No. Track/1/21/91/0101/7/50702 dtd. 17.7.91 to the said firm for manufacture and supply of C.I. sleepers to various consignees in M.F.R. The sleepers were to be manufactured from pig-iron purchased by the suppliers from Steel Plants, under allotment order of Railway Board. The suppliers was to use 100% own pig-irons, which the suppliers had to obtain from specified Steel plants, as per the allotment orders of the Railway Board. The cost of sleepers already included transportation cost of pig-iron from Steel Plant to the work site of the sleepers manufacture.

As per Railway Board policy the price of the pig-iron is always taken to include the freight charge of the pig-iron of itself. Further when the price of pig-iron itself was Rs. 6065/- per M.T., this was held to include the pig-iron freight charge of Rs. 730/- per M.T.

Information further exists that the said firm had referred to a letter of Railway Board dtd. 15.7.93, in demanding a further freight escalation of Rs. 730/- per M.T. This was accepted by the M.F.R. authorities, despite the fact that the pig-iron price which was paid by M.F.R. to the firm for manufacture of sleepers already contained the component of Rs. 730/- per M.T. for pig-iron freight charge. But the Railway Board letter dtd. 15.7.93 that it only permits freight escalation of Rs. 63/- per M.T. based on an increase in Railway freight of Rs. 55/- per M.T. that for the limited period of 1.4.92 to 18/5/92; and from 18.5.92 onwards, pig-iron price was once again to become Rs. 730/- per M.T.

Information further exists that the firm had submitted their bill Nos. 1) JDCF/MFR/Esco/01/93-98 dtd. 20.3.94 and 2) JDCF/MFR/Esco/08/94 dtd. 28/3/94 for 2865.662 M.T.s freight charges towards C.I. products amounting to Rs. 20,91,933/- which was accepted by the aforesaid Railway officers/officials and payment made.

The aforesaid act of the Railway officials and the firm constitute an offence U/s 120B/420 I.P.C. and 13(1)(d) r/w 13(2) of P.C. Act. 1988. The case is endorsed to Shri. B. S. Jha, Dy. Comm. Guwahati for investigation.

18/9/94
Superintendent of Police,
CBI(ACB)Guwahati.

विशेष पुलिस स्थापना
DELHI SPECIAL POLICE ESTABLISHMENT
GUWAHATI BRANCH

प्रथम सूचना
FIRST INFORMATION REPORT

(दंड प्रक्रिया संहिता की धारा 154 के प्रचीन)
(Recorded u/s 154 Cr. P.C.)

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रिपोर्ट करने का समय और तारीख
Date and time of Report

7/8/2000 17.00hr.

क्राइम नं०
HCO(A)/2000-SH3

घटना-स्थल और राज्य का नाम
Place of occurrence with State Guwahati, Assam and Other place(s)

घटना का समय और तारीख
Date and time of occurrence During

अभिज्ञाती या सूचना देने वाले का नाम और पता
Name of complainant or informant with address Source information

घटना का विवरण
Offence

U/Sec 120 B r/w 420 IPC and U/Sec 13(1)
(d) r/w Sec 13(2) of PC act 1988.

परिचयित का नाम और पता
Name and address of the accused

5. Shri J. Baruah, Head Clerk
O/o the Chief Engineer
NF Rly, Maligaon.
6. M/s Precision Casting &
Engineering Works, Haurah.

(1) Shri D.M. Bose Dy. Chief Engineer (IP)
NF Rly, Maligaon.

(2) Shri D.K. Baruah, S.O. (Accts) O/o the
F.A. & CAO (Store) NF Rly, Maligaon.

(3) Shri A.K. Sarkar, S.O. (Accts) O/o the
FA & CAO (Store) NF Rly, Maligaon.

4. Shri N. Sengupta, S.O. (Accts) O/o the
FA & CAO (Store) NF Rly, Maligaon.

कार्रवाई का विवरण
Action taken

Regular Case registered.

तफ्तीग: अधिकारी
Investigating Officer

Shri B.S. Jha, Inspector.

सूचना
INFORMATION

Information is received from reliable source that Shri D.M. Bose, Dy. Chief Engineer (IP), Shri D.K. Baruah, Shri A.K. Sarkar and Shri N. Sengupta all three as S.O. (Accts) in the O/o the FA & CAO (Store) and Shri J. Baruah Head Clerk in the O/o the Chief Engineer, while working as such in the NF Railway Maligaon entered in to a criminal conspiracy with representatives of M/s Precision Casting & Engineering works during 1994-95 and criminally abused and misused their official position to show undue favour to M/s Precision Casting & Engineering works and there by caused unlawful gain to the said firm of Rs. 2,58,517.82 and corresponding loss to

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the NF Railway in the matter of freight in connection with supply of cast Iron (CI) sleepers to various consignees in NF Railway.

It is alleged that the Railway Board awarded contract No. TRACX/1/21/91/0101/7/30762 dated 15.7.91 to M/s Precision casting & Engineering works for manufacture and supply of CI sleepers to various consignees in NF Railway by using 100% own materials i.e. Pig Iron obtained from specified steel plant as per the allotment orders of the railway board. The cost of the C.I. sleeper included the transportation from the steel plant to the work site of the sleeper manufacture and the component being Rs. 730/- per MT as the actuals supported by invoices, excluding a brief period between 1.4.1992 to 18/19.592 during which an escalation of Rs. 63/- per MT in price of CI sleeper owing to freight increase in Pig Iron was permitted by the Railway Board w/c Precision casting & Engineering works supplied only a fraction of the total quantity during said period, but dishonestly claimed vide payment order No. CS/100/1202 and CS/100/1211 both dated 31.1.94 for Rs. 2,58,317.82 freight escalation at Rs. 730/- per MT for 1614.611 MT which was dishonestly passed and paid by the accused NF Railway official causing wrongful loss of Rs. 2,58,317.82 to the Govt. of India and corresponding gain to M/s Precision casting & Engineering works and themselves.

The above facts disclose commission of cognizable offences U/sec 120 B r/w 420 IPC and Sec 13(1)(d)/r/w 13(2) of PC act 1988 hence a regular case is registered and endorsed to Shri. B. S. Jha, Inspector for investigation.

Superintendent of Police
CBI/AC/Quahatla

57
2/s filed today by Dr. M.C. Sarma, Rly.
counsel. copy ~~sent~~ served on other side
to be posted on 8.2.08 16/2/08

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- FEB -

गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A.~~XXXX~~ 257/2007

Shri Anil Kumar Sarkar ...

Applicant

Versus

Union of India & Another ...

Respondents

AND

IN THE MATTER OF

Written Statement on behalf of respondents

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<u>Sl.No.</u>	<u>Particulars</u>	<u>page No.</u>
1. Written Statement ...		1 to 4.
2. Verification		5.

Submitted

Heu
Dr. M.C. Sarma 06/02/08

Railway Advocate

Date :

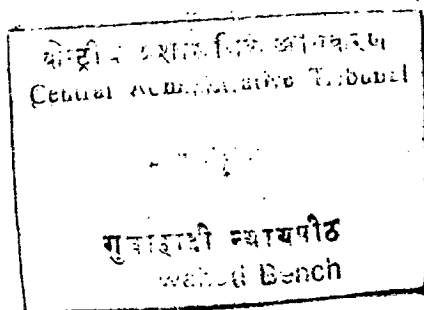
Dr. M. C. Sarma

M.Com, Ph.D., LL.B.

Advocate, Gauhati High Court.

Railway Advocate, Central Administrative Tribunal,

Guwahati



Filed by
Mun
06/07/08
Dr. M. C. Sarma
M.Com, Ph.D., LL.B.
Advocate, Gauhati High Court.
Railway Advocate, Central Administrative Tribunal,
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A.257/2007

Shri Anil Kumar Sarkar ... Applicant

Versus

Union of India & Another ... Respondents

AND

IN THE MATTER OF

Written Statement on behalf of the respondents.

The answering respondents respectfully SHEWETH :

1. That the answering respondents have gone through a copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling the Hon'ble Tribunal to take a proper view of the matter in question.

3. That the respondents respectfully beg to submit that the matter as it stands at present is beyond the jurisdiction of the Hon'ble Tribunal as per details of facts indicated in paragraphs 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8 of the O.A. The applicant has stated in paragraph 4.8 that being aggrieved by the decision of the Hon'ble Tribunal dismissing his O.A.29/05 vide order dated 15.02.2005, the applicant approached the Hon'ble Gauhati High Court by filing writ petition No.1591/05 and a review petition on 09.03.2005. The applicant has indicated in para 4.8 that the Hon'ble High Court disposed of the review petition "with direction to the respondent authority to appoint only one officer to be enquiry officer in all four departmental proceedings to be completed preferably within a period of three months." The applicant has nowhere mentioned as to what finality the Hon'ble

...P...2.....

Copy Received
Mallikarjun
04/02/08

Shirray
Hoping

Deputy Chief Accounts Officer

Gauhati High Court's order has reached by the date the present O.A. was filed before the Hon'ble Tribunal. No Bench indication has been given as to what step, if any, has been taken by the applicant before the Hon'ble High Court as to leave the field open for interference by the Hon'ble Tribunal. In view of this position, respondents beg to humbly submit that the application is a fit case for dismissal for want of jurisdiction.

While on the subjects mentioned by the applicant in paragraphs 4.2 to 4.8, the respondents beg to state that they are trying their very best to proceed with and finalise the DAR cases as early as possible although they are handicapped in this effort by various factors including co-operation ~~the~~ from the charged official for a quick resolution of the cases.

4. That the application suffers from want of a cause of action. In his prayer before the Hon'ble Tribunal the applicant as asked for a direction to be given to the respondent authorities to stay the departmental proceedings till the pendency of the criminal proceedings in the court of the Special Judge, CBI at Guwahati. On the face of it and as has been admitted by the applicant himself in paragraph 5.3 of the O.A., there can be no bar for simultaneous proceedings against an official as per a catena of decisions of the Apex Court. It is respectfully submitted that as per details of the irregularities in financial dealings involving the applicant, public funds of crores of rupees were allegedly lost. Moreover, both for departmental proceedings as well as for the criminal cases decisions of the Central Vigilance Commission and the Ministry of Railway were duly obtained. It is respectfully submitted here that there is no legal bar to the initiation of departmental disciplinary action under the rules applicable to delinquent public servants where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other because the ingredients of delinquency/misconduct in criminal prosecution and departmental proceedings as well as the standards of proof required in both cases are not identical. In criminal cases the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings proof based on preponderance of probability is sufficient for holding the charges as proved under conditions of natural justice. It is therefore submitted

that as the charges against the applicant are of a very serious nature, involving possible misuse of authority leading to loss of public funds of over three crores rupees and as the departmental major penalty proceedings are being carried out strictly according to the Railway Servants (D & A) Rules, 1968, affording natural justice to the applicant, the Hon'ble Tribunal may reject the request of the applicant and dismiss the O.A. for want of a valid cause of action.

5. Parawise comments:

5.1. That as regards paragraph 4.1, the respondents have no remarks to offer as the matters stated therein are based on records which the applicant is put to the test as far as their veracity is concerned.

5.2. That as regards paragraphs 4.2, 4.3, 4.4, 4.5, and 4.6, the respondents submit that they are nothing but a litany of the possible misdeeds indulged in by the applicant during his service life as an officer during the period 1994-95 for which departmental proceedings had to be drawn against him as per rule and as dictated by the facts described in the memoranda of charges. The enormity of the irregularities detected was such that extreme caution has to be exercised in proceeding with the cases of enquiry into voluminous records. These DAR enquiries are at various stages of finalisation and would be completed as early as possible. However due to very nature of the cases there is unavoidable delay as the respondents are handicapped by various factors including co-operation from the charged official for quick resolution of the cases.

5.3. That as regards paragraph 4.7, the respondents beg to state that, as admitted by the applicant himself, the Hon'ble Tribunal was pleased to dismiss the O.A. 29/05 by order dated 15.02.2005 for the spacious reasons recorded therein.

5.4. That as regards paragraph 4.8, the respondents beg to state that the disciplinary proceedings against the applicant are being conducted as per directions given by the Hon'ble High Court in the writ petition and the review petition filed by the applicant.

5.5. That as regards paragraph 4.9, the respondents beg to ~~xxxxx~~ deny that the facts relating to the four

...P...4....

Handwritten signature and stamp of the Central Administrative Tribunal, Guwahati.

केन्द्रीय प्रशासकीय सेवा वरुण
Central Administrative Service
पेंडिंगी before
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ls of records

disciplinary cases and the criminal cases pending before the Special Judge, CBI, Guwahati are grounded on the same set of facts. The applicant has given details of records based on which four charge sheets have been issued in paragraphs 4.3, 4.4, 4.5 and 4.6 and each of these charge sheets are based on separate facts and separate set of records. He has himself also stated in paragraph 4.9 that eleven FIRs were registered before the Superintendent of Police, CBI, Guwahati based on reported irregularities. The very fact that there are eleven cases in the CBI court against only four disciplinary cases proved beyond doubt that each case is based on separate set of ~~xx~~ facts. Moreover, the applicant has not cared to clearly juxtaposed the claimed similarities in all the four DAR cases and the eleven CBI cases to prove that they are based on the same set of facts, as claimed. There is thus no alternative for the respondents/^{but} to pursue the DAR and CBI cases simultaneously in view of the fact that the charges are serious and evidence strong enough in the whole affair involving huge amount of public funds and public interest.

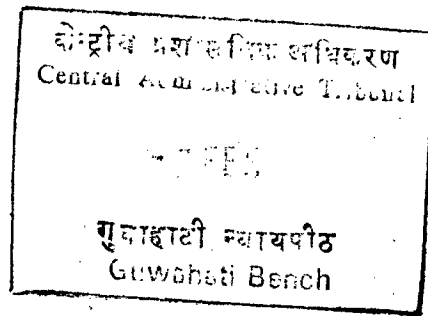
5.6. That in regard to the grounds of relief as stated in paragraph 5 of the O.A., the respondents beg to reiterate that the facts based on which the DAR proceedings have been drawn on the four charge sheets are different in each case and there is nothing common between the facts and records of these cases and those of the eleven cases registered in the CBI court. Decision of the disciplinary authorities in the DAR cases would in no way prejudice the decisions which the CBI would take in the eleven cases registered with them. It is submitted in all humility and with due respect that prejudice, if any, can be done in the matter only by the applicant himself in the manner in which he functioned in discharge of his official duties during the period in question.

Under the circumstances, the respondents beg to submit that the applicant's plea for stay of the departmental proceedings do not have any legal or logical basis and that the application be dismissed with costs.

... P...5...

Wesleyan Methodist

(5)



VERIFICATION.

I, Shri A.S. Hopkinson, son of Late A.S. Satai-long, aged about 49 years and at present working as Dy. CAO/G, M.F. Railway, Maligaon, do hereby solemnly affirm that the statements made in paragraphs 1 to 5 are true to the best of my knowledge and information based on records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the _____ day of January, 2008.

Amy Shivaray Hopkinson
Signature

Designation

उप-प्रमुख, प्रशासनिक विभाग, गुवाहाटी
Deputy Chief Accounts Officer (A)
17, B-1, Maligaon, Guwahati.

Rejoinder filed today, copy served
on the other side, To be posted
on 2.4.08

[Signature]
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

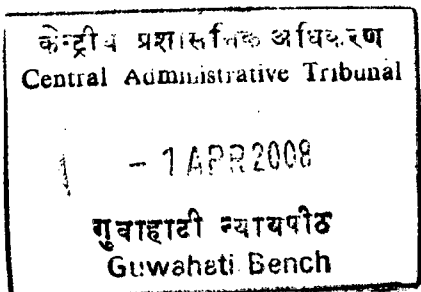
Filed By -

Anil Kumar Sarkar

Through - Madhurya Mahanta

Advocate

31/03/08



O.A. No. 257/2007

Sri Anil Kumar Sarkar.

..... Applicant

- Vs -

The Union of India & Anr.

..... Respondents

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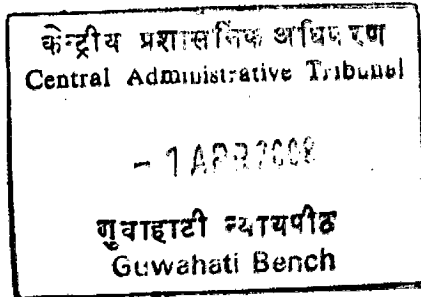
1. Rejoinder 1 to 3.
2. Verification 4
- ~~Annexure C Copy~~
- ~~Annexure E Copy~~

Filed By: Madhurya Mahanta

Madhurya Mahanta

Advocate -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI



IN THE MATTER OF

O.A. No. 257/2007

Sri Anil Kumar Sarkar.

.....Applicant

-Vs-

The Union of India and Anr.

.....Respondents

-AND-

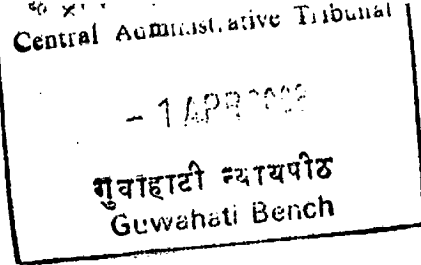
IN THE MATTER OF

A rejoinder filed by and on behalf of
the Applicant to the written
statement submitted by the
respondents.

MOST RESPECTFULLY BEGS TO STATE:

1. That the Applicant begs to state that he has received a copy of the written statement submitted by the respondents and has understood the contents thereof. At the outset, prior to replying to the various statements made in the written statement, the Applicant states that none of the statements made therein shall be deemed to be admitted save and except those which are specifically admitted herein below.
2. That with regard to the statements made in paragraphs 1 and 2 of the written statement the Applicant has no comments to offer.
3. That the statements made in paragraph 3 of the written statements are denied by the Applicant. In this context it is humbly stated that the matter at hand falls within the jurisdiction of this Hon'ble Tribunal and hence the statements made contrary thereto are denied. Further as is evident from the statements made

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Filed By - Anil Kumar Sarkar
Through - Medhraj Mohanta
31/03/08. Advocate



Amel Kumar Sardar

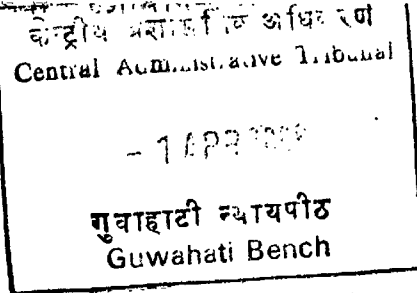
paragraph 4.8 of the O.A., the Hon'ble High Court while disposing the Review Petition had specifically directed the appointment of one enquiry officer for all the four departmental proceedings and had further directed for completion of the enquiries within a period ^{of} three months. The Respondents have in a most unfair and prejudicial manner continued the departmental proceedings for more than three years from the date of issue of the order of the Hon'ble High Court as such it is now not open to the respondents to question the delay, if any, which has occurred in filling the instant Original Application.

4. That the statements made in paragraph 4 of the written statement are denied in seriatim by the Applicant. A bare glance at the Memorandum of Charges issued in the departmental proceedings and the set of charges in the criminal cases would clearly reveal that the charges are identical. Further the statements made in paragraph 5.3 of the O.A. being legal advice, the Applicant refrains from commenting the same. However it is pertinent to note that the answering respondents have conveniently quoted only part of the submission, to suit their limited purpose.

It is pertinent to state herein that the Applicant has approached this Hon'ble Tribunal on the ground that the departmental proceedings which have been initiated against the Applicant arises from the same cause of action, for which criminal proceeding is also pending against the Applicant, as such, it was incumbent upon the respondent authorities to stay the departmental proceeding pending the final decision of the case.

5. That with regard to the statements made in paragraph 5.1 of the written statement the Applicant has no comment to offer.
6. That the statements made in paragraph 5.2 of the written statement are categorically denied by the Applicant. It is denied that the Applicant has not co-operated with the respondents during the enquiry proceedings. In fact the records of the case, if perused by this Hon'ble Tribunal, would clearly reveal the contrary. The respondents have inordinately delayed the entire disciplinary proceedings and having failed to finalize even a single case till date are now shifting the onus on the Applicant.

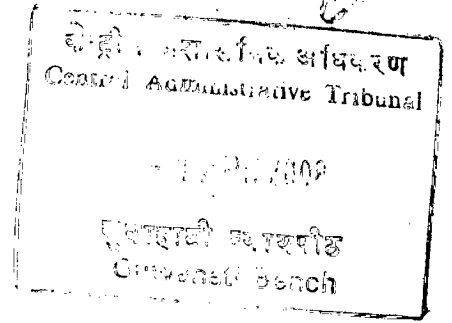
Madhupri Mishra
Advocate



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Anil Kumar Sarker

7. That with regard to the statements made in paragraphs 5.3 and 5.4 of the written statement the Applicant does not admit anything which are contrary to the records of the case and further reiterates the statements made in paragraphs 4.7 and 4.8 of the O.A.
8. That while denying the statements made paragraph 5.5 of the written statement, the Applicant reiterates the statements made in paragraph 4 hereinabove for the sake of brevity.
9. That the Applicant categorically denies the statement made in paragraph 5.6 of the written statement. The said statements cast aspersion on the Applicant even prior to his conviction either from a criminal court or the disciplinary authority themselves. The same is reflective of the malafide intent of the authorities who have already considered the Applicant to be guilty of the charges framed against him despite the fact the proceedings is still pending. The Applicant humbly reiterates that he has rendered honest, sincere and dedicated service to the departments concerned and as such the reliefs prayed for in the O.A. are legally valid and tenable and accordingly the O.A. is liable to be allowed.

Mallikarjun M. S.
12/02/2019



VERIFICATION

I, Sri Anil Kumar Sarkar, son of Sri Chandrakanta Sarkar, aged about 54 years, resident of Resident of T/Flat No. 476/D Nambari, Maligaon, Guwahati, Assam, Pin-781001, do hereby state and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the the case. The statements made in paragraphs 1, 2, 3(Pt), 4(Pt), Sd/- the accompanying application are true to the best of my knowledge and those made in paragraphs 3(Pt) & 4(Pt) ——— above are true to my information derived from records and those made in paragraph — are true to my legal advice and rest are my humble submission before this Hon'ble Tribunal and I have not not suppressed any material fact. .

And I sign this verification on this the 20th day of March, 2008 at Guwahati.

Anil Kumar Sarkar

DEPONENT