

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MLP-70/95 ordersheet pg 1
Disposed date- 01/8/95

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI, 5

O.A.No. 44/95

Misc.Petn.

C.P. No.

R.Appl:

..... N. G. Sen APPLICANT'S
frs.

..... Y. C. (2 OR RESPONDENT'S

Mr. B.K. Sharma, Mr. P.K. Tiwari FOR THE APPLICANTS

Mr. B. Mehta, Mr. S. Sharma

.....
Mr. G. Sharma, Add. C.A. FOR THE RESPONDENTS

OFFICE NOTE

DATE

ORDER

27.3.95

Mr B.K. Sharma for the applicant.

this is made in a
form and within time
C. F. of Rs. 50/-
deposited vide

IPO/BD No 80/421639

Dated 24.3.95.

24/3/95
Rd. 15.

A disciplinary enquiry initiated in 1984 still has not reached finality. It is apparent from the report of the enquiry officer that the department has not been in a position and possibly will not be in a position to adduce material evidence which was stated to be the basis of the articles of charges and prove the allegations against the applicant. ^{Having regard to 14} The very fact that despite several opportunities over the years and the directions given by the enquiry officer from time to time, ~~since~~ this evidence was not ^{being} produced, it will mean grave injustice to the applicant now to give further opportunity to the respondents to try to produce the said evidence. There can be no denying of the fact that under the rules the delinquent is entitled, firstly, to the inspection of the documentary evidence proposed to be tendered and an opportunity thereafter to rebut the same. All the stages for this purpose ^{are} ~~have~~ been ^{over} ~~worked~~. Interest of justice will not be served if there is further delay when the

27.3.95

prospect of respondents being able to ^{prove} ~~frame~~ the charges against the applicant is very dim. In the absence of any finding recorded by the enquiry officer on the basis of whatever evidence was produced before him as he found it impossible to do so, it is extremely doubtful as to whether the disciplinary authority has acted legally and in consonance with the principles of natural justice in holding the applicant guilty of charges levelled against him and to impose a penalty upon him.

There are cases and cases where a serious allegation in the beginning is made giving a feeling that there is a very serious misconduct on the part of the delinquent involving an element of criminality. However, a mere allegation would not be tantamount to proof and in the absence of proof the delinquent is entitled to be looked upon as innocent. The very fact that the respondents have not been able to produce any material evidence dilutes the seriousness of the charges as originally made.

By reason of the inability of the respondents to take necessary steps for carrying forward the enquiry and proving the charge has resulted in depriving the applicant of his promotion which he claims to be entitled to. This is another facet of the injustice caused to him. Moreover, the very fact that the disciplinary authority has passed an order of withholding three increments with cumulative effect when compared with the alleged misconduct shows that

even,...

OFFICE NOTE

Date

COURT'S ORDER

27.3.95

even if the enquiry is now [REDACTED] it may not result in serious [REDACTED] of justice even if this penalty is to be set aside.

We should have expected the Appellate Authority to have disposed of the appeal early in the background of the peculiar circumstances and the undue delay that has entered in this case. The appeal is stated to have been filed on 25.7.1994. If the Appellate Authority were to decide the appeal we would have been able to know whether the aforesaid aspects have been examined or not and whether it has ^{been} considered as to whether in the circumstances and when the enquiry was abandoned it should be finally closed by holding that the charges are not proved and giving the benefit of inability of the respondents to prove the charge to ^{the applicant} set aside the order of punishment so that the way for consideration of his promotion was made clear.

In the circumstances we admit the ^{application} appeal and direct that notices be issued to the respondents. We grant the respondents 8 weeks time to file their written statement without hoping to get further extension and direct that the application be listed for final hearing on 12.6.1995. Meanwhile, we direct the respondent No.2 to dispose of the appeal of the applicant which is stated to have been filed on 25.7.1994 within a period of two months from the date of receipt of a certified copy of this order and making the copy of his decision available to the applicant immediately after the decision

is....

4

O.A.No.44/95

OFFICE NOTE

Date

COURT'S ORDER

27.3.95

is given and to make a copy available to this Tribunal ^{also} on the day on which the application is directed to be placed for hearing, i.e., 12.6.1995. It is made clear that the pendency of the original application will not bar the respondent No.2 from proceeding with the appeal as directed above. Respondent No.2 shall bear in mind the observations made above by us in the order and ~~with due advertence to~~ the order dated 6.4.1994 passed earlier by this Tribunal in O.A.No.59/94 while deciding the appeal.

hille

Vice-Chairman

bo

Member

nkm

Requisites are read on 21.4.95 & examined vide nos. 1758-62 d. 26.4.95

Am
24/4

Service Reports are still awaited.

etc

12.6.95

To be listed for hearing on 21.6.95.

By order

Service Reports are still awaited.

etc

For
31/3/95

24.6.95 for hearing on 1.8.95

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI-5

ORIGINAL APPLICATION NO:

MISC. PETITION / REVIEW APPLICATION / CONT. PETITION NO.

..... APPLICANT(S)
versus

..... RESPONDENT(S)

FR is received from
The Resp. no. 2.

The FR. is in
compliance of the
order dt. 27-3-95.
submitted in Ho
removal & order.

On
22/6/95

Notice duly sent
on R. no. 1, 3, 6 & 7.

Notice from R. no. 4
sent back.

On
18/7

6
O.A.44/95(In M.P.70/95) 6

1-8-95

Mr.B.K.Sharma for the applicant.

Mr.G.Sharma Addl.C.G.S.C. for the respondents.

Arguments of both the counsel are heard and concluded. Order pronounced. Application is ^{partly} allowed. Misc.Petition is disposed of.

22.9.95

Copy of Indg./Order
dttd 1.8.95 issued
to all concerned
vide S/No. 4336-
4339 dttd. 10.10.95. ✓

[Signature]

lm

[Signature]
Vice-Chairman

[Signature]
Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 44/95
T.A. NO.

DATE OF DECISION 1-8-95

Shri Nani Gopal Sen

(PETITIONER(S))

Mr.B.K.Sharma, Mr.P.K.Tiwari, B.Mehta and
Mr.S.Sharma.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr.G.Sharma Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
THE HON'BLE SHRI G.L.SANGLYINE, MEMBER(ADMN)

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

yes

no

Judgment delivered by Hon'ble

VC.

M.G. Chaudhary

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 44/95

Date of Order: This the 1st Day of August 1995.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

SHRI G.L.SANGLYINE, MEMBER (ADMN)

Shri Nani Gopal Sen
Son of Makhanlal Sen,
Presently working as Inspector,
Central Excise, Agartala Range,
Road No.3, Jay Nagar, Agartala
Tripura West, Pin Code-799001. Applicant.

By Advocate Mr.B.K.Sharma and P.K.Tiwari,
Mr.E.Mehta, Mr.S.Sharma

-Vs-

1. Union of India,
represented by the Secretary, Finance,
Government of India,
New Delhi.
2. The Collector of Customs & Central Excise
Shillong-1
3. The Deputy Collector,
Customs & Central Excise,
Shillong
4. Sri Swapan Kr.Roy
Supdt.Customs (Preventive)
Dharamanagar
5. Sri Debendra Ch.Das
Supdt.Customs ((Disposal)
Shillong.
6. Sri Priyada Ranjan Mallik
Supdt.Karimganj Customs Division,
Karimganj
7. Sri Gopal Ch.Das
Supdt.Digboi Central Excise Division.

..... Respondents.

By Advocate Mr.G.Sharma Addl.C.G.S.C.

O R D E R.

CONTD/-

hsh

CHAUDHARI J(VC)

1. The O.A. is directed against the order dated 24-5-94 imposing penalty upon the applicant in a disciplinary proceeding. By interim order dated 27-3-95 we had directed the respondents No.2 to dispose of the appeal filed by the applicant against the very same order and which was pending before him. The respondent No.2 has now disposed of the appeal and copy of the order has been submitted to the record of this O.A. It is seen from that order that the respondent No.2 has dropped the charges that were made against the applicant vide charge sheet dated 5-7-84 which amounts^{to} setting aside the order of penalty imposed upon the applicant by the impugned order. The grievance of the applicant to that extent therefore does not survive.

2. While passing the order the appellate authority, i.e. respondent No.2, however has transgressed the scope of the appeal by recording following adverse comment against the applicant in operative order reading thus:-

"However, I find that the officer was not efficient enough for proper seizure investigation of the case thereby giving rise to considerable amount of confusions that took place at the time of seizure. For this act, I issue him a warning and he is advised to be more careful and more circumspect in future."

The aforesaid warning was not relatable to the charge. It amounts to modifying the penalty which could not be done as the charges were dropped. To that extent the operative order is not sustainable in law and that will have to be set aside as prayed in the

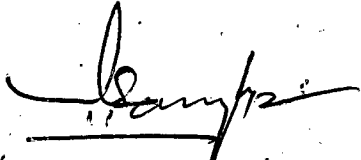
[Signature]

conts/-

M.P. Order accordingly.

3. The applicant has also prayed for consequential benefits including consideration for promotion consequent upon the dropping of the charges and the order of penalty consequently does not survive. As a necessary consequence it follows that the respondents will have to consider the question of consequential benefits to be extended to the applicant including his claim for promotion. Since no directions have been given by respondent No.2 in his order on appeal in that respect we direct the respondents to consider the said questions on merits and inform the decision to the applicant in due dourse but as expeditiously as possible preferably within 2 months from the date of receipt of copy of this order. No separate order on the M.P.

4. O.A.is allowed in terms of above order. No order as to costs. M.P.disposed of.


(G.L.SANGLYNE)
MEMBER (ADMN)


(M.G.CHAUDHARI)
VICE-CHAIRMAN

Central Administrative Tribunal
22 MAR 1995

Filed by the Applicant
through

B. Mohan
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.

Title of the case ; O.A.No 44/95.

Shri Nani Gopal Sen Applicant.

Vs

Union of India and Ors. Respondents.

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For Use in Tribunal's Office.

Read Gopal
Gopal Jaima
Advocate
15-3-95

*
*
*Date of filing : *
*
*Registration No: *
*
*
*
*Signature/
*Registrar/
*
*

22 MAR 1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. of 1995

BETWEEN

Shri Nani Gopal Sen,
Son of Makhanlal Sen,
presently working as Inspector,
Central Excise, Agartala Range,
Road No. 3, Jay Nagar, Agartala
Tripura West, Pincode-799001.

... Applicant

AND

1. Union of India,
represented by the Secretary, Finance,
Government of India,
New Delhi.
2. The Collector of Customs & Central Excise,
Shillong-1.
3. The Deputy Collector,
Customs & Central Excise,
Shillong.
4. Sri Swapan Kr. Roy,
Supdt. Customs (Preventive),
Dharmanagar.
5. Sri Debendra Ch. Das,
Supdt., Customs (Disposal),
Shillong.
6. Sri Priyada Ranjan Mallik,
Supdt. Karimganj Customs Division,
Karimganj.
7. Sri Gopal Ch. Das,
Supdt. Digboi Central Excise Division.

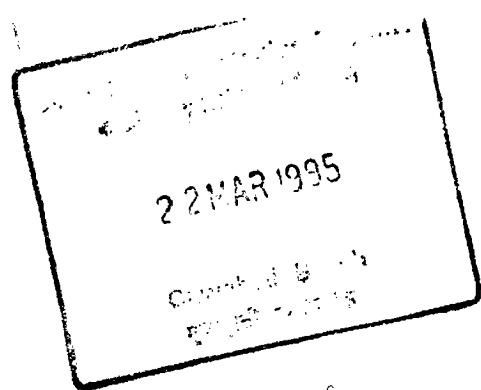
... Respondents

DETAILS OF APPLICATION

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

This application under Section 19 of the
Administrative Tribunals Act, 1985, is not made against

Contd...P/2.



any particular order. Instead it seeks relief against the long continuation of a disciplinary proceeding against the applicant. The disciplinary proceeding against which the relief is being sought had commenced nearly 11 years ago. Even after the lapse of nearly 11 years, it has not finally been concluded inasmuch as the Statutory Appeal dated 25.7.94 filed by this applicant against the order of Disciplinary Authority dated 24.5.94 (holding the applicant guilty of the charges contrary to the findings of the Enquiry Officer) has not been disposed of as yet.

As a result of this inordinately long continuance of disciplinary proceeding the applicant's service conditions have been adversely affected i.e. he has not been promoted to the next higher post and has been superseded by his juniors. Hence the applicant is aggrieved from :

- (a) An inordinately long continuation of the disciplinary proceeding under Rule 14 of the CCS(CCA) Rules which had commenced with the issuance of the Memorandum of Charges dated 5.7.84 and till this date has not been finally concluded inasmuch as the Statutory Appeal dated 25.7.94 filed by the applicant against the order of Disciplinary Authority dated 24.5.94 has not been disposed of as yet.
- (b) Promotion of the Respondent Nos. 4 and 5 to the grade of Superintendent Group 'B' vide order No. 147/93 dated 13th June 1993 and the promotion of the respondent Nos. 6 and 7 vide order No. 30/1994 dated 2nd Feb. 1994, superseding the applicant.

22 MAR 1995

- (c) Order of Disciplinary Authority vide DISC Order No. 1/CIU-VIG/94 C.No.11(10)A/2/Con/87/294 dated Shillong the 24th May 1994, holding the applicant guilty of the charges (contrary to the findings of the Enquiry Officer who held that the charges against the applicant have not been proved) and ordering withholding of three increments with cumulative effect from the date of next increment.
- (d) Non disposal of the applicant's appeal dated 26.7.94 against the aforesaid order of Disciplinary Authority dated 24th May 1994, despite several reminders.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant case is within the jurisdiction of the Hon'ble Tribunal.

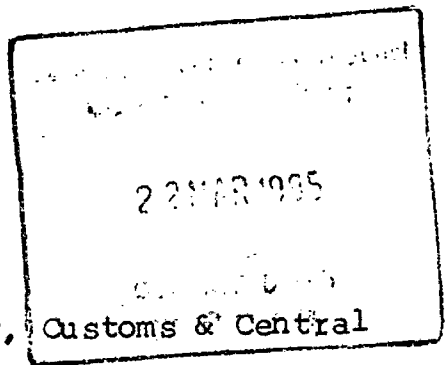
3. LIMITATION :

The instant applicant fulfills the legal requirement of limitation as laid down under Section 21 read with Section 20 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant belongs to Scheduled Caste community. He joined the department of Central Excise in a clerical grade on 28th October 1970. Subsequently, the applicant was promoted to the post of Inspector and he joined in the said capacity on 16.10.80. When this

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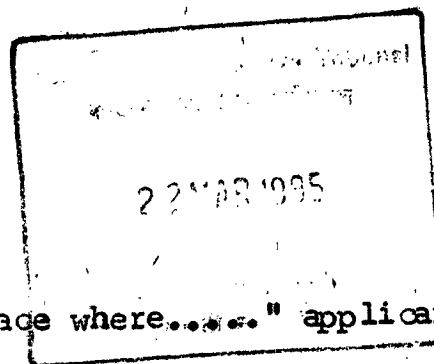


applicant was working as Inspector, Customs & Central Excise, Agartala Range, the Deputy Collector of Customs & Central Excise (respondent No. 3) by issuing a Memorandum C.No. II(10)A/4/CON/84/540 dated 5.7.84 proposed to hold an inquiry against the applicant under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter alluded to as the CCS(CCA) Rules). The aforesaid memorandum contained the charges on which the inquiry is proposed to be held alongwith the statement of allegation in support of each article of charge and the list of documents and witnesses by whom the articles of charges were proposed to be sustained. The memorandum called upon the applicant to submit within 10 days of the receipt of the memorandum a written statement of his defence and also to state whether he desires to be heard in person.

ANNEXURE:A is the copy of the Memorandum dated 5.7.1984.

4.2 That the article of charge contained in the Annexure:A memorandum ~~sate~~ stated interalia that the applicant "while functioning as Inspector of Sonamura C.P.P. had behaved in a manner unbecoming ~~of~~ that of a Government servant at the time of detection of the case leading to seizure of the Gold. It has been alleged that he had ordered one Shri N.C. Das, a contingent paid staff in full uniform to take part in the detection which is against the normal practice.....It was also alleged that".... the applicant....."xhad a hand in concealment of some gold bars which were ultimately recovered by the B.S.F. from the body of".....

Contd...P/5.



the applicant....." and from a place where....." applicant
....."was alleged to have hidden the gold."

4.3 That after completion of the inquiry and on receipt of the inquiry report, the disciplinary authority (respondent No. 3 - Deputy Collector, Customs & Central Excise) imposed the penalty of withholding 3 increments with cumulative effect, upon the applicant, vide Disc. Order No. 3/CON/85 dated 30.5.85 (signed on 17.6.85). It is pertinent to mention here that the aforesaid order of punishment was passed without furnishing the applicant with the copy of inquiry report and without providing the applicant an opportunity to show cause against the penalty.

ANNEXURE: B is the copy of the order of imposition of penalty upon the applicant.

4.4 That being aggrieved by the order of imposition of penalty, the applicant vide appeal dated 29.7.85 appealed to the appellate authority (Respondent No. 2 - Collector of Customs & Central Excise). The applicant's appeal dated 29.7.85 was rejected vide Collector of Customs, Shillong order No. 5/CON/85 dated 17.12.85. It is pertinent to mention here that the applicant's appeal was rejected by the appellate authority by a non-speaking order holding that "the contents of the appeal was tedious on technicalities without any point for consideration."

ANNEXURE: C is the copy of the applicant's appeal dated 29.7.85.

ANNEXURE: D is the copy of the appellate order dated 17.12.85.

Contd...P/6.

22 MAR 1985

4.5 That being aggrieved by the dismissal of the appeal, of the applicant, filed a petition dated 19.3.86 for review of the punishment imposed upon him. The afore-said petition for review was initially addressed to the Chairman, Central Board of Excise & Customs, New Delhi. However, the applicant was intimated vide letter dated 17th November 1986 of the respondent No. 3 that the petition for review of the order of punishment lies to the President of India against the appellate order passed by the respondent No.2. Hence the applicant was advised to furnish a 'no objection certificate' to treat his petition dated 19.3.86 as addressed to the President of India.

4.6 That on receipt of the letter dated 17th Nov.1986 the applicant immediately submitted a no objection certificate to treat his petition dated 19.3.86 as the one addressed to the President of India. Subsequently, the applicant was intimated vide letter dated 9th April 1987 issued by the respondent No. 2 to the Assistant Collector Customs & Central Excise, that as the "proceedings against Shri Sen suffer from inherent technical lacunae and amount to denial of natural justice to the petitioner the President has, therefore, without going into merits of the case, remitted the case to the competent disciplinary authority for conducting a de-novo enquiry in accordance with various provisions and for passing a fresh order. Shri Sen may please be informed accordingly."

ANNEXURE: E is the copy of the letter dated 9th April 1987.

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22 MAR 1995

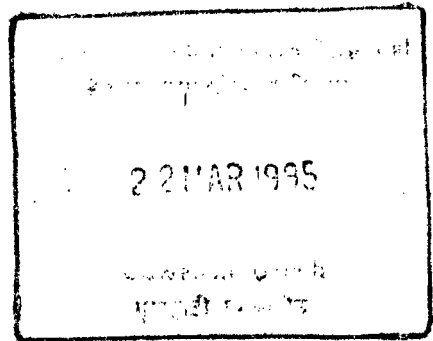
4.7 That upon receipt of the Annexure:E letter the applicant wrote a letter dated 28.4.87 to the respondent No. 2 wherein the request was made to pass necessary orders (pursuant to the order passed by the President of India) quashing the original proceedings and restoring the increments of the applicant w.e.f. 1.10.85.

4.8 That vide order dated 30th July 1987, the respondent No. 2 quashed the order of punishment passed against the applicant and restored his increments so far not drawn with effect from 1.10.85.

ANNEXURE:F is the copy of the order dated 30th July 1987.

4.9 That after quashing of the order of punishment and the restoration of increments to the applicant, it was expected that the de-nove enquiry against the applicant will start immediately and would be completed in shortest possible time. However, when till 1992, the De-Nove enquiry did not make any progress and due to this inordinate delay in the completion of enquiry, the promotion prospects of applicant started being adversely effected, the applicant vide his letter dated 8.8.92 requested the ~~app~~ respondent No. 2 (Collector of Customs & Central Excise) to drop the proceedings against him.

4.10 That the applicant's letter dated 8.8.92 failed to evoke any response from the respondent No. 2. Meanwhile vide order No. 147/93 dated 15th June 1993, the promotion of Inspectors of Customs & Central Excise to the grade of



Superintendent Group 'B' was made. Pursuant to the aforesaid order of promotion, the respondent No. 4 and 5 (both of whom are scheduled caste candidates but are Junior to the applicant) were promoted to the grade of Superintendent Group 'B'. While on the other hand because of the pendency of de-novo enquiry against him, the applicant's turn for promotion to the said grade was ignored.

ANNEXURE: G is the copy of the order dated 16th June 1993 showing the promotions made pursuant to the order dated 15th June 1993.

4.11 That subsequently, vide order dated 2nd February 1994 more promotions of the Inspectors of Customs and Central Excise to the grade of Superintendent Group 'B' were made. Pursuant to this order of promotion, the respondent Nos. 6 and 7 (both of whom are scheduled caste candidates but are junior to the applicant) were also promoted to the grade of Superintendent Group 'B'. While on the other hand even on this occasion because of the pendency of de-novo enquiry against him, the applicant's turn for promotion to the said grade was ignored.

ANNEXURE: H is the copy of the order dated 2nd February 1994.

~~xxx~~ It is pertinent to mention here that the promotion of respondent No. 4, 5, 6 and 7 were made against the vacancies reserved for scheduled caste candidates.

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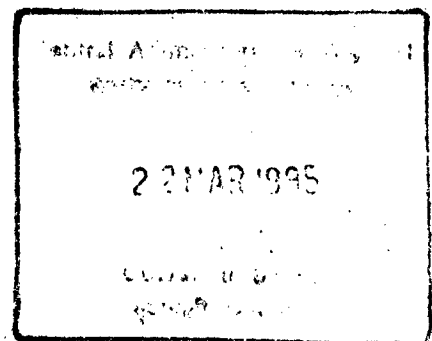
22 MAR 1995

4.12 That the respondent No. 4, 5, 6 and 7 belong to scheduled caste community and they are all juniors to applicant. The same is borne out from the seniority list in the grade of Inspector as on 1.1.93. In the said seniority list the respondent Nos. 4, 5, 6 and 7 have been shown at Sl. No. 48, 49, 66 and 70 respectively while on the other hand applicant's name appears at Sl.No. 47. Hence despite being junior to the applicant, the respondent Nos. 4, 5, 6 and 7 were promoted while the applicant was ignored for the simple reason that he is facing an enquiry.

ANNEXURE: I is the copy of the seniority list dated 1.1.93.

4.13 That at last the applicant on having found that the enquiry against him is pending since 1985 and there has been inordinate delay in the completion of disciplinary proceeding against him as a result of which his conditions of service are being adversely affected, filed the Original Application No. 59 of 1994 before the Central Administrative Tribunal, Guwahati Bench praying for a direction to close the enquiry against him and also for a direction to promote him to the Superintendent Group 'B' with effect from 15.6.93 with all consequential benefits.

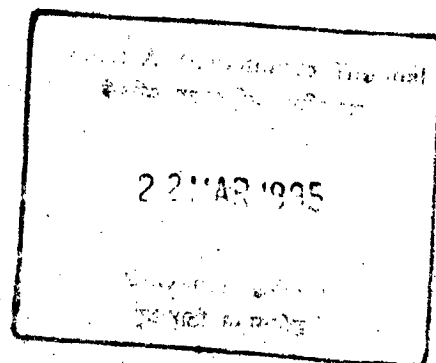
4.14 That the Hon'ble Tribunal in its order dated 6.4.94 directed the competent authority to complete the enquiry with final orders without fail within 30 days from the date of receipt of the copy of the order. The Hon'ble Tribunal also ordered if the enquiry is not



completed within the specified period, the disciplinary proceeding/enquiry shall stand quashed. The Hon'ble Tribunal further directed in its order that in the event of termination of the enquiry proceeding in favour of the applicant or due to quashing of the proceeding, the competent authority shall promote the applicant to the grade of Superintendent Group 'B' with effect from the 15.6.93 when his immediate juniors were promoted vide Est. Order No. 147/93 dated 15.6.93 endorsing C. No. II(3).5/E.T./III/93 dated 15.6.93.

Annexure:J is the copy of the order dated 6.4.94 passed in O.A. No. 59 of 1994.

4.15 That in view of the aforesaid order of the Hon'ble Tribunal, the Enquiry Officer was directed by the competent authority to complete the de-novo enquiry vide its letter dated 2.5.94. As a result, the Enquiry Officer proceeded to complete the enquiry which had been pending since 1985 within the specified time. However, the Enquiry Officer could not complete the enquiry and submitted his report dated 6.5.94 to the disciplinary authority with the finding that "the enquiry is abandoned, and stopped. Nothing could have been proved." It will be pertinent to mention here that during the long continuance of the so called departmental proceeding neither the prosecution side nor the delinquent side led any evidence. As per the procedure prescribed under the rules, the prosecution side is to lead the evidence, both oral and documentary first and thereafter the delinquent is to lead his evidence. During the long continuance of the enquiry in the instant



case the prosecution side did not lead any evidence and the applicant also did not get the opportunity to lead his evidence inasmuch as those stages did never come in the enquiry. The entire proceeding confined only to the question of production and inspection of documents which also could not be provided to the applicant. Thus on the face of such a situation and in view of the order dated 6.4.94 passed by the Hon'ble Tribunal, the Enquiry Officer, after a single sitting on 2.5.94 after the order dated 6.4.94 had to abandon and drop the enquiry. Be it stated here that the proceeding dated 2.5.94 also confined to the question of production of documents etc. and nothing else. During the long pendency of the enquiry, not a single stage of the different stages of an enquiry could be completed.

4.16 That the disciplinary authority (Respondent No.3) on receipt of the said report dated 6.5.94 did not make available the same to the applicant and thus deprived him of the opportunity to show cause on the findings of the Inquiry Officer before passing of the order of punishment by the disciplinary authority. The disciplinary authority (Respondent No. 3) passed the order of punishment against the applicant vide Disc. Order No.1/CIV-VIG/94 C.No. II(10)A/2/CON/87/294 dated 24.5.94. In the order it held the applicant guilty of the charges framed against him and awarded him the punishment of withholding of 3(three) increments with cumulative effect. On the face of it such an order is illegal and arbitrary inasmuch as no such order based on an abandoned enquiry could have

been passed. The disciplinary authority instead of gracefully accepting the situation, forcefully imposed the penalty on the applicant in gross violation of the established procedure for departmental proceeding.

ANNEXURE:K is the copy of the order of disciplinary authority dated 24.5.94.

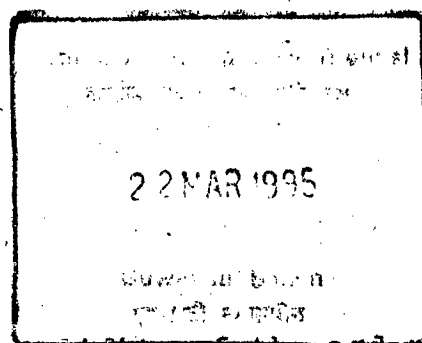
4.17 That alongwith Annexure:K order of the Disciplinary Authority dated 24.5.94, the applicant was also served with the copy of the Inquiry Report dated 6.5.94. Perusal of the inquiry report showed that the Enquiry Officer in his report had held that the charges against the applicant has not been proved and directed that the enquiry be abandoned.

In arriving at this finding, the Enquiry Officer considered several relevant aspects.

Copy of the inquiry report dated 6.5.94 is annexed herewith and marked as ANNEXURE:K¹.

4.18 That this subsequent development of so called completion of inquiry within the stipulated 30 days and passing of the order of punishment by the disciplinary authority was brought to the notice of the Hon'ble Tribunal by this applicant. Thereupon the Hon'ble Tribunal vide order dated 15.6.94 observed that the applicant is now at liberty to proceed against the order of penalty in accordance with law.

4.19 That thereafter the applicant filed an appeal dated 25.7.94 under Rule 23 of the CCS(CCA) Rules, 1965 before the appellate authority (Respondent No.2) wherein



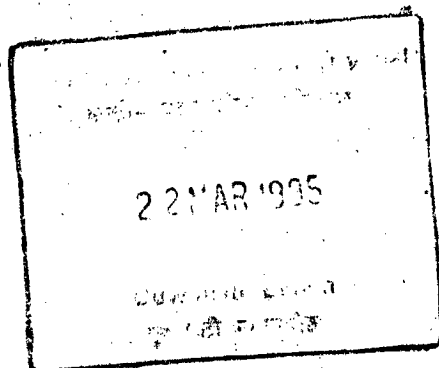
he challenged the legality and validity of the order dated 24.5.94 passed by the disciplinary authority (Respondent No. 3).

ANNEXURE:L is the copy of the applicant's appeal dated 25.7.94.

4.20 That after the filing of the Annexure:L ~~letter~~ appeal by the applicant more than six months have passed away but till now the aforesaid appeal of the applicant has not been disposed of as yet. The applicant also sent the reminders dated 26.8.94, 12.9.94 and 5.10.94 to the appellate authority requesting it to dispose of the applicant's appeal dated 25.7.94 with the speaking order. However, even these reminders failed to serve any purpose and the applicant's appeal has not been disposed of by the appellate authority till this date.

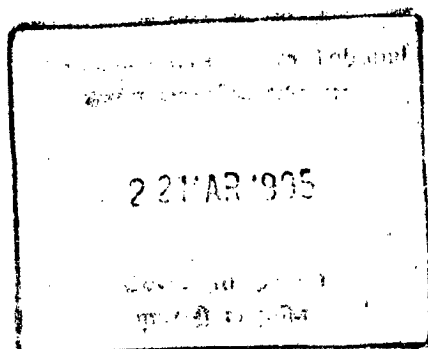
ANNEXURE:M is the copy of the last reminder dated 5.10.94.

4.21 That in March 1995, the D.P.C. is going to be held for assessing the suitability of Inspectors of Customs and Central Excise for the purpose of making promotions to the grade of Superintendent Group 'B'. The applicant has reasonable apprehension that like 1993 and 1994 on this occasion also his case will not be considered by the D.P.C. because of the penalty imposed and the disciplinary ~~authority~~ proceeding has not been finally concluded inasmuch as the appeal filed by the applicant against the order of the disciplinary authority has not been disposed of as yet. It is stated that the applicant cannot be made



to suffer and his promotion prospects cannot be adversely affected because of the inability of the respondent No. 2 to dispose of the applicant's appeal in a reasonable time. Failure on the part of the respondent No. 2 to dispose of the applicant's appeal in a reasonable period amounts to abdication of duty and responsibility casts upon it not to keep pending the matter relating to disciplinary proceeding specially when the continuation of the proceeding for an inordinately long period can have adverse affect upon the service prospects of the Government servant.

4.22 That ~~ix~~ the instant case is a fit case wherein the Hon'ble Tribunal may be pleased to quash the disciplinary proceedings pending against the applicant. Since the disciplinary proceeding had started as early as in 1984 and even in the period of 11 years, the same could not be completed without any progress, there is no certainty as to how long the proceeding might continue. As the respondent Nos. 4, 5, 6 and 7 have already been promoted to the Superintendent Group 'B' despite they are being juniors to the applicant, the Hon'ble Tribunal may be pleased to direct that notwithstanding the penalty and pendency of the departmental appeal, the applicant be promoted to the grade of Superintendent Group 'B' retrospectively from the date when his juniors were promoted. Even otherwise also the applicant is entitled to such promotion in view of the order dated 6.4.94 and consequent failure of the respondents to complete the



proceeding within the stipulated time.

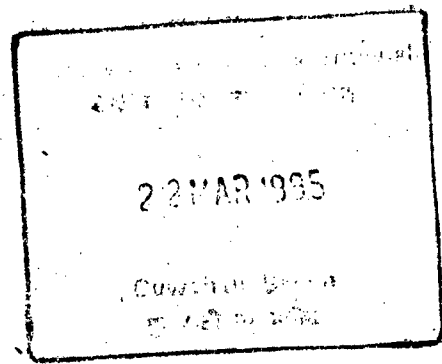
4.23 That the Annexure:K order of the disciplinary authority dated 24.5.94 is liable to be quashed and set aside inasmuch as disciplinary authority acted with total non-application of mind while considering the report of the Inquiry Officer and it arrived at the contrary finding to that of the Inquiry Officer by relying upon surmises and conjecture. There being no evidence on records, the disciplinary authority could not have imposed the order of penalty and that too on the basis of an abandoned enquiry. By imposing the order of penalty in a Rule 14 proceeding in the manner as has been done in the instant case, the disciplinary authority grossly violated the provisions of CCS(CCA) Rules and Article 311 of the Constitution of India.

4.24 That the disciplinary authority also made a grave error in not supplying the copy of the Inquiry Report to the applicant before passing the impugned order of punishment dated 24.5.94. It severely prejudiced the interest of the applicant and deprived him of the opportunity of presenting his case before the disciplinary authority in the light of the findings of the Inquiry Officer.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

The applicant being aggrieved by the order of the disciplinary authority dated 24.5.94 by the

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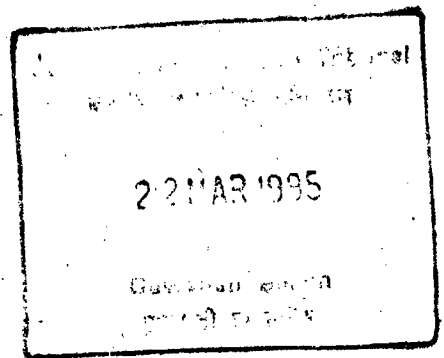
non-disposal of his appeal dated 25.7.94 and by the promotion of his juniors to the post of Superintendent Group 'B' superseding this applicant, prefer this application on the following grounds :

5.1 For that the failure of the disciplinary authority to supply to the applicant the copy of the inquiry report severely prejudiced the applicant and violated his valuable right of receiving the copy of the inquiry report and making representation prior to the passing of the order of punishment against him.

5.2 For that the disciplinary authority passed the impugned order in total non-application of mind and relied upon the surmises and conjectures in justifying the order of punishment against the applicant.

5.3 For that the disciplinary authority failed to consider the real purport and meaning of de-novo enquiry. It failed to consider that in the case of the applicant, the de-novo enquiry could not be carried out at all in view of the non-production of the original copies of ~~the~~ some of the vital documents and the Inquiry Officer had to abandon the inquiry. As the de-novo inquiry against the applicant was not carried out at all, the disciplinary authority could not have passed the order of punishment against the applicant.

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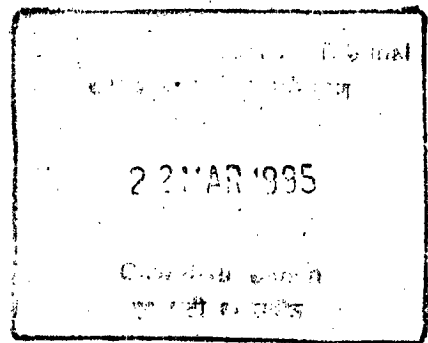
5.4 For that the disciplinary authority acted contrary to the settled principle of service jurisprudence while negating the findings of the Inquiry Officer. Law is well settled that the disciplinary authority if it refuses to accept the findings of the Inquiry Officer, should give sound and cogent reasons for doing so. However, in the instant case disciplinary authority relied upon the surmises and conjectures in over-ruling the findings of the Inquiry Officer.

5.5 For that the disciplinary authority failed to consider the effect of non-production of original copies of three vital documents upon the merit of the case. As despite the repeated notices of the Inquiry Officer, original copies of the documents viz. representation dated 19.11.83 of Shri N.C. Das, applicant's diary dated 21.4.83 and the statements of Shri P.K. Saha dated 23.4.83, were not produced for the inspection of the applicant, the de-nove enquiry against the applicant was fully vitiated and no decision could have been taken pursuant thereto by the disciplinary authority.

5.6 For that the disciplinary authority acted in unholy haste in passing the impugned order of punishment. The only factor it considered was that of somehow passing the final order within the time limit prescribed by the Hon'ble Tribunal, Guwahati. While

Contd...P/17A.

- 1B(A) -



doing so the authority did not consider that the Enquiry could not be completed and not a single stage of different stages could arrive at finality. In any case the disciplinary authority could not have passed the impugned order without giving any opportunity to the applicant to have his right of defence by way of adducing evidence etc.

5.7 For that the findings of the disciplinary authority are based upon the distorted facts and convoluted logic and hence liable to be quashed and set aside.

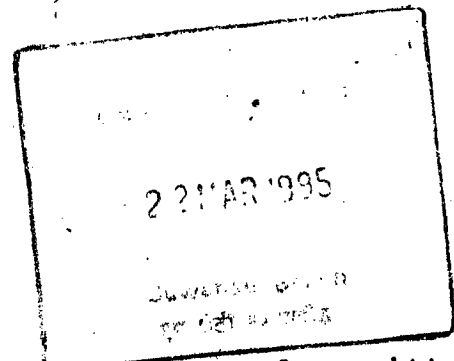
5.8 For that the de-novo inquiry against the applicant was not carried out in compliance with the rule 14 of the CCS(CCA) Rules, 1965. Hence the order of punishment passed by the disciplinary authority is void ab-initio.

5.9 For that the order of the disciplinary authority is arbitrary and against the settled principles of service jurisprudence.

5.10 For that the disciplinary authority over looked the fact that the inquiry against the applicant is pending since last nearly 11 years and the charge involved therein are stale. By ignoring this relevant aspect the disciplinary authority committed grave error.

5.11 For that the disciplinary authority while passing the impugned order of punishment against the applicant seriously

Contd...P/17(B)



erred in the exercise of its jurisdiction and committed grave error both within and out side of the jurisdiction.

The applicant craves leave of this Hon'ble Tribunal to rely on all those grounds that have been urged in the applicant's appeal dated 25.7.94.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has exhausted all the remedies available to him under the relevant service rules and there is no alternative remedy available to him in law.

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

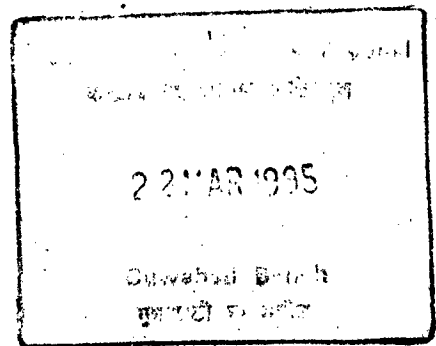
The applicant further declares that he has not filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of a Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

On the facts and circumstances stated hereinabove, the applicant prays for the following reliefs :

- 8.1 Quash the order of imposition of penalty passed by the Deputy Collector, Customs & Central Excise, Shillong (respondent No.3) vide Disc. order No.1/CIV-VIG/94 C.No. 11(10) A/2/CON/87/294 dated 24th May 1994 (Annexure:K).

Contd...P/18



8.2 Direction to promote the applicant to the post of Superintendent Group 'B' retrospectively with effect from 15.6.93 with all consequential benefits and/or pass any other order or orders as may be deemed fit and proper.

8.3 Direction to implement the consequential reliefs of promotion etc. granted to the applicant by the Hon'ble Tribunal by its order dated 6.4.94 in O.A. No. 59/94 in view of failure of the respondents to complete the departmental proceeding within the stipulated time.

9. INTERIM ORDER PRAYED FOR :

Direction to consider the applicant's case for promotion to the post of Superintendent Group 'B' by the D.P.C. scheduled to be held in March 1995.

10.....

The application is filed through Advocate.

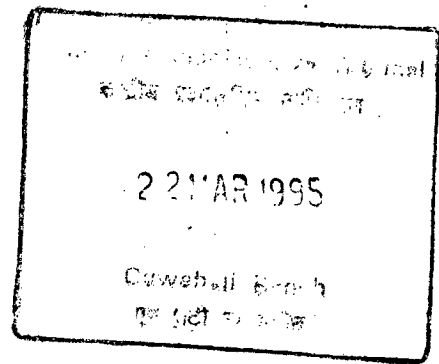
11. PARTICULARS OF THE I.P.O. :

- 11.1 I.P.O. No. :
- 11.2 Date :
- 11.3 Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....



- 19 -

VERIFICATION

I, Shri Nani Gopal Sen, son of Makhan Lal Sen, aged about 45 years, presently working as Inspector of Central Excise, Agartala Range, Road No. 3, Jay Nagar, Agartala, Tripura, do hereby verify that the contents from paragraphs 1, 4.1, 4.9, 4.15, 4.16, 4.20 to 4.24 are true to my knowledge which I believe to be true and the statements made in paragraphs 4.2 to 4.8, 4.10 to 4.14, 4.17 to 4.19 are true to my information being based on records and the rest are my humble submissions before this Hon'ble Tribunal and I also state that I have not suppressed any material fact.

And I sign this verification on this the day of February 1995.

Nani Gopal Sen

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Annexure: : A

STANDARD FORM FOR INITIATION OF MINOR PENALTY PROCEEDINGS
(IN CASES WHERE DISCIPLINARY AUTHORITY DECIDES TO HOLD THE
ENQUIRY)

(Rule 16 of C.C.S. (C.C.A) Rules, 1969).

6 - - - - -

GOVERNMENT OF INDIA
OFFICE OF THE COLLECTOR,
CUSTOMS & CENTRAL EXCISE.
S H I L L O N G.

C.NO. II(10)A/4/CON/84/540
Noted-----.

MEMORANDUM

In continuation of Memorandum No. II(8)2/ CON/224 dated the 4th April, 1984 issued under Rule 16 of the CCS(CCA) Rules, 1965, the undersigned is of the opinion that it is necessary to hold an inquiry against Shri Nani Gopal Sen Inspector, Customs & Central Excise, Agartala Range under rule 16 (i)(b) of the CCS(CCA) Rule 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statements of articles of charge (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV).

2. Shri Nani Gopal Sen, Inspector is directed to submit within ten days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri Nani Gopal Sen, Inspector is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiry Authorities or otherwise fails or refused to comply with the provisions of rules 14 and 16 of the CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the Inquiry Authority may hold the inquiry against him.

5. Attention of Shri Nani Gopal Sen, Inspector is invited to Rule 20 of the CCS(Conduct) Rules, 1964, under which no Government servants shall bring or attempt to bring any political or outside influence to bear upon any Superior Authority to further his interests in respect of matters pertaining to his service under 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 Nani Gopal Sen is aware of such a representation and that it has been made at his instigation and action will be taken against him for violation of Rule 20 of CCS(Conduct) Rules, 1964.

6. The receipt of this memorandum may be acknowledged.

Sd/-Illegible.

(Z. TOCHHAWNG)

DEPUTY COLLECTOR (&E).

CUSTOMS & CENTRAL EXCISE, SHILLONG.

SHILLONG.

To,
Shri Nani Gopal Sen, Inspector,

Customs & Central Excise,

Attested.
Advocate.

ANNEXURE-I

22/03/1995

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI NANI GOPAL SEN. INSPECTOR OF CUSTOMS & CENTRAL EXCISE.

ARTICLE-I

That the said Shri Nani Gopal Sen, Inspector while functioning as Inspector of Sonamura C.P.P. during the period from 22.4.83 to 7.5.83, (c) acted in such a way which is unbecoming of a Government servants and as such he violated the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (conduct) Rules, 1965.

Sd/-Illegible,
5/7

(Z.TOCHHAWNG)
DEPUTY COLLECTOR (P&E).
CUSTOMS & CENTRAL EXCISE:SHILLONG.

ANNEXURE-II

STATEMENT OF INPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI NANI GOPAL SEN. INSPECTOR OF CUSTOMS & CENTRAL EXCISE.

ARTICLE-I

That Shri Nani Gopal Sen, Inspector while functioning as Inspector of Sonamura C.P.P. had behaved in a manner unbecoming that of a Government servant at the time of detection of the case leading to seizure to seizure of the gold. It has been alleged that he had ordered one Shri N.C.Das, a contingent paid staff in full uniform to take part in the detection which is against the normal practice, as such contingent paid staff are only temporary employees and not allowed to take direct part in such operations. Further making a temporary contingent staff wear uniforms, prescribed for a regular Group 'D' staff employee, is against Rules. It was also alleged that Shri Nani Gopal Sen, Inspector had a hand in concealment of some gold bars which were ultimately recovered by the BSF from the body of Shri N.C.Das and from a place where Shri Nani Gopal Sen, was alleged to have hidden the gold. By this act Shri Nani Gopal Sen, Inspector had failed to maintain absolute integrity and devotion to duty which attracts Rule 3(I), (II) and (III) of Central Civil Services (Conduct) Rules, 1964.

Sd/-Illegible,
5/7

(Z.TOCHHAWNG)
DEPUTY COLLECTOR (P&E)
CUSTOMS & CENTRAL EXCISE
SHILLONG.

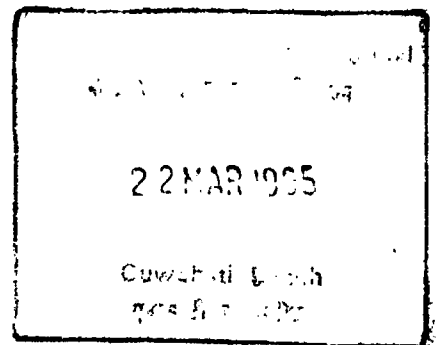
LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE IS PROPOSED TO BE SUSTAINED.

1. Complaint dated 27.5.83 from Shri M.S.Sandhu, Assistant Director (Genl) addressed to the Collector, Customs & Central Excise, Shillong.

2. Copy of representation dated 19.11.83 from Shri Nirode Ch. Das, S/O. Shri Birendra Ch. Dasm Sibanyra, West Tripura, addressed to the Additional Collector, Customs & Central Excise, Shillong.

3. Extract of the enquiry report submitted by the Assistant Collector, Customs & Central Excise, Agartala addressed to the Additional Collector Vide C.No.II(8)1/CON/ACA/83/217 dated 7.10.83.

Attested.
Advocate.



- 2 -

4. Extract of the report dated 19.10.83 submitted by the Assistant Collector, Agartala to the Deputy Collector (P & E), Customs & Central Excise, Shillong.

5. True copy of diary of Shri N.G.Sen, Inspector, Sonamura C.P.P.

6. Statement dated 27.6.83 submitted by Shri Nirode Chandra Das in presence of the Assistant Collector, Customs & Central Excise, Agartala.

Sd/- Illegible,
5/7

(Z. TOCHHAWNG)
DEPUTY COLLECTOR (P & E)
CUSTOMS & CENTRAL EXCISE: SHILLONG

ANNEXURE-IV

LIST OF WITNESSES BY WHOM, THE ARTICLE OF CHARGE IS PROPOSED TO BE SUSTAINED.

1. Shri N.L.Roy Inspector, Customs & Central Excise, Sonamura.
2. Shri Nirode Ch. Das, S/O. Shri Birendra Chandra Das, Sonamura. Tripura (West).
3. Shri Suklisl Sheel, Sepoy, Customs & Central Excise, Sonamura, Tripura West.
4. Shri Promtosh Dutta, Sepoy, Customs & Central Excise, Sonamura, Tripura West.
5. Shri Mantu Paul, S/O. Shri Mahendra Paul, Jeynagar, Agartala, Tripura West.
6. Shri Pradip Kumar Saha, S/O. Shri Maran Chandra Saha, Padmadhepa, Melagarh, Tripura West, Cont(G).
7. Shri Tarak Bhattacharjee, Const. BSF, Srimantapur, Tripura West.

Sd/-Illegible,
5/7

(Z. TOCHHAWNG)
DEPUTY COLLECTOR (P & E)
CUSTOMS & CENTRAL EXCISE: SHILLONG

Attested.
Advocate.

GOVERNMENT OF INDIA
OFFICE OF THE COLLECTOR OF CUSTOMS & CENTRAL EXCISE
SHILLONG.

DISC. ORDER NO. 3/CON/85
DATED. SHILLONG. THE 30TH MAY '85'.

22 MAR 1985

1. Appellate Authority : The Collector of Customs and Central Excise, Shillong.
2. Time limit for appeal : 45 (forty five) days from the date of service of the order.

Whereas, a disciplinary proceeding was initiated on 5th July, 1984 under C.No.II(10)A/Con/84/540 against Shri Nani Gopal Sen, Inspector of Customs & Central Excise, Shillong Collectorate under Rule 16 of Central Civil Services (Classification, Central and Appeal) Rules, 1965 on the following charges and statements of misconduct and misbehaviour in support of the Article of charge :

ARTICLE-I

That the said Shri Nani Gopal Sen, Inspector while functioning as Inspector of Sonamura, CPP during the period from 22.4.83 to 7.5.83 has failed to maintain (a) absolute integrity, (b) devotion to duty and (c) acted in such a manner which is unbecoming of a Government servant and as such he violated the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct Rules), 1964.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF THE ARTICLE OF CHARGE.

That Shri Nani Gopal Sen, Inspector while functioning as Inspector of Sonamura CPP had behaved in a manner unbecoming of a Government Servant at the time of detection of the case leading to seizure of the Gold. It has been alleged that he had ordered on Shri N.C. Das, a contingent paid staff in full uniform to take part in the detection which is against the normal practice, as such contingent paid staff are only temporary employees and not allowed to take direct part in such operations. Further, making a temporary contingent staff wear uniforms, prescribed for a regular Group 'D' staff employee, is against Rules. It has also alleged that Shri Nani Gopal Sen, Inspector had failed to maintain absolute integrity and devotion to duty which attracts Rules 3(1), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.

Shri. N.C. Sen, Inspector in reply to the said charge Memorandum pleaded not guilty of the charges made against him and prayed to be heard in person. Consequent upon his reply it was decided that an enquiry is to be made to enquire into the charges levelled against Shri Sen, Inspector.

Accordingly, Shri Digindra Kumar Paul, Superintendent Group 'B' Customs and Central Excise, Agartalla Division was appointed as Enquiry Officer to enquire into the charges framed against Shri Sen Vide Order No. 58/Con/84 dated 27-11-84 and appointed Shri Bibhuti Mohon Dutta Roy, Superintendent Cr. 'B' Customs & Central Excise, Agartalla Division as presenting Officer to present the case before the Enquiry Officer in support of the charges. The enquiry officer then submitted the report of enquiry to the Disciplinary Authority, whose findings are given below:

FINDING OF THE DISCIPLINARY AUTHORITY

I have gone through the case records including the submission made by the accused Shri Nani Gopal Sen, Inspector & the report submitted by the Enquiry Officer Shri. D.K. Paul, Superintendent.

contd.....p/2.

Shri Nani Gopal Sen, Inspector has been accused of failure

to maintain absolute integrity, devotion to duty and acting in a way which is unbecoming if a Government Servant at the time of detection of a case leading to seizure of Gold on 20.4.83. Shri N.G. Sen has been accused of ordering a contingent paid staff who to wear uniform of a Group 'D' staff and to take part in a preventive operation. Further, Shri N.G. Sen has also been accused of having a hand in concealment of Gold Bars which were ultimately recovered and seized.

On going through the statements and various submissions made, it could be seen very clearly that Shri N.G. Sen, Inspector while functioning as Inspector of Sonamura Customs Preventive Post had asked Shri Nirode Ch. Das, contingent paid staff, Sonamura CPP to take part in a preventive operation and also to wear the uniform of Group 'D' staff for which a contingent paid staff is never entitled. Shri Nirode Ch. Das himself has stated that the Khaki dress which he wore was supplied to him by Shri N.G. Sen and except for the waist belt this is similar to the uniform prescribed to the Group 'D' staff for which a contingent paid staff is never entitled. Shri Nirode Ch. Das himself has stated that the Khaki dress which he wore was supplied to him by Shri N.G. Sen and except for the waist belt this is similar to the uniform prescribed to the Group 'D' employees. No doubt there is no bar in taking Shri Nirode Ch. Das along with the preventive party for the purpose of identifying and suspected person. However, it was not correct and proper that Shri Nirode Ch. Das should be included as one of the party in detection of a case. It is also surprising that Shri Nirode Ch. Das stated that he knew the names of the suspected persons only after their arrival at the BSF Camp.

Regarding the involvement of Shri Nani Gopal Sen in the concealment of the Gold bars although only Shri Nirode Ch. Das was caught red handed with the gold bars, the evidences and statements subscribed by the various concerned persons would point out that the fact that there was positive involvement of Shri N.G. Sen, Inspector in the matter. There is no denying the facts that Shri N.G. Sen, Inspector Shri Nirode Ch. Das, contingent paid staff and Shri Pradip Kumar Saha, suspected person were all gathered together for some time and Shri Nirode Ch. Das was caught red handed with two gold bars which gold bars which has not been denied. Further, Shri Nirode Ch. Das has confessed clearly that he noticed Shri Pradip Kumar Saha handing over three gold bars to Shri N.G. Sen, Inspector. Although the 3 gold bars were not recovered directly from the body of Shri N.G. Sen, they were recovered from the cot which was just lying next to Shri N.G. Sen, Inspector and Shri Pradip Kumar Saha. There is no way under which the three gold bars could have been concealed in the cot before the arrival of the Customs officer, BSF officers and the suspected persons. Even if Shri Pradip Kumar Saha had managed to conceal the three gold bars in the cot, not by the Shri N.G. Sen, it would not have been possible for either Shri N.G. Sen or Shri Nirode Ch. Das not to have noticed the concealment since only three of them were present in the room. Therefore, even if the gold bars were not recovered directly from the possession of Shri N.G. Sen the involvement of Shri N.G. Sen is clear.

In view of the above I hold Shri N.G. Sen, guilty of the charge as framed in the articles of charges in that Shri N.G. Sen Inspector had failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of a Government Servant.

O R D E R

It is therefore, ordered that the increments of Shri Nani Gopal Sen, Inspector be with hold by three stages with cumulative effect in the time scale of pay of Rs. 425-15-500-EB-15-560-20-700-EB-25-800, under Rule 11 of CCS (CCA) Rules, 1965. It is further ordered that the stoppage of increments will be effective from the next date of increment due to Shri N.G. Sen, Inspector.

Shri Nani Gopal Sen,
Inspector of
Customs & Central Excise,

AGARALA DIVISION.

Sd/-Illegible, 12.6.85
(Z. TOCHHAWANG)
DEPUTY COLLECTOR (P & E),
CUSTOMS & CENTRAL EXCISE: SHILONG.

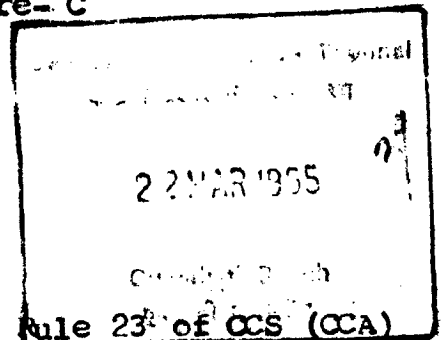
Attested.

Advocate.

Annexure- C

REGISTERED WITH A/D.

TO
THE COLLECTOR OF
CUSTOMS & CENTRAL EXCISE
Shillong-I



Sir,

This is an appeal preferred under Rule 23 of CCS (CCA) Rules 1965 against the punishment imposed vide Deputy Collector (PP & E), Customs and Central Excise, Shillong Order No. 3/CON/85 dated 30.5.85 for consideration.

2. That the memorandum of charges (Annexure-I) No. II/10) A/4/CON/84/540 dated NIL is stated to be issued under Rule 16 of CCS (CCA) Rules, 1965, but in forms and contents the said memorandum is one issued under Rule 14 of the CCS (CCA) Rules, which denied the opportunities available under Rule 16 and shows motives and malafides in imposing the penalty affecting adversely the amount of pension.

3. That Rules 16 of CCS (CCA) Rules 1965 prescribes as follows:-

"(A) Notwithstanding anything contained in clause (6) of Sub-Rule (1), if in a case it is proposed, after considering the representation, if any, made by the Government servant under clause (a) of that Sub-Rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an enquiry shall be held in the manner laid down in sub-rule (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

Even before the issue of the memo of charges, the disciplinary authority decided that the punishment should be such as referred to in sub(1-A) of Rule 16 *ibid*, not to

speak of taking such decision only after "Considering the representation, if any made by the Government servant under clause (a) of that sub-Rule."

Having this basic element of pre-conceived notion and bias on the part of the disciplinary authority, the entire proceeding has been vitiated.

4. That initiation of proceeding under Rule 16, is for imposing minor penalties specified under Rule 11. Requirement of a reasonable opportunity under that rule has been proscribed by the rule itself as only in making a representation against the proposed imposition of a minor penalty, and included an opportunity both against the alleged guilt and also the quantum of punishment.

The said memorandum of charges (Annexure-1) has been drawn under Rule 14 of the CCS (CCA) Rules, 1965 for imposing major penalty, and expressly declared in para 1 thereof that it was for imposing minor penalties under Rule 16 of CCS (CCA) Rules, 1965. But in para 4 it made obligatory for the Government to comply with the provisions of both the rules 14 and 16 of the CCS (CCA) Rules, 1965. This is uncommon and not authorised by the CCS (CCA) Rules, 1965. If the disciplinary authority was competent to impose penalty under Rule 14 in the context of the memo of charges, in as much as it deprived the Government servant to be supplied with a copy of the report and to know the substance of the adverse findings and the materials on which they were based and to which reference has been made by the punishing authority in the punishment order.

Attested.
Advocate.

Contd...p/2...

22 MAR 1985

5. That the memo of charges (Annexure-I) starts as follows:-
 "In continuation of memorandum No. II(8)2/CON/84/224 dated the 4th April, 1984 issued under Rule 16 of the CCS (CCA) Rules, 1965, the undersigned is of the opinion that it is necessary to hold an inquiry against Shri Nani Gopal Sen, Inspector of Customs & Central Excise, Agartala Range under Rule 16(1)(b) of CCS(CCA) Rules, 1965."

It is completely false to state that memorandum No. II(8)2/CON/84/224 dated 4th April, 1984 (Annexure-II) was issued under Rule 16 of CCS (CCA) Rules, 1965. It was a memorandum calling explanation as to why disciplinary action should not be taken against the Government servant on certain allegations brought against him in a report made by the Asstt. Collector, Agartala. Such an explanation does not form the part of proceedings under Rule 16 of CCS(CCA) Rules, 1965. It has neither been cited as a document under Annexure-III of the chargesheet.

6. That the contents of the instant memo of charges (Annexure-I) suggests that a memo of charges under Rules 16 to be issued first, and after considering the representation, if any, made by the Government servant, the second memo for initiation of minor penalty proceedings in case where disciplinary authority decide to hold the inquiry, is to be issued. The procedure has wholly been denied. The denial rendered the instant memo of charges (Annexure-I) as one without foundation.

7. That the memo of charges (Annexure-I) did not inform the Government servant that the proposal to take action against him under Rule 16 of CCS(CCA) Rules, 1965. It merely expressed the opinion that it was necessary to hold an enquiry under Rule 16(1)(b) of CCS(CCA) Rules, 1965. As such it has been malafide to impose penalty under Rule 16 of CCS(CCA) Rules, 1965 without informing the Government servant to take action under Rule 16ibid.

8. That there is a single article of charge in the memo of charges (Annexure-I) against the Government servant, on which it was decided to hold the enquiry before hearing anything from the Government servant. In this context para-3 of the memo of charges (Annexure-I) informing to hold the enquiry "in respect of those articles of charge as are not admitted" stands meaningless, and exposes bias of the disciplinary authority in expressing opinion beyond the requirement.

9. That on receipt of the memorandum of charges (Annexure-I), the Government servant wanted to have attested copies of the documents listed in Annexure-III of the memo of charges (Annexure-III). It was not supplied stating that during inquiry, "fullest opportunity" will be provided to inspect the documents vide letter No. II(10)A/4/CON/84/607 dated 10.8.84 (Annexure-IV).

10. That on any denial of the article of charge, an Inquiry officer was appointed vide "order" No. 58/CON/84 dated 27.11.84 Annexure-V which states as follows:-

"Where as an inquiry under Rule 16 of CCS(CCA) Rules, 1965 is being held against Shri Nani Gopal Sen, Inspector of C. & CE Agartala."

But it appointed the Inquiry officer denying authority from Sub-Rule(2) of Rule 14 of CCS(CCA) Rules, 1965.

A copy of report of the Inquiry officer appointed under Rule 14(2) is obligatory to be supplied to the delinquent Government servant. But it has been denied in the instant case without stating reasons therefor. Rule 16(1)(b) provides that "an inquiry in the manner laid down in subrules (3) to (23) of Rule 14" to be held. It enjoins that the inquiry officer to be appointed under Rule 16 (1-A). Since it was not done, denial to supply the copy of report has been denial of natural justice, and prejudicial to the interests of the Government servant.

Attested.
 Advocate.

~~On the first day i.e. 12.3.85~~

11. That the oral enquiry was held on 12.3.85 and 13.3.85. on the first day i.e. 12.3.85 the Inquiry Officer first put several question and obtained oral reply of the Government servant, put them on writing, and supplied a copy to the Government servant (Annexure-VI).

It contains the following:-

- Question-1. Pleading guilty or not.
- Question-2. Regarding reply to memo of charges.
- Question-3. Called for the statement of defence to be submitted by the Government servant to the Inquiry Officer.
- Question-4. On uniform of M.C. Das.
- Question-5. On Departmental badge to N.C. Das.
- Question-6. On N.C. Das participation in preventive duties.
- Question-7. On instructions of controlling officers through diary.
- Question-8. On utilising contingent staff on preventive duties.
- Question-9. On Identification of Mantu Paul.
- Question-10. On the allegations of concealment of Goldbars.
- Question-11. As to how two Goldbars had gone to the possession of C.C. Das.
- Question-12. On the allegation of Pradip Saha and N.C. Das meeting in room.

Oral inquiry on 12.3.85 concluded with this. On the following day i.e. 13.3.85, 5 prosecution witnesses were examined by the Inquiry Officer. Their statements were recorded by the Inquiry Officer. The Government servant was not allowed to cross examine the witnesses. No copy of the statements was supplied to the Govt. servant on his oral demands for the same, either the ordersheet was shown to the Government servant, nor his signature was obtained thereon. The Inquiry Officer held the oral Inquiry in a manner decided by himself, and not as prescribed by Rule (3) to (23) of Rule-14 of CCS (CCA) Rules, 1965. Sub-Rule (II) of Rule 14 provides that the Inquiry Officer should allow 5 days time to inspect the documents specified in the list referred to in sub-rule (2). After inspection of documents, further 10 days time should be given to furnish list of additional documents. After clear 3 days of inspection of documents, the oral inquiry to start. First prosecution (state) witnesses to be examined. After closure of the case on behalf of the disciplinary authority, the delinquent officer to be asked to state his statement of defence and produce defence witness. After closure of the case by the delinquent officer, the Inquiry officer may put questions to him on points appearing against him.

In the instant case, the Inquiry officer first started to examine the delinquent Government servant himself. He used his personal knowledge, beyond that in the records of the proceedings. Questions Nos. 5, 6, 7, 8, 9, 11, and 12 were put by the Inquiry officer using his personal knowledge, as no mention of these appear either in the article of charge or in the imputation thereof, not any evidence, primary or secondary was produced before him on 12.3.85 and before putting the questions. By doing this, the Inquiry officer has proved himself to be an agent of the disciplinary authority, instead of a judge acting on quasi-judicial proceeding without any attachment and having impartiality.

12. That after the oral inquiry came the punishment order (Annexure-VII) No. 3/CON/85 dated 30.5.85.

It refers to the report of the Inquiry Officer in page-2 para 2. But did neither supply a copy of the Inquiry report to the delinquent Government servant, nor stated what the report of the inquiry officer was. But has imposed a penalty of gross consequences without hearing a singular word from the delinquent Government servant, after issuing in the memo of charges. The God himself did not punish Adam without hearing him as to what he had got to say on the allegation. The CCS (CCA) Rules, 1965 carry that tradition which cannot be denied by any authority whatsoever.

Contd...p/4...

22/12/1995

13. That Rule 17 of CCS(CCA) Rules, 1965 prescribes that the Government servant shall also be supplied with a copy of the report of inquiry. This has been denied to the prejudice of the interest of the Government servant, and punishment has been imposed keeping him in the dark.

14. That in violation of Rule 30 of CCS(CCA) Rules - all orders, notices and other processes under the CCS(CCA) Rules, 1965 have been served to the delinquent Government servant through others, and made the Government servant to submit his documents through others. This has lower the prestige of the delinquent Government servant to the eye of these others, and has caused humiliation.

15. That even the punishment order was delivered through Shri B.L. Deb Barman, Asstt. Collector, Agartala in loose in 4 sheets, which is derogatory to the prestige of the Government servant (Annexure-VIII).

16. In the circumstances, I pray that you would be kind enough to set aside the aforesaid punishment order as being violative of CCS(CCA) Rules, 1965 in-operative, void ab-initio, and without any evidence for which I shall ever pray.

Enclosure:- 8(eight)

Yours faithfully,

Dated, Agartala,

The 29 th July, 1985

(N.G. SEN)

Inspector of
Customs & Central Excise, Agartala.

Copy forwarded to:-

The Deputy Collector (P & E)? Customs and
Central Excise, Shillong.

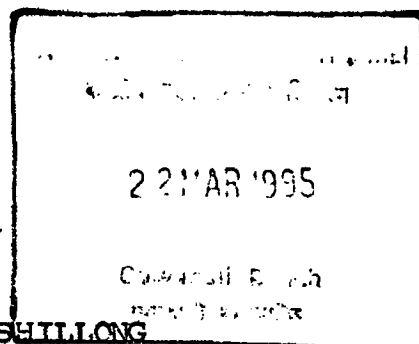
(N.G. SEN)

Inspector of
Customs & Central Excise, Agartala.

Advocate.

ANNEXURE-D

CUSTOMS AND CENTRAL EXCISE: SHILLONG



ORDER NO. 5/Cen/85

DATED SHILLONG 13TH DECEMBER, 1985 &

CHo.11(26)3/CON/85/988

Dated, Shillong

17th December, 1985

Sub:- Appeal preferred by Shri Nani Gopal Sen,
Inspector against the Disc. order No. 3/
Cen/85 dated 30.5.85.

On careful consideration of the appeal dated 29.7.85 preferred by Shri Nani Gopal Sen, Inspector, Customs and Central Excise against the Disc. Order No.3/Cen/85 dated 30.5.1985. passed by the Deputy Collector (P&E) Customs and Central Excise, Shillong communicated under C. No.11(10)A/4/Cen/84 dated 18.6.85m the undersigned found that Shri Nani Gopal Sen has been harping only on technicalities of the case and has not furnished any evidence or point to be considered on merit.

2. Having regard to above, undersigned rejects the appeal preferred by Shri Nani Gopal Sen, Inspector.

sd/- (G.R. SHARMA)

COLLECTOR

Shri Nani Gopal Sen,
Inspector, Customs and Central Excise,
Agartala.

Attested.
Advocate.

22 MAR 1987

ANNEXURE-E

CUSTOMS & CENTRAL EXCISE: SHILLONG

C.No. II(10) A/2/CON/87/401

Dated 9 APR 1987

To

The Assistant Collector,
Customs & Central Excise,
Agartala.

Subject : Inquiry under Rule-14 of C.C.S.(C.C.A.) Rules, 1965
against Shri N.G. Sen, Inspector, Customs & Central
Excise at present posted at Agartala Customs Station.

Please refer to your letter No. II(8)1/CON/ACA/84/95
dated 31.3.1987 on the above subject.

It has been informed by the Ministry that after careful consideration of the submissions made by Shri Sen in his petition dated 19.3.86 and scrutiny of the records of the proceedings, it has been observed that the memorandum dated 4.4.86 was not issued under Rule 16 of the CCS(CCA) Rules, 1965 and the disciplinary authority had ordered initiation of formal disciplinary proceedings only after consideration of reply of Shri Sen to the aforesaid memorandum. It is further observed that the charged officer had not been provided the opportunity to inspect the relevant documents. During the enquiry, the defence was taken before presentation of prosecution case and this amounts to denial of natural justice to charged officer. The charged officer has also not been provided with a copy of the enquiry report which is required in terms of Rule 17 of the CCS(CCA) Rules. The order of the Appellate Authority on the appeal of Shri Sen is not a self-contained speaking and reasoned order conforming to legal requirements as required under Government of India's instruction No. 1 below 15 of the CCS(CCA) Rules, 1965. Thus the proceedings against Shri Sen suffer from inherent technical lacunae and amount to denial of natural justice to the petitioner. The President, has therefore, without going into merits of the case, remitted the case to the competent Disciplinary authority for conducting a de-novo enquiry in accordance with various provisions and for passing a fresh order. Shri Sen may pleased be informed accordingly.

Sd/- (SURJIT SINGH KOMAL)
DEPUTY COLLECTOR (PER & ESTT)
CUSTOMS AND CENTRAL EXCISE: SHILLONG.

C.No. II(10) A/4/CON/ACA/87/126 Dated Agartala the 27th April '87

Copy to :

Shri N.G. Sen, Inspector, Customs & Central Excise,
Agartala Customs Station for information and necessary
action.

Sd/-
(P. SITLING)
ASSISTANT COLLECTOR
CUSTOMS & CENTRAL EXCISE
AGARTALA.

....

Attested.
Advocate.

CUSTOMS AND CENTRAL EXCISE
SHILLONG

C.No. II(10)A/2CON/87/991 Dated Shillong the 30th July 1987

ORDER

The Disciplinary Order No. 3/CON/85 communicated under C.No. II(10)A/4/CON/84/156-160 dated 18th June, 1985 is treated as quashed and Shri N.G. Sen, Inspector is to restore increments as far not drawn with effect from 1.10.85.

Sd/-

(SURJIT SINGH KOMAL)
DEPUTY COLLECTOR (P&E)
CUSTOMS & CENTRAL EXCISE
SHILLONG.

Shri N.G. Sen,
Inspector,
Customs & Central Excise,
Agartala.

Attested.
/s/ Advocate.

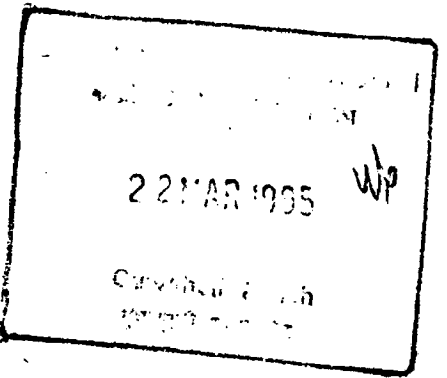
Annexure:G

THE COLLECTOR OF CUSTOMS (PREVENTIVE)
HQRS: SHILLONG

Office of the ASSISTANT
COLLECTOR, CUSTOMS
& CENTRAL EXCISE

ESTABLISHMENT ORDER NO. 2/93

Dated, Shillong the 16th June, of 1993.



Sub:- Est. Transfer and posting in the grade of
Superintendent Group 'B' in the newly created
Customs Preventive Sub-Collectorate - order

Consequent upon the promotion of Inspectors of
Customs and Central Excise, Shillong to the grade of
Superintendent Group 'D' vide Extt. Order No. 147/93
dated 15.6.93 and their services having been placed against
the 20 (twenty) posts created for the New Customs Preventive
Collectorate of the North-Eastern Region, the following
posting are hereby ordered with immediate effect and until
further orders.

Pending the setting up of the New Customs Preventive
Sub-Collectorate Hqrs., and the 4 (four) Customs Divisions at
their respective places, the officers may assume charge at
their respective places of posting and send their joining
reports to the office of the Collector of Customs (Preventive)
at Lattumkhrah Main Road, Shillong - 793003.

SL.No.	Name of officer	Proposed Postings
1.	S/Shri Jagadish Ch. Das, No. 1	Supdt. Customs Preventive (Disposal), Karimganj.
2.	Md. Joynul Abedin	Supdt. Customs Preventive Jorhat.
3.	Amrtave Bhattacharjee, No. 1	Supdt. Customs Preventive Hqrs. Shillong.
4.	Alok Chatterjee	Supdt. Customs (ICD), Guwahati.
5.	Pranab Sikdar	Supdt. Customs (Preventive) Hqrs. Shillong.
6.	Kshitish Ch. Sarker	Supdt. Customs Preventive Digboi.
7.	Bidyut Kr. Banerjee	Supdt. Customs attached with Collector, Shillong. (Present on deputation to CEIB, New Delhi).

contd.. p.. 2..

Sd/-
Advocate.

22 MAR '95

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Gow. Hall, Shillong
22 MAR '95

- 33 -

8. Pranay Kanti Deb
Supdt. attached to Addl. Collr.
Customs Preventive, Shillong.
9. Sashidhar Pegu (ST)
Supdt. attached to Addl. Collr.
Customs Preventive, Shillong.
10. Dharendra Nath Bora (ST)
Supdt. Customs (Disposal), Dhubri
11. Barendra Ch. Pegu (ST)
Supdt. Customs Preventive, Tezpur.
12. Alexander Lywait (ST)
Supdt. attached to Addl. Collr.
Customs Preventive, Shillong.
13. Rathindra Ch. Dey
Supdt. Customs Preventive
(Disposal), Silchar.
14. Kailash Kr. Taneja
Supdt. Customs Preventive,
attached to Addl. Collr. (Prev.),
Shillong.
15. Kanak Ch. Gogoi
Supdt. Customs (Exports), Tura
Preventive Post.
16. Rupnath Pegu (ST)
Supdt. Customs (Preventive),
Dibrugarh.
17. Kalparam Kachari (ST)
Supdt. Customs (Disposal),
Guwahati.
18. Swapan Kr. Roy (SC)
Supdt. Customs (Preventive),
Dharmanagar.
19. Debendra Ch. Das (SC)
Supdt. Customs (Disposal),
Shillong.
20. Chalau Hauzel (ST)
Supdt. Customs (Preventive)
Champhat.

(DALBIR SINGH
COLLECTOR OF CUSTOMS PREVENTIVE
SHILLONG

C.NO.II(2)ESTT/CCP/SH/93 25557-25633/3 Dt.16th June, 93.

Copy forwarded for information and necessary action to:-
The Collector, Central Excise, Shillong.
The Additional Collector (Tech)/(P&V)/Prev), Customs and
Deputy Collector (Audit), Customs and Central Excise,
Assistant Collector (Hqr.Prev), Customs and Central
Excise. Shillong.
(Audit)/Hqr.Prev)/(Anti-Evasion), Customs Central Excise
Shillong.
Assistant Collector, Customs and Central Excise,
.....The copy meant for the concerned
para enclosed.

12/6/93

ANNEXURE- H

CUSTOMS & CENTRAL EXCISE:SHILLONG.

22 MAR 1995

General Manager
T. S. S. S. S.

ORDER NO.30/1994
DATED,SHILLONG THE 2nd FEB.' 94

Subject - Estt. Promotions,Transfers and postings in the grade of Superintendent Group 'B' -Order Regarding.

PART-I

P R O M O T I O N S

The following Inspector of Customs and Central Excise are hereby promoted to the grade of Superintendent Group 'B' in the scale of pay of Rs 2000-60-2300-EB-75-3200-100-3500/- with effect from the date they take charge of higher posts at the places of postings with immediate effect and until further orders.

<u>Sl.No.</u>	<u>Name</u>
1 st	Shri Rameswar Bhattacharjee
2 nd	Shri Priyoda Ranjan Mallik(SC)
3 rd	Shri Gopal Ch. Das (SC)

They are hereby asked to exercise option within one month from the date of promotion as to whether their initial pay should be fixed in the higher post on the basis of FR.22(C) straightway, without any further review on accrual of increment in the pay scale of the lower post or their pay on promotion should be fixed initially in the manner as provided under FR.22(a) (i) which may be refixed under FR.22(c) on the date of accrual of next increment on the scale of pay of the lower post. Option once exercised shall be final.

In the event of refusal of Promotion to the grade of Superintendent Group will be placed above Shri T...Hartiong promoted to the grade of Superintendent Group 'B' vide Estt. Order No.240/93 dated 27.12.93.

The seniority of the remaining two officers in the grade will be in the order shown above.

PART-II

TRANSFERS AND POSTINGS

The following transfers and postings in the grade of Superintendent Group 'B' of Customs and Central Excise are hereby ordered with immediate effect and until.

Advocate.

35

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2011-12-25

M

SL.NO.	NAME	FROM	TO
2.	<u>Shri P.R. Mallik,</u> Supdt.	<u>Sutakandi ICS</u> Karimganj Customs Division.	<u>Appeal Branch</u> Hqrs.Shillong
3.	<u>Shri G.C. Das,</u> Supdt.	<u>Margherita-I Rng.</u> <u>Digboi-CBX.Divn.</u>	<u>Law Branch</u> Hqrs.Shillong
.....			

Sd/-

(V.LALWILA)
COLLECTOR

C.NO.II(3)3/ET.III/93

Dated

Copy forwarded for information and necessary action to:-

1. The Additional Collector (Cus. Prev., Imphal) Hqrs. Officer Shillong
2. The Additional Collector (Tech.) Collectorate Hqrs. Office, Shillong.
3. The Deputy Collector(Audit), Customs and Central Excise, Shillong.
4. The Assistant Collector, ~~Central-Excise~~/Customs Div.Agartala
The copy meant for the concerned of officer is enclosed.
5. The Assistant Collector, Customs Division, Aizwal.
6. The Assistant Collector(Law) Collectorate Hqrs Office,Shillong.
7. Shri for compliance.
8. The P.A.O./C.A.O. of collectorate Hqrs. Office,Shillong.
9. Accounts I & II/LT.I & II/Confdl.,Sr./CU-CUM-VIG Branch
10. The General Secretary, Group 'B'/Group 'C' Executive officers & Association, Customs and Central Excise, Shillong.
11. Guard File.

Sd/-

(EVA. R.MYNNLSWA)
DEPUTY COLLECTOR(P&V)
CUSTOMS & CENTRAL EXCISE:SHILLONG.

SENIORITY LIST IN THE GRADE OF INSPECTOR AS ON 01.01.1993

Swing
in

Sl. No.	Name and Qualification	Date of Birth.	Date of apptt. in the Govt. Service.	Date of confirmation.	Date of apptt. as Inspector.	Whether DR/PR	REMARKS.
1.	2.	3.	4.	5.	6.	7.	8.
	<u>S/SRI</u>						
1.	Nibash Kanti Barman, B. A.	08.02.51	23.01.77	01.03.79	28.01.77	DR	
2.	Bijoy Krishna Deb, I.A.	01.02.39	14.02.62	01.09.79	13.11.76	PR	
3.	Arun Kumar Dutta, B.A.	27.03.54	27.01.77	01.01.80	27.01.77	DR	
4.	Rameswar Bhattacharjee, B.Sc.	27.01.53	22.01.77	01.01.80	22.01.77	DR	
5.	M. Supra Singh, Matric	01.07.35	26.06.67	01.01.80	26.10.76	PR	
6.	Nikhil Kumar Nath, B.Sc.	17.01.51	19.09.77	01.01.80	19.09.77	DR	
7.	Molay Kanti Bose, B.Sc.	17.10.51	19.07.77	24.11.80	19.7.77	DR	
8.	Ashoke Kumar Choudhury, B.A.	01.06.53	19.09.77	13.12.80	19.09.77	DR	
9.	Kishalay Das, B.A.	19.3.55	04.10.78	13.12.80	04.10.78	DR	
10.	Jogodish Chandara Das(No.1), B.A.	23.06.52	21.07.74	13.12.80	20.11.78	PR	
11.	Amitabha Bhattacharjee(No.1), B.Sc.	01.03.56	25.09.78	13.12.80	25.11.78	PR	
12.	Alok Chatterjee, B.Sc.	01.04.56	04.10.78	13.12.80	04.10.78	DR	
13.	Pranab Sikdar, B.Sc.	24.04.51	12.10.78	13.12.80	12.10.78	DR	
14.	Kshitish Ch. Sarkar, Matric	05.07.46	25.01.65	13.12.80	27.11.78	PR	
15.	Bidyut Kr. Banerjee, B.Sc.	26.02.56	30.09.78	13.12.80	30.09.78	DR	On deputation to E.I.E. New Delhi.
16.	Sudhakar Sharma, M.Sc.	31.03.52	25.11.78	13.12.80	25.11.78	DR	
17.	Pranay Kanti Deb, B.Com.	26.01.54	12.06.74	13.12.80	14.11.78	DR	
18.	R. Lalngurauba (ST), B.A.	01.03.57	03.10.78	13.12.80	03.10.78	DR	
19.	Utpal Kumar Das (ST), B.A.	01.12.52	30.10.78	13.12.80	30.10.78	DR	
20.	Sashichar Pegu (ST), B.A.	01.09.48	04.10.78	13.12.80	04.10.78	DR	

Contd.....P/2-.....

Advocate.

-: 3 :-

1.	2.	3.	4.	5.	6.	7.	8.
	<u>S/SHRI</u>						
43.	Braja Gopal Mandal, B. Sc.	21-9-52	27-5-79	1-10-81	27-10-79	DR	
44.	Debabrata Paul, B. Com.	28-11-49	28-10-70	1-10-81	23-10-80	PR	
45.	Gouranga Ch. Sarkar, Matric	25-11-44	28-10-70	1-10-81	29-10-80	PR	
46.	Sudip Deb, B. Sc.	15-8-54	7-3-80	1-10-81	7-3-80	DR	
47.	Nani Gopal Sen, (SC), B. A.	28-8-48	28-10-70	1-10-81	26-10-80	PR	
48.	Swapn Kr. Roy, (SC), B. A.	16-3-51	10-11-80	1-10-81	10-11-80	DR	
49.	Debendra Ch. Das, (SC), B. A.	1-7-45	25-1-65	1-8-82	29-11-78	PR	
50.	Debashish Bhattacharjee, B. A.	25-3-54	7-11-75	1-12-82	6-11-82	PR	
51.	Chelua Hauzel (ST), B. A.	1.3.54	6-3-80	1-12-82	6-3-80	DR	
52.	Gopendralal Sutradhar (SC) Matric	1-4-35	5-12-56	1-12-82	26-4-80	PR	
53.	Jibanlal Bhowmic, P.U.	26-12-53	18-2-76	1-12-82	16-11-82	PR	
54.	J. Hartlong, (ST), B.A.	1.3.56	22-11-79	1-12-82	22-11-79	DR	
55.	Sukesh Rn. Dhar, B.A.	8.5.53	9-2-76	1-12-82	16-11-82	PR	
56.	Srijan Ganguli, B.Sc.	1-8-55	13-2-76	1-12-82	16-11-82	PR	
57.	Abhijit Ghosh, B.Sc.	3-11-52	21-2-76	1-12-82	16-11-82	PR	
58.	Biswajit Bhattacharjee, B.A.	30.6.56	20.2.76	1-12-82	16-11-82	PR	
59.	Priya Ram Baruah, P.U.	1-2-51	2-11-70	1-12-82	16-11-82	PR	
60.	Smti Purabi Debgupta, B.A.	1-12-54	6-11-75	1-12-82	16-11-82	PR	
61.	Madhu Sudhan Tyagi, B.Sc	20.7.57	13.4.81	1-12-82	13.4.81	DR	On deputation to NCR New delhi.
62.	Rathindra Bhattacharjee, B.Sc	6-11-54	6-3-74	1-12-82	16-11-82	PR	
63.	Smti Rosemary Shabong (ST) Matric	1-9-44	5-8-71	1-12-82	16-11-82	PR	
64.	Jagajyoti Acharjee, B.Sc	1-1-55	30-3-81	1-12-82	30-3-81	DR	

A. d.
Advocate.

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65. Tapan Kr. Kar, B.A.	01.11.49	05.06.74	01.12.82	16.11.82	PR	
66. Priyoda Pn. Mallic (ST) P.U.	01.02.47	01.04.72	01.12.82	16.11.82	PR	
67. Smti Sayada Jasmine Bagum, B.A.	01.12.52	15.04.74	01.12.82	16.11.82	PR	
68. Debajyoti Mishra, B.Com.	01.09.54	01.06.74	01.12.82	16.11.82	PR	
69. Haripada Debnath, B.Sc.	01.02.45	20.03.74	01.12.82	16.11.82	PR	
70. Gopal Ch. Das (SC) B. . (H), L.L.B.	01.01.56	25.01.77	01.12.82	16.11.82	PR	
71. L. Hauferram (ST) P. .	24.12.46	01.03.74	01.12.82	16.11.82	PR	
72. Arun Kumar Chaturvedi, M.A.	25.12.54	08.04.81	01.12.82	08.04.81	DR	On deputation to DGRI, New Delhi.
73. Sachindra Nath Das (SC), B.A.	01.12.55	06.05.77	01.12.82	6.11.82	PR	
74. Sudip Kr. Nandi, B.Sc.	01.02.51	07.09.77	01.12.82	6.11.82	PR	On deputation to DRI, Silchar.
75. S. K. Vidyanta, M.Sc.	13.02.56	27.03.81	01.12.82	7.03.81	DR	
76. Setal Ch. Das (SC), H.S.L.C.	02.09.51	12.03.74	01.12.82	6.11.82	PR	
77. Dilip Kr. Verma, B.Sc.	16.06.55	10.06.81	01.12.82	0.06.81	DR	On deputation to DGAE, Patna.
78. Susmal Das, B.Sc.	02.01.56	23.05.81	01.12.80	23.05.81	DR	On deputation to NCE, New Delhi.
79. Biman Ch. Das (SC), H.S.D.C.	21.08.47	15.03.74	01.12.82	16.11.82	PR	
80. Jyotish Ch. Das (SC) B.A.	01.12.52	14.11.77	01.12.82	16.11.82	PR	
81. Amit Kumar Deb, Matric	01.10.43	06.04.74	01.12.82	16.11.82	PR	
82. Karendra Ch. Rabha (ST) B.A.	01.11.49	22.01.77	01.12.82	26.11.82	PR	
83. Khanindra Neog, B.Com.	11.06.55	30.03.81	01.12.82	30.03.81	DR	
84. Smti. Lilyda Shangpliang (ST), B.A.	27.01.52	03.02.74	01.12.82	16.11.82	PR	
85. Ashok Kr. Dey, B.A.	10.06.53	10.04.78	01.08.83	15.07.83	PR	
86. Balaram Das, P.U. Sc.	12.02.53	23.06.77	01.08.83	18.07.83	PR	

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI - 5

O.A. 59/94

Sri Nani Gopal Sen ... Petitioner

-VS-

Union of India & Ors. ... Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE CHAIRMAN,
THE HON'BLE SHRI G. L. SANGLYINE, MEMBER (ADMN.).

For the Petitioner ... Mr. B.K. Sharma,
Mr. P.K. Tiwari,
Mr. B. Mehta.

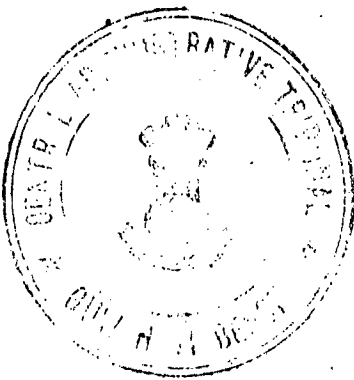
For the Respondents ... Mr. G. Sarma, Addl.C.G.S.C.

6.4.94 Heard learned counsel Mr B.K.Sharma on behalf of applicant Shri Nani Gopal Sen, Inspector, Central Excise, Agartala Range, Tripura West. Perused the statements of grievances and reliefs sought for in this application. Also heard learned Addl. C.G.S.C Mr G.Sarma on behalf of respondents.

The disciplinary proceeding against the applicant Shri Nani Gopal Sen has been started vide Memorandum No.II(10)A/4/CON/84/540 dated 5.7.84 (Annexure-A). Although 10 years have passed, the disciplinary proceeding has not been completed.

A De-nove enquiry of the proceeding was ordered by the President of India in the first part of 1987 on ground of inherent technical lacunae amounting to denial of natural justice as expressed in the letter No.II(10)A/2/CON/87/401 dated 9th April, 1987 of the Deputy Collector, Customs and Central Excise, Shillong to the Assistant Collector, Customs and Central Excise, Agartala (Annexure-F to the application). Thereafter also the enquiry has not been completed. In the meantime several junior officers got promotion superseding applicant to the grade of Superintendent in June 1993 and February 1994 vide orders under Annexure J & K. Thus the applicant is suffering irreparable injury for undue/abnormal delay on the part of the respondents to complete the enquiry of the disciplinary proceeding. The prayer is now for directions on the respondents to close the enquiry and to promote him to the rank of Superintendent Group 'B' retrospectively from the date when his immediate junior was promoted.

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6.4.94

Upon hearing the counsel of the parties and in view of the facts and circumstances narrated above, we consider it just and expedient to pass the interim order :

The respondents No.1, 2 and 3 are directed to complete the enquiry with final orders without fail within 30 days from the date of receipt copy of this order. If the enquiry is not completed within this specified period, the disciplinary proceeding/enquiry shall stand quashed.

It is further directed that in the event of termination of the enquiry/proceeding in favour of the applicant or due to quashing of the proceeding for reasons indicated above, the respondents No.1, 2 and 3 shall promote the applicant Shri Nani Gopal Sen to the grade of Superintendent Group 'B' with effect from 15.6.93 when his immediate junior was promoted vide Estt. Order No.147/93 dated 15.6.1993 endorsed under C.No:II(3)5/ET.III/93 dated 15.6.93 disclosed in Annexure-J.

This application is disposed of with the above directions.

Communicate all concerned.

Sd/- S. HAQUE
VICE CHAIRMAN

Sd/- G.L.SANGLYING
MEMBER (ADMIN)

Memo No. : 1676

Date : 20/4/94

Copy for information & necessary action to :

(1) Shri Nani Gopal Sen, S/O. Makhenlal Sen, working as Inspector, Central Excise, Agartala Range, Road No. 3, Jay Nagar, Agartala, Tripura West, Pin Code - 799 001.

- (2) The Secretary, Finance, Govt. of India, New Delhi.
- (3) The Collector of Customs of Central Excise, Shillong 1.
- (4) The Deputy Collector, Customs & Central Excise, Shillong.
- (5) Shri Swapn Kr. Roy, Supdt. Customs (Preventive), Dharmanagar.
- (6) Shri Debendra Ch. Das, Supdt. Customs (Disposal), Shillong.
- (7) Shri Priyada Ranjan Mallik, Supdt. Karimganj Customs Division.
- (8) Shri Gopal Ch. Das, Supdt. Digbel Central Excise Division.
- (9) Mr. B. Mehta, Advocate, Gauhati High Court, Guwahati.
- (10) Mr. G. Sarma, Addl.C.G.S.C., G.A.T., Guwahati Bench, Guwahati.

SECTION OFFICER (J)

Disc. Order No. 1/CIU-VIG/94

22.12.93

C.No.II(10)A/2/CON/7/294

Dated, Shillong the 24th of May 1994

Dated: -26.5.93

I. An appeal against this order alongwith a copy of this order lies to the Appellate Authority (Collector, Customs & Central Excise, Shillong) within a period of forty five (45) days from the date on which a copy of the order appealed against was delivered to the Appellant.

II. A copy of the appeal should be forwarded by the Appellant to the Authority which made the order appealed against and the fact of having done so should be clearly indicated in the appeal itself.

Whereas, disciplinary proceedings was instituted on 5th July 1994 under C.No.II(10)A/4/CON/4,540 against Shri.Nani Gopal Sen, Inspector of Customs and Central Excise, Shillong collectorate under Rule 16 of the CCS(CJA) Rules, 1965 with the following Article of charge and statement of imputation.

ARTICLE OF CHARGE.

Shri.Nani Gopal Sen, while functioning as Inspector of Sonamura, C.P.F. during the period from 22.4.93 to 7.5.93 has failed to maintain absolute integrity, devotion to duty and acted in such a manner which is unbecoming of a Govt. servant and as such he violated the provisions of Rule 3(1) (i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964

STATEMENT OF IMPUTATIONS.

That Shri Nani Gopal Sen, while functioning as Inspector of Sonamura C.P.F. had behaved in a manner unbecoming of a Govt. servant at the time of detection of the case leading to seizure of the Gold. It has been alleged

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Attested.
Advocate.

22 MAR 1985
22 MAR 1985

that he had ordered one Shri N.C. Das, a contingent paid staff in full uniform to take part in the detection ~~which is~~ against the normal practice, as such contingent paid staff are only temporary employees, and not allowed to take direct part in such operations. Further, making a temporary contingent staff wear uniforms, prescribed for a regular Gr'D' employee, is against Rules. It has also alleged that Shri Nani Gopal Sen, Inspector had a hand in concealment of some gold bar which were ultimately recovered by the BSF from the body of Shri N.C. Das, and from a place where Shri N.G. Sen, was alleged to have hidden the gold. By this act, Shri Nani Gopal Sen, Inspector had failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Govt. servant which attracts Rule 3(1)(i), (ii) and (iii) of Central Civil Service (Conduct) Rules, 1964.

Shri N.G. Sen, Inspector in reply to the said charged ~~minutes~~ memorandum pleaded not guilty of the charges made against him and prayed to be heard in person. Consequent upon his reply it was decided that, an enquiry is to be made to enquire into the charges levelled against Shri Sen, Inspector. Accordingly, Shri Digindra Kumar Paul, Supdt., Gr.'B' Customs & Central Excise, Agartala Divn. was appointed as enquiry officer to enquire into the charges framed against Shri Sen, vide Order No. 58/COM/84 dated 27.11.84 and appointed Shri Bibhuti Mohan Dutta Roy, Supdt., Gr.'B' Customs & Central Excise, Agartala Divn. as presenting officer to present the case before the enquiry officer in support of the charges. The enquiry officer then submitted the enquiry report to the Disc. Authority.

Aites.ed.
Advocate

The Disciplinary authority after careful examination of the case records including the submissions of the accused, Shri Nani Gopal Sen, Inspector and the report submitted by the inquiry officer Shri D.K. Paul, Supdt., decided the case with a penalty of stoppage of three increments of Shri Nani Gopal Sen, Inspector.

22/12/95

with cumulative effect in the time scale of pay of Rs. 425-15-500 to Rs. 560-20-700-25-800/- under Rule 11 of CCS (CA) Rules 1965. It was further ordered that the stoppage of increments will be effective from the next date of increment due to Shri N.G. Sen, Inspector Vide Disciplinary order No. 3/CON/95 dated 30.5.95.

Shri Nani Gopal Sen Inspector submitted his appeal against the above order to the Collector which was duly rejected vide order No. 5/CON/95 dated 17.12.95 communicated under C.NO.II(26)3/CON/95-989-991.

Shri Nani Gopal Sen, Inspector further submitted a memorial dated 19.3.96 to the President of India. The Ministry after scrutiny of the case records found that the case of Shri Sen, suffered from inherent technical lacunae and amount to denial of natural justice and thereby remitted the case to the competent Disciplinary authority for conducting a de novo enquiry for passing a fresh order vide F.NO.C.17013/3/87-Ad. V dated 3.2.87. Hence this de novo enquiry.

In view of the above, the case was sent for enquiry where S/Shri Arvind Singh, Asstt. Collector and Samir Chakraborty, Inspector were appointed as Inquiry Officer and Presenting officer vide C.NO. II(10)A/2/CON/97/1259-1265 and even No. 1253-1259 dated 2.11.97 respectively. During the course of enquiry Shri Sen, Inspector desired for original documents and the same could not be provided except xerox copies as the records were lying with CEGAT, Calcutta since 19.4.95 in connection with an appeal case on 3.1.99, the Inquiry officer had submitted his report vide C.NO.II (10)A/1/CON/ACA/97/303 dated 20.7.99 and the same could not be accepted as the enquiry was not conducted as per rules laid down in the Central Civil Service (Classification Control & Appeal) Rules, 1965 vide No. 646 dated 13.9.90. In the meantime, Shri Arvind Singh, A.C. was transferred to Gauhati Divisional office, as such Shri A. Jha nearly posted A.C., and Shri D.N. Chakraborty Supdt., were appointed as Inquiry Officer and Presenting officer vide even No. 409-5 dated 7.6.90 and 647-651 dated 13.9.90 but the Inquiry officer before commencing the enquiry had transferred Shri Sen, Inspector from Agartala Preventive Unit to Agartala Range-II in view of ongoing enquiry vide C.NO.II (3) 5/FT/97/6165-73(A) dated 31.9.90.

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Attested.
Advocate.

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25.10.90

Having been aggrieved with the above transfer order, Shri Sen files his representation dated 10.9.90 to the Dy. Collector (P&V) for changing of Inquiry officer but the same was rejected on the ground of Deptt. conveniences as the earlier Inquiry officer was transferred to Cabbathi vide even No. 472/73 dated 25.10.90.

Against the above order Shri Sen, preferred an appeal to the Collector dated 11.11.90 wherein he alleged that the Inquiry officer and D.C. (P&V) is biased and prejudiced. He also charged that the Inquiry officer will uphold the charge against him. Infact, as per CCS(CCA) RULES 7(1)(b) the Inquiry officer is not the authority to uphold the charge as alleged by Shri Sen. Inspr., but to conduct an enquiry as per rule and submit the report along with his findings on the strength of documentary evidences and statement of witnesses.

In view of the above, the Collector rejected the appeal as the allegation against the Inquiry officer and Disc. authority not based on established facts but on assumption only vide even No. 75-76 dated 10.1.91.

In view of the above the enquiry proceedings was delayed. In the meantime, Shri A. Jha, AC, was transferred and Shri S. Chatterjee, A.C., Customs & Central Excise, Agartala was appointed as Inquiry Officer vide even No. 226-200 dated 13.3.92. On transfer of Shri Chatterjee, AC, Shri D.D. Rishi, AC, Customs & Central Excise Agartala (incharge) was appointed as Inquiry officer vide even No. 1059-63 dated 16.10.92 and Shri Parash Deb Nath, Inspector as representing officer even No. 1074-77 dated 19.10.92. Shri S.B. ROY, Supdt, in response to the order appointing him as Inquiry officer intimated vide C. NO. VIII/17/1/ Inquiry /93/2392 dated 29.3.93 that he is not in a position to conduct the enquiry as he was the Inquiry officer during the preliminary enquiry. Consequently, Shri D.B. Baral, AC, Customs and Central Excise, Agartala was appointed as Inquiry officer vide even No. 325-29 dated 22.4.93. The Inquiry officer vide C. NO. II(10) A/2/CON/ACA/93/300 dated 11.7.93 forwarded the letter dated 26.7.1993 of Shri Sen, Inspector requesting therein to supply some

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Attested.
/s/
Advocate.

22 MAR 1995

additional documents which were forwarded vide even No. 294-95 dated 22.9.93. But the Inquiry officer vide C.No. II (10)A/2/CON/ACA/93/16 dated 7.2.94 intimated that some documents sent vide above reference are not in original and requested to send the original copies immediately. In this regard, only DUR-2 report in original and the attested copy of representation dated 19.11.93 of Shri Nirode Ch. Das addressed to the Addl. collector Customs & Central Excise, Shillong were sent vide even No. 107 dated 25.2.94 with a direction to search for the original documents from Agartala Divisional office, Agartala, since the case originated from Agartala Divisional office itself. In the meantime, Shri N.G. Sen, Inspector, submitted his representation dated 5.4.94 to the Asstt. Collr., Customs & Central Excise, Agartala with a copy to this office intimating that due to the failure of the Department to provide the original documents during the course of enquiry proceedings to meet the reasonable opportunity of defence and justice, he has moved his case before the CAT, Guwahati Bench, Gauhati. The Honourable CAT, Gauhati, has passed an interim order directing to complete the enquiry proceedings with final order without fail within 30 days from the date of receipt of copy of the order vide C.A. 59/94/1674 dated 26.4.94.

In view of the above order, the Inquiry officer was directed to complete the enquiry on the basis of available records vide even No. 195 dated 2.5.94. The Inquiry officer has submitted his enquiry report (copy enclosed) vide C.No. II (10)A/2/CON/ACA/93/131 dated 6.5.94 in duplicate which depict as below:-

That during the course of enquiry, Shri N.G. Sen, Insp. denied all the charges instituted against him. He was assisted by Shri S.S. Das, as his defence assistant to defend the case on his behalf. On 30.6.93, the first day of hearing, all the listed documents in original mentioned in Annexure III were produced before the charged officer for inspection except Sl. No. 2-copy of representation dated 19.11.93 from Sri Nirode Ch. Das to the Addl. Collr., Customs & Central Excise, Shillong and (5) True copy of diary of Sri N.G. Sen, Inspector, Sonamura P.P. for which he demanded for the original ones. In fact, the attested copy of diary dated 21.4.93 was produced for inspection but the charged officer demanded for the original and alleged that the same was self-created by Sri S.K. NAG, Supdt., Udaipur Prev. post with a malafide intention to entangle him in the case. His contention cannot be accepted as the officer of Gazetted post is empowered to attest the record from the original one.

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Attested.
Advocate.

Control Authority
22/4/83

22/4/83

Besides the above documents listed at Annexure III, Shri N.G. Sen, Inspector requested for additional documents in original which were produced before him except (1) Tape recorded cassette (2) The original statement of Shri Pradip Kr. Saha dated 23.4.83. A copy of the statement dated 23.4.83 of Sri P.K. Saha was produced for inspection but the charged officer demanded for the original one. The tape-recorded statement was lying with BSF which could not be procured. From the inquiry report submitted by the Inquiry Officer Shri D.R. Baral, AC, Agartala it appears that the proceedings simply limited only to producing documents and asking for the originals by the accuse officer. The Inquiry Officer has not asked for the witnesses to substantiate the charge. He also did not give any findings or the point of allegation whether established as per records or rebut the charges if found baseless.

Findings of the Disc. Authority.

I have carefully examined the case of Shri Nani Gopal Sen Inspector with reference to the seizure case of 5(five) primary gold biscuits under case No. 2/CL/IMP/SPP/83 dated 22.4.83 Shri N.G. Sen, Inspector was charge-sheeted for negligence in detection and seizure of the gold, utilising Shri F.C. Das, a contingent paid staff in full uniform to participate in the detection which is against the normal practice. Further, it was also alleged that Nani Gopal Sen, Inspector had a hand in concealment of some gold bars which were ultimately recovered by the BSF from the body of N.G. Das, and from a place where Shri Sen, was alleged to have nidden the Gold biscuits.

Shri N.G. Sen, Inspector denied the charges labelled against him. For such denial, the case was sent for enquiry and the authority decided the case with a penalty of stoppage of three increments of Shri Nani Gopal Sen, Inspector with cumulative effect.

Against the above order, Shri Sen, Inspector submitted an appeal to the Collector which was rejected.

Being aggrieved he submitted a memorial to the President of India for which the Ministry found some irregularities which Shri Sen, suffered from inherent technical lacunae and amount to denial of natural justice and thereby remanded the case to the competent Disc. authority for conducting a de-novo enquiry and passing a fresh order.

Attested.
Advocate.

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22 MAR 1995

As such, the case was sent for de-bici enquiry. During the course of enquiry, the charged officer desired for original documents for only those two documents which could not be produced i.e., Statement of N.C. Das dated 19.11.83 and diary of N.C. Sen, dated 21.4.83 for inspection mentioned at Annexure III. All other two documents were produced in original. The above two documents were true copy of the original duly attested by Cazeltd officers with their seals.

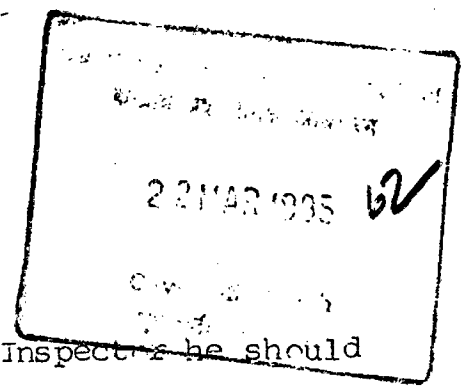
I also, found that the case has been pending since 1984 due to remission of the case for de-nove enquiry, non-availability changing of Inquiry Officer from time to time due to absence of regular Assistant Collector at Agartala Divisional office, Shri N.G. Sen, Inspector also filed his representations to the Dy. Collector (P&V), against the Inquiry officer, then to the collector against the Dy. Collector (P&V) and Inquiry officer for their biasness and prejudice both of which were rejected.

In course of the enquiry th CAT, Gauhati Bench on the basis of case filed by Shri N.G. Sen, Inspector passed an interim order, direction the disciplinary authority to complete the enquiry proceedings and pass final order without fail within 30 days from the date of receipt of the order which will expire on 29.5.94.

Shri N.G. Sen, supplied Sri Nirde Ch. Das, a contingent paid staff with a chaki dress to accompany the patrol party. He also utilised Sri Das on previous occasions and it is revealed vide his original diary dated 5.8.82 and 6.8.82 where his controlling superintendents raised objection and directed not to utilise the service of Sri Nirde Ch. Das who is not a regular staff. Inspite of the written order of the supervisory officer, Sri N.G. Sen, Inspector defied the controlling officer's direction which clearly smacks of an unholy alliance or direct understanding between Sri N.G. Sen, and Sri N.C. Das. This gives a fillip to Sri Pradip Saha (bearer of gold-biscuits) in BSF camp to distribute the gold bars between them which was ultimately thwarted by the timely intervention of the BSF staff and thus the offending gold hooked into Govt. account. The DRI report received on 20.4.83 by Sri N.G. Sen was recorded on 23.4.83 after the case was hooked on 22.4.83 as seizing officer, Sri N. G. Sen Inspector did not justify the role of Sri Nirde Ch. Das as an offender in the brief facts of the case. After reaching BSF camp, Sri Mantu Paul was taken for search with metal detector and Sri Pradip Kr. Saha

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Advocate.



was under the case of Sri N.G. Sen. As an Inspector he should have been more responsible officer. But Sri Sen failed to exhibit his responsibilities properly rather he made a covering by stating that Sri Pradip Kr. Saha was taken to the adjacent room for drinking water. In the BSF camp, supply of drinking water would have certainly been made with the direction /knowledge and direct supervision of the BSF staff and not by Sri Sen and N.C. Das.

The documents whatever supplied for inquiry proceedings some in original and others in attested true copies duly authenticated by a Gazetted officer will justify the involvement of Sri N.G. Sen, in the concealment of the gold biscuits.

The allegation is therefore proved and stands substantiated.

ORDER

In view of the discussion above, I pass the following order:-

Shri N.G. Sen, Inspector, was found guilty of the charges framed against him and in spite of all technical lacunae the punishment awarded earlier was only a minor penalty and was justifiable considering the gravity of the offence. I hereby order withholding of 3 (three) increments with cumulative effect from the date of next increment.

Sri N.G. Sen, Inspector,
Central Excise,
Agartala Range,
Agartala.

(EVA M.R. HYNNIEMTA)
DEPUTY COLLECTOR (P & V)
CUSTOMS & CENTRAL EXCISE::SHILLONG.

Advocate.

ANNEXURE-K-1

ENQUIRY REPORT (DEMOVO-ENQUIRY) 23 MAR 1993
DISCIPLINARY PROCEEDINGS AGAINST SHRI NANI GOPAL SEN.
INSPECTOR, CENTRAL EXCISE, AGARTALA RANGE UNDER SILCHAR
DIVISION (CENTRAL EXCISE) (PREVIOUSLY INSPECTOR).
CUSTOMS AND CENTRAL EXCISE, AGARTALA DIVISION.

Under Sub-Rule (2) of Rule 14 of CCS(CCA) Rules, I was appointed by Mrs. L.R. MITHRAN, Additional Collector (P&V), Customs and Central Excise, Shillong (then) as the Inquiring Authority to inquire into the charges framed against Shri Nani Gopal Sen, Inspector vide order no. 10/CIUVIG/93 dated, Shillong the 20th April '93. I have since completed the inquiry and on the basis of whatever documents produced before me by the Disciplinary Authority and the Presenting Officer, prepared my inquiry report as under.

The charged Officer, Shri N.G. Sen participated in the inquiry from the beginning to the end and attended all the hearings. He was assisted by Shri S.S. Das as Defence Assistant on the 1st hearing dated 30/6/93 and the 2nd hearing dated 2.8.93 and 3rd hearing dated 12.1.1994.

Paresh

The presenting officer, Shri/Debnath also attended from the beginning to the end and attended all the hearings.

In the articles of charge it was alleged that Shri N.G. Sen, Inspector while functioning as Inspector of Sonamura C.P.C. during the period from 22.4.93 to 7.5.93 has failed to maintain (a) absolute integrity, (b) devotion to duty and (c) acted in such a way which unbecoming of Government servant and as such he violated the provisions of Rule-3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (conduct) Rules, 1964.

In the statement of imputations of Mis-conduct or Mis-behaviour in support of articles of charge framed against Shri N.G. Sen, Inspector it was alleged that while functioning as Inspector of Sonamura C.P.P. he had behaved in a manner unbecoming that of a Government servant at the time of detection of the case leading to seizure of the Gold. It has been alleged that he had ordered one Shri N.C. Das, a Contingent paid staff in full uniform to take part in the detection which is against the normal practice, as such contingent paid staff wear uniforms, prescribed for a regular Group-'D' staff employees, is against rules. It was also alleged that Shri N.G. Sen, Inspector had a hand in concealment of some gold bars which were ultimately recovered by the BSF from the body of Shri N.C. Das and from a place where Shri

N.G.Sen, was alleged to have hidden the gold. By this act Shri N. G. Sen, Inspector had failed to maintain absolute integrity and devotion to duty which attracts Rule-3(i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964.

THE LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGE WAS PROPOSED TO BE SUSTAINED ARE THE FOLLOWING:-

1. Complaint dated 27-5-83 from Shri M.S. Sandhu, Assistant Director General addressed to the Collector, Customs & Central Excise, Shillong.
2. Copy of representation dated 19.11.83 from Shri Nirode Ch. Das, S/O Shri Birendra Chandra Das, Sonamura, West Tripura addressed to the Additional Collector, Customs and Central Excise, Shillong.
3. Extract of the enquiry report submitted by the Assistant Collector, Customs and Central Excise, Agartala addressed to the Additional Collector, vide C.No. II(B)/1/CON/ACA/83/217 dated 7-10-83.
4. Extract of the report dated 19-10-83 submitted by the Assistant Collector, Agartala to the Deputy Collector (p&3), Customs and Central Excise, Shillong.
5. True Copy of diary of Shri N.G.Sen, Inspector, Sonamura C.P.P.
6. Statement dated 27-6-83 submitted by Shri Nirode Chandra Das in presence of the Assistant Collector, Customs and Central Excise, Agartala.

THE LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE WAS PROPOSED TO SUSTAIN WERE THE FOLLOWING:-

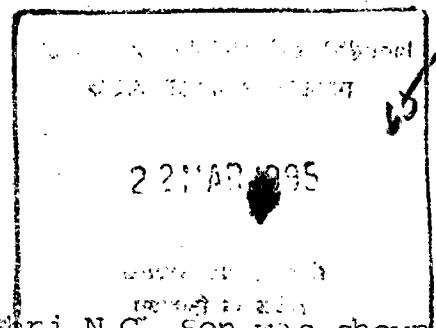
1. Shri N.L.Roy, Inspector, Customs & Central Excise, Sonamura pp.
2. Shri Nirode Ch. Das, S/O Shri Birendra Ch. Das Sonamura,
3. Shri Sukhial Sil, Sepoy, Customs and Central Excise, Sonamura
4. Shri Prantosh Dutta, Sepoy, Customs & Central Excise, Sonamura
5. Shri Mantu Paul, S/O Shri Mahendra Paul, Joynagar, Agartala,
6. Shri Shri Pradip Kumar Saha, S/O Shri Moran Ch. Saha, Padma-dhepa, Melaghar, Tripura (West).
7. Shri Tarak Bhattecharjee, Const. B.S.F. Srimantapur.

The 1st hearing was held on 30-6-93. The Charged Officer alongwith his Defence Assistant, Shri S.S.Dads and the Presenting Officer appeared before me on 30-6-93 at 12.00 hours. At the onset of the inquiry, the Charged Officer was asked whether he admits the charges framed against him vide Memorandum No. II(B)/2/CON/P4/224 dated 4-4-84. The Charged Officer denied all the charges and pleaded not guilty.

The documents on which the charges is proposed to be sustained (Annexure-III) are marked and signed as exhibit p-1 to exhibit p-6. The Charged officer wanted to inspect the original documents to prove his defence.

The following documents were shown:-

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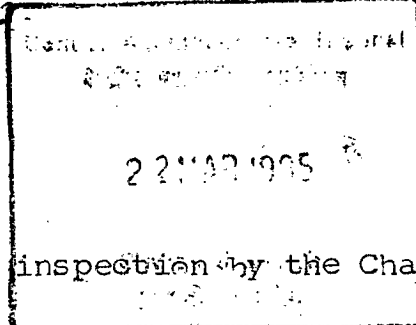
-3-

1. Sl.No.6 of Annexure-III(P-1)-4th sheets-Shri N.G. Sen was shown the documents. On seeing the documents stated that the document No.6 of Annexure-6 of Annexure-III is a statement dated 27.6.83 of Shri Nirode Ch.Das submitted in presence of Assistant Collector, Customs and Central Excise, Agartala. But the one produce is a statement dated 27.6.83 of Shri Nirode Ch. Das recorded in presence of Shri S.K. Nag, Superintendent, Customs and Central Excise, Udaipur. As such the document in Sl.No.6 of Annexure-III is not the same as shown ~~the~~ by the presenting Officer. Further, the statement made by Shri Nirode Ch.Das on 27.6.83 has been signed by the Superintendent, Udaipur on 29.6.83.
- A Zerox copy was handed over to him as demanded.
2. Sl.No. 5 of Annexure-III (P-5)-4th sheets-Shri N.G. Sen was shown the true copy of diary of Shri N.G.Sen in four pages attested by Shri S.P. Nag, Superintendent, who has not been cited as witness to authenticate the diary.
3. Sl.No.4 of Annexure-III(P-4)-2 sheets-Shri N.G. Sen was shown the report dated Sl. No.4 of Annexure-II 9p-4)-2 sheets- Shri N.G. Sen was shown the report dated 19-10-83. He stated that in the letter it contains seven sheets of enclosures relevant to the contents of the letter which has not been exhibited today.
4. Sl.No.3 of Annexure-III(P-2)-8 sheets- Shri N.G.Sen demanded ~~original for inspection as the document under Sl. No.2 of Ann-~~ was shown the enquiry report dated 7-10-83. A zerox copy of the report was given as demanded.
5. Sl.No. 2 of Annexure- III(P-2)-3 sheets- Shri N.G.S en demanded original for inspection as the document under Sl.No.2 of Annexure III is a copy and not the original. Copy shown to Shri N.G.Sen.
6. Sl.No.1 of Annexure-III(P-6)-2 sheets- The letter dated 27-5-83 of Shri M.S.Sandhu, Assistant Director (General) is shown to Shri N.G.Sen. He stated that the signature of Shri Sandhu is illegible and without official rubber stamp. This letter is F.I.R. **IN THIS CASE AND** Shri Sandhu has not been cited in Annexure-IV as witness to authenticate the document. The accused Officer requests for inclusion of his name as witness in regard to the case.

The Inquiry Officer vide his office letter C.No.II(10)/A/2/CON ACA/93/273 dated 2-7-93 requested the Disciplinary Authority

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Accepted.
Advocate.



to supply the following documents for inspection by the Charged Officer.

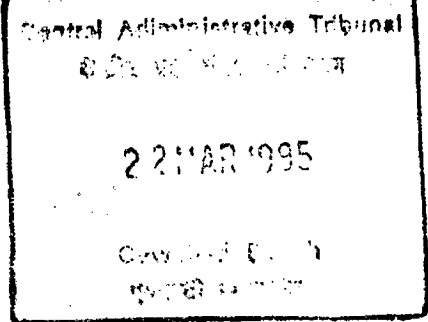
1. Enlosures (7 sheets) in original of the Enquiry report submitted by the Assistant Collector, Customs and Central Excise, Agartala on 19-10-93 to the Deputy Collector (p&E) Customs and Central Excise, Shillong. (Sl.No.4 of Annexure III of Charge Memorandum No.II(3) 12/CEN/94/224 dated 4-4-94).
2. Original copy of Representation dated 19-11-93 of Shri Nirode Ch.Das, S/O Shri Birendra Ch.Das, Sonamura, Tripura(west) addressed to Additional Collector, Customs and Central Excise, Shillong. (Sl.No.2 of Annexure-II of Charge Memorandum No. II(3)/2/CEN/94/224 dated 94).

Second hearing was conducted on 2-9-93 wherein 2(two) witnesses, Shri Mantu Paul and Shri Pradip Kr. Saha, the witnesses mentioned in Annexure-IV of the Memorandum of charges, were also summoned for examination. Both the witnesses did not appear on the day. The charged officer vide his letter dated 26-7-93 asked for some additional documents for his defence. He also asked for the documents which he asked for to inspect was discussed. He stated on 30-6-93, Relevancy of the documents he wanted inspection on 30.6.93. Relevancy of the documents he wanted to inspect was discussed. It stated that the listed documents as well as the additional documents wanted by him for inspection, are relevant for his defence.

The following documents and persons were asked by the Charged Officer for inspection and summon for his defence vide his letter dated 26-7-93.

- 1.(i) Statement of Shri Pradip Saha dated 23-4-93 obtained by the Superintendent, Customs and Central Excise, Udaipur in connection with recovery of 5(five) Gold bars on 21-4-93.
- (ii) Statement of Shri Nirode Ch.Das dated 23-5-93 obtained by the superintendent, Customs and Central Excise, Udaipur in connection with recovery of 5(five) Gold bars on 21-4-93.
- (iii) Additional Collector, Customs and Central Excise, Shillong letter No.VIII(10)/12/CUS/93/19395 dated 2-6-93 to the Assistant Collector, Customs and Central Excise, Agartala regarding seizure of 5 (five) Gold bars on 21-4-93 at Sonamura.
- (iv) Coy.Commander, 'B' Coy, 76th Bn, B.S.F. Srimantapur letter No. B/Gold-seizure/83/116 dated 22-4-93 to the sub-Divisional Judicial Magistrate, Sonamura. It has been listed in para 3(page2) of the document No.II(3)/1/CEN/ACA/93/217 dated 7-10-93 listed in Annexure III. The document is in the custody of Assistant Collector, Customs & Central Excise, Agartala and one Coy.Commander 'B' Coy 76th Bn.BSF? Srimantapur.

Accepted.
Advocate.



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- (v) Tape recorded statements of all the persons concerned which was recorded by the BSF on 21.4.83 at Primanatpur in connection with recovery of 5 (five) Gold Bars and which has been mentioned in letter No. II(B)/CON/ACA/93/217 dated 7.10.83 listed in Annexure-III of the memo of charges.
- (vi) Original diary of Shri N.G. Sen which has been listed under Sl. No. 5 of Annexure-III of the memo of charges with out mentioning the period in which the diary pertains to.
- (vii) D.R.I.-2 report regarding seizure of 5 (Five) Gold Bars at Sonamura on 21.4.83 as has been referred to in document listed under Sl. No. 4 of Annexure-III of the memo of charges.
- (viii) Letter No. CIU-31/83/10395-99 dated 21.7.83 from the Deputy Collector (P & T) Customs & Central Excise, Shillong to the Assistant Collector, Customs & Central Excise, Agartala regarding recovery of 5 (Five) Gold Bars at Sonamura on 21.4.83 which has referred to in the document listed in Sl. No. 4 of the memo of charges.
- (ix) Original representation dated 19.11.83 of Shri Pirode Ch. Das to the Additoral Collector, Customs & Central Excise, Shillong.

2. The following persons whose report and statements have been relied upon by the Disciplinary Authority to sustain the article of charge against the charge sheeted officer, has not been cited as witness to the case. As such they may be summoned to appear before the enquiry to give evidence on those documents which are originated from them and thus to provide the opportunity to cross examine them in order to contradict the article of charge.

- (i) Shri H.S. Sandhu, Assistant Director (General) B.S.F., N.E. Frontier, Shillong.
- (ii) Shri R.M. Sen, the then Assistant Collector, Customs & Central Excise, Agartala.

The Inquiry Officer requested the Disciplinary Authority vide his letter C.No. II(10)/A/2/CON/ACA/93/300 dated 4.8.93 to send the documents as asked by the Charged Officer vide his letter dated 26.7.93 for inspection by the Charged Officer to prepare his defence.

On the same matter, another letter vide even No. dated 11.8.93 was written to the Disciplinary Authority to produce the documents.

contd...p/6

Associate.

22 MAR 1995

The Disciplinary Authority vide their letter C.No.11(10)/A/2/CON/87/294-95 dated 22.9.93 submitted the following documents.

1. Original statement of Shri Pradip Saha dated 23.4.83 subscribed before Supirtendent, Udaipur.
2. Additional Collector, Customs & Central Excise, Shillong's letter No. VIII(10)/12/CUS/83/19395 dated 2.6.83 to the Asstt. Collector, Customs & Central Excise, Agartala.
3. Coy, Commander, 'B' Coy, 76 Bn. BSF Srimantapur letter No. B/Gold/seizure/83/116 dated 22.4.83 to the Sub-Divisional Judicial Magistrate, Sonamura.
4. DRI-2 report - re garding seizure of 5(Five) Gold bars at Sonamura on 21.4.83.
5. Letter No. CIU-31/83/10395-99 dated 21-7-83 from the Deputy Collector (P&E), Customs & Central Excise, Shillong to Assistant Collector, Customs & Central Excise, Agartala.

In respect of the records requested by the Cahrged Officer for inspection.

1. Statement of Shri Nirode Ch. Das dated 23.4.83 obtained by the Supirentendent, Customs & Central Excise, Udaipur in connectio with recovery of 5(Five) Gold bars on 21.4.83 - the Disciplinary Authority stated that ~~that~~ the carbon copy of which is found in a rotten cordition, original copy may be with Assistant Collector, Agartala.
2. Tape recorded statement of all the persons concerned which was recorded by the BSF on 21.4.83 at Srimantapur in connection with recovery of 5(Five) Gold bars and which has been mentioned in letter No. II(8)/1/CON/ACA/83/217 dated 7.10.83 listed in Annexure-III of the charges - the Disciplinary Authority stated that it is not available in Hqrs. Office and are to be collected from Divisional Office, Agartala.
3. Original Diary of Shri N.G. Sen, which has been listed under sl.No.5 of Annexure-III of the Memorandum of charges- the Disciplinary Authority stated that the same was sent vide their letter of even No. 40P-5 dated 7.5.90 which may be collect2ed from the Presenting Officer.
4. Original representations dated 19.11.83 of Shri Nirode Ch, Das to the Additional Collector of Customs & Certral Excise, Shillong - the Disciplinary Authority stated that the same was sent vide their letter of even no.40P-5 dated 7.6.90 which may be collected from the Presenting Officer.

11/11/83
11/11/83

22/12/95

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The Charged Officer was called vide this office letter dated 7-1-94 to inspect the documents further available from the Disciplinary Authority in presence of the Presenting Officer.

Hearing was conducted on 12-1-94. The following further documents were produced for inspection by the Charged Officer.

1. Original copy of the letter of the Additional Collector, Customs & Central Excise, Shillong letter No. VIII(10)/12/CUS/83/19395 dated 2-6-83

A xerox copy of the same is supplied to the Charged Officer as per his request.

2. Original copy of the letter of Coy. Commandant 'B' Coy, 76 Bn. BSF letter no. B/Gold-seizure/83 116 dated 22-4-83.

A xerox copy of the same is supplied to the Charged Officer as per his request.

3. Original copy of the letter No. CIU-31/83/10395-99 dated 21-7-83.

A xerox copy of the same is supplied to the Charged Officer as per his request.

On inspection of the documents the charged officer has issued a letter dated 14-1-94 stating

1. A copy of statement of Shri Pradip Kr. Saha dated 23.4.83 has been shown. Original could not be shown. The original statement may kindly be made available for inspection.

2. Copy of Additional Collector, Customs & Central Excise, Shillong letter No. VIII(10)/12/CUS/83/19395 dated 2-6-83. A xerox copy may be supplied.

A xerox copy was accordingly supplied to him.

3. Coy, Commandant 'B' Coy, 76 Bn. BSF letter No. B/Gold-seizure 83/116 dated 22-4-83. A xerox copy may be supplied.

A xerox copy was accordingly supplied to him.

4. The true copy of diary of Shri N.G. Ser has been shown. But the original diary could not be shown. Therefore, original diary may kindly be arranged for inspection.

5. DRI-2 report could not be shown. Instead seizure report has been shown. Therefore DRI-2 report may kindly be arranged for inspection.

6. Letter No. CIU-31/83/10395-99 dated 21-7-83 has been shown. A xerox copy may kindly be supplied.

A xerox copy was accordingly supplied to him.

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22/03/1995

7. Original representation dated 19-11-93 of Shri Nirode Ch. Das could not be shown. Instead only a copy has been shown. The original representation may, therefore, kindly be produced for inspection.

8. Statement of Shri Nirode Ch. Das dated 23-4-93 is said to be not available with the Assistant Collector, Agartala. One "Rotten Copy" is said to be available with Hqs. Office. The original statement may therefore, be kindly be arranged for inspection.

9. Tape recorded statement of concerned persons recorded by BSF on 21-4-93 is said to be not available with the Assistant Collector, Agartala. This may kindly be arranged for inspection.

A letter was issued to the Disciplinary Authority vide this letter C.No.II(10)/A/2/CON/ACA/93/16 dated 7-2-94 calling for the production of documents as asked for by the Charged Officer vide his letter dated 14.1.94. for his inspection of the same to prepare his defence.

A letter was issued to the Disciplinary Authority vide this office letter C.N.II(10)/A/2/CON/ACA/93/79 dated 11-3-94 asking for the documents as asked for vide this office letter of even no. dated 7-2-94 and telegram dated 21-2-94.

The Disciplinary Authority vide their office letter C.No. II(10)/A/2/CON/97/10^o dated 25-2-94 received by me on 15-3-94 stated

1. The DRI-2 report in original and the attested copy of representation dated 19-11-93 of Shri Nirode Ch. Das to Additional Collector, Customs and Central Excise, Shillong are sent herewith.

2. Other desired original documents are not available in Hqs. Office.

3. Since the case originated from Agartala Divisional Office, the original documents must be lying at the Division itself.

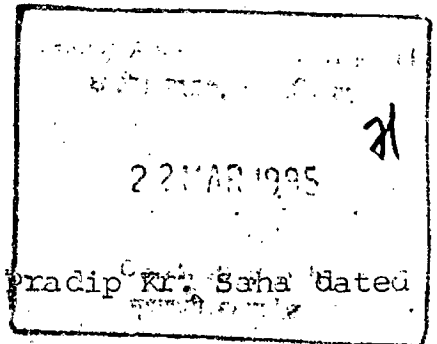
4. The Enquiry proceedings may be conducted immediately.

Hearing was fixed on 21-3-94. The presentation officer could not attend the hearing due to his uncle's death. The hearing was postponed.

Next hearing was fixed on 22-3-94. The Charged Officer and the Presenting Officer appeared before me for hearing. As per the demand of the Charged Officer, all the available documents were presented before him for inspection.

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Attested.
Advocate.



1. A copy of the statement of Shri Pradip Kr. Saha dated 23-4-83 was shown.

Shri N.G.Sen, Charged Officer wanted to inspect the original one.

Shri Paresh Debnath, Presenting Officer was asked to produce the original one. He stated that the Disciplinary Authority has been requested to supply the original one but the same was not received by him till to-date. As such he cannot supply the same.

2. Original copy of Additional Collector, Customs & Central Excise, Shillong letter No. VIII(10)/12/CUS/93/19395 was produced for inspection. Zerox copy was supplied.

3. Original copy of Coy, Commandar, (B) Coy, 76 Bn, BSF letter no 3/Gold-seizure/83/116 dated 22-4-83 has been produced for inspection. Zerox copy of the same was supplied.

4. True copy of the diary of Shri N.G.Sen was produced for inspection of Charged Officer. But Shri Sen demanded to inspect the original one of the diary.

Shri P. Debnath, Presenting Officer stated that Disciplinary Authority has been requested to supply the original one but he did not receive the same till to-date. And as such he cannot supply the same.

5. The DRI-2 in original has been produced for inspection. A Zerox copy was supplied.

6. Original letter No. CIU-31/93/10395-99 dated 21-7-93 has been produced for inspection. Zerox copy was supplied.

7. The copy of the representation dated 19-11-93 of Sree Nirode Ch. Das was produced for inspection. Shri. N.G.Sen demanded to inspect the original one.

Shri P. Debnath, was asked to produce the original one. He stated that the Disciplinary Authority has been informed to supply the original one for inspection of the same. The Disciplinary Authority as supplied an attested copy of the same.

Shri P. Debnath was asked whether he can supply the original one or not?

Shri P. Debnath stated that he cannot supply the original one. He can supply the attested copy of the original one. He produced the same for inspection of Charged Officer.

The Charged Officer inspected the attested copy of the original one but again demanded to inspect the original one.

8. The original copy of the statement of Shri Nirode Ch. Das dated 23-4-93 has been produced for inspection.

A Zerox copy was supplied.

9. Shri N.G.Sen wanted the tape recorded statement recorded by B.S.F. on 21-4-93.

Comtd....p/10

Advocate.

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Shri P. Debnath, Presenting Officer stated that the Disciplinary Authority has been informed accordingly but the same has not been supplied, till to-date so the same could not be produced for inspection.

Shri P. Debnath, was asked whether he can supply the same now.

Shri Debnath stated that he cannot supply the same.

The Presenting Officer vide his letter C.No.VIII/17/34/92 dated 24.3.94 wrote a letter to the Inquiry Officer to supply the original documents (as asked by the Charged Officer) to the Presenting Officer for inspection of the same by the Charged Officer.

The Inquiry officer in the capacity of Assistant Collector wrote a letter vide C.No.II(10)/A/2/COE/ACA/93/91 dated 4-4-94 wrote to the Presenting Officer that the same is not available with him. However the Assistant Collector was able to collect the diary dated 5-2-92 and 6-2-92 of Shri N.G.Sen, the Charged Officer from the superintendent, Customs Preventive Force, Udaipur, Tripura.

The Charged Officer issued a letter dated 5-4-94 to the Inquiry Officer stating that

1. It has become evident and admitted fact that, on going of this present proceeding has been vitiated from the following defects and infirmities.

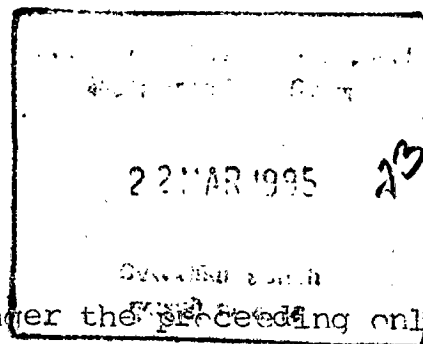
(a) That the on going of this present proceedings caused from the decision of the fountain of justice i.e. the President of India communicated by the Collector, Central Excise, Shillong in the year 1967. Since then, a number of Inquiry Officers and Presenting Officers conducted the Enquiry, but failed to arise a judicial decision as a fact finding authority resulting indirect pecuniary harassment denial and deprivation of rightful promotion and last of all supercassation by the junior Inspectors.

(b) That it will be evident from your order sheet that, even after lapse of so many years the Department and the Competent Authority utterly fails to furnish the vital material documents as required to most the reasonable opportunity of defence and fair play of justice. The salutary principle of justice is that, "No one should be condemned unless being heard." Similarly "delay in justice is a sheer denial of justice."

2. Applying the above principle it has become evident from the on going of the present proceeding that, the Inquiring Authorities did not attach any importance to my prayer and indepth study

Cond...p/11..

Advocate.



of the case only with an object to linger the proceeding only.

Under such exasperating circumstances and being aggrieved with the on going of the present proceeding I find no other alternative but to move before the CAT Guwahati Branch on 8-3-94 through my authorised counsel for redress and remedial measures. The case is now sub-judice before the Honble Authority of the CAT.

A hearing was held on 11-4-94 wherein the Charged Officer and the Presenting Officer appeared before me for hearing. During the hearing the following discussions were held.

1. Shri N.G.Sen, Charged Officer again demanded to inspect the original statement of Shri Pradip Saha dated 23-4-93.

On the above Shri P. Debnath, Presenting Officer stated that the Disciplinary Authority as well as the Assistant Collector of Customs Preventive Division, Agartala have been intimated to supply the original one but the same is not received by him till to-date. As such he cannot supply the same.

On the above again the Charged Officer wanted to know from Presenting Officer that Presenting Officer should specifically mention whether he will be able to produce the original document for inspection or not.

The Presenting Officer on the above query stated that since it is not available with him, he was not able to produce the same for inspection.

2. The Charged Officer wanted to inspect the original diary which is a document in Annexure-III on which the charge is proposed to be sustained.

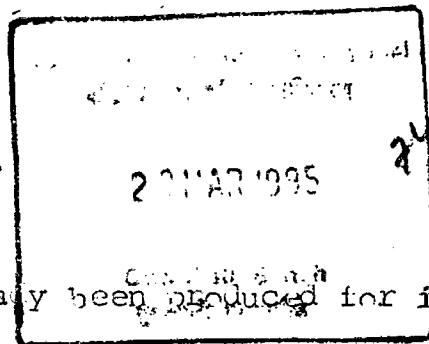
On the above the presenting Officer stated that the true copy of the diary has already been produced for inspection. The presenting Officer presented the original diary of Shri N.G.Sen, charged Officer for the period 5-8-92 and 6-9-92. He further stated that the original diary for the period dated 21-4-93 is not available with him for production of the same for inspection.

The Charged Officer denied to inspect the in-complete documents produced before him. He again demanded to produce the original documents in complete for inspection. He further stated that the original diary for the period dated 21-4-93 is very much related with present proceeding.

On the above points the Presenting Officer stated that the true copy of the diary for the period dated 21-4-93 duly

Contd p 22...

Received.
 J.
 Advocate.



attested by a Gazetted Officer has already been produced for inspection.

On the above point, Shri N.G. Sen, Charged Officer stated that the the true copy of the diary for the period dated 21-4-83 was not attested from the original diary dated 21-4-83. He further stated that the true copy was self created by Shri S.K. Nag Superrintendent, Udaipur Preventive Post (then) with a malafide intention to extort him in present proceeding.

On the above point, the Presenting Officer raised objection and stated that it seems to be incredible on the part of a responsible Government Gazetted Officer not to attest a diary from the original one. Since the same is being produced with the higher authority to conduct the departmental proceedings against an Officer.

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The Inquiry Officer asked the Presenting Officer lastly whether he is in a position to produce the original diary dated 21-4-83. The Presenting Officer stated that the same is not available with him and as such he is not in a position to produce it now.

3. The Charged Officer demanded to inspect the original representation dated 19-11-83 of Shri Norode Ch. Das.

The Presenting Officer stated that the same is not available with him and so he is not in a position to produce the same.

On the above, the Charged Officer again demanded to inspect the original one to defend himself.

3. The Charged Officer demanded to produce the tape recorded statement recorded by BSF on 21-4-83 as the same is very much relevant in the present proceeding.

On the above, the presenting Officer stated that the same is not available with him and so he is not in a position to produce the same.

5. The Presenting Officer stated that the original documents on the basis of which the departmental proceedings against the Charged Officer have been started have already been produced for inspection of Charged Officer. Again the additional documents demanded 9 nos. of additional documents in original to produce to him for inspection, there 5 nos. of documents in original have already been produced to him for inspection and zerox copies also being supplied. Also an attested copy of the documents appearing at Sl. No. 9

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State.

His letter under reference has been produced for inspection. He further submitted that the Inquiry Officer may wish to proceed with the case.

On the above, Shri N.G.Sen, Charged Officer stated that he should be given an opportunity to inspect the following documents in original before my further proceedings.

- (A) Original statement of Shri Pradip Kr. Saha dated 23-4-83.
- (B) Original diary of Shri N.G.Sen, Inspector.

(C) Representation dated 19-11-83 of Shri Nirode Ch. Das.

(D) Tape Record Cassette.

He produced a letter dated 11-4-94 wherein again requested the documents as stated below.

1. Original statement of Shri Pradip Kr. Saha dated 23-4-83.
2. Original diary of Shri N.G.Sen, Inspector.
3. Representation dated 19-11-83 of Shri Nirode Ch. Das.
4. Tape Recorded Cassette.

A letter C.No. VIII/17/34/92 dt. 25-4-94 was issued by the Presenting Officer to the Disciplinary Authority, a copy to me, the Inquiry Officer, calling for documents which has been wanted by the Charged Officer vide his letter dt. 11-4-94, for inspection.

A hearing was called on 2-5-94 vide my letter dt. 25-4-94 asking them for hearing & allowed them to submit brief at the time of hearing, if they like so.

The Charged Officer and the Presenting Officer appeared for hearing on 2-5-94. The charged Officer submitted a letter dt. 2-5-94 at the onset of the hearing. In his letter he stated that the inspection of documents has not yet been completed and as such question of submission of brief at this stage does not yet arise. The Presenting Officer submitted a brief dated 2-5-94 giving brief history of the case which lead to the charge of imputation against the Charged Officer and the reasons thereof in his defence.

Attested.
Advocate.

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22.08.95

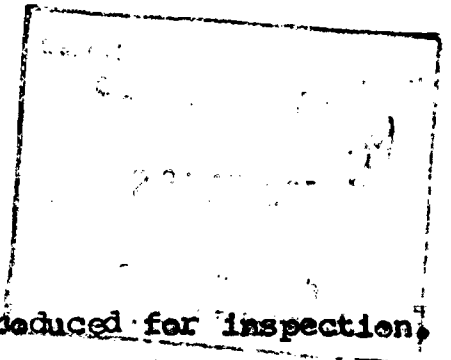
During the hearing the Charged Officer and the Presenting Officer put forth their points of defence and the following discussions and counter discussions were held.

1. The Charged Officer submitted a letter to-day, 2-5-94, with reference to my letter dated 25-4-94 calling for hearing.
2. Shri Paresh Debnath, Presenting Officer submitted a brief to-day on 2-5-94 (8 pages). In the last para of the letter the Presenting Officer has submitted that "In the circumstances as mentioned above, it is hereby submitted that the Inquiry Officer may proceed with the case, hear parties, witness and dispose the case according to Rule."
3. The Presenting Officer was asked about the contents of the letter about the other paras except last para. He stated that as per documents took place in connection with the seizure of 5 (five) Gold biscuits of foreign origin alongwith other items under case No. 2/CL/IMP/SHP/P3 dated 22-4-93. He further stated that in view of the nature of the case and also on perusal of relevant records and and from facts and materials placed before him, the Disciplinary Authority held that adequate ground exists for conducting departmental enquiry against Shri Shri N.G. Sen, Inspector under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 and this appointed the present inquiry officer to hold the de novo enquiry i.e. to enquire into the charges against Shri N.G. Sen, Inspector, vide his Order no. 10/CIU-WIG/93 dated 22-4-93.
4. The Charged Officer stated that without the inspection of the 4 letters stated vide his letter dated 11-4-94, further proceeding should not be made.
5. The Charged Officer was asked regarding the relevancy of the letter of Shri Pradip Kumar Saha in relation to this case.

~~The Charged Officer was asked regarding the relevancy~~
The Charged Officer stated that Shri Pradip Saha is a one of the witnesses vide Annexure-IV of the Charged Sheet. So Shri Saha's statement dated 22-4-83 is most relevant in this present proceeding. The Charged officer stated that Shri Saha's statement was recorded on 23-4-83 by the Superintendent/Seizing Officers at police Station. So his original statement is very much

Accepted.
Advocate.

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relevant to find out the turth and may be produced for inspection.

The Presenting Officer commented on the above point of the Charged Officer. He stated that the Charged Officer did not clear who recorded the statement of Shri Pradip Kr. Saha dated 23-4-83 in presence of whom.

The Charged Officer stated that the statement was recorded probably by the Superintendent in presence of two independent witnessess.

The Presenting Officer stated that whether Charged Officer stated in his assumption. No documentary evidence has been placed before the Inquiry Officer that it is recorded in the police station by the superintendent. Still if it is recorded, whether it was being considered by the departmennt to frame charge against Shri Sen. Moreover since the vary man Shri Pradip Kr. Saha has been listed as one of the witnesses, so he can be heard in person. Sofurther proceeding may not be stopped.

The Charged Officer stated that Shri Pradip Kr. Saha is an accused person in the case of seizure of 5(five) gold bars. His statement was recorded and duly forwarded to the higher suthority in connection with gold seizure. As such he is the accused as well as witness of this proceeding.

The Inquiry Officer asked the Presenting Officer whether he can supply the original statemt of Shri Pradip Kr. Saha or not.

The Presenting Officer stated that if it was forwarded to the higher Authority, the Disciplinary Authority did not supply the said document till to-date and hence it cannot be prodeccd for inspection.

6.

The Charged Officer was asked about relevancy of the original diary of Shri N.G.Sen which is wanted to inspect.

The Charged Officer stated that the diary of Shri N.G.Sen is in the list of documents vide Annexure-III of the charged sheet framed against him. He wanted to inspect the original one & varify with copy so as to make sure of content of the same. He further stated that the original diary for the the period of 5-8-82 and 6-8-82 is produced for inspection but he denied to inspect the same as they are not releaed in this procedding the incident of occurance was 21-4-83 and the original diary for the period of 21-4-83 is very much relevant in this proceedi ngs.

Submitted.
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date.

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The Presenting Officer stated on the above that the original diary dated 5-8-82 and 6-8-82 is very much related with the case. He requested to mark it as an exhibit. He stated that the then superintendent specifically instructed on the body of the diary dated 5-8-82 and 6-8-82 to Shri N.G. Sen that since Nirode Ch. Das was not a regular staff, so his service should not be utilised on preventive purpose in future. He instructed this on 17-9-82 where on inspite of this instruction, Shri Sen organized the preventive party including Shri Nirode Ch. Das, Safaiwalla in connection with the seizure of gold biscuit on 21-4-83. If he felt that there was acute shortage of staff to perform preventive work, he could have taken the assistance of another Inspector of Srimantapur Land Customs Station and also 2 (two) sepais posted which he did and in addition, for security purpose he could have taken the assistance of more BSF personnels, obeying freely the instruction of the Office Superintendent. The Presenting Officer further stated that the arrested copy of Shri N.G. Sen dated 21-4-83, duly attested by a Gazetted Officer has been produced for the inspection of Charged Officer on 11-4-94. He submitted that where Charged Officer stated that he is concerned with the contents of the diary i.e. he is to verify whether true copy was made from the original one. The Charged Officer also alleged on 11-4-94 during the course of hearing that the said copy self created by the Superintendent to exonerate him in the present proceedings. If it was self created and separate and from the original one then how it corroborates with the contents of the brief facts submitted by the Charged Officer with the D.R.I.-2 report which may please be seen by the Inquiry Officer. However, if available as because he has written to the Disciplinary Authority to supply the same and if received, the same will be produced for inspection.

The Charged Officer stated that to utilize the service of Shri Nirode Ch. Das on preventive work not a bar. However the original diary of Shri N.G. Sen as shown in list of documents in Annexure-II of the charged sheet may be produced in original for inspection.

The Presenting Officer was asked whether he can produce the original diary or not. On the above he stated that he cannot produce the original diary.

7. The Charged Officer was asked about the relevancy of the representation dated 19-11-83 of Shri Nirode Ch. Das.

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Attested.
Advocate.

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The Charged Officer stated that the representation of Shri Nirode Ch. Das dated 19-11-83 shown in the list of documents vide Annexure-III of the charge sheet. So it may be produced for inspection to verify the correctness of the document.

The Presenting Officer stated that the copy of representation dated 19-11-83 has already being produced for inspection of the Charged Officer. Here again he raised the same points i.e. contents of the letter. The Inquiry Officer may observe that what-aver stated by Shri Nirode Ch. Das in his statement dated 27-6-83 have been stated almost the same thing in his dated 19-11-83 except praying to the Additional Collector, Shillong for his sympathetic consideration and to quash him from any punishment and to provide him in his previous job and some other points. The original copy of the statement dated 27-6-83 of Shri Nirode Ch. Das has already been produced for inspection of Charged Officer.

However he stated that he wrote to the Disciplinary Authority, if supplied to him, he shall produce the same.

8. The Charged Officer was asked about the relevancy of the Tape Recorded Cassette in connection with present proceedings.

The Charged Officer stated that the Tape recorded Cassette is relevant as the statement was recorded in cassette at the time of incident which took place at BSF Camp, Srimantapur. There is mention of Tape Statement in the letter of Shri R.N.Sen, the then Assistant Collector of Agartala Division in his letter dated 7-10-83. He further stated that the matter regarding Tape Statement is mentioned in the letter to the Su-Divisional Judicial Magistrate, Sonamura, Tripura (West) by Shri M.L.Yadav, the then Coy. Commandar, "B" Coy, 76, Bn. BSF Srimantapur, Sonamura, Tripura (West). He wanted the Tape Statement to be produced for hearing.

The Presenting Officer stated that in the letter of the BSF addressed to the Sub-Divisional Judicial Magistrate, Sonamura it was written by the BSF that "tape recorded statements of (a) & (b) above have also been kept which can be produced before the Hon'ble Court if desired," which may please be perused by the Inquiry Officer. The presenting Officer further draw the notice of the Inquiry Officer to the extract of report under C.No.II(B)/1/CON/ACA/83/217 dt. 7-10-83 submitted by the then Assistant Collector, Agartala to the Additional Collector, Customs & Central Excise, Shillong which is listed as documents as per Annexure-III of the Charged Memorandum. Where wrote that

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Advocate.

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the" Tape Recorded Statement as alleged to have been recorded has also not been made available." Hence the Inquiry Officer may verify the relevancy of the production of the Tape Statement as demanded by Charged Officer for his inspection.

The Presenting Officer is asked whether he can produce the Tape Statement or not.

The Presenting Officer stated that he cannot produce the same and as such he has written to the Disciplinary Authority to supply the same, if available it shall be supplied by him for inspection of Charged Officer.

9. The Charged Officer stated that he wanted 4 original documents vide his letter dated 11-4-94 (discussed to-day). He stated that in respect of the documents the Presenting Officer stated that when they will be available, they will be supplied for inspection. The Charged Officer stated that how long he can wait for inspection of the documents as he alleged that it is intentionally delayed to produce the original documents for inspection by the Disciplinary Authority as already 12 years have elapsed since the occurrence. He further stated that without the inspection of the original documents as wanted by him, further proceedings should not be initiated.

The Presenting Officer stated that he has already sent letter to the Disciplinary Authority at Shillong for supply of the documents as demanded by the Charged Officer and awaiting for his reply soon.

DISCUSSIONS AND FINDINGS

At the onset of the departmental proceedings the Charged Officer denied all the charges and pleaded not guilty.

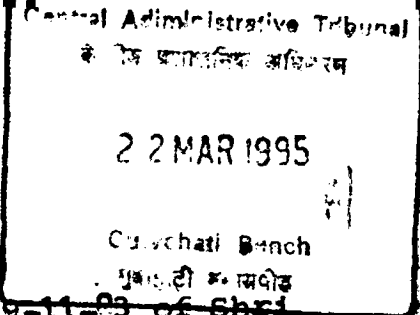
At the time of hearing the Charged Officer requested for production of documents mentioned in Annexure-III of the Memorandum of the charged sheet, for inspection.

All the documents in Annexure-III of the Memorandum of the charged sheet in original is placed before him for inspection except.

(i) the original representation dated 19-11-83 from Shri Nirode Ch. Das to the Additional Collector, Customs & Central Excise, Shillong.

(ii) The original diary of Shri N. G. Sen, the Charged Officer.

Advocate.



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The copy of the representation dated 19-11-83 of Shri Nirode Ch. Das was placed before the Charged Officer for inspection but he demanded to inspect the original one. The Disciplinary Authority and the Presenting Officer was asked on several occasion to submit the same for production before the Charged Officer for inspection.

The original diary of Shri N.G. Sen, the Charged Officer, for the period from 5-8-82 and 6-8-82 is placed before the Charged Officer for inspection. The Charged Officer demanded the original diary dated 21-4-83 for inspection. The same could not be supplied by the Disciplinary Authority on the presenting officer for inspection by the Charged Officer. The Disciplinary Authority as well as the presenting officer was requested to submit the original one several times but they failed to submit the same in original for inspection. The Charged Officer denied to inspect the copy of the diary dated 21-4-83 and on all occasion demanded to inspect the original one.

2. On the point of relevancy of the representation dated 19-11-83 of Shri Nirode Ch. Das, it is found that it is a document under Annexure-III of the Memorandum of the charged sheet. Further it is found that Shri Nirode Ch. Das is also one of the accused party of the gold case. As such it is felt that the original representation, dated 19-11-83 of Shri Nirode Ch. Das is an important document and the same should have been placed before the Charged Officer for inspection. A copy of the representation dt. 19-11-83 of Shri Nirode Ch. Das was supplied by the Disciplinary Authority and the Presenting Officer for inspection but the Charged Officer was not satisfied with the copy and wanted to inspect the original one.

2.1 I find that the demand by the Charged Officer to inspect the original statement dated 19-11-83 was genuine and the Presenting Officer should have supplied the same for the satisfaction of the Charged Officer.

1.1 On the point of the relevancy of the Diary of the Charged Officer, it is found that it is a document under Annexure- III of the Memorandum of Charged Sheet. Further it is found that diary dt. 21-4-83 is the diary of the date of occurrence of the incidence on the basis of which the charged sheet is framed against the Charged Officer. The Charged Officer demanded to inspect the original diary dated 21-4-83 for inspection. The Presenting Officer was asked on

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19-11-83
Disc. Auth.

several occasion to supply the original diary dated 21-4-83 but he failed to supply or produce the same in original for inspection by the Charged Officer. On all occasion the Presenting Officer produced the true copy of the diary dated 21-4-83 for inspection but the Charged Officer denied to inspect the true copy of the diary for inspection and demanded to inspect the original one. Even the Charged Officer categorically stated that the true copy of the diary dt. 21-4-83 was self created by Shri B.K.Nag, Superintendent, Udaipur Prev. Post (then) with a malafide intention to entangle him in the present proceeding.

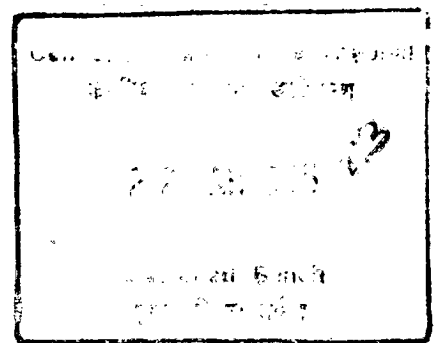
On the above point I find that the diary dated 21-4-83 (the day of occurrence of incident) is a very important document in the presenting proceeding and the demand of the Charged Officer to inspect the original one is genuine and the Presenting Officer should have supplied the same to the Charged Officer in original for his inspection and satisfaction. At the time of hearing the Charged Officer demanded to inspect some additional documents (not mentioned in Annexure-III of the Memorandum of the Charged Sheet) as allowable under Rule 14(11)(iii) of the CCS(CCA) Rules for his defence. The Disciplinary Authority as well as the Presenting Officer was requested to supply the same for inspection by the Charged Officer. The Presenting Officer made available all the documents in original for inspection except

1. Tape recorded cassette.
2. The original statement of Shri Pradip Kr. Saha dt. 23-4-83. The copy of the statement of Shri Pradip Kr. Saha dated 23-4-83 was placed before the Charged Officer inspection but the Charged Officer demanded to inspect the original one. The Presenting Officer was requested on several occasion to produce the original statement dated 23-4-83 but he failed to produce the same.

On the point of relevancy of statement of Shri Pradip Kr. Saha dated 23-4-83, it is found that statement of Shri Pradip Kr. Saha dated 23-4-83 is a statement made after two days of the date of occurrence of the incident and 23-4-83 is the date which falls within the period 22-4-83 to 7-5-83 the period within which the Article of charges (Article-I) under the Memorandum of charged sheet, has been framed against the Charged Officer. Further it is found that Shri Pradip Kr. Saha is written under Annexure-IV of the charged sheet. Further more it is found that Shri Pradip Kr. Saha is an accused person being accused as carrier of the gold bars in the seizure of 5 (five) gold bars. The Charged Officer categorically stated that Shri Pradip Kr. Saha is an

Advocate.

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accused person in the seizure of 5 (five) gold bars and he has also been made a witness by the Disciplinary Authority in the present proceeding. Since he is an accused person, his statement ~~has not been taken~~ ~~he stated that Shri~~ has naturally been taken. He stated that Shri Saha's statement was taken in the Police Station. He further stated that the original statement dated 22-4-83 of Shri Pradip Kr. Saha is very much relevant in the present proceeding to find out the truth. As such he demanded to inspect the original one

On the above I find that since Shri Pradip Kr. Saha is an accused in the present case (seizure of 5 gold bars) and also a witness under Annexure-IV of the Memorandum of the charged sheet, his statement dated 22-4-83 is a vital document in the present proceeding I find that the demand of the Charged Officer inspect the original statement dated 22-4-83 of Shri Saha is genuine and the Presenting Officer should have supplied the same in original to the Charged Officer for his inspection and satisfaction.

The Charged Officer wanted the tape recorded statement as the statement was recorded at the time of incident which took place at BSF camp, Srimantapur. He further stated that there is mention of Collector, of Agartala Division in his letter dated 7-10-83. He further stated that the matter regarding tape statement is mentioned in the letter to the Sub-Divisional Judicial Magistrate, Sonamura, Tripura (West) by Shri M.L. Yadav, the then Coy. Commander, "B" Coy, 76 BN BSF, Srimantapur, Sonamura. The Charged Officer wanted the Tape recorded statement to be produced for hearing.

It is found that there is an existence of Tape recorded statement at the time of incident from the letter of Shri R.N. Sen, and Shri M.L. Yadav as stated above. The Tape recorded statement could have lead the Inquiry Officer into the truth of the case. The Tape statement should have been supplied by the Presenting Officer, but he failed to supply the same.

It is found that the Tape statement could have lead into the truth of the case, still I find that without the same the proceeding can be conducted as documents available are enough to conduct the enquiry. As such I find that the non-availability of the Tape statement would not hamper in conducting the present proceeding as enough documents are available for the same.

From the above discussion it is found that the Presenting Officer could not supply the following documents in original for inspection by the Charged Officer which are vital for conducting the present proceedings.

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Advocate.

- (i) Original representation dt. 19-11-83 of Shri Nirode Ch. Das.
(ii) Original diary dated 21-4-83 of Shri N.G.Sen, the Charged Officer.
(iii) Original statement of Shri Pradip Kr. Saha dt. 23-4-83.

It is also observed that among the 6(six) documents by which the article of charge was proposed to be submitted under Annexure-III of the Memorandum of the charged sheet, 2(two) documents

- (i) Representation dated 19-11-83 of Shri Nirode Ch. Das and
(ii) Diary of Shri N.G.Sen
are copied of documents and not the original one. This means that the article of charges was framed on copies of documents itself.

Under Rule 14 of CCS(CCA) Rules, 1965, the Presenting Officer is supposed to make available the documents to the Charged Officer for inspection. Inspection of documents is one of the most important exercise under a judiciary system. For inspection of documents, the original documents are to be made available for inspection. Under any judiciary system the Charged Officer should be given a reasonable opportunity to inspect the original documents on the basis of which the article of charges are framed so that the Charged Officer may satisfy himself on the authenticity of the documents. For preparation of his defence he needs to inspect the authenticity of the documents and as such it is always reasonable to demand the original documents for inspection by the Charged Officer.

The Presenting Officer was requested on several occasion to supply the original documents as asked for by the Charged Officer but he failed to produce the same though a long period has already elapsed. Rather I am of the view that the Presenting Officer is not in a position to supply the original documents as asked for by the Charged Officer. Delay in justice means denial of justice. As such it is not practical to wait further for searching and producing the original documents by the Presenting Officer. As such the request of the Presenting Officer to give him more time to search and produce the original documents, cannot be accepted.

Denial to inspect the original documents by the Charged Officer is denial of natural justice to him. The prescribed procedure therefore, requires that the accused officer (Charged Officer) should be told in the form of written charges exactly what he is ~~allegation are based, that he should~~ alleged to have done and on which evidence, oral or documentary, the allegations are based, that he should have an opportunity to inspect the documentary evidence, to test the oral evidence of cross-examination and to furnish such evidence as he may wish to adduce in his own

APPEAL UNDER RULE 23 OF THE CCS (CCA) RULES 1965

General Bench
10/01/94

From : Shri Nani Gopal Sen,
Son of Madhan Lal Sen,
Presently working as Inspector of
Central Excise, Agartala Range,
Road No.3, Jaynagar, Agartala,
West Tripura, PIN CODE-799001.

Appellant

To : The Collector of Customs &
Central Excise, Shillong-1,

Appellate Authority

(Through : Deputy Collector (P&N), Customs & Central Excise:
Shillong-Disciplinary Authority)

Appeal Presented against the order
of Disciplinary Authority vide Disc.
order No.1/CTU-VI 9/94 C.No.II (10)A/2½
Con/P7/294 dated Shillong the 24th
May 1994, holding the appellant guilty
of the charges (contrary to the findings
of the Enquiry Officer who held that
the charges against the appellant
have not been proved) and ordering
holdings of three increments with
cumulative effect from the date of
next increment.

The humble appellant abovenamed-

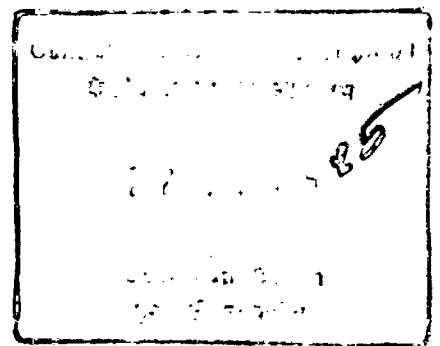
Most Respectfully Sheweth:

1. That when this appellant was working as
Inspector Customs & Central Excise, Agartala Range, The Deputy
Collector of Customs & Central Excise by issuing a Memorandum
No.II(10) A/4/CON/P4/540 dated 5.2.94 proposed to hold an
enquiry against the appellant under Rule 16 of the Central
Civil Services (Classification, control & Appeal) Rules,

1965

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Accepted.
Advocate.



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defence. Anything less than this would amount to a denial of the reasonable opportunity which is guaranteed by Article 311 of the Constitution.

In the instant case Charged Officer could not be offered an opportunity to inspect the original documents as stated previously. As such I have no other way but to stop the proceeding as further proceeding without going a chance to the Charged Officer to inspect the original document would amount to denial of the natural justice.

As such the enquiry is abandoned and stopped. Nothing could have been proved.

On the basis of the above findings the Disciplinary Authority may decide either to give consequential relief to the Charged Officer or to confirm the charges framed against him, whichever he deems fit.

(D.B.BARAL)
INQUIRY OFFICER
ASSISTANT COLLECTOR
CUSTOMS PREVENTIVE DIVISION
AGARTALA

Approved.
A.
Advocate.

20/12/1985

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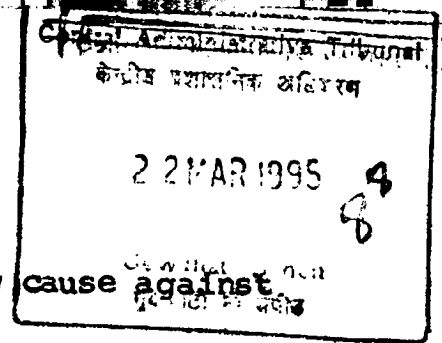
(hereinafter alluded to as the CCS(CCA) Rules). The aforesaid Memorandum contained the charges on which the enquiry is proposed to be held alongwith the statements of allegations in support of each Articles of Charges and list of documents and witnesses by which the Articles of charges are proposed to be established. The Memorandum called upon the appellant to submit within 10 days of the receipt of the Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

2. That the article of charges contained in the Memorandum has stated, inter alia, that the appellant while functioning as Inspector of Sonamura C.P.F. had behaved in a manner unbecoming that of a Government servant at the time of detection of the case leading to seizure of gold. It was alleged that the appellant had ordered one Shri N.C. Das, a contingent paid staff in full uniform to take part in the detection which is against the normal practice. It was also alleged that the appellant had a hand in concealment of some gold bars which were ultimately recovered by B.S.F. from the body of Sri N.C.Das and from a place where the appellant was alleged to have hidden the gold.

3. That after completion of the enquiry and on receipt of the enquiry report, the disciplinary authority (Dy. Collector, Customs & Central Excise) imposed the penalty of withdrawing three increments with cumulative effect upon the appellant vide Desc. Order No.3/CON/85 dated 30-5-85 (signed on 17.6.85). It is pertinent to mention here that the order of punishment was passed without furnishing the appellant with a copy of the enquiry report and without

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Ad. Advocate.



Providing the appellant an opportunity to show cause against penalty.

4. That being aggrieved by the imposition of penalty the appellant vide appeal dated 29.7.85 appealed to the appellate authority (Collector of Customs & Central Excise). The appeal of the appellant dated 29.7.85 was rejected vide collector of customs, Shillong order No. 5/CON/85 dated 17.12.85. It is pertinent to mention here that the appellant's appeal was rejected by the appellate authority by a nonspeaking order holding that "the content of the appeal was tedious on technicalities without any point for consideration."

5. That being aggrieved by the dismissal of his appeal, the appellant filed a petition on 19.3.86 for review of the punishment imposed upon him. The aforesaid petition for review was initially addressed to the Chairman, Central Board of Excise & Customs, New Delhi. However, the appellant was intimated vide letter dated 17.11.86 of the respondent No. 3 that the petition for review of the order of punishment lies to the President of India against the appellate order. Hence the appellant was advised to furnish a 'No Objection Certificate' to treat his petition dated 19.3.86 as addressed to the President of India.

6. That on receipt of the letter dated 17.11.86 the appellant immediately submitted a 'No Objection Certificate' to treat his petition dated 19.3.86 as the one addressed to the President of India. Subsequently, the appellant was intimated vide letter dated 9.4.87 issued by the collector of Customs & Central Excise that as the proceeding against the appellant suffered from inherent technical lacunae and amount to

Advocate.

denial of natural justice to the petitioner, the President has, therefore, without going into the merits of the case remitted the case to the competent disciplinary authority for conducting a de-novo enquiry in accordance with various provisions and for passing a fresh order. the appellant may please be informed accordingly.

7. That upon receipt of the letter dated 9.4.87 the appellant wrote a letter dated 28.4.87 to the Collector, Customs & Central Excise wherein request was made to pass necessary orders (pursuant to the order passed by the president of India) quashing the original proceeding and restoring increments of the appellant with effect from 1.00.85.

6. That vide order dated 30.7.87, the Collector of Customs & Central Excise quashed the order of punishment passed against the appellant restoring his increment so far not drawn with effect from 1.10.85.

9. That after quashing of the order of punishment and the restoration of increments to the appellant, it was excepted that the de-novo enquiry against the appellant would start immediately and will be completed in the shortest possible time. However, as the de-novo enquiry did not appear to have made any progress and the inordinate delay in the completion of enquiry started having an adverse effect upon the appellant's promotion prospect, the appellant vide his letter dated 8.8.92 requested the Collector, Customs & Central Excise to drop the proceeding against him.

10. That the appellant's letter dated 8.8.92

Advised.
Advocate.

-5-

failed to evoke any response from the Collector of Customs & Central Excise. Meanwhile vide order No.147/93 dated 15.3.93, the promotion of Inspectors of Customs & Central Excise to the Grade of Superintendent, Group-B was made. Pursuant to the aforesaid order of promotion, some of the appellant's juniors were promoted to the Grade of Superintendent Group-B. While on the other hand, because of the pendency of the de-novo enquiry against him, the appellant's turn for promotion to the said Grade was ignored.

11. That subsequently, vide order dated 2.2.94, more promotions of the Inspectors of Customs & Central Excise to the Grade of Superintendent, Group-B were made. Pursuant to this order of promotion, more persons junior to the appellant to were promoted to the Grade of Superintendent, Group-B, while on the other hand, even on this occasion because of the pendency of the de-novo enquiry against him the appellant's turn for promotion to the said grade was ignored.

12. That at last, the appellant on having found that the enquiry against him is pending since 1985 and there has been inordinate delay in the completion of his proceeding as a result of which his conditions of service are being adversely affected, filed the original Application No.59 of 1994 before the Central Administrative Tribunal, Guwahati Bench praying for a direction to close the enquiry against him and also for a direction to promote him to the Superintendent, Group-B with effect from 15.6.93 with all consequential benefits. The Hon'ble Tribunal in its order dated 6.4.94 directed the competent authority

Attes.ed.
 Advocate.

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to complete the enquiry with final orders without fail within 30 days from the date of receipt of the copy of the order.

The Hon'ble Tribunal also ordered if the enquiry is not completed within this specified period, the disciplinary proceeding/enquiry shall stand quashed. The Hon'ble Tribunal further directed in its order that in the event of termination of the enquiry proceeding in favour of the appellant or due to quashing of the proceeding, the competent authority shall promote the appellant to the grade of superintendent, Group-B with effect from 15.6.93 when his immediate junior were promoted vide Estt. Order No. 147/93 dated 15.6.93 endorsing C.No.II(3).5/E.T./III/93 dated 15.6.93 with the aforesaid direction, the Hon'ble Tribunal disposed of the appellant's application O.A.59/94.

13. That in view of the aforesaid order of the Hon'ble Tribunal, the Enquiry Officer was directed by the competent authority to complete the de-novo enquiry. As a result, the Enquiry Officer proceeded to complete the enquiry which had been pending since 1985 within a short span of 30 days. The Enquiry Officer completed the enquiry within 30 days and submitted his report dated 6.5.94 to the disciplinary authority without making a copy of the same available to the appellant.

14. That the Enquiry Officer in his enquiry report dated 6.5.94 held that the charges against the appellant have not been proved and directed that the enquiry be abandoned.

In arriving at this finding, the Enquiry Officer considered several relevant aspects. It was found by the Enquiry Officer

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that all the documents mentioned in the Memorandum of charge-sheet were placed in original for inspection except the two vital documents-(1) the original representation dated 19.11.93 from Shri Nirod Ch. Das to the Additional Collector, Customs & Central Excise, Shillong and (2) the original diary of the appellant.

14.1 In regard to the non-production of the first document for inspection, the Enquiry Officer stated as follows:

"On the point of relevancy of that representation dated 19.11.83 of Shri N.C.Das, it is found that it is a document under Annexure-3 of the Memorandum of charge-sheet. Further it is found that Shri N.C.Das is also one of the accused party of the gold case. As such it is felt that the original representation dated 19.11.83 of Shri N.C.Das is an important document and the same should have been placed before the charged officer for inspection."

It was further observed by the Enquiry Officer that "....I find that the demand by the charged officer to inspect the original statement dated 19.11.83 was genuine and the Presenting Officer should have supplied the same for the satisfaction of the charged officer."

14.2 In regard to the non-production of the second document, the Enquiry Officer stated as follows :

"The charged officer demanded the original diary dated 21.4.83 for inspection. The same could not be supplied by the disciplinary authority or the Presenting Officer for inspection by the charged officer. The disciplinary authority as well as the Presenting Officer was

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requested to submit the original one several times, but they failed to submit them in original for inspection.

It was further observed by the Enquiry Officer that:

".....on the point of the relevancy of the diary of the charged officer, it is found that it is a document under Annexure-2 of the Memorandum of Charge-sheet. Further it is found that the diary dated 21.4.93 is the diary of the date of occurrence of incidence on the basis of which the charge-sheet is framed against the charged-officer. The charged officer demanded to inspect the original diary dated 21.4.93 for inspection. The Presenting Officer was asked on several occasions to supply the original diary dated 21.4.93, but he failed to supply or produce the same or original for inspection by the charged officer."

The Enquiry Officer noted with concern the statement of the appellant that the true copy of the diary dated 21.4.93 is a manufactured document and not the original and the same has been created with a malafide intention to entangle him with the present proceeding. In view of this allegation of the appellant, it was observed by the Enquiry officer that:

".....I find that the diary dated 21.4.93 (the date of occurrence of incident is a very important document in the present proceeding and that demand of the charged officer to inspect the original one is genuine and the Presenting Officer should have supplied the same to the charged officer in original for his inspection and satisfaction."

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14.3 That in course of the proceeding, the appellant also demanded the copy of the original statement of Shri Pradip Kumar Saha dated 23.4.83 for the purpose of inspection. The Enquiry Officer requested the Presenting Officer on several occasions to produce the original statement dated 23.4.83, but he failed to produce the original statement. On the relevancy of the statement of Shri Pradip Kumar Saha dated 23.4.83, it was observed by the Enquiry Office that

".....Statements of Shri Pradip Kumar Saha dated 23.4.83 is a statement made after two days of the date of occurrence of the incident and 23.4.83 is a date which falls within the period 22.4.83 to 27.5.83, the period within which the article of charges (Article 1) in the Memorandum of Charge Sheet. Furthermore, it was found that Shri Pradip Kumar Saha is an accused person being accused as carrier of gold bars in the seizure of five gold bars. The charge officer categorically stated that Shri Pradip Kumar Saha is an accused person in the seizure of five gold bars and he has also been made a witness by the disciplinary authority in the present proceeding. Since his is an accused person, his statement has naturally been taken. He stated that Shri Saha's statement was taken in the Police Station. He further stated that the original statement dated 23.4.83 of Shri Saha is very much relevant in the present proceeding to find out the truth. As such, he demanded to inspect the original one."

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It was held by the Enquiry Officer that the demand of the appellant to inspect the original statement dated 23.4.83 of Shri Saha is genuine and the Presenting Officer should have supplied the same in original to the appellant for his inspection and satisfaction.

14.4 It was held by the Enquiry Officer that the Presenting Officer could not supply the following vital documents in original for inspection by the appellants which are vital for conducting the Present Proceeding:

- (i) Original representation dated 19.11.83 of Shri N.C.Das:
- (ii) Original diary dated 23.4.83 of Shri N.G.Sen, charged officer (appellant):
- (iii) Original statement of Shri Pradip Kumar Saha dated 24.3.83

It was also held by the Enquiry Officer mentioning these documents by which the article of charge was proposed to be sustained in Annexure-3 of the Memorandum of charge-sheet, two documents viz. (i) representation dated 19.11.83 of Shri N.C.Das (ii) diary of the appellant are copies of documents and not the originals one, which means that the article of charges was framed on copies of documents itself.

In consideration of the abovementioned relevant aspect, it was held by the Enquiry Officer that the appellant could be offered any opportunity to inspect the original document. As such, there is no other option but to stop the proceeding as further proceeding without giving chance to the appellant to inspect the original documents would amount to denial of the natural justice. The Enquiry Officer, this decided that the enquiry is abandoned and stopped and nothing

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could have been proved against the appellant.

15.1

15.2.

15.2. That the disciplinary authority also made a grave error in not supplying the copy of the enquiry report to the appellant before passing the impugned order of punishment dated 24.5.94. It severally prejudiced the interests

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of the applicant and deprived him of the opportunity of presenting his case before the disciplinary authority in the light of the findings of the Inquiry Officer.

16. That the appellant being aggrieved by the order of the disciplinary authority dated 24.5.94 is filing the instant appeal on the following grounds:

16.1 That the failure of the disciplinary authority to supply to the appellant the copy of the inquiry report severly prejudiced the appellant and violated his valuable right of receiving the copy of the inquiry report prior to the passing of the order of punishment against him.

16.2 That the disciplinary authority passed the impugned order in total non-application of mind and relied upon the surmises and conjectures in justifying the order of punishment against the appellant.

16.3 That the disciplinary authority failed to consider the real purport and meaning of De-novo enquiry. It failed to consider that in the case of appellant the De-Novo inquiry could not be carried out at all in view of the non-production of the original copies of some of the vital documents and the inquiry officer had to abandon the inquiry. As the De-Novo inquiry against the appellant was not carried out at all, the Disciplinary authority could not have passed the order of punishment against the appellant.

16.4. That the disciplinary authority acted contrary to the settled principle of service jurisprudence while negativating the findings of the Inquiry Officer. Law is well settled that the disciplinary authority if it refuses to accept

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the findings of the Inquiry Officer, should give sound and cogent reasons for doing so. However, in the instant case disciplinary authority relied upon the surmises and conjectures in over-ruling the findings of the Inquiry Officer.

16.5 That the disciplinary authority failed to consider the effect of non-production of original copies of three vital documents upon the merit of the case. As despite the repeated notices of the Inquiry Officer original copies of the documents upon the merit of the case. As despite the repeated notices of the Inquiry Officer original copies of the documents viz. Representation dated 19.11.83 of Shri N.C.Das, appellant's diary dated 21.4.83 and the statement of Shri P.K.Saha dated 23.4.83 were not produced for the inspection of the appellant, the De-Novo inquiry against the appellant was fully vitiated and no decision could have been taken pursuant thereto by the disciplinary authority.

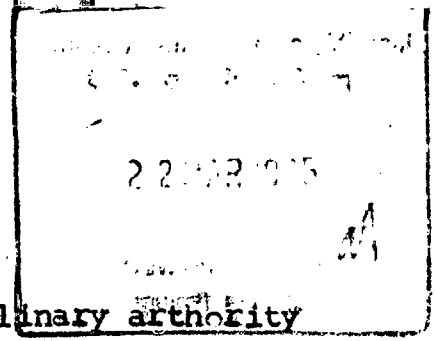
16/6. That the disciplinary authority acted in unholy haste in passing the impugned order for punishment. The only factor if considered was that of some how passing the final order within the time limit prescribed by the Hon'ble Tribunal, Guwahati.

16.7 That the findings of the disciplinary authority are based upon the distorted facts and convoluted logic and hence liable to be quashed and set aside.

16.8 That the De-Novo inquiry against the appellant was not carried out in compliance with the Rule 14 of the CCS(CCA) Rules, 1955. Hence the order of punishment passed by the disciplinary authority is void-ab-initio.

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16.9

That the order of the disciplinary authority is arbitrary and against the settled principles of service jurisprudence.

16.10

That the disciplinary authority over-looked the fact that the inquiry against the appellant is pending since last nearly 10 years and the charges involved therein are stale, by ignoring this relevant aspect the disciplinary authority committed grave error.

16.11

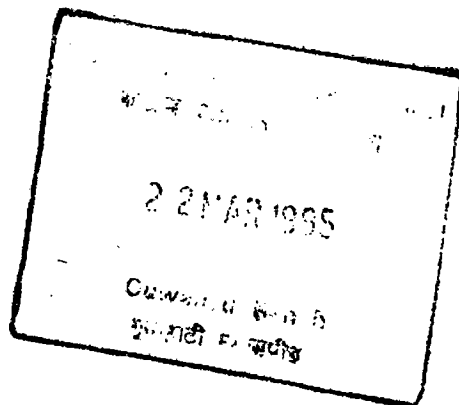
That the disciplinary authority while passing the impugned order of punishment against the appellant seriously erred in the exercise of its jurisdiction and committed grave errors both therein and out of its jurisdiction.

In the premises aforesaid, it is most respectfully prayed that your honour may be pleased to quash/set aside the order of disciplinary authority dated 24.5.94 with the direction that the appellant shall be entitled to all the consequential benefits including his promotion to the grade of Superintendent Group 'B' with effect from 15.6.93 when his immediate junior was promoted vide Estt. Order No. 147/93 dated 15.6.93 endorsed under C.No. II(3)5/ET.III/93 dated 15.6.93.

And for this the appellant as in duty bound, shall ever pray.

Asses.ed.
Advocate.

Annexure: M

CONFIDENTIALREGISTERED WITH A/D

To

Mrs. L.R. Mithran,
Collector of Customs & Central Excise,
Shillong.

Sub:- 3rd reminding Prayer resting with
appeal relating to Disc. Order No.
1/CM-Vig/94 dated 24.5.94-Communication
of speaking order-Corres-reg.

Madam,

An appeal was preferred under Rule 23 of the
CCS (CCa) Rules 1965 to the honourable Collector of Customs
& Central Excise, Shillong on 25.7.94. Since it has already
been elapsed a period of about two and a half month I have
not yet been favoured with your kind valuable decision.

I would therefore, pray, firmly believe and
expect that your gracious self will be pleased to pass nece-
ssary speaking order on my appeal immediately so as to enable
me to restore my due post to the rank of Superintendent
above my juniors w.e.f. 15.6.93 and oblige thereby.

Yours faithfully,

sd/- 5/10/94

(N.G. Sen)

Inspector of Central
Excise, Agartala Range,
Jaynagar, Rd. No. 3, Agartala.

Ames.ed.
Advocate.