

10/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Stali  
30.1.18

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

OA No. 228/96

Sh. R. Kavonakar Applicant(s)

Union of India Respondent(s)

Mr. G.K. Bhattacharya Advocates for the applicant(s)

u. G.N. Das, Mr. N. Devi, Mr. P. Sanyal

Mr. A.K. Choudhury Advocates for the Respondent(s)

Office Notes | Date | Courts' Orders

This application is in  
for and within time  
of Rs. 50/-

Application No. 4444/96

Dated 7.10.96

N. Sanyal  
Dy. Registrar 7/10/96

8.10.96

Learned counsel Mr. G.N. Das for  
the applicants.

Mr. A.K. Choudhury, learned Addl.  
C.G.S.C. for the respondents.

Heard Mr. G.N. Das for admission.

Perused the contents of the application  
and reliefs sought. The application is  
admitted. Written statement within six  
weeks. Issue notice on the responde-

nts by registered post.

List for written statement and  
further order on 22.11.1996.

Member

trd  
m  
9/10

22-11-96

Miss N. Devi counsel for  
the applicant. Addl. C.G.S.C.

Mr. A.K. Choudhury for the respondents  
seeks two months time to file  
written statement.

List for written statement  
and further order on 7-1-97.

Member

lm  
m  
22/11

*Notice served  
for the respondents  
vide order of 15/10/96*

*are still invited  
not been b/w*

*Notice duly served on  
respondent No- 2*

*not been b/w*

7-1-97

Learned counsel Mr. G.N. Das for the applicant. Mr. A.K. Choudhary, Addl. C.G.S.C. are submitted written statement and served on Mr. G.N. Das to-day. This case is ready for hearing.

List for hearing on 10-2-97.

lm  
w  
9/11

Member

9-1-97

10.2.97

Adjourned for hearing on 18.2.97

D/S filed by in  
R. No. 1, 2 & 3.

Member

trd

6-2-97

28.2.97

Let this case be listed for hearing on 4.3.97.

Member

1) N/S filed by the R-NO. 1, 2 & 3.

2) Notice duly served on R-2.

3) Memo of appearance not filed.

4-3-97

Let this case be listed for hearing before a Bench without one of us (G.L. Sanglyine, Member, Administrative Registrar shall place before me

4-3-97

Let this case be listed for hearing before a Bench without one of us (Hon'ble G.L. Sanglyine, Member(A), Registrar shall place before me (Hon'ble Vice-Chairman) for necessary administrative order.

Member

Vice-Chairman

lm  
w  
12/3

3

O.A. No. 228 of 1996

1) W/ statement - his name  
b'w on R. 1, 2 & 3.

2) Memo of appearance  
his name - b'w

14.3.96

Let this case be listed on 4.4.97 for further orders.

*[Signature]*  
Vice-Chairman

314

trd  
13/3

3-4-1997.

4.4.97

Let this matter be placed before me in my chamber on 7.4.1997.

Order dtd. 4-3-97 of the case may kindly be seen. This case relates to the Income Tax Deptt. As per <sup>above</sup> order, this case cannot be heard by the Hon'ble Member(A).

*[Signature]*  
Vice-Chairman

pg

Ref: No. 13/1/95-JA dtd 2-9-97. a t  
Flag 'X'

11.9.97

Learned counsel for the applicant are not present today. List it on 15.9.97 for orders.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

Vide letter above the Dy. Registrar(JA), C.A.I. (P.E.) conveyed the Order of the Hon'ble Chairman that the O.A. No. 228/96 (Shri R. Karmakar -Vs- U.O.I. & ors) of this bench may be transferred to any bench as per the choice of the applicant.

The above letter is <sup>laid</sup> ~~kept~~ for favour of kind perusal and necessary orders.

*[Signature]*  
S.O. (J)

Dy. Registrar

16.9.97

Mr G.K. Bhattacharjya, learned counsel appearing on behalf of the applicant prays for one week time to take instruction.

List on 23.9.97 for further orders.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

pg

23-9-97

Learned counsel Mr.G.K. Bhattacharjee appearing on behalf of the applicant submits that he is not able to contact with the applicant. Therefore, he prays for 1 month time.

Let this case be listed for orders on 31-10-97.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

lm

W/S. his name b'w.

22/9

*[Signature]*  
13/9

A 228/91

(41)

W/S has been filed.

29/10

31.10.97

Division Bench is not sitting. List on 10.2.98.

W/S has been filed.

9/2

9.2.98

Notes on flag 'X' at prepage may kindly be seen.

This is req. transfer of the CAT in the Hon'ble Member (a) cannot take up the matter placed before the Hon'ble

10.2.98

There is no representation on behalf of the applicant. For the ends of justice the case is adjourned till 20.2.98.

Member

Vice-Chairman

pg  
WS  
11/2

20.2.98

Mr. G.K. Bhattacharya, learned counsel for the applicant submits that the applicant has filed a petition before the Hon'ble Chairman. Therefore, he needs one month time. The other side has no objection.

Accordingly the case is adjourned to 23.3.98.

Member

Vice-Chairman

W/S has been filed.

19/2

Letter issued vide despatch NO. 715 dated 19.3.98 to the Dy. Registrar, P.B. New Delhi for confirmation of flag 'X'.

pg  
WS  
23/2

23-3-98

Let this case be listed for on 4.5.98 for orders. hearing

Member

Vice-Chairman

19/3/98.

lm  
WS  
24/3

The case is ready for hearing as required W/S.

4.5.98

proceed in the day. by order.

21/3

Notes of the Registry

Date

Order of the Tribunal

W/S as per bill on R. Nos. 1-3.

5.5.98

Heard Mr G.K. Bhattacharyya learned counsel for the applicant as well as Mr A.K. Choudhury, learned Addl. C.G.S.C. Hearing concluded Judgment reserved.

SB  
1/5

1.5.98

1) Notice duly served on Respondent NO. 2.

nkm

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

2) W/S on behalf of Respondents NO 1, 2 & 3 has been filed.

8.5.98

Judgment pronounced in open court and kept in separate sheets. The application is allowed. No order as to costs.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

3) The case is ready for hearing.

nkm

W/S  
1/5

Received copy of the Judgment for the applicant.

Bill

(G.N. Das)  
Advocate  
12/5/98

Copy of the Judgment -  
sent vide d. nos.  
1370 to 1373 to the  
parties through Regd.  
with A/D.

SB  
20/5



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

O.A. NO. 228 of 1996  
T.A. NO.

DATE OF DECISION 8.5.1998

Shri R. Karmakar

(PETITIONER(S))

Mr G.K. Bhattacharyya, Mr G.N. Das and  
Mrs N. Devi

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr A.K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR S.P. BISWAS, ADMINISTRATIVE MEMBER

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 ?

Judgment delivered by Hon'ble Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.228 of 1996

Date of decision: This the 8th day May 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr S.P. Biswas, Administrative Member

Shri Ratneswar Karmakar,  
Income Tax Officer, OSD,  
Office of the Deputy Commissioner of Income Tax,  
Range-I (since dismissed),  
Guwahati. ....Applicant

By Advocates Mr G.K. Bhattacharyya,  
Mr G.N. Das and Mrs N. Devi.

- versus -

1. The Union of India in the  
Ministry of Finance,  
Department of Revenue,  
Central Board of Direct Taxes, New Delhi,  
(represented by the Secretary to the  
Government of India, Ministry of Finance,  
Department of Revenue, C.B.D.T.,  
New Delhi),
2. The Commissioner of Income Tax,  
North Eastern Region,  
Shillong.
3. The Chief Commissioner of Income Tax,  
Bihar, Orissa and N.F. Region,  
Patna. ....Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

.....  
O R D E R

S.P. BISWAS, J. (ADMINISTRATIVE MEMBER)

The applicant, an Income Tax Officer (ITO for short)/OSD in the office of Deputy Commissioner of Income Tax/Range I/Guwahati, is aggrieved by Annexure A XIV and A XVI orders dated 30.12.1993 and 28.6.1996 respectively. By the former, an order of dismissal from service has been served on the applicant on the last day of his service career. By the latter, applicant's

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statutory appeal against the aforesaid order has been rejected. Consequently, the applicant seeks issuance of directions by this Tribunal for quashing both the orders..

2. Background facts, in brief, necessary for proper appreciation of the case, are as under. The applicant, after having joined the respondents as UDC in 1959 rose to the level of ITO in May 1980 by virtue of hard and sincere work. He had a meritorious service to his credit and had earned laurels from President of India even in 1973. While serving as ITO/Tezpur, the CBI registered a case against him alleging that he has amassed huge assets worth Rs.2,39,000/- suspected to be disproportionate to his known sources of income and also recommended initiation of disciplinary action. A major penalty chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was served upon him on 23.10.1990. The basic charge related to acquiring of disproportionate assets worth Rs.78,901.04 covering the period from 1959 to 1987 in contravention of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS Conduct Rules, 1964. Applicant submitted the reply on 24.11.1990 denying the charges. The preliminary hearing started in Delhi on 13.8.1992. However, proceedings were finally concluded on 1.11.1993 having started on 30.10.1993. Applicant pointed out several infirmities in the enquiry, demanded specifically production of two additional documents, sought permission to cross-examine two vital witnesses and prayed that findings are not sustainable in law. Following the finding of the Inquiry Officer that "charge is proved to the extent that the C.O. was having disproportionate assets to the tune of Rs.48,878.28", the applicant was served with the impugned order dated

30.12.1993.....

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30.12.1993 while he was attending a party in honour of his farewell.

3. Applicant seeks to challenge the order of dismissal mainly on grounds of violation of principles of natural justice based on failure to comply with provisions of Rule 14 of the CCS(CCA) Rules, 1965. It contains the following:

".....As per rule 14(14) of the CCS(CCA) Rules, the oral and the documentary evidence by which the articles of charge are proposed to be proved shall be produced and that the witnesses shall be examined, cross examined and re-examined. As per said rule, therefore, recording of evidence includes proving the activity of the listed documents through witnesses. It is only through such testification and oral evidence, in other words examination in Chief, the cross examination part is done and as such testification of the listed documents by independent witnesses is a lawful necessity in the inquiry proceedings under rule 14 of the CCS (CCA) Rules. The very purpose of the oral inquiry, therefore, is to record evidence through testification and acceptance of such documents as exhibits and unless therefore such of those documents remain not testified such documents remain to be more documents of the prosecution and not Exhibits in the inquiry proceedings....." (emphasis ours).

xxxxxxx                    xxxxxxxx                    xxxxxxxxxxx

".....Inquiry proceedings conducted under Rule 14 of the CCS (CCA) Rules being quasi judicial proceedings, non production of witnesses to testify the documents to be taken as Exhibits, and arbitrarily taking these documents listed in Annexure as Exhibits without affording the charged officer the reasonable opportunity of cross examination is not only illegal and unjustifiable but also quite contrary to the provisions of the statute itself....."

Out of 30 listed witnesses, the applicant prayed for production of mainly two witnesses at Sl.Nos. 16 and 26 respectively. Sri R.K. Choudhury (at Sl.No.16) as ITO (Vigilance) had submitted the report forwarding pay particulars of the applicant's income covering the period from 9.3.1959 to 26.3.1987. The details in the report.....

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report was relied upon to frame the statement of imputation of misconduct in terms of assets (income) available with the applicant, savings effected and the unexplained assets. The other important witness (at Sl.No.26) on whose examination was insisted upon by the applicant was Sri P.L. Yadavendu, Asstt. Valuation Officer (AVO for short). This witness had assessed the residential building of wife of the applicant, on the basis of which charges were framed. None of these two witnesses were allowed to be cross-examined, applicant's demand for the same notwithstanding. The applicant would submit that production of documents in enquiry is not proof. Documentary evidences can be relied upon as having been proved only if it comes before the enquiry authority through the statements of those who had made them. As per applicant, not only the two vital witnesses were not allowed to be examined, the documents submitted by them and heavily relied upon by the authorities were not proved in the enquiry by marking them through the authors of the documents. Hence there is no proof of guilt and the whole enquiry is vitiated on account of violation of principles of natural justice, the applicant contended.

5. Another very important plea taken by the applicant relates to non-supply/production of two vital documents.

"....On 5.5.92, the applicant submitted a prayer to the Enquiry Officer requesting him to allow the applicant to inspect the following additional documents which were considered relevant to the charges levelled against him:-

- (a) Copy of the Final Report submitted by the C.B.I. in case No.RC-4/87-SHG as it was in connection with the same charge and contained the findings of the I.O. and the recommendations, if any.

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(b) Copy of the documents/records on the basis of which the pay and other allowances of the appellant were computed while framing the charge. The appellant also prayed that he be allowed to submit his list of witnesses after the evidence of the department was concluded as he might not have to examine any witness."

6. As the Enquiry Officer was convinced that the documents/records on the basis of which pay and allowances were computed were relevant for the defence of the applicant, directed the Presenting Officer on 13.7.1992 to make those documents available to the applicant for his inspection to be completed by 7.8.1992. However, the applicant was not given any opportunity at any stage of the enquiry to go through those documents in the custody of the Presenting Officer or take extracts of the listed documents. Rule 14(14) does not contemplate such a situation, the applicant argued.

While arguing the case in favour of the applicant, the learned counsel placed reliance on the orders of Ernakulam Bench of this Tribunal in the case of P.S.G. Pillai Vs Union of the India and two others, AISLJ 1993 (Vol I) 171 decided on 14.2.1992.

7. The other grounds taken by the applicant include (i) undue hurriess shown in conducting the proceedings, (ii) Disciplinary Authority disagreeing with the finding of the Inquiry Officer without recording the reasons, (iii) taking the statement/assessment of the AVO without examining him, (iv) working out the figures of disproportionate assets on the basis of conjectures and surmises and (v) illegal reliance on details of what is called a /personal diary of Mrs Karmakar (Sl.Nos.40, 43 and 44) in the list of documents) without giving copies to the applicant.

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8. In the counter, the respondents have submitted that the applicant had only raised technical objections regarding the valuation report though he has not contested the same on merits. It is also clear that the applicant had failed to produce his own valuer with the result the I.O. had to work out the valuation of the property to the best of his judgment. The I.O. gave reasons for accepting the valuation of AVO corroborating evidence including exhibit S-53 - a diary maintained by Mrs Karmakar "..... The record clearly shows that the pay and allowances of the officer for the pre-check period have been worked out on the basis of available pay particulars but have not left out the pay and allowances for the period <sup>for</sup> which these particulars were not available. These details were calculated on the basis of average salary being drawn by the officer in the proximate period for which particulars were available....."

9. IN the counter filed on 8.1.1997, the respondents have summarised their stand as under:

".....Shri R. Karmakar had raised three main arguments i.e. proper opportunity was not given to him, pay and allowances for a period of 9 years and one month were denied to him in working out the disproportionate assets, and that important witnesses were not present. The same issues have again been raised in the present application and it can clearly be stated that he was given all due opportunity, even though the matter had to be hurried up due to direction of the Hon'ble Tribunal. Guwahati to complete the proceedings within a specified time....."

In support of their contentions, the learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in the case of Union of India and another -vs- B.C. Chaturbedi, (1995) 6 SCC 750. It has been held therein that:

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"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

"....The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence....."

10. We have heard rival contentions of counsel for both the parties. The issues that fall for determination are:

(i) Whether in the facts and circumstances of the case, there have been violations in procedural provisions resulting in denial of justice to the delinquent officer?

(ii) Whether the case of the charged official has been prejudiced by denial of producing the two particular witnesses for cross examination as demanded repeatedly by the applicant, and non availability of documents regarding pay and allowances as well as valuation done by AVO?

(iii) Whether the applicant got adequate opportunities to defend himself ensuring that there has been no denial of natural justice in course of proceedings? and

(iv) Whether the case could be held as one of there being no evidence?

11. Before we proceed to examine the issues aforementioned, it would be apposite to mention here a few guidelines/principles, relevant to the present case, enunciated by the Hon'ble Supreme Court in a catena of

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judgments. These are as follows: (a) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of rules/regulations/statutory provisions governing such enquiries should not be set aside automatically, (b) The Court/Tribunal may interfere, where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the finding reached by the disciplinary authority is based on no evidence, (c) the standard proof required in a domestic enquiry is only preponderance of probability and not proof beyond reasonable doubt, (d) where there is some evidence on record, the Disciplinary Authority can't be faulted and the Court/Tribunal can't re-appreciate the evidence, (e) Rules of evidence don't apply to domestic enquiry, (f) the Court/Tribunal can't act as a fact finding forum and (g) Reasonable opportunity or fair treatment given to the delinquent official must be judged on the "touchstone of prejudice" caused, if any, on the facts and circumstances of each case. (See B.C. Chaturbedi -vs- Union of India and others, (1995) 5 SLR 778, State Bank of Patiala and others -vs- S.K. Sharma, JT 1996 (3) SC 722 and N. Rajarathinam -vs- State Tamil Nadu and another, 1997 (1) SLJ 10).

12. The pleadings started on 4.5.1998. Since the materials available on record were not sufficiently clear, we adjourned the case for 5.5.1998 and directed the learned counsel for the respondents to bring out the factual positions as to whether evidences were produced in the prescribed manner, the reasons for which the

1/2

cross-examination of the witness who valued the property could not be ensured and whether an authority, competent as per law, has acted as Appellate Authority while disposing off the applicant's appeal dated 18.2.1994 under Section 27(2) of the CCS (CCA) Rules.

13. During the course of arguments next day on 5.5.1998, learned counsel for the respondents fairly conceded that the two pinpointed witnesses could not be made available as the proceedings had to be hurried up due to directions of this Tribunal to complete the proceedings within a specified time. Respondents have also conceded this point in para 7 of their counter dated 8.1.1997. There has, thus, been a violation of the following procedural provision -

".....(14) On the date fixed for interview, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the Government servant....."

While disposing of the O.A.No.160/93 on 23.8.1993, this Tribunal did not permit short circuiting of the procedural steps while expediting the enquiry proceedings. It was well within the provisions for the respondents to come up before the Tribunal seeking extension of time for sake of full compliance of the requirements and proceed with the case under Rule 9 of the Pension Rules, 1972, if it was so advised. Respondents failed to take actions in this respect. Besides there being a violation of procedural provision (Rule 14(14) of the CCS(CCA) Rules) as aforequoted, we are confronted herein with an avoidable situation of "Justice hurried is Justice burried".

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14. WE shall now proceed to examine the disposal of applicant's appeal preferred under Rule 23 of the CCS(CCA) Rules, 1965. We find that the Appellate order (enclosure to Annexure XVI) dated 26.6.1996 has been rightly issued in compliance with stipulations under Rule 27(2) but signed by an officer not competent to do so. While rules permit conveying such orders issued under the signature of a subordinate authority but the orders on "Appeal" in such cases have to be, as per rule, of none less than Appellate Authority itself at least on the file. Records don't show that the said order was issued by a competent authority. The learned counsel for the respondents, on being questioned by us, could not clarify the real position. On this score alone, Annexure XVI appellate order is a nullity in the eyes of law.

15. Admittedly, findings were reached by the enquiry authority on documentary evidence. We find that the Inquiry Officer gave specific orders on 13.7.1992 to make two additional documents available to the applicant considering those to be relevant for applicant's defence. These documents were with the Disciplinary Authorities. But those could not come to the cognizance of enquiry authority through the medium of any human testimony. It was also not possible to find out whether they were genuine documents or not or whether they are admissible in evidence or not or whether they are documents to be proved in the manner contemplated in Chapter V and VI of the Evidence Act. The applicant had, times without number, sought production of those documents. There is no whisper either in the enquiry report or in the order imposing the penalty as to why those could not be made available. Failure to give copy of the listed documents, when specifically demanded, or at least an opportunity to

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persue them vitiates the enquiry. The applicant did mention the relevance of the aforesaid documents to the charges framed against him. It is not denied either by the Inquiry Officer or the respondents. We find non-supply of such essential materials has prejudiced the applicant's case in the light of the law laid down by the Apex Court in Transport Commissioner, MAS -vs- A.K. R. Moorthy, 1995 (1) ATJ Vol 18 pg 299, State of Tamil Nadu -vs- T.K. V. Perumal and others, 1996 (3) SLJ 43 and in the case of State Bank of Patiala (Supra). Even the final report by the CBI, relating to the same set of charges containing the findings, were not permitted to be inspected on grounds of privilege. It is well settled in law that when a report has been relied upon in framing the charges, access to such a report can't be denied. Such a view finds support in the decision of the Apex Court in State of U.P. -vs- Md Shariff, 1982 (2) SC 376. It is, therefore, evident that the applicant did not get adequate opportunities to defend his case.

16. There is yet another error apparent in determining the value of assets. The C.O. has disputed the value of the residential building (i.e. Rs.3,27,830) on the basis that Shri Yadavendu (AVO) assessed the building on the basis of Delhi Plinth Area rates as on 1.10.1976. Whereas the valuation report of AVO also mentions of Guwahati rate being taken into account. It was in the context of the above dispute that the need to cross-examine the AVO was considered vital. Inquiry Officer submits that "Shri Yadavendu did not turn up during the course of enquiry and the case being a time bound case has to be closed. This has definitely put defence in a disadvantageous position."

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The other document taken into account for computing the disproportionate assets was the diary purported to be maintained by Mrs Karmakar. We have since perused the said diary. It does contain entries over a large number of items, even unrelated to cost of the building held in her name. No human being, unless he /she has taken leave of common sense, would certify that the diary belongs to Mrs Karmakar. None has authenticated it. It has been relied upon in working out the charge of disproportionate assets, but a copy was not given to the applicant. It eludes comprehension as to how such an unreliable document could lend support to the charges against the C.O. In the result, the finding in enquiry proceedings herein could be held as one backed by questionable evidence.

17. We are in respectful agreement with the views expressed by Ernakulam Bench of this Tribunal in Original Application No.413 of 1991 decided by them on 14.2.1992 as referred to in para 6 herein before. The ratios arrived at therein are squarely applicable in the facts and circumstances of the present case.

18. In the light of the foregoing reasons, the original application succeeds on merits and is accordingly allowed with the following orders:

- (i) Both the orders dated 30.12.1993 and 10.7.1996 (i.e. of Disciplinary Authority at Annexure XIV and of Appellate Authority at Annexure XVI) are hereby set aside.
- (ii) Respondents shall disburse the pensionary benefits to the applicant with all arrears, if due. This

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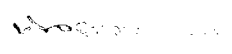
shall be done within a period of three months.

(iii) Our orders, however, shall not stand in the way of respondents to resume further proceedings against the applicant in accordance with law, if so advised.

19. There shall be no order as to costs.



( D. N. BARUAH )  
VICE-CHAIRMAN



( S. P. BISWAS )  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH  
GUWAHATI.

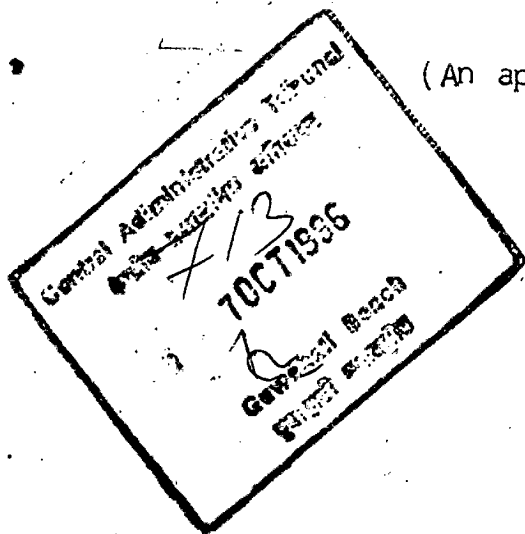
(An application under section 19 of the Administrative  
Tribunal Act ,1985).

O.A. 228 /96.

Shri Ratneswar Karmakar....Applicant.

-Versus-

Union of India and others..Respondents.



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Filed by :-

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Advocate. 7/10/96

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Adl. C. J. SC  
7/10/96

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7/10/16  
Ratneswar Karmakar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH  
GUWAHATI.

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

O.A. 228 /96.

Shri Ratneswar Karmakar.

-Versus -

Union of India and others.

1 : PARTICULARS OF THE APPLICANT:

- i) Shri Ratneswar Karmakar.
- ii) Son of Late Gopal Ch.Karmakar.
- iii) Aged about 60 years.
- iv) Income Tax Officer, OSD.  
Office of the Deputy Commissioner of  
Income Tax,Range-I,Red Cross Building ,  
Uzanbazar,Guwahati-781001(Since dismissed).

2 : PARTICULARS OF THE RESPONDENTS:

- 1) Union of India in the Ministry of Finance,  
Department of Revenue, Central Board of Direct  
Taxes, New Delhi (represented by the Secretary  
to the Govt. of India , Ministry of Finance,  
Department of Revenue ,C.B.D.T.,New Delhi)
- 2) Commissioner of Income Tax,North -Eastern  
Region ,Post Box-20,Shillong-793001.
- 3) Chief Commissioner of Income Tax,Bihar,  
Orissa and N.F.Region,Patna.

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3 : THE APPLICATION IS AGAINST THE FOLLOWING ORDERS:

1) Order No.F.No.E/Con/CT/90-91/1499 dated 30.12.93 passed by the Commissioner of Income-Tax, N.E. Region, Shillong(Respondent No.2) whereby the extreme penalty of dismissal from service was imposed on the applicant and that too on the last day of his service career.

2) Order No.F.No.C-16011/2/94-V & I dated 28.6.96 passed by the Secretary to the Govt.of India, Ministry of Finance ,Department of Revenue,C.B.D.T., New Delhi (Respondent No.1) as communicated by the Respondent No.2 under cover of his office letter No.F.No.E-5/Con/CT/90-91/738 dated 10.7.96 whereby the statutory appeal preferred by the applicant challenging the order of his dismissal from service was illegally and arbitrarily rejected and the order of penalty imposed by the disciplinary authority was confirmed .

4 : THE APPLICANT DECLARES THAT THE SUBJECT MATTER OF THE ORDER IS WITHIN THE JURISDICTION OF THIS TRIBUNAL:

5 : THE APPLICANT FURTHER DECLARES THAT THE APPLICATION IS WITHIN THE LIMITATION PRESCRIBED UNDER SECTION 21 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

6 : FACTS OF THE CASE:

1) That the applicant initially joined the Income Tax Department on 9.3.59 as an Upper Division Clerk and he

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was promoted to the rank of Inspector on 15.2.71. By dint of hardwork, the applicant earned his promotion to the rank of Income Tax Officer on 23.5.80 and he had been working as such in the N.E. Region . During the entire period of the applicant's service career, there was no occasion when he had incurred the displeasure of his superiors. The applicant was awarded a Presidential award of Rs.1000/- in 1973 in appreciation of his meritorious service records all through. The applicant was due to retire from service on attaining the age of superannuation on 31.12.93 and on the last day of his service career, the applicant received the impugned order dismissing him from service as a penalty and as such he is filing this application.

2) That while serving as Income Tax Officer, Tezpur, the C.B.I. registered a case against the applicant being case No. RC-4/87-SHG on the allegation that the applicant, while serving as an Income Tax Officer, amassed huge assets worth Rs.2,39,000/- which was suspected to be grossly disproportionate to his known sources of income. The C.B.I. after through investigation, submitted Final Report in the case as sufficient evidence could not be collected to sustain the charge but while submitting the Final Report , the C.B.I., in a routine manner, recommended that disciplinary action be initiated against the applicant.

3) That the Commissioner of Income Tax, N.E. Region, Shillong (Disciplinary Authority) vide office memorandum

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No.E-5/Con/CF /90-91/2147 dated 23.10.90, issued a charge-sheet under Rule 14 of the C.G.S. (CCA) Rules, 1965 wherein it was alleged that the applicant had acquired assets disproportionate to his known sources of income to the tune of Rs.78,901.04 in contravention of the C.C.S. (conduct ) Rules and he was directed to submit his written statement of defence within 10 days of the receipt of the Memorandum. From the article of charges and the statement of imputations, it appeared that the charge related to the period from 1959 to 1987 and the allegation was that the appellant failed to maintain absolute integrity and devotion to duty and that while serving as Upper Division Clerk, Income Tax Inspector and Income Tax Officer under the administrative Control of the Commissioner of Income Tax, N.E. Region, the applicant had acquired assets disproportionate to his known sources of income to the tune of Rs.78,901.04. The applicant, immediately on 24.11.90, submitted his reply denying the charges levelled against him. Thereafter, Shri J.D. Verma, Commissioner for departmental Enquiries, C.V.C. , New Delhi was appointed as the Enquiry Officer. Initially Shri G.K. Das, Inspector , CBI, Shillong who was also cited as a witness was appointed as the Presenting Officer but subsequently he was replaced by Shri J.S. Terang, CBI, Shillong as the Presenting Officer.

A copy of the charge memorandum dated 23.10.90 and reply dated 24.11.90 are annexed herewith and marked as Annexure-I and II respectively.

- 4) That the Enquiry Officer listed the case for preliminary hearing on 13.3.92 in New Delhi but the applicant

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*Inspector Karumakar*

could not attend as the intimation was received by him only on 10.3.92. The Enquiry Officer, however, held the preliminary hearing on 13.3.92 as scheduled in the absence of the applicant. As per order of the Enquiry Officer dated 13.3.92, the applicant alongwith his defence assistant visited the office of the Deputy Supdt. of Police., Guwahati on 2nd , 3rd, 4th and 8th April, 1992 for inspection of relevant documents. The applicant had taken down notes in respect of some of the listed documents and photostate copies in respect of some others<sup>which</sup> were made available to him on his request. The photostat~~ed~~ copies of some pre-recorded statements of the listed witnesses were also made available to the applicant but no such copies of the statements of witnesses against serial No.1 to 4, 16, 26 to 30 were made available to this applicant. In this connection, the applicant submitted a report to the Enquiry Officer on 9.4.92 stating the above facts and praying for expeditious disposal of the proceedings.

A copy of the order dated 13.3.92 passed by the Enquiry Officer and the report dated 9.4.92 submitted by the appellant are annexed herewith and marked as Annexure-III and IV respectively.

5) That, on 5.5.92 , the applicant submitted a prayer to the Enquiry Officer requesting him to allow the applicant to inspect the following additional documents which were considered relevant to the charges levelled against him:-

- (a) Copy of the Final Report submitted by the C.B.I. in case No.RC-4/87-SHG as it was in connection with the same charge and contained the findings of the I.O. and the recommendations, if any.

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(b) Copy of the documents/records on the basis of which the pay and other allowances of the appellant were computed while framing the charge. The appellant also prayed that he be allowed to submit his list of witnesses after the evidence of the department was concluded as he might not have to examine any witness.

A copy of the aforesaid prayer is annexed herewith and marked as Annexure-V.

6) That, on 16.7.92, the applicant received a copy of the order sheet dated 13.7.92 passed by the Enquiry Officer confirming that the documents/records on the basis of which the pay and allowances of the applicant were computed were relevant for the defence of the applicant and accordingly the Enquiry Officer directed the Presenting Officer to make those documents available to the applicant for his inspection to be completed by 7.8.92 positively. It was surprising that inspite of specific order dated 13.7.92 passed by the Enquiry Officer, no effective steps had been taken by the Presenting Officer to produce the aforesaid documents for the inspection of the applicant. The Enquiry Officer, by his order dated 13.7.92, however, held that the copy of the Final Report submitted by the Investigating Officer of the C.B.I. in case No.RC-4/87 was of confidential nature and as such it was not permitted to be inspected by the applicant although such a privilege could not be claimed in the eye of law. By the said order, the applicant was directed to submit his list of defence witnesses and he was informed that his prayer to submit the same after the conclusion of the prosecution case could not be acceded to as there would be no time left for summoning the witnesses.

A copy of the order dated 13.7.92 passed by the Enquiry Officer is annexed herewith and marked as Annexure-VI.

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7) That the applicant, then, by his letter dated 29.7.92, submitted his list of defence witnesses and stated that summons were not required to be issued and that he would produce the witnesses on the date fixed without causing any inconvenience or delay to the proceeding.

Copy of the letter dated 29.7.92 is annexed herewith and marked as Annexure-VII.

8) That, after sending the said letter, the applicant did not receive any response from the authorities particularly the C.B.I. and even after lapse of more than 3 months, the applicant did not receive any communication from the C.B.I. regarding inspection of additional documents as specified by him and which were very relevant to the charges. Having no alternative and since the proceedings were being unduly delayed, the applicant, on 19.11.92, submitted a representation to <sup>the Enquiry Officer</sup> ~~Respondent No. 1~~ stating the entire facts and as to how the proceedings were being unduly delayed. The applicant also informed that he would be reaching the age of superannuation by the end of 1993 and prayed that the proceedings against him be completed before his retirement.

Copy of the representation dated 19.11.92 is annexed herewith and marked as Annexure-VIII.

9) That again there was no response from the authorities and the applicant was not allowed to inspect the documents specified by him and the proceeding was being held up at this early stage of enquiry.

10) That the applicant, then, on 22.12.92. Submitted an appeal to the disciplinary authority stating the entire facts and as to how the matter was being delayed for no fault of the applicant and prayed that the proceedings against him be dropped or alternately direct that the documents specified by

him were made available for his inspection at an early date and thereafter conclude the proceeding expeditiously before his date of superannuation on 1.1.94. The copies<sup>5</sup> of the appeal were also endorsed to Respondent No. 3 and 4.

A copy of the said appeal dated 22.12.92 is annexed herewith and marked as Annexure-IX.

11) That, on 16.7.93, the applicant received a copy of the order sheet dated 2.7.93 whereby the Enquiry Officer had informed the applicant that the inspection of additional documents permitted for the defence of the applicant stood completed although some documents (at serial 17 of Annexure-III of the charge memo) on the basis of which pay and order allowances were computed for a considerable long period between 1959 and 1987 had not been furnished as yet. To be more precise, the pay particulars of the following period has not been furnished to the applicant till then:

- 1) From 9.3.59 to 13.4.60 .
- 2) From 20.4.60 to 17.5.63.
- 3) From March'64 to May'66.
- 4) From 7.5.68 to 15.2.71.

In this connection, the applicant, on 28.7.93 had submitted a representation to the Enquiry Officer stating that since all the documents on the basis of which the pay etc. particulars were computed could not be made available to the applicant in complete form, it could not be accepted that the inspection stood completed. Even after holding such a view, the Enquiry Officer has been taking everything be surely and

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instead of fixing a date of hearing , it was intimated that the date of hearing would be notified shortly.

A copy of the representation dated 28.7.93 is annexed herewith and marked as Annexure-X.

12) That, meanwhile , as many as 3 officers Junior to the applicant were promoted to the rank of Asstt. Commissioner of Income Tax and the applicant who had, otherwise, a good service record, would also have been so promoted but for the pendency of the proceedings. Though in the proceedings more than 7 months had elapsed, the authorities had not taken any effective steps to allow the applicant to inspect the documents and the applicant apprehended that the matter would be further delayed and as such the applicant filed an application before the Gauhati Bench of the Central Administrative Tribunal stating the entire facts with the prayer that the proceedings be dropped or alternately for a direction that the proceedings be completed within a stipulated period . The aforesaid application was numbered as OA.160/93.

13) That the Hon'ble Tribunal, by order dated 17.8.93, after hearing the advocates for both sides, directed that the proceedings with final result be completed by 31.12.93, failing which the proceedings would stand quashed.

A copy of the said order is annexed herewith and marked as Annexure-XI.

14) That, subsequently, the Enquiry Officer informed the applicant that he would hold regular hearing in the D.E.

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from 30.10.93 to 2.11.93 at Guwahati. Accordingly, on 30.10.93, the applicant alongwith his advocate appeared before the Enquiry Officer and the P.O. was also present. Since as per the list of witnesses, there were as many as 30 witnesses and since on the date of hearing, the C.B.I. could not produce any of the listed witnesses, to facilitate early disposal of the matter, the ~~applicant~~<sup>applicant</sup> had agreed to accept the routine documents at Annexure- III to the charge -sheet against serial No.1, 5,6 to 46 were taken on record. Although the documents at serial No.1 (assessment report in respect of the residential building of Mrs. Karmakar) were marked and taken on record on the first day of the hearing, i.e., 30.10.93, the applicant had submitted that the author of the document, i.e., witness at serial No.26, Sri P.L. Yadavendu be made available for his cross-examination as the whole charge depended on this assessment report. The Enquiry Officer agreed to consider the evidentiary value of the said report if the witness did not turn up.

It will be pertinent to mention here that the Enquiry Officer was in a great hurry to complete the proceedings and the applicant had insisted on examining only 4 out of 30 listed witnesses to facilitate early disposal of the case. Out of these witnesses, Shri R.K. Choudhury, I.T.O. (Vigilance) listed at serial No.16 of the list of witnesses, was a material witness so far the applicant was concerned. The said witness had submitted the report forwarding the pay particulars of the applicant covering the period from 9.3.59 to 26.3.87 and in his report he had specifically mentioned

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that the pay particulars for a certain period could not be collected and furnished due to non-availability of records. Though the applicant had insisted on examining the documents on the basis of which his pay and allowances were calculated, the Enquiry Officer had held that it was upto the prosecution to prove my pay particulars by adducing authentic evidence and as such this witness was very relevant. The other important witness on whose examination I had insisted was Shri P.L. Yadavendu, Asstt. Valuation Officer and who was listed as witness No.26. Since this witness had assessed the residential building of Mrs. Sheela Karmakar on the basis of which the charges were framed, this witness was also very relevant to the charges.

15) That, on 31.10.93, 2 witnesses, namely, Shri B.P. Chakravorty and Shri A.B. Gupta, who were the Investigating Officers were examined and no other witnesses were present. The Presenting Officer prayed that Shri P.L. Yadavendu, A.V.O., who had done the valuation in respect of the building and Shri R.K. Choudhury, the then I.T.O. (Vigilance) who had forwarded the pay particulars were <sup>very</sup> vital and important for the prosecution case and he be given another opportunity to produce these witnesses, However, the Enquiry Officer rejected the prayer on the ground that it was a time bound case as directed by the Guwahati Bench of the Central Administrative Tribunal and the prosecution case was closed.

That immediately, thereafter, the Enquiry Officer took up the defence case and examined the applicant as D.W. 1

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and he was cross-examined by the Presenting Officer. The applicant, during his evidence, produced and exhibited two documents including a valuation report prepared by a registered valuer and the case was adjourned till 1.11.93 on which date the applicant examined Shri G. Baishya, Office Assistant in the office of Shri I. Sarma, Consulting Engineer and registered valuer who duly proved the valuation report marked as Ex-D-2 and the proceedings were concluded. As per order dated 1.11.93, the Presenting Officer and the Charged Officer were required to submit their respective written brief to the Enquiry Officer within a stipulated period and the Written Briefs were so submitted. That the applicant, on 21.12.93, received letter No. F-Nb.E-5/Con/CT/90-91/3005 dated 21.12.93 from the Commissioner of Income Tax whereby a copy of the Enquiry Report dated 30.11.93 was forwarded to the applicant and the applicant was directed to make representation against the same within 3 days. In the said letter, it was also mentioned that the Commissioner was not in agreement with the Enquiry Report to the extent of taking the disproportionate assets as Rs.48,878.28 as held by the Enquiry Officer and that he was inclined to take the disproportion at Rs.78,901.00.

A copy of the said letter dated 21.12.93 along with the Enquiry Report is annexed herewith and marked as Annexure-XII and XIII respectively.

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16) That the applicant, immediately, on 24.12.93, submitted his representation stating that 3 day's time be allowed to study the report and submit his representation was too short; more so when the Enquiry Officer submitted his report as far back as on 30.11.93 and it took the Disciplinary Authority 21 days to go through the report and issue the letter. The applicant also stated that though in the Memorandum dated 21.12.93 it was stated that the Commissioner was not in agreement with the Enquiry Officer, no reasons were given for the disagreement and this also placed the applicant at a disadvantage. The applicant also pointed out the infirmities in the enquiry and prayed that the findings were not sustainable and to exonerate the applicant from the charges.

17) That the applicant begs to state that the applicant was due to retire on reaching the age of superannuation on 31.12.93 after putting in 34 years' of faithful and loyal service without any blemish to the Department. During this entire period the only immovable asset and that too in the name of his wife who had her own income was a residential house in Guwahati for which the appellant was made to suffer over all these years. In spite of the above, the applicant was expecting that he would retire from service on 31.12.93 and at least spend his retirement life peacefully.

18) That, in such a situation, the applicant was shocked when he, while attending a farewell party organised by his office colleagues, on 31.12.93, was served with the

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impugned order No.F.No.E-5/Con/90-91/1499 dated 30.12.93 at 2.30 P.M., whereby the penalty of dismissal from service was imposed on the applicant.

A copy of the said order is annexed herewith and marked as Annexure-XIV.

19) That, being highly aggrieved by the impugned order dismissing him from service on the last date of his service, the applicant decided to file an appeal against the order as provided under the Rules. Unfortunately, after receiving the impugned order, the applicant was in a stage of shock for several days after which he was suffering from hypertension and on the advice of his doctor, he had to take complete rest. However, the applicant prepared and submitted his appeal through the Respondent No.2 on 18.2.94 by annexing a copy of the medical certificate. The appellate authority did not dispose of the appeal as required under the Rules and made undue delay.

A copy of the forwarding letter dated 18.2.94 forwarding the appeal is annexed herewith and marked as Annexure-XV. (The applicant craves leave of the Hon'ble Tribunal to produce and rely on the appeal).

20) That, thereafter, the applicant filed an application before this Hon'ble Tribunal which was registered as O.A. No. 175/94. The applicant impugned the dismissal order dated 30.12.93 and prayed for reinstatement with all consequential benefits. During the continuance of the proceedings before this Hon'ble Tribunal, the respondents

obtained several adjournments so that the pending appeal could be disposed of .

21) That the applicant has now received the appellate order dated 28.6.96 passed by the Respondent No.1 and communicated by the Respondent No.2 vide his office letter dated 10.7.96 whereby the appellate authority illegally and arbitrarily rejected the appeal in flagrant violation of the Rules.

A copy of the appellate order is annexed herewith and marked as Annexure-XVI.

22) That the applicant has become highly aggrieved by the action of the appellate authority in illegally and arbitrarily rejecting the appeal in contravention of the Rules without discussing various contentions/grounds raised by the applicant in his statutory appeal and as such the applicant is approaching this Hon'ble Tribunal for relief. The above noted O.A. No.175/94 has since been withdrawn with permission of this Hon'ble Tribunal.

7 : DETAILS OF REMEDIES EXHAUSTED :-

The applicant, on 18.2.94, submitted an appeal under Rules 23 of the C.C.S.(C.C.A.) Rules, 1965 against the order dated 30.12.93 dismissing him from service . The appeal has since been disposed of by the competent authority whereby the appeal was illegally and arbitrarily rejected.

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8 : THE APPLICANT FURTHER DECLARES THAT HE HAS NOT PREVIOUSLY FILED ANY APPLICATION/WRIT APPLICATION OR SUIT REGARDING THE MATTER IN RESPECT OF WHICH THIS APPLICATION HAS BEEN MADE BEFORE ANY COURT OF LAW OR ANY OTHER AUTHORITY OR ANY OTHER BENCH OF THIS HON'BLE TRIBUNAL AND NO SUCH APPLICATION/WRIT PETITION OR SUIT IS PENDING :

The O.A.No.175/94 filed before disposal of the appeal has since been withdrawn ~~withdawn~~ with permission of this Hon'ble Tribunal.

9 : RELIEF SOUGHT AND GROUNDS:-

I) For that the impugned order dismissing the applicant from service on the last day of his service ~~career~~ was passed in a most illegal and arbitrary manner and as such, the same is liable to be set aside.

II) For that the impugned order imposing the major penalty of dismissal was passed in gross violation of the procedure laid down for imposing penalties and as such, the impugned order is bad in law and liable to be set aside.

III) For that the applicant was to retire from service on 31.12.93 afternoon and as such the impugned order of dismissal served on the same date in the afternoon has no effect. As the same only deprived the applicant of his pensionary benefits, the same is bad in law and liable to be set aside.

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IV) For that the Enquiry Officer conducted the enquiry in hot haste and he was only interested in concluding the enquiry within the short period of 3 days and while doing so, the Enquiry Officer completely ignored the provisions of the Rules for which he gave such a finding and, as such, the impugned findings and the impugned order of penalty based thereon are bad in law and liable to be set aside.

V) For that since the Enquiry Officer was in a hurry to complete the proceedings, the applicant, to facilitate early disposal of the enquiry, insisted on examination of only 4 out of 30 listed witnesses but none of these witnesses were produced and examined and since this has caused great prejudice to the applicant, the findings are bad in law and liable to be set aside.

VI) For that, from the Enquiry Report, it will be established that the pay particulars of the applicant for a long period of 9 years 1 month were not furnished and taken into account and as such, the whole charge is liable to be quashed on this ground alone.

VII) For that in spite of the insistence of the applicant and also the presenting Officer, Shri R.K. Choudhury, ITO (VIG) was not examined and as such there was no evidence whatsoever establishing and proving the income of the applicant and as such no charge of acquiring property disproportionate to the known sources of income can be held to be proved and the findings and the impugned order of penalty are liable to be set aside.

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VIII) For that the enquiry officer after holding that the salary of different months in different years had been left out and that it was the prosecution who was under legal obligation to first prove that the pay and allowances were correct, committed an illegality by holding that the charge was proved and as such the same was liable to be set aside.

IX) For that, admittedly, the pay particulars for a period of 9 years 1 month were left out while computing the income of the applicant as no particulars for the said period were available. The applicant categorically stated that during this period, his income from pay and allowances was Rs.36,000/- and the Enquiry Officer, on a wrong presumption, held that the pay and allowances would work out to Rs.25,000/- and, as such, the impugned findings are bad in law and liable to be set aside.

X) For that the Enquiry Officer, while holding that the income during the said period of 9 years 1 month was 25,000/-, proceeded on the basis that till 1964 the applicant was drawing a net salary of Rs.142.00 only which is apparently wrong as other allowances were not taken into account and, as such, the findings are bad in law and liable to be set aside.

XI) For that the Enquiry Officer, while rejecting the fact that the pay and allowances of the applicant for the left out period of 9 years 1 month were Rs.36,000/- shifted the onus of proving the pay and allowances to the applicant when, in fact, it was for the department to prove the same and, as such, the findings and the impugned order

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based thereon are bad in law and liable to be set aside.

XII) For that in the enquiry , though Shri P.L. Yadavendu, A.V.O., who prepared the valuation report was not examined and his statement and assessment were taken into account by the Enquiry Officer and, as such, the findings are bad in law and liable to be set aside.

XIII) For that the Enquiry Officer after holding that non-examination of Shri Yadavendu had definitely put the defence in a disadvantageous position, committed an illegality by accepting the report and as such the whole finding is bad in law and liable to be set aside.

XIV) For that the applicant did not get any opportunity to cross examine Shri Yadavendu on the valuation report prepared by him and this has resulted in a denial of reasonable opportunity of being heard and as such the findings and the impugned order are bad in law and liable to be set aside.

XV) For that the Enquiry Officer committed an illegality by accepting the assessment Report of Shri Yadavendu only on the ground that the applicant did not object to the authenticity of the document inas much as the authenticity of the document was never objected to and only the procedure adopted and the value was in question and the applicant , if he had given an opportunity to cross -examine Shri Yadavendu, would have been able to demolish the report and, as such, the findings arrived at are bad in law and liable to be set aside.

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XVI) For that the Enquiry Officer by rejecting the valuation report prepared by a registered valuer and duly proved in the enquiry, committed an illegality and, as such, impugned findings are bad in law and liable to be set aside.

XVII) For that, though the applicant had been informed by the disciplinary authority that it did not agree with the Enquiry Report that the extent of disproportionate asset was Rs.48,878.28 as held by the Enquiry Officer and was inclined to take the disproportion at Rs.78,901.00, no reason whatsoever had been given and as such the applicant was denied a reasonable opportunity of making an effective representation against the same and, as such, the impugned order is bad in law and liable to be set aside.

XVIII) For that the reasoning given in the impugned order even to the extent of disagreeing with the findings of the Enquiry Officer are absurd and without any basis and as such the impugned order is bad in law and liable to be set aside.

XIX) For that the finding of the Disciplinary authority that non-production of two departmental officers had not prejudiced his interest has to be rejected out-right as it not only violates the Rules but also principles of Natural Justice and, as such, the impugned order is bad in law and liable to be set aside.

XX) For that there is no evidence whatsoever to either prove the income of the applicant or the valuation of the purported asset of the applicant and, as such, the impugned findings and the order are bad in law and liable to be set aside.

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Rameswar Karmakar

XXI) For that no person preparaly instructed in law would have come to the finding arrived at both by the Enquiry Officer and the Disciplinary Authority and , as such, the imposition of the impugned order of major penalty of dismissal on the applicant and that too in the afternoon of the last day of his service is bad in law and liable to be set aside.

XXII) For that the disciplinary authority,,while disagreeing with the findings of the Enquiry Officer, is required to gáve sufficient opportunity to the applicant to state his case before coming to any conclusion on imposing any penalty and also to record reasons as to why the disciplinary authority differs with the findings of the Enquiry Officer and the appellate authority should have taken this aspect into consideration and that not having been done, the appellate authority committed a serious illegality and as such the appellate order is bad in law and liable t be set aside and quashed.

XXIII) For that the authority failed to produce the relevant and essential documents specified by the applicant during the enquiry and the entire proceedings and consequent imposition of penalty of dismissal from service are vitiated on this ground alone and the appellate authority failed in its duty to assess and evaluate such an illegality and as such the appellate order is bad in law and liable to be set aside.

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XXIV) For that it is a settled principle of law that producing documents without presenting someone to prove them amounts to denial of right of cross-examination to the applicant and this important and vital aspect of the matter missed the attention of the appellate authority and as such the appellate order is bad in law and liable to be set aside.

XXV) For that the appellate authority had failed to appreciate and consider that the applicant was dismissed from service on the afternoon at 2.30 P.M. on the date of retirement although the applicant had an unblemished record of more than 35 years of service and the evidence on record is not so strong warranting imposition of the extreme penalty of dismissal and as such the appellate order is bad in law and liable to be set aside.

XXVI) For that ,in any view of the matter,the impugned order of dismissal and the appellate order are bad in law and liable to be set aside.

It is therefore prayed that your Lordships would be pleased to admit this appeal ,call for the entire records of the case and ask the opposite parties to show cause as to why the impugned order dated 30.12.93 (Annexure-XIV) and the appellate order dated 28.6.96(Annexure-XVI) should not be set aside and quashed and after perusing the causes shown ,if any and hearing the parties, set aside the impugned order dated 30.12.93 (Annexure-XIV) and the appellate

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Rameswar Karmakar

order dated 28.6.96 (Annexure -XVI) and direct that the applicant be given all consequential benefits and/or pass any other order/orders as your Lordships may deem fit and proper.

And for which act, the applicant, as in duty bound, shall ever pray.

10: INTERIM ORDER :

NIL.

11: Does not arise.

12 : Postal order No. B-11-444494. dated 4-10-96.  
of Guwahati Post office is annexed.

contd...

Ratneswar Kumar

V E R I F I C A T I O N

I, Shri Ratneswar Karmakar, son of Late Gopal Chandra Karmakar, aged about 60 years, Income Tax Officer, O.S.D. in the office of the Deputy Commissioner of Income Tax, Range- I (Since dismissed ) Red Cross Building, M.G. Road , Uzanbazar, Guwahati do, hereby , verify that the contents in paragraphs 1 to 12 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Ratneswar Karmakar

Signature

7.10.96

Guwahati

...

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Annexure I

(25)

STANDARD FORM OF CHARGE SHEET FOR MAJOR DELINQUENCIES  
Rule 14 of C.C.S. (E.C.S) Rules)

25/10/90

No. F-5/60/CT/90-91/2197

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

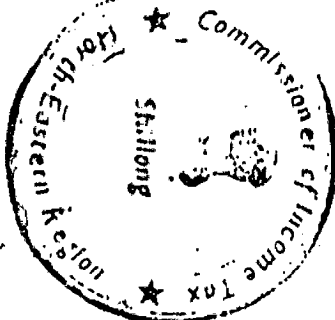
OFFICE OF THE COMMISSIONER OF INCOMETAX  
NORTH EASTERN REGION: SHILLONG-793001  
POST BOX NO. 20

Dated Shillong, the 23<sup>rd</sup> Oct. 990

MEMORANDUM

The President/undersigned proposes to hold an inquiry against Shri Ratneswar Karmakar, Incometax Officer in the Incometax Department, North Eastern Region, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I) A statement of the imputations of misconduct in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be ~~maintained~~ sustained are also enclosed (Annexures III and IV).

2. Shri Ratneswar Karmakar is directed to submit within 10 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 enquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each articles of charge.



Attested by  
Revenue Adv.

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(27) (26) (25) (27)

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

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

6. The receipt of the Memorandum may be acknowledged.



*P.K. Sarma*  
23/10/90

( P.K. Sarma )  
Commissioner of Income-tax  
North Eastern Region,  
Shillong.

To  
Shri Ratneswar Karmakar,  
Income tax Officer,

Gurahati. Ward-1(i)

*Adva*

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ANNEXURE- I

ARTICLE OF CHARGE FRAMED AGAINST SRI RATNESWAR  
KARMAKAR INCOME TAX OFFICER, N.E. REGION: SHILLONG

....

That, the said Sri Ratneswar Karmakar, while functioning as an Upper Division Clerk, Income tax Inspector and Income Tax Officer under the Commissioner of Incometax, N.E. Region, at different places during the period 1959 to 1987 failed to maintain absolute integrity and devotion to duty, in as much as he is found to have acquired assets disproportionate from his known source of income to the tune of Rs.78,901.04, the acquisition of which is not explainable from his known sources of income. The said Sri R. Karmakar has therefore contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of C.C.S. (Conduct) Rules, 1964.

.....



Attested  
*[Signature]*  
Adv.

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ANNEXURE- II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SRI RATNESWAR KARMAKAR INCOMETAX OFFICER UNDER COMMISSIONER OF INCOME TAX, N.E. REGION.

Sri Ratneswar Karmakar, while posted and functioning as an Upper Division Clerk, Income Tax Inspector and Income tax Officer under the Commissioner of Incometax, N.E. Region at different places during 1959 to 1987 failed to maintain absolute integrity and devotion to duty in as much as he acquired disproportionate assets to the tune of Rs.78,901.00 otherwise than from his known sources of income. Necessary details in this regard as as under:-

2. Sri Ratneswar joined as U.D.C. in the Incometax Deptt. on 9/3/59 and was posted at Dibrugarh. He was promoted to the rank of Inspector on 15.12.71 and was posted at different places of N.E. Region. He was further promoted to the rank of Income tax Officer with effect from 23.5.80 and was posted at Guwahati, Shillong, North Lakhimpur and Tezpur. Sri Karmakar is the second son of Lt. Gopal Ch. Karmakar and he had not inherited any property worth to be mentioned.

3. As per the available pay particulars, the total income of Sri Karmakar from pay and other allowances prior to 1.1.2 (i.e. from 9.3.59 to 31.12.74) from all known sources of income, ( computed by giving maximum benefit to the officer) is as under :-

A) <u>Income ( Before check period)</u>		
1) From pay and allowances		Rs. 57,644.50
ii) from interest on deposits		Rs. 12.78
		<u>Rs. 57,657.28</u>



*Alister  
Sharma Adv.*

4. The expenditure incurred by Sri Karmakar towards food and non food items before 1.1.75 i.e. the commencement of the check period, calculated on the basis of data made available National Sample Survey Organisation on consumer expenditure from July 1967 onwards works out to Rs. 3676/-. Since data for the period till 1967 was not readily available the expenditure incurred by Sri Karmakar till 1967 has been taken as 'nil'. Sri Karmakar has claimed that his family was residing with his father-in-law till 1971. Accepting this claim, the expenditure was calculated for one unit till 1971 and for 3 units i.e. two adults and two minor children thereafter. In this manner the net savings of pre-check period with Sri Karmakar work out to Rs. 48,981/- i.e. Rs. 57,657 (-) Rs. 8676/-

5. Further, on 26.3.87 Sri Karmakar was found to be in possession of the following assets either in his name or in the name of his immediate family members :-

1) Movable properties notices during the searches	Rs. 1,04,205.13
ii) Land at Sri Nagar, Guwahati	Rs. 6,000.00
iii) Building on land at Sl.(ii) (excluding supervision charges @ Rs.7.5%)	Rs. 3,27,830.00
iv) Deposits in Bank N.S.C. etc.	Rs. 28,815.35
	Total Rs. 4,66,850.48

6. The likely savings of Sri Karmakar during the check period i.e. 1.1.75 to 26.3.87 work out as under :-

Total income from pay and allowances	=Rs. 2,10,453.84
Interest income on deposits etc.	=Rs. 2,261.78
	Total =Rs. 2,12,715.62
Less: expenditure on food items	=Rs. 32,612.40
" on non-food items	Rs. 21,966.00
" on education	=Rs. 8,328.00
" on electricity	=Rs. 1,566.30
	Rs. 64,472.70

Savings of the check period = (2,12,715.62 - 64,472.70)  
=Rs. 1,48,242.92.



*Signature*  
Adv.

7. The wife of Sri Karmakar is stated to have earned an income of Rs.1,90,318/- during the check period which has been disclosed by her in the various returns of income filed by her. Even though the existence of such businesses is not satisfactorily established, yet in order to allow the officer maximum possible benefit, credit for savings of this entire income is also allowed. Thus the total savings of Sri R.Karmakar and his wife from all known source work out as under :-

i)	Savings of Sri Karmakar	<u>before check period</u>	=Rs.48,981/-
ii)	" " "	<u>during</u> " "	=Rs.1,33,883/-
iii)	" " Smti.Karmakar		=Rs.1,90,318/-
			Total savings possible Rs.3,79,812/-

8. Thus, as against the total assets of Rs.4,66,850/- found with Sri Karmakar as on 26.3.87, maximum savings available with him from all possible sources are Rs.3,79,812/- leaving unexplained assets of Rs.87,667/- Even if a further allowance of 10% is made to cover any possible mistakes in estimation of expenditure etc., the disproportionate assets work out to Rs.78,901/-

9. Therefore, Sri Karmakar is found to be in possession of disproportionate assets of Rs.78,901/-. He has thus failed to maintain absolute integrity and devotion to duty and has acted in a manner unbecoming of a Government servant, thereby contravening rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.



*Sarvesh*  
Adv.

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(28) (31) (32) (33)

ANNEXURE- III

LIST OF DOCUMENTS BY WHICH ARTICLES OF CHARGES FRAMED AGAINST SRI R.KARMAKAR INCOMETAX OFFICER, ARE PROPOSED TO BE SUSTAINED.

.....

1. Assessment report in report of Residential Building belonged to Smti. Sheela Karmakar w/o Sri Ratneswar Karmakar along with covering letter F.No. Vig-3/Con/CT/73-74/2345 dated 2.12.1987.
2. Original copy of seizure list (MR NO 13/87) prepared by Inspector G.K.Das. Dtd. 26/3/1987 in duplicate.
3. Seizure list (MR, NO 13/87 prepared by Sri B.P. Chakravarty DSP, dated 26.3.1987 (P.1 to 6) in duplicate.
4. Seizure Memo. dated 30.3.87 ( in duplicate)
5. Copy of F.I.R. of RC-4/87-SHG. ✓
6. Inventory dtd. 26.3.87 prepared by Inspector G.K.Das in duplicate.
7. Inventory dtd. 26.3.87 prepared by DSP B.P.Chakravarty, in Triplicate.
8. Permission of Court for retention of seized articles dated 27.3.1987.
9. Particulars of payment of report thereon submitted by A.E.(Ele) Zoo Rd. Ele. Sub Divn. ASEB No. RSD/R-5/88/210 Dtd. 6.2.1988
10. Report of Principal, Don Bosco High School submitted vide No. Nil dated 22.12.88.
11. Report of Principal, Cotton College Guwahati (NO. CC/4165 dated 22.12.88.
12. Report submitted by Dy. Comm (Valuation and assessment) GMC. vide GAS/87/MISC/373, dtd. 21.12.87 in two sheets.
13. Report from AE(Ele) Zoo Road, Ele. Sub Divn, Vide No. ASEB. RSD/R-5/1039 dated 26.12.1987.
14. Copy of report obtained from SDC/Guwahati vide No. CCI/88/333 dated 22.2.1988.
15. Report submitted by Principal, St. Mary's School, Guwahati No. Nil dated 18.2.1988.
16. Copy of letter No. B 820/Megh/86 dt. 29.8.1987 alongwith enclosure, of National Sample Survey Organisation.
17. Letter No. VIC-3/CON/CT/73-74/Pt. II/11 dated 11.4.1988 forwarding pay particulars(enclo of the accused).

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*Arrested  
Sunder, Adv.*

(32) (33)

- 18. Immovable property statement file of Sri R.Karmakar (P.1 to 7)
- 19. Personal file No. Por/R-7/59-60 in respect of Sri R.Karmakar.
- 20. Receipt of Pradip Tailoring No.284 dt.6.2.87 for Rs.77/-
- 21. Two Hotel receipts No.3505 and 3506 dt. 21.11.86 of Hotel Himalaya, Tezpur Assam for Rs.560/- and 250/-
- 22. Receipt No.2490 dt.20.2.87 of Purbanchal Ashram for Rs.100/-
- 23. Pass Book No 48429 of Gauhati P.O.
- 24. -do- No.160 of -do-
- 25. -do- No.106284 -do-
- 26. -do- No.106695 -do-
- 27. -do- No.228868 -do- (2 nos)
- 28 Pass Book No. 441 of UBI Silphukhuri Branch.
- 29. A Bunch of application, letter etc.
- 30. One bunch of paper in respect of expenditure etc.
- 31. One bunch of papers in respect of expenditure etc.
- 32. One bunch of papers in respect of expenditure etc.
- 33. One bunch of papers in respect of expenditure etc.
- 34. One bunch of papers in respect of expenditures etc.
- 35. One bunch of papers in respect of expenditure etc.
- 36. One bunch of papers in respect of expenditures of income and expenditure of Mrs. Sheela Karmakar for the year ending 31.3.74 and other expenditure papers including letter dtd. 16.12.86 signed by Mrs. Sheela Karmakar.
- 37. G.M.C. Notice u/s 156(3) No.G.A.S. 13/83/70 dtd.18.2.85
- 38. Receipt No.10280 in the name of Shri R Tapan Kr.Sanyal for Rs. 4.65 dt.30.4.85.
- 39. Partnership deed No.1846 between Shri Amal Roy, and Shri Jagadish Mazumder dt. 15.7.86 in respect of M/s Kamakhya Motor Works, Guwahati.
- 40. Diary of Mrs.Sheela Karmakar for the year 1975.
- 41. Diary of Shri R.Karmakar for the year 1979.
- Diary
- 42. Diary of 1981 in respect of expenditure etc.
- 43. Diary of Mrs. Sheela Karmakar for the year 1979.
- 44. Diary of Mrs. Sheela Karmakar for the year 1987.
- 45. Diary of M/s Vishal Roadways in the name of Sri R.Karmakar for the year 1981.
- 46. L.I.C. Pocket diary for the year 1974 in the name of Mrs. Sheela Karmakar.

Letter No. Misc/21/5/87/ dt. 21.5.87 of Standard Literature Co.(P) Ltd.

Director of I.A.T. Guwahati

*Sarwan, Adv.*

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE  
AGAINST SRI R. KARMAKAR INCOME TAX OFFICER ARE  
PROPOSED TO BE SUSTAINED?

.....

1. Sri A. Chatterjee, Inspector of Customs & Central Excise, Guwahati.
2. Sri A. Halim, Inspector Customs and Central Excise, Guwahati.
3. Sri D.C. Banis, Inspector (Preventive) Customs & Central Excise, Tezpur.
4. Sri S.P. Sharma, Inspector (Preventive) Customs & Central Excise, Tezpur.
5. Sri D.K. Pathak, Sr. Branch Manager LIC Branch No.1 Guwahati
6. Sri Samar Choudhury, Dy. Commissioner (Assessment & Valuation) Guwahati Municipal Corporation Guwahati.
7. Sri Lewyase, C/O Fr. V.M. Thomas, Principal, Don Bosco School, Guwahati.
8. Sri K.D. Krori, Principal Cotton College, Guwahati.
9. Sri Prabesh Kanti Sinha S/o Lt. Prafulla Kumar Sinha O/O the SDO (Elec) Zoo Narangi Sub Division, Guwahati.
10. Sri Pranjit Kumar Deka SDO (Elec) Zoo Road, Guwahati.
11. Sister Mary M. Principal, St. Mary's School, Silpukhuri, Guwahati.
12. Sri & Digambar Das S/O Lt. Dharani Das Das Clerk/Typist Social Welfare Office, Guwahati Club.
13. Sri Amal Ray S/O Lt. Radhakrishna Roy of Bishnupur, Guwahati.
14. Sri A.S. Tanuja, Asstt. Valuation Officer, Income tax Deptt. Guwahati.
15. Sri R.K. Nath. J. E. -do-
16. Sri R.K. Choudhury, ITO (Vigilante) N, E.R., Shillong.
17. Sri Debraj, Kathpal, S/O Sri Haricharan Kathpal of Swiss Watch Corporation, Laktokia, Guwahati.
18. Sri Ratan Goenka S/O Sri R. Goenka of R.L. Industries Store, Fancy Bazar, Guwahati.
19. Sri Sharwan Kr. Siotia S/O Radhakrishna Siotia of M/s. Radhakrishna, Dindoyal, Fancy Bazar, Guwahati.
20. Sri Suresh Kumar Jain S/O Jamarmal Jain of M/s Assam Import Agency, Fancy Bazar, Guwahati.

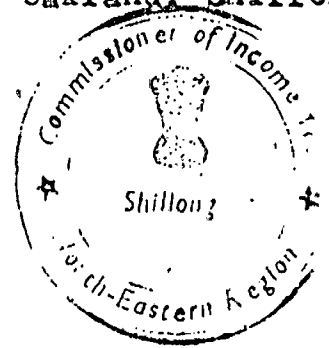
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*Attested  
General  
Sd/-*

(29) (34) (35)

21. Sri Gojen Deka S/O Lt. Buren Deka Prop. M/s Ganesh Hardware, Zoo Road, Guwahati.
22. Sri Haripada Medhi S/O Lt. H.C. Medhi, Sales Afler M/s Bimal Auto Agency, A.T. Road, Guwahati.
23. Sri A.P.S. Bedi Patner, K.K. & A Corporation, G.S. Road, Guwahati.
24. Sri M.L. Ghosh Branch Manager Remington Rand, Ananda Bhawan, G.S. Road Ulubari, Guwahati.
25. Sri Tapan Sanyal S/O Sri Anup Sanyal M/s Daidyanath Jewellery, Laktokia, Guwahati.
26. Sri P.L. Yadavendy Asstt. Engineer CPWD SSE II PWD(DA) Delhi Administration M.S.O. Building 3rd Floor, I.P. Estate, New Delhi-2
27. Sri S.K. Das, Asstt. Director N.S.S.O) Oakland, Shillong-1
28. Sri D.P. Chakravarty, Dy.S.P. CBI.
29. Sri G.K. Das, Inspector CBI, Shillong.
30. Sri A.B. Gupta, Inspector, CBI, Shillong.



.....  
*Harish Chandra Adh*

(35) (35) (SC) A-TT

AMENDMENT - II.

REGISTERED POST WITH A/D.

D.No. Con-1/90-91/

Dated, Cuttack, the 26th November, 1990

To, **The Commissioner Income-Tax, (by B. No.)  
North Eastern Region,  
Post Box-20,  
Bhubaneswar-751001.**

Dear Sir,

**Subject:-** In the matter of the Memorandum of Articles of charge under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1953.

And

In the matter of submission of written statement of defence.

In compliance with your F.No.E-5/Con/CT/90-91/2197 dated 23/10/90 followed by subsequent instructions communicated under F.No.E-5/Con/CT/90-91/2473 dated 20/11/90 on the above subject, I have the honour to submit the statement of my defence as required of me as under :-

**STATEMENT OF DEFENCE AGAINST BREACH OF THE ARTICLES OF CHARGE AS PER MEMORANDUM-21 OF THE MEMORANDUM.**

1. I DENY THE CHARGE NO. 1.
2. I admit specifically the charge No. 2.
3. I admit the charge No.3, provided the figures taken therein are factually correct in all material aspect.

Contd..... 2.

*Attested by  
Jawant  
Sd/-*

4. I admit the charge No.4, provided it is in conformity with the income-figures as stated in the charge No.3.
5. I admit the charge No.5, except the following :-
  - (I) out of the total movable properties as referred to in clause (i) and clause (iv) of the Charge No.5, Properties worth Rs. 54072.88 belonging to others; and
  - (II) the immovable property as referred to in clause (ii) and clause (iii) of the charge No.5 belonging to other.
6. I admit the charge No.6, provided the income-figures as taken therein are factually correct and complete in all material aspect.
7. I admit the Charge No.7 provided the figure in clause (ii) thereof is in agreement with the resultant figure as shown in the charge No.6.
8. I DENY THE CHARGE NO. 8, in facts as well as in law.
- And
9. I DENY THE CHARGE NO.9.

In this connection, I am to state that I desire to be personally heard with the aid of an advocate before your goodself at your Gauhati Camp office on such date as may be conveniently appointed.

Yours faithfully,

Sd/-  
24.11.90

( R. Karmakar )  
Income-tax Officer, Officer on Spl.  
Duty, C/O. The Deputy Commissioner  
of Income-tax, Gauhati Range-1,  
Choudhury Bldg., Uzan Bazar,  
Gauhati-781001.

All 25 to 67  
Karmakar  
Adv.

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A-III

ANNEXURE III.

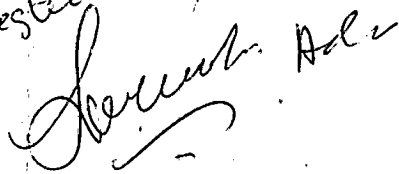
For Detail  
18.11.92.

PROBANT S. SHRI R. BOSE, Dy. Secy, CBI, Guwahati.

The case was posted for a PM this day. The CO and the PO are both absent. The PO, in view of his pre-occupation in another E.O. at Calcutta, has authorized Shri B. Bose, Dy. Secy, CBI, Guwahati to attend this hearing on his behalf. It was permitted. CO also vide his telegram dt. 23.11.92 has intimated that because of the short notice and for want of appointment of his DA, it would not be possible for him to attend this hearing. He has further requested to adjourn this hearing by two months. His request was considered but as this hearing is being held only to ascertain from the CO whether he pleads guilty to the charges or not and to lay down a schedule of inspection of documents etc., and also as it is clear from his reply dt. 24.11.92 to the chargesheet it is apparent that he does not plead guilty to the charges, it was decided to hold the PM was held and the following schedule was laid down.

The CO alongwith his Defence Assistant, if any, would visit the office of the PO at Gauhati on 2nd and 3rd April, 1992, each day at 10 AM and complete the inspection of the listed documents. The PO during that period would provide the CO with the photo-copies of the pre-recorded statements of the listed witnesses as well as of the listed documents to the extent possible. The CO

Contd..... 2.

Attested by  
  
 Secy. Adm.

The CO would, immediately after completion of the inspection of the listed documents, would let the undersigned know whether he accepts the authenticity of the listed documents or not, failing which it would be presumed that he accepts all such documents to be authentic.

The CO would submit to the undersigned his list of Addl. documents and defence witnesses, with a copy direct to the PO on or before 13.4.1992. While furnishing his list of addl. documents, the CO would furnish full particulars of each document, their relevancy to the charges and their probable custodians. As regards the defence witnesses, the CO would give their relevancy to the charges and their exact postal addresses. For want of such details, his lists would be liable to be rejected.

The PO would collect the permitted addl. documents, if any, and make them so available for the inspection of the CO and his DA in his (PO's) office by fixing a date and time mutually agreeable to both but positively by 4.5.1992 under intimation to the undersigned. The dates for the BH would be notified after compliance of the above schedule.

Contd..... 3.

*Lawrence*  
*Adv.*

A copy of this ordersheet was handed over to the Rep. of the PO for handing that over to the PO and another copy was sent to the CO by registered post for information and compliance.

PO's Rep. Sd/-  
13/1/92  
Dy. SP / CBI / Delhi

Sd/-  
(J.D. Verma)  
C.B.I.

NO.12/JDV/168  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

Block 10, Jannagar House,  
Akbar Road, New Delhi-110011  
Dated: 13-1-1992.

Recd.  
Sent Today.

A copy of the ordersheet recorded this day is sent herewith for information and compliance to Shri N. Karmakar, Income-tax Officer, (OSD), c/o the Dy. Commissioner of Income-tax, Range-I, Red Cross Building, MG Road, Guwahati-781001.

Sd/-  
(J.D. Verma)  
Commissioner for Departmental Inquiries  
Tel-3782536.

*Handwritten signature*  
Adl

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A-IV

~~CONFIDENTIAL-III.~~  
CONFIDENTIAL.

To,

Shri J.D. Verma,  
Commissioner for Departmental Inquiries  
Central Vigilance Commission  
Block No. 10, Jangpore House  
Akbar Road,  
New Delhi-110 011.

Sub.- D.P. against Shri R. Karmakar I.T.O.

Ref.- Copy of order sheet dated 13.3.92 on the subject.

Sir,

In pursuance of your order dated 13.3.92, I along with my Defence Assistant, Shri G.N. Das, Advocate, Guwahati High Court, visited the office of the Deputy Superintendent of Police, Central Bureau of Investigation, Guwahati Unit, Hill side Road, Guwahati-3 on 2nd, 3rd, 4th and 6th April, 1992 for inspection of documents. The Deputy Superintendent of Police, CBI, Guwahati was pleased to produce before me the documents listed against serial 3 to 47 in Annexure-III of the charge-sheet memorandum dated 23.10.90 which was received by me on 25.10.90. Out of these listed documents, I had taken down notes in respect of documents listed against serial 5, 6, 18 to 31, 33, 36, 37, 39 to 47. The Deputy Superintendent of Police, CBI was pleased to provide me with photostat copies of the listed documents against serial 1, 2, 3, 4, 7 to 17, 32 and 38 on my request.

I had been provided with photostat copies of the pre-recorded statements of the listed witnesses against serials 5 to 15 and 17 to 25 on 6.4.92 and some

Contd.... 2.

*Attested  
Shri  
Saini*

(SE) (41) (TH) (H2)

documents on 8.4.92. Copy of statements of listed witnesses against sections 1 to 4, 16 and 26 to 30 could be made available to me. As I have completed inspection of documents only on 8.4.92 and since the documents are voluminous it will take sometime for me to study them and prepare the list of additional documents and defence witnesses and as such I request you to kindly grant me time till 23.4.92 to submit additional list of documents and witnesses.

The list of additional documents and defence witnesses would be submitted before 23.4.92 with J.S. Terang, Sr. Police Prosecutor, CSI C/O Deputy Superintendent of Police, CSI (Quahati Unit) so that the additional documents could be made available to me without delay.

I would, therefore, fervently request your goodness to take effective steps to expedite disposal of the proceedings as early as possible with a view to relieving me from mental tension and suffering and in the interest of natural justice and fairplay.

Yours faithfully,

( R. Karmakar )

C/O  
Income-Tax Officer (CSD)  
O/O the Dy. Commissioner of Income  
Tax, Range-I, Red Cross Bldg.,  
M.G. Road, Quahati-781001.

Contd..... 3.

*Handwritten signature/initials*

(42) (42) (42)

Copies forwarded to :-

- 1. Deputy Superintendent of Police, GDS, Gurdaspur, Punjab.
- 2. Superintendent of Police, Gurdaspur, Punjab.
- 3. District Tax Officer, Gurdaspur, Punjab.
- 4. District Tax Officer, Gurdaspur, Punjab.

( S. K. Kaur )  
 Income Tax Officer (GDS)  
 Gurdaspur.

.....

*S. K. Kaur*  
 A.S.

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ANNEXURE-V.

Recd. Post.

Recd. No. 1015 at 5/5/92

No. Par-1/91-92/317

Dt. 5.5.92.

To

Shri J.D. Verma,  
Commissioner for Departmental Enquiries,  
Central Vigilance Commission,  
Block-10, Janagar House, Akbar Road,  
New Delhi-110 011.

Subj: List of additional documents in D.S. against  
Shri A. Karmakar.

Ref: Copy of order-sheet dt. 13.3.92.

Sir,

After inspection of the documents on 3.4.92, I had sent a representation to your good self on 9.4.92 requesting that I be granted time till 23.4.92 to submit the additional list of documents as the documents inspected by me were voluminous. However, it took more time than I expected to study the documents including salary statements, and as such there has been a slight delay in submitting the list which I am submitting below :-

(1) Final Report submitted by the investigating officer in case No. RC.4/87 -SNG.

The above will be very relevant to the charges as the aforesaid case was in connection with the same charges and will contain the findings of the investigation and the recommendations made. The same will be available with the Suptd. of Police, CBI, Shillong.

Contd..... 2.

*Attested  
Hareesh  
Delhi*

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(2) Documents/records from which the pay and allowances were computed while framing the charge.

This will be very relevant as from the pay particulars dt. 11.4.68 (document no.17) the details of ~~AA~~ salary for certain period were not given as they were not available and it is essential to know how and on what basis my total pay and allowances were computed.

(3) That as regards the list of witnesses to be examined by me, I submit that I may be allowed to submit ~~if~~ the same after the evidence of the department is concluded as I might not have to examine any witnesses. By ~~afore-~~ said prayer may be allowed as it will not cause any inconvenience to the department and I will be required to produce my witnesses only after the case for the disciplinary authority is closed.

I, therefore, request you kindly to pass necessary orders enabling me to inspect the additional documents listed above.

Yours faithfully,

Sd/- 15/5/92

( R. Karnaker )

ITO (OSD)

(Charged Official)

o/o the Dy. Commissioner  
of Income Tax, Range-I  
Red-Cross Bldg. : M.G. Road,

ahmednagar-411001.

*Annexure 2*  
*Sd/-*

Contd..... 3.

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SECRETARY OF THE GOVT

NO. 130/12-1/11-02/11-02 13.5.92

Copy forwarded to :-

1. Deputy Director of Police, C.I.,  
Cantt. U.S.S., Cantt. U.S.S.,  
Cantt. U.S.S.

2. Director of Police, C.I. (C.I.), U.S.S., Cantt. U.S.S.

3. Mr. J. S. K. K. K.,  
C.I. U.S.S., Cantt. U.S.S.,  
C.I. U.S.S., Cantt. U.S.S.,  
C.I. U.S.S., Cantt. U.S.S.

S/-

13.5.92

(M. K. K. K.)

(M. K. K. K.)

(M. K. K. K.)

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*Handwritten signature*  
2.6.92

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ANNEXURE - VI.

New Delhi.  
13.7.1992.

Seen letter dt. 5.5.92 of the CO, wherein he has furnished his list of addl. documents. The list was gone through and the documents asked for by him at Sl.No.2 i.e., the documents/records from which the pay and allowance were computed while framing the charge, were held relevant for his defence. As regards the document asked for by him at Sl.3, this document being the investigation report is of confidential nature and is, as such, not permitted. The PO should, therefore, collect the documents permitted above and make those available for the inspection of the CO on a date, time and place mutually agreeable to both of them. However, this should be completed by 7.8.92 positively, under intimation to the undersigned.

2. The CO has not cited his list of defence witnesses till this date. His request to submit the same after conclusion of the prosecution case cannot be acceded to as the regular hearing will be held on day-to-day basis and there will be no time left for summoning his witnesses, if asked at that stage. The CO is, as such, given a final opportunity to submit such a list, if any, by 31.7.92, failing which it will be presumed that he does not want to examine any defence witness.

*Accepted  
Kanchan  
advi*

Contd..... 2.

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3. A copy of this ordersheet is being sent to both the PO and the CO for their information and compliance.

Sd/-

( J.D. Verma )

C.S.I.

No. 12/30V/169

GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

Block 10, Jangar House  
Akbar Road, New Delhi-110011.

Dated : 13th July, 1992.

A copy of the ordersheet recorded this day is sent herewith for information and compliance to :-

- Reqd.
1. Shri Joy Sing Terang, Sr., P.P., Central Bureau of Investigation, A.C.B., Shillong (Meghalaya).
  2. Shri B. Karmakar, ITO (GSD), office of the Dy. Commissioner of Income Tax, Range-I, Red Cross Bldg., M.G. Road, Guwahati-781001.

- 60 -

Sd/-

( J.D. Verma )

Commissioner for Departmental Inquiries

Tel-378253

*Sanjay*  
*Recd*

.....

(43) (48) (49)

ANNEXURE- VII.

ORDER POST.

F.No. PER-1/1991-92/331

Dated, Guwahati, the 29th July, 1972

Shri J.O. Verma,  
Commissioner for Departmental Inquiries &  
Central Vigilance Commission,  
Block-10, Jangar House,  
Ashok Road, New Delhi-110011.

Sub:- D.C. against Shri R. Karmakar, ITO.

Ref:- Copy of order sheet dated 12.7.72 on the subject.

Sir,

With reference to your above-quoted order, I beg to inform you that I prayed that I be allowed to submit my list of witnesses after conclusion of evidence of the department and that too only, if required, depending upon the evidence adduced by the department. However, as my prayer was not acceded to, I am submitting my list of defence witnesses -

- (1) I will be examining myself;
- (2) Shri Rahul Karmakar, C/O. "PURABI", Srinagar Link Road, P.O. Dispur, Guwahati-781005.

He will depose in matters connected with the construction of the building;

- (3) An approved valuation engineer from Guwahati.

*Attested  
J. Verma  
Sd/-*

Contd.... 2.

(47) (49) (50)

As the date of hearing has not been fixed, it will not be possible to give the name of the valuation engineer concerned, as we do not know who would be available on that day. Summons are not required to be issued to him, and I undertake to produce the engineer, if required by me, on the date fixed without causing any inconvenience or delay to the proceedings. He will be deposing on the valuation of the building in question.

I have not yet heard from the CBI regarding inspection of the additional documents allowed by your goodself but I expect to hear from them soon.

Yours faithfully,

Sd/-

29.7.92

(R. Karshakar)

Income-tax Officer, OSD,  
C/o. Deputy Commissioner of Income Tax,  
Range-1, Red Cross Building, M.G. Road,  
Uzanbazar, Guwahati-781001.

Memo No. PER-1/191-92/882-84 Dt. Guwahati the 29th July, 1992.

Copy to :-

1. Deputy Superintendent of Police, CBI Guwahati Unit, Chenikuthi Hill-side, P.O. Chenikuthi, Guwahati-3.
2. Superintendent of Police, CBI (ACB), Oakland, Shillong-793001.
3. Shri J.S. Terang, Sr. Public Prosecutor, CBI, C/o Deputy Superintendent of Police, CBI Guwahati Unit, Chenikuthi Hill-side, P.O. Chenikuthi, Guwahati-781003 for information.

Sd/-

(R. Karshakar)

Income-tax Officer, OSD,  
E/o. D.C.I.T., Range-1, Red Cross Building,  
M.G. Road, Uzanbazar, Guwahati-781001.

*Attested  
Per  
Sd/-*

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(50)

(51)

A-VIII

(50)

CONFIDENTIAL

F.No. Per-1/1991-92/2123 Dt. Comptroller, the 10th Div., 1992

To

The Commissioner for Departmental Inquiries,  
Central Vigilance Commission,  
Blich-10y Jangar House, Akbar Road,  
New Delhi-110011.

Sub: 1- D.O. against Shri R. Khasakar, ITO, Guwahati.

Ref: 1- No.12/JDV/166 dated 13.7.92.

Sir,

I would humbly like to place the following before your goodself for your kind consideration and necessary action so that the proceedings against me are not unduly delayed and I am not made to suffer any longer.

After inspection of the documents, I by my letter F. No. per-1/91-92/317 dated 5.5.92, submitted an additional list of documents required for inspection by me. Your goodself, by order dated 13.7.92, received by me on 15.7.92, was please to direct the presenting officer who is the senior Public Prosecutor, CBI, Shillong to collect the documents permitted and make them available for my inspection by 7.8.92. By the said order, I was also directed to submit my list of witnesses by 31.7.92 and I had sent the same by speed post on 29.7.92 vide F.No. Per-1/1991-92/681 dated 20.7.92.

Contd..... 2.

*Alleged  
Jangar  
sd/-*

Though more than 3 months have already elapsed, I have not received any communication from the C.A.I. regarding inspection of the additional documents as specified by me and allowed by your goodself and the proceedings are being delayed for no fault of mine.

I, therefore, request you kindly to direct the Presenting Officer to make the documents available for my inspection immediately so that further steps can be taken in the proceedings to complete it expeditiously.

I would also like to place on record that I will be retiring from service on reaching the age of superannuation by the end of 1993 and that unless the proceedings against me are completed before my retirement, I will be facing unnecessary difficulties consequently.

Yours faithfully,

RS/-

19.11.92

(R. Kamakar)

Income-tax Officer, CSD. Co. Sheti.  
C/o. Office of the Deputy Commissioner  
of Income tax, Range-1, Gwahati,  
Red Cross Buildings, M.G. Road,  
Gwahati-781001 (Assam).

*Laxman  
Dole*

SPEED-POST

NO. 180 dt. 22/12/92

F. No. Per-1/92-93/2324

dt. 22/12/92

A-IX

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OLC

To,

The Commissioner of Income Tax,  
North-Eastern Region,  
Shillong- 793001,  
Post Box No. 20.

Sub.- Appeal against indefinite and undue  
delay in disposing of the proceedings  
to the detriment of the appellant.

Sir,

With due respect and humble submission, I  
have the honour to place the following before your  
good self for your kind consideration and taking  
necessary action in the matter so that I am not  
made to suffer any longer and the proceeding drawn  
up against me which is already unduly delayed is  
completed without further delay.

I have put in about 34 years of faithful  
and loyal service to the Govt. and I am due to  
retire from service on attaining the age of super-  
annuation in January, 1994 and due to no fault of  
mine one proceeding on alleged charges relating to  
the years 1959 - 1987 is pending since 23.10.90 and  
being unduly delayed. Though the delay in initiating  
and concluding the proceeding against me cannot  
be attributable to me, I have been subjected to  
mental tension and sufferings and unless the proces-  
sing is completed expeditiously I will have to face

Contd-..... 2

Attested  
Sincerely  
Adv.

A dt. 22.12.92

serious complications even after my retirement.

1 : That while serving as an Income Tax Officer, Guwahati I received on 25.10.90 the office memorandum No. E-5/Con/CT/90-91/2197 dt. 23.10.90 whereby I was informed that it was proposed to hold an enquiry against me under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and I was directed to submit my written statement of my defence. From the articles of charge and statement of imputation of misconduct, it appeared that the charge related to the period from 1959 to 1987 and the allegation was that I failed to maintain absolute integrity and devotion to duty while serving as an Upper Division Clerk, Income Tax Inspector and Income Tax Officer under the Commissioner of Income Tax, N.E. Region, Shillong at different places and thus I acquired assets disproportionate to my known sources of income to the tune of Rs.78,901.04. I immediately, on 24.11.90, submitted my reply denying the charges. Thereafter Shri Y.D. Verma, Commissioner for Departmental Enquiries, Central Vigilance Commission, New Delhi was appointed as the Enquiry Officer while Shri G.K. Das, Inspector, CBI, Shillong who was also a listed witness (F.W.) vide serial No. 29 of the list of witnesses (Annexure-IV to the charge memorandum) was appointed on 19.8.91 as the Presenting Officer. Shri Das was subsequently on 10.3.92 replaced

Contd..... 3.

*Shri Verma*  
*Adv.*

by Shri J.S. Terang, Sr. Public Prosecutor, CBI, Shillong as the Presenting Officer. The Enquiry Officer had fixed 13.3.92 for preliminary hearing in New Delhi but I could not attend as the intimation was received by me only on 10.3.92. The Enquiry Officer held preliminary hearing on 13.3.92 as scheduled in my absence. As per order of the Enquiry Officer dt. 13.3.92, I along with my Defence Assistant visited the Office of the Dy.S.P., CBI, Guwahati on 2nd, 3rd, 4th <sup>and 8th</sup> April, 1992 for inspection of documents. I had taken down notes in respect of some listed documents while photostat copies in respect of some others were made available to me on my request. The photostat copies of some pre-recorded statements of the listed witnesses were made available to me but no copy of the statements against serials 1 to 4, 16 and 26 to 30 could be made available to me.

2 : That, on 5.5.92, as directed, I submitted a list of the following additional documents to the Enquiry Officer :-

- (1) Copy of the final report submitted by the investigating Officer in case No.RC.4/87 - SHG of the CBI, Shillong and it was considered very relevant to the charges brought against me as the afore-said case was in connection with the same charges and must have

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contained the findings of the investigating agency (CBI) and the recommendations, if any, made therein.

- (ii) The documents/records on the basis of which my pay and allowances were computed while <sup>m</sup>fraying the charge.

In this connection it would be pertinent to mention here that the CBI, <sup>Shillong</sup> registered a regular case (R.C.4/87) against me on the same set of charges. During investigation of the case my house and the premises were searched and various articles were seized. It was understood that the CBI did not proceed with the case as sufficient materials were not forthcoming to substantiate the charges against me. The CBI suggested that departmental proceedings should be initiated against me and hence the instant proceeding against me.

*L. Kumar*  
*Adv.*

2 : On 15.7.92 I received a copy of the order sheet dt. 13.7.92 passed by <sup>The</sup> Enquiry Officer holding that the documents/records on the basis of which my pay and allowances were computed was relevant for my defence and accordingly directed the Presenting Officer to make these documents available to me

Contd..... 5

for my inspection to be completed by 7.8.92 positively. It is surprising that inspite of specific order dt. 13.7.92 passed by the Enquiry Officer, no effective steps have been taken so far by the Presenting Officer to produce the afore-said documents, for my inspection. ~~The Enquiry Officer~~, by his order dt. 11.7.92, however, held that the copy of the final report submitted by the Investigating Officer of the C.B.I. in case No. RC 4/87 is of confidential nature and as such it was not permitted to be inspected by me.

4 : On 29.7.92 I sent a list of defence witnesses to the Enquiry Officer, New Delhi by speed post as ordered by him and since then nothing has been heard as to the progress of the enquiry. On 19.11.92 I sent a representation by speed post to the Enquiry Officer intimating that nothing has been done by the P.O. to produce the additional documents as specified by me and allowed by the E.O. and that as a result the proceedings are being delayed for no fault of mine. I further requested the E.O. to direct the P.O. to make the documents available for my inspection immediately so that further steps could be taken for expeditious disposal of the proceedings but till date no steps have been taken to make the documents available to me for my inspection for which the proceedings are being delayed.

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5 : That I have already suffered a lot from the early part of 1987 when the C.B.I. registered a case against me and which ultimately ended in final report. Thereafter the instant proceeding drawn up in 1990 is still in the initial stages and documents which have been held relevant to the charges have not yet been made available for my inspection for which the proceedings are being unnecessarily delayed. The documents specified by me for inspection are very relevant to the charges and if the same is not available with the authorities, there is no justification whatsoever to continue with the proceedings and the proceeding is liable to be dropped on this ground alone as because of the instant proceeding my promotion to the next higher rank of Asstt. Commissioner is being withheld and as many as 3 officers junior to me have already been promoted to the rank of Asstt. Commissioner.

I, therefore, pray before Your goodself to consider what is stated above in its true perspective and direct that the proceeding against me be dropped or alternately direct that the documents specified by me are made available for my inspection at an early date and thereafter conclude the proceedings expeditiously before my date of superannuation.

*Received  
Adv.*

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And for this act of kindness  
I as in duty bound, shall ever  
pray.

Yours faithfully,

*MC*  
22-12-92

(R. Karmakar )

Income Tax Officer, OSD  
C/O Deputy Commissioner of  
Income Tax, Range-I.  
Red Cross Building, M.G.Road,  
Uzanbazar, Guwahati-781001.

Date, Guwahati

The..... Dec./92.

Memo F. No. per-1/92-93 / 23 25-26 dt. 22/12/92

Speci post no.

(1) 178

Copy forwarded to :-

- 1) The Chief Commissioner of Income Tax,  
Patna, Bihar for information and necessary  
action ( By name).
- 2) The Commissioner for Departmental  
Enquiries, Central Vigilance Commission,  
New Delhi. ( By name).

2) 179

dt. 22/12/92

( R. Karmakar )

22-12-92

Income Tax Officer, OSD,  
C/O Deputy Commissioner of  
Income Tax, Range-I,  
Red Cross Building, M.G.Road,  
Uzanbazar, Guwahati-781001.

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ANNEXURE - I.

SPERM POST No.3691 dt.22.7.93

F.No.Per-1/92-93/1084 Dated Guwahati, the 20th July, 1993.

To

Shri J.D. Verma,  
Commissioner for Departmental Inquiries,  
Central Vigilance Commission,  
Block-10, Jangar House, Akber Road,  
New Delhi-110011.

Sub:- D.E. against Shri R. Karmakar, I.T.C.(C.S.D.)  
Guwahati(Arson).

Ref:- Your order dt.2.7.93 conveyed in your letter  
No.12/JDV/168/ dt. 12.7.93.

Sir,

I am surprised to have received your above-quoted letter relating to the compliance of your order dt. 13.7.92. Your order was very specific that the P.O. would collect the documents allowed by your and make these available to me for my inspection and the process should be completed by 7.8.92 positively.

In this connection I would humbly like to place the following before your goodself for your kind consideration and necessary action so that the proceedings against me are not unduly delayed and I am not made to suffer any longer.

1) That the copy of the order dt. 13.7.92 was received by me on 15.7.92 and I was legitimately expecting some intimation from the P.O., Shri J.S. Terang, Sr.P.O., CBI, ACB, Shillong to whom the copy of the relevant order

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Allosted  
Karmakar  
Adv.

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was duly endorsed by you. As no intimation was received, I, on 19.11.92, submitted an application by Speed Post intimating that no action was initiated by the P.O. till then for complying with your order dt. 12.7.92 by making the additional documents, as allowed by you, available to me for my inspection within 7.8.92.

A copy of this application is annexed herewith as Annexure-I.

2) That, on 22.12.92, I preferred an appeal before the Commissioner of Income-tax, North Eastern Region, Shillong explaining as to how the finalisation of the proceeding against me was being unduly delayed to my great prejudice and praying that the proceeding be dropped or alternately direct that the documents specified by me and duly allowed by the P.O. were made available for my inspection without further delay and thereafter conclude the proceeding expeditiously before my date of superannuation. The copies of this appeal were duly endorsed to the Chief Commissioner of Income-tax, Patna, Bihar and your goodself (by name) by Speed Post.

A copy of this appeal is annexed herewith and marked as Annexure-II.

3) That the Commissioner of Income-tax, N.E. Region, Shillong, by his letter No. P.No. E/5/Con/Ct/90-91/1360 dt. 2.3.93 addressed to the P.O. and requested his (P.O.)

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*Sacurah*  
*Sole*

to make the statements/documents available to me for my defense. Copies of this letter were also endorsed to the Sr. CBI, ACB, Shillong and top me.

A copy of this letter dt. 3.3.93 is annexed herewith and marked as Annexure-III.

In my prayer for inspection of additional documents which was allowed by your goodness, I had prayed that I be allowed to inspect the documents/records on the basis of which my pay and allowances were computed while framing the charge, as the particulars given in letter dt. 11.4.88 (document N.17) did not contain the particulars of the entire period, and this was very relevant to the charge.

My respectful submission is that since the particulars are not available, there can be no question of proving them, and as such I reiterate the relevancy of the documents prayed for by me. Since the same have not been made available in complete form, it cannot be taken to have been completed as stated in your above-quoted order and I have been deprived of examining these relevant documents.

Yours faithfully,

sd/-  
28.7.93.

( R. Karimakar )

Income-tax Officer, OSD (C.O.),  
C/o. Deputy Commissioner of Income-tax, Range-1,  
Guwahati .

Red Cross Building, M.G. Road, Uzan Bazar,  
Guwahati-781001.

Contd..... 4.

*Laceriah*  
Adu

Memo No. Per-1/92-93/1055-57 Dt. Guwahati the 26th July, 1993.

Copy forwarded to :-

1. Commissioner of Income-tax, N.E. Region,  
post Box No. 20, Shillong-793001.
2. Shri J.S. Terang, Sr. P.O. CBI, ACB,  
Oakland, Shillong-793001.
3. S.O., CBI, ACB, Oakland, Shillong-793001.  
for information.

Sd/-

28/7/93

( R. Karmakar ),  
Income Tax Officer, OSD,  
C/o D.C.I.T, Range-1, Guwahati,  
Red Cross Building, M.O. Road, Uzan Bazar,  
Guwahati-781001.

....

*Serial*  
*sd/-*

63  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH 338 GUWAHATI - 5

D.A. 152/93

Shri Ratneswar Karmakar — Applicant

-VS-

Union of India & Others — Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE CHAIRMAN.

For the Applicant ... Mr. G.K. Bhattacharjee  
Mr. G.M. Das.

For the Respondents ... Mr. A.K. Choudhury,  
Addl. C.G.S.C.

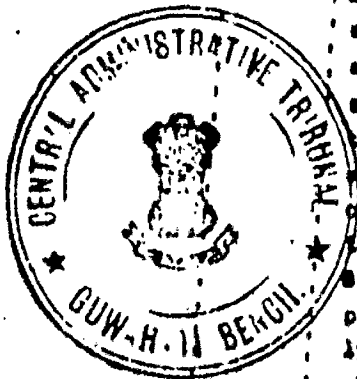
17.10.93

Heard learned counsel Mr G.K. Bhattacharjee on behalf of the applicant, Shri Ratneswar Karmakar, Income Tax Officer(OSD), Office of the Deputy Commissioner of Income Tax Range-I, Guwahati. Perused the statement of grievances and reliefs sought for in this application.

Disciplinary proceeding had been initiated against the applicant vide memorandum No.F-5/Con/CT/90-91/2197 dated Shillong the 23.10.1990 drawn up by the Commissioner of Income Tax, North Eastern Region, Shillong with specific charges. The charge in the disciplinary proceeding against the applicant is that during the period 1959-87 while functioning as UCC, Income Tax Inspector and Income Tax Officer at different places failed to maintain absolute integrity and devotion to duty and thereby acquired assets disproportionate from his known source of income to the tune of Rs.78,901.04. Initially the CBI investigated into this charge/allegation and submitted final report for insufficient evidence and with a casual observation that the Department may enquire into the matter. On the basis of such casual observation, the authority had initiated the Disciplinary Proceeding. Mr G.K. Bhattacharjee further submits that proceeding has been initiated deliberately to harass the applicant unnecessarily when CBI could not get any prima facie case for initiating prosecution.

The applicant is due to retire in January 1994. He had submitted written statement in defence denying the charges and the Enquiry Officer had also been appointed. The disciplinary proceeding began in October 1990 and in usual course, as per rules, the proceeding should have

been....



Attested  
[Signature]  
Adv.

17.0.93

been completed with final result long ago, but it has been unduly delayed. Mr Dhattacharjee submits for a direction on the respondents to complete the disciplinary proceeding within time bound period to relieve the applicant from all anxieties as he will retire in January 1994. Learned Addl. C.G.S.C. Mr A.K. Choudhury submits that it is for consideration of the Tribunal to pass orders fixing time for finalisation of the proceeding.

In view of the background that once the allegations/charge failed on thorough investigation by CBI and the fact that the applicant would retire in January 1994, we consider it proper to direct with time bound period for disposal of the disciplinary proceeding. Accordingly, we direct the respondents to complete the disciplinary proceeding with final result within 31.12.1993, failing which the disciplinary proceeding under Memorandum No.E-5/Con/00-91/2197 dated 23.10.1990 shall stand quashed.

This application under Section 19 of the Administrative Tribunal Act 1985 by Shri Ratneswar Karanar is disposed of with the above directions.

Intimate all concerned immediately for compliance.

Sd/- S. Haque  
VICE CHAIRMAN

Page No. 2689

Date 23/5/93

Copy for information & necessary action to :

- 1) Shri Ratneswar Karanar, Late Gopal Ch. Karanar, Income Tax Officer, G.S.O., Office of the Deputy Commissioner of Income Tax, Range-1, Red Cross Building, Uzan Bazar, Guwahati - 781 001.
- 2) The Secretary, Ministry of Finance, Income Tax Department, New Delhi.
- 3) Commissioner of Income Tax, North-Eastern Region, Post Box - 20, Shillong - 793 001.
- 4) Chief Commissioner of Income Tax, Bihar, Offices and N.C. Region, Patna (Bihar).
- 5) Commissioner for Departmental Enquiries, Central Vigilance Commission, Block - 10, Jangra House, Akbar Road, New Delhi - 110 011.
- 6) Mr. G.N. Das, Advocate, Gauhati High Court, Guwahati.
- 7) Mr. A.K. Choudhury, Addl. C.G.S.C., Central Adm. Tribunal, Gny.Bench, GMY.

*Karanar*  
*Adv.*

*23/5/93*  
DEPUTY REGISTRAR (D.D.)



श्रीर. भागकर

दूरभा. : कार्यालय : 223758

आवास : 223698

Telex : hona { Office : 223758  
Res. : 223698



भायकर भागकर

उत्तर-पूर्वीय क्षेत्र

पो. बा. न. 20, शिल्लॉंग - 793001  
COMMISSIONER OF INCOME-TAX  
North-Eastern Region  
Post Box 20, Shillong - 793001  
( MEGHALAYA )

*21/12/93  
3.30 PM  
M...*

F.No. E-5/Con/CT/01-91/ 3005

Date. 21st December, 1993

To  
Shri R. Karmakar,  
Income-tax Officer (OSD),  
Office of the Deputy Commissioner of  
Income-tax, Range-I, Guwahati.

Sub:- Disciplinary Proceedings -

Please find enclosed in attested copy of Inquiry Report of Shri J.D. Verma, Commissioner for Departmental Inquiries and Inquiry Officer relating to the Departmental Inquiry in your case.

2. You are requested to peruse the report and should you wish to make any representation against it, the same should be handed over in person to Smt. R. Das, Deputy Commissioner of Income-tax, Range-I, Guwahati within three days of receipt of this communication and the copy of the report.

3. Please also note that I am not in agreement with the Inquiry Report to the extent of taking the disproportionate assets at Rs.43,873.23 as held by the Inquiry Officer. You may note that I am inclined to take the disproportion at Rs.73,951/-

4. Please acknowledge receipt.

Encl: As stated above.

( D. Agarwala )  
Commissioner of Income-tax,  
North Eastern Region,  
Camp, Guwahati:

*Attested  
Signature  
Date*

CONFIDENTIAL.

NO.12/JDV/168-101  
Government of India  
Central Vigilance Commission.

Subject :- Departmental Inquiry against Shri R. Karmakar,  
ITO, Shillong.

REPORT

To enquire into the charges framed against Shri R. Karmakar, ITO, Shillong, the undersigned was appointed as Inquiry Officer vide order No.B-5/Con/CT/90-91/201 dt. 3.7.91 by the Commissioner of Income Tax, North Eastern Region, Shillong. Shri. J.S. Terang was appointed as Presenting Officer in the case.

ARTICLE OF CHARGE .

The article of charge framed against Shri R. Karmakar, ITO, Shillong, is as under :

"That the said Sh. Ratneswar Karmakar while functioning as an Upper Division Clerk, Income Tax Inspector and Income Tax Officer under the Commissioner of Income Tax, N.E.Region, at different places during the period 1959 to 1987 failed to maintain absolute integrity and devotion to duty, in as much as he is found to have acquired assets disproportionate from his known source of income to the tune of Rs.78,901.04, the acquisition of which is not explainable from his known source of income. The said Shri R. Karmakar has therefore contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of C.C.E.(conduct) Rules 1964."

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BRIEF HISTORY :

The preliminary hearing in the case was held on 18.3.93. The PO and the CO were absent. The PO in view of his pre-occupation in another D.E., however, authorised Sh. J. Bora, Dy. S.P., CBI, Gauhati to attend the hearing on his behalf. Regular hearing in the case was held from 20/10/93 to 1/11/93. 30 listed documents were marked and taken on record with the consent of the CO as Ex. S-1 to Ex. S-25 to 37. Pre-recorded statements were also marked and taken on record as Ex-S-30 to Ex.S-36, 2 prosecution witnesses were examined as SW-1 and SW-2, 2 defence documents were marked and taken on record as Ex-D-1 and Ex.D-2. CO appeared as a witness in his defence and was examined as DW-1 and another defence witness was examined as DW-2. Written briefs of PO & CO were received on 8.11.93.

ANALYSIS OF EVIDENCE.

4. Sh. R. Karmaker, Charged Officer, was functioning as Upper Divisional Clerk, Income Tax Inspector and Income Tax Officer under the Commissioner of Income Tax, North East Region at different places during the period 1959 to 1987. The specific charge against the CO is that while functioning in the aforesaid category he acquired either in his own name or in the name of others moveable and immoveable assets to the tune of Rs.4,66,850.45 which is disproportionate to his known source of income and failed to account the same satisfactorily. The check

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period for determining the value of assets income etc. of the CO has been fixed from 1.1.75 to 26.3.87. The net savings of the CO before the check period, during the check period and the savings of Smt. Karmakar were to the tune of Rs. 3,79,812/- . Against this he acquired the total assets of Rs. 4,66,850/- leaving unexplained assets of Rs. 87,667/-. It has further been stated in the statement of imputation that even if a further allowance of 10% is made available to cover any possible mistake in estimation of expenditure etc. The disproportionate assets works out to Rs. 78,901/-.

5. The CO in his brief has argued that while calculating the income from pay and allowances, the pay particulars covering a period of 9 years and 1 month for the pre-check period to the tune of Rs. 36,000/- approx. were left out and had not been taken into account. He has further stated that had this amount been accounted for total savings would have been raised to Rs. 4,23,541/- and consequently alleged unexplained assets would stand at Rs. 43,309/- and after allowing 10%, the resultant unexplained asset would ultimately stand at Rs. 38,978/- which is less than 10% of the total income. It is further his contention that the assessment report dt. 3.3.87 submitted by Sh. T.M. Yaduvendu, Asstt. Valuation Officer, Income Tax Department, Guwahati, was not authenticated by the author during the course of inquiry and as such it need not to be taken into consideration. According to CO he had got the property valued from a Government approved valuer and he has assessed the same building at Rs. 1,92,039.15 only on the basis of Assam PWD rates and it should be accepted as evidence.

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6. The contention of the CO and the evidence brought on record by the prosecution with regard to the income expenditure and assets alleged to have been acquired by the CO are discussed in the subsequent paragraphs.

INCOME :

Pre-check period income and expenditure :

7. Prosecution had calculated the total income of the CO from all sources as Rs.57,657.20 from 9.3.93 to 31.12.74. This comprises of Rs.57,644.50 from pay and allowances and Rs.12.78 from interest on deposits. As per the prosecution case CO had not inherited any property worth to be mentioned. The expenditure for this period has been worked out to Rs.8,675/-. In this manner the net savings for the pre-check period with the CO works out to Rs.49,981/-.

8. CO's contention is that pay particulars covering a period of 9 years 1 month to the tune of Rs.36,000/- has not been taken into account. The particulars of the pay and allowances are in Ex-S-14 and a perusal of this document reveals that the contention of the CO is correct and salary of different months in different years has been left out. Even in the statement of imputation it had been stated that the pay and allowances of the CO for the pre-check period have been worked out on the basis of the available pay particulars only. Co has claimed that his income during the left out period works out to Rs.36,000/- approx. The basis on which this amount has been arrived at has not been explained by the CO in his brief

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or in his deposition when he appeared as his own witness DW-1. As the details of the pay and allowances for the left out period are not available on record it cannot be said whether the calculations made by the Co are correct or not. But the fact that it is prosecution who is <sup>under</sup> ~~upper~~ legal obligation to first prove that the pay and allowances as given <sup>for the pre-check period</sup> in the statement of imputation/accepts the fact that these are not correct. However, the claim of CO that his income from pay and allowance was Rs. 36,000/- is also not correct. Pay particulars of the months closure to the left out period are available in Ex-S-14. The average of pay and allowance calculated by CO comes to Rs. 363.63 per month. Till 1964 CO was drawing a monthly net salary of Rs. 142 only. Therefore, the figure of Rs. 36,000/- given by CO is highly exaggerated. If calculations are done on the basis of pay and allowances drawn in the months closure to left out period, his approx. pay and allowances would work out to Rs. 25,000/- approx. Under the given circumstances the contention of the CO that the pay and allowances for the left over period works out to Rs. 36,000/- is not accepted but a benefit of Rs. 25,000/- is given to him. On this basis the total income for the check period would work out to Rs. 82,657.28.

9. The expenditure incurred by CO towards food and non-food items before 1.1.75 has been calculated at Rs. 3,676/-. Though CO has stated that computation on amount spent on items of expenditure by prosecution is

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based on conjecture and statements, it is noted that the calculations are on the basis of data made available by the National Sample Survey on Consumer Expenditure from July, 1957 and the expenditure incurred in 1957 has been taken as nil. Similarly, the expenditure till 1971 has been calculated for one unit only accepting the claim of the CO that his family was residing with his father-in-law. Therefore, the amount of expenditure calculated by the prosecution is just and reasonable. Even CO has not indicated as to what should be the reasonable expenditure according to him. As such, his contention that the computation of expenditure is based on conjecture and surmises is baseless.

10. On the above basis the net savings for the pre-check period would work out to Rs.73,981.28.

Income during check period:

11. Prosecution has calculated the total income of the CO as Rs.2,12,715.62 (Rs.2,10,453.84 from pay and allowances and Rs.2,281.78 as interest on deposits). As such the total income of CO during check period was Rs.2,12,715.62 CO has not disputed these figures of income.

EXPENDITURE :

12. As per the prosecution case total expenditure incurred by the CO on food items, non-food items, education and electricity was of the order of Rs.64,472.70 during the check period. CO has not put any worth while argument to contest this figure except that the computation of amount spent on items of expenditure is based on conjecture

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and submisses. Prosecution has not given the detailed calculation on the basis of which the figure of Rs.64,472.70 has been arrived at. Similarly CO has not indicated as to what should be the reasonable amount of expenditure as per his calculations. It is, however, noted that the expenditure as calculated on food, non-food items, education and electricity works out to only 30% of CO's income and which is quite justified. Hence, the arguments of the CO is just for the sake of argument only.

ASSETS :

13. Prosecution has listed only four items under this head details of which are as follows :

(i)	Movable properties notices during the searches	Rs. 1,04,205.13
(ii)	Land at Sri Nagar, Guwahati	Rs. 6,000.00
(iii)	Building on land at Sl.(ii) (excluding supervision charges @ Rs.7.5%)	Rs.3,27,830.00
(iv)	Deposits in Bank N.S.C. etc.	Rs. 28,815.35
		Total : Rs. 4,66,850.48

14. CO has not disputed the items at Sl.No.1, 2 and 4. However, in respect of item No.3 his contention is that Sh. P.L. Yadhuvendu, Asstt.Valuation Officer, It Department Guwahati, who prepared the valuation report was not produced as a witness for cross-examination and as such the valuation report at Ex.S-1 assessing the property for Rs.3,27,830/- has no evidenciacy value. It is further

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his contention that Sh. Yadhuvendu assessed the building on the basis of Delhi plinth area rates as on 1.10.76 of the CPWD and it was unfair to adopt Delhi rates in assessing the building rates in Guwahati. He has also stated that he had got the property valued from a qualified and authorised valuer and he has assessed the same building at Rs.1,02,059.15 only on the basis of Assam PWD rates and it should be accepted as evidence of the correct valuation.

15. Ex.S-1 is the valuation report of Sh. Yadhuvendu. The valuation was done by him on a reference from the Inspecting Asst. Commissioner of Income Tax for incometax purposes as the value declared by the assessee i.e. Mrs. Shree Karmakar, who is the owner of the building, declared the value of the property at Rs.1,84,200/- only. At the time this document was taken on record, CO submitted that the author of this report should be made available for his cross-examination and then only its evidenciary value should be taken into consideration. No such objection was raised by CO at the time of inspecting the documents. Sh. Yadhuvendu did not turn up during the course of inquiry and the case being a time bound case has to be closed. This has definitely put defence in a disadvantageous position. CO has got the property valued from a Government approved valuer Sh. I. Sharma and his valuation report is at Ex.D-2. Sh. I. Sharma was one of the defence witnesses but, CO failed to produce him during the course of inquiry. As per this valuation report the property is valued at Rs.1,82,059.15. But, the evidenciary value of this report is similar to that of Ex.S-1. However, Ex.S-33 is the diary entry dated

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was not prepared by the wife of the CO and it contains some of the details of the payments made to labourers and the amount spent on materials purchased for the construction of the building. PO has argued that even as per this document the amount expended on materials is Rs.1,71,160.20 and the payments made to labourers are of the order of Rs.91,148/-. Thus the total amount spent on material and payment to labourers as per Ex-S-33 along comes to Rs.2,62,309.20. This fact clearly proves that Ex.D-2 is also not authentic. Besides the amount of Rs.1,62,309.20 spent on material and labour there is an entry of an expenditure of Rs.34,000/- on furniture. There bound to be expenditure on other items such as electric fittings, classes, etc. This shows that though Sh. Yadhuvendu has not been produced for cross-examination the report submitted by him is not totally unauthentic. One of the argument of the CO is that the cost of the construction had been worked on the Delhi plinth ~~same~~ rates method. The fact is that the rates adopted by Sh. Yadhuvendu are the Delhi plinth area rates with cost index for the relevant period for Guwahati. It is also observed that the valuation report at Ex.S-1 was forwarded by Sh. Yadhuvendu on 9.3.87 whereas the case against the CO was registered on 24.3.87 as is evident from the FIR at Ex.S-2. Even at the time of inspecting the document CO did not raised any objection to the authenticity of this document and the only objection raised by him was at the time of regular hearing. As stated earlier, the author of this report

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was not produced by the prosecution for cross-examination and Ex.S-1 is of a little evidentiary value for this reason. However the fact the even on materials and labour charges an amount of Rs.2,62,308/- is figuring in Ex-S-33 cannot be ignored. A perusal of Ex.S-33 reveals that at the end of the entries of material and labour payments there is an entry of Rs.2,78,488/-. This seems to be the correct total and even PO has left some of the entries. This gives an irresistible impression that the report submitted by Sh. Yadavendu is reasonable and the valuation got done by the CO from a Government approved valuer on his own is grossly undervalued.

16. Besides the savings to CO prosecution has also taken a sum of Rs.1,90,318/- as savings of Smt. Karmakar based on his income tax returns. CO has not disputed this fact.

17. In the light of the above discussion the final figures of CO's income, expenditure, assets, likely savings etc. works out as follows :

(i)	Savings in pre-check period	Rs.	73,981.28
(ii)	Income during the check period	Rs.	2,12,715.62
(iii)	Expenditure during check period	Rs.	64,472.70
(iv)	Savings of Smt. Karmakar	Rs.	1,90,318.00
(v)	Probable savings (Income - Expenditure + pre check period savings + savings of Smt. Karmakar)	Rs.	4,12,542.20
(vi)	Assets acquired during the check period	Rs.	4,66,850.48

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18. Thus, against the savings of Rs. 4,12,542.20. CO was having assets worth Rs. 4,66,850.43 leaving unexplained assets of Rs. 54,308.23. Even if an allowance of 12% as given in the statement of imputations is allowed; the disproportionate assets works out to Rs. 48,878.28.

19. Incidentally it is noted from Ex. S-33 that there are entries regarding the amount paid "to father" on various dates during 1984. A total of this comes to Rs. 4,59,732/-. Though PO has raised this point in his brief, CO has not contested it in his brief. His brief is totally silent on this argument of PO. If this amount is taken into consideration total disproportion would be of the order of Rs. 2,08,610.28. However, since there is no mention of this expenditure in the statement of imputation by the prosecution for reasons best known to them it has not been taken into consideration for arriving the disproportion.

FINDINGS :

20. Charge is proved to the extent that CO was having disproportionate assets to the extent of Rs. 48,878.28.

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New Delhi, 30th November, 1993.

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Sd/- J.L. Verma.

Commissioner for Departmental Inquiries

Inquiry Officer.

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OFFICE OF THE COMMISSIONER OF INCOME-TAX:  
NORTH EASTERN REGION:POST BOX NO.20:  
SHILLONG.Dated, Shillong, the 30th Dec, 1990ORDER

The Commissioner of Income-tax, North Eastern Region, Shillong, initiated disciplinary proceedings against Shri/Ratneswar Karmakar, Income-tax Officer (Group-B) in the Income-tax Department, North Eastern Region, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The article of charge framed against the C.O., Shri Ratneswar Karmakar in respect of which inquiries were held is as follows :-

ARTICLE OF CHARGE

2. That, the said Shri Ratneswar Karmakar, while functioning as an Upper Division Clerk, Income-tax Inspector and Income-tax Officer under the Commissioner of Income-tax, N.E. Region at different places during the period 1959 to 1987 failed to maintain absolute integrity and devotion to duty, in as much as he is found to have acquired assets disproportionate to his known sources of income to the tune of Rs.78,901.04, the acquisition of which is not explainable from his known sources of income. The said Shri R. Karmakar has, therefore, contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.
3. The C.O., Shri Ratneswar Karmakar was informed of the charge framed against him vide this office Memorandum No.E-5/Con/CT/90-91/2197 dt. 23rd October, 1990 which was served on him on 25-10-90. He was given an opportunity to submit his written statement of defence and also whether he desired to be heard in person. By this Memorandum Shri R. Karmakar was also informed that an inquiry will be held in respect of those articles of charge as are not admitted.
4. In the statement of imputation of misconduct the facts of the case and analysis of evidence were provided to the Charged Officer. The Charged Officer was functioning as Upper Division Clerk, Income-tax Inspector, Income-tax Officer under the Commissioner of Income-tax, North Eastern Region at different places during the period 1959 to 1987. The specific charge against the C.O. is that while functioning in the aforesaid categories he acquired, either in his own name or in the name of others, movable or immovable assets to the tune of Rs.4,66,850.48 which is disproportionate to his known sources of income and he failed to account for the same satisfactorily. The check period for determining the value of assets and income of the Charged Officer has been fixed from 1-1-75 to 26-3-87. During this period the net savings of the Charged Officer including his savings before the check period, and the savings of his wife, Smt. Karmakar, were to the tune of Rs.3,79,812.00.

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Against these savings the Charged Officer acquired total assets of Rs.4,66,850.48 leaving unexplained assets of Rs.87,667/-. It was further stated in the statement of imputation that even if a further allowance of 10% is made to cover any possible mistake in estimation of expenditure etc., the disproportionate assets value works out to Rs.78,901.00.

5. The C.O., Shri R. Karmakar applied for another 15 working days' time to submit his reply. He was allowed 10(ten) days extension of time to submit his written statement of defence; Shri R. Karmakar made further correspondence praying for on the spot access to the inspection of documents by which articles of charge are proposed to be framed, with facilities for taking extracts, copies etc. to enable him to prepare his reply. He was informed that full opportunity to inspect the listed documents will be given to him during the course of inquiry, and he was asked to submit his written statement of defence on 25-11-90. The reply of Shri R. Karmakar dt. 24-11-90 sent by Regd.Post was received on 29-11-90. The written statement of defence against the article of charges as per Annexure-II of the Memorandum of Charge Sheet submitted by the Charged Officer is as below:-

1. I deny the Charge No.1.
2. I admit specifically the Charge No.2.
3. I admit the Charge No.3, provided the figures taken therein are factually correct in all material aspect.
4. I admit the Charge No.4, provided it is in conformity with the income figures as stated in the Charge No.3.
5. I admit the Charge No.5, except the following :-
  - I) Out of the total movable properties as referred to in Clause (i) and Clause (iv) of the Charge No.5, properties worth Rs.54072.88 belonging to others; and
  - II) the immovable properties as referred to in Clause(II) and Clause (iii) of the Charge No.5 belonging to others.
6. I admit the Charge No.6, provided the income figure as taken therein are factually correct and complete in all material aspect.
7. I admit the Charge No.7, provided the figure in Clause(ii) thereof is in agreement with the resultant figure as shown in the Charge No.6.
8. I deny the Charge No.8, in fact, as well as in law; and
9. I deny the Charge No.9".

6. Considering the replies given by the C.O. it was felt necessary to hold a regular inquiry for which Shri J.D. Verma, Commissioner for Departmental Inquiries, CVC, New Delhi was appointed as Inquiring Authority vide this office No.E-5/Con/CT/90-91/281 dt. 3-7-91.

7. The Inquiring Authority Shri J. D. Verma conducted the enquiry. His findings was that the disproportionate assets works out to Rs.48,878.28 only and not Rs.78,901. The Inquiring Authority observed that the salary of the C.O. of different months in different years has been left out. According to him till 1964 the C.O. was drawing a monthly net salary of Rs.142/- only. He concluded that if calculations are done on the basis of pay and allowances drawn in the months closer to left out

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period, the approximate pay and allowances of the C.O. would work out to Rs.25,000/- approx. and, therefore, he has given the benefit of funds of Rs.25,000/- to the C.O.

8. An attested copy of the Inquiry Report was served on the CO on 21-12-93. The CO was also informed of the disagreement of the undersigned with the Inquiry Report the extent of taking disproportionate assets at Rs.48,878.28 as held by the Inquiring Authority. The CO was given 3 days' time from the receipt of the communication and the copy of the report for making representation in view of the time limit given by the Guwahati Bench of CAT directing the disciplinary proceedings to be completed with final results within 31-12-93.

9. The representation of Shri R. Karmakar (C.O.) has been received on 25-12-93. The C.O. has raised the following points inter-alia in his representation :-

- (1) That being asked to submit representation only within three days from receipt of the enquiry report and forwarding letter of the Disciplinary Authority has prejudiced his interest.
- (2) That since the Disciplinary Authority did not inform him of the reasons for being inclined to disagree with the amount of disproportion in the enquiry report, he is at a disadvantage.
- (3) That though the prosecution had listed as many as 30 witnesses, they could produce only 2 and though the C.O. insisted before the E.O. on examination of 4 of the 30 listed witnesses they were not produced to the great detriment of his cause. Specifically the C.O. states that the evidentiary value of the statement of pay and allowances produced by Shri R. K. Chaudhary, the then ITO(Vig.) in the Office of the Commissioner of Income-tax, North Eastern Region, Shillong could not be established since Shri R. K. Choudhary was not produced at the time of enquiry for cross examination by the C.O. He especially insists that his pay particulars for a period of 9 years & 1 month were not "proved" during enquiry.
- (4) The prosecution has relied on the valuation report of Shri P. L. Yadavendu, Asstt. Valuation Officer of the Income-tax Department, who had valued the residential building of Mrs. Sheela Karmakar. The C.O. states that since Shri Yadavendu was not made available for cross examination by himself his valuation report has got no evidentiary value and the Enquiry Officer committed an illegality by considering that report.
- (5) The C.O. represented that the Enquiry Officer violated the procedure for production of oral and documentary evidence in that witnesses, as per the provisions of Rule 14(14) of the C.C.S.C.C.A. Rules 1965, should be cross examined by the Presenting Officer only in the presence of the Enquiring Authority which, in his case, was not done, since as many as 19 prerecorded statements of witnesses were introduced as substantive evidence in the enquiry and none of the witnesses whose statements were so recorded at the time of investigation of the case No.RC-4/87-SHG were produced before the Enquiring Authority.

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(6) As regards pay and allowances drawn by the C.O. during the left out period of 9 years & 1 month, the I.O. has allowed an amount of Rs.25,000/- to be income for this period which the C.O. has contested to be without any plausible basis. The C.O. has claimed his pay and allowances for this period at Rs.36,000/-.

(7) In the general ground of appeal the Charged Officer has specifically stated that the prosecution has failed to marshal evidence worth its name against him.

10. The representation of the C.O. has been very carefully considered. The reason for asking him to submit the representation within three days arose due to the order of the Hon'ble CBT, Guwahati Bench which set a time limit for disposal of the case.

11. The reasons for disagreement as to the amount of disproportion taken in the enquiry report arise from the fact that the entire proportion of amounts not covered by the C.O.'s income for the precheck period had been worked out by the prosecution and enumerated in detail in their initial report. The difference between those figures and the figures taken by the Enquiry Officer arise due to the I.O. allowing the benefit of Rs.25,000/- as against the claim of the C.O. to the extent of Rs.36,000/- being the main point contested by the C.O. against the prosecution i.e. estimation of income for the precheck period.

12. The I.O.'s findings in this regard are not correct. The pay and allowances of the officer for the precheck period have been worked out on the basis of available pay particulars but have not left out the pay and allowances for the period for which these particulars were not available. The pay and allowances for such period have been taken into account on the basis of average salary being drawn by the officer in the proximate period for which particulars were available. The fallacy of I.O.'s arguments would be clearly apparent when the total amount of pay and allowances worked out by him at Rs.82,65/- are divided by the number of months from March, 1959 to December, 1974, i.e., 190 months. This gives an average of Rs.435/- p.m. throughout the period of these 16 years. The evidence in the shape of Ex.6-14, however, shows that C.O. was deriving the gross emoluments of less than Rs.200/- p.m. till 1964. In 1966-67 these were of the order of less than Rs.300/- p.m. and in 1968 they hovered around Rs.340/-. It was only in 1971 that the amount of gross emoluments crossed the figure of Rs.400/- p.m. For nearly 10 years prior to that i.e., for 120 months the average salary for these 120 months could not have been exceeded Rs.250/-. The amount of Rs.57,644/- worked out by the prosecution gives an average of about Rs.303/- p.m. over the whole period of 190 months. Thus, the benefit of Rs.25,000/- given by the I.O. is totally unwarranted.

13. The argument of the C.O. that the mere production of documents without presenting the author to "prove" them amounts to denial of right of cross examination to him and being detrimental to his interest, is not acceptable. The report of pay and allowances as well as report of valuation of the house were prepared by the Departmental Officers under clear and proper rules and procedures. Particularly for pay and allowances, in the case of a Govt. servant this cannot fluctuate to any extent. By his own admission, the C.O. has admitted that he had not objected to the valuation report of

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the house until the enquiry stage. Even subsequently it is seen that he could not fault the report on any specific point but only insisted on its rejection in-toto in favour of the report prepared by his own valuer. In the circumstances it is clear that non-production of the two Departmental Officers viz. Shri R. K. Choudhary and Shri P. L. Yadavendu has not prejudiced his interest, since even by their appearance at the enquiry, these officers would not be able to adduce any more material evidence than their signed documents which are not only matters of official record, but also based on official documents and all reasonable recorded evidences. As already mentioned above the pay and allowances of the officer for the precheck period have been arrived at on the basis of average salary being drawn by the officer in the proximate period for which particulars are available. This method cannot be considered arbitrary. The Enquiry Officer has also submitted detailed reasons for accepting the report of Shri Yadavendu as reasonable and consequentially it follows that the valuation got done by the C.O. by his own valuer is grossly understated, which is a reasonable view.

14. As for the alleged violation of procedure by the Enquiry Officer as stated by the C.O. the same has been duly examined and taken into consideration with reference to relevant rules and regulations on this subject. It is not acceptable that in a departmental enquiry a Govt. of India O.M. cannot be followed by the Enquiry Officer. Hence the Enquiry Officer has correctly followed the procedure for considering the oral and documentary evidence with reference to the article of charge.

FINDING

15. From the above it is abundantly clear that the charges stand proved. The extent of disproportion is Rs.78,901.00, which comes to 39% of the income of the Charged Officer.

This clearly reflects on the integrity of the Charged Officer, and in the circumstances the undersigned is, therefore, of the view that Shri Ratneswar Karmakar, Income-tax Officer, in the Income-tax Department, N.E. Region is not a fit person to be retained in service. The undersigned under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby imposes on the said Shri Ratneswar Karmakar the penalty of dismissal from service, as enunciated in clause (ix) of Rule 11 of the said Rules.

This order will take immediate effect.

( D. Agarwala )  
Commissioner of Income-tax,  
North Eastern Region,  
Shillong.  
(Disciplinary Authority)

Shri Ratneswar Karmakar,  
Income-tax Officer(OSD),  
O/o the Deputy Commissioner of  
Income-tax, Range-I, Guwahati.

*Larwood*

*Adv.*

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SECRET/REGD.A/D.

Memo No.E-5/Con/CT/90-91/1500-1503 Dated 30-12-93.

Copy to:-

1. The Registrar, C.A.T., Guwahati Bench, Guwahati for favour of information.
2. The D.C.I.T., Range-I, Guwahati (By name) for information and necessary action. She is requested to get the enclosed order served on the Charged Officer, Shri R. Karmakar, ITO(OSD) at once, in any case before 31-12-1993, and also to give the enclosed copy of the order to the Registrar, C.A.T., Guwahati Bench, Guwahati before 31-12-1993, and to return the acknowledgements urgently.
3. The D.I.T.(Vig.), New Delhi (Attention:Shri S.S. Gandhi,DDIT(Vig.)), Central Board of Direct Taxes, 8th Floor, Mayur Bhawan, Connaught Circus, New Delhi-110001 for information.
4. The Chief Commissioner of Income-tax, Patna for favour of information.

*H. B. Mahanta*

( H. B. Mahanta )  
Asstt. Commissioner of Income-tax(Hqrs.),  
for Commissioner of Income-tax,  
North Eastern Region,  
Shillong.

*Karmakar*  
*Adm.*

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A-22

To,

The Commissioner of Income-Tax,  
N.E. Region,  
Shillong (Meghalaya).

Ref.:- Your letter No.F No.E-5/Con/CT/90-91/1499  
dt. 30.12.93.

Sub.:- A P P E A L.

Sir,

I am highly aggrieved by your above-quoted order by which I was dismissed from service on the date I was to retire from service on reaching the age of superannuation. I am submitting an appeal against the same as provided. Under Rule 26(2) of the CCS(CCA) Rules, 1965, I am required to forward a copy of the appeal to your goodself and as such I am forwarding the same to you for onward transmission to the Appellate Authority without any avoidable delay.

Yours faithfully,

ENCL :

Appeal petition  
with 15 annexures.

( Ratneswar Karmakar )  
ITO(OSD) Guwahati,  
(Since dismissed )

18-2-94

Attested  
Signature  
Adv.

.....

22

REGISTERED AIR

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ANNEXURE - XVI

F.No. E-5/Con/CT/90-91/738

OFFICE OF THE COMMISSIONER OF INCOME TAX  
NORTH EASTERN REGION: POST BOX NO: 20  
SHILLONG - 793001.

Dated: 10-7-96 June, 1996.

To  
Shri R. Karmakar,  
C/O "Purabi", Shrinagar,  
Link Road, P.O. Dispur,  
Guwahati - 781005.

Sub: Appeal under Rule 23 of the CCS (CCA) Rules, 1965 -  
before the President of India of income  
to the tune of Rs. 78,001/-. An inquiry was ordered  
Ref: Your letter dt. 18-2-94.  
into the charge.

Please refer to above in his report dated 30.1.1993  
2. The appeal filed by you/r 23 of the CCS (CCA) Rules,  
1965 before the Hon'ble President of India against the order of  
the Disciplinary Authority has been considered by the President  
and the President finds that the appeal filed by you is without  
any merit and the penalty imposed is not excessive. The President  
is, therefore, pleased to reject the appeal filed by you and con-  
firm the penalty imposed on you by the Disciplinary Authority. A  
copy of the order as received from the appellate authority is  
enclosed. Please acknowledge receipt of the same.

Disciplinary Authority  
proved and imposed a pe  
vide order dated 30.1.93.

Enc: As stated.  
Asstt. Commissioner of Income-tax (Vig.),  
for Commissioner of Income-tax,  
N.E.R., Shillong.

Memo No. E-5/Cbn/CT/90-91/...  
Copy to the Addl. CIT, R-I, Guwahati for information. She is requested  
to get the enclosed covered letter on Shri R. Karmakar, C/O "Purabi",  
Shrinagar, Link Road, P.O., Dispur, Guwahati-781005 and to return the  
acknowledgement to this office.

Enc: As stated.  
Asstt. Commissioner of Income-tax (Vig.),  
for Commissioner of Income-tax,  
N.E.R., Shillong.

Attested  
Personal  
Adl.

F.No.C-16011/2/94-V&L.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 28<sup>th</sup> June, 1996.

ORDER UNDER RULE 27(2) OF C.C.S(C.C.A) RULES

A Charge-sheet for major penalty was issued to Shri R.Karmakar, ITO on 23.9.1990 for failure to maintain absolute integrity as he was found to have acquired assets disproportionate to his known sources of income to the tune of Rs.78,901/-. An oral inquiry was ordered and an Inquiry Officer was appointed to inquire into the charge.

2. The Inquiry Officer in his report dated 30.11.1993 found the charge as proved but found the disproportion to the extent of Rs.48,878/-. The Disciplinary Authority did not agree with the findings of the Inquiry Officer and served the Inquiry Officer's report alongwith his disagreement stating that the disproportionate assets were to the extent of Rs.78,901/-. After considering Shri Karmakar's reply to the Inquiry Officer's report, the Disciplinary Authority held the article of charge as proved and imposed a penalty of dismissal from service vide order dated 30.12.1993.

3. Shri R.Karmakar filed an appeal dated 18.2.1994 to the President against imposition of the said penalty. The contentions raised by Shri R.Karmakar were found to be similar to those raised by him earlier and which had been already considered by the Inquiry Officer and the Disciplinary Authority before passing the penalty order. The case was referred to the U.P.S.C. for advice.

4. The U.P.S.C. has examined the submissions of the officer and have come to the conclusion that the disproportionate assets would work out to Rs.48,878/-. However, they have found the penalty of dismissal imposed

*Lawrence*

Adv.

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: 2 :

upon him earlier as neither harsh nor inequitable and have advised that the appeal of Shri Karmakar be dismissed. (copy of advice of UPSC enclosed).

5. On perusal of all relevant facts on record and the advice of the U.P.S.C., the President finds that the appeal of Shri R.Karmakar is without any merit and the penalty imposed is not excessive. The President is, therefore, pleased to reject the appeal filed by Shri R.Karmakar and confirm the penalty imposed upon him by the Disciplinary Authority.

By Order and in the Name of the President.

*Sanjay Puri*

(SANJAY PURI)  
UNDER SECRETARY TO THE GOVT. OF INDIA.

Shri R.Karmakar,  
Income-tax Officer

Through Commissioner of Income-tax,  
Shillong.

Copy to:

1. The Commissioner of Income-tax, North Eastern Region, Shillong, alongwith a copy for Sh. R.Karmakar, ITO.
2. The Director, Central Vigilance Commission, New Delhi.
3. The Director of Income-tax(Vigilance), New Delhi.
4. The Under Secretary(Ad VI)/Under Secretary(Pers), CBI, New Delhi.

( SANJAY PURI )  
UNDER SECRETARY TO THE GOVT. OF INDIA.

*Karmakar*  
*Adi.*

87

CONFIDENTIAL  
F.3/33/95-S.I

29-3-96

The Secretary to the Govt of India,  
Ministry of Finance,  
Department of Revenue,  
Central Board of Direct Taxes,  
New Delhi.

(Attention : Shri Sunil Gupta, Under Secretary)

Subject : Appeal preferred by Shri R.Karmakar, I.T.O.  
against the penalty of dismissal.

Sir,

I am directed to refer to your letter No.C-16011/2/94-V&L dated 3.1.96 on the subject mentioned above and to convey the advice of the Union Public Service Commission as follows:

2. Vide charge memo. No.E-5/CON/CV90-91/2197 dated 23.10.1990 from Commissioner of Income Tax, North Eastern Region, Shillong, Shri R.Karmakar, ITO had been called upon under Rule 14 of the CCS(CC&A) Rules, 1965 to answer the following article of charge :

Article of charge

That, the said Sri Ratneswar Karmakar, while functioning as an Upper Division Clerk, Income Tax Inspector and Income Tax Officer under the Commissioner of Income Tax, N.E.Region, at different places during the period 1959 to 1987 failed to maintain absolute integrity and devotion to duty, in as much as he is found to have acquired assets disproportionate from his known source of income to the tune of Rs.78,901.04, the acquisition of which is not explainable from his known sources of income. The said Sri R.Karmakar has therefore contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of C.C.B (Conduct) Rules, 1964.

A statement of imputation of misconduct /misbehavior on the part of the Charged Officer, Shri

*Karmakar*  
Aclh.

R.Karmakar, ITO was also enclosed along with the said memo. The Charged Officer. in his reply dated 24.11.90 denied the article of charge levelled against him. An inquiry was, therefore, held. The Inquiry Officer in his report dated 30.11.93 held that the disproportionate assets work out to Rs.48,878.28 only and not Rs.78,901.00. A copy of the Inquiry Report was forwarded to the Charged Officer. vide Memo. dated 21.12.93 along with the disagreement of the Disciplinary Authority that the disproportionate assets may be taken as Rs.78,901.00 and not Rs.48,878.28 as held by the Inquiry Officer. for making further submission, if any. The Charged Officer. submitted his representation dated 24.12.93. On consideration of Inquiry Report, proceedings of the Inquiry and representation of the Charged Officer., the Commissioner of Income Tax, North Eastern Region, Shillong, the Disciplinary Authority held the Article of charge as proved against the Charged Officer. and imposed the penalty of dismissal from service on Sh.R.Karmakar, the Charged Officer. vide order No.E-5/CON/CT/90-91/1499 dated 30.12.93. The Charged Officer. has preferred an appeal dated 18.2.94 to the President, the Appellate Authority against the imposition of penalty. The appellate Authority has tentatively decided that the appeal preferred is devoid of merit and deserves to be rejected. The case along with the relevant has been referred to the Commission for advice as to the orders to be passed by the President in this regard.

3.1 The records of the case have been examined in detail by the Commission. On a perusal of charge memo dated 23.10.1990, the Commission observe that the crux of the charge against Shri R.Karmakar, I.T.O. is that he is alleged to have failed to maintain absolute integrity and devotion in as much as he is found to have acquired assets disproportionate from his known source of income to the tune of Rs.78,901.04, the enormity of which amount is not duly explainable from his known source of income. The Charged Officer. has denied and disputed the charge levelled against him.

3.2. The Commission observe that the prosecution had calculated the total income of the Charged Officer. from 9.3.59 to 31.12.74 as Rs.57,657.28. This comprises Rs.57,644.50 and allowances as per the available pay particulars and Rs.12.78 from interest on deposits. The Charged Officer. had not inherited any property worth mentioning. The expenditure for this period has been worked out to be Rs.8,676/-. The net savings for the pre-check period of the Charged Officer are taken as Rs.48,981/-.

3.3 There is a force in the contention of the

*S. Kumar*  
*Adv.*

Charged Officer that the pay particulars of the Charged Officer. for a period of approximately. nine years have not been taken into consideration as is evident from Ex.8.14. Even the statement of imputation clearly admits that the pay & allowances of the Charged Officer for the per-check period have not been worked out & estimates done on the basis of the available pay particulars only. The Charged Officer has claimed a benefit of Rs.36000/-. However, the Charged Officer has not explained the basis on which the amount has been arrived at. As the details of the pay & allowances for the left out period are not available on record and Charged Officer has also not given any basis for calculating his income for the left out period, we may agree with the Inquiry Officer. who has already conceded a benefit of Rs.25,000/- to the Charged Officer, towards pay allowances for the left out period. Therefore, the total income for the pre-check period may be taken as Rs.82,657/-.

3.4 The Commission observe that the expenditure incurred by the Charged Officer towards food and non-food items before 1.1.75 has been calculated at Rs. 8,676/- by the Inquiry Officer. These calculations are on the basis of data made available by the National Sample Survey on Consumer Expenditure from July, 1957 and the expenditure incurred in 1957 has been taken as nil. The expenditure till 1971 has been calculated for one unit only accepting the claim of the Charged Officer that his family was residing with his father-in-law. The amount of expenditure calculated by the prosecution and the Inquiry Officer seems to be just and reasonable as the Charged Officer has not indicated as to what could be the reasonable expenditure according to him. They therefore, find it difficult to agree with the Charged Officer's contention that the computation of expenditure is based on conjecture and surmises.

Income during check period - Rs.82,657.28  
 Expenditure during the pre - Rs. 8,676/-  
 check period.

Net savings during the pre  
 check period. - Rs.73,981.28

Income during check period  
 -----

3.5 The Commission observe that the prosecution has calculated the total income of the Charged Officer as Rs.2,12,715.62 (Rs.2,10,453.84 from pay and allowances and Rs. 2,261.78 as interest on deposits for the check in period.) The Charged Officer has not disputed

*Severnel*  
*Adv.*

these figures of income.

Expenditures

3.6. The Commission observe that as per the prosecution, the total expenditure incurred by the Charged Officer on food items, non-food items, education and electricity was of the order of Rs.64,472.70 during the check period. The Charged Officer has not contested this figure except that the computation of amount spent on items of expenditure is based on conjecture and surmises. They further observe that the prosecution has not given the detailed calculations on the basis of which the figure of Rs.64,472.70 has been arrived at. Similarly Charged Officer has not indicated as to what should be the reasonable amount of expenditure as per his calculation. The Commission are therefore inclined to agree with the Inquiry Officer that the expenditure as calculated on food, non-food items, education and electricity which works out to be only 30% of the Charged Officer's incomes is quite reasonable and justified.

ASSETS

3.7 The Commission observe that the prosecution has listed the following four item under the head assets, which are as follows-

(i)	Movable properties noticed during the searches	-	Rs.1,04,205.13
(ii)	Land at Sri Nagar, Guwahati	-	Rs. 6,000.00
(iii)	Building on land at Sl.(ii) (excluding supervision charge @ Rs. 7.5%)	-	Rs.3,27,830.00
(iv)	Deposits in Bank N.B.C.etc.	-	Rs. 30,015.35
	Total		Rs.4,66,850.48

3.7.1. The Charged Officer has not disputed the item at Sl.No.1,2 and 4. However, in respect of item No.3 his contention is that Shri P.L.Yaduvendu, Asst. Valuation Officer, / Income Tax Department, Guwahati, who prepared the valuation report was not produced as a witness for cross-examination and as such the valuation report at Ex.S-1 assessing the property for Rs.3,27,830/- has no evidenciary value. The Charged Officer has further argued that the valuation by Shri

*Samuel*  
 Adi.

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Yadhuvendu assessed the building on the basis of Delhi plinth area rates as on 1.10.76 of the CPWD and it was unfair to adopt Delhi rates in assessing the building rates in Gauhati. The Charged Officer had got the property valued from a qualified and authorised valuer at Rs.1,82,059.15 only on the basis of Assam PWD rates and it should be accepted as evidence of the correct valuation.

3.7.2. The Commission observe that the valuation report as per Ex.S-1, was done by Shri Yadhuvendu on a reference from the Inspecting Asst. Commissioner of Income Tax purposes as the value declared by the assessee i.e. Mrs. Sheel Karmakar who is the owner of the building, declared the value of the property at Rs.1,84,200/- only. The Charged Officer did not raise any objection to this assessment at the time of inspecting the documents and he took objection only when this document was taken on record and submitted to make Shri Yadhuvendu available for cross-examination. They observe that the Charged Officer has got the property valued, from a Govt. approved valuer, Shri I. Sharma as per Ex.D.2. Shri Sharma was one of the defence witnesses but, Charged Officer failed to produce him during the course of inquiry. Similarly, the prosecution failed to produce Shri Yadhuvendu during the proceedings of the inquiry for the cross-examination. The Commission base their observation on the diary maintained by the Charged Officer's wife (Ex.S-33) which contains neat details of the payments made to laborers and the amount spent on material purchased for the construction of the Building. As per this document the amount spent on material is Rs.1,71,160.20 and the payment made to labourers are of the order of Rs.91,148/-. Thus the total amount spent on material and payment of labourers as per Ex.S-33 alone comes to Rs.2,62,308.20 which clearly proves that Ex.D-2 is also not authentic. In addition, there is expenditure on wood work, electricity fittings and other miscellaneous items. They, therefore, observe that though Shri Yadhuvendu had not been produced for cross-examination the report submitted by him is not unauthentic. The Commission find it difficult to agree with the Charged Officer that the cost of the construction had been worked on the Delhi plinth area rates modes because the rates adopted by Sh. Yadhuvendu are the rates with the cost index for the relevant period for Gauhati. They further note that the valuation report at Ex.S-1 was forwarded by Sh. Yadhuvendu on 3.3.87 whereas the case against the Charged Officer was registered on 24.3.87 as is evident from the FIR at Ex.S-2. They further observe that even at the time of inspecting the document the Charged Officer did not raise any objections to the authenticity of this document and the only objection raised by him was at the time of a regular hearing. The Commission further observe that the expendi

Loveneek  
Adv.

iture on materials and labour charges is Rs.2,62,308/- figuring in diary maintained by the Charged Officer's wife which one can hardly ignore Ex.S-33 further reveals that at the end of the entries of material and labour payments there is an entry of Rs.2,78,488/-. They therefore, observe that the report submitted by Sh. Yadhuvendu is reasonable and the valuation got done the Charged Officer from a Govt. approved valuer on his own is grossly undervalued. The production of S/Shri P.L.Yadhuvendu and R.K. Choudhary during the proceedings of the inquiry would not have made much material difference to the evidence furnished as their signed documents were based on official documents and all reasonable recorded evidence.

In addition to the Charged Officer's savings, the prosecution has taken a sum of Rs.1,90,318/- as savings of Smt. Karmakar based on the income tax returns. The Charged Officer has not disputed this fact.

3.8 In view of the position explained, the figures of Charged Officer's income, expenditure, assets, likely savings, etc. work out as follows :

- (i) Savings in pre-check period : Rs. 73,981.28
- (ii) Income during the check period : Rs. 2,12,715.62
- (iii) Expenditure during check period : Rs. 64,472.70
- (iv) Savings of Smt. Karmakar : Rs.1,90,318.00
- (v) Probable savings (Income-Expenditure + pre-check Period savings +savings of Smt.Karmakar). : Rs.4,12,542.20
- (vi) Assets acquired during the check period. : Rs.4,66,850.48

Against the savings of Rs. 4,12,542.20 the Charged Officer was having assets worth Rs.4,66,850.48 leaving unexplained assets of Rs.54,308.28. Even if remittance of 10%, as given in the statement of imputations is allowed, the disproportionate assets would work out to Rs. 48,878.28.

3.9. To sum up, the Commission conclude that the Article of charge is proved to the extent that the Charged Officer was having disproportionate assets to the extent of Rs.48,878.28.

*Laxmi*  
*Adv*

Filed in Court  
on 7-1-97  
Honourable  
Court Master



Filed by -  
A. M. Chandra

7/1/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

In the matter of :-  
O.A. No.228 of 1996  
Ratneswar Karmakar .... Applicant  
-Versus-  
Union of India & Ors... Respondents

Written Statement for and on behalf of the  
Respondents Nos. 1, 2 & 3.

I, S. Kharpor, Asstt. Commissioner of Income Tax,  
Office of the Commissioner of Income Tax, North Eastern  
Region, Shillong, do hereby solemnly affirm and say  
as follows :-

- 1) That I am the Asstt. Commissioner of Income Tax, Office of the Commissioner of Income Tax, North Eastern Region, Shillong and am acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements made in the application may be deemed to have been denied. I am authorised to file this written statement on behalf of the Respondents No. 1, 2 & 3.
- 2) That with reference to paragraph 1 to 5 of the application the respondents have no comments.
- 3) That with reference to paragraph 6.1 to 6.22 of the application the answering respondent beg to state that the details regarding service record are as per the Departmental records, Service book, etc. The details of inquiry proceedings are contained in the minutes of the meeting which have duly been recorded by the IO concerned. All other documents mentioned are also as per record. However, the objections raised by him are taken up in brief below.

Contd.p/2-

Shri R. Karmakar has raised technical objections regarding the valuation report though he has not contested the same on merits. His main objection is that Shri P.L. Yadevindu, AVO was not produced as a witness. While this fact is correct, it is also clear that Shri Karmakar failed to produce his own valuer and the IO made the valuation to the best of his own valuation judgement. In fact the IO in his report has given reasons for accepting the valuation of the AVO, as also corroborating evidence including exhibit 5-33 a diary maintained by Mrs. Karmakar was also considered before accepting the valuation.

The next objection of Shri Karmakar is regarding non-production of Shri R.K. Choudhury, the ITO (Vig.) who was to be produced in connection with accounting of pay and allowances. While Shri Choudhury could not be produced the Disciplinary Authority has clearly stated that the report of pay and allowances was prepared by the Departmental officers under clear and proper rules and procedures and this cannot fluctuate to any great extent. In fact the IO had given benefit of Rs.25,000/- against claim of Rs.36,000/- by Shri Karmakar regarding difference due to income for a period which is stated to be unaccounted by Sri Karmakar. The record clearly shows that the pay and allowances to the officer for the pre-check period have been worked out on the basis of available pay particulars but have not left out the pay and allowances for the period which these particulars were not available. These details were calculated on the basis of average salary being drawn by the officer in the proximate period for which particulars were available. The amount of Rs.57,644/- worked out by the prosecution gives an average of about Rs.1303/-P.M., over the whole period of 190 months whereas for nearly 10 years prior to 1971 the average salary for 120 months on the basis of available data could not have exceeded Rs.250/- P.M.

In his appeal also, Shri R. Karmakar had raised three main arguments i.e. proper opportunity was not given to him, pay and allowances for a period of 9 years and one month were denied to him in working out the disproportionate assets, and that important witnesses were not present. The same issues have again been raised in the present application and it can clearly be stated that he was given all due opportunity, even though

the matters had to be hurried up due to direction of the Hon'ble Tribunal, Guwahati to complete the proceedings within a specific time. The other two objections have already been clarified above.

The officer has also stated (Para 6.21) that the appeal has been rejected by the Appellate Authority, arbitrarily and in violation of rules. This is strongly denied as the appeal was considered in detail in all aspects before taking advice of MR UPSC and approval of FM. All necessary procedures were followed before rejecting the appeal.

4) That with reference to paragraph 7 & 8 of the application the respondents have no comments.

5) That with reference to paragraph 9.1 to 9.5 of the application the answering respondent beg to state that all proper procedures were followed before levying the penalty of dismissal. All necessary details which were available on record were duly considered and decisions were taken (including the decisions of the IO) on the basis of all material produced before it and keeping in mind the time constraints set out by the Hon'ble Tribunal, Guwahati. All these features are verifiable from record.

6) That with reference to paragraph 9.6 to 9.11 of the application, the answering respondent beg to state that pay and allowances for the entire period were duly considered on the basis of facts and figures available. All relevant material on record was considered. In fact the Disciplinary Authority did not accept the IO's finding that Rs.25,000/- could be added to the income of the officer as according to the disciplinary authority the figures worked out were correct. In case there was any proof with the officer of the amount being different he could have produced the same before the IO. The onus cannot be shifted (especially for the pre-check period) on to the Department as regards calculation of pay and allowances.

7) That with reference to paragraph 9.12 to 9.16 of the application the answering respondent beg to state that Shri R. Karmakar has raised only the question of cross examination of Shri Yadavendu but has never found fault with the report on any specific point and has only insisted upon its rejection in toto.

The IO in his report has given reasons for accepting the AVO's report and has made necessary discussion and taken into account other evidence like the diary maintained by Mrs. Karmakar, etc. before rejecting the report of the registered valuer and accepting the report of the AVO. The details are part of record.

8) That with reference to paragraph 9.17 to 9.21 of the application the answering respondent beg to state that while the reasons for disagreement have not been clearly on account of Rs.25,000/- allowed by the IO while working out income of the relevant period. The IO's report has also given clear cut indications of how the disproportionate assets have been worked out. These documents are taken together, the difference in figures is clearly explainable even if not specifically stated in the communication of the DA. It can again be stated that all procedures were followed before imposing penalty on the officer.

9) That with reference to paragraph 9.22 to 9.26 of the application the answering respondent beg to state that the appellate order has been passed after due consideration of all facts on record, the officer's arguments and after following all relevant procedures including reference to UPSC.

10) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

V E R I F I C A T I O N

I, S. Kharpor, Asstt. Commissioner of Income Tax, Office of the Commissioner of Income Tax, North Eastern Region, Shillong, do hereby declare that the statements made in this written statement are true to my knowledge arrived from the records of the case.

I sign this Verification of this the 3<sup>rd</sup> day of  
January 1995 at Shillong.

श्री एस खरपोर  
सहा: अधीक्षक (वित्तकर्म)  
आ. अ. व. विभाग  
जिला  
Shri S. Kharpor  
Asstt. Commissioner of Income-tax  
(V. I. Dept.)  
CIT's Office, Shillong

DEPONENT