

30/600

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 234/96.....

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SECTION OFFICER (Judl.)

[Signature]
31.1.98

8A No. 234196

M. C. Talukdare

Applicant(s)

VS

Union of India & ors.

Respondent(s)

Mr. R. Dutta

Advocates for the applicant(s)

Mr. J. Sarkar & Co.

Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
<p>This application is in form and within time C. F. of Rs. 50/- deposited vide IPO-BD No. 46950/ Dated ... 20.8.96</p> <p><i>J. Sarkar</i> Dy. Registrar 9/10/96</p>	14.10.96	<p>Learned counsel Mr R. Dutta for the applicant. Learned counsel Mr J.L. Sarkar for the respondents.</p> <p>Heard Mr Dutta for the admission. Perused the contents of the application and relief sought. The application is admitted. Issue notice on the respondents by Registered Post. Written statement within 6 weeks.</p> <p>List for written statement and further orders on 26.1.96.</p>
<p><u>16-10-96</u></p> <p>Notice prepared and issue vide NO. dated .</p>	<p>nkm 15/10</p>	<p><i>Member</i> Member</p>
<p><u>14.11.96</u></p> <p>Notice issued to the concerned parties vide D. No. 3546 dt. 17.10.96.</p>	26.11.96	<p>None present.</p> <p>Written statement has not been submitted.</p> <p>List for written statement and further orders on 19.12.1996.</p>
<p><i>By</i></p> <p>1) Service Reports are still awaited. 2) W/Statement has not been filed.</p> <p>1) written statement has not been filed.</p>	<p>trd 26/11</p>	<p><i>Member</i> Member</p>
<p>20/18-12</p>	19.12.96	<p>Learned Counsel Mr J.L. Sarkar for the respondents. Service report awaited. Written statement has not been submitted.</p> <p>List for written statement and further orders on 9.1.1997.</p>

1) Service reports are still awaited.

2) W/statment has not been filed.

8/97

4-2-97

1) Service Report are still awaited.

2) written statement has not been filed.

BM

9.1.97

Leave note of Mr R.Dutta. Mr J.L. Sarkar for the respondents seeks one month time to file written statement.

List for written statement and further orders on 5.2.97.

ba
Member

pg

9/11

5.2.97

Mr J.L.Sarkar for the respondents seeks one month time to file written statement.

List on 5.3.97 for written statement and further orders.

ba
Member

4.3.97

- written statement has not been filed by the respondents.

BM

pg

9/12

5.3.97

Shri M.C.Talukdar in person. Mr J.L. Sarkar, learned counsel for the respondent prays for further time to submit written statement. Allowed.

List for written statement and further orders on 2.4.1997.

ba
Member

pg

9/13

1) Service Reports are still awaited.

2) W/statment has not been filed.

BM
1/4

10/2/97 ...
2) Rejoin ...
... A.W.

18-6-97 . . . Hearing is adjourned to
9-7-97.

ba
Member

lm
FA

9-7-97 Mr.S.Sarma learned counsel on behalf of Mr.R.Dutta for the applicant prays for adjournment due to his personal difficulties.

Hearing adjourned. List on 15-7-97 for hearing .

ba
Member

lm
10/7

16.7.97 Mr R.Dutta for the applicant. Mr J.L. Sarkar for the respondents.

Counsel of the parties have completed their submissions. Hearing concluded. Judgment reserved.

ba
Member

pg

30.7.97 Mr R.Dutta for the applicant. Judgment and order pronounced. Application is disposed of in terms of the order. No order as to costs.

ba
Member

pg

11.8.97

Copy of the judgment has been sent to the D/Sec. for issuing the same to the parties.

Issue vide
D.No. 2707 to 2712
of 13.8.97.

ba

2.4.97 . . . Mr J.L.Sarkar for the respondents.

Mr M.Chanda mentions that Mr R. Dutta, counsel for the applicant is unable to appear today on account of personal difficulties. Mr Sarkar prays for further time to file written statement.

List for written statement and further orders on 23.4.97.

[Signature]
Member

23.4.97

Mr R.Dutta, learned counsel for the applicant and Mr J.L.Sarkar, learned Railway counsel for the respondents are present.

Written statement has not been submitted.

List for written statement and further orders on 21.5.97 as requested by Mr Sarkar.

[Signature]
Member

21-5-97

Written statement filed on behalf of respondent No. 1 to 3.

21.5.97

Mr R.Dutta for the applicant. Mr J.L.Sarkar, learned Railway counsel has submitted written statement. Case is ready for hearing.

List for hearing on 18.6.97. Mr Dutta may submit rejoinder, if necessary, with copy to Mr Sarkar.

[Signature]
Member

pg

[Signature]
23/5

1) Service Reports are still awaited
2) W/s statement - has not been filed

22/4

pg

31/4

1) W/s. has not been filed
2) Service Reports are still awaited

3) No appearance has been made

23/5

pg

24/4

Rejoinder has not been filed

17/6

pg

[Signature]
23/5

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

O.A. NO. 234 of 1996.
T.A. NO.

DATE OF DECISION 30-7-1997.

Shri Madhab Ch. Talukdar

(PETITIONER(S))

Shri R. Dutta.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri J.L.Sarkar, Railway counsel.

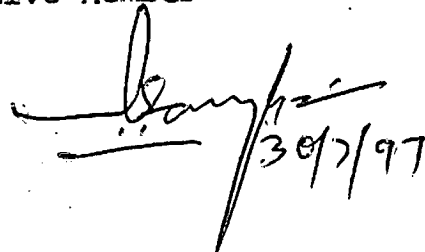
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *yes.*
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


30/7/97

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.234 of 1996.

Date of Order : This the 30th Day of July, 1997.

Shri G.L.Sanglyine, Administrative Member.

Shri Madhab Ch. Talukdar
son of Late B.C.Talukdar, resident of
Uzan Bazar, Guwahati. . . . Applicant.

By Advocate Shri R.Dutta.

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.
2. General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.
3. The Chief Commercial Manager,
N.F.Railway, Maligaon,
Guwahati-11. . . . Respondents.

By Advocate Shri J.L.Sarkar, Railway counsel,

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER

In this application the applicant seeks a direction on the respondents to pay him interest on the amount of gratuity and the amount of Commutation of Pension belatedly paid to him by the respondents at the rate of 18% per month with effect from 1.7.1994 till the dates of payment.

2. The facts in this case, in short, are :

The applicant retired from service on 30.4.1994 on attaining the age of superannuation. The gratuity of Rs.26,293/- and the amount of commutation of pension of Rs.74,183/- were paid to him on 10.9.1996 and 23.9.1996 respectively. While he was in service a disciplinary proceeding was initiated against him on 27.3.1990. The proceeding went on and the Enquiry Officer completed his enquiry on

1
30-7-97

4.10.1993. A copy of the enquiry report was supplied to the applicant on 6.4.1994 and the applicant furnished his reply on 20.4.1994. The proceeding was finally disposed of by the disciplinary authority on 23.8.1996. Thereafter, the amounts were paid to him.

3. Shri J.L.Sarkar, the learned Railway counsel, has submitted that interest is not payable by the respondents on any of the amounts. In respect of payment of gratuity he has relied on the Railway Board's letter No.F(E)III79/PNI/15 dated 13.9.1979 which states that where disciplinary or judicial proceeding is pending against an employee no gratuity is to be paid to such employee until the conclusion of the proceeding and final orders therewith issued. Further, if on conclusion of the proceedings the competent authority allows payment of gratuity, the gratuity will be deemed to have fallen due only on the date of the orders of the competent authority. In the case of the present applicant there was no delay in payment of the gratuity to the applicant after the disciplinary proceeding was finally disposed of by the competent authority. In respect of the payment of amount of commutation of Pension, he has submitted that pension was not commuted but full provisional pension according to relevant Rule 2308-A was paid to the applicant with effect from the date of his retirement till the pension was later on commuted on completion of the disciplinary proceeding aforesaid. In the facts of his case, interest is not payable on this amount also. Shri R.Dutta, the learned counsel appearing for the applicant, has disputed the contentions placed on behalf of the respondents. According to him it is not the intention of the aforesaid circular to deny interest on delayed payments of Gratuity and.

Commutation of pension where the respondents delayed completion of disciplinary proceedings against a retired employee much beyond any reasonable time after retirement. There are standing guidelines issued by the Railway Board giving time limit for completion of disciplinary proceedings. The above mentioned Circular will have to be read with the stipulations contained in the guidelines for to do otherwise would result in arbitrary and unjust action by the employer against the retired employee for no fault of his own as is the case in the present case of the applicant. According to him there cannot be unlimited time allowed to the respondents to delay the completion of disciplinary proceeding and thereby give them the scope to unduly deny payment of gratuity and regular pension. In short, Sri Dutta has submitted that this Circular/letter of the Railway Board cannot be made applicable in the facts and the circumstances of the case of the applicant. He has further submitted that since the delay in completion of the disciplinary proceeding after 30.4.1994 cannot be attributed to the applicant at all the applicant is entitled to the interest as prayed for.

4. The applicant has completed his part of the disciplinary proceeding on 6.4.1994. Thereafter it was for the disciplinary authority to finalise the proceeding and issue orders. The disciplinary authority took his own time and disposed of the proceeding on 23.8.1996. There is an inordinate delay of more than 28 months. Had the proceeding been completed earlier the applicant could have commuted his pension in time and received payment earlier. Further, Gratuity could have also been paid to him earlier. Delay in finalisation of the disciplinary proceeding in the facts

30.7-97


of this case is therefore a strong ground for the applicant to claim interest on the belated payment of gratuity and amount of commutation of pension. The question is, however, whether interest is liable to be paid by the respondents simply because there was a delay in finalisation of the disciplinary proceeding pending against the applicant which had resulted in delay of payments of the retiral benefits to him. It is settled law that interest on gratuity is liable to be paid by the authorities when there is failure on their part to make timely payment of gratuity due to administrative lapse. In this case, the applicant does not possess the materials to determine whether there was such lapse and the respondents have taken shelter under the timeless effect of the Railway Board's letter dated 13.9.1979 referred to above. It may be mentioned here another submission of Sri Sarkar, that is, according to him the applicant cannot take the delay in completing the disciplinary proceeding as a ground for claiming interest as he had participated in the proceeding and had never objected to the delay in its disposal. This contention is unacceptable because the applicant never knew before 23.8.1996 that despite the delay the respondents would not pay him interest on the belated payments of his retiral benefits. In the facts and circumstances above, I set aside the letter No.545-E/1/342/PN(O) dated 25.9.1996. Further I, direct the respondents to make enquiry into the circumstances and the reasons why the disciplinary proceeding pending against the applicant could not be completed between 6.4.1994 and 23.8.1996. A final order is thereafter to be issued to the effect whether based on the findings of the enquiry the applicant is entitled to interest on the amounts of Gratuity and Commutation of pension paid to him or on any of them. Before the order is issued, the respondents shall allow the applicant reasonable opportunity of personal hearing including placing

R
30.7.97

of materials on records before him. The order shall be issued by the competent authority of the respondents within 60 (sixty) days from the date of receipt of this order by the Respondent No.2.

5. If the applicant is still aggrieved with the order of the competent authority ^{he} is at liberty to approach this Tribunal again seeking appropriate reliefs, if so advised, without prejudice to the contentions of both sides in the present application.

6. The application is disposed of as indicated above. No order as to costs.


(G.L.SANGLYINE) 30/7/97
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

File No. 118/96
J. Datta
Mallgaon, Guwa

Central Administrative Tribunal
গুৱাহাটী বেঞ্চ
737
9 OCT 1996
Guwahati Bench
গুৱাহাটী বেঞ্চ

Application under section 19 of the Administration Tribunal Act, 1985)

O.A. NO. 234 /1996.

Shri Madhab Ch. Talukdar : Applicant.

- Versus -

The Union of India & Ors : Respondents.

I N D E X

Sl.No.	Description of documents relied upon	Annexure No.	Page.
1.	Application	-	02 to 11.
2.	Copy of Memorandum Charges	A/1.	12 to 16.
3.	Copy of Model time schedule	A/2.	17 & 18.
4.	Copy of Enquiry Report	A/3.	19 to 32. 33.
5.	Copy of Displeasure	A/4.	34.
6.	Hon'ble Tribunal's Order	A/5.	
7.	Applicant's representation dt. 16.09.96	A/6.	35 to 37. 38.
8.	GM/N.F. Rly's letter No. 545/E/1/342/PN(O) dt. 25.09.96.	A/7.	
9.	Judgement in O.A.No.210 of 1990	A/8.	39 to 43.

Recd
J.D.
O.A.
9.10.96

Madhab Chandra Talukdar

Signature

2. Jurisdiction of Tribunal :-

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

3. Limitation :-

The applicant further declares that the application is within the limitation period as it is a continuing wrong.

4. Facts of the Case :-

4.1. That, the applicant is a citizen of India and is therefore entitled to rights and privileges guaranteed under the Constitution of India.

4.2. That, the applicant was originally appointed as Commercial Apprentice, a group 'C' post, in the N.F. Railway in the year 1961 and by dint of his sincere service was promoted to the post of Asstt. Commercial Superintendent on 20.06.83 and was posted at New Guwahati, N.F. Railway. The post of Asstt. Commercial Superintendent, since 1992 has been redesignated, as Asstt. Commercial Manager. The applicant was subsequently transferred from New Guwahati to Maligaon Head Quarter and was posted as Asstt. Commercial Officer/Rates, Head Quarter from which post he retired on superannuation with effect from 30th April 1994.

4.3. That, vide No.E/74/GAZ/250/Con. dated 27.03.90 a memorandum of charges containing 12 Articles of charges were drawn against the applicant by the Chief Commercial Superintendent, N.F. Railway, Maligaon (a post since redesignated as Chief Commercial Manager), for various alleged omission and commission in the matter of assessment delivery and auction by the applicant while working at New Guwahati.

A copy of the said memorandum of charges is annexed herewith as

ANNEXURE - A/1.

4.4. That, the applicant submitted his reply on 22.06.90. Thereafter, the Chief Commercial Manager, N.F. Railway, Maligaon appointed Shri V. Kumar, Chief Bridge Engineer, N.F. Railway, Maligaon as Inquiry Officer vide letter No.E/74/GAZ/250/Con. dtd. 16.08.90.

4.5. That, in the year 1971, the Railway Board after taking into account the suggestion received from various Railway Administrations formulated a model time schedule for finalising the disciplinary proceeding laying down the time limits for the various stages of disciplinary proceedings and providing for finalising the disciplinary proceedings within a period of 202 days. The said model time schedule was circulated to the General Manager, of all Indian Railway, letter No.E(D&A)RG6-17 dated 08.01.71. Subsequently, the model time schedule

was revised to 150 days for finalisation of the disciplinary proceeding when the notice to show cause against the proposed penalty was dispensed with.

A copy of the model time schedule for finalising departmental proceedings is annexed herewith as

ANNEXURE - A/2.

4.6. That, although a preliminary enquiry is to be held under Rule 9 Sub-Rule 11 of the (Railway Servant Discipline and Appeal) Rule 1968 immediately following the appointment of the Inquiry Officer, the preliminary enquiry took place only on 07.04.93. The regular enquiry started only on 16.07.93 and completed on 04.10.93.

4.7. That, vide letter No.E/74/GAZ/250/Con. dtd. 06.04.94 the applicant was furnished with a copy of the enquiry report in which the Article of charges No.6, 7, 8, 10, 11 & 12 were held to be not proved and Article No. 1, 2, 3, 4, 5 & 9 held to be partially proved (for technical violation of some procedure) but without any ~~undue~~ undue loss to the Railway Administration.

A copy of the said enquiry Report is annexed herewith as ANNEXURE - A/3

4.8. That, the applicant submitted his representation on the enquiry report to Chief Commercial Manager, N.F. Railway, Maligaon on 20.04.94.

Cont 5.



4.9. That, no final decision on the disciplinary proceedings under Rule 10 of the Railway servant(Discipline and Appeal) Rule 196^{DP} was taken by the disciplinary authority(Respondent No.3) the Chief Commercial Manager, N.F. Railway, Maligaon before 30.04.94, the date of retirement of the applicant on superannuation although the period between the date initiation of the disciplinary proceedings and the date of retirement of the applicant was long 4 years.

4.10. That, the applicant retired from service on 30.04.94 and his gratuity and commutation of pension amount were with-held by the respondents. The applicant met the Chief Commercial Manager (Respondent No.3) number of times and requested for a final decision on the disciplinary proceeding without any result.

4.11. That, finding no alternative the applicant filed O.A. No. 112 of 1996 before this Hon'ble Tribunal praying for a direction to the respondents for finalisation of the disciplinary proceeding ~~by~~ and the Hon'ble Tribunal ^{DP} issued notice to the respondents for filing written statement.

4.12. That, thereafter, the General Manager, N.F. Railway(Respondent No.2) communicated a displeasure under No. E/74/GAZ/250/Con dt. 23.08.96.

A copy of the said communication dated 23.8.96 is annexed herewith as

ANNEXURE - A/4.

Cont ... 6.

4.13. That, thereafter the respondents have arranged payment of a sum of Rs. 69,293/- towards the gratuity and a sum of Rs. 74,183/- towards the ~~XXXXXX~~ ~~XXXXXX~~ commutation of pension money on 10.09.96 and 23.09.96 respectively.

4.14. That, the applicant withdraw the O.A. No. 112 of 1996 as he got relief prayed in the application.

A copy of the Order has passed by the Hon'ble Tribunal is annexed herewith as ANNEXURE - A/5.

4.15. That, as the payment of gratuity and commutation of pension money was delayed by more than 2 years without any fault on the part of the applicant and as no interest for delayed payment of gratuity and commutation of pension money was made as per settled law laid down by Hon'ble Supreme Court of India, the applicant represented to the GM/N.F. Railway, Maligaon on 16.09.96 for payment of interest in respect delay in payment of gratuity and commutation of pension money.

A copy of the said representation dt. 16.09.96 is annexed herewith as ANNEXURE - A/6.

4.16. That, the GM/N.F. Railway, Maligaon vide letter No.545/E/1/342/PN(O) dt.25.9.96 turned down the representation of the applicant for payment of interest.

A copy of the said letter dated
25.09.96 is annexed herewith as
ANNEXURE - A/7.

4.17. That, in a similar case in O.A.No.210
of 1990 Md. Ataur Rahaman -Vs- Union of India & Ors.
this Hon'ble Tribunal was pleased to issue directions
for payment of interest @ 12% ~~per annum~~ RD ~~per annum~~ RD
for delayed ~~payment~~ RD of gratuity arising out of disci-
plinary proceeding in which ultimately no punishment
was imposed.

A copy of the said judgement is
annexed herewith as ANNEXURE-A/8.

5. Ground for Relief :

5.1. That, the disciplinary proceeding agai-
nst the applicant was un-necessarilly delayed and pro-
longed. The proceedings started in the year 1990 and
should have been completed within a period of 150 days
as per the model time schedule circulated by the Rail-
way Board (Annexure - A/2).

5.2. That, the delay in finalising the dis-
ciplinary proceeding is due to negligence of the res-
pondents in as much as they did not ensure the atten-
dence of the presenting Officer, conclusion of enquiry
and taking a final decision.

5.3. That, the disciplinary proceeding could have been and should have been finalised within the service period of the applicant and there would have been no necessity of with-holding and delaying of payment of gratuity and commutation of pension money.

5.4. That, even after submission of enquiry report by the learned Inquiry Officer the respondents took more than about 2 and 1/2 years to take a decision on the enquiry report.

5.5. That, as there was no financial losses caused and as no misconduct was proved the disciplinary proceeding could not be continued under any rule after retirement of the applicant.

5.6. That, as the applicant retired from service on 30.4.94, the master and servant relation ceased to exist and the GM/N.F. Railway, Maligaon had no authority to communicate a displeasure to the applicant and the displeasure communicated to the applicant under (Annexure - A/4) is without any jurisdiction and therefore non-est.

5.7. That, the displeasure is not a punishment and the respondents have paid interest to Shri Ataur Rahaman the applicant of O.A. No.210 of 1990 themselves although a displeasure was communicated to Md. Ataur Rahaman even ^{before} ~~without~~ the intervention of the Court.

5.8. That, the applicant is entitled to the interest in respect of delayed payment of gratuity and commutation of pension money under law laid down by Hon'ble Supreme Court.

5.9. That, as the respondents paid interest in similar case, denial of the same is a clear case of discrimination and therefore violative of Article 14 and 16 of the Constitution of India.

6. Details of remedies exhausted :-

That, the applicant represented to the GM/N.F. Railway, Maligaon vide letter dt.16.09.96 which has been turned down by the General Manager.

7. Matters previously filed or pending with any other Court :-

The applicant further declare that he has not previously filed any application, Writ Petition or Suit in respect of the subject matter of the application in any other branch of the Tribunal or in any other Court nor such application, Writ or Suit is pending before any of them.

8. Relief Sought :-

The applicant humbly prays for :-

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

I, Shri Madhab Chandra Talukdar, Son of Late B.C. Talukdar, aged about 60 years, residing at Happy Village, Uzan Bazar, Guwahati-781003 do hereby verify the contents of para 4, 6, 7 & 10 of the application are true to my knowledge and belief and rests are my humble submission to the Hon'ble Tribunal and I have not suppressed any material fact pertaining to the matter of the application.

Madhab Chandra Talukdar

Signature of the Applicant.

Dated : 9.10.96.

Place : Guwahati.

Cont 12.

MP

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE
GENERAL MANAGER
GUMALATI-781011.

No. E/74/GAZ/250/Con.

Dated 27-3-90.

M E M O R A N D U M.

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

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

3. Shri Talukdar is further informed that he may, if he so desires, take the assistance of any other Railway servant (who satisfies the requirements of Rule 9 (13) of the Railway Servants (Discipline & Appeal) Rules, 1968) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s),

Shri Talukdar should obtain an undertaking from the nominee(s) that he (they) is(are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

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

Handwritten signatures and initials

Contd.

4. 1990
Maligaon, Guwahati-781011

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

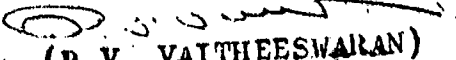
(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

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

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

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

8. The receipt of this Memorandum may be acknowledged.


(P.V. VAITHEESWARAN)
CHIEF COMMERCIAL SUPDT.

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

To
Shri M.C. Talukdar,
ACS/Rates/HQ.

(Through CCS/MLG.)

Alleged
Boyle

H. E. M. (1/10/68)
Manager, Chennai-700011

~~Best~~ Statement of Articles of Charges framed
against Sri Madhab Chandra Talukdar, the then
ACS/New Gauhati, now ACJ/ates, Head Quarters, N.
F. Railway, Maligaon.

Article - 1

That Sri Madhab Chandra Talukdar while functioning as ACS/NGC at New Gauhati from 18-6-83 to 17-9-87 had in consideration of his own and in collusion with the consignee of Consignment booked under Invoice/R.R.No.7/46430 dt. 17/18-9-83 Ex. MK3 to NGC issued a fictitious A.D. Report on 17-11-86 with back date 15-11-86, without physical verification and actual assessment of damages, if any, in the said consignment in violation of C.C.O.'s Circular letter No.C/65/0/37/ID dt. 29-6-84 indicating imaginary percentages of damages on 132 bags of rice which were unloaded, delivered and removed from NGC(NG) Goods Shed premises on 15-11-86 when Sri Talukdar was availing two days' sanctioned casual leave on 15th and 16th November/83, out of his Head Quarters at that time.

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Article - 2

That said Sri M.C. Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own and in collusion with the consignee of 31 consignments, detailed in Annexure 'A', issued fictitious A.D. Reports without physical verification of the consignments and actual assessment of damage/deficiencies, if any, thereon in violation of CCO/N.F.Rly/Maligaon's circular letter No.C/65/0/30/ID dt. 29-6-84 indicating imaginary percentage of damages/deficiencies since the consignments were unloaded, delivered and removed from NGC(NG) Goods Shed during the period of hours when Sri Talukdar was actively engaged in performing duties at outstation viz: ICD/AMJ and thereby caused loss to the Railway Administration.

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Article - 3

That said Sri M.C. Talukdar, while working in the aforesaid post during the aforesaid period had in consideration of his own, in collusion with the consignee of the consignment booked under Invoice/R.R.No. 207/676552 dt. 12-7-86 Ex. COP-NGC issued a fictitious A.D. Report on 1-8-86 without physical verification and actual assessment of damages, if any, on the 19 Bags Masur of aforesaid consignment in violation of CCO/N.F.Rly/Maligaon's Circular Letter No.C/65/0/30/ID dt. 29-6-84, indicating imaginary 27% damages, even though the consignment was removed from NGC(NG) Goods on 27-7-86, when Sri Talukdar was actively engaged in outstation duty at ICD/AMJ and thereby caused loss to the Railway Administration.

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Article - 4

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That said Sri H.C. Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own, and in collusion with the consignees of Consignments booked under Inv/R.R.No: 1/187670 dt. 21-7-86 Ex. Itpur to NGC and 85, 87/067803, 067804 dt. 29-3-87 Ex. CPC to NGC issued fictitious A.D. reports without proper verification/assessment of damages of all the alleged damaged bags, in violation of CCO/N.F. Rly's Circular letter No. C/65/0/30/ID dt. 29-6-84 indicating imaginary percentages of damages against certain numbers of alleged damaged bags which the parties had removed during the process of unloading from wagons and thereby caused loss to the Railway Administration.

Article - 5

149/

That said Sri H.C. Talukdar, while working in the aforesaid post during the aforesaid period had in consideration of his own issued assessment delivery reports in most perfunctory manner against 7 consignments, detailed in Annexure 'B', without observing the proper procedure of assessment delivery laid down in the Manual of Station Accounts, ICM Vol-II and CCO/N.F. Railway, Maligaon's Circular Letter No. C/65/0/30/ID dt. 29-6-84 and thereby caused loss to the Railway Administration.

Article - 6

That said Sri H.C. Talukdar, while working in the aforesaid post during the aforementioned period, had disposed of 17 consignments detailed in Annexure 'C', through Public Auction Sales at a very low price in consideration of his own deliberately fixing the reserve price of the consignments at the level of 17% to 45% below that should have been the reserve price, in contravention of Railway Board's instruction under their letter No. 77-10 III/53 dt. 17-1-83 circulated through CCO/N.F. Rly's letter No. C/65/0/93/ID/Recom-30 Pt. II dt. 28-29/1/83, causing loss to the Railway Administration.

Article - 7

That said Sri H.C. Talukdar, while working in the aforesaid post during the afore mentioned period had in consideration of his own, materially altered the size of the consignment of wheat which was underloaded at Godown No.1 of NGC Goods-shed on 9-12-86 from Wagon No. NFC 14328, Ex. Hoja to NGC, by adding the words "Approximate weight 80 quintals on 19-12-86 i.e. the date of auction sale of consignment, without putting any dated signature, in the Tally Book in continuation of unloading remarks recorded by Sri Bhagaban Kumar, CC/NGC on 9-12-86, to forestall any doubt as to the weight of the consignment shown in the auction sale document.

Article - 8

That said Sri H.C. Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own, and in connivance with S/Sri P.B. Choudhury, CGS/II and D.K. Bose, the then TIA/NGC arranged to record a reduced weight of 30 quintals in the auction records on 28-11-86, the date of auction, without actual weighing of the consignment of the 61 bags rice, against earlier recorded weight of 47 quintals that recorded on 15-10-86 i.e. on the date of the unloading the said lots by Sri P.B. Choudhury, CGS/II/NGC and thereby caused loss to the Railway Administration.

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Article - 9

That said Sri M.C.Talukdar while working in the aforesaid post during the aforesaid period, had in consideration of his own and in connivance with Sri D.K.Bose, the then TIA/MGC, arranged disposal of 2728 bags salt in 7 lots & through Public Auction Sale on 31-8-87 without determination/preparation of pre-determined reserve price list of the consignments in contravention of para 2235(3) of IRCM Vol-II and CCO/N.F.Railway's Circular No.C/65/0/93/ID/Recom-30 Pt.II dt.28/2-1-83 issued in reference to Railway Board's instructions under No.77 TC-III/53 dt.17-1-83.

(Salt)

Article - 10

That said Sri M.C.Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own and in connivance with Sarvasri D.K.Bose, the then TIA/MGC and P.B.Choudhury, C/S/II/MGC arranged preparation of 7 false bid sheets on 1-9-87 for submission as original bid sheets, in lieu of original bid sheets that were prepared at the time of auction sales held at MGC on 31-8-87 with a view to conceal the actual state of affairs to the higher authorities and thereby tampered with official records.

(Salt)

Article - 11

That said Sri M.C.Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own and in connivance with Sri D.K.Bose, the then TIA/MGC, disposed of 391 bags of salt that received in wagon No. MBE 22525 Ex.III to MGC by inserting the particulars of these 391 bags salt in the bid sheet of another 224 bags in wagon No.25952, which were sold through Public Auction on 5-9-86 and thereby cornered the value of the entire lot of 391 bags salt causing loss to the Railway Administration.


(Salt)

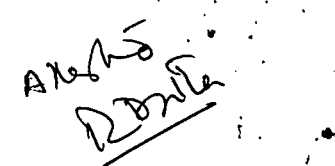
Article - 12

That said Sri M.C.Talukdar, while working in the aforesaid post during the aforesaid period, had in consideration of his own and in collusion with Sri D.K.Bose, the then TIA/MGC, and Sri P.B.Choudhury, C/S/II/MGC, arranged deposit of Rs.11050/- being the sale proceeds of 1466 bags salt in 3 lots (i.e. 471 bags, 615 bags and 370 bags) without selling the same through proper and fair Public Auction sale on 31-8-87 with a view to deceive the Railway Administration from getting due sale proceeds that would have fetched in proper and fair public auction sale.

(Salt)

The above acts of Shri M.C.Talukdar exhibit his lack of absolute integrity, devotion to duty and conduct unbecoming of a Railway or Government servant and he thereby violated the Rules 3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.


(P.V. VAI THEESWARAN)
CHIEF COMMERCIAL SUPDT.


R. D. Datta
Malgoon, Guwahati-781011

Model Time-schedule for finalising departmental proceedings in case of major penalties

Stage in the disciplinary proceedings	Time laid down in the D&A Rules.	Time limit for stages where no time limit is laid down in the rules.	Remarks.
(1)	(2)	(3)	(4)
1. Issue of charge-sheet .....	.....	.....	.....
2. Inspection of documents mentioned in the list enclosed with the charge-sheet and taking relevant extract therefrom, with the help of Assisting Railway Servant, if any, and asking for inspection of additional documents not mentioned in the list enclosed with the charge-sheet.	20 days Maximum (Sub-rules 5(1) and (111) of rule 9 of RS(D&A) Rules, 1968.	.....	.....
3. Time by which the employee should submit his written statement of defence to the charge sheet, submit a list of witnesses to be examined on his behalf and nominate an Assisting Railway Servant, if not already done.	10 days.	10 days.	No time limit has been laid down in the rules for submitting a list of witnesses and nomination of an Assisting Rly. Servant. Therefore, 10 more days as mentioned in Column 3 may be given to the employee at the discretion of the disciplinary authority.
Time by which the disciplinary authority should take a decision to hold an inquiry after considering the defence to the chargesheet.	.....	10 days (including two days for receipt of the statement of defence in the Office of the disciplinary authority)	.....

Akshay
 N. Datta
 Director
 Railway Board
 New Delhi

Annexure A/B contd

(1)	(2)	(3)	(4)
5. Time by which the date inquiry should be fixed after completion of all preliminaries.	20 days (Sub-rule 10 of rule 9)	.....	Though in the rule, maximum of 30 days have been allowed for this purpose, yet it is considered the 20 days would be quite sufficient for the employee to prepare himself for defence. This also does not infringe the rule as the rule is not rigid about this.
6. Time by which the inquiry should be completed and the inquiry officer should submit his report to the Disciplinary Authority.	.....	60 days	.....
7. Time by which the Disciplinary Authority, should take the decision and issue the notice of penalty.	.....	20 days	.....
8. Time by which the Disciplinary Authority should submit his report to the Disciplinary Authority.	50 days.	100 days.	Total 150 days.

A. K. S. Datta
 R. Datta, (Ind. J.)
 Mallagan, Guwahati-781011.

INQUIRY REPORT
IN THE DAR Case against Shri M.C. Talukdar, ex. ACS/New Guwahati (now working as ACM (Marketing)/Maligaon.

Shri M.C. Talukdar, the then ACS/New Guwahati now working as ACM (Marketing)/Maligaon was issued with a major penalty memorandum vide CCS/Maligaon's L.No. E/74/GAZ/250/Con dated- 27.3.90. The undersigned was appointed as Inquiry Officer vide CCS/Maligaon's Notification No. E/74/GAZ/250/Con dt-16.8.90. The Charge Sheet and certain other Documents were forwarded under CM(P)/Maligaon's L.No. E/74/GAZ/250/Con dated 23.4.91. The then Presenting Officer Shri S. Chakraborty was generally not available or was on sick list. He was replaced by Shri R. Chakraborty vide CM/Maligaon's Notification No. E/74/GAZ/250/Con dated 7.9.92.

2. A copy of the Statement of Article of Charges, Statement of Imputation of misconduct/misbehaviour, List of Documents relied upon and List of Prosecution Witnesses presented are enclosed as Annexure-I to IV respectively. The Preliminary Hearing of the case was held on 7.4.93. During the Preliminary hearings, the Charged Officer (C.O) denied each and every charge. The documents relied upon by the Prosecution were taken on record and a list of these indicating the coding is enclosed as Annexure-5.

3. The Regular Hearings were commenced w.e.f. 21-9-93 but were adjourned till 4-10-93 to enable the Prosecution to present one of its witnesses. In all, Prosecution presented 8 witnesses, marked as PW-1 to PW-8. No witness was presented by the Defence. C.O. was also examined on certain points by the I.O. Proceedings of the Regular hearings containing examination, cross-examination, re-examination of the witnesses as well as of the examination of C.O. by I.O. are enclosed as Annexure-6.

4. A few Documents were submitted by Defence. These have been taken on record on 4.10.93 and marked as DD-1A to B, DD-2, DD-3, DD-4 and DD-5. These are enclosed as Annexure-7. Copies of the Daily Order Sheets are enclosed as Annexure-8. Both the Prosecution as well as Defence submitted their written Briefs which are enclosed as Annexure-9 & 10 respectively.

5. The charges brought against Shri M.C. Talukdar pertain to the period while he was working as ACS/New Guwahati and also performed duty as Manager at ICD/Maligaon. Each of the Article of charges is considered individually in the succeeding paragraphs.

5.1 Article - 1

5.1.1 Prosecution has alleged that the C.O., in consideration of his own and collusion with the consignee, issued a fictitious A/D Report without physical verification and actual assessment of damages of 132 bags of rice consignment. He is thus alleged to have acted in violation of CCS/Maligaon's

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A.K. Das
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instructions (Exhibit P-8). The A/D Report was alleged to have been issued on 17.11.86 with a back-date of 15.11.86 when the C.O. was availing 2 days' sanctioned Casual Leaves on 15th & 16th Nov./86 out of his Hd. Qrs (P-1). Evidences have been produced vide P-5 & P-6 of the fact of release of wagons containing the consignment of 295 bags rice on 15.11.86 and all the consignments being removed from New Guwahati Goods Shed on the same day. Prosecution has also relied upon C.O.'s Statement vide Answer to Q.26 at the time of Fact Finding Inquiry (P-9A & B) wherein C.O. confirmed that he has availed the aforesaid Casual Leaves and returned to Guwahati only on the night of 15.11.86. Further, in Answer to Q.27(P-9A & B), he admitted to have recorded assessment delivery after ascertaining the fact of the case from the unloading Goods Clerks in response to the request by STAFFED.

5.1.2. C.O., vide his defence contained in the Written Brief (Annexure-10) has stated that the Prosecution has failed to prove the elements of consideration of his own, collusion with the consignee and recording imaginary percentage of damage without physical verification. He has further added that the assessment in this case was made by the staff and his approval was given later on. But he has not quoted any authority for such action, which is justified by him only on grounds of a so-called practice. In doing this, he would appear to have violated the relevant instructions in the said CCO's Circular. Thus his point vide the Written Brief that P.O. has not pointed out which part of CCO's Circular has been violated is superfluous.

5.1.3. From the above, it is established that the C.O. recorded the assessment after the goods were removed from the Goods Shed, thereby defeating the very purpose of assessment delivery by a Gazetted Officer, detailed instructions for which have been given in Exhibit P-8. These instructions enjoin upon the Gazetted Officer to personally examine the consignment for which A/D is to be made. However, the Prosecution has not produced any evidence in regard to quantum of assessment wrongly made, i.e., whether the assessed damages were excessive and whether any undue loss was caused to the railway. Further, no evidence was produced by Prosecution of C.O. acting in collusion with the consignee. C.O.'s Statement vide Exhibit P-9A & B that he recorded the assessment after the officials of STAFFED STAFFED approached him and told that they would be in trouble in their office if the assessment was not recorded, appears to be nearer to the truth.

5.1.4. In view of the above, the charge as framed, is not fully proved. However, it is proved that the C.O. made the assessment after the goods had left the Goods Shed and to that extent imaginary percentages of damages to rice bags were indicated.

5.2 Article-2

5.2.1. Prosecution's case is that the C.O. in consideration of his own and in collusion with the consignees of all the 21 consignments issued fictitious A/D Report without physical verification and actual assessment of damage/deficiency in violation of CCO's circular (P-8). These consignments are alleged to have been unloaded, delivered and removed from New Guwahati (MG) Goods Shed during the period of

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Malgaon, Guwahati-781011

hours when the CO was engaged in performing duties at out-station, viz., ICD/Amingaon. Prosecution has produced evidence by way of TA Journal for July/86 (P-10) of the C.O. A/D Reports had been issued by the CO on the days and during the timings when the CO was supposed to have been engaged in active duty hours at ICD/Amingaon and could not, therefore, be physically present to examine or assess the quantum of damage in the said consignment, as required vide Exhibit P-8. As per CO's answers at the time of Preliminary Investigation (P-9A & B), the consignments were not physically verified by him as regards extent of damage. CO's alleged instructions to the unloading Goods Clerks to release the consignments meant for A/D after getting information regarding extent of damage, etc., were denied by the concerned unloading Goods Clerk, during the preliminary investigation. These statements were confirmed by Witnesses PW-1 to PW-4 during the regular hearings vide their answer to Q.1 during their examination-in-Chief. The P.O. has also referred to the CO's statement vide P-9A & B "Yes, they (consignee) had given their applications for A/D directly to me after physical assessment done in my absence, goods removed and after my arrival at New Guwahati sometime on the same day and sometime later on" and that this indicated existence of willful collusion between the CO and the consignee.

5.2.2 In his defence, CO, vide his Written Brief (Annexure-10) has indicated that statements recorded at the time of Preliminary Investigations could not be relied upon as they were dictated/put to mouth by Vigilance officials. He has stated that A/D was made by CGS/ACS as per powers. He has further stated that the correct procedure of stacking the good bags and segregating the damaged ones was being followed at New Guwahati as brought out during the cross-examination of the Witnesses. He has pointed out that the Prosecution have not questioned that damage, deficiency was there and the same was reflected in the Tally Books. He has also stated that as ACS/New Guwahati, he had to look after the goods shed covering an area of about 1.5 Sq. Km, in addition to the Military siding, FCI Depot, DCOS/Pandu, Shillong Out Agency and also the work of Manager/ICD, Amingaon. He has further stated that the TA bill had been prepared after 3 months. Though timings were not accurate, according to him, TA claimed was 70% only and was not irregular. He has also stated that though he made more than one round trip to ICD/Amingaon from New Guwahati on certain days, he did not indicate the same with the detailed timings in his TA Journal. He has also mentioned that the then Area Officer (AO)/New Guwahati, Shri R.N. Kalita, now AM/Guwahati, could have been asked by Vigilance about these special circumstances and problems prevailing in Assam and also that the AO had seen the CO making assessment in spite of the difficult situation. He has also brought out that the Prosecution has not spelt out which part of CCO's circular dated 29.6.84 (Exhibit-P-8) has been violated by him and how.

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5.2.3 At the time of preliminary examination, it was established that the procedure stipulated vide Ex.P-8 for A/D would take certain time. As per CO's answer to Q.no.20 (P-9A & B) during the Fact Finding Inquiry that a time of 40 - 60 mts. will be required for assessment delivery of 40 bags of pulses. This has not been disputed by

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Mallgaon, Guwahati-781011

the defence. However, it is a fact that the prosecution has not stated which para (Ex.P-8) has been violated by CO, but the prosecution case relies upon the fact that CO was not present at that time when A/D was supposed to have been made as per the timings shown in his TA Journals. Vide P-8, it is not necessary for RPF staff to witness the assessment, when the assessment is granted by a Gazetted officer. This means that the officer making assessment must personally see the consignment and act as per para-2 under the heading "Assessment" in Ex.P-8. Thus, there is not much force in the CO's contention that the prosecution has not spelt out as to which para of CCO's circular (P-8) has been violated.

5.2.4 CO has contended that he made more than one round trip from New Guwahati to ICD/Amingaon during the day and that timings given by him in the TA Journal of July/86 were not accurate but only reflected TA claim of 70% per day, since the journals were filled up much later due to his preoccupation. An examination of the Placement Registers, Tally Books, Gate Pass Books and Gate Exit Registers produced by the prosecution proves that the consignments were supposed to have been assessed during the periods when the CO was not present in his Hd.Qrs/New Guwahati. The timings entered in TA Journal of CO are not observed to be identical on day-to-day basis. Thus, it would be too much of a coincidence that on the day assessment deliveries were supposed to have been made, the CO made more than one round trip to ICD/Amingaon and made no mention of it in his TA Journal. Thus CO's defence that he made more than one round trip to ICD/Amingaon in each and every case of A/D listed by the prosecution is highly improbable.

5.2.5 However, the prosecution has not been able to produce any evidence that the damage assessment made in any case of A/D, was on the high side and resulted in any undue loss to the railway and additional benefits to the consignees. No evidence of personal gain to the CO has also been produced.

5.2.6 In view of the above, it would appear that the defence given by CO during his preliminary examination at the time of Fact Finding Inquiry (Ans.to Q. 29 in Ex.P-9A & B) reflect the most probable situation, i.e., he asked the unloading Goods Clerks to release the consignments requiring CO's assessment after keeping information regarding extent of damages, etc., and the CO later on gave the assessment to the consignees. No doubt, the witnesses during the inquiry have denied that they followed this course of action. But this was obviously in their own interest. CO has also mentioned that he was over-worked during the period and might have been forced to adopt a short-cut procedure. Thus there is a preponderance of the probability possibility that CO failed to examine personally all the consignments or at least a part of the consignments for which assessment delivery was made. He, therefore, violated the instructions contained in CCO's Circular (P-8). However, no willful collusion with the consignee has been proved.

5.2.7 Therefore, the charge vide Article-2 is partially proved, viz., violation of provisions under the heading "Assessment" in Ex.P-8.

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R. Dutta. (Advocate)
 Malgaon, Guwahati-781011

5.3. Article-3

5.3.1 According to the Prosecution, CO in consideration of his own and in collusion with the consignee issued a fictitious A.D. Report without physical verification and actual assessment of damages of a Masurdal consignment in violation of CCO's circular vide Exhibit P-8. The charge has been supported by documents showing that the consignment was unloaded, delivered and removed from the Goods shed during the period when the CO was on active duty at ICD/Amingaon. At the time of Fact Finding Inquiry, CO, vide ans.to Q.4 (P-9A & B) had replied that he had not actually assessed the consignment when it was removed on 29.7.86. Further, vide ans.to Q.29(P-9A & B), the CO had stated that the unloading Goods Clerks were instructed to release the consignment which required CO's assessment after keeping the information regarding the extent of damage. Prosecution has alleged that there is no rule and instruction which provides for issue of A.D.Report without personal verification by the A.D. Granting official and that issue of the A.D. Report established collusion between the CO and the consignee.

5.3.2 An examination of documents, relied upon by the Prosecution namely, Placement Registers, Tally Books, Gate Pass Book and Exit Gate Register alongwith CO's TA Journal of July/86 proves that CO was not present in his Hd.Qrs at New Guwahati to personally assess the consignment unless the TA journal of the CO was false. The charge is similar to that vide Article-2 and CO vide his Written Brief (Annexure-10) has clubbed it with Article-2 for his defence. The pros and cons of the charges vide article-2 have already been discussed in the preceding paragraphs. Prosecution has not been able to produce any evidence that the CO while indicating the percentages of damages without physical verification caused any undue loss to the railway; nor any gain to CO, has been proved. However, there is a high degree of probability that the CO did not personally examine the consignment with a view to assess the damages. Thus the partial charge of issue of A.D. Reports indicating percentages of damages without personal verification and thereby violating instructions issued vide Ex.P-8 is proved.

5.3.3 In view of the above, the charge is partially proved.

5.4. Article-4

5.4.1 Prosecution has alleged that the CO, in collusion with the consignees of 3 consignments had issued fictitious A.D.Report without physical verification in violation of Exhibit P-8. The wagons were unloaded, delivery made and goods removed on the same day date by the consignees. Vide Answer to Q.20 during the FFI, CO stated that 40 to 60 mts.time would be required to assess 40 bags pulses. This fact has not been disputed by the defence. Further, some time will be required to stack the damaged bags separately, before assessment can be undertaken. Release timings of the wagons and removal of Goods by the consignees, as per documents presented by prosecution, clearly indicate that the proper procedure of stacking the damaged goods separately and thereafter carrying out an assessment could not have been made if the provision of Ex.P-8 were to be properly followed.

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R Duria, (Advocate)
Maligaon, Guwahati-781011

5.4.2 Further, it is alleged by the prosecution that the consignee had removed part of the damaged goods along with good portion of the consignment (Exhibits P-15 & P-7), i.e., 32 bags of Copra and 15 bags of Masurdal were not available at New Guwahati Gds Shed premises for examination, though they were declared as damaged by CO.

CO, vide his Written Brief (Annexure - 10) has clubbed the defence alongwith the Article-2 & 3, some aspects of which have already been discussed in paragraphs 5.2 and 5.3 above.

5.4.3 The Prosecution has not produced any evidence that the CO was not physically present at the time of unloading/delivery/removal of consignments. Further, if the Officer making A.D. is present, it may not be necessary for goods to be taken inside the Gds Shed, unless some facilities inside the Gds Shed are required to be utilised. Also if the Officer is present, consignee need not wait for unloading to be completed, before applying for A.D., since it would involve unnecessary delay. Thus, prosecution's contention that the CO did not personally verify the consignment is not proved. No evidence that assessment granted was more than justified, has also been furnished. Thus it has not been proved that there was any undue loss to the railway. Personal gain to CO has also not been proved. Thus, the charge of CO colluding with the consignees is not proved.

5.4.4 However, in view of para 5.4.1, it is most probable that the proper procedure of "Assessment" as laid down in para-2 of Ex.P-8 was not followed by CO namely, sample weighing, etc., while granting A.D., since it would have involved a much longer time than that which was really available.

5.4.5 In view of above, the charge vide Article-4 is partially proved.

5.5 Article-5

5.5.1 The Prosecution has alleged that CO in consideration of his own issued assessment delivery reports in most perfunctory manner against 7 consignments without observing the proper procedure of A.D. as laid down in CCO's circular (P-8) and thereby caused loss to the railway. In support of the charge, documents have been produced to establish that consignments were available in the Goods Shed after release time of wagons and before removal time (as per Gate Register) for a period varying from 0 to 40 minutes. The consignments consisted of commodities like pulses, cement & copra. This is alleged to be insufficient time for proper assessment delivery to be made, in terms of CCO's circular quoted above. However, no evidence of assessment of damages having been made on the high side and thereby undue loss being caused to the railway, has been produced.

5.5.2 In his defence, CO has brought out that the concerned witnesses have stated that the good and damaged consignments had been segregated. Removal of goods was done only after assessment or delivery was made against clear receipt.

Prosecution has brought out that CO, vide Art. 5.5.1 had taken the plea that the goods...
 R. Dutta. (Ad. Secy)
 Calcutta, Guwahati-781011

5.5.3 These allegations and charges are similar to Article-4. Defence vide Written Brief has raised the question of timings. There is nothing to disprove the record of timings. However, from the evidence presented by the Prosecution and in view of discussion in para 5.4.1, it is quite clear that the period available was inadequate for making a proper assessment in terms of CCO's circular (Ex.P-8). However, no evidence has been given that CO was not physically present to make the assessment and that the assessment resulted in any undue loss to the railway. No evidence of personal gain to CO has also been produced. Thus following the line of reasoning as per para 5.4.3 and 5.4.4, one would reach to similar conclusion as in Article-4.

5.5.4 Summarising, in all probability, the proper procedure of "Assessment" as per para-2 of CCO's circular (Ex.P-8) was not followed by CO while granting A.D. However, it is not proved that the assessment resulted in any undue loss to the railway. Thus the charge is partially proved.

5.6 Article-6

5.6.1 The Prosecution charge is that the CO had disposed off 17 consignments consisting of mustard oil, salt & vegetable oil through Public Auction Sale fixing the Reserve Price of these commodities at a very low value in consideration of his own. This action is alleged to be in contravention of Rly. Board's instructions issued vide exhibit P-35. The Prosecution case is that the RPs of the articles were fixed at a value much lower than 20% below the then prevailing wholesale market rate of identical commodity as per the guidelines contained in Exhibit P-35.

5.6.2 CO, in his defence vide Written Brief (Annexure-10) has brought out the followings:-

- (i) The condition of consignment which has been considered to be good by the Vigilance Branch is not factually correct. In a leading remark recorded by the Vigilance Branch it is stated that there was a doubt whether the Dalda was really Tripti Brand Dalda. The tins were mutilated and contents were not in a good condition. Further, no party preferred a claim against this consignment.
- (ii) The RP for M/oil had been intimated to CCO/Maligaon. The consignment was booked on 12/5/85 from Idgah t New Guwahati and it was auctioned on 9/8/85. CCO had referred back on fixation of the Reserve Price.
- (iii) CO had consulted the then DEM/Landing in regard to fixation of RP in salt consignments. He states that these were lying in a scattered condition for a considerable period after being unloaded from wagons which in turn had been detained in the yard for about a month. CO had submitted document DD-4 which is purported to be a photocopy of CO's Note dt-29.8.85 and contains the notation of the then ADM/Guwahati that DEM/Landing has approved fixation of Rs.6/- as RP for this salt consignments.

5.6.3 Prosecution has brought out that the CO, vide Ans. to Q.50 (P-9A & B) had taken the plea that the DEM/Landing confirmed CO's proposal of fixing Rs.20/- as RP of 25 bags. But this was denied by DEM/Landing vide Ex.P-4.

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R Dutta. (Advocate)
Maligaon, Guwahati-781011

Further, even if DD-4 is accepted to be genuine, it is not clear whether R.P. approved vide DD-4 refers to the consignee in question. Hence no cognisance can be given to CO's contention that he consulted the then DEM/Loading regarding fixation of R.P. for salt consignment.

5.6.4 Prosecution has not stated as to which para of Rly.Ed. Circular (P-35) has been violated by the CO. A perusal of this circular, however, reveals that the guidelines for fixing R.P. are contained in para Nos. 2, 3, 8 & 10. In the case under consideration, it is seen that para-2 is applicable. As per this para, the Officer responsible to conduct the auction will finally fix the RP. It is also mentioned in this para that reduction of about 20% of the verified market-price of the articles of almost similar nature, could be allowed. It is further stated that if the articles happens to be in damaged condition a further reasonable reduction in the R.P. commensurate with the condition of the articles could be made. Ultimately, the RP has to be fixed by the Auction conducting official before the date of the auction.

5.6.5 Prosecution has failed to prove that the articles were not in a damaged/deteriorated condition, since it is in that event only the CO can be held responsible for having caused a loss to the railway by fixing RPs much below the limit of 20% reduction. No evidence of personal gain to the CO has also been produced.

5.6.6 In view of above, the charge is not proved.

5.7 Article-7

5.7.1 The Prosecution has alleged that the CO, in consideration of his own, materially altered the size of a wheat consignment by adding the words "Approximate weight 80 Qtls." on 19.12.86 i.e., the date of auction sale of consignment without putting any dated signature in the Tally Book in continuation of unloading remarks recorded by CC/Now Guwahati to forestall any doubt as to the weight of the consignments shown in the Auction Sale document. During the preliminary inquiry, CO, vide Ans. to Q.61 (P-9A & B) had admitted that he had personally recorded the words "approximate weight 80 Qtls" in Ex.P-48 and had expressed regret for the same.

5.7.2 Defence has stated that even at the time of Preliminary Investigation, nearly a year had passed since the Auction Sale and CO was not able to recall the facts very well. In his written Brief (Annexure-10), CO has brought out that during inquiry proceedings, witness PW-6, vide Ans. to Q.1 on 24.9.83 stated that "Approximate weight 80 Qtls" was entirely in his own handwriting.

5.7.3 In view of the above, the Prosecution case has not been established. No evidence of personal gain to the CO was also produced by Prosecution. The charge is, therefore, not proved.

5.8 Article-8

5.8.1 According to the Prosecution, the CO, in connivance with S/Ch. PD. Chowdhury, the then CCS-II/Now Guwahati & D.K. Bose, the then TIA/Now Guwahati arranged to record a reduced weight of 30 Qtls. in Auction records on 28.11.86, the date of auction, without actual weighment of the consignment of 64 bags rice against earlier recorded weight of 47 Qtls., recorded on 15.10.86, i.e., the date of unloading of Prosecution case. No further evidence is submitted.

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R Dutt
R Dutt, (Advocate)
Mallagan, Guwahati-781014

Annex A/31m

the said lots and thereby caused loss to the railway. During the Fact Finding (Preliminary) Inquiry, CO, in reply to Q.7 (P-914B) stated that he had taken the weight as 30 qtls. by his personal assessment as proper weighment could not be done due to scattered and rotten condition of the consignment. During the inquiry witness PW-5, vide Ans. to Q.8 put by PO stated that the consignment was not so rotten that it could be dumped, rather it could be used as fodder. Prosecution has also stated that since the consignment was sold in auction at Rs.4510/-, CO's plea that the consignment was rotten and labour refused to handle it, could not be accepted.

5.8.2 CO, in his defence, has brought out in his Written Brief (Annexure-10) that PW-5, vide Ans. to Q.7 during his Examination-in-Chief by the PO stated that the consignment was so rotten that the labour refused to handle it at first, but later, on persuasion, they unloaded the wagons. Defence has further brought out that if the party wanted to take the weight of 47 qtls. instead of 30 qtls. after the auction sale, certainly CGS would not have permitted it nor it could have passed through the Gate.

5.8.3 Prosecution on one hand has stated that a high price was fetched for the auction sale and on the other they have questioned reduction in the weight of the consignment. It has been established that the consignment was damaged, but no evidence has been presented by the prosecution that the weight of the consignment was different from 30 qtls. as assessed by the CO on 28.11.86.

5.8.4 CO, vide his Written Brief has stated that the quantity was measured by him in presence of CGS/New Guwahati and Goods Shed staff and found to be 30 qtls. In the Tally Book, a quantity of 47 qtls was shown. It was the responsibility of CO to question as to what happened to the balance 17 qtls and to arrange to inquire into the discrepancy. The CO would thus appear to have failed to take action on the discrepancy which had come to light on 28.11.86.

5.8.5 No evidence of personal gain to the CO and of his collusion with the then CGS/New Guwahati and TIA/New Guwahati has been furnished.

5.8.6 In view of above, the charge as framed is not proved. However, CO prime-facie appears to be responsible for not inquiring into the matter of reduction in the weight of the consignment, as brought out in para-5.8.4.

5.9 Article-9

5.9.1 Prosecution has alleged that the CO in consideration of his own and in connivance with Sh. DK Bose, the then TIA/New Guwahati, arranged disposal of 7 lots of salt through Public Auction Sale on 31.8.87 without determination/preparation of pre-determined R.P. List of the consignment. This is alleged to be in contravention of provisions in IBCM & CCO's Circular (Ex.P-35). The Prosecution case relies upon contradictory statements of CO and the then TIA/New Guwahati recorded during the Preliminary Inquiry, as regards to the recording and production of the pre-determined reserve price list. Exhibit P-56 and P-57 have also been relied upon by the Prosecution to substantiate its case that the CO and the TIA tried to create the R.P. list which showed the R.P. at a slightly lower level as compared to the highest bids purported to have been received during auction sale on 31.8.87. No further evidence in support of Prosecution case was presented during the inquiry.

A. K. S.

R. D. S.

P. Dutta. (Advocate)
Minnon, Guwahati-781018

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Anno A/B/mt

5.9.2 Vide para 2235(3) of IRCM and P-35, it is necessary that a pre-determined reserve price of the goods to be auctioned should be fixed in advance of the auction date and that papers relating to fixation of R.P. should be kept in safe custody by the Supervisor of Lost Property Officer or in the office of CGC/CGS of Divisional Office. The form in which it is to be recorded, is not, however, specified.

5.9.3 CO, vide his written Brief (Annexure-10) has stated that the Auction was originally fixed to be held on 28.8.87 and Shri Dhar, the then TIA(HQ), Witness PW-8, was deputed to associate with the auction. But the auction was not held due to visit of MT/Rly. Board. During cross-examination on 24.9.88, PW-8, vide Ans. to Q.5 stated that he instructed CGS to refund the money to the intending bidders which was earlier deposited by them as the 'security deposit'. Defence plea is that if PW-8 was not aware of the reserve price then he would not have associated with the preliminary work of auction.

5.9.4 CO has also brought out that a joint assessment statement was prepared (copy of which was presented as Defence Document DD-1/A to DD-1/E) after check by officials including Vigilance. The assessment of extent of damage was even higher than that assessed earlier by CO. He further adds that if there was any doubt about the quantum of damage or about the prices, the Vig. Branch could have very well stepped lifting of the auctioned lots. The delivery of the materials was given to the bidders immediately afterwards. He has further added that the RPs were shown to the Vig. party by Shri Baso on 2.9.87 as soon as he arrived.

5.9.5 It appears from Prosecution's case that the CO was not able to produce a copy of the RP List immediately. But no clear evidence has been presented by the Prosecution that no Reserve Price existed prior to Auction Sale and that the small piece of paper (P-56) which was presented by TIA/New Guwahati containing TIA & CO's signatures was prepared after the auction Sale. IRCM and Rly. Board's instructions have been referred to by the Prosecution. However, these instructions are silent on the form and details required to be maintained. Certain details were furnished by CO. Further, Rly. Board's letter (P-35) stipulates simply that RP shall be fixed by the Auction conducting official before the date of Public Auction. The evidence presented does not establish that this was not done. Document P-56 purported to be the R.P. List was presented to the Vigilance party. Sh. Baso's Diary also contained the Reserve Prices which was seized by Vigilance. However, CO's contention that PW-8 waited till 18.30 hours on 28.8.87 and thereafter arranged refund of security money to the intending bidders does not conclusively prove that the RPs were communicated to him.

5.9.6 It is, however, a fact that CO was not able to immediately produce a copy of R.P. which should have been in his safe custody, as laid down in the rules and mentioned in para 5.9.2 above. No evidence of personal gain to the CO has been presented by the Prosecution. Further, it is a fact that the bidders were permitted to take delivery of the auctioned lot. Had the price fetched not been adequate, this would not have been permitted.

5.9.7 In view of above, the charge is only partially proved in that the CO did not ensure proper custody of the Reserve Price List (as brought out in para 5.9.6 above).

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Attorney

[Signature]

R. Dutta. (Advocate)
Mallgaon, Guwahati-781011

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5.10 Article-10

5.10.1 The Prosecution charge is that the CO in consideration of his own and in connivance with Sri DK Bose, the then TIA/New Guwahati and Sri PB Chowdhury, the then CGS-II/New Guwahati Gds Shed arranged preparation of 7 false bid sheets on 1.9.87 in lieu of original bid sheets that were prepared at the time of Auction Sale held at New Guwahati on 31.8.87, with a view to conceal the actual state of affairs and thereby tampered with official records. Only 4 sets out of 7 sets (Ex.P/51-A to G) were allegedly signed by the CO and the highest bidders. None of the bid sheets were signed by TIA. CO is alleged to have handed over the seven bid sheets on 2.9.87 to the Vig. Official and recorded on 30.12.87 that these were original bid sheets. But after being informed of Sh.PB Chowdhury's statement that these bid sheets were prepared on 1.9.87 and were not the original bid sheets, changed his statement. Vide Ans. to Q.65 (P-9A to B) at the time of Fact Finding Inquiry, CO stated that 4 nos. bid sheets on which his signatures existed were original and for the balance 3 nos. he was not sure. Prosecution alleges that this is admission of substitution of at least 3 sets of bid sheets. Further, according to PO, as per his written Brief (Annexure-9) pleas taken by Sri Bose (PW-7) in reply to Q.3 put by IO on 24.9.93 is not acceptable on the ground that both the documents P-56 & P-58 were written by Sri Bose. He has further pointed out that Sri PB Chowdhury (PW-5), during the inquiry in the course of his deposition on 23.9.93 (answer to Q.2 during Examination-in-Chief) stated that the bid sheets were original and the remarks were added in only one bid sheet marked P-51 regarding the condition of damage as per CO's instructions. At the time of Preliminary Inquiry, in Ans. to Q.14 of Ex.P-49, PW-5 had stated that the 7 sets of bid sheets were substituted on 1.9.87 on the dictation of Sri Bose, the then TIA/New Guwahati. However, PW-5, vide Ans. to Q.1 during examination by PO on 23.9.93 stated that he stood by the document P-49 except in regard to Q.9. Thus prosecution failed to produce evidence during the regular hearings that the original bid sheets were substituted.

5.10.2 CO, in his defence vide Annexure-10 has also brought out that Sh.PB Chowdhury, witness PW-5, in reply to Q.1 during his cross-examination by D.C. stated that his answer was dictated by the Vigilance official at the time of Preliminary Inquiry. He has further added that it is not a fact that the bid sheets were taken by Dy.CVO(T) from his custody. He added that all the papers had been taken by the Vig. Branch by issuing the seizure list on 2.9.87 and that he recorded a Note thereon on 30.12.87 when the papers were in the custody of the Vig. Branch. The Note recorded reads as under:

"The bid sheet which was in my almirah was handed over to Dy.CVO(T) on 2.9.87 as considered original bid sheet"

CO, in his Written Brief stated that he had not written that these were handed over personally by him. He has maintained that these were in the custody of Sh.PB Chowdhury, CGS-II/New Guwahati. Since he had not completed the same in all respect, they were not signed by him.

R. Dutta
 R. Dutta, (Adj. Secy)
 Maligaon, Guwahati-781011

Annex A/21/10

5.10.3 Vide answer to Q.1 by PW-5 during his examination by the PO on 23.9.83, the Witness denied his earlier statement that he prepared fresh bid sheet as per the dictation of Shri Bose. Though during his cross-examination, vide ans. to Q.1 he stated that the answers at the time of Fact Finding Inquiry (P-49) was dictated by the Vigilance official, it was later on clarified vide PW-5's answer to Q.1 put by PO during the re-examination that Vigilance official helped in framing the Witness' answer. No evidence of personal gain to the CO has been presented by the prosecution. It is also a fact that the bidders were permitted to take delivery of auctioned lots after the same was examined by a Joint Committee consisting of ACS and Vigilance officials, proved that the price fetched during auction were reasonable. Otherwise lifting of lots would not have been permitted.

5.10.4 In view of above, the prosecution has failed to prove that the original bid sheets were substituted and that the CO acted in connivance with the then TIA and CGS for personal gain. It is, however, clear that the CO as Auction Conducting official failed to ensure that all the Bid Sheets were signed by the highest bidders and were completed in time by the CGS/New Guwahati, immediately after the auction was over and also signed by the TIA and himself as per the rules. An examination of the bid sheet reveals that only C.R. Note No. may legitimately be left blank till the next day. But this could be entered the next day and TIA could affix his signature thereon, once again, this time, only for C.R. Note No. His answers at the time of Fact Finding Inquiry also do not indicate that he arranged for the preservation of the Bid Sheets properly, as required under the rules.

5.11.5 Thus the charge as framed is not proved. However, CO would appear to be responsible for not having ensured proper procedure being followed in regard to completion and preservation of the Bid Sheets.

5.11 Article-11

5.11.1 The Prosecution has alleged that the CO in consideration of his own and in connivance with Sri D.K.Bose, the then TIA/New Guwahati disposed off 391 bags of salt, the particulars of which were inserted in the Bid Sheet of another consignment of 224 bags of salt which were sold through Public Auction on 5.9.86 and thereby cornered the value of entire lot of 391 bags of salt causing loss to the railway. Prosecution relies upon the copy of the R.P. List (Ex.P-60) submitted by Sri D.K. Bose, the then TIA/New Guwahati, wherein the particulars of the lots auctioned on 29.8.86 did not include the quantity of the 391 bags received in wagen No.NK/BC-62525. It has been alleged that the particulars of these 391 bags were inserted by CO at a later date below the particulars of 224 bags indicated against Sl.No.2 in the R.P. Register (P-36). Prosecution has alleged that absence of the particulars of 391 bags in Ex.P-60 establishes that the particulars of 391 bags were entered by C.O. in the R.P. Register at a later date.

5.11.2 C.O., in his defence vide the Written Brief has brought out that the Reserve Price was fixed for 224 + 391=615 bags at Rs.11,500/- and if the reserve price was for 224 bags salt only, it would work out to Rs.51.33 which being very high would be absurd, since similar consignments had a comparatively very low reserve price.

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R. Dutta, (Advocate)
Mallgaon, Guwahati-781011

Method

5.11.3 Prosecution, in the Statement of Imputation have referred to CO's Note dt-5.9.86 "High price" as there was heavy competition amongst the bidders. It is, however, noted that this note is given below item no.3 in the Reserve Price Register which has no relation with the lots under consideration.

5.11.4 The Prosecution has also given a comparison of the R.P. for various lots of salt consignments in the statement of Imputation. For better appreciation, the R.P. per quintal has also been worked out and the results obtained are as under :-

S/No.	Item No. in RP list.	No. of bags.	Weight (Qtls) for the lot.	Total RP (Rupees).	RP (Rupees) per Qtl.
1	1	209	162.75	3,500	16.13
2	3	435	326.25	4,500	13.73
3	4	425	318.75	8,200	25.73
4	7	280	172.50	4,800	27.88

5.11.5 If Rs.11,500/- is considered as the R.P. for 224 bags weighing as 168 Qtls, the R.P. per quintal will work out to Rs.68.45 which is a very high figure compared to the values for other lots which are varying between Rs.13/- to Rs.28/-. The R.P. can be calculated similarly on per bag basis. The value works out to Rs.51.34 per bag as stated by CO vide his Written Exktf Statement. CO has stated that such a high rate could not be fetched by a lot consisting of 224 bags of salt only. Considering that the consignment of 391 bags was similar to the others, its weight could be taken as about 300 Qtls. Thus if Rs.11,500/- was fixed as the R.P. for the lots of 224 + 391 = 615 bags (168 + 300) = 468 Qtls.) as claimed by CO, R.P. per quintal works out to Rs.24.57, which is comparable to the R.P. fixed for the other lots.

5.11.6 In view of above and in view of the fact that the Prosecution has not been able to present adequate evidence that the particulars of 391 bags salt were added at a later date by the CO, the charge is not proved.

5.12 Article-12

5.12.1 It has been alleged by the Prosecution that the CO in consideration of his own and in collusion with Sri D.K. Bose, the then TIA/New Guwahati and Sri P.B.Chowdhury, the then CGS-II/New Guwahati arranged deposit of Rs.11050/- being the Sale Proceeds of 1456 bags salt in 3 lots without selling the same through Proper and fair Public Auction Sale on 31.8.87, with a view to deceive the railway from getting due sale proceeds that would have fetched in proper and fair Public Auction Sale.

5.12.2 The Prosecution case relies upon 3 sets of Bid Sheets out of 7 sets (Ex. P-51A to G) which were signed neither by the highest bidders nor by the CO and nor by the TIA. The amount of Rs.11,050/- is the Sale Proceeds consisting of 80% of the Bid amount for the aforesaid 3 sets of the bid sheet. Prosecution case is that the amount was collected without obtaining the signatures of the highest bidders, the Auction Conducting official and Auction Witnessing official, thereby proving that the consignments were not disposed off in an open and fair Public Auction Sale.

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 R. Dutta. (Advocate)
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Asst. AC/mtg.

5.12.3 CO, in his defence vide the Written Brief has denied the charges and stated that the Vig.Branch has not mentioned that w.e.f. 1-9-87 the sale of non-iodised salt was banned in the State of Assam and that by conducting the Auction Sale, a good amount of money was realised by the railway. Otherwise, some expenditure would have been incurred in dumping it.

5.12.4 As stated in para-5.9.4 above, as a result of the Joint Check of the auctioned lots by the officials including Vigilance on 4.9.87, the same were released to be lifted by the highest bidders. It would, therefore, appear that there was no loss to the railway, otherwise, the consignment would not have been released. However, it is a fact that the 3 sets of bid sheets were not signed by the CO and TIA. It was the responsibility of CO and TIA to ensure that the signatures of the highest bidders were taken on the bid sheets on the date of the auction and the bid sheets should also have been signed by himself and the TIA. Thus, the CO would prima-facie appear to be negligent in this regard, though there does not appear to be any loss to the railway.

In view of the above, the charge, as framed, is not proved.

6. FINDINGS

Summarizing, only partial charges are proved against the C.O. vide Articles - 1,2,3,4,5 & 9 of charges. In none of the Articles of Charges, undue loss to the Railway Admn. has been proved. No other charge, as framed vide Article of Charges, has been proved.

7. Other Matters Brought to Light:

Estimated

7.1 In para 5.8.4, it has been brought out that the CO failed to take action on the discrepancy observed in the weight of consignment of 64 bags of rice, since he ^{estimated} the weight as 30 Qtls. against 47 Qtls. recorded in the Tally Book.

7.2 Clear instructions need to be issued that ACS and TIA should sign the bid sheets on the same day as that of Auction Sale immediately after the fall of hammer and the fact of depositing of the 20% or full bid amount, as the case may, should be recorded clearly. C.R. Notes particulars may be entered the next day, which may once again be signed by TIA before he sends as copy of the auction report to FA & CAO.

7.3 Vide para 5.12.4, it has been brought out that the CO would prima-facie appear to be responsible for a procedural lapse of not ensuring that the highest bidders signed the three bid sheets (Ex.F-51D,E & G) immediately after the fall of the hammer. He himself did not sign these 3 sets of bid sheets and thus violated the extant orders.

DA:-As above.

(Vined Kumar)
Chief Track Engineer
(Ex.C.B.E./Maligaon)
INQUIRY OFFICER.

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Maligaon, Guwahati

- 33 -

Annexure A/4

N. F. RAILWAY.

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

No. E/74/G.M./250/Con.

Dated 23-8-96.

To
Shri M.C. Talukdar,
Retd. ACM/N.F. Railway,
"Happy Villa,"
Uzan Bazar,
Guwahati-3.

Sub: Communication of displeasure.
.....

During 1983-87, while working as ACS/NGC, you failed to ensure compliance of extant order/procedure regarding grant of assessment deliveries to a number of consignments as detailed in the Memorandum of charges of even number dated 27.3.90.

By your above act you failed to live up to the trust and faith entrusted on you by the Railway Administration.

Government's displeasure is, therefore, communicated to you for your failure as indicated above.

S.D. Gupta
(S.D. GUPTA)
GENERAL MANAGER.

A. N. Das
[Signature]

R. Datta. (A.D. 7877)
Maligaon, Guwahati-781011

Annexure A/G

Dated - 16-9-96

To,
The General Manager,
N.F. Railway, Maligaon,
Guwahati-781011.

Sub : Payment of interest for delay in pay-
ment of Gratuity and Commutation money.

Sir,

I have the honour to state the following for your immediate action.

1. That, I retired from service on 01.05.94 after superannuation. But my gratuity and commutation money was not paid on the plea that disciplinary proceeding against me was pending and same has been paid only in the month of Sept. 1996.

2. That, the disciplinary proceeding for which my gratuity and commutation money was detained was delayed abnormally on account of the Administration failure to arrange attendance of presenting Officer has recorded by the Inquiry Officer in the very first para of his report. Although, the Inquiry Officer was appointed on 16.08.90 preliminary hearing of the enquiry, which should have been done within 10(ten) days of the appointment of the Inquiry Officer, was held only on 7.4.93 and regular enquiry started on 16.07.93 and completed on 04.10.93. Thus, no action was taken between 16.08.90 and 07.04.93 a period of about 3 years only because the presenting Officer was not available or other reasons best known to the Administration. The intentional delay does not stop the Inquiry Officers report exonerating me on the charge of lack of absolute integrity or making out financial gains were submitted to the Administration by the end of year 1993 or early part of 1994, but I was furnished with a copy of enquiry report only on 08.04.94 which was replied by me on 20.04.94. Thereafter, no decision were communicated and I had to file the ^{CA} No. 112 of 1996 in the Central Administrative Tribunal, Guwahati Bench, for issue of a direction to the Administration for finalisation of the disciplinary proceeding. The Hon'ble Central Adminis-

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Maligaon, Guwahati-781011

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trative Tribunal admitted the case and issue notice to the Administration asking for written statement, and only then a displeasure was communicated to me ^{issued} ~~by~~ by the General Manager under No.E/74/GAZ/250/Con dt. 23.8.96 forwarded under General Manager/P, Maligaon No.E/74/GAZ/250/Con dt. 26.8.96. I have already expressed in a separate communication that the displeasure was beyond your jurisdiction in as much as master and servant relation has ceased to exist and therefore the same is non-est. Besides, without conceiving the authority and jurisdiction of the issuing the displeasure letter I may say that for this detaining my gratuity and commutation money should not have been restored to in as much as this displeasure could have been issued immediately on receipt of my remarks on the enquiry report which was submitted on 20.4.94. In this connection, I may pointed out the time scheduled prescribed for issuing final order on the enquiry report by the disciplinary authority is only 20 days in the model time scheduled prescribed by the Railway Board for finalisation of the disciplinary proceedings.

3. From the above, it can be seen that the enquiry was unusually delayed for long 6(six) years in spite of the Railway Board's model time scheduled and this abnormally delay was due to to negligency of the disciplinary authority, presenting Officer, Inquiry Officer and other concerned Officials. It has been settled that in such delays the Railway Servant is entitled to interest at the market rate for delay in payment of gratuity and other dues. In fact, in a similar case namely of same viz. ^{Alauar} ~~ACOS~~ Rahaman, Ex.ACOS under COS/Maligaon whose gratuity was also detained due to ^{pendency of} disciplinary proceeding ~~pending~~ and subsequently ~~ended in~~ communication of displeasure, was paid interest by the Administration itself, under letter No.522E/1/130/PN(O) dt 23-4-91.

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Maligaon, Guwahati-781011

- 37 - Annexure A16 Contd.

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4. In the above background I request you to please to sanction the interest for delay payment of gratuity and commutation money at the rate of 18% per annum at a very early date.

A very early action and reply thereto is solicited.

Thanking you,

Yours faithfully,

M.C. Talukder

(M.C. TALUKDER)
Retired ACM/N.F. Railway.
Happivilla, Uzanbazar,
Guwahati-781003.

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AKAS
R. Pathak

W. Pathak
Mallgaon, Guwahati-781011

-38- Annexure A/7



महाप्रबन्धक (का)
पूर्वोत्तर सीमा रेलवे
मालीगांव, गुवाहाटी-781011
GENERAL MANAGER (P)
Northeast Frontier Railway
Maligaon, Guwahati-781011

NO.545E/1/342/PN(O)

25th September, 1996

To
Shri M.C. Talukder,
Retd. ACM/NF Railway,
Happivilla,
Uzanbazar,
GUWAHATI:-781003.

Sub:- Payment of interest on delayed
• payment of Gratuity and
Commutation money.

Ref:- Your Appeal dtd.16-9-96, addressed
to the General Manager/NFR.

In terms of Railway Board's letter No.F(E) III78PN1/11 dtd.17-5-78, the DCRG can be kept withheld and only provisional pension is to be paid in cases where there are disciplinary/criminal proceedings ~~are~~ pending against the Railway servant on the date of his superannuation. Further, while instruction exist for payment of interest on delayed payment of DCRG, there is no rule/instruction for payment of interest on commutation money. Accordingly there was no procedural error in holding back DCRG and not to allow you commutation of your pension on the date of your retirement on 30-4-94 as a disciplinary proceeding arising out of vigilance investigation was pending against you since 29-3-90.

The said withheld payments have been released in your favour immediately after finalisation of the DAR proceedings on 23-8-96.

The issue of Govt.displeasure does not mean that you have been absolved of the charges or exonerated or the charges against you have been dropped altogether. Hence your claim for payment of interest on alleged delay in payment of Gratuity and Commutation money is not tenable and cannot be entertained.

This has the approval of Competent Authority.

M. Brahma
(M.BRAHMO)
DY.CPO/G
for GENERAL MANAGER/P

A. K. Datta
R. Datta

R. Datta. (Retd. NFR)
Maligaon, Guwahati-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.210 of 1990

Date of decision : The 29th day of July, 1991.

Md. Aatur Rahman, son of late Md. Ibrahim,
aged 61 years 3 months, retired Assistant
Controller of Stores, N.F. Railway,
Dibrugarh, resident of Niz Kadamani,
Dibrugarh-786 003, Assam

.... Applicant

-Versus-

1. Union of India, represented through
Secretary, Railway Board, New Delhi,
2. General Manager, N.F. Railway,
Maligaon, Guwahati-781 011
3. Controller of Stores, N.F. Railway,
Maligaon, Guwahati-781011
4. Shri J.S. Parmar, Chief Material
Manager, N.F. Railway, Maligaon,
Guwahati-781011

..... Respondents

For the applicant : Mr. R. Dutta, Advocate

For the respondents : Mr. B.K. Sharma, Standing Counsel
for the Railway Administration.

C O R A M:

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN

1. Whether reporters of local papers may be allowed to see
the judgment?
2. To be referred to the reporters or not? /v
3. Whether Their Lordships wish to see the fair copy
of the judgment?

....

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M. Dutta, (29/7/91)
Maligaon, Guwahati-781011

ACHARYA.J.

In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order communicated to the petitioner conveying the displeasure of the Controller of Stores(D.P.No.3) and also to issue a direction to the opposite parties for payment of interest to the petitioner for delayed payment of Death-cum-Gratuity (DCRG) and commutation money of pension at the rate of 12% from the date starting after expiry of two months from the date of retirement.

2. Shortly stated, the case of the petitioner is that he retired from the post of Assistant Controller of Stores with effect from 31.8.1937. On 20.8.1987 the petitioner was served with a chargesheet containing certain irregularities committed by him in the matter of purchases for the Stores of the N.F. Railway. Ultimately, the order of displeasure was communicated to him as stated above and that was after retirement. During the period of pendency of the departmental proceeding, the petitioner was not paid the DCRG and commuted value of the pension. Hence this application has been filed with the aforesaid prayer. In this case counter has not been filed even though several adjournments have been granted to enable the opposite parties to file counter. However, today the matter was taken up for hearing.

3. I have heard the learned counsel for the parties. It was pointed out to Mr. Dutta that this case suffers from claim of plural remedies, which was noted in the ordersheet dated 4.12.1990. Mr. Dutta, the learned counsel for the

petitioner submitted today that he does not press for the quashing of the order communicating the displeasure of the Chief Controller of stores. Mr. Dutta confines this case only in regard to the prayer for ^{grant of} interest. Hence this case neither suffers from the infirmity of claim of plural remedies nor does it ^{goes} outside the jurisdiction of a Single Judge. Therefore, I have heard the case on merits today.

4. The learned counsel for the petitioner, Mr. Dutta, informed me that the petitioner has been paid Rs.6675/- as interest on delayed payment of DCRS amounting to Rs.45745/- from 1.4.1938 to 13.1.1990. This is borne out from the contents of memo No.522 E/1/130/PN(O) dated 23.4.1991 under which the petitioner has been informed by the Chief Personnel Officer. Grievance of the petitioner on this issue is that even though the Supreme Court has ruled that interest at the rate of 12% should normally be granted, the Railway Administration has given an interest much below 12% and that too such interest should have been paid upto the date of actual payment. It is not known on what basis the dates have been fixed from 1.4.1938 to 13.1.1990. At the cost of repetition it may be said that the aforesaid communication is dated 24.4.1991. Without receiving this communication the petitioner cannot appear to ^{have} received the money. That apart, it is worthwhile to refer to some judgments of the Hon'ble Supreme Court, one of which is reported in 1985(1) All India Service Law Journal 106 (State of Kerala & Ors. -Vs- K. Padmanabham Nair). In the said case Their Lordships were pleased to observe as follows:

" The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be overemphasized and it

R. Dutta
R. Dutta

R. Dutta. (Advocate)
Mallagan, Guwahati-781011

would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

In the same case Their Lordships were pleased to further observe as follows:

" Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at the current market rate till actual payment."

5. In the case of Bakshis Singh -Vs- Union of India reported in 1990(1) All India Service Law Journal(CAT) 149 the Division Bench of this Tribunal had followed the dictum laid down by Their Lordships of the Supreme Court and had directed payment of interest at 12% per annum.

6. In the present case, ofcourse, there was some justification on the part of the Railway Authorities in withholding payment of DCRG etc. because of the pendency of the disciplinary proceeding has been disposed of and that of the departmental proceeding. But, now, that the Railway Authorities have paid interest to the petitioner on the gratuity money etc. it now remains to be considered as to what is the ^{quantum of} interest payable thereon. Hon'ble Supreme Court has ruled in several cases that 12% per annum should be paid. In the case of Padmanabham (Supra) it is to be found that it arose from the judgment of District Court and confirmed by the High Court of Kerala and the rate of interest granted by the District Court and High Court was 6% per annum. But Their Lordships of the Supreme Court stated as follows:

" Unfortunately such claim for interest that was allowed in the respondents'.....

Answer me A/B Court

respondent's favour by the District court and confirmed by the High Court was at the rate of 6% per annum, though interest at 12% had been claimed by the respondents in his suit. However, since the respondent acquiesced his claim being decreed at 6% by not preferring any cross objection in the High Court, it would not be proper for us to enhance the rate of 12% per annum which we were otherwise inclined to grant! (emphasis is mine)

From the observations of Their Lordships it is manifestly clear that the Hon'ble Supreme Court felt inclined to grant interest at the rate of 12% per annum in cases of this nature, and, therefore, it is directed that interest at 12% be given to the petitioner in the present case from 1.4.1938 to the date of actual payment.

7. It again remains to be considered as to how the date of actual payment is to be determined. The Railway Administration would give notice by Registered Post with A/D to the petitioner in his leave address furnished in his pension papers as to the date on which he should be present in the concerned office to receive payment and in case the petitioner does not appear on the said day then it is at his own risk.

8. Thus the petition is accordingly disposed of leaving the parties to bear their own costs.

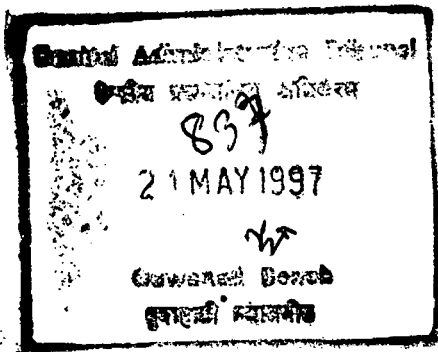
SD/- K. P. ACHARYA
29-7-91
VICE-CHAIRMAN

TRUE COPY
Deputy Registrar (Judicial)
Central Administrative Tribunal
Guwahati Bench, Guwahati

[Handwritten signature]
Mallagan, Guwahati-781011

110102/110102
F. No. 234/96
Chief Personnel Officer (C)
G. S. D. Office, Guwahati-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



O.A. No. 234/96

Shri M.C. Talukdar

-Vs.-

Union of India & Ors.

File by the
Respondents 1, 2 & 3
J. Sankar
Adv.

In the matter of :-

Written Statement on behalf
of the Respondents No.1, 2 and 3.

The Respondents No.1, 2, and 3 most respectfully
beg to state as under :-

1. That the Respondents have received the
copy of the Original Application filed by the
applicant and understood the contents thereof.

2. That in reply to the statement made in
Para 4.5, it is stated that the model time table
for finalising disciplinary proceedings was prescribed
by the Railway Board with a view to expedite fina-
lisation of disciplinary proceedings. These clearly
indicate that the Railway Administration is quite
aware about the finalisation of Discipline and Appeal
Rules proceedings expeditiously to avoid any hardship

As per copy
20/5/97
21/5/97

Original
10/11/90
10/11/90

to the delinquent employee. This is not a mandatory rule.

The disciplinary proceedings of the petitioner was ^{initiated} intimated on Vigilance angle which cannot be compared with the normal departmental disciplinary proceeding as cases initiated by the Vigilance Organisation are referred to the ^{Railway} Board for obtaining advice of the Central Vigilance Commission (CVC) at various stages.

3. That in reply to the statement made in Para 4.6, it is stated that since the Discipline and Appeal Rules proceeding was initiated on Vigilance angle and also that the applicant was holding Group 'B' post it was necessary to appoint the Inquiry Officer by the Railway Board to inquire into the charges brought against the petitioner. The Railway Board appointed Inquiry Officer on 23.5.90 but owing to transfer of the appointed Inquiry Officer to South Central Railway, a second Inquiry Officer had to be appointed by the Railway Board. It is mentioned here that even though the Memorandum of charges was issued vide General Manager's Memorandum No.E/74/GAZ/250/CON dated 27.3.90 the Charged Officer, that is petitioner, submitted his defence on 13.3.91^{only} that is, after a lapse of one year. It may be appreciated that the delay in finalising the disciplinary proceeding was attributable not only to the Railway Administration but also to the petitioner himself which also caused departure from the time-table of 150 days as mentioned by the petitioner ^{and the same} in para-4.5 cannot be applicable in this case of the petitioner.

VERIFICATION

I, Shrimati . . . M. BRAHMO

by profession Railway service working as

. . . Dy. C.P.O. G.S. aged about

. . . 36 . . . years do hereby verify that the state-

ments made in paragraph 1 to 7 are true to my

knowledge derived from the records which I

believe to be true.

Guwahati.

Dated 20.5.97.

M. Brahma
Signature
म. मुख्य कामिक अधिकारी
Dy. Chief Personnel Officer
पू. सी. रेलवे, गुवाहाटी.
M. F. Bly., Guwahati. 781011

(5) 49-

N. F. RAILWAY.

FS-480.

NO. E/207/0-XIII(C).

Pandu, dated, 1-6-1978.

To

All Heads of departments.

All DSS, DAOs, WAOs/WBQ & DERT & DVS/TSK.

All Distt. & Asstt. Officers of non-divisionalised offices.

N. F. Railway.

General Secretary, NFRMU/PNO with 40 spare copies.

General Secretary, NPREU/PNO with 35 spare copies.

Sub: Grant of provisional pension to retired railway servants against whom departmental or judicial proceedings are in progress.
...

A copy of Railway Board's letter No.F(E)III78PNI/11 dated 17-5-78 on the above subject together with its enclosure is forwarded for information and guidance. Railway Board's earlier letter dated 8-4-76 as referred to in their present letter was circulated under this office No.FS-400/E/207/0-IXII(C) dated 10-5-76.

Sd/-

for CHIEF PERSONNEL OFFICER.

(Copy of Railway Board's letter No.F(E)III78PNI/11 dt. 17-5-78).

Sub: Grant of provisional pension to retired railway servants against whom departmental or judicial proceedings are in progress.
...

Reference this Ministry's letter No.F(E)III74/TNI/10 dated 20-11-74 on the above subject (copy enclosed) in which it was clarified that the payment of provisional pension to the retiring railway servants against whom departmental or judicial proceedings has been instituted or are continued, is mandatory under Rule 2308(A)(CSR-351B)-RII. It has been brought to the notice of this Ministry that in spite of this clarification provisional pension is not being authorised by some administrative authorities where departmental/judicial proceedings are pending against a retiring railway servant. Since non-payment of provisional pension causes avoidable hardship to railway servants and the administrative authorities have no discretion in this matter, it is again emphasised that the provisional pension must be authorised in all such cases in accordance with the rule. Non-compliance with this rule will be viewed seriously by the Government.

2. Rule 2308(A)(CSR-351-B)-RII ibid inter-alia, provides that the provisional pension in such cases should not exceed the maximum pension which would have been admissible on the basis of the qualifying

contd...2.

[Handwritten signature]
20/5/78
Stt. Personnel Officer,
N. F. RAILWAY, PANDU.

service upto the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension. It has been reported that the discretion vested in the administrative authorities by this rule which lays down the ceiling for provisional pension, is being used by them to pay less than 100 per cent of the admissible pension. The matter has been considered and it has been decided that even in cases covered by the above mentioned rule, 100 per cent pension which is otherwise admissible to the railway servants should be authorised as provisional pension, as in cases of normal retirement. No gratuity shall however be paid at this stage.

3. The instructions contained in Min. of Finance's O.M.No.11(2)-EV(A)/76 dt.28-2-76 circulated to the railways vide this Ministry's letter No.F(1)III76PN1/2 dt.8-4-76, that the provisional pension will become final after six months, if not otherwise finalised, will not apply to the provisional pension granted in cases where departmental or judicial proceedings are pending. In this cases, the pension can be finalised only after the proceedings are concluded and decisions taken in the light of these proceedings.

4. This has the approval of the President.

(Copy of Ministry of Railways(Railway Board)'s letter No. F(E)III74PN1/10 dated 30-11-1974 addressed to all G.M.s etc. as per Standard Lists 'A' & 'B')

It has come to the notice of Railway Board that some of the administrative authorities are not following Rule 2208(A) (CSR 351-B)RII (introduced vide ACS No. 191-RII circulated through Board's letter No.F(1)620SR-1/2 dated 4-4-64) which provided that a Railway servant who has retired and against whom any departmental or judicial proceedings are instituted or are continued, shall be paid provisional pension. The payment of provisional pension under this rule is mandatory, but some administrative authorities appear to be under the impression that in cases where the departmental proceedings instituted against a railway servant were for a major penalty and in which ultimately no pension might become payable on the conclusion of the proceedings after his retirement under Rule 2208(CSR 351-A)-RII even the provisional pension need not be sanctioned. This view is against the letter and spirit of the rules. It is, therefore, requested that you may bring to the notice of administrative authorities under you the correct position under the rules so that the provisional pension under Rule 2208(A) (CSR 351-B)RII ~~ibid~~ is not denied to the retired railway servants.

Sd/-
(A. Krishnamurthy.)
Asstt. Director, Finance.
Railway Board.