

No. 34/6/2021-M.III
Government of India
Ministry of Mines
Mines-III Section

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Dated: 21.02.2022

MEMORANDUM

The President proposes to hold an inquiry against Shri K.K. Tardia, Regional Controller of Mines, IBM, Guwahati under Rule 14 of the CCS(CCA) Rules, 1965. 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-1). A statement of imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-2). A list of documents by which the articles of charges are proposed to be sustained are enclosed (Annexure-3). A list of witnesses by which the articles of charges are proposed to be sustained are enclosed (Annexure-4).

2. Shri K.K. Tardia, Regional Controller of Mines is directed to submit within 15 days of receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will be held only in respect of those articles of charge which are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri K.K. Tardia, Regional Controller of Mines is further informed that if he does not submit his written statement of defence on or before the time specified in Para-02 above, or does not appear in person before the inquiry authority or otherwise fails or refuse to comply with the provisions of Rule 14 of CCS (CCA) Rules, 1965 or the orders/directions issued in person of the said rule, the inquiring authority may hold the inquiry against him *ex parte*.
5. Attention of Shri K.K. Tardia, Regional Controller of Mines is invited to Rule 20 of the CCS (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri K.K. Tardia is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.
6. The receipt of this Memorandum may be acknowledged.

(By order in the name of the President)

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21.02.22
(Vivek Kumar Sharma)
Director

Encl: As above

To
Shri K.K. Tardia,
Regional Controller of Mines
Indian Bureau of Mines,
CCOM (MDR), Office,
Nagpur/Camp- Guwahati

[Signature]
स्मरजीत कुमार बिस्वास / Smarajit Kumar Biswas
निदेशक / Director
खान मंत्रालय / Ministry of Mines
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ANNEXURE-1**STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI K.K. TARDIA, REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, GUWAHATI.****ARTICLE - I**


That the Mines and Minerals (Development and Regulation) Act 1957 (in short MMDR Act 1957) has been amended vide Notification published on 28th March 2021 (No. 16 of 2021) in the Gazette of India Extraordinary, Part II, Section 1 as "Mines and Minerals (Development and Regulation) Amendment Act, 2021" thereby all cases covered under Section 10A (2) (b) including pending cases, the right to obtain prospecting license followed by, as the case may be, shall lapse on commencement of MMDR Amendment act 2021.

However, despite of MMDR Amendment Act 2021 came in to force with effect from 28.03.2021 and clear cut instructions issued by the Chief Controller of Mines (MDR) that all Mining Plans approved for fresh grant of leases falling under saved cases of erstwhile Section 10A (2) (b) of MMDR Act, 1957 have no relevance, which clearly means that all cases covered under Section 10A (2) (b) including pending cases, wherein mining plan has been approved but lease deed has not been executed the approval in all such cases shall be revoked immediately or in cases where in either mining plan has not been approved or lease deed has not been executed cannot be processed further.

However, Shri K.K. Tardia, Regional Controller of Mines, Guwahati has approved mining plans of five cases of Graphite leases initially provisionally, then accorded final approval which are falling in the ambit of the erstwhile Section 10A (2) (b) of MMDR Act, 1957. By approving the Mining Plan (post amendment on 28.03.2021) of five cases of Graphite deposits falling in the category of erstwhile Section 10A (2) (b) of MMDR Act, 1957, Shri K.K. Tardia, RCOM has acted against the provision of the MMDR Act, 1957 and thus acted against the spirit of law thereby causing loss to the exchequer.

ARTICLE - II

That on the clarifications sought on the matter of approval of Mining plans against the provision of the MMDR Act 1957, Shri K.K. Tardia through his e-mail dated 29.11.2021 has stated that section 5(2)(b) of MMDR Act-1957 is applicable to minerals listed in Part-A, B & C of First schedule and Fourth schedule of MMDR Act, 1957. Graphite is a mineral which is not listed either in Part-A, B & C of First schedule of MMDR Act, 1957 or in its Fourth schedule as a notified mineral. Hence, the State Government has right to grant, execute and register mining lease deed after satisfaction in respect of Graphite mineral which is not in violation of Section 5 (2)(b) of MMDR Act-1957. The contention of Shri K.K. Tardia, RCOM that the provision of Section 5 (2) (b) of MMDR Act, 1957 is not applicable to "Graphite" mineral is totally misconceived and wrong. It is fact that Section 5 (2)(b) of the MMDR Act 1957 is very much applicable to the mineral "Graphite". It shows that Shri K.K. Tardia, RCOM is not conversant with the factual provisions of the Acts and Rules or deliberately misinterprets the rules. This shows that he fails for devotion to his duties as per Rule 3(1) (ii) of CCS (Conduct) Rules, 1964 and his action are unbecoming to a Government Servant as per Rule 3(1) (iii) of CCS (Conduct) Rules, 1964. Further by acting against the established law, he has caused huge loss to the State


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exchequers as these five leases would otherwise have fetched huge revenue to the State Government through auction of mining leases.

ARTICLE-III

In spite of clear advice, Shri K.K. Tardia vide his letter no. IBM/GHY/41/Tech/2010-11/-Vol-II dated 31.12.2021 has not taken any remedial measures including revoking of approval of mining plan, but only struck to justification of his act of approving five number of mining plans post execution of mining lease deeds. Thus, Shri K.K. Tardia, Regional Controller of Mines has willfully disobeyed the directives of higher authorities and shown insubordination. Therefore, Shri K.K. Tardia, RCOM failed to maintain devotion to his duties and behaved in a manner unbecoming of a Government servant in contravention of Rule 3(1) (ii) and Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

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ANNEXURE-2

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF CHARGES FRAMED AGAINST SHRI K.K. TARDIA, REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, GUWAHATI.

ARTICLE-I

That the State Government of Arunachal Pradesh executed and registered mining lease deeds as per following:

S.No.	Name of the Depot and their extent in Hectare	Date of Execution of Mining Lease Deed
1.	Dodeserum Graphite deposit (183 hect)	29.01.2021
2.	Bopi Graphite Deposit (37 hect)	01.02.2021
3.	La Lamdak Graphite Deposit (79 hect)	29.1.2021
4.	Doni Graphite Deposit (196 hect)	29.1.2021
5.	Taliha Graphite Deposit (496 hect)	29.1.2021

As per section 5(2) (b) of Mines and Minerals (Development and Regulation) Act, 1957 (in short MMDR Act, 1957), no mining lease shall be granted by the State Government unless it is satisfied that there is mining plan duly approved by the Central Government or by the State Government in respect of such category of mines as specified by the Central Government for the development of mineral deposits in the area concerned. However, it is observed that all the aforesaid mining lease deeds have been executed without an approved Mining Plan and thus their execution are in contravention of the section 5(2)(b) of the MMDR Act, 1957. It is a matter well settled in law that any action taken by any authority in contravention to the provisions of the Act and Rules made there under is ab initio void. It has also been observed that all the aforesaid five cases of grant of Mining Leases are fresh grant of mining leases and falls within the ambit of erstwhile Section 10A (2) (b) of the MMDR Act, 1957.

In the meanwhile, the MMDR Act, 1957 has been amended vide Notification published on 28th March, 2021 (No. 16 of 2021) in the Gazette of India Extraordinary, Part II, Section 1 as "Mines and Minerals (Development and Regulation) Amendment Act, 2021" thereby all cases covered under Section 10A (2) (b) including pending cases, the right to obtain prospecting license followed by mining lease or mining lease, as the case may be, shall lapse on commencement of MMDR Amendment Act, 2021. Therefore, instructions in this regard were issued to all the Regional/Zonal offices vide letter no. M-11013/3/MP/90-CCOM-Vol-I dated 13.4.2021 from the Office of the Chief Controller of Mines (MDR), IBM Nagpur advising therein that Mining Plan approved for fresh grant of leases falling under section 10A (2) (b) of MMDR Act, 1957 shall be revoked where the lease deed has not been executed before the 28.03.2021 in light of amendment done in the section 10(A)(2)(b) of the MMDR Act vide notification dated 28.03.2021 proclaiming all cases covered under section 10A (2) (b) including pending cases the right to obtain prospecting license followed by mining lease or mining lease, as the case may be, shall lapse on commencement of MMDR Amendment Act, 2021.

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However, in spite of MMDR Amendment Act, 2021 came in to force with effect from 28.03.2021 and in spite of clear cut instructions issued by the Chief Controller of Mines (MDR) in this regard, Shri K.K. Tardia, Regional Controller of Mines, Guwahati has approved mining plans of above five cases of Graphite mining leases which are falling in the ambit of the erstwhile Section 10A (2) (b) of MMDR Act 1957. post execution of lease deeds thereby granting post facto approval in contravention of the provisions of MMDR Act, 1957 and Rules made there under, an action of which is illegal. The details of approval of these Mining Plans by Shri K.K.Tardia, RCOM is as under:

S.No.	Name of the Depot and their extent in Hectare	Date of provisional approval of mining plan	Date of final approval of mining plan
1.	Dodeserum Graphite deposit (183 hect)	19.5.2021	13.8.2021
2.	Bopi Graphite Deposit (37 hect)	19.5.2021	16.08.2021
3.	La Lamdak Graphite Deposit (79 hect)	20.05.2021	16.08.2021
4.	Doni Graphite Deposit (196 hect)	20.05.2021	17.08.2021
5.	Taliha Graphite Deposit (496 hect)	20.05.2021	12.08.2021

By approving the Mining Plan (post amendment on 28.03.2021) of these fresh grant of mining lease falling in the category of erstwhile Section 10(A)(2)(b) of MMDR Act 1957. Shri K.K.Tardia, RCOM has acted against the provision of the MMDR Act 1957 and thus acted against the spirit of law thereby causing loss to the exchequer.

ARTICLE-II

After the facts came to the notice of higher authorities of Indian Bureau of Mines and Ministry of Mines regarding illegal approval of Mining Plan by Shri K.K.Tardia, RCOM, the Chief Controller of Mines in Charge (MDR) , Indian Bureau of Mines, Nagpur had telephonically enquired the matter on 29.11.2021 with Shri K.K. Tardia, Regional Controller of Mines, Guwahati and directed him to submit the clarifications and status report especially on the aspects of lease status and its relevance in the context of commencement of MMDR (Amendment) Act, 2021 on 28.03.2021. Shri K.K. Tardia in his clarification submitted through e-mail dated 29.11.2021 has stated that section 5(2)(b) of MMDR Act-1957 is applicable to minerals listed in Part-A, B & C of First schedule and Fourth schedule of MMDR Act, 1957. Graphite is a mineral which is not listed either in Part-A, B & C of First schedule of MMDR Act, 1957 or in its Fourth schedule as a notified mineral, Hence, the state government has right to grant, execute and register mining lease deed after satisfaction in respect of Graphite Mineral which is not in violation of Section 5 (2)(b) of MMDR Act-1957.

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The contention of Shri K.K. Tardia, RCOM that the provision of Section 5 (2) (b) of MMDR Act 1957 is not applicable to "Graphite" mineral is totally misconceived and wrong. The Section 14 of the MMDR Act, 1957 specifies that Section 5 to 13 of the Act shall not apply to quarry leases, mining leases or other minerals concessions in respect of minor minerals. Section 3(e) of MMDR Act defines "Minor Mineral" as "building stones, gravel, ordinary clay, and ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral" and Graphite has not been declared as a minor mineral. Thus, not being declared as a minor mineral, provisions of Section 5 to 13 are applicable over the mineral "Graphite". In fact that "Graphite" Mineral is a non-metallic other than minor Mineral enlisted at item 22 of the Second Schedule of the MMDR Act, 1957 (Rates of royalty) as per Gazette of India published on 01.09.2014. Therefore, it is fact that Section 5 (2) (b) of the MMDR Act 1957 is very much applicable to the mineral "Graphite". This clearly shows that Shri K.K. Tardia, RCOM is not conversant with the factual provisions of the Acts and Rules and failed to clarify the stand taken by him. This shows that he fails for devotion to his duties as per Rule 3(1) (ii) of CCS (Conduct) Rules 1964 and his action are unbecoming to a Government Servant as per Rule 3(1) (iii) of CCS (Conduct) Rules 1964. Further by acting illegally, he has caused huge loss to the State exchequers as these five leases would otherwise have fetched huge revenue to the State Government through Auction of mining leases.

ARTICLE-III

After examination of the clarification dated 29.11.2021 submitted by Shri K.K. Tardia, Regional Controller of Mines, Guwahati, the Chief Controller of Mines, Indian Bureau of Mines, Nagpur, has advised him to take immediate remedial measures vide letter No.R-11013//MISC/MP-SOM(EZ)/2006-CCOM-Vol.II, dated 30.11.2021. It was clarified in the said letter dated 30.11.2021 that as per section 5(2) (b) of MMDR Act 1957, no mining lease shall be granted by the State Government unless it is satisfied that there is mining plan duly approved by the Central Government or by the State Government in respect of such category of mines as specified by the Central Government for the development of mineral deposits in the area concerned. It is clear that the lease deeds for all the above five areas have been executed in contravention of the section 5(2) (b) of the MMDR Act, 1957. It was also cited in the said letter that, as per erstwhile Rule 7(10) (c) of The Minerals (other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 (now amended vide notification G.S.R 775(E) dated 02.11.2021) which state that, upon issuance of an order under clause (a) of sub rule (6) or sub rule (9) for grant of a mining lease the applicant for such mining lease shall satisfy the conditions with respect to a mining plan specified in clause (b) of subsection (2) of section 5. It is imperative that all the conditions as stipulated in the Rule 7(10) of The Minerals (other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 are to be complied before the execution of the lease deed. In the instant case, the Mining plan was not approved before the execution of the lease deed. Therefore, it was made clear to Shri K.K. Tardia through letter dated 30.11.2021 that it is a matter well settled in law that any action taken by any authority in contravention to the provisions of the act and rules made there under is ab-initio void and therefore, advised to take immediate remedial measures in the light of amendment took place in MMDR Act, 1957 on 28.03.2021.

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Further in the past CCOM office vide letter No. M-11013/3/MP/90-CCOM-Vol-I dated 09.04.2021 has advised all Regional/Zonal heads that all the mining plans received for fresh grant of leases should be examined judiciously and under no circumstances the cases falling under saved cases of erstwhile section 10A (2) (b) of MMDR Act, 1957 should be processed after enactment of MMDR (Amendment) Act, 2021. It was also reiterated that all mining plans already received under erstwhile section 10A (2) (b) of MMDR Act, 1957 as fresh case and are under processing stage in regional offices should be disposed off on techno-legal basis immediately. Further, it was brought to the notice of all Regional/Zonal Heads including Shri K.K. Tardia, RCOM vide CCOM letter No. M-11013/3/MP/90-CCOM-Vol-I dated 13.04.2021 that all mining plans approved for fresh grant of leases falling under saved cases of erstwhile section 10A (2) (b) of MMDR Act, 1957 have become infructuous in case mining lease has not been executed before the date of commencement of MMDR Amendment Act, 2021.

In spite of clear advice, Shri K.K. Tardia vide his E-Mail dated 31.12.2021 addressed to Chief Controller of Mines has not taken any remedial measures including revoking of approval of mining plan, but only struck to justification of his act of approving five number of mining plans post execution of mining lease deeds. Thus, Shri K.K. Tardia, Regional Controller of Mines has willfully disobeyed the directives of higher authorities and shown insubordination. Therefore, Shri K.K. Tardia, RCOM failed to maintain devotion to his duties and behaved in a manner unbecoming of a Government servant in contravention of Rule 3(1) (ii) and Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

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LIST OF DOCUMENTS ON WHICH ARTICLES OF CHARGES FRAMED AGAINST SHRI K.K. TARDIA, REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, GUWAHATI ARE PROPOSED TO BE SUSTAINED:

(i)	Letter No.M-11013/3/MP/90-CCOM-Vol-I dated 09.04.2021 issued by Indian Bureau of Mines through email dated 09.04.2021 - P-15/A ✓	→ 12-13
(ii)	Letter No.M-11013/3/MP/90-CCOM-Vol-I dated 13.04.2021 issued by Indian Bureau of Mines through email dated 13.04.2021 - P-18/A ✓	→ 14-15
(iii)	Letter No.DGM-11021/6/2021-22266/2070-74, dated 14.10.2021 issued by Deputy Secretary (Geology & Mining), Govt. of Arunachal Pradesh. - P-19/A ✓	→ 16
(iv)	Letter No.DGM/MC/659/2021/2041-45, dated 25.10.2021 issued by Secretary (Geology & Mining), Govt. of Arunachal Pradesh. - P-20/A ✓	→ 17-18
(v)	Clarification of Shri K.K.Tardia, Regional Controller of Mines, Indian Bureau of Mines, Guwahati submitted by eMail dated 29.11.2021. - P-22-23/A ✓	→ 19-20
(vi)	Letter No.R-11013/1/MISC/MP-SOM(EZ)/2006-CCOM-Vol.II, dated 30.11.2021, addressed to the Regional Controller of Mines, Indian Bureau of Mines, Guwahati issued by the Chief Controller of Mines(I/C), Indian Bureau of Mines, Nagpur. - P-24-25/A ✓	→ 21-22
(vii)	Brief note on approval of five numbers of Mining Plans by Regional Office, Indian Bureau of Mines, Guwahati in respect of Graphite Mineral in the State of Arunachal Pradesh submitted to the Ministry of Mines vide letter No.N-11013/1/MISC/MP-SOM(EZ)/2006-CCOM-Vol-II, dated 15.12.2021 issued by the Senior Asst. Controller of Mines in the Office of Chief Controller of Mines, Indian Bureau of Mines, Nagpur. - P-29-30/A ✓	→ 23-25
(viii)	Ministry of Mines letter No.16/138/2021-M.VI, dated 27.12.2021 addressed to the Controller General, Indian Bureau of Mines. - P-31-33/A ✓	→ 29-30
(ix)	Letter No. IBM/GHY/41/Tech/2010-11/Vol-II, dated 31.12.2021 addressed to the Chief Controller of Mines, Indian Bureau of Mines, issued by Shri K.K. Tardia, Regional Controller of Mines, Indian Bureau of Mines, Guwahati. - P-31-33/A ✓	→ 31-32

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ANNEXURE-4

LIST OF WITNESSES ON WHICH ARTICLES OF CHARGES FRAMED AGAINST SHRI K.K. TARDIA, REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, GUWAHATI ARE PROPOSED TO BE SUSTAINED:

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