

Ministry of Mines
UPA No. 1637149
O/o JSCUT
Date 14/10/2022

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Government of India
Ministry of Mines

Dated the 14th October, 2022

OFFICE MEMORANDUM

Sub: Inquiry Report in respect of Shri K.K. Tardia, Regional Controller of Mines, Indian Bureau of Mines.

Ref.: Order No.36.6.2021-M-III dated 21.04.2022.

With reference to the above Office Memorandum, the Inquiry Report on the charges framed against Shri K.K. Tardia, Regional Controller of Mines, Indian Bureau of Mines, is enclosed along with Annexure (Page No.1- 303) for further necessary action.

Upendra C. Joshi
14/10/2022

(Upendra C. Joshi)

Joint Secretary to Government of India &
Inquiring Authority

Encl: Enquiry Report

Shri Vivek Kumar Sharma,
Director,
Ministry of Mines,
Room No.308, D Wing,
Shastri Bhawan,
New Delh-110001.

DR (SkB) - Yours pl.

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Inquiry Report of the Disciplinary Proceedings against Shri K.K. Tardia, Regional Controller of Mines, Indian Bureau of Mines, under Rule -14 of C.C.S (C.C. & A) Rules, 1965.

1. A disciplinary proceeding under Rule-14 of CCS(CC&A) Rules, 1965 was instituted against Shri K.K. Tardia, RCOM, IBM, vide memorandum No. 34/6/2021/M-III dated 21/2/2022, with Statement of Articles of charges and Statement of imputation of misconduct or misbehavior in support of the charges.
2. I was appointed as Inquiring Authority by the Disciplinary Authority, vide order no. 34/06/2021/M-III, dated 21/04/2022. Shri Manish K. Maindiratta, RCOM, IBM, was appointed as Presenting Officer by the Disciplinary Authority, vide order No. 34/06/2021-M-III, dated 21/04/2022.
3. Following documents have been listed by which the Statement of Articles of Charges framed against Shri K.K. Tardia, RCOM are proposed to be established/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.
 - (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.
 - (iii) Letter No. DGM-1102/6/2021-22266 2070-74 dated 14.10.2021 issued by Deputy Secretary, (Geology and Mining), Government of Arunachal Pradesh.
 - (iv) Letter No. DGM/MC-659 2021/2041-45 dated 25/10/2021 issued by Secretary, (Geology & Mining), Government of Arunachal Pradesh.
 - (v) Clarification of Shri K.K. Tardia, Regional Controller of Mines, Indian Bureau of Mines, Guwahati, submitted by email dated 29.11.2021.
 - (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.
 - (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 Assistant Controller of Mines in the Office of the Chief Controller of Mines, Indian Bureau of Mines, Nagpur.
 - (viii) Ministry of Mines Letter No. 16/38/2021/M-VI dated 27/12/2021 addressed to the Controller General, Indian Bureau of Mines.
 - (ix) Letter No. IBM/(GHY)/41/Tech/2010-II/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, IBM, Guwahati.

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4. There were no witnesses by whom the Articles of charges and Statement of imputation of misconduct or misbehavior in support of charges framed against Shri K.K. Tardia, RCOM, proposed to be sustained.
5. The preliminary hearing was held on 30.06.2022 and altogether 5(Five) hearings were conducted. However, the departmental enquiry was not held on 11/08/2022, due to sickness of the Presenting Officer.
6. On the very date of preliminary hearing, Shri K.K. Tardia, the Charged Officer (C.O.) pleaded not guilty of charges. However, the C.O. vide his email dated 07.06.2022, in response to the notice of hearing dated 30.06.2022 had requested to engage Shri Prave Ranjan Mishra, Advocate, Bar Council, Enrollment No. 0-303/2000, as Defense Assistant, during the enquiry proceedings. As the said request was without the prior approval of the Disciplinary Authority, the same was not allowed/considered. Moreover, as per the judgement delivered on 03/02/2021, by the Hon'ble Mr. Justice U. Kameswar Rao, of the Hon'ble High Court of Delhi at New Delhi in WP(c) 5292/2020 and CM No. 19101/2020 in the case of Biswasri Mukherjee, Petitioner VS. Punjab and Sind Bank, respondent the petitioner is not entitled to engage a Legal Practitioner/Lawyer to defend the case in the departmental enquiry.
7. Accordingly, the C.O. was advised to intimate the name, designation and address of the employee, if any, who will assist him during the enquiry. The C.O. was also advised that, in case, he has been allowed the assistance of a legal practitioner by the Disciplinary Authority, the name and address of such legal practitioner should be intimated together with a copy of the Letter of permission.
8. The C.O. vide his letter dated 07/07/2022, sought permission from the Controller General and Disciplinary Authority, endorsing a copy of the same to the I.A., to engage Shri Sharad S. Sapkal, Dy. Controller of Mines (Retd.), IBM, Nagpur, for the assistance during the hearing.

Thereafter, the regular hearings commenced from 21/07/2022 and concluded on 07/09/2022.

9. On behalf of the Disciplinary Authority, the Presenting Officer, produced 09(Nine) no. of listed documents, as mentioned above, (para-3). The said documents had been inspected by the C.O. and the same were taken on records.
10. The C.O. vide his letter dated 21.07.2022, requested to provide nine (9) documents. IBM, Nagpur and Guwahati were asked to furnish these documents. The documents received from IBM were made available to C.O. and P.O. for further submission from their side.

11.

(a) Statement of Articles of Charges and the Statement of imputation of misconducts or misbehavior in support of the charges are as under:

Article-I.

That the Mines and Minerals (Development and Regulations) Act, 1957 has been amended vide Notification published on 28/03/2021, as Mines and Minerals (Development and Regulation) Amendment Act 2021, enumerating that all cases covered under Section 10 A 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 the MMDR (Amendment) Act, 2021, which came into force w.e.f. 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 -10 A 2(b) of the MMDR Act, 1957, have no relevance, which clearly means that.

all cases covered under Section 10 A 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 5 (Five) cases of Graphite Leases initially provisionally, then accorded final approval which are falling in the ambit of the erstwhile Section-10 A 2(b) of the 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-10 A 2(b) of the 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 email dated 29.11.2021 has stated that Section 5(2)(b) of the MMDR Act, 1957 is applicable to Minerals listed in Part-A, B & C of first schedule and fourth schedule of the MMDR Act, 1957. Graphite is a mineral, which is not listed either in Part-A, B & C of First Schedule of the MMDR Act, 1957 or in its fourth Schedule as a notified mineral.

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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 the MMDR Act, 1957.

The contention of Shri K.K. Tardia, RCOM that the provision of Section-5 (2)(b) of the 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 (I)(ii) of CCS(Conduct) Rules, 1964 and his action are unbecoming of a Government Servant as per Rules-3(I)(iii) of CCS(Conduct) Rules, 1964. Further by acting against the established Law, 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

Inspite of clear advice, Shri K.K. Tardia, vide his Letter No. IBM/GHY/41/Tech/2010-II/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 numbers 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(I)(ii) and Rule-3(I)(iii) of CCS(Conduct) Rules, 1964.

(b) Statement of Imputation of Misconduct or misbehavior 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 the following;



S.No.	Name of the Depot & their extent in Hectare	Date of execution of mining lease deed
1.	Dodeserum Graphite Deposit (183ha.)	29.01.2021
2.	Bopi Graphite Deposit (37 ha.)	01.02.2021
3.	La Lamdak Graphite Deposit (79ha.)	29.01.2021
4.	Doni Graphite Deposit (196ha.)	29.01.2021
5.	Taliha Graphite Deposit (496ha.)	29.01.2021

As per section-5 (2)(b) of the MMDR Act, 1957, no mining lease shall be granted by the State Government unless it 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 & thus their execution are in contravention of the Section-5 (2)(b) of the MMDR Act, 1957. Any action, taken by any authority in contravention to the provisions of the Act & Rules made there under is ab initio void. It has also been observed that all the aforesaid five cases of grant of mining leases and fresh grant of mining leases falls within the ambit of erstwhile Section -10 A 2(b) of the MMDR Act, 1957.

The MMDR Act, 1957, has been amended vide Notification dated 28/03/2021, as "Mines & Minerals (Development & Regulation) Amendment Act, 2021, thereby all cases covered under Section-10 A 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 the 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 13.04.2021 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 10 A 2(b) of the MMDR Act, 1957 shall be revoked where the lease deed has not been executed before 28/03/2021 in the 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 10 A 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 the MMDR (Amendment) Act, 2021.

Inspite of the aforesaid amendment in the MMDR Act, which came into force w.e.f 28/03/2021 and 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 the above said 5 (five) cases of Graphite mining leases, which are falling within the ambit of erstwhile Section-10A (2)(b) of the MMDR Act, 1957, post execution of lease deeds, thereby granting post facto approval in

contravention of the provisions of the MMDR Act, 1957 and Rules made there under, which is termed as illegal action.

The details of approval of these mining plans by Shri K.K. Tardia, RCOM is as under;

S.No.	Name of the Depot & their extent in Hectare	Date of provisional approval of mining plan	Date of final approval of mining plan
1.	Dodeserum Graphite Deposit (186 ha.)	19.05.2021	13.08.2021
2.	Bopi Graphite Deposit (37) ha.	19.05.2021	16.08.2021
3.	La Lamdak Graphite Deposit (79 ha.)	20.05.2021	16.08.2021
4.	Doni Graphite Deposit (196 ha.)	20.05.2021	17.08.2021
5.	Taliha Graphite Deposit (496ha.)	20.05.2021	12.08.2021

By approving the mining plan (Post amendment on 28/03/2021), of the above fresh grant of mining lease falling in the category of erstwhile Section 10 A (2)(b) of the MMDR Act, 1957, Shri K.K. Tardia, RCOM, has acted against the provision of Law, thereby causing loss to the exchequer.

Article -II

The Chief Controller of Mines (Incharge) (MDR), Indian Bureau Mines, Nagpur had telephonically enquired on 29/11/2021, with Shri K.K. Tardia, RCOM, Guwahati, after the fact came to the notice of higher authorities of IBM and Ministry of Mines regarding illegal approval of Mining plan by Shri K.K. Tardia. Shri Tardia was directed to submit the clarifications and status report, especially, on the aspects of lease status and its relevance in the context of the commencement of MMDR (Amendment) Act, 2021, w.e.f on 28/03/2021.

Shri K.K. Tardia, RCOM, vide his email dated 29/11/2021, clarified 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 the MMDR Act, 1957 or in its fourth schedule as a notified mineral. Hence, further clarified that the State Government has right to grant, execute & register mining lease deed after satisfaction in respect of Graphite mineral which is not in violation of Section-5 (2)(b) of the MMDR Act, 1957.

The Contention of Shri K.K. Tardia, RCOM that the provision of Section-5 (2)(b) of the MMDR Act, 1957 is not applicable to "Graphite" mineral is totally misconceived and wrong. 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 the MMDR Act, defines "Minor Mineral". 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,

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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 & he failed to clarify the stand taken by him. This shows, he fails to show devotion to his duties as per rule-3(l)(ii) of CCS(Conduct) rules, 1964 and his action are unbecoming to a Government Servant as per Rule-3(l)(iii) of CCS(Conduct) Rules, 1964. 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, RCOM, Guwahati, the Chief Controller of Mines, Indian Bureau of Mines, Nagpur, has advised him to take immediate remedial measures vide letter no.R-11013/1/MISC/MP-SOM(EZ)-2006-CCOM-VOL-II dated 30.11.2021. Vide this letter dated 30.11.2021, it was clarified that as per section-5 (2)(b) of the MMDR Act, 1957, no mining lease shall be granted by the State Government unless it is satisfied that there mining plan duly approved by the Central Government or by the State Government in respect 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 5 (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 states 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 Sub-Section (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 the MMDR Act, 1957 on 28/03/2021.

The 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 & under no circumstances the cases falling under saved cases of erstwhile

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section 10 A 2(b) of the 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-10 A 2(b) of MMDR Act, 1957, as fresh case and are under processing stage in regional offices should be disposed of 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- 10 A 2(b) of the MMDR Act, 1957 have become infructuous in case mining lease has not been executed before the date of Commencement of the MMDR (Amendment) Act, 2021.

In spite of clear-cut advice, Shri K.K. Tardia vide his email 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 plan post execution of mining lease deeds.

Thus, Shri K.K. Tardia, RCOM has willfully disobeyed the directions of higher authorities. Therefore, Shri K.K. Tardia, RCOM failed to maintain devotion to his duties & behaved in manner unbecoming of a Government Servant in contravention of Rule-3(I)(ii) and Rule-3(I)(iii) of CCS(Conduct) Rules, 1964.

(c) Case of Prosecution:

The Presenting Officer, during the hearing narrated at length, about the allegations/charges levelled against Shri K.K. Tardia, RCOM through the Article of Charges. The Presenting officer vide his letter No. Nil dated 19.09.2022 has submitted written brief, which is detailed as under:

Article-I.

(i) Subsequent to the amendment in the MMDR Act, 2021, IBM Headquarter issued necessary advisory to all the Regional Controller of Mines, vide letter dated 09.04.2021(Ext-P-1), advising inter-alia that Section -10 A 2(b) has been amended and as per the amended clause-

"the cases covered under this clause including pending cases, the right to obtain a prospecting license followed by a mining lease or a mining lease, as the case may be, shall lapse on the date of commencement of the MMDR Act 2021".

Besides, it was also clarified in the said letter dated 9/04/2021, that all mining plans received for fresh grant of lease should be examined judiciously and under no circumstance the cases falling under saved clause of erstwhile section-10 A 2(b) of the MMDR Act, should be processed. Further, all

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mining plans already received under erstwhile Section- 10 A 2(b) of the MMDR Act, as fresh case and are under processing stage in regional offices should be disposed of on techno-legal basis immediately.

Again, another advisory was issued vide letter dated 13/04/2021 (Ext-P-2) to revoke approval of mining plan in all such cases where mining lease has not been executed before the date of commencement of the MMDR (Amendment) Act, 2021, as saved cases of erstwhile Section 10 A 2(b) of the MMDR Act, 1957 have become infructuous.

However, inspite of clear instructions, the C.O. Shri K.K. Tardia, RCOM, Guwahati approved the mining plans, which were under the ambit of erstwhile section 10 A2(b) of the MMDR Act, initially provisionally in May 2021 and later gave final approval in August, 2021.

Thus, the action of approving the Mining Plans against the provisions of the MMDR (Amendment) Act, 2021, speaks about his action against the spirit of Law, thereby causing loss to exchequer by way of loss in terms of delay of auction and thereby causing loss of royalty, NMET, DMF, loss of premium of Government on auction etc.

During the hearing, C.O. Shri K.K. Tardia, reiterated that his office had written two letters through emails dated 10.05.2021 and 19.05.2021 to the Chief Controller of Mines (MDRD), IBM, Nagpur and he did not receive any reply in this regard. It was however argued by PO that since, the advisory letter were issued on 09.04.2021 and 13.04.2021 to all the RCOMS, stating, inter-alia under no circumstances, the case falling under saved clause of erstwhile Section 10 A 2(b) of the MMDR Act, should be processed, there was no need of any reply to the letters of the C.O dated 10/5/2021 & 19/5/2021.

It was also contended by P.O. that the letter issued by CCOM /IBM dated 30.11.2021, had specific mention of the fact that the mining lease deeds, were indeed executed in contravention to 5(2)(b) of MMDR Act 1957 by the State Government and actions taken in contravention to the provisions of the act and rules made there under, are ab-initio void. He also referred to the letter issued by IBM dated 13.04.2021, which directed all the RCOM's that Mining Plan approved for fresh grant of leases falling under section 10 A 2(b) shall be revoked where the lease deed has not been executed before 28.03.2021. Accordingly, RCOM was directed to take the remedial action.

P.O. further, stated that since D.O. needed advice from the COM(MDRD), IBM, Nagpur and once he had referred the matter to Headquarter, he should not have taken decision in the matter without receiving direction from the Headquarter.

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ii. **Article – II**

After the facts about approval of the five mining plan came to the notice of the Ministry of Mines and in turn of IBM/Nagpur, IBM headquarter enquired about the said matter from RCOM, Guwahati on 29.11.2021, telephonically and sought clarification (Ext.-P-4). In response, the RCOM Guwahati, clarified vide email dated 29.11.2021 (Ext.-P-5) that provision of Section 5(2)(b) are not applicable for the mineral "Graphite", as it is not listed in Part-A, B, C and First and Fourth Schedule of the MMDR Act and hence, the State Government has the right to grant, execute and register mining lease deed after its satisfaction in respect of "Graphite" mineral, which is not violation of Section 5(2)(b) of the MMDR Act, 1957.

The mineral "Graphite" has not been declared as "minor" mineral as per law. As such, RCOM, Guwahati, in contravention of Section 5(2)(b) of the MMDR Act, approved the mining plan.

Thus, the above action on the part of the C.O., Shri K. K. Tardia, failed to prove his devotion to duties and his acts were unbecoming of Government Servant.

iii. **Article III**

The Chief Controller of Mines, IBM issued a letter dated 30.11.2021, (Ext-P.6), in response to the clarification date 29.11.2021 of the RCOM, Guwahati.

P.O. elaborated that the letter issued dated 30.11.2021 has clearly mentioned the legal position regarding violation of MMDR Act and other provisions of MCR, hence the execution of mining leases by State Government was ab-initio void and further directed RCOM/Guwahati to take immediate remedial action citing in his letter the earlier directions issued vide letter dated 13.04.2021. However, in spite of the advice issued to him on 09.04.2021, 13.04.2021 and a detailed letter dated 30.11.2021, about the legal position, he did not take any remedial action, despite the power been vested with him. Instead, he struck to his justification for approval of mining plans vide his email dated 31.12.2021 (Ext-P.9). Therefore, the above action on the part of the C.O. speaks about his wilful disobedience of the directives of higher authorities and showing insubordination.

During the hearing, C.O. mentioned that the email dated 19.05.2021 issued by IBM, Headquarter, was a pressure for early disposal of the pending mining plans. To this effect, P.O. stated that the same is nothing but routine follow up and review by the Headquarter, seeking from each and every office, under IBM, Headquarter, and there was no such pressure on the C.O to dispose of the mining plans without examination.

As the C.O. did not take remedial action, despite issuance of the letter dated 30.11.2021 by the CCOM, Nagpur, the Competent Authority initiated the punitive action, after receipt of the replies dated 31.12.2021 from the C.O.

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(d) Case of Defence: -

(i) Article - I

In the beginning, during the course of hearing, C.O./D.A. explained that, 10 A 2(b) cases are those cases in which either the Reconnaissance permit (RP) or Prospecting License (PL) permissions were granted prior to MMDR Amendment Act of 2015 and these were permitted for up gradation to higher level of exploration/mining, (either to PL or Mining Lease (ML)), as the case may be, on the fulfillment of certain conditions as stipulated in the MMDR amendment Act 2015. These cases are also called saved cases, and the State Government after examining the requisite conditions, is empowered for upgrading these cases to PL or ML. However, with the Amendment of 2021, these saved cases have all lapsed on 28.03.2021.

In the written brief C.O. mentioned that, in view of the instructions dated 13.04.2021, which were issued by IBM headquarter, the RCOM/Guwahati had revoked 3 (three) mining plans in May-2021, for which no mining lease had been executed. The said work was done by the then RCOM, but these 5(five) Graphite cases being typical, the same were kept in abeyance and one case (Taliha) was referred to Headquarter for seeking advice on 10/5/2021. The C.O., Shri K.K. Tardia, took charge of RCOM/Guwahati on 10/5/2021, and he also sought advice from Headquarter about 4(four) cases on 19.05.2021. In the meantime, RCOM/Guwahati also received an e-mail on 08/05/2021, from DGM, State Government, Arunachal Pradesh, informing execution of mining leases in five cases.

C.O./D.A. further mentioned that IBM vide their letter dated 13.04.2021/(Ext.-P-2) directed that the Mining Plans approved for fresh grant of leases falling under saved cases of erstwhile Section 10 A 2(b) of MMDR have become infructuous, in case Mining Lease has not been executed before the date of commencement of the MMDR Amendment Act 2021 on 28.03.2021 and advised to revoke the approval of such cases. In this context, D.A. further submitted that regarding the five cases for which mining plans were under consideration, the mining leases were already executed by the State Government which was communicated by the State Government in May 2021. Since the mining leases were already executed, and the directions issued by IBM/headquarter vide their letter dated 13.04.2021, were only for the cases where mining lease were not executed, therefore C.O. had sought advice from IBM headquarter.

The IBM Headquarter, was however following up regularly with RCOM regarding disposal of pending mining plans and delay in finalisation was viewed seriously about the pendency of a mining plan i.e. (Taliha), as per the letter dated 19/5/2021. This situation further made him approve these mining plans within stipulated time. Further, during Covid-19 Pandemic, provisional approvals were to be granted as per Headquarter letter dated 13/5/2021.

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The provisional as well as final approvals of these 5(five) cases were informed to the Headquarter but at no stage the mining plan approvals were objected to, despite knowing the fact that the leases were granted without mining plans.

The C.O. submitted that the MMDR Amendment Act 2021, nowhere prohibited approval of mining plan for already granted leases and actions were taken in right spirit to abide the orders of superiors and avoid pendency. Hence, he did not act against the spirit of law. He further submitted that the letters dated. 09/04/2021 and 13/04/2021 of the CCOM were about the approved mining plans for which leased have not been executed before 28/3/2021, whereas in these 5(five) cases, mining leases were executed by State Government before 28/3/2021 in January and February, 2021.

Regarding loss of exchequer, C.O./D.A. submitted that the decision of granting lease and its execution was done by State Government and thereby these leases cannot be auctioned. Since the decision for execution of mining lease was solely of the State Government and all the processes of auction are also to be completed by State Government, therefore, loss of exchequer, if any, cannot be attributed to C.O.

Hence, humbly denied the charge in this Article.

(ii) Article-II.

During course of hearing, C.O/D.A. stated that it was wrong interpretation of the provisions of Act and rules. However, it was totally unintentional. Also, C.O. accepted the charge that he was not conversant with the rules and there was no deliberate misinterpretation of the rules on his part.

Further, C.O., in his written brief, has mentioned about his less acquaintances and less knowledge of the major changes in the law and the fact that he could not concentrate over the office work because of personal health issues, family problems. Moreover, he got affected by Covid (Corona virus) too.

Regarding loss of exchequer, C.O/D.A. submitted that the decision of granting lease and its execution was done by State Government and thereby these leases cannot be auctioned. Therefore, loss of exchequer, if any, cannot be attributed to C.O.

(iii) Article -III

During hearing stage C.O. denied the charge of disobedience and insubordination and mentioned that all through his service he had always been obediently following the directions of his seniors. Regarding this specific case, he cited various reasons such as he was holding administrative position immediately before the posting as RCOM/Guwahati and he did not had enough support in the

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office due to prevalence of COVID. All these circumstantial situations affected his decision making which resulted in wrong interpretation of rules and provisions.

C.O/D.A. further submitted that vide letter dated 30.11.2021, CCOM IBM had advised for remedial action however there was no mention of the specific action to be taken in these cases. This further created confusion and ambiguity and Shri Tardia RCOM/Guwahati explained all the facts and reasons of his actions vide letter dated 31.12.2021. Immediately after receiving his letter dated 31.12.2021, without giving any further chance for corrective action, C.O. was suspended.

C.O. also submitted that all the mining plan approvals were in the knowledge of superiors and he acted as per their instructions for transparent and expeditious disposal of mining plans within 45 days.

Though he was advised to take remedial action because leases were granted against the Section 5(2)(b) of the Act, however, as regards remedial action (corrective actions), he discussed the matter with inspecting officers. The inspecting officer had briefed him that during inspection in March and April 2021, the party (lessee) had deposited stamp duty and got executed mining lease. The same has been formally corroborated by suo-motto, mail dated 08/5/2021 of the State Government. He could not understand the intentions behind the letter dated 30/11/2021 and hence, discussed with the junior officers.

In his brief he has also informed that later on, these mining plans were revoked on 07/1/2022 by RCoM, which was challenged in the court of Law and Hon'ble High court stayed all revocations of mining plans.

He has humbly denied the charge of acting against the conduct rules. He has worked in good faith with honest intention and did not ever defy the orders of superiors, which is evident from his past service records of 28 years.

(e) Analysis of the evidence and observations

The Article wise analysis is as follows-

ARTICLE-I

It is observed that the amendment to the MMDR Act, 1957, effective from 28/03/2021, pertaining to the provisions of the Act. 10 A 2 (b) is quite relevant to the instant case.

The notification, published on 28/03/2021, states that for all cases covered under section 10 A 2(b) including pending cases, the right to obtain prospecting license followed by a mining lease or mining lease, as the case may be, shall lapse on the date of commencement of the MMDR(Amendment) Act, 2021, i.e. with effect from 28.03.2021.

In this regard IBM, Headquarter Nagpur issued advisory to the all Regional Controller of Mines vide document i.e. letter dated 09.04.2021 (Ext.-P-1), emphasising the modification of the erstwhile section – 10 A 2(b) of the MMDR Act, 1957, and advising that all Mining Plans received for fresh grant of leases should be examined judiciously and under no circumstance the cases falling under saved cases of the erstwhile Section-10 A 2(b) of the MMDR Act, 1957 should be processed. Besides, all the mining plans received under erstwhile Section-10 A 2(b) of the said Act, as fresh case and under processing stage in Regional Officers should be disposed of on techno-legal basis. The IBM, Headquarter, also sought to furnish an action taken report over the issue.

Further the document issued by IBM dated 13/04/2022 (Ext.-P-1) was referred, wherein it was advised to RCOM's to revoke the approval of all such cases, where mining lease has not been executed, before the date of commencement of the MMDR (Amendment) Act, 2021, as saved cases of erstwhile section 10 A 2(b) of the said Act, of 1957, have become infructuous. Again, the IBM Headquarter, also sought to furnish an action taken report in this regard.

While examining the above two document it is observed that though IBM had issued two letters regarding processing of mining plan of erstwhile 10 A 2(b) cases, however, these letters did not envisage a situation, where mining lease was already executed by the State Government. By not mentioning anything on such cases, an element of doubt can arise that those cases where lease had been executed are excluded from the purview of instructions issued vide IBM'S letter dated 9.4.2021 and 13.4.2021.

In fact, C.O. has repeatedly raised this issue in his defense and mentioned that RCOM /Guwahati had written letters, seeking clarification for these five cases, where mining lease were already executed by the State Government. However, at that time, IBM did not issue any clarification sought by RCOM/Guwahati vide their letters dated 10.5.2021 and 19.5.2021. He further mentioned that there was no question or objection raised from IBM headquarter even after approval of these mining plans.

It is however noted that, later on, only when a query was raised by Ministry of Mines, IBM telephonically enquired about the status of these cases from RCOM/Guwahati which was replied by C.O. on 29.11.2021. This was responded by CCOM/IBM vide his letter dated 30.11.2021, as a reply to the email of C.O. dated 29th Nov 2021. This clarificatory letter was issued after the mining plans were already approved by RCOM/Guwahati.

It is a fact that C.O. approved five (5) mining plans, provisionally on 19th and 20th May, 2021 and final approval on 12th, 13th, 16th and 18th August, 2021. In the light of CCOM's letter dated 30.1.2021, the above said actions of C.O. are against the provisions of the Act and violates the spirit of the law. However, it is also noted, that C.O. Shri Tardia vide his office letters (emails) dated 10.05.2021 and 19.05.2021, had sought clarification from IBM/Headquarter but he did not receive any clarifications, and he did not get any communication/response from CCOM, therefore, he construed

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that these mining plans are to be approved. Further, it has been observed that the C.O. on the same date i.e. 19.05.2021, approved mining plans in two cases and remaining three cases were approved on 20.05.2021. Thereafter, C.O. finally approved all the (5) five mining plans, to avoid pendency in August-2021. Though he had referred the matter to IBM headquarter for clarification, without waiting, he simultaneously acted by approving the mining plans.

Based on above discussion, it is therefore concluded that, in the light of the MMDR Amendment Act 2021, though, the charge levelled against C.O. regarding approval of five (5) graphite block mining plans against the provisions of MMDR ACT 1957, has been established, however, it is also observed that the decision of approval of such mining plan by C.O. was guided and influenced by the circular dated 13.05.20, which specifically mentions about the cases where mining lease were not executed. This was further compounded by the fact that IBM did not reply to the letters of C.O. till such time the mining plans were finally approved in August 2021 as the letter issued by IBM explaining the legal position and advising for remedial action was issued on a much later date on 30.11.2021. Though C.O. had a chance to take remedial action, but he maintained his earlier position.

Regarding loss of exchequer, it is stated that the State Government on its own executed the mining lease without ensuring that the mining plans were approved. While executing the mining lease, State Government did not ask RCOM/Guwahati about mining plan approval. Rather a sua-moto email dated 08.05.2021 was received by RCOM/Guwahati from the State Government, informing that the leases were granted in respect to the five (5) mines in January and February, 2021. Further, the letters from Arunachal Pradesh State Government asking for the advice from Ministry of Mines, New Delhi were issued by State Government in 14.10.2021 (Ext.-P-3) and letter dated 25.10.2021 (Ext.-P-4). In this regard CCOM clarified vide his letter dated 30.11.2021 that the execution of mining leases were in contravention of the MMDR act and hence ab-initio void. In such a situation, the approval of mining plan at later stage by RCOM/Guwahati may not result in actual mining by the lease holder unless it is proved that state government's act of execution of mining leases were fully compliant with the provisions of MMDR Act.

In view of above, it is observed that though the approval of mining plans of these five cases were in violation of MMDR amendment Act 2021, however since the decision for execution of the mining lease was solely taken by State Government, therefore the loss which would have accrued to the exchequer of State Government by not following the auction route, cannot be attributed to C.O. and hence not proved.

(a) ARTICLE-II

In the instant case, the IBM headquarter enquired about the matter telephonically from the C.O. on 29.11.2021 and sought clarifications. The C.O. vide his email dated 29.11.2021, has stated that the provisions of section 5(2)(b) of the MMDR Act, 1957 are not applicable for the mineral

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"Graphite", as it is not listed in Part-A, B, C and First & Fourth Schedule of the MMDR Act and the State Government has the right to grant, execute and register mining lease deed after its satisfaction in respect of "Graphite", mineral.

It is a fact that the mineral "Graphite" has not been declared as "Minor" mineral as per Law.

It is observed that Shri Tardia RCOM/Guwahati wrongly interpreted that Graphite is minor mineral and section 5(2)(b) is not applicable in these cases. Further he assumed that State Government could also have their mechanism for approval of mining plan by State Government officials and interpreted that State Government was competent to execute the mining lease. Such interpretation of the MMDR Act and Rules (MCR etc) proves that his understanding about the Act and Rules is not proper.

It is also mentioned that during the course of inquiry, C.O./D.A. accepted that he was not conversant with the provisions of the Act and Rules. C.O. however, clarified that wrong interpretation of the rules was not deliberate and cited various reasons for that as already elaborated in above paras.

I observe that, so far as the charge is concerned, the C.O.'s grasping and interpretation of the amended provision of the MMDR Act was incorrect and he acted as a novice. It is noted that C.O. did not fully understand the provisions of the Section-5(2)(b) of the Act, the provisions of Amendment Act, 2015, and different provisions about the classifications of the minerals.

In view of above, the charge levelled against Shri Tardia that he was not conversant with rules is proved amounting to his failure towards his duties as per Rule 3(1)(ii) and unbecoming to a Government Servant as per Rule 3(1)(iii) of CCS(Conduct)Rules, 1964.

Article III

The C.O. Shri Tardia was issued a letter dated 30.11.2021 by the CCOM, IBM clarifying him, in response to the letter dated 29.11.2021 that leases have been granted in contravention to Section 5(2)(b) of the Act, and any action in contravention to the provisions of the Act, are ab-initio void. Thereafter, advised to take remedial action/measures.

It is also noted that the letter of CCOM dated 30.11.2021 did clarify the legal position on these five cases, albeit, quite late after the approval of mining plan by C.O. However, even though, it was late, RCOM was directed vide above letter to take remedial action. The direction for revoking approval of mining plans pertaining to 10 A 2(b) cases, which were approved by RCOM, were already communicated vide IBM's letter dated 13.04.2021 and were again mentioned in the latter dated 30.11.2021. To my mind, this letter was good enough for RCOM to take action as was directed through earlier letter of 13.04.2021. The argument of C.O. that specific remedial action was not mentioned in the letter does not hold good at this stage.

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But the C.O. neither acted upon the matter as per guidelines issued vide letters dated 09.04.2021 & 13.04.2021 nor 30.11.2021, he only stuck to his Justification about the approval on mining plans vide his email dated 31.012.2021.

In view of above, the charge of disobedience of the direction from higher authority is proved.

12. Conclusion

It is concluded that C.O. Shri Tardia is not well conversant with the provisions of the MMDR Act, corresponding Rules and its interpretation and he acted against the provisions of the MMDR Act. Further, C.O. did not take remedial measures as he was directed vide letter dated 30.11.2021, rather he kept on justifying his actions, amounting to disobedience of the higher authorities.

However, as regards the loss to the exchequer, I am of the view that since State Government executed the mining lease without any reference to RCOM/Guwahati and since auction itself is a long process which State Government has to undertake without any certainty of success, therefore the outcome of auction can not be quantified and hence the loss cannot be ascertained and it cannot be attributed to C.O.

The Conclusions are as follows: -

(i) Article -I

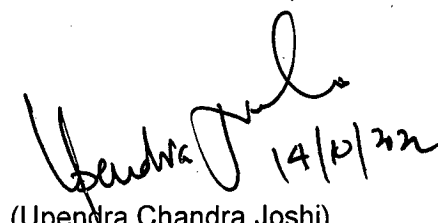
The charge of approval of mining plan by Shri Tardia, against provision of MMDR Act, 1957 and thus against the spirit of Law is proved. However, the charge of causing loss to exchequer is not proved.

(ii) Article-II

The charge that he was not conversant with the factual provisions of the Acts and Rules, thereby his failure for devotion to his duties as per Rule-3(1)(ii) and unbecoming to a Government Servant as per Rule -3(1)(iii) is proved. However, the charge of huge revenue to the State Government is not proved.

(iii) Article- III

The charge of disobedience of the directives of higher authorities and insubordination, thereby failure to maintain devotion to his duties and unbecoming of a Government Servant, as per Rule -3(1)(ii) and Rule-3(1)(iii), is proved.


14/12/22

(Upendra Chandra Joshi)

Joint Secretary and Inquiring Authority