

Written submission on Disciplinary proceedings against Shri K.K. Tardia, RCOM

In reference to the Disciplinary proceedings against Shri K.K. Tardia, RCOM held on 30.06.2022, 21.07.2022, 10.08.2022, 06.09.2022 and 07.09.2022, undersigned along with Charged officer (CO) were asked to give written submissions in the matter.

All the documents were linked and marked earlier during the presentation of Presenting Officer (PO) and a copy thereof were given to CO on the direction of Inquiry Officer (IO).

Ministry of Mines issued statement of article of charges framed against Shri K.K.Tardia, Regional Controller of Mines Nagpur on 21.02.22. The details of the articles and the submissions of the undersigned on the matter as Presenting Officer are as under:

Article 1:

Subsequent to the amendment in MMDR Act 2021, IBM Headquarter issued advisory to all the Regional Controller of Mines vide letter dated 09.04.2021 (Annexure-P1), wherein it was clearly mentioned 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 pending licence followed by a mining lease or a mining lease, as the case maybe, shall lapse on the date of commencement of the Mines and Minerals Development and Regulation Act 2021".

It was clarified in the said letter dated 09.04.2021 that All Mining Plans received for fresh grant of lease should be examined judiciously and under no circumstances the cases falling under saved clause of erstwhile section 10A(2)(b) of MMDR Act, should be processed. Further, all Mining plans already received under erst while section 10A(2)(B) of MMDR as fresh case and are under processing stage in regional offices should be disposed off on techno-legal basis immediately. Vide letter dated 13.04.2021 (Annexure-P2), advisory letter was again issued to revoke approval of mining plan in all such cases where mining lease has not been executed before the date of commencement of MMDR Amendment Act 2021, as saved cases of erstwhile section 10A(2)(b) of MMDR Act 1957 have become infructuous.

Inspite of clear instructions, RCOM Guwahati approved the Mining Plans, which are under the ambit of erstwhile 10(A)(2)(b) of MMDR Act, initially provisionally in May 2021 and later gave final approval in August 2021. Thus approving the mining plan against the MMDR Act 1957 and acted against the spirit of law thereby causing loss to exchequer by means of loss in terms of delay of auction thereby causing loss of royalty, NMET, DMF, loss of premium to government on auction etc.

During the hearing CO reiterated that his office has written two letters through emails on 10.05.2021 and 19.05.2021 to Chief Controller of Mines (MDRD), IBM Nagpur and no reply has been received. In this regard it is submitted that the advisory letters issued on 09.04.2021 and 13.04.2021 to all the RCOM's were very clear and stated that under no circumstances the cases falling under saved clause of erstwhile section 10A(2)(b) of MMDR Act, should be processed. Thus the reply to letter of RCOM Guwahati dated 10.05.2021 and 19.05.2021 is already there in the letters issued on 09.04.2021 and 13.04.2021 and the approval was not supposed to be given in these cases by RCOM, Guwahati. Even assuming that he needed advice, once a matter has been referred by him to headquarters, he should not have taken decision on the matter without directions from headquarter. If this is allowed, officers will misuse the system by referring the matter to headquarter and then themselves deciding

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without waiting for the reply. If this argument is really accepted, CG IBM will start deciding on matter referred to ministry but decision not received from ministry. It will create havoc in the system.

Article 2:

After the facts about approval of mining plan came to the notice of Ministry of Mines and in turn IBM; IBM Headquarter enquired about the same from RCOM Guwahati on 29.11.2021 telephonically and sought clarification. (Annexure P4 and P5)

RCOM Guwahati clarified vide email dated 29.11.2021 (Annexure-P5) 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 MMDR Act and 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-1947 which states that:

"No mining lease shall be granted by the State Government unless it is satisfied that-

[{b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.]

[Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.]."

It is a fact that Graphite has not been declared as minor mineral as per law. Thus approval of Mining Plan by RCOM Guwahati then was in contravention of section 5(2)(b) of the MMDR Act. It shows that either he was not conversant with provision of law or has deliberately misinterpreted the rule. Thus failing to prove his devotion to duties and his acts were unbecoming of Government servant. Further this act has caused loss to the exchequers. The CO accepted that Graphite was wrongly understood as minor mineral. The approval of mining plan subsequent to its execution is in violation of provision of section 5(2)(b) of the MMDR Act.

Article- III

In response to the clarification dated 29.11.2021 by RCOM Guwahati, Chief Controller of Mines, IBM issued a letter dated 30.11.2021 (Annexure-P6) and clarified that the said leases have been made in contravention to section 5(2)(b) of the act and the rules there under and any action in contravention to the provisions of act and rules are ab-initio void. He further advised RCOM Guwahati to take remedial measures. CO submitted during the verbal hearing that remedial measures were not written clearly in the said letter. In this regard it clarified that in spite of advice issued on 09.04.2021, 13.04.2021 and detailed reiteration of the law position in the letter dated 30.11.2021, RCOM Guwahati didn't 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 (Annexure-P9). Thus RCOM Guwahati has wilfully disobeyed the directives of higher authorities and shown insubordination. Though CO has maintained during hearing that remedial

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action was not clearly mentioned in the letter but it is a fact that no letter has been issued by him to HQ seeking clarification on the matter.

Further there was no pressure, as has been mentioned by CO during the hearing citing the email dated 19.05.2021 written by IBM head quarter. The status of disposal of mining plan is sought from each and every office in the routine manner as a part of review by headquarters.

Because of inaction on part of RCOM after the issue of letter dated 30.11.2021 by CCOM Nagpur for remedial action, a Brief note on approval of Mining Plan to ministry vide it's letter dated 15.12.2021 (Annexure- P7). After the submission of reply by RCOM Guwahati on 31.12.2021, the ministry approved the suspension order (Annexure-P9).

27/12/2021
Manish K Maindiratta
Presenting Officer