

14-03-23, 24-09-24, 24-09-24, 24-09-24, 27-09-24

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No.16732 of 2017

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF:

Hafiz Ahnmad

.....Petitioner

-Versus-

Bangladesh represented by the Secretary, Ministry of Power, Energy and Mineral Resources, Power Division, Bangladesh Secretariat, Dhaka-1000 and others.

.....Respondents

Mr. Golam Abbas Chowdhury with  
Mr. Khan Mohammad, Advocates

..... for the petitioner

Mr. Shaikh Mohammad Zakir Hossain, Advocate

..... for the respondent No. 1

Heard on: 01.02.2023

Judgment on : 12.03.2023

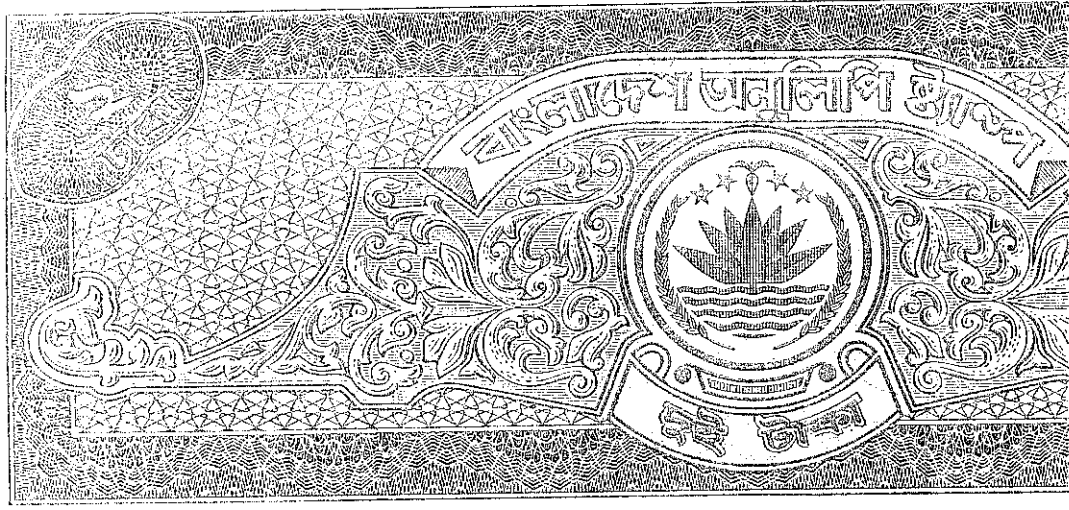
Present:

Ms. Justice Naima Haider  
&

Mr. Justice Md. Khairul Alam

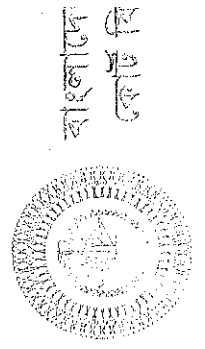
Naima Haider, J:

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No.27.12.2637.012.31.043.16.721 dated 02.01.2017 issued by the respondent no.2 purporting to reduce the rank of the petitioner from General Manager to Deputy General Manager as in Annexure-G and Memo No.27.12.2637.012.31.033.16.873 dated 20.02.2017 issued by the



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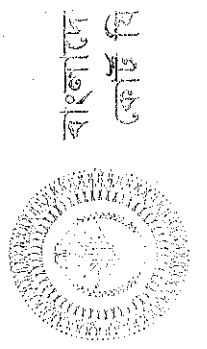
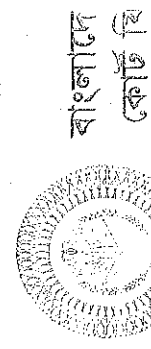
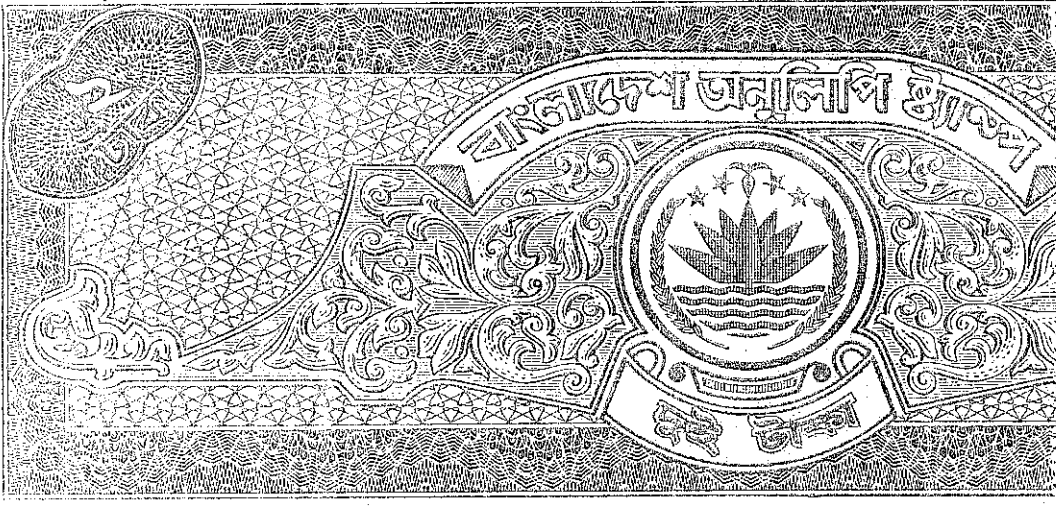
respondent no.2 purporting to dismiss the petitioner from his service as in Annexure-M should not be declared to have been issued without lawful authority and is of no legal effect and why a direction should not be issued upon the respondents to reinstate the petitioner in his original post of General Manager with all attendant benefits and /or pass such other or further order or orders as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule is as follows:

On 12.08.1987 the petitioner was appointed in the post of Assistant General Manager of Rural Electrification Board (REB) and subsequently he was regularized in the said post. He was promoted to the post of Deputy General Manager (Current Charge) on 27.07.1998 and joined on 01.08.1998 and was regularized on 01.08.1999. Again the petitioner was promoted to the post of General Manager (Current Charge) on 02.04.2013 and confirmed in the said post on 15.06.2014, since then he has been performing his duties with utmost sincerity and to the highest satisfaction of the authority. On 04.04.2013 he was posted as General Manager of Patuakhali Palli Bidyut Samity.

A committee was formed to inquire into the allegation brought against him and he was asked to submit his written reply to the inquiry committee within 15 day vide inquiry report dated 22.06.2016. He submitted written reply denying all the allegations brought against him and he stated that the charged brought against him does not sustain at all because he was not entrusted with the duties of record keeping and it was the duty of the AGM(Administration).

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Some of the documents were illegally burnt by the AGM for which Patuakhali P.S. Case No.1(6):16 dated 01.06.2016 was lodged against the AGM(Administration) Mr. Abu Saleh Md. Abdul Hamid.

Suddenly he was suspended and a notice was issued on 31.06.2016 and he asked to show cause within 7 working days why he should not be proceeded for misconduct cheating and negligence of duties. He reply the same on 10.07.2016 denying the allegation brought against him and he was not the custodian of the office documents, rather it is the duty of the AGM and in reply dated 31.07.2016 he stated that action was taken against the AGM who was responsible for the custody of the office documents.

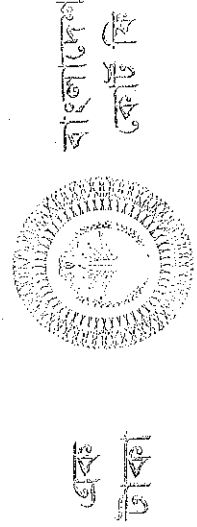
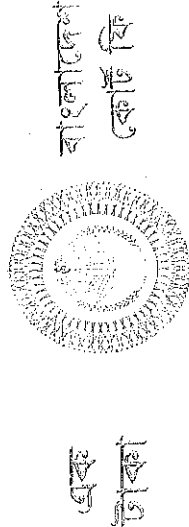
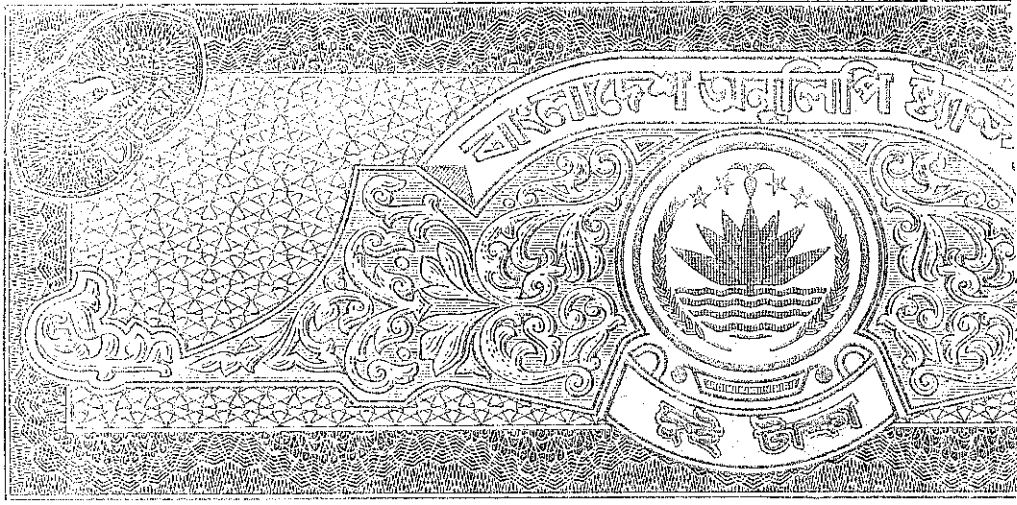
The Inquiry Officer did not examine any witness before the petitioner and he was not given opportunity for cross-examination. On 01.12.2016 the second show cause notice was served upon the petitioner and he replied the same on 19.12.2016 denying the allegation of misconduct, corruption and negligence of duty.

Without considering his replies, the respondent no.2 vide Memo dated 02.01.2017 punished the petitioner by reducing his rank from GM to DGM.

On 22.01.2017 the petitioner made a departmental Appeal against his punishment before the Chairman of the Rural Electrification Board for reinstating him in his former post of General Manager which was not considered and his appeal was rejected on 08.02.2017.

The respondents have initiated another proceeding against the petitioner by a charge sheet dated 14.07.2016 on the selfsame occurrence of defalcating money by the Cashier Jayeda Khanam and implicated him for



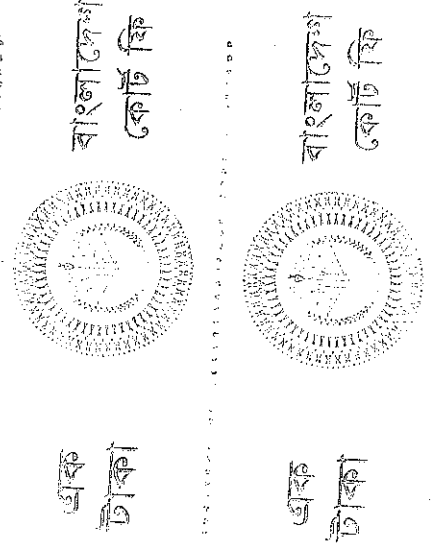


assisting the Cashier by way of non-collection of Balance Confirmation Certificate from the Bank which is without lawful authority. The authority unlawfully preceded the petitioner twice for the same offence which is unwarranted also. On 01.08.2016 he gave replied the same before the Inquiry Committee regarding the memo dated 14.07.2016 and on 09.01.2017 the Inquiry and Discipline Wing served a Final Show Cause Notice upon the petitioner. He gave replied on 23.01.2017 of the Final Show Cause Notice dated 09.01.2017 and the respondent no. 2 issued a dismissal letter dated 20.02.2017. Against the order of dismissal letter dated 20.02.2017 the petitioner filed an appeal on 20.03.2017 under Rule 45 of the Poilli Bidyut Samity Kormochari Bidhi, 1992 ( Amended upto 2012) before the respondent no.2. Though after completion of the investigation, the Investigating Officer of the Anti-Corruption Commission submitted a charge sheet against the cashier Jaida Khanam being charge sheet dated 30.10.2017 under section 409/ 420/467/468/471 of the Penal Code read with section 5(2) of the Anticorruption Commission, Ain 1947.

Finding no other alternative efficacious remedy, the petitioner has moved this Court and obtained the instant Rule Nisi.

The respondent No. 2 entered appearance by filing affidavit-in-opposition. The case of the respondent No. 2 is that: Cashier Jayeda Khanam was a mere Accountant wherein the petitioner was the General Manager of Patuakhali Pally Biddyut Samity and responsible to manage and supervise the whole account system of the PBS. He cannot avoid liabilities by saying that said accountant was solely liable of misappropriation of the said money. A prudent person can easily understand that without aid of

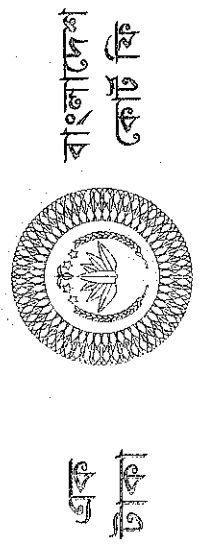
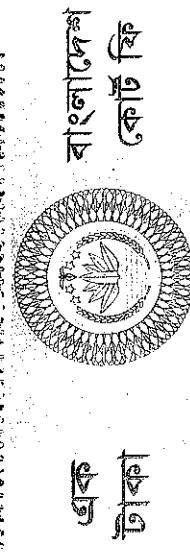
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the supervise authority an accountant cannot misappropriate huge amount of money from the PBS and the petitioner himself cannot keep away from vicarious liability as he was the supervising authority of said Accountant Jayeda Khanam. Before commencement of departmental proceedings against the petitioner, the investigation committee properly followed all the procedures. General Manager post is a most senior and responsible post in PBS and all other officers are under his supervision and the petitioner being the head of the PBS cannot avoid his liabilities blaming the others. Cashier, Jayeda Khanam has been suspended from her work and a criminal case being Patuakhali P.S. Case No.04/121 is filed against her on 04.04.2016, after investigation by the Anti-Corruption Commission found the said cashier of the alleged offence and submitted charge against her on 30.10.2017, although the petitioner's name is not included in the charge sheet, however this does not let the petitioner to escape from his liabilities. As a General Manager, he failed to provide precise instructions for saving the files and other documents in the right places and because of this negligence the officers and employees got an opportunity to destroy important office documents and therefore, the respondent lawfully found the petitioner guilty under section 38 of the Service Rule.

Mr. Golam Abbas Chowdhury, the learned Advocate appearing on behalf of the petitioner submits that the respondent no.2 has formed 2 committees in this regard but both of those committee have submitted a dissimilar and a contradictory inquiry report. He next submits that a dissimilar and a contradictory inquiry report by which it is assumed that the facts has been hidden and intentionally the petitioner has been guilty

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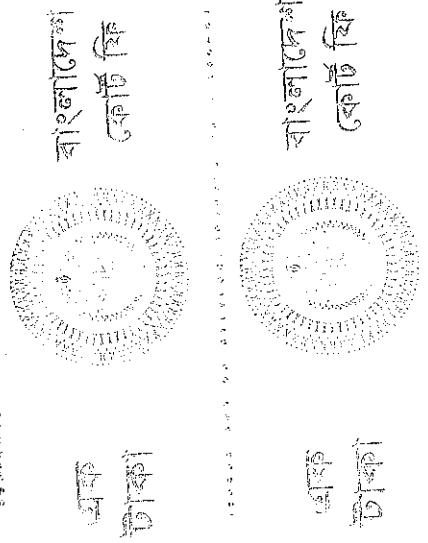
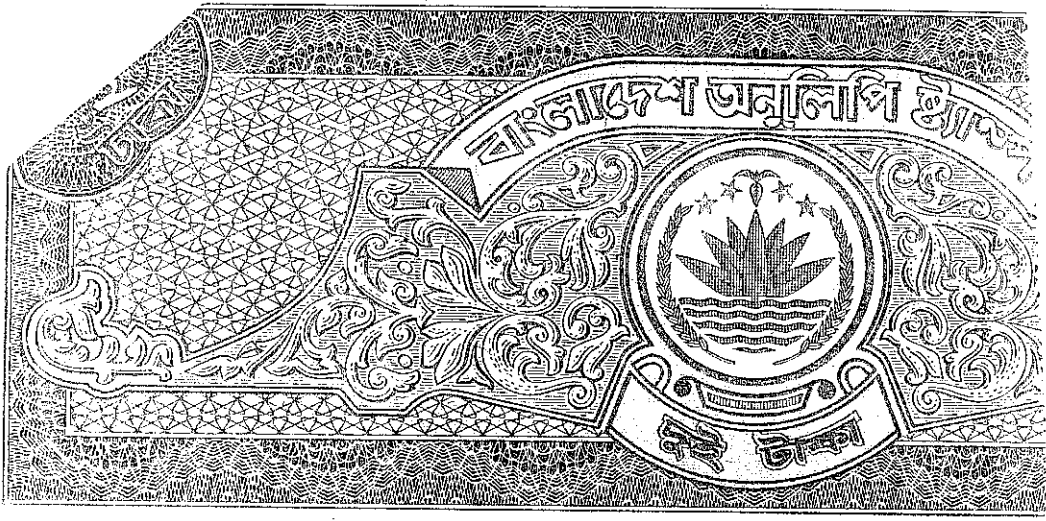


with an ill motive. He further submits that the real offender already has been identified in the charge sheet submitted by the Anti-Corruption. He lastly submits that after thorough investigation, caring the pin point of the allegation and submitted charge sheet by the investigating officer of the Anticorruption commission wherein the petitioner is not guilty at all, and the respondent no.2 has dismissed the petitioner from his service before submitting the charge sheet which is fully decision of whimsical and mythical and without law full authority.

Per contra, Shaikh Mohammad Zakir Hossain, the learned Advocate appearing for the respondent no.2 submits that the Cashier was a mere accountant wherein the petitioner was General Manager of Patuakhali Pally Biddyut Samity and responsible to manage and supervise the whole account system of the PBS. He next submits that the petitioner cannot avoid liabilities by saying that said accountant was solely liable of misappropriation of the said money and the petitioner failed to perform his job while he was working with the Patuakhali Pally Biddyut Samity as AGM(Finance). He lastly submits that the respondents issued two charge sheets and the charges were distinguishable from each other. After investigation the inquiry committee found the petitioner was guilty of all the allegations brought against him and thus the petitioner has been punished by reducing his rank from GM to DGM lawfully following all the required procedure of law.

We have considered the submissions of the learned Advocates and perused the writ petition, its annexures as well as the affidavits in opposition filed by the respondent no.2 and other materials on record.

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“দেশবন্ধুর শপথ নিন, দুর্নীতিকে বিদায় দিন”

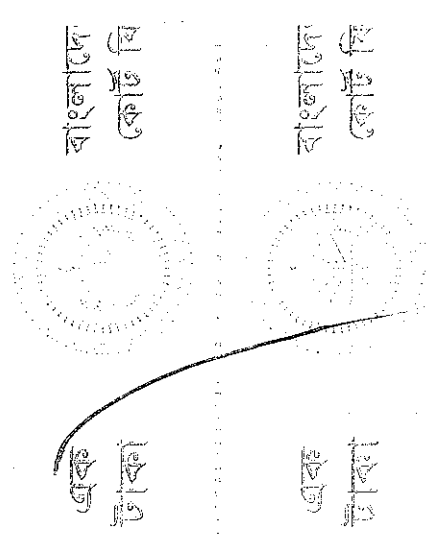
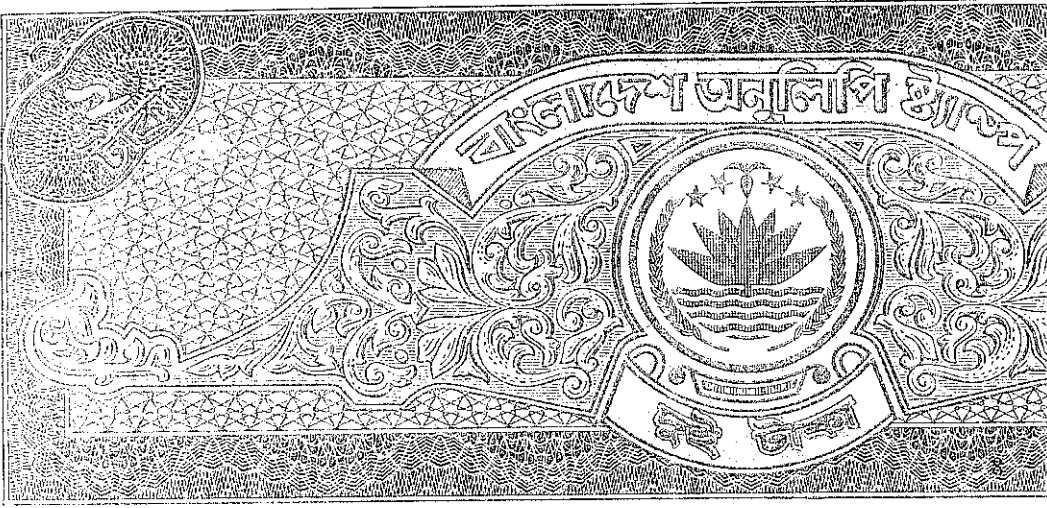


It appears from the record that on 12.08.1987 the petitioner was appointed in the post of Assistant General Manager of Rural Electrification Board (REB) and he was promoted to the post of Deputy General Manager (Current Charge) on 27.07.1998. Again the petitioner was promoted to the post of General Manager (Current Charge) on 02.04.2013, since then he has been performing his duties with utmost sincerity and to the highest satisfaction of the authority. On 04.04.2013 he was posted as General Manager of Patuakhali Palli Bidyut Samity. He was suddenly suspended for misconduct, cheating and negligence of duties.

We have further taken into account that the inquiry committee in their findings could not come to a conclusion that the petitioner is guilty of offence under Rule 39(1) (kha)(5) of the Pally Biddut Samity Employee Service Rules 1992 (as amended in 2012). However, according to Rule 39(ka) and (kha) of the said Probidhanmala, punishment can only be imposed where allegation is proved against the delinquent and before commencement of departmental proceedings against the petitioner; the investigation committee did not properly followed all the procedures.

We cannot be oblivious of the fact that after thorough investigation, caring the pin point of the allegation, the investigating officers of the Anti-corruption commission submitted charge sheet wherein the petitioner is not guilty at all, nevertheless the respondent no.2 has dismissed the petitioner from his service before submitting the charge sheet which is fully decision of whimsical and mythical and without lawful authority.

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The real offender already has been identified in the charge sheet submitted by the Ant-Corruption Commission. The contrary he has been dismissed from his job which fully illegal and unlawfully.

It is settled principle of law that the punishment or penalty to be imposed must be commensurate with the gravity of the misconduct. Although the choice and quantum of punishment is within the jurisdiction and discretion of the authority, yet it must suit the offence and "it should not be vindictive or unduly harsh" nor "so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias" (*Ranjit Thakur vs. Union of India*, AIR 1987 SC 2386). We have no hesitation to hold that in the instant case, the penalty is disproportionate and too harsh.

Having regard to the attending facts, circumstances and law discussed above, we find the dismissal order as being unduly harsh, highly disproportionate and shocking to the conscience. Hence, the penalties of reduce of the rank and dismissal order dated 02.01.2017 and 20.02.2017 are respectively set aside.

The respondents are directed to reinstate the petitioner in the original post of General Manager of Rural Electrification Board (REB) with all attended benefits within 60(Sixty) days from the date of receipt of the judgment.

With these observations and directions, the Rule is made absolute.

No order as to costs.

Communicate the judgment and order at once.


Naima Haider


Md. Khairul Alam, J:

I agree.

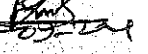
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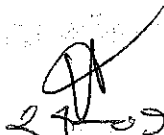
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