



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
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DISCIPLINARY DIRECTORATE

**The Institute of Cost Accountants of India
Disciplinary Committee u/s 21B of The Cost and Works
Accountants Act 1959**

In the matter of

Complaint No. Com/21-CWA(9)/2010 -

CMA Biswarup Basu (M/8237), Complainant

Vs

CMA (Dr.) Sanjiban Bandyopadhyaya (M/8601), Respondent

FACTS

1. The Disciplinary Directorate was in receipt of a complaint dated 8th January, 2010 in Form I along with requisite fee of Rs.2500/- from CMA Biswarup Basu, complainant, bearing membership number 8237 filed against CMA (Dr.) Sanjiban Bandyopadhyaya, respondent, bearing membership number 8601 alleging defalcation of funds of E.I.R.C of the Institute of Cost & Works Accountants of India (now The Institute of Cost Accountants of India).
2. The Disciplinary Directorate having scrutinized the complaint and finding the same in order and on being satisfied that it is a fit case to be dealt with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, proceeded to register the complaint vide Complaint No. Com-21/CWA(9)/2010 which is a unique number given to this complaint. In support of the complaint, the complainant has furnished six Annexure (Annexure - 1 to Annexure 6) and a List of Evidences through Annexure - B containing nine Exhibits (Exhibits P to Exhibit X) containing self attested copies of various documents in sixty five pages.
3. A careful perusal of the instant complaint would show that the same hinges entirely on financial irregularities stated to have been committed by the respondent.
4. The respondent filed the first written statement dated 11th March 2010 pursuant to Rule 8(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 denying the allegations made by the Complainant stating that the instances of complaint against him are not genuine in nature.



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5. The said written statement of the respondent was forwarded to the complainant for rejoinder on the same and a rejoinder dated 7th April 2010 was sent by the complainant to the Disciplinary Directorate stating that the irregularities complained of were on record and proves the allegations complained of which were based entirely on documentary evidence furnished by the complainant with the original complaint.
6. The Director (Discipline) on perusal of the complaint, written statement and rejoinder and documents relied upon in formulation of prima facie opinion formed the prima facie opinion dated 28th June 2010, a copy of which was duly served on the complainant and the respondent in terms of Rule 18(2) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
7. The respondent submitted his second written statement dated 12th March 2012 pursuant to Rule 18(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 denying once again the allegations which were levelled by the complainant in his complaint and in the subsequent rejoinder.
8. The complainant in his second rejoinder stated that the matters complained of are on record and the Respondent has taken about 11 months to submit the second written statement. He submitted that the respondent has defalcated funds of EIRC of ICWAI (now ICAI) and prayed that the case be disposed of at the earliest.
9. The respondent submitted his third written statement on 5th March 2014 wherein he stood by his earlier submissions made in the earlier written statements.
10. The complainant and the respondent were called for making oral submissions before the Disciplinary Committee in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at Kolkata office of the Institute on 18th November 2014.
11. The respondent was not present on 18th November 2014 to make oral submissions but the complainant was duly present who made an oral submission. The complainant was advised by the Disciplinary Committee to submit an affidavit as to his contention preferably written 2 weeks from the date of the oral submission made by him. The complainant submitted an Affidavit as per direction of the Disciplinary Committee retaining the allegations against the Respondent along with documentary evidences which was duly received by the Institute on 5th December 2014.
12. The next date for making oral submissions by the respondent was fixed at the next meeting held at Delhi office of the Institute on 6th January 2015 and the respondent was also informed to this effect by the Disciplinary Committee vide letter Ref No. G/DD(M-8601)/Com-C-9-4)/12/2014 dated 22nd December 2014 requesting him to be present before the Disciplinary Committee for making oral submissions in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
13. The Committee, at its meeting dated 6th January 2015 held at the Institute's Delhi office, noted that the respondent, on this occasion too, did not make himself convenient



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- to attend the oral submission pursuant to Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 even though a notice dated 22nd December 2014 was duly served on him and received by him. The charges framed against the Respondent were, however, read out in terms of Proviso to Rule 18(7) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, in the absence of the respondent. The Committee, in the said meeting, decided that a final opportunity of being heard be given to the respondent in the next meeting of the Disciplinary Committee.
14. Subsequently, the respondent was informed by the Disciplinary Committee vide letter Ref No. G/DD(M-8601)/CWA(9)/5/01/2015 dated 29th January 2015 informing him to be present for making oral submissions before the Disciplinary Committee in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
15. The respondent appeared for making oral submissions in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. He stated that he was present in Delhi office at the 18th meeting of the Disciplinary Committee on 6th January 2015 for making oral submissions but was not called for hearing by the Committee. This is, however, factually incorrect as the Committee decided to send Director (Discipline) to look for him. Director (Discipline) could not locate him although, it is expected that persons called for hearing should wait for call from the Disciplinary Committee for making their submissions where the meeting is being held.
16. The charges that were framed in terms of sub-rule (7) of Rule 18 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 were read out in the presence of the respondent who though, was physically present for the oral submissions stated that so long as the Disciplinary Committee consisted of present members (excluding Government nominees), he will not make submissions. *He added that he will make oral submissions if and only if, the Disciplinary Committee is re-constituted. He then left the meeting room without having denied the charges.*
17. To give the respondent a fair chance to present his case, the then Disciplinary Committee felt that the respondent be given an opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in the next meeting of the Committee before passing any order under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.
18. A letter Ref No. G/DD(M-8601)/Com-CWA(9)/7/04/2015 dated 13th April 2015 was sent by the Disciplinary Directorate to the respondent calling upon him to be present before the Disciplinary Committee on 27th April 2015 at the Delhi office of the Institute to enable him an opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.



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19. The respondent appeared on the appointed date and time for the hearing before the Disciplinary Committee. *The respondent stated that he would not like to submit anything. He, however, handed over to the Director (Discipline) who was the Secretary of the Disciplinary Committee two copies of written submissions meant for circulation only to the two members of the Committee, who are Government nominees.* The Presiding Officer directed the Secretary, Disciplinary Committee to circulate copies of the written statements to all members of the Disciplinary Committee for their perusal and observation.
20. On perusal of the written submission along with the annexure (numbering about 54 pages) of the respondent, the Committee noted that he had not submitted any additional material evidence which justifies the claims for reimbursements made by the respondent, for being considered by the Disciplinary Committee in the instant case and to decide whether such claims were bonafide.
21. The details of charges against the respondent are summarised below:

- i. The respondent, a council Member, has taken advance in connection with ICAI (then ICWAI) Diamond Jubilee Conference organized by EIRC at Hotel Peerless Inn on 4th December 2004 and 5th December 2004 on following dates:

<u>Sl. No.</u>	<u>Date</u>	<u>Voucher No.</u>	<u>Amount (Rs.)</u>
1.	07.12.2004	27	15000.00
2.	08.12.2004	41	15000.00
3.	16.12.2004	73	20000.00
TOTAL			50000.00

The advance was drawn after the conference was over. Also, the subsequent advances were drawn before the first advance was adjusted. Drawing of advance one after another after the conclusion of the conference is inappropriate and whatever justification has been provided by the Respondent does not appear to be tenable.

- ii. The respondent got his advances adjusted after about three months from the date of conclusion of ICAI (then ICWAI) Diamond Jubilee conference as detailed below:

Sl No	Date	Voucher No	Amount	Purpose
1	28.03.05	108	9637.00	Delhi Coordination Exp.
2	28.03.05	109	2943.00	Travelling & Conveyance
3	28.03.05	111	4024.00	Cold drinks/snacks at Hotel Peerless
4	28.03.05	112	13220.00	Re-imbusement of Mobile Exp
5	28.03.05	113	6893.00	Taxi fare for IOC programme



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6	28.03.05	114	24744.00	Travelling & Conveyance
	TOTAL		61461.00	

All adjustments were made on the same date i.e. 28.03.05 and some expenses are personal in nature.

- iii. The respondent claimed Rs. 24,744/- in his own handwriting towards travelling and conveyance against local taxi fare vide voucher no. 114 dt. 28.03.2005 against which Rs. 20000/- was adjusted. It was found that the amount of Rs. 24744/- was claimed on 68 occasions almost on continuous basis for which no details of journey undertaken was provided in violation of the TA/DA rules of the Institute.
- iv. In respect of voucher no. 114 dt: 28.03.2005 the respondent has claimed local taxi fare at Kolkata on 16.09.2004, 17.09.2004 and 18.09.2004 while in reality on those days the Respondent was at New Delhi in connection with meetings of the Central Council. The very fact that the respondent was at New Delhi is proved from the TA bills of the respondent for the above period. Thus the respondent has made false claims. The reply furnished by the respondent is not tenable. Moreover, the respondent had claimed Rs. 328/- as other mileage at Delhi in his TA bill and thus his contention that such exp. were incurred in New Delhi does not hold good.
- v. In respect of voucher no. 113 dt. 28.03.2005 of EIRC, the respondent had adjusted Rs. 6893/- towards taxi fare on various dates for one month training programme for the officials of Indian Oil Corporation Ltd. from 16.11.2004 to 16.12.2004 at Great Eastern Hotel, Kolkata. The said claim is in the own handwriting of the Respondent on a sheet of paper where he himself has stated that the programme was held at Great Eastern Hotel Kolkata, from 16.11.2004 to 16.12.2004. However, the details to the attachment to voucher no. 113 dt. 28.03.2005 show that on several occasions taxi fares were claimed to and from Hotel Hindustan International, Kolkata. The fact that the training programme of IOC officials was held at Great Eastern Hotel, Kolkata is corroborated from the Annual report of EIRC of ICWAI for the year 2004-05. Also, Hotel Hindustan International, vide their letter dt. 24.11.2014, has confirmed that there was no booking during the above period. The reply furnished by the respondent in his written statement has been duly considered but found not tenable.
- vi. The respondent had adjusted Rs. 4024/- vide voucher no. 111 dt. 28.03.2005 of EIRC towards purchase of Cold drinks and snacks from local pan shop. The programme in connection with such expenditure has been claimed to be made, was the ICAI (then ICWAI) Diamond Jubilee Conference organized by EIRC at Hotel Peerless Inn on 04.12.2004 and 05.12.2004. The Disciplinary Directorate vide letter dated 11.06.2014 wanted to know from Hotel Peerless Inn as to whether the hotel allows snacks/cold drinks to be brought from outside and to be served to guests/participants when an auditorium is booked for the purpose of holding and conducting any programme/meeting. Hotel Peerless Inn vide their letter dated 14.06.2014 replied in



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negative. This expenditure of Rs. 4024/-, claimed to have been made, is irregular and is therefore, false.

- vii. The respondent had adjusted Rs. 2943/- vide voucher no. 109 dt. 28.03.2005 of EIRC. The expenses are towards travelling & conveyance of Shri Pallab Bhattacharya (Rs. 1375/-), Shri Bhaskar Das (Rs. 514/-) and Shri Subir Chowdhury (Rs. 1084/-). The claims / bills of these persons are not on record. It is quite irregular that the respondent drawing the amount of their behalf without having any authority. Any payment from the Institute to a third party should normally be made directly and not through an intermediary. Hence, on the face of it, the transaction appears to be fraudulent.
- viii. An amount of Rs.9637/- was adjusted vide voucher no. 108 dt. 28.03.2005 towards 'Delhi Co-ordination expenses. A scrutiny of the attached bills reveal that not a single expense pertaining to the purported 'Delhi Co-ordination' were incurred at Delhi other than for an amount Rs. 76/- spent at Karolbag, New Delhi on 18.09.2004. On the said date the respondent has also claimed TA/DA. It appears that the respondent has claimed these re-imbursements fraudulently. Some of the personal expenditure are stated here below:

Sl.	Place	Date	Amount (Rs.)	Purpose
1	Assam Travels, Guwahati	07/04/04	1,204.00	Car Hire
2	Gasoline Station, New Alipore	23/10/04	364.00	Diesel
3	The Shillong Club Ltd	17/08/04	205.00	Room No 20
4	S Service Station, 213, Sarat Bose Road	17/10/04	1000.00	Petrol
5	The Shillong Club Ltd	16/08/04	220.00	Room No 20
6	M/s Casurina Service Station, Digha	19/10/04	398.30	Petrol
7	Fuel point	09/12/04	87.00	Diesel

- ix. It is further found that the respondent vide voucher no. 113, dt. 28.03.2005 has claimed local taxi fare for Rs. 75/- on 19.10.2004, being journey from residence to IOCL. On the same date the respondent has claimed to purchase petrol for Rs. 398/- from M/s Casurina Service Station, Digha. Vide voucher no. 108, dt. 28.03.2005. Again the Respondent has claimed to purchase diesel from fuel point on 09.12.2004 vide voucher



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no. 108, dt. 28.03.2005. On the same date the Respondent has claimed taxi fare on 09.12.2004 for Rs. 326/- vide voucher no. 114, dt. 28.03.2005. Thus the claims are false.

- x. The respondent has adjusted Rs 13,220 towards mobile telephone expenses from EIRC of ICWAI (vide voucher No 112 dt. 28.03.2005 of EIRC) against cell no. 9831086795. The details of such bills pertaining to voucher 112 dt. 28.03.2005 are given below:-

(Claim from EIRC against Mobile No. 9831086795)	
Bill Date	Bill Amount
21.08.2004	2,272
21.09.2004	4,152
21.10.2004	2,484
21.11.2004	4,319
21.12.2004	7,037
21.01.2005	8,449
TOTAL	28,713

As intimated by P. Sarkar Accounts Officer EIRC, the respondent agreed to receive Rs.13220/- against the above bills. There is no decision on record of the council of EIRC of ICAI (then ICWAI) to reimburse mobile telephone bills of a central council member.

- xi. The respondent has claimed mobile bills continuously for 6 months from ICAI (then ICWAI) head quarter also against the same mobile (9831086795) for the same period. The details are given below:

Bill Date	Bill Amount	Amount Claimed	Date of reimbursement	Cheque no
21.08.2004	2,272	1,478	31.08.04	049436
21.09.2004	4,152	2,978	14.10.04	049571
21.10.2004	2,484	1,642	08.11.04	049591
21.11.2004	4,319	3,667	01.12.04	049643
21.12.2004	7,037	3,692	30.12.04	049681
21.01.2005	8,449	4,962	02.02.05	049796



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TOTAL	28,713	18,419		
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- xii. The respondent has himself stated in his written notes on different dates addressed to the Institute that the amount claimed by him towards mobile bills against telephone no. 9831086795 relates to Institute purpose which means that the rest of the amounts pertaining to the said mobile bills were personal calls.
- xiii. Thus, the entire amount of Rs. 13220/- that was received by him from EIRC of ICAI (then ICWAI) vide voucher no. 112, dt. 28.03.2005 against total bill value of Rs. 28713/- for 6 months has been fraudulently drawn.
- xiv. It is found that the respondent had claimed local taxi fare at Kolkata on 24.11.04 & 25.11.04. However, facts reveal that the Respondent was present at New Delhi in connection with Central Council Meeting on both these days. The same can be corroborated from the TA Bills of the Respondent for the above stated period.
- xv. The written submission by the respondent on various dates have been duly considered but not found tenable. The original complaint along with rejoinder of the complainant and affidavit submitted by the complainant along with documentary evidences attached thereto have also been duly considered by the Disciplinary Directorate. The documents relied upon by the Director Discipline at the time of formulation of prima facie has also been duly considered.
- xvi. Prima facie opinion was formed by Director (Discipline) on 28th June 2010 and the same was considered and agreed to by the Disciplinary Committee in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and necessary compliance with Rules 18(2)(a) and 18(2)(b) were made. Subsequently, the complainant and the respondent were called for making oral submissions in terms of Rule 18(6) of the Rules and other compliances as required under the Rules were made.
22. Against the order dated 27th May 2015 of the Disciplinary Committee, the respondent filed an appeal before the Hon'ble Appellate Authority. The order dt. 9th April, 2018 of the Hon'ble Appellate Authority is reproduced below:

1. This appeal arises against the Order dated 27th May, 2015 passed by the Disciplinary Committee of the Institute of Cost Accountants of India in complaint No. Com-21/CWA(9)/2010 titled Shri Biswarup Basu, Membership No. 8237 (Complainant) Vs. Dr.Sanjiban Bandyopadhyaya, Membership No.8601 (Respondent), whereby, the Appellant has been held guilty of Professional and Other Misconduct under the First Schedule and Second Schedule to the Cost and Works Accountants Act, 1959 ("Act") and awarded the following punishment:-





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- a) Reprimanding the member,
 - b) Repayment of the entire amount of Rs. 61,461/- (Rupees sixty one thousand four hundred and sixty one) only to EIRC of the Institute plus equivalent amount as fine to be paid within 30 days of the service of this Order and
 - c) Removal of the name of the member from the Register of Members for a period of one year from the date of service of the Order
2. For the purpose of deciding the present appeal, the brief facts of the matter, which we have noted are that Shri Biswarup Basu filed a complaint, dated 8th January, 2010 against Dr. Sanjiban Bandyopadhyaya in Form I alleging defalcation of funds of Eastern India Regional Council (EIRC) of the Institute of Cost & Works Accountants of India.
 3. The Disciplinary Directorate having scrutinized the complaint and finding the same in order and on being satisfied that it is a fit case to be dealt with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, ("Rules") proceeded to register the complaint vide complaint no. Com/21-CWA (9)/2010 and a copy of the said complaint was sent to Dr. Sanjiban Bandyopadhyaya, Respondent vide Ref No. G/DD (M-8237)/Com-C-9/1/01/2010 dated 21st January, 2010 pursuant to Rule 8(1) of the said Rules.
 4. The Disciplinary Committee has investigated the complaint in accordance with the provisions of the Act and the Rules framed thereunder and accordingly the Appellant was asked to appear before it on various occasions for making submissions in his defence. However, the Appellant did not appear before the Committee for the reasons best known to him except on 6th February, 2015 when the Appellant stated that he would not like to submit anything. Though, the charges against the Appellant were read out and the Appellant left the said meeting without making any submission in his defence.
 5. Accordingly, the Disciplinary Committee of the Institute of Cost and Works Accountants of India after perusing the complaint, written statements, rejoinders and all the related materials on record, passed the impugned Order in terms of Section 21B (3) of the Act read with rule 19(1) of the Rules.
 6. We have heard the parties of this appeal and during the proceedings before us, noted that the crux of the allegations made by the complainant against the respondent, the Appellant herein, is that of defalcation of funds of EIRC of the Institute of Cost Accountants of India in connection with the ICWAI Diamond Jubilee Conference organized by the Eastern India Regional Council at Hotel Peerless Inn held on 4th & 5th December, 2004, for which an advance amount of Rs. 50,000/- was admittedly taken by the Appellant namely Dr. Sanjiban Bandyopadhyay and the adjustment of the said amount by the Appellant through voucher Nos. 108, 109, 111, 112, 113 and 114. Additionally,

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we have heard the oral arguments of the parties concerned besides their written arguments.

7. The complainant reiterated his submissions as alleged by him in his aforesaid complaint and *inter-alia* submitted that Dr. Sanjiban Bandyopadhyaya has committed financial irregularities and had submitted false claims in violation of the TA/DA rules of the Institute including the claims of taxi bills on the same dates from EIRC as well as Headquarter and thereby he has cheated the Institute.
8. Per-contra, the Learned Counsel appearing on behalf of the Appellant argued that all the claims made by the Appellant are in order and the same have been approved by the competent Authority of the Institute and only thereafter the same has been adjusted by the accounts department of the Institute. Further, he submitted that the whole disciplinary enquiry conducted in this matter is against the provisions of the applicable Law and the procedure prescribed for the purpose of enquiry in the matter of professional or other misconducts by the Disciplinary Committee.
9. Additionally, it was also submitted by him that the Disciplinary Committee of the Institute of Cost Accountants of India even has not mentioned that under which specific clause of the First or the Second Schedule, the action of the Appellant constituted as a professional or other misconduct and therefore, the Disciplinary Committee has simply make a sweeping remark in its aforesaid Order that Mr. Sanjiban Bandyopadhyaya is guilty under the First and Second Schedule of the Act. Furthermore, it was also submitted by him that no evidence at all has been led to prove facts by holding a statutory trial as prescribed before holding the Appellant guilty and the Disciplinary Committee has only placed reliance on the facts of the matter without proving and corroborating them with the necessary evidences by way of at least examining the necessary witnesses in this matter in terms of Rule 18(9), 18(10), 18(11), 18(12) and 18(13) of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and therefore, nor any witness has been examined neither a chance of cross examination was offered to the Appellant.
10. At this point of time it will be appropriate to note the aforesaid rules, which are reproduced as hereunder:-

“(18) Procedure to be followed by the Committee:

- (1) If the respondent does not plead guilty, then the Committee shall fix date for examination of witness and production of documents.
- (2) The Committee may, on application of the Director, issue notice for appearance to any of his witnesses directing him to attend or to produce any other document or material evidence.
- (3) On the date so fixed, the Committee shall proceed to take all such





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evidence as may be produced by the Director, including oral examination of witnesses and production of documents:

Provided that the Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

- (4) After the presenting of evidence by the Director is over, the complainant shall be given an opportunity, if present during the hearing, to present any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by the Director.
- (5) The respondent shall be then called upon to enter upon his defence and produce his evidence”.
11. It is a matter of record that the Disciplinary Committee of the Institute has neither recorded any evidence nor any person has been examined as a witness. However, an officer to enquire about the veracity of the factum of holding the said programme on 4th and 5th December, 2004, in the Hotel Peerless Inn, was sent but even the said officer was also not examined as a witness in the matter.
12. Be it as it may be, after noting of the facts of the matter as above and hearing of the parties besides perusing all materials on record, we are of the considered view that the Disciplinary Committee of the Institute at least should have examined the representative of the Hotel Peerless Inn, in addition to the officer concerned of the accounts department of the Institute, who has cleared the aforesaid bills as well as the Officer of the Institute who has made an enquiry in the matter, as a witness, and after providing an opportunity to the Appellant herein for cross examining them, before finally deciding the matter.
13. In view of the above observations and considering the non-observance of the established procedure to be followed by the Disciplinary Committee of the Institute, we are therefore, in exercise of the powers conferred upon this Authority under clause (c) of sub-section (2) of section 22E of the Cost and Works Accountants Act, 1959, staying the operation of the Impugned Order passed by the Disciplinary Committee of the Institute till the completion of the directions for which the present matter is being remitted to the Disciplinary Committee of the Institute of Cost Accountants of India for undertaking the aforesaid proceedings for the purpose as mentioned under Para (12) of this order and to pass a fresh Order. We also direct the Disciplinary Committee to consider any relevant evidence if any, sought to be produced by any of the party. The whole proceedings by the Disciplinary Committee be completed within a period of six months from the date of receipt of this Order. Needless to mention that the entitled party may approach this Authority in case of being felt aggrieved from the Order to be passed by the Disciplinary Committee in pursuance of the directions given to

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the Institute as aforesaid by way of filing a fresh appeal.

14. With this the present appeal is disposed of. No cost to either party.
23. From the above it is submitted that the Hon'ble Appellate Authority has directed the followings:
1. Examination of the representative of the Hotel Peerless Inn
 2. Examination of the officer concerned of the accounts department of the Institute, who has cleared the aforesaid bills as well as the Officer of the Institute who has made an enquiry in the matter, as a witness,
 3. Providing an opportunity to the Appellant herein for cross examining them, before finally deciding the matter.
 4. Consider any relevant evidence if any, sought to be produced by any of the party.
24. In the 38th Meeting of the Disciplinary Committee held at New Delhi on 9th May 2018, Committee members perused the details of the order of the Appellate authority and noted that in order to comply with the order passed by the Hon'ble Appellant Authority, it was imperative to call the representative of the Hotel Peerless Inn, officer concerned of the accounts department of the Institute, who has cleared the aforesaid bills as well as the Officer of the Institute who has made an enquiry in the matter, as a witness, and providing an opportunity to the Appellant herein for cross examining them, before finally deciding the matter. *The Committee further noted that in order to comply with the order passed by the Hon'ble Appellant Authority, it was decided to start the proceedings by invoking the provisions under Rule 18(9) onwards before finally deciding the matter.*
25. Accordingly, a letter dated 19th September 2018 was sent to both the parties requesting them to appear before the Disciplinary Committee on 5th October 2018 at 11.30. A.M. at Western India Regional Council of The Institute of Cost Accountants of India, Mumbai to produce witnesses in support of their contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The respondent, in the meantime, vide his email dated 1st October 2018, informed that due to pre-occupation, he would not be able to attend the meeting and sought adjournment to a different date. The complainant, in the meantime, vide his email dated 1st October 2018 requested to allow him to be present before the disciplinary committee on 05.10.2018 at 11:30 AM through Video Conferencing at the Institute Headquarters at Kolkata. The Director (Discipline), vide email dated 3rd October 2018 granted permission to the complainant to appear before Disciplinary Committee though video conference at 12.30 pm. The complainant though was present on the appointed date and time could not present his case due to connectivity issues.
26. In the 44th Meeting of the Disciplinary Committee held at Mumbai on 5th October 2018, the Committee deliberated on the same and decided to provide one more opportunity to both the parties and call them in the next meeting of the Committee to produce witnesses in support of his contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules, 2007. Accordingly, letters dated

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16th October 2018 were sent to both the parties requesting them to appear before the Disciplinary Committee on 26th October 2018 at the Institute HQ at Kolkata to produce witnesses in support of their contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules. The following parties and the then employees of EIRC were also issued letters dated 22nd October 2018 requesting their presence as witnesses:

- i. The Manager, The Peerless Inn,
- ii. Ms. Debosmita Sengupta, Officer EIRC.

The complainant submitted an affidavit mainly reiterating the averments made by him in his complaint. *Ms. Sayantani Bose, Manager (HR), representative of hotel Peerless Inn appeared before the Disciplinary Committee and submitted that they do not allow snacks and soft drinks from outside for consumption in restaurant and banquets.*

27. The Committee decided to provide one more opportunity to the respondent in the next meeting of the Committee to produce witnesses in support of his contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Rules. Further, Committee decided to call officer concerned of the accounts department of the Institute, who had cleared the bills as well as the Officer of the Institute who has made an enquiry in the matter, as a witness, and provide an opportunity to the Appellant herein for cross examining them, before finally deciding the matter. Accordingly, letters dated 19th March, 2019 were sent to both the parties requesting them to appear before the Disciplinary Committee on 1st April 2019 at 11.00 A.M. at EIRC of the Institute at 84, Harish Mukherjee Road, Kolkata to produce witnesses in support of his contention and to produce any document or material evidence in terms of Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
28. In compliance with the decision taken at the 47th meeting of the Disciplinary Committee held on 19th July 2019 at Kolkata, an email dated 3rd February 2021 was sent to Shri P. Sircir, Former Accounts Officer of EIRC requiring his presence before the Disciplinary Committee on 10th February 2021 at 3.30 PM for vouching the authenticity of certain payments made to the respondent during the FY 2004-05 which is the subject matter of the above mentioned complaint. The present Director (Finance) was also requested to make himself convenient to be present before the Disciplinary Committee on 10th February 2021 at 3.00 PM for identifying and testifying the authenticity of vouchers prepared by the Finance Department of the Headquarters against which telephone bills were reimbursed.
29. In the 49th meeting of the DC held on Chennai on 10th & 11th February 2021, the Committee members perused the order dated 27th May 2015 of the Disciplinary Committee and the extracts of the order passed by the Hon'ble Appellate Authority dated 9th April 2018 and directed Director (Discipline) to inform the Committee:
- (i) The procedure followed by the Disciplinary Committee and not followed by the Disciplinary Committee when the order dated 27th May 205 was pronounced by the Disciplinary Committee.



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- (ii) Whether the same has now been followed.
(iii) Production of further evidence, if any.

The Committee decided that the respondent be asked to furnish written submission with proper evidence, if any, in his defence in compliance with Rule 18(13) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

30. This matter was taken up on 11th February 2021 at the 49th meeting of the Committee. *The Director (Discipline), in compliance with Rule 18(11) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 presented evidence before the Committee stating that the instant complaint hinges on the inappropriateness of taking of an advance of Rs 50,000/- in three phases, from Eastern India Regional Council (EIRC) in connection with ICWAI (now ICAI) Diamond Jubilee Conference organized by EIRC on 4th & 5th December 2004 at Hotel Peerless Inn. The said advance was taken allegedly after the conclusion of the conference. The matter under consideration was the manner of adjustment of the amount of advance against expenses claimed to have been incurred by the Respondent. The records show that many of such claims were false and fictitious which have already been noted by the Disciplinary Committee on the basis of documentary and other evidence on record.*
31. The Director (Discipline) thereafter proceeded to present the evidence and requested CMA Arnab Chakraborty, Director (Finance) of the Institute of Cost Accountants of India to place before the learned members of the Committee original documents in respect of the following. CMA Arnab Chakraborty, Director (Finance) appeared before the Committee and produced the following documents:-
- a) The payment voucher numbers 01004 dated 31st August 2004 and 03341 dated 14th October 2004 for Rs 1478/- (vide cheque number 049436) and Rs 2978/- (vide cheque number 049571) respectively against the same invoice (cell phone number 98310-86795) against which cell phone bills were claimed from EIRC. *The respondent, ie, the appellant had claimed payment against the same set of invoices also from EIRC.*
- b) The vouchers relating to the reimbursement of cell phone bills for the months of October 2004, November 2004, December 2004 and January 2005 confirming *that the respondent had withdrawn various amounts towards reimbursement of cell phone bills for these months through account payee cheque.*
- c) *The said Note Ref. No. F & A -1/01/10 dated 14th January 2010 of the then Director (Finance) revealed that the respondent claimed reimbursement of telephone bills against the same cell phone number 98310-86795, month after month from August 2004 to January 2005.*
- d) A certified copy of T.A. Bill dated 21st September 2004 was produced by the Director (Finance) showing that the *respondent was at Delhi from 16th September to 19th September 2004.*
- e) A certified copy of T.A. Bill dated 7th December 2004 was produced by the Director





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(Finance) showing that the respondent was at Delhi on 24th November and 25th November 2004.

f] A Note Ref. No. F & A -1/01/10 dated 14th January 2010 of Shri R.N. Pal the then Director (Finance) was produced by the present Director (Finance) wherein the above mentioned details were mentioned.

g] The Committee noted the above and also the fact that *the respondent had claimed taxi fare towards local conveyance at Kolkata from 16th September to 19th September 2004 and on 24th November and 25th November 2004 which is false as he was on official tour to Delhi on these days.*

h] Letter Ref. ERC/6304 dated 2nd February 2010 issued by Shri P. Sarcar, the then Accounts Officer of EIRC stating that the respondent claimed reimbursement of telephone bills against the same cell phone number 98310-86795 from August 2004 to January 2005 at from EIRC.

The Committee also noted the above mentioned facts and directed Director (Discipline) to write to the respondent for submitting written submissions together with evidence, if any, for placing the same before the Committee in the next meeting.

32. In compliance with the above directives of the Disciplinary Directorate, a letter Ref No. G/DD/(M-8601)/CWA(9)/12/02/2021 dated 24th February 2021 was written to Dr. Sanjiban Bandyopadhyaya, respondent in the original complaint in the matter requesting to provide written submissions together with evidence, if any, in your defence may please be submitted within 07 (seven) days from the date of service of this letter. This was also followed by email on the same day. The responded replied as follows which is given in verbatim:

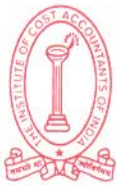
“Dear Sir

Refer to your above mail, I am to state that-

1. Till 24th May, 2021, I am extremely otherwise preoccupied on some very important work for the State and Nation, as per directives of highest authorities of the Nation.
2. This matter relates to the year 2004, which means more than One and a half Decades.
3. During 2010, I had given my written representations. At that time, before giving my written representation, I requested you to allow me to go through documents of 2004 so that so much back dated incidents may be properly recapitulated and properly represented. But I was not allowed, resulting in deprivation from my normal right.
4. Further to mention that last meeting of the said committee on the case was held on Mid July, 2019. Now, you are asking on the same issue after passage of 18 Months.
5. I am not in a position to place further written submission within very short period, as stipulated by your good-self.
6. I reserve my right to present my write-up on later days



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Yours faithfully

Sanjiban Bandyopadhyaya”

33. In the 50th meeting of the Disciplinary Committee held on 12th March 2021, the Committee directed the Secretary to call the then Accounts officer of EIRC at a subsequent meeting of the Committee. The Committee also decided that the respondent to be present in the same meeting where the then Accounts Officer would be present in terms of Rule 18(13) to enter upon his defence and produce evidence relating to the instant complainant and also for affording him an opportunity of cross examination of the complainant and such other person as the respondent / Appellant thinks fit. In the 52nd meeting of the Disciplinary Committee held on 19th July 2021, the Director (Discipline) was advised to call Shri P. Sircar, the then Accounts officer of EIRC for his deposition in the matter and to call the respondent in the next meeting of the Committee for the purpose of affording him an opportunity to enter upon his defence and produce evidence under Rule 18(13) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and for compelling attendance of any witness for the purpose of examination or cross-examination or the production of any document or any material object in terms of Rule 18(14) of the said Rules.

34. In compliance with the above directives, a letter Ref No. G/DD/(M-8601)/CWA(9)/13/07/2021 dated 29th July 2021 was sent to the respondent calling upon him to appear before the Disciplinary Committee on 5th August 2021 at the Delhi office of the Institute to enter upon his defence and produce evidence in terms of Rule 18(13) of the Rules and for compelling attendance of any witness for the purpose of examination or cross-examination or the production of any document or any material object in terms of Rule 18(14) of the said Rules.

The respondent by his email dated 29th July 2021 responded as follows:

“Dear Sir

I request to hold the meeting at Headquarter at Kolkata, as COVID Protocol is still on & being a Senior Citizen I stopped travelling outstation since last week of March, 2020.

Hope, all will consider the situation.

Further requesting to arrange one person & write our statements & handover, duly attested by you, there only

Regards

Sanjiban Bandyopadhyaya”

35. The Committee members noted that the respondent was duly intimated by email/hard copy of the letter to appear before the Disciplinary Committee on 5th August 2021. The respondent, by his email dated 29th July 2021, requested to hold the meeting at

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Headquarters at Kolkata, as COVID Protocol was still on and being a senior citizen, he had stopped travelling outstation since last week of March, 2020. The Committee noted that the respondent was given an alternative option to exercise the option of appearing before the Committee through virtual mode by way of video conferencing which option he chose not to exercise.

36. The respondent was given one final opportunity vide letter/email dated 23rd August 2021 to appear on 28th August 2021 at the Institute Headquarters at Kolkata for cross examining the complainant and the then Accounts Officer of the EIRC, who was called on 28th August 2021. Shri P. Sircar, the then Accounts Officer was also called on 5th August 2021 at Delhi office of the Institute for vouching the authenticity of certain payments made to the respondent during the FY 2004-05 which is the subject matter of the captioned complaint. The then Accounts Officer of EIRC, who had cleared the various bills of Dr. Sanjiban Bandyopadhyaya at the relevant point in time, however, appeared on the scheduled date i.e., on 5th August 2021 through video conferencing to whom, the following questions were asked to him:

Q (i) Where was the Diamond Jubilee Conference held?

Reply:- It was held on 4th& 5th December at 2004 at Hotel Peerless Inn.

Q (ii) Who was the Chairman of Diamond Jubilee Conference?

Reply:- Dr. Sanjiban Bandyopadhyaya (respondent)

Q (iii) Was Dr. Sanjiban Bandyopadhyaya given any advance for Diamond Jubilee Conference?

Reply:- Yes.

Q (iv) How much amount of advance was given and when was it given to Dr. Sanjiban Bandyopadhyaya?

Reply:- An amount of Rs 50,000/- was given to Dr. Sanjiban Bandyopadhyaya in three phases of Rs 15,000/- each on two occasions, namely on 7th December and 8th December 2004 and Rs 20,000/- on 16th December 2004 in connection with ICWAI Diamond Jubilee Conference.

Q (v) How was the above amount of Rs 50,000/- adjusted?

Reply:- It was adjusted through 6 vouchers.

Q (vi) What was the amount adjusted against cell phone number 98310-86795 in connection with Diamond Jubilee Conference?

Reply:- Dr. Sanjiban Bandyopadhyaya submitted bills for 6 months from August 2004 to January 2005 (both months inclusive) out of which of about Rs 13,000/- (exact amount could not be recalled at this point) was adjusted. A detailed clarification in this regard was given to Shri Kaushik Banerjee, the then Director (Discipline).

37. The Disciplinary Committee perused through the records. On perusal of the records and documents relating to this complaint, it is observed that the above deposition made by Shri P. Sircar in Para (i) to (v) is factually correct. In regard to Para (vi) above, a letter Ref. ERC/6304 dated 2nd February 2010 issued by the then Accounts Officer of EIRC





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stating that the respondent claimed reimbursement of telephone bills against the same cell phone number 98310-86795 from August 2004 to January 2005 is also on record.

38. As per the order dated 9th April 2017 of the Hon'ble Appellate Authority which had directed for examination of the officer concerned of the accounts department of the Institute, who has cleared the aforesaid bills and providing an opportunity to the Appellant herein for cross examining them, before finally deciding the matter both Shri P. Sircar, the then Accounts Officer of the EIRC as well as the respondent was called. The then Accounts Officer of the EIRC who had appeared before the Disciplinary Committee on 5th August 2021 through the virtual mode appeared before the Committee once again in person on 28th August 2021 and made the following submissions;

- i. That the ICWAI Diamond Jubilee Conference was held on 4th & 5th December at 2004 at Hotel Peerless Inn.
- ii. That an amount of Rs 50,000/- was advanced to the respondent in three phases of Rs 15,000/- each on two occasions, namely on 7th December and 8th December 2004 and Rs 20,000/- on 16th December 2004 in connection with ICWAI Diamond Jubilee Conference.
- iii. That this amount of Rs 50,000/- was paid in three phases to the respondent - Rs 15,000/- vide voucher number 27 dated 7th December 2004, Rs 15,000/- voucher number 41 dated 8th December 2004 and Rs 20,000/- voucher number 73 dated 16th December 2004 after the conclusion of Diamond Jubilee Conference.
- iv. That the amount taken by the respondent as advance was adjusted through six vouchers (Vr. Nos 108, 109, 111, 112, 113, & 114) all dated 28th March 2005.
- v. That letter dated 2nd February 2010 of Shri. P. Sircar addressed to the then Additional Director & Joint Secretary of the Institute confirmed receipt of Rs 13,220/- towards reimbursement of telephone (Cell) charges by the respondent from the EIRC.

The above documents were also personally identified by Shri P. Sircar who had cleared the various bills of the respondent at the relevant time.

39. The respondent also appeared before the Committee at the time allotted to him on 28th August 2021 and he was asked to cross examine Shri P. Sircar, The respondent stated that unless and until Shri P. Sircar makes any submission before him, it was not possible for him to cross examine Shri P. Sircar. *At this point, Director (Discipline) requested Shri P. Sircar to reiterate the submissions made which was duly made by Shri P. Sircar. The respondent, however, refrained from cross examining Shri P. Sircar. Then the respondent was asked by the Committee members if he would like to cross examine the complainant or any other witness. To this the respondent replied in the negative.*

40. CMA Kaushik Banerjee, Secretary of the Institute who had conducted an inquiry on the basis of a letter No. 2/7/2009-PI dated 28th October 2009 of MCA conducted an inquiry during October 2009 in the capacity of Director (Discipline) in respect of the alleged complaint, deposed before the Disciplinary Committee and submitted that the respondent had taken Rs 50,000/- as advance in three phases which were drawn after the conclusion of Diamond Jubilee Conference. He said that the matter was an old one





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but he could recapitulate that the respondent got his advances adjusted on 28.03.2005 much after the conclusion of ICAI (then ICWAI) Diamond Jubilee Conference by way of 06 (six) vouchers. He further submitted that the respondent had drawn telephone bills against his cell phone number 98310-86795 during the period August 2004 to January 2005 both from the EIRC as well as from the Institute Headquarters.

41. Thereafter, CA G.V. Krishna, learned Presiding Officer for this particular agenda item asked Director (Discipline) to identify and show a copy of the relevant payment voucher through which the cell phone bills were paid. *The voucher No. 112 dated 28.03.2005 for Rs 13,220/- of EIRC was shown to the Committee members. The Presiding Officer wanted to know who had signed the voucher to which Director (Discipline) stated that the payment was authorized by Shri Suresh Chandra Mohanty, the then Secretary of EIRC which was countersigned by one Shri Manas Kumar Thakur. Director (Discipline) also produced before the Committee copies of 03 (three) vouchers namely, nos 108 for Rs 9637/-, 111 for Rs 4024/- and 113 for Rs 6,893/- respectively, all dated 28th March 2005, which were authorized for payment by Shri Manas Thakur, who was not empowered to do so since he was not an office bearer at the relevant time. The Committee noted that Shri Manas Thakur had clearly overstepped his jurisdiction and signed all the three vouchers on the place meant to be signed by Chairman/Secretary/Treasurer.*

FINDINGS

42. Director (Discipline) was advised to prepare a brief note on how the figure Rs 61,461/- was arrived indicating the amount that has been fraudulently withdrawn and to place the same at the next meeting of the Committee. Director (Discipline) presented the following note before the Committee and the Committee noted that:

- (i) The Appellant i.e., the respondent, in the instant complaint has taken advance in connection with ICAI (then ICWAI) Diamond Jubilee Conference organized by EIRC at Hotel Peerless Inn on 4th December 2004 and 5th December 2004 on following dates:

<u>Sl. No.</u>	<u>Date</u>	<u>Voucher No.</u>	<u>Amount (Rs.)</u>
1.	07.12.2004	27	15000.00
2.	08.12.2004	41	15000.00
3.	16.12.2004	73	20000.00
		TOTAL	50000.00

The advance was drawn after the conference was over. Also, the subsequent advances were drawn before the first advance was adjusted. The advance of Rs 50,000/- was drawn after the conclusion of the conference and whatever justification has been provided by the respondent in his defence before the Committee on 28th August 2021 does not appear to be tenable.





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- (ii) The respondent got his advances adjusted on 28.03.2005 much after the conclusion of ICAI (then ICWAI) Diamond Jubilee Conference in the following manner:

<u>Sl. No.</u>	<u>Date</u>	<u>Voucher No.</u>	<u>Amount (Rs.)</u>	<u>Purpose</u>
1.	28.03.05	108	9637.00	Delhi Coordination Exp.
2.	28.03.05	109	2943.00	Travelling & Conveyance
3.	28.03.05	111	4024.00	Cold drinks/snacks at Peerless Inn
4.	28.03.05	112	13220.00	Re-imburement of Mobile Exp.
5.	28.03.05	113	6893.00	Taxi fare for IOC Programme
6.	28.03.05	114	24744.00	Travelling & Conveyance
		TOTAL	61461.00	

All adjustments were made on the same date i.e. 28.03.05 and some expenses are personal in nature.

- (iii) The respondent claimed Rs. 24,744/- in his own handwriting towards travelling and conveyance against local taxi fare vide voucher no. 114 dt. 28.03.2005 against which Rs.20000/- was adjusted. It was found that the amount of Rs. 24744/- was claimed on 68 occasions almost on continuous basis for which no details of journey undertaken was provided in violation of the TA/DA rules of the Institute.
- (iv) In respect of voucher no. 114 dt. 28.03.2005 the respondent has claimed local taxi fare at Kolkata on 16.09.2004, 17.09.2004 and 18.09.2004 while in reality on those days the Respondent was at New Delhi in connection with meetings of the Central Council. That on these days he was at New Delhi is proved from the TA bills of the Respondent for the above period. These are false claims. The reply furnished by the Respondent is not tenable. Moreover the Respondent had claimed Rs. 328/- as other mileage at Delhi in his TA bill and thus his contention that such expenditure was incurred in New Delhi does not hold good.
- (v) In respect of voucher no. 113 dt. 28.03.2005 of EIRC the respondent had adjusted Rs. 6893/- towards taxi fare on various dates for one month training programme for the officials of Indian Oil Corporation Ltd. from 16.11.2004 to 16.12.2004 at Great Eastern Hotel, Kolkata. The said claim is in the own handwriting of the respondent on a sheet of paper where he himself has stated that the programme was held at Great Eastern Hotel Kolkata, from 16.11.2004 to 16.12.2004. However the details to the attachment to voucher no. 113 dt. 28.03.2005 show that on several occasions taxi fares were claimed to and from Hotel Hindustan International, Kolkata. The fact that the training programme of IOC officials was held at Great Eastern Hotel, Kolkata is corroborated from the Annual Report of ERIC of ICWAI for the year 2004-05. Also, Hotel Hindustan International, vide there letter dt. 24.11.2014, has confirmed that there was no booking during the above period. Thus the respondent has made false claims.
- (vi) The respondent had adjusted Rs. 4024/- vide voucher no. 111 dt. 28.03.2005 of EIRC towards purchase of Cold drinks and snacks from local pan shop. The





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programme in connection with such expenditure has been claimed to be made, was the ICAI (then ICWAI) Diamond Jubilee Conference organized by EIRC at Hotel Peerless Inn on 04.12.2004 and 05.12.2004. The Disciplinary Directorate vide letter dated 11.06.2014 wanted to know from Hotel Peerless Inn as to whether the hotel allows snacks/cold drinks to be brought from outside and to be served to guests/participants when as auditorium is booked for the purpose of holding and conducting any programme/meeting. Hotel Peerless Inn vide their letter dated 14.06.2014 replied in negative. This expenditure of Rs. 4024/-, claimed to have been made, is not regular and is therefore, false. This has also been confirmed when the Disciplinary Committee examined Ms. Sayantani Bose, Manager of the Hotel at its meeting held on 26th October 2018 wherein she had stated in writing that they do not allow snacks and soft drinks from outside for consumption in hotel and banquets.

- (vii) The Respondent had adjusted Rs. 2943/- vide voucher no. 109 dt. 28.03.2005 of EIRC. The expenses are towards travelling & conveyance of Shri Pallab Bhattacharya (Rs. 1375/-), Shri Bhaskar Das (Rs. 514/-) and Shri Subir Chowdhury (Rs. 1084/-). The claims/bills of these persons are not on record. However, this amount of Rs 2943/- may have been paid to these persons and *therefore, the respondent may be given a benefit of doubt.*
- (viii) An amount of Rs. 9637/- was adjusted vide voucher no. 108 dt. 28.03.2005 towards 'Delhi Co-ordination expenses. A scrutiny of the attached bills reveals that not a single expense pertaining to the purported 'Delhi Co-ordination' were incurred at Delhi other than for an amount Rs. 76/- spent at Karolbag, New Delhi on 18.09.2004. The said voucher number 108 was passed by one Shri Manas Kumar Thakur, who was not even an office bearer of EIRC, at the relevant time, far less to speak of being a Chairman/Vice Chairman/Secretary or Chairman. However, since the respondent may have incurred the expenditure as the same is subject to controversy, the Committee takes a lenient view, notwithstanding the fact that the voucher has been signed by a person not authorized to do so and therefore, decides to exclude Rs 9637/- for the purpose of calculation of misappropriation/defalcation made by the appellant/respondent.
- (ix) It is further found that the Respondent vide voucher no. 113, dt. 28.03.2005 has claimed local taxi fare for Rs. 75/- on 19.10.2004, being journey from residence to IOCL. On the same date the Respondent has claimed to purchase petrol for Rs. 398/- from M/s. Casurina Service, Digha. Vide voucher no. 108, dt. 28.03.2005. On the same date the Respondent has claimed taxi fare on 09.12.2004 for Rs. 326/- vide voucher no. 114, dt. 28.03.2005. Thus the claims are false.
- (x) The respondent has adjusted Rs. 13,220 towards mobile telephone expenses from EIRC of ICWAI (vide voucher No. 112 dt. 28.03.2005 of EIRC) against cell no. 9831086795. The details of such bills pertaining to voucher 112 dt. 28.03.2005 are given below:-





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(Claim from EIRC against Mobile No. 9831086795)	
Bill Date	Bill Amount
21.08.2004	2,272
21.09.2004	4,152
21.10.2004	2,484
21.11.2004	4,319
21.12.2004	7,037
21.01.2005	8,449
TOTAL	28,713

As intimated by P.Sarkar Accounts Officer EIRC, the respondent agreed to received Rs. 13220/- against the above bills. This has also been confirmed by Shri P. Sarcir when he deposed before the Disciplinary Committee on 28th August 2021. There is no decision on record of the council of EIRC of ICAI (then ICWAI) to reimburse mobile telephone bills of a central council member.

- (xi) The Respondent has claimed mobile bills month after month from ICAI (then ICWAI) head quarter also against the same mobile (9831086795) for the same period. The details are given below:

Bill Date	Bill Amount	Amount Claimed	Date of reimbursement	Cheque no.
21.08.2004	2,272	1,478	31.08.04	049436
21.09.2004	4,152	2,978	14.10.04	049571
21.10.2004	2,484	1,642	08.11.04	049591
21.11.2004	4,319	3,667	01.12.04	049643
21.12.2004	7,037	3,692	30.12.04	049681
21.01.2005	8,449	4,962	02.02.05	049796
TOTAL	28,713	18,419		

- (xii) Thus, the entire amount of Rs. 13220/- that was received by him from EIRC of ICAI (then ICWAI) vide voucher no. 112, dt. 28.03.2005 against total bill value of Rs. 28713/- for 6 months has been fraudulently drawn.
- (xiii) It is found that the respondent had claimed local taxi fare at Kolkata on 24.11.04 & 25.11.04. However, facts reveal that the Respondent was present at New Delhi in connection with Central Council Meeting on both these days. The same can be corroborated from the TA Bills of the Respondent for the above stated period.

43. The letter dated 22nd January 2010 of Shri Manas Kumar Thakur referred by the respondent which states that cold drinks brought from outside were served at Hotel Peerless Inn where a programme of EIRC was being held has also been proved to be false and untrue as the representative of Hotel peerless has deposed before the Disciplinary Committee at its 44th meeting held on 26th October 2018 at Kolkata that





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Hotel Peerless Inn do not allow snacks and beverages to be brought from outside to be served to guests in the hotel. It is very likely that Shri Manas Kumar Thakur had connived with the respondent in misappropriating the money.

44. The matter came up for discussion in the 56th meeting of the Committee held on 25th September 2021 and the Committee noted that the details of misappropriation/defalcation by the respondent is as under:-

Sl No	Particulars	Amount (Rs)
1	Cell phone expenses from EIRC of ICWAI (vide voucher No. 112 dt. 28.03.2005 of EIRC) against cell no. 9831086795	13,220
2	Adjustment made vide voucher no. 111 dt. 28.03.2005 of EIRC towards purchase of Cold drinks and snacks from local pan shop. The programme in connection with such expenditure has been claimed to be made, was the ICAI (then ICWAI) Diamond Jubilee Conference organized by EIRC at Hotel Peerless Inn on 04.12.2004 and 05.12.2004.	4,024
3	Taxi fare adjusted vide voucher number 113 for training programme held at Hotel Hindustan International (No details of journey has been given)	6,893
4	Taxi fare adjusted vide voucher number 114 (No details of journey has been given, hence the entire amount becomes questionable)	24,744
	Total	48,881

As mentioned in para (vii) & (viii) above, benefit of doubt is given to Rs 2943/- [adjusted vide voucher no. 109 dt. 28.03.2005] which were incurred towards travelling & conveyance of Shri Pallab Bhattacharya, Shri Bhaskar Das and Shri Subir Chowdhury Further, An amount of Rs. 9637/- [adjusted vide voucher no. 108 dt. 28.03.2005] towards 'Delhi Co-ordination expenses' is also given benefit of doubt.

Thus, an amount of Rs 48,881/- (Rupees Forty eight thousand eight hundred and eighty one) has been fraudulently withdrawn.

45. On perusal of the above it is amply clear that there has been a clear case of defalcation of Rs 48,881/- and a case of 'other misconduct' has been made out. The Committee finding the respondent guilty of other misconduct, directed Director (Discipline) to call the respondent in the next meeting of the Committee under Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct





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and Conduct of Cases) Rules, 2007 to enable him an opportunity of being heard before passing any order under sub-section (3) of Section 21B of the Cost & Works Accountants Act, 1959.

46. By an email dated 1st October 2021 at or about 5.53 PM, the respondent was called upon under Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to enable him an opportunity of being heard before passing any order under sub-section (3) of Section 21B of the Cost & Works Accountants Act, 1959. The respondent by an email sent to the Disciplinary Directorate on the same date at or about 8.21 PM submitted as follows:

"Dear Sir

I, being a Sr. Citizen, categorically mentioned earlier that I restricted myself from travelling outstation since last week of March '20 due to Pandemic and also requested to call the meeting at Kolkata HQ.

Once again requesting the same.

Regards
Sanjiban"

47. The respondent was again called vide letter/mail Ref. No.: G/DD/(M-8601)/CWA(9)/16/11/2021 dated 18th November 2021 for hearing on 25th November 2021 at 11.30 A.M. under Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to enable him an opportunity of being heard before passing any order under sub-section (3) of Section 21B of the Cost & Works Accountants Act, 1959. The respondent by his email dated 22nd November 2021 received at or about 11.25 A.M. confirmed his presence for the hearing on 25th November 2021. The respondent appeared before the Committee on the scheduled date and time. The respondent was informed that on arriving at a finding under Rule 18(17) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 that he is guilty of 'other misconduct', an opportunity of being heard was being given to him under Rule 19(1) of the Rules before passing any order under sub-section (3) of Section 21B of the Cost & Works Accountants Act, 1959.
48. At the hearing, the learned members of the Committee requested the respondent to make his submissions, if any. The respondent replied that he has nothing more to submit as he had already made his written submissions on earlier occasions and also verbally when he was called on 28th August 2021 for the purpose of affording him an opportunity to enter upon his defence and produce evidence under Rule 18(13) of the Rules and for compelling attendance of any witness for the purpose of examination or cross-examination or the production of any document or any material object in terms of Rule 18(14) of the said Rules. He further stated that the matter was already 16/17 years old and it is not possible for him to recollect the details which occurred before more than a decade and a half.
49. The respondent once again replied that since it was a very old matter, he was unable to recollect the details. But he stated that during the period 2004-05 the Eastern India



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Regional Office (EIRC) was going through acute cash crunch and he had to pay from his own pocket first before he could claim reimbursement of the amount expended. He also stated that for organizing a programme as big as the Diamond Jubilee Conference he had taken the help of students and others who were paid from his own pocket. One of the learned members of the Committee asked the respondent that when an opportunity to cross examine the complainant or Shri P. Sarcar, the then Accounts Officer or any other person was given to him under Rule 18(14) of the Rules on 28th August 2021, why did he not cross examine any of them. The respondent replied that since Shri P. Sarcar did not deny to any of the submissions made by the former, he did not find it necessary to cross examine the latter.

50. At the 58th meeting of the Committee held on 25th November 2021, the learned members brought to the notice of the respondent that there was a misappropriation of Rs 48881/- (Rupees Forty eight thousand eight hundred and eighty one) only. The Committee noted that the respondent has nothing to state in his favour even though a number of opportunities have been afforded to him to make his submissions. The Committee also noted that the directions of the Hon'ble Appellate Authority have been complied with in as much as the following had been complied with:

- (i) A proper statutory trial has been held and the facts have been proved by corroborating the same with necessary evidences.
- (ii) Examination of the representative of the Hotel Peerless Inn has been done who re-confirmed that Hotel Peerless Inn does not allow snacks and cold drinks to be brought from outside for consumption in their hotel.
- (iii) Examination of Shri P. Sarcar i.e., the officer concerned of the accounts department of the Institute, who has cleared the aforesaid bills as well as CMA Kaushik Banerjee, the Officer of the Institute who has made an enquiry in the matter have been called and both have deposed before the Committee.
- (iv) CMA Arnab Chakraborty, Director (Finance) of the Institute was also examined who identified the above mentioned vouchers before the learned members of the Committee.
- (v) An opportunity was given to the respondent for cross examination which he chose not to exercise.
- (vi) All other relevant evidences produced by Director (Discipline)

ORDER

51. The written submission by the Respondent on various dates have been duly considered but not found tenable. The original complaint along with rejoinder of the complainant





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and affidavit submitted by the complainant along with documentary evidences attached hereto have also been duly considered by the Disciplinary Directorate. The documents relied upon the Director Discipline at the time of formulation of prima facie has also been duly considered.

52. The Committee noted that the process itself followed in EIRC in disbursing an amount of Rs 50,000/- as an advance after the conclusion of Diamond Jubilee Conference of the ICWAI (now ICAI) is flawed. This amount was paid in three stages, on Rs 15,000/- on 7.12.2004, Rs 15,000/- on 8.12.2004 and finally Rs 20,000/- on 16.12.2004. The logic of paying an advance to someone after the conclusion of the program appears to be extremely unconvincing and queer to the Committee. The Committee further observes that the appellant has drawn such advance one after another without adjusting the first advance that was drawn on 7.12.2004. Again, all such advances were adjusted on one day i.e., on 27.03.2005.
53. The Committee also observes that the appellant had made several false and untrue claims like claiming local taxi fare at Kolkata on 16.09.2004, 17.09.2004 and 18.09.2004 while he was at New Delhi in connection with attending meeting of the Central Council of the Institute. Also, he had claimed local taxi fare at Kolkata on 24.11.2004 and 25.11.2004 when he was actually at New Delhi to attend the meeting of the Central Council on those days.
54. Again, in a program held at Great Eastern Hotel, Kolkata from 16.11.2004 to 16.12.2004, the respondent, in his own handwriting on a sheet of paper has himself stated that the programme was held at Great Eastern Hotel Kolkata, during the above mentioned period but the details to the attachment to voucher no. 113 dt. 28.03.2005 show that on several occasions taxi fares were claimed to and from Hotel Hindustan International, Kolkata. Thus the respondent has made false claims.
55. The Committee further noted that the respondent has submitted a letter Ref No. EIRC/Coml/09-10/001 dated 22nd January 2010 of Shri Manas Kumar Thakur, the then Chairman of EIRC who at the time of the occurrence Of the event was an ordinary Regional Council Member. The above referred letter dated 22nd January 2010 of Shri Manas Kumar Thakur also states that cold drinks brought from outside were served at Hotel Peerless Inn where a programme of EIRC was being held. It is on record that Hotel Peerless Inn in its letter dated 14th June 2014 addressed to the Disciplinary Directorate has categorically stated that they do not allow snacks and beverages to be brought from outside to be served to guests in the hotel. It is also on record that Ms.. Sayantani Bose, Manager (HR), representative of hotel Peerless Inn appeared before the Disciplinary Committee on 26th October 2018 and submitted that they do not allow snacks and soft drinks from outside for consumption in restaurant and banquets. Thus, the entire amounts of Rs 4,024/- adjusted vide voucher number 111 towards cold drinks and snacks have been fraudulently made. This also raises question on the credibility of the statements made by Shri Manas Kumar Thakur made in the capacity of Chairman,





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EIRC as on 22nd January 2010 as the statement made by him is not only untrue and false but also goes on to show the connivance between the respondent and the said Shri Manas Kumar Thakur in orchestrating the misappropriation.

56. The respondent had claimed mobile bills for his mobile number 9831086795 for the period from 21.08.2004 to 21.01.2005 (both months inclusive), both from the Institute Headquarters as well as from the EIRC. The respondent agreed to receive Rs 13,220/- towards mobile phone expenses from EIRC. The Committee observes that there is no decision on record of the EIRC Council to reimburse mobile phone bills of a Central Council Member.
57. The Committee also noted that the appellant did not pay the amount of Rs 61,461 /- plus 100% penalty thereof levied under sub-section (3) of Section 21B of the Cost and Works Accountants Act, by an order dated 27th May 2015.
58. **In all the proceedings relating to the instant complaint, during the period from 20th September 2020 to 11th February 2023, CMA Biswarup Basu, being the complainant himself recused himself from all meetings when this Agenda item used to be taken up. In almost all the proceedings before the Committee, CA Nalini Padmanabhan, Government Nominee took over as the Presiding Officer of the Committee except in two of the meetings held on 28th August 2021 and 8th September 2021 respectively, where CA G.V. Krishna, Government Nominee presided over in such meetings.**
59. In the 59th meeting of the Disciplinary Committee held on 8th February 2022, the learned members noted that the above mentioned financial irregularities prove beyond point that the respondent has misappropriated the funds of the Institute and holds him guilty of violation of the following provisions of The Cost and Works Accountants Act, 1959 and the rules made there under:
- **Clause (2) of Part IV of The First Schedule to the Cost and works Accountants Act, 1959**
 - **Clause (1) of Part II of The Second Schedule to the Cost and works Accountants Act, 1959.**
60. The Committee unanimously decided that the following action be taken under sub-section (3) of Section 21B of the CWA Act, 1959 against the respondent:
- (a) Reprimand
 - (b) Removal of name from the Register of members for a period of one year
 - (c) Impose a fine of Rs 48,881/- together with an equivalent amount of penalty to be paid within 30 days of the date of service of the order, failing which the name of the member will be removed for a period of one year.



Nalini Padmanabhan



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61. The Committee members noted that the name of the respondent was already removed from the Register of members for a period of one year by virtue of an order dated 27th May 2015 of the earlier Disciplinary Committee. The Committee decided that in the event of non-payment of the amount of fine together with the amount of penalty by the respondent, the name of the member will be removed for a period of one year. This removal of name of the respondent will be afresh notwithstanding the earlier removal made vide order dated 27th May 2015 of the earlier Disciplinary Committee.
62. As per Section 22E (1) of the Cost and Works Accountants Act, 1959, "any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary committee imposing on him any of the penalties referred to in sub-section (3) of Section 21A and sub-section (3) of Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority."

Nalini Padmanabhan 26/2/23

(CA Nalini Padmanabhan)
Government Nominee

PRESIDING OFFICER (for this matter)

