

Crossing of  
E.P.  
(No)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 254/91

~~Tax No.~~

DATE OF DECISION 28.1.1992

Mr. R.P. Vasani, Petitioner

Mr. J.D. Ajmera Advocate for the Petitioner(s)

**Versus**

Union of India & Ors. Respondent

Mr. P.M. Raval Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. R.C. Bhatt

: Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *X*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *X*

Mr.R.P.Vasani,  
Type-IV/2,P & T Colony,  
Ranip,  
Ahmedabad - 382 480.

...Applicant.

( Advocate : Mr.J.D.Ajmera )

Versus

1. Union of India,  
Notice to be served through  
the Secretary,  
Ministry of Telecommunication,  
New Delhi.
2. Mr.M.K.Magla, or his successor,  
in-Office., Deputy General Manager (Admn.),  
Office of Chief General Manager,  
Telecom,  
Gujarat Circle,  
Ahmedabad - 380 009.
3. General Manager,  
Telecom District,  
Rajkot - 360 001.

...Respondents.

( Advocate : Mr.P.M.Raval )

J U D G M E N T

O.A. NO. 254 OF 1991.

Date : 28-01-1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

Heard Mr.J.D.Ajmera, learned counsel for  
the applicant. None remained present for the respondents.

2. The applicant ~~an~~ accounts officer serving  
with the respondents, Telecommunication Department, in  
this application filed under Section-19 of the Admini-  
strative Tribunals Act, 1985, alleged that on 1st August,  
1988, he was due of crossing efficiency bar and in the  
pay scale of Rs. 2375-75-3200-EB-100-3500, The applicant  
is not permitted to cross EB, at the stage of Rs.3,200/-,  
basic in the pay scale. It is alleged in the application

that after he is permitted to cross E.B., his basic salary would be increased to Rs.100/- p.m. and usual allowances. It is the case of the applicant that as his E.B. was due in August, 1988, his case should have been considered by the D.P.C. in July, 1988, and the applicant has produced at Annexure-A/1, the copy of the Fundamental Rules-25, with Government of India's instruction thereunder, which shows the time-schedule which is to be adopted for considering the E.B.Cases. This document Annexure-A/1, does show that if the period during which the date of crossing the E.B. falls within August to October, then the DPC has to consider the E.B. Case in July. It is the case of the applicant that the Telecom District Manager, Rajkot, vide his letter dated 3rd October, 1988, informed the applicant that the memorandum of charges issued by the respondent No.1, dated 21st September, 1988, had been received and the same was sent along with the letter dated 3rd October, 1988. The applicant has produced collectively at Annexure-A/2, the copy of the letter dated 3rd October, 1988, alongwith the memorandum of charge dated 21st September, 1988, and other documents received by him. Thereafter, the applicant sent representation in connection with his E.B. to respondent No.3, on 27th November, 1989, vide annexure-A/3, that if his case was kept pending due to the disciplinary case pending against him, he could not cross E.B. and the action of the respondents on the <sup>ir</sup>part would be bad in view of the decision of the Full Bench of the Central Administrative Tribunal, and therefore, he requested the respondents that his


E.B. be released. Thereafter the respondent no.2, sent  
a letter dated 30th January, 1990, <sup>vide Annexure-A/4,</sup> informing the respondent  
no.3, that the applicant's case has been considered  
at length by his office and <sup>that</sup> they have not given any  
cognigence to the Judgment delivered by the Madras Bench  
of the Central Administrative Tribunal, in absence of  
any administrative instruction to be followed. The  
judgment and the copy of the said order dated 30th  
January, 1990, i.e., Annexure-A/4, was sent to the applicant  
vide letter dated 2nd July, 1990 for information.  
It is the case of the applicant that the General  
Manager has appreciated the applicant's sence of  
devotion to duty vide letter dated Annexure-A/5, dated  
26th March, 1990, and the General Manager, Ahmedabad  
Telecom District has also appreciated <sup>that</sup> the applicant's  
works, vide Annexure-A/5, dated 25th April, 1991.

3. The applicant has challenged the order of  
the respondents dated 30th January, 1990, Annexure-A/4,  
not releasing the applicant's E.B. Rs.3,200/- from  
1st August, 1988, on the ground that the D.P.C. had  
to consider the applicant's case in the month of July, 1988  
in which month the charge sheet was not issued to  
the applicant. It is therefore, the case of the  
applicant that it is not open for the respondents  
to put the applicant's case in a sealed cover and not  
to release the applicant's E.B., and hence the order  
Annexure-A/4, is illegal and arbitrary and has prayed  
that the same be set aside.

4. The learned advocate Mr.J.D.Ajmera, for the applicant submitted that the Full Bench of Central Administrative Tribunal, had given Judgment in K.C.H.Venkata Reddy and Ors. and Union of India and Ors., reported in Full Bench, judgments, (Central Administrative Tribunal), (1986-89), Page No.158, in which it is held that the date of initiation of disciplinary proceedings is the date when the charge-memo or the charge sheet is issued to the employee and the sealed cover procedure can be resorted to only thereafter. He submitted that the charge-memo was not served to the applicant, admittedly upto July, 1988, but the same was sent to the applicant on 3rd October, 1988, as it appears from Annexure-A/2. He therefore, submitted that in July, 1988, the D.P.C. had to consider the suitability of the applicant for crossing the efficiency bar and the sealed cover procedure should not have been adopted because in that month there was no initiation of departmental proceeding against the applicant because in July, 1988, the charge-memo was not served on the applicant.

5. The respondents have contended in the reply that the Full Bench Judgment referred to by the applicant could not be given any weight because it cannot be applied universally and the reliance was placed on R.I., communication issued from D.O.T., New Delhi, dated 1st January, 1988. It is contended by the respondents that the DPC Proceedings was taken before the due date of E.B. The respondents have produced at R.II, a copy of the letter dated 6th April, 1989, that the decision to initiate disciplinary proceedings against applicant was taken on 20th July, 1988, which was

communicated by Section Officer of vigilance office. Therefore, the reliance was put by the respondents on 20th July, 1988, referred to above which was communicated to the Vigilance Officer on 6th April, 1989. The respondents therefore, contended that the application should be dismissed. The Full Bench's decision of the Central Administrative Tribunal referred to along with the other cases were taken to Supreme Court and the Hon'ble Supreme Court of India has held in the case of the Union of India and others, Versus K.V.Jankiraman, etc. reported in Judgment-Today-1991-(3) S.C. Page.527, = AIR-1991, S.C. Page No.2010, The Hon'ble Supreme Court has agreed with the view of the Central Administrative Tribunal's judgment of Full Bench that it is only when the charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be restored to only after the charge-memo/charge sheet is issued. It is held that the pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. This decision is binding to all the subordinate Courts, Tribunals and to all the Government Departments including the respondents.



6. In the instant case, in July, 1988, admittedly no charge memo or charge sheet is issued to the applicant and as per the FR-25, and the Government of India's instruction - A/1, this case has to be considered in July, 1988, and at that time it cannot be said that there

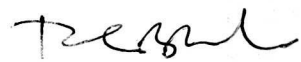
was a disciplinary proceeding commenced against the applicant in view of the decision of the Hon'ble Supreme Court of India, and therefore, we agree with the submissions of the learned advocate for the applicant that the suitability of the applicant to cross the E.B. ought to have been considered by the DPC just prior to 1st August, 1988. The sealed cover procedure is required to be resorted to only after the charge sheet or charge-memo is issued, as per the ratio laid down in the Judgment of the Hon'ble Supreme Court in Jankiraman's case (Supra). No such Charge-memo or the charge sheet was issued against the applicant till 1st August, 1988. Therefore, following the ratio of Supreme Court decision it cannot be said that any departmental proceeding was initiated against the applicant on due date of crossing the efficiency bar i.e., 1st August, 1988.

7. The learned advocate for the respondents did not remain present to meet with the arguments of the learned advocate for the applicant. But having considered all the contentions of the Written Statement of the respondents and documents produced by them and having considered the ratio of the decision of the Hon'ble Supreme Court in Jankiraman's case, (Supra), the following order requires to be passed.

ORDER

8. The order passed by the respondent no.2, dated 30th January, 1990, vide Annexure-A/4, is set aside. The order of the respondents in keeping the applicant's case in sealed cover and not releasing the applicant's E.B.

is also quashed and set aside. The respondents are directed to open the sealed cover of the DPC meeting and the respondents shall pass appropriate orders in regard to the crossing of the E.B. as on the due date, regarding the fitness of the applicant by DPC as on 1st August, 1988. The respondents to comply with the above directions within a period of three months from the date of receipt of the copy of this Judgment by the respondents. No order as to costs. The application is disposed of.



( R.C.Bhatt )  
Member (J)

*\$101*  
*16/5/94*

All communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name  
Telegraphic address :—  
"SUPREMECO"

*S.15/94*

No.

D.No.431/93/Sec.IX

**SUPREME COURT  
INDIA**

Dated New Delhi, the 11th May, 1994 19

FROM Assistant Registrar,  
Supreme Court of India.

TO ✓ The Registrar,  
Central Administrative Tribunal,  
Ahmedabad.

*N.Y. 10*  
*R.C.B.*

CIVIL APPEAL NO.4220 OF 1994  
(From & Judgment and Order dated 15th September, 1992  
in Central Administrative Tribunal, Ahmedabad Bench in  
O.A. No.254 of 1992)

Batuklal Girija Shankar Tarwadi

.. Appellant

-Vs-

Union of India & Anr.

.. Respondents

Sir,

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordship of the Supreme Court to transmit herewith a certified copy of the Order dated the 5th May, 1994 in the appeal above-mentioned.

The certified copy of the decree made in the said appeal and the Original Records, if any, will be sent later on.

Please acknowledge receipt.

Yours faithfully,

Encl. As above.

*[Signature]*  
Assistant Registrar

Submitted to Hon'ble the V.C.

*A.C. of order dt. 5/5/94 passed by the Supreme Court against the Judgment passed by this Tribunal is put up for perusal please.*

*44/254/91*

*[Signature]*  
*17/5/94*  
*S.O.B.*

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4220 OF 94  
@ S.L.P (CIVIL) No. 7043 OF 93

Certified to be true copy

Assistant Registrar (Judl.)

12-5-1994  
Supreme Court of India

Batukhal Girijashankar Tarwadi

... Appellant

vs.

516527

Union of India & Anr.

... Respondents

O R D E R


Leave granted.

The appellant is the son of Girjashankar. The appellant's father was employed with the Western Railway and died while employed, on 22nd April, 1978 leaving behind wife, two sons including the appellant. The elder brother of the appellant is mentally retarded and was offered a job on compassionate ground but he could not avail the same. At the time of his father's death the appellant was minor aged about 10-1/2 years. After attaining the majority he applied for a job but his application was rejected and the petition filed by the appellant in the Tribunal was dismissed. The Tribunal gave the ground for dismissing the application is that the appellant had approached much later after attaining the majority.

We have heard learned counsel for the parties. Having regard to the facts and circumstances of the case we are of the view that this is a fit case in which the claim of the petitioner/appellant should be considered by the authorities. The appeal is, therefore, allowed. The order of the Tribunal is set aside and the respondents are directed to consider the claim of the appellant for appointment on compassionate

grounds in accordance with the rules within 6 weeks.

No costs.

  
.....J.  
(S.C. Agrawal)

  
.....J.  
(M.K. Mukherjee)

New Delhi

May 5, 1994.

*By Registrar OD*

Date : 2nd June, 1994

- To,
01. Union of India,  
Owning and Representing,  
Western Railway,  
Through General Manager,  
Western Railway,  
Churchagate,  
Bombay - 400 020.
  02. Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
Bhavnagar.

Sub : C.A. No.: 4220 of 1994  
Batuklal G. Tarwadi..... Appellant.  
Vs.  
Union of India & Ors..... Respondents.

Sir,

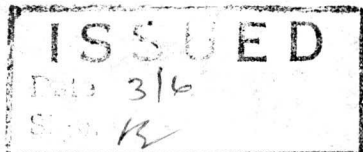
I am directed to forward herewith a certified copy of order dated 5th May, 1994 passed by Hon'ble the Supreme Court in the above matter for information and necessary action.

Receipt may kindly be acknowledged.

Yours faithfully,

*P. T. Tailor*  
( T. P. Tailor )  
Deputy Registrar (J)

*a/c*  
*S*  
*2/6/94*



All communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name. Telegraphic address :— "SUPREMECO"

D.No. 431/93/IX

SUPREME COURT  
INDIA

Dated New Delhi, the 20<sup>th</sup> May, 1994.

Central Administrative Tribunal  
Ahmedabad Bench  
Award No. 133-4  
Date 17-6-94

FROM

The Registrar (Judicial),  
Supreme Court of India,  
New Delhi.

TO

The Registrar,  
Central Administrative Tribunal,  
Ahmedabad.

CIVIL APPEAL NO. 4220 OF 1994.

Batuklal Girija Shankar Tarwadi.

Appellant.

Versus

Union of India and ~~Ors~~ Anr.

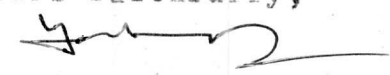
Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 11th May, 1994, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 5th May, 1994 of the Supreme Court in the said appeal.

Please acknowledge receipt.

Yours faithfully,

  
for Registrar (Judicial).

S.O.(J) (1) for n.a.  
Pz  
1-6-94

2

518642

Sup C 52

**IN THE SUPREME COURT OF INDIA****CRIMINAL/CIVIL APPELLATE JURISDICTION**

Certified to be true copy

Assistant Registrar (Judl.)

Supreme Court of India

Nox

xxx

**CIVIL APPEAL NO.4220 OF 1994.**

(Appeal by special leave granted by this Court by its Order dated the 5th May, 1994 in Petition for Special Leave to Appeal (Civil) No.7043 of 1993 from the Judgment and Order dated the 15th September, 1992 of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in M.A.No.139/92 in O.A.No.254 of 1992).

Batuklal Girija Shankar Tarwadi,  
Son of late Shri Girija Shankar Tarwadi,  
(Formerly Pointsman under S.M.Gavadka,  
Bhavnagar Division, Western Railway)  
Sheri No.5, Chakargadh Road,  
Amreli.

Appellant.

Through the Legal Aid Committee,  
Supreme Court of India.

**Versus**

1. Union of India,  
Owning and Representing,  
Western Railway,  
Through,  
General Manager,  
Western Railway,  
Churchage,  
Bombay - 400 020.
2. Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
Bhavnagar.

Respondents.

5th May, 1994.**CORAM:**

HON'BLE MR. JUSTICE S.C.AGRAWAL  
HON'BLE MR. JUSTICE M.K.MUKHERJEE

For the Appellant : Mr. K.V.Venkataraman, Advocate.

For the Respondents : Mr. Altaf Ahmed, Additional Solicitor  
General of India.  
(M/s. C.V.S.Rao, T.C.Sharma, P.Parmeswaran,  
Advocates with him).

The Appeal above-mentioned being called on for hearing  
before this Court on the 5th day of May, 1994, UPON perusing the  
record and hearing counsel for the parties herein, THIS COURT  
DOTH in allowing the appeal ORDER:

1. THAT the Judgment and Order dated the 15th September, 1992

of the Central Administrative Tribunal, Ahmedabad in M.A. No.139 of 1992 in O.A.No.254 of 1992 be and is hereby set aside and the Respondents herein be and are hereby directed to consider the claim of the appellant herein for appointment on compassionate grounds in accordance with the rules within 6 weeks from this the 5th May, 1994;

2. THAT there shall be no costs of this appeal in this Court;

AND THIS COURT DOETH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Manepalli Narayanarao Venkatachaliah, Chief Justice of India at the Supreme Court, New Delhi dated this the 5th day of May, 1994.

*sd/*  
(VED PRAKASH SHARMA)  
REGISTRAR.

**SUPREME COURT**  
**CRIMINAL/CIVIL APPELLATE JURISDICTION**

No. ~~xxx~~ of 199 ~~xxx~~  
CIVIL APPEAL NO.4220 OF 1994.

**Batuklal Girija Shankar Tarwadi.**

Appellant  
Petitioner  
~~xxxxx~~

Versus

**Union of India and Anr.**

Respondent **s.**

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH AT AHMEDABAD.  
M.A.No.139/92 in O.A.No.254 of 1992.**

**DECREE ALLOWING THE APPEAL WITH NO COSTS.**

Dated the 5th day of May, 1994.

Examined

Compared with

No. of folios

SHRI **K.V.Venkataraman,**

Advocate on Record for **the Appellant.**

SHRI **P.Parmeswaran,**

Advocate on Record for **the Respondents.**

SEALED IN MY PRESENCE  
*Amur*  
20/5/94

Central Administrative Tribunal Ahmedabad Bench.

Application No. OA/254/91. of 199

Transfer Application No. \_\_\_\_\_ Old Writ.Pet.No. \_\_\_\_\_

CERTIFICATE

Certified that no further action is required to be taken  
and the case is fit for consignment to the Record Room (Decided)

Dated: 6/2/92.

Countersigned.

S 

Section Officer/Court Officer.



Signature of the Dealing  
Assistant.

# INDEX SHEET

PART A B & C

[illegible]

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No: 254

of 91

Miscellaneous Petition No: -

of -

Shri R P Vazani Petitioner(s)

Versus.

Union of India & Co Respondent(s).

This application has been submitted to the Tribunal  
by Shri J D Sharma.  
Under Section 19 of the Administrative Tribunal Act, 1985. It has  
scrutinised with reference to the points mentioned in the check  
list in the light of the provisions contained in the Administrative  
Tribunal Act, 1985 and Central Administrative Tribunals (Procedure)  
Rules, 1985.

The Applications has been found in order and may be  
given to concerned for fixation of date.

The application has not been found in order for the  
reasons indicated in the check list. The applicant may be advised  
to rectify the same within 14 days/draft letter is placed below  
for signature.

ASSTT:

S.O.(J) :

D.R.(J) :

KNP/30491/ \*\*\*\* \*

1/3 Sawe  
10/5/91  
H. J. J. J.  
11/5/91



CENTRAL ADMINISTRATIVE TRIBUNALAHMEDABAD BENCHAPPLICANT(S) R P VasaniRESPONDENT(S) Union of India & CoPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO  
RESULT OF EXAMINATION.

1. Is the application competent ? Yes
2. (A) Is the application in the prescribed form ? Yes  
(B) Is the application in paper book form ? Yes  
(C) Have prescribed number complete sets of the application been filed ? Yes
3. Is the application in time ? Yes  
If not by how many days is it beyond time ?  
Has sufficient cause for not making the application in time stated ?
4. Has the document of authorisation/ Vakalat Nama been filed ? Yes
5. Is the application accompanied by D.D./I.P.O. for Rs. 50/-? Number of D.D./I.P.O. to be recorded. 801-866160.
6. Has the copy/copies of the order(s) against which the application is made, been filed? Yes
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed? Yes  
(b) Have the documents referred to in (a) above duly attested and numbered accordingly? Yes  
(c) Are the documents referred to in (a) above neatly typed in double space ? Yes
8. Has the index of documents has been filed and has the paging been done properly? Yes

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT  
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.? *yes*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ? *no*
11. Are the application/duplicate copy/~~ppate~~ copies signed.? *yes*
12. Are extra copies of the application with annexures filed.? *yes*
  - (a) Identical with the Original.
  - (b) Defective.
  - (c) Wanting in Annexures
- No. \_\_\_\_\_ Page Nos. \_\_\_\_\_ ?
- (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the respondents been filed? *no*
14. Are the given addressed, the registered addressed ? *yes*
15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application? *yes*
16. Are the transations certified to be true or supported by an affidavit affirming that they are true? *yes*
17. Are the facts for the cases mentioned under item No.6 of the application? *yes*
  - (a) Concise ?
  - (b) Under Distinct heads ?
  - (c) Numbered consecutively ?
  - (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons.? *yes*

*checked*  
*2077/51*

SIC 197/91  
27/6/91

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD.

ORIGINAL APPLICATION NO. 254 OF 1991

R.P. Vasani

.. Applicant

Versus

Union of India & Ors.


.. Respondents

I N D E X

Ann.No.	Particulars	Pages No.
-	Memo of Application	1 to 13
'A-1'	Copy of Fundamental Rules 25 and Govt. of India's instruction	14 to 22
'A-2' (Colly.)	Copy of letter dt. 3.10.1988 alongwith memorandum of charge dt. 21.9.1988	23 to 30
'A-3'	Copy of letter dt. 27.11.1989	31
'A-4'	Copy of letter dt. 30 Jan., 1990	32
'A-5'	Copy of letter dt. 26.3.1990 issued by General Manager, Rajkot	33
'A-6'	Copy of letter dt. 25.4.1991	34

Ahmedabad.

Dated : 27.6.91

  
( J D Ajmera )  
Advocate for the applicant.

Copy sent to  
MR. P.M. Thakar  
Adv.  
Kgs. Patel  
27.6.91.

JDA  
2+3

10 A/c  
801 866/60

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD.

ORIGINAL APPLICATION NO. *254* OF 1991.

R.P. Vasani

.. Applicant

Versus

Union of India & Others

.. Respondents

DETAILS OF APPLICATION :

I. PARTICULARS OF THE APPLICANT :

MR. R.P. VASANI

Type IV/2, P & T Colony,

Ranip,

Ahmedabad - 382 480.

II. PARTICULARS OF THE RESPONDENTS :

Respondent No. 1 - Union of India,  
Notice to be served through  
the Secretary,  
Ministry of Telecommunication,  
New Delhi.

Respondent No. 2 - Mr. M.K. Magla, *or his Successor*  
*2 km. off*, Deputy General Manager (Admn.)  
Office of Chief General Manager,  
Telecom, Gujarat Circle,  
Ahmedabad- 380 009.

Respondent No. 3 - General Manager,  
Telecom District,  
Rajkot - 360 001.

III. ORDER UNDER CHALLENGE :

ORDER NO.: D.O. Letter No. LEG/5-1/90 dt. 30.1.1990  
passed by opponent No. 2.

Brief facts of the order :

The applicant challenges the action of the respondent No. 3 in not permitting the applicant to cross E.B. at the stage of Rs. 3200/- basic in the pay scale of Rs. 2375-75-3200-EB-100-3500 and also order passed by respondent No. 2 rejecting the applicant's representation. It may be stated that the applicant had been served the order passed by respondent No. 2 on or after 2nd July, 1990 as copy of the order passed by respondent No. 2 was served upon the applicant on or after 2.7.1990.

IV. JURISDICTION :

The applicant states that the subject matter of the present application falls within the jurisdiction of this Tribunal.

V. LIMITATION :

The applicant further states that the subject matter of the application is within the period of limitation as prescribed under section 20 of the Administrative Tribunals Act, 1985.

VI. FACTS OF THE CASE :

1) The applicant states that he has been serving under the respondents since February, 1965 and from time

to time he has been promoted to the higher posts. The applicant has put in more than 26 years service. The service particulars of the applicant are as under :

<u>Date</u>	<u>Appointment/Promotion</u>
1. 16.2.1965	Appointed as Time-scale Clerk at Rajkot.
2. December, 1969	Promoted as Post office, R.M.S. Accountant
3. <del>22</del> . 12.10.1971	promoted as Junior Accountant
4. 21.1.1974	promoted as Senior Accountant
5. 15.5.1978	promoted as Accounts Officer on ad-hoc basis.
6. 1.7.1981	promoted as Accounts Officer on regular basis
	- since then the applicant has been serving as Accounts Officer for the last about 10 years.

The applicant states that as stated above, the applicant has been promoted from time to time to higher post and he has been discharging his duties, sincerely, diligently and efficiently. There is no adverse remarks against <sup>him.</sup> The applicant's A.C.R. are outstanding. The applicant, is therefore, entitled to cross the E.B.

2) The applicant states that on 1.8.1988, he was due for crossing E.B. and ~~xxx~~ in the pay scale of Rs. ~~2375~~-75-3200-EB-100-3500 the applicant is not permitted to cross E.B. after the stage of Rs. 3200 basic. If the applicant is ~~per~~ permitted to cross E.B. then his basic salary would be increased Rs. 100/- plus usual allowances.

The applicant states that Union of India have issued orders under fundamental Rules 25 which inter alia provides that the time schedule may be adopted for considering E.B. cases in different months for the different periods. In the present case, as the applicant's E.B. was due in August, 1988, therefore, as per the instruction, his case should have been considered by the D.P.C. in July, 1988. The applicant begs to annex herewith a copy of Fundamental Rules 25 and the Govt. of India's instruction thereunder and marked Annexure A-1 Ann.A-1

The applicant states that his case has been considered by the D.P.C. and the same has been kept in sealed cover.

3) The applicant states that the telecom Dist. Manager, Rajkot vide his letter dt. 3.10.1988 informed the applicant that a memorandum of charges issued by the Ministry of Communication, Department of Telecom. New Delhi dt. 21.9.1988 has been received and the applicant was sent alongwith letter dt. 3.10.1988. Copy of the letter dt. 3.10.1988 alongwith the memorandum of charge dt. 21.9.1988 and other documents received are annexed and marked Annexure A-2 (Colly.). Ann.A-2  
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4) The applicant states that since the applicant's salary has been stagnated at the basic of Rs. 3200/- and he has <sup>not</sup> been permitted to cross E.B., the applicant made

a representation to respondent No. 3 on 27.11.1989. The applicant, inter alia, pointed out in the said representation that if his case ~~xxxxxx~~ kept pending during the disciplinary case pending against him, he could not cross E.B. The said action would be bad in full bench judgment rendered by the Central Administrative Tribunal. He therefore, requested that his E.B. may be released. A copy of the said letter dt. 27.11.1989 is annexed herewith and marked Annexure A-3. Thereafter, the applicant has not been given any opportunity of being heard. The applicant states that respondent No. 3 has not given any reply to him and appears to have referred the matter to respondent No.2. It appears that respondent No.2 has sent a letter dt. 30th January, 1990 informing respondent No.3 that the applicant's case has been considered at length by his office and they have not given any cognizance to the judgment delivered by the Madras Bench of the Central Administrative Tribunal in absence of any administrative instruction to follow up the judgment. A.C.M.(Admn.) Office of ~~Chief~~ General Manager, Telecom District, Rajkot - respondent No. 3 sent a copy of the above referred order dt. 30 January, 1990 to the applicant vide letter dated 2.7.1990 to the applicant for information. Copy of the letter dt. 30 January, 1990 is annexed herewith and marked Annexure A-4. Communication sent to the petitioner dt.

2.7.1990 is below the said order of respondent No.3.

5. The applicant states that his service record is

clean and blotless and he has been rendering service efficiently and deligently. The General Manager, Telecom-District, Rajkot has issued a letter dt. 26.3.1990 appreciating the work of the applicant, where in he has stated that the applic~~ant~~ has played a very significant role in pursu~~ing~~ the case with the <sup>municipality</sup> Ministry and District Revenue Authorities and he has utilised all resources further in department. It is further stated that the General Manager was gretely appreciated the applicant's sence of devoition to duty. A copy of the letter dt. 26.3.1990 written by the General Manager, Rajkot is annexed herewith and marked Annexure A-5. Ann.A-5

Similarly, the General Manager (Operation & Maintenance) Ahmedabad Telecom District, Ahmedabad has also appreciated the applic~~ant~~'s works and has issued a letter to that effect on 25.4.1991 wherein he has stated that he is extremely happy to applicant's ~~com~~mandable performance in the last <sup>financial</sup> ~~final~~ year. A copy of the said ~~letter~~ dtl 25.4.1991 is annexed herewith and marked Annexure A-6. Ann.A-6

6) The applicant states, that, therefore, he has been discharging his duty efficiently and deligently and has not committed any misconduct. The action of the respondents in not releasing the applicant's E.B. and put his case in a sealed cover pendency of the inquiry proceedings, is illegal, arbitrary and contrary to the judgment of the Tribunal and therefore, it is violative

of articles 14 and 16 of the Constitution.

7) The applicant begs to challenge the said action of the respondent authority in keeping his case in sealed cover and not granting him E.B. on the following amongst other grounds.

P G R O U N D S :

i) That the impugned action of the respondents in not permitting the applicant to cross E.B. is illegal and arbitrary and violative of fundamental rights guaranteed under articles 14 and 16 of the Constitution of India.

ii) That the applicant has been discharging his duty sincerely, efficiently and diligently. The applicant has not committed any misconduct. It is further submitted that the applicant has been served with charge-sheet by the communication issued by Telecom District Manager, Rajkot dt. 3.10.1988 alongwith that letter a memorandum issued by the Government of India, Ministry of Communication, Department of Telecommunication dt. 21st September, 1988 has been annexed with all other annexures. It is submitted that the applicant's <sup>E.B.</sup> increments had become due on 1st August, 1988 and as per the instruction of the Govt., the D.P.C. has to consider the applicant's case in the month of July, 1988. It is clear from the above referred dates that in July, 1988, the charge sheet was not issued to the applicant. It is <sup>submitted that</sup> therefore it is not open for the respondents to put the applicant's case in

a sealed cover and not to release the applicant's E.B.

The said action of the respondents is arbitrary and contrary to the judgment rendered by the Central Administrative Tribunal's benches.

iii) It is further submitted that the orders passed by respondent No.2 dt. 30 January, 1990 (Ann. A-4) is illegal, arbitrary. It is submitted that though the said authority was aware of the judgment of the Tribunal however he has stated that he has not taken cognizance of the judgment of the Tribunal. It is submitted that judgments of the Tribunal prevails over the instructions issued by the department. Once there is a judgment of the Tribunal it is binding to all and it is not necessary ~~xxx~~ that till fresh instructions are received the said judgment could not be implemented. The respondent No.2 has shown scant regard for the judgment referred to in Tribunal in which Union of India ~~is~~ already party in the said case, and office of respondents No. 2 and 3 are subordinate office for the same. It is submitted that the respondent No. 2 has misled the judgment and misdirected himself. It is submitted that the judgment rendered by the Central Administrative Tribunal of the full bench consisting of the Hon'ble Chairman of the Principal Bench as well as other two Hon'ble Vice Chairmen of Madras and Hyderabad Bench. It is submitted that, therefore, the full bench judgment is binding to all

the parties. It is not open for the respondent No. 2 to not to take cognizance of the said judgment. The approach of respondent No. 2 is contemptuous. It is submitted that in the judgment, the full bench has held that the date of initiation of the proceedings should be taken as basis for complying sealed cover proceedings and it is well established that the date of initiation of the proceedings is the date when the charge memo is served in the officer. It is submitted that therefore, in the present case, the applicant was served the charge sheet/memo on or after 3.10.1988 whereas his E.B. became due on 1st August, 1988. It is submitted that therefore, prior to 1st August, 1988, he was not served with charge sheet, therefore, his E.B. has to be released and ~~xxxxxx~~ cannot be withheld on the ground that disciplinary proceedings are pending against him. It is submitted that the action and orders of the respondents are contrary to the judgment rendered by the full bench of the Tribunal.

- iv) It is submitted that the applicant has to suffer loss of about Rs. <sup>450</sup>~~200~~/- or so per month. Prima facie, the impugned orders cannot be sustained and same are contrary to the judgment rendered by the full bench. The applicant has made out a prima facie strong case and balance of convenience is in favour of the applicant and therefore, the applicant is entitled to interim relief as prayed for. It is submitted that the applicant would also suffer

irreparable loss and damage if the interim relief as prayed for is not granted.

VII. RELIEF SOUGHT FOR :

The applicant, therefore, prays that this Hon'ble Tribunal may be pleased to :

- A) Allow this application and quash and set aside the action of the respondent No. 3 in not releasing the applicant's E.B. at the stage of Rs. 3200/- and also order passed by respondent No. 2 dt. 30 January, 1990 ;
- B) Quash and set aside the action and order of the respondents in ~~xxx~~ keeping the applicant's case in a sealed cover and not releasing the applicant's E.B. and direct the respondents to open the sealed cover and direct the respondents to release the applicant's E.B. and give him all consequential benefits w.e.f. 1st August, 1988 including the arrears of salary etc.
- C) pass all other orders as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of this case.

8. INTERIM RELIEF IF PRAYED FOR :

The applicant submits that prima facie, the applicant has made out a strong case. The impugned action and orders of the respondents are contrary to the judgment rendered by the Full Bench of the Tribunal on the subject matter. The said orders are percy, illegal and bad. It is submitted that the applicant, therefore, ~~xxxxx xxxx xxxxx~~ is entitled to interim relief as prayed for. The applicant therefore, prays that this Hon'ble Tribunal may be pleased to :

- A) Pending admission, hearing and final disposal of this matter, the Hon'ble Tribunal may be pleased to issue interim direction to the respondents to open the applicant's sealed cover regarding his E.B. case and if the applicant is entitled to cross E.B. as per the result of the said proceedings, direct the respondents to release the applicant's E.B. w.e.f. 1.8.1988 with all other consequential benefits, including refixation of the salary and arrears of salary;

IX. MATTER NOT PENDING :

The applicant declares that he has not filed any other petition or application in this Hon. Tribunal or in any Court of law in India including Supreme Court of India.

X. REMEDY EXHAUSTED :

The applicant further declares that the applicant has made representation to the respondent authority and it has been disposed of by the competent authority. Therefore, the applicant has exhausted all the remedies available to him under the rules.

XI. PARTICULARS OF DEMAND DRAFT IN RESPECT OF COURT FEES :

1. Demand Draft No. : 01 866160
2. Date of Issue :: 27.6.81
3. Name of Issuing Post Office : High Court Post Office.
4. Post Office at which payable : Ahmedabad.



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NOTE.—If, in the above illustration, the next increment is to accrue after one year from the date of grant of advance increments (i.e., on 1-9-1972 only) then the regulation of pay will be as follows:—

1-3-1971	160	
1-7-1971	160	Punishment starts operating.
1-9-1971	176	Two advance increments.
1-7-1972	184	Punishment period is over. (or Rs. 176 if the increment was withheld with cumulative effect).
1-9-1972	192	(or Rs. 184 if the increment was withheld with cumulative effect).

4. Similarly in cases where a penalty of reduction to a lower stage in the time-scale of pay for a specific period is imposed, the order of penalty should not interfere with the accrual of advance increments granted as an incentive for passing departmental tests.

[ G.I., M.F., O.M. No. 1 (23)-E. III (A)/75, dated the 18th June, 1975. ]

F.R. 25. Where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or special order, authorise in this behalf.

#### GOVERNMENT OF INDIA'S ORDERS

(1) Procedure for consideration of cases for crossing of efficiency bar.—The procedure and guidelines to be followed in the matter of crossing of efficiency bar by Government servants as contained in the Cabinet Secretariat (Department of Personnel and A.R.), O.M. No. 29014/2/75-Ests. (A), dated the 15th November, 1975 (not printed) and subsequent instructions issued from time to time on the subject have been reviewed and in supersession of all the earlier instructions on the subject, the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras. of this Office Memorandum.

2. Cases of Government servants for crossing of efficiency bar in a time-scale of pay shall be considered by a Committee which shall be the same as the Departmental Promotion Committee constituted for the purpose of considering cases of confirmation of the Government servants concerned. Where, however, in a D.P.C. constituted for considering case of confirmation, a member of the Union Public Service Commission is associated, it shall not be necessary to associate the member of the Commission in the Committee for considering cases of Government servants for crossing of the efficiency bar. Where no D.P.C. has been prescribed for considering cases of confirmation, a Committee comprised of officers

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of sufficiently higher level may be set up to consider the cases of efficiency bar.

2.1 It is not essential for the Committee considering cases of Government servants for crossing the E.B. to sit in a meeting to consider such cases, but it may consider such cases by circulation of papers. The Committee shall make its recommendations to the authority competent to pass an order under F.R. 25 and the decision will be that of the competent authority.

2.2 The following time-schedule may be adopted for considering the E.B. cases:—

<i>Months during which the date of crossing the E.B. falls</i>	<i>Months in which E.B. cases should be considered by the D.P.C.</i>
January to March	January
April to July	April
August to October	<u>July</u>
November and December	<u>October</u>

According to the above time-schedule, E.B. cases falling during the months of January to March are cleared in January and cases falling during the months of April to July in the month of April. It would be necessary to get the confidential reports in respect of these persons for the immediately preceding year written on priority basis during the first fortnight of January/April itself so that the consideration of these cases is not delayed beyond the months of January and April. In respect of cases of E.B. becoming due during the months of August to December, it would not be necessary to obtain special reports as a matter of course for the incomplete portion of the year for which regular confidential reports are not yet due.

2.3 Where reports of performance are not prescribed or maintained for any category of Government servants on account of the nature of their work, the Administrative Ministry/Department may consider the introduction of written/trade tests for the purpose of assessing the suitability for crossing of E.B.

2.4 The decision to enforce E.B. should be formally communicated to the Government servant concerned in all cases. If a Government servant is not allowed to cross E.B. on due date, his case may be reviewed again next year. Such reviews should be done annually in accordance with the above time-schedule.

2.5 In the event of D.P.C. being convened after a gap of time following the date on which the Government servant became due to cross the E.B., the Committee should consider only those Confidential Reports which it would have considered had the D.P.C. been held as per the prescribed schedule. If the Government servant is found unfit to cross the

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bar from original due date, the same D.P.C. can consider the report for subsequent year also, if available, to assess his suitability in the subsequent year.

2.6 Where a Government servant held up at the E.B. stage on account of unfitness is allowed to cross the E.B. at a later date as a result of subsequent review, his pay shall normally be fixed at the stage immediately above the E.B. In case the competent authority proposes to fix his pay at a higher stage by taking into account the length of service from the due date of E.B., the case should be referred to the next higher authority for a decision.

3. In case of Government servants—

- (i) under suspension;
- (ii) in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) against whom an investigation on serious allegation of corruption, bribery or similar grave misconduct is in progress;

the D.P.C. shall assess their suitability without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them. However, the recommendations of the D.P.C. shall be kept in a sealed cover. If on conclusion of the disciplinary proceedings the Government servant is exonerated of the charges against him, the recommendations in the sealed cover may be considered by the competent authority, who may lift the efficiency bar retrospectively from the date it originally became due. If the proceedings end in imposition of one of the minor penalties, the E.B. case may be reviewed by the D.P.C. with reference to the original recommendations kept in the sealed cover and the circumstances leading to the disciplinary action and the penalty imposed. The review D.P.C. in such cases shall, having regard to the circumstances of the case like the date of the cause of action for the disciplinary proceedings and the nature of penalty, specifically give their recommendations whether the crossing of E.B. can be allowed from the original due date or from a prospective date only. In cases where the disciplinary proceedings end in imposition of a major penalty, the recommendations of the D.P.C. kept in the sealed cover shall not be acted upon.

3.1 A Government servant, who is recommended for crossing of E.B. by the D.P.C. but in whose case any of the circumstances mentioned in para. 3 above arise after the recommendations of the D.P.C. are received but before he is actually due for crossing the E.B. will be considered as if his case had been placed in a sealed cover by the D.P.C.

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4. In a case where a Government servant, who becomes due for crossing of E.B., is already undergoing a minor penalty, the D.P.C. shall consider his case taking into account the overall record, including the circumstances leading to the disciplinary proceedings and the nature of penalty imposed, and give their recommendations regarding his suitability for crossing the bar. If, however, the Government servant is undergoing the penalty of withholding of increment, the crossing of E.B. shall be given effect to only after the expiry of the period of penalty.

5. Ministry of Finance, etc., may please bring these instructions to the notice of all concerned authorities under their control.

[ G.I., Dept. of Per. & Trg., O.M. No. 29014/2/88-Ests. (A), dated the 30th March, 1989. ]

(2) Delegation.—(a) General.—It has been decided that the authorities mentioned below shall be empowered to issue the sanction in regard to fitness to cross the efficiency bar in respect of the staff mentioned against each—

- (a) in respect of a member of Central Civil Service, Class I or General Central Service, Class I in a Ministry or Department of the Government of India, the Secretary of the Ministry or Department or the authority administering the Central Service, Class I concerned;
- (b) in respect of a member of a Central Civil Service, Class II (other than the Central Secretariat Service, Section Officers Grade) or General Central Service, Class II, working in a Ministry or Department of the Government of India, the Joint Secretary in the Ministry or Department; and in respect of members of the Central Secretariat Service (Section Officers Grade) and those of Selection Grade of Central Secretariat Stenographers' Service working in a Ministry or Department of the Government of India, the Secretary of the Ministry or Department concerned;
- (c) in respect of all Gazetted and non-Gazetted Officers working in a non-Secretariat office, the Head of the Department:

Provided that in respect of a member of a Central Civil Service, Class I, serving in a non-Secretariat office, the power shall be exercised only by the authority administering the Central Civil Service, Class I, concerned.

2. If in respect of any staff of the Ministries/Departments of non-Secretariat Offices, an authority lower than the authorities mentioned at (a), (b) and (c) above is at present empowered to withhold the increment by virtue of the powers conferred upon him by F.R. 24 or the relevant disciplinary rules, then such authority may continue to issue sanctions in regard to fitness to cross the efficiency bar in respect of such staff.

[ G.I., M.F., O.M. No. F. 2 (19)-E. III/62, dated the 23rd April, 1962 read with Corrigendum, dated the 30th October, 1963 and Addendum, dated the 18th January 1971. ]

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4. In a case where a Government servant, who becomes due for crossing of E.B., is already undergoing a minor penalty, the D.P.C. shall consider his case taking into account the overall record, including the circumstances leading to the disciplinary proceedings and the nature of penalty imposed, and give their recommendations regarding his suitability for crossing the bar. If, however, the Government servant is undergoing the penalty of withholding of increment, the crossing of E.B. shall be given effect to only after the expiry of the period of penalty.

5. Ministry of Finance, etc., may please bring these instructions to the notice of all concerned authorities under their control.

[ G.I., Dept. of Per. & Trg., O.M. No. 29014/2/88-Ests. (A), dated the 30th March, 1989. ]

(2) Delegation.—(a) General.—It has been decided that the authorities mentioned below shall be empowered to issue the sanction in regard to fitness to cross the efficiency bar in respect of the staff mentioned against each—

- (a) in respect of a member of Central Civil Service, Class I or General Central Service, Class I in a Ministry or Department of the Government of India, the Secretary of the Ministry or Department or the authority administering the Central Service, Class I concerned;
- (b) in respect of a member of a Central Civil Service, Class II (other than the Central Secretariat Service, Section Officers Grade) or General Central Service, Class II, working in a Ministry or Department of the Government of India, the Joint Secretary in the Ministry or Department; and in respect of members of the Central Secretariat Service (Section Officers Grade) and those of Selection Grade of Central Secretariat Stenographers' Service working in a Ministry or Department of the Government of India, the Secretary of the Ministry or Department concerned;
- (c) in respect of all Gazetted and non-Gazetted Officers working in a non-Secretariat office, the Head of the Department:

Provided that in respect of a member of a Central Civil Service, Class I, serving in a non-Secretariat office, the power shall be exercised only by the authority administering the Central Civil Service, Class I, concerned.

2. If in respect of any staff of the Ministries/Departments of non-Secretariat Offices, an authority lower than the authorities mentioned at (a), (b) and (c) above is at present empowered to withhold the increment by virtue of the powers conferred upon him by F.R. 24 or the relevant disciplinary rules, then such authority may continue to issue sanctions in regard to fitness to cross the efficiency bar in respect of such staff.

[ G.I., M.F., O.M. No. F. 2 (19)-E. III/62, dated the 23rd April, 1962 read with Corrigendum, dated the 30th October, 1963 and Addendum, dated the 18th January 1971. ]

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(b) *Income Tax Department.*—It has been decided that under the provisions of F.R. 25, all Commissioners of Income Tax, the Director of Inspection (Income Tax), the Director of Inspection (Investigation) and the Director of Inspection (Research, Statistics and Publication) be empowered to issue the sanction in regard to fitness to cross the efficiency bar in respect of Income Tax Officers, Class I.

[G.I., M.F., O.M. No. 2/7/66-Ad. VI, dated the 25th November, 1966.]

(3) Procedure for consideration of cases, (a) when disciplinary proceedings are pending, (b) when conduct is under investigation.—See para. 3 of G.I.O. (1) above.

(4) Competent authority in the case of deputationists and those on foreign service.—A question has been raised regarding the authority competent to sanction increment above the efficiency bar, in respect of—

(i) Government servants on deputation from State Governments to the Central Government and vice versa; and

(ii) Government servants on deputation from one Central Government Department to another Central Government Department/Foreign Service.

2. It has been decided that as an increment next above the efficiency bar needs the sanction of the authority empowered to withhold increments under F.R. 24 or the relevant disciplinary rules, the authority which has the power to make substantive appointments to the post held by the deputationist Government servant or an authority empowered under the C.C.S. (C.C.A.) Rules, 1965, to withhold increments, would be the authority competent to allow him to cross the efficiency bar. In other words, in respect of a State Government servant on deputation to Central Government and drawing pay in the State Government scale *plus* deputation (duty) allowance in accordance with the extant orders, it will be for the State Government concerned to consider the question of allowing him to cross the efficiency bar in his parent scale and issue appropriate orders in the matter. Where the State Government servant draws pay in the scale of the post held by him on deputation under the Central Government, the competent authority under the Central Government will decide about his crossing the efficiency bar in the Central scale of pay and forthwith inform the State Government concerned of the decision taken. In cases where it is decided to enforce the efficiency bar the State Government should be informed forthwith of the circumstances leading to the issue of the orders withholding increment at the efficiency bar on the analogy of the proviso to Rule 20 of the C.C.S. (C.C.A.) Rules, 1965.

3. The procedure outlined above, with regard to the grant of increment above the efficiency bar will also apply, *mutatis mutandis*, to Central Government employees on deputation (a) from one Central Government Department to another, (b) to State Governments and (c) to foreign service.

[G.I., M.F., O.M. No. F. 1 (2)-E. III (A) 68, dated the 13th May, 1968.]

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(5) Restoration of the normal date of increment after lifting of the efficiency bar.—A question has been raised whether, at the subsequent crossing of efficiency bar, after a Government servant was held up at the efficiency bar stage for some time, his original date of increment should be restored or he may be ordered to serve for one year at the new stage after crossing of efficiency bar so as to earn the next increment.

2. It has been decided that in such cases, once the competent authority has determined the stage at which the Government servant concerned should draw his pay from the date he is allowed to cross the efficiency bar, the next increment above the stage will accrue to him on the usual date of drawal of increment, if otherwise admissible and not after rendering one year's service.

[ G.I., M.F., O.M. No. P. 1 (14)-E. III (A)/68, dated the 4th September, 1968. ]

(6) When penalty of withholding of increment imposed while official held up at efficiency bar stage.—Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October, 1970, but was not found fit to cross the bar. In the meantime he was placed under suspension and he could not, therefore, be allowed to cross the efficiency bar while under suspension in October, 1971 and October, 1972. The disciplinary proceedings against him ended with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of the order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which he should draw the pay above efficiency bar should also be decided and the penalty order enforced as explained above.

[ D.G., P. & T., Letter No. 6/13/72-Disc. II/(Disc. I), dated the 9th February, 1973. ]

It is clarified that on the basis of the order allowing to cross the efficiency bar indicating also the stage at which the official would draw pay above the efficiency bar, the pay of the official should be fixed at this stage in the first instance from the date from which he has been allowed to cross the efficiency bar and then the increment which was due from that date should be withheld for enforcing the penalty. For a proper

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(8) When an official becomes due for crossing E.B. even before earning a single report.—When a Government servant officiating in a higher post becomes due for crossing efficiency bar in the scale attached to the higher post even before earning a single report regarding his performance in the higher post, consideration of his case for crossing the efficiency bar in the scale attached to the higher post in which he is officiating should be deferred till at least one report about his performance in that post becomes available and thereafter taken up for consideration which should be on the basis of the entire record of service. If he is found fit as a result of such consideration, he may be allowed to cross the efficiency bar retrospectively from the due date.

[ G.I., M.H.A., Deptt. of Personnel & A.R., O.M. No. 29014/2/75-Est. (A), dated the 6th April, 1979 — Point 6. ]

(9) When increment above E.B. stage is allowed inadvertently.—Increment(s) granted above the efficiency bar by mistake should be withheld at once. Simultaneously, the official's case for crossing the efficiency bar from the due date should be considered by the appropriate committee taking into account the records of performance up-to-date. If he is found fit to cross the efficiency bar from the due date the withheld increment(s) should be released to him with arrears, if any, pertaining to the period from the date of release of those increment(s). If, however, he is not found fit to cross the efficiency bar from the due date, the amount paid to him by way of increment(s) which were not due to him should be recovered in easy instalments.

[ G.I., M.H.A., Deptt. of Personnel & A.R., O.M. No. 29014/2/75-Est. (A), dated the 6th April, 1979 — Item 4. ]

(10) Effect of advance increments taking official above E.B. stage. —  
(a) *Absorbable in future increments.*—If the grant of advance increment(s) (absorbable in future increments) on the passing of a prescribed test or acquiring the prescribed proficiency in a prescribed subject takes the Government servant above the efficiency bar stage, while the advance increment(s) should be granted, the next increment should be granted to him only if and when he is found fit to cross the efficiency bar, after consideration of his case.

[ G.I., M.H.A., Deptt. of Personnel & A.R., O.M. No. 29014/2/75-Est. (A), dated the 6th April, 1979 — Point 5. ]

(b) *Not absorbable in future increments.*—It is clarified in consultation with the Ministry of Finance that if an officer qualifies for advance increments (not absorbable in future increases in pay) which is granted would take him beyond the efficiency bar stage in the time-scale, he would be considered for crossing the efficiency bar with effect from the date of accrual of the advance increments itself. If crossing the efficiency bar is sanctioned in pursuance of F.R. 25, the officer would get the advance increments from the due date. If not, the officer will come on to such stage in the time-scale of pay as the competent authority may fix when the efficiency bar is subsequently lifted, taking the date of accrual of advance increments as the due date of crossing the efficiency bar.

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This issues with the concurrence of P. & T. Finance, vide their Dy. No. 5158/FA-I/76, dated the 25th May, 1976.

[D.G., P. & T., N.D. No. 2/167/75-PAP, dated the 9th June, 1976.]

(11) No orders for crossing E.B. necessary while fixing pay in the promoted post.—See G.I. Order (4) below F.R. 22-C.

(12) E.B. crossing automatic in cases of refixation under F.R. 31 (2).—See G.I. Order (3) below F.R. 31.

(13) E.B. not to be withheld merely on the ground F.R. 17-A has been invoked.—See G.I. Order under F.R. 17-A.

(14) Stoppage at E.B. does not amount to penalty but can be appealed against.—See Explanation below Rule 11, and Rules 23, 27 of C.C.S. (C.C.A.) Rules, 1965.

F.R. 26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:—

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.

(b) (i) Service in another post, other than a post carrying less pay referred to in clause (a) of Rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post on which the Government servant holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India:

\*Provided that the President may, in any case, in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies,

1. As substituted by G.I., M.F., Notification No. F. 1 (I)-E. III (A)/67, dated the 29th November, 1967.

\*See G.I.O. (3) below.

*One copy*  
*for*

दूरसंचार विभाग CONFIDENTIAL/BY HAND  
Department of Telecommunications

समय भ्रम  
संदर्भ दे

reply  
quote

Vig/12/86

प्रेषक  
From : Telecom District Manager,  
Rajkot.

सेवा में  
To : Shri R.P. Vasani,  
Accounts Officer, TRA I  
O/O T.D.M. Rajkot.

दिनांक  
Dated at Rajkot 3-10-88

Annex: A/2  
23

विषय  
SUBJECT: Making over of memorandum received  
from Deptt. of Telecom, New Delhi.

Please find enclosed Memo No. 8/24/88-Vig II(1) (ii)  
dated 21.9.88 from Govt. of India, Ministry of Communications,  
Department of Telecommunications, New Delhi.

You are requested to acknowledge the receipt  
of the memorandum in triplicate.

Further, while submitting your defence statement,  
you are requested to submit the same in triplicate, for  
onward transmission to the higher authorities.

(NIRMAL SAROOP) 3.10.88

Telecom District Manager,  
Rajkot, 360001.

Encl: As above

Enc  
Per

24

Dak Tar Bhawan  
Sansad Marg,  
New Delhi-110001.

Dated the 21st Sept 1988

M E M O R A N D U M

The President proposes to have an inquiry held against Shri Ratilal P. Vasani, Asstt. Chief Accounts Officer, o/o Divisional Engineer Telegraphs, Junagadh under Rule 14 of the CCS(CCA) Rules, 1965. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexe-I). A statement of the imputations of mis-conduct or mis-behaviour in support of each article of charge is enclosed (Annexe-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexes III & IV).

2. Shri Ratilal P. Vasani is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted by him. He should, therefore, specifically admit or deny each article of charge.

4. Shri Ratilal P. Vasani is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Shri Ratilal P. Vasani is invited to rule 20 of the CCS(Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Ratilal P. Vasani is aware of such a


.....2/-

*[Signature]*  
ACV

representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the CCS (Conduct) Rules, 1964.

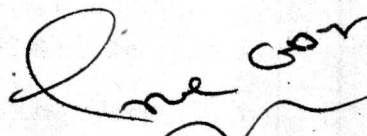
6. Receipt of this Memorandum shall be acknowledged.

By order and in the name of the President.

  
( R. MOZUNDER ) 20/7/88  
DIRECTOR ( VM )

Shri Ratilal P. Vasani,  
Asstt. Chief Accounts Officer,  
o/o Divisional Engineer Telegraphs,  
Junagadh.

(Through the General Manager Telecom, Ahmedabad).

  
J. Me Gorr  
Aen

Statement of articles of charge framed against  
Shri Ratilal P. Vasani, ACAO, o/o DET, Junagadh.


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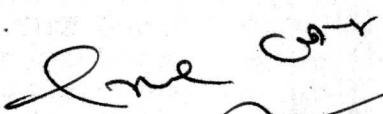
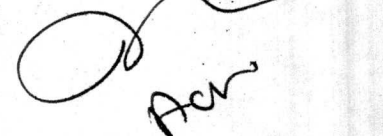
ARTICLE

That the said Shri Ratilal P. Vasani, while functioning as ACAO in office of DET Junagadh during the year 1981, as a member of Selection Committee for recruitment of Telephone Operators, abetted Shri J.I. Vasavada, DET, Junagadh in as much as he failed to see that selection of candidates is proper and according to the procedure laid down.

Thus, by his above acts, Shri Ratilal P. Vasani exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening Rule 3(1) (i) and (iii) of CCS (Conduct) Rules, 1954.

By order and in the name of the President.

  
( R. K. ZUNDER ) 20/9/82  
DIRECTOR (VI)

  
Ine  
  
Ach

27

Statement of imputations of misconduct or misbehaviour in support of article of charge framed against Shri Ratilal P. Vasani, ACAA, o/o Divisional Engineer Telegraphs, Junagadh.

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That the said Shri Ratilal P. Vasani was working as ACAA in o/o Divisional Engineer Telegraphs, Junagadh during the year 1981.

2. On 14.7.1981 an advertisement was published by the G.M. Telecom, Ahmedabad for recruitment of 56 TOS in Junagadh Telegraph Engineering Division. In response to this advertisement 2387 candidates submitted applications out of which 357 candidates were called for written test in October, 1981 and 65 candidates were selected for recruitment to the Posts of TOS. The procedure prescribed for recruitment of TOS stipulates that the recruiting authority should maintain three registers known as 'X', 'Y' and 'Z' registers. In 'X' register, names of the candidates who apply for the post are entered. Thereafter a check list is prepared which contains details of Particulars of candidates, which is scrutinised by the Clerk and Head Clerk concerned. Thereafter, the names of the candidates, who are found suitable to be called for written test, are entered in 'Y' register. Register 'Z' contains the names of candidates finally selected by the duly constituted Selection Committee. As per DG P&T circular letter No. 20/27/74-SPB.I dated 17.2.1975 the weightage is to be allowed by raising the aggregate percentage in the basic examination.
3. The G.M. Telecom, Ahmedabad had appointed S/Shri J.I. Vasavada, DET, Junagadh, R.P. Vasani, ACAA and K.V. Vasavalia, SDO(P), as Members of Selection Committee. Shri K.V. Vasavalia, who was a member of the Selection Committee, did not sign the list of selected candidates because he was never shown the final list of selected candidates.
4. Written test of the candidates was conducted in MDS College, Junagadh. Shri J.I. Vasavada DET, Junagadh had issued instructions to Examination Supervisors not to initial answer books. Shri H.R. Solanki, former Time Scale Clerk in o/o DET, Junagadh had written the answer books of candidates S/Shri M.K. Paradava and G.K. Varu who were subsequently employed as TOS. This has been confirmed by the handwriting expert.

28

- ✓ 5. The aggregate marks of S/Shri M.K. Raparelia, B.P. Lakhani and M.K. Paradava should be 57.45, 61.27 and 60.36 respectively. But with a view to favouring them, these candidates have been deliberately given higher aggregate marks as 62.45, 65.7 and 66 respectively to which they were not otherwise entitled to.
6. Thus, by his above acts, Shri Ratilal P. Vasani committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner which is unbecoming of a Government servant thereby violating Rule 3(1) (i), (ii) and (iii) of CCS(Conduct) Rules, 1964.

.....

Done copy  
Acr

✓ List of documents by which article of charge framed against Shri Ratilal P. Vasani, ACAO, o/o Divisional Engineer Telegraphs, Junagadh are proposed to be sustained.

---

1. Advertisement published by the circle office for recruitment of Telephone Operator in 1981.
2. Original application of Shri M.K. Paradava and Shri G.K. Varu.
3. Inward Register for the applications of Telephone Operator recruitment 1981.
4. So-called 'Y' register in which name of S/Shri M.K. Paradava and G.K. Varu are entered.
5. Final 'Z' register in loose line sheets.
6. D.P.C. List.
7. Result sheet of written test examination in which nos. of S/Shri M.K. Paradava and G.K. Varu are seen.
8. Duty list of invigilators.
9. Order for S/Shri M.K. Paradava and G.K. Varu to resume training.
10. Appointment order of S/Shri M.K. Paradava and G.K. Varu.

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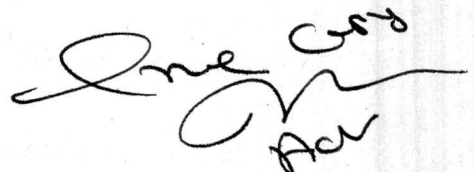
*Inve Cor*  
*ACU*

30

List of witnesses by whom articles of charge framed against Shri Ratilal P. Vasani, ACAO, o/o Divisional Engineer Telegraphs, Junagadh are proposed to be sustained.

1. Shri Thakorlal Shankerlal Vyas, Asstt. Director (Rectt. & Estd), o/o General Manager Telecom, Ahmedabad R/o 17 Indraprath Society, Sector-22 Gandhinagar.
2. Shri Chhaganlal Devjibhai Khanpara, Junior Engineer, o/o AE PRX Gandhidham, R/o T-7 P&T Colony, Gandhidham.
3. Shri Pravinchandra Vishwanath Acharya, Section Supervisor o/o DET, Junagadh, R/o 5-B, Anjana Society, Near Collector's Bungalow, Junagadh.
4. Shri Keshavlal Veljibhai Vasavada, SDOT, Veraval R/o Circuit House, Veraval.
5. Shri Jayendraprasad Labhshankar Vyas, SSTRS, o/o DET, Junagadh, R/o Kadiwad Vasta Lodha's Shari, Junagadh.
6. Shri Dharamshi Popatlal Popat, JE, o/o SDOP, Junagadh R/o 28 Khodiyarnagar, Junagadh
7. Shri Ashvinkumar L. Bhatt, Telephone Operator, Telephone Exchange, Junagadh, R/o House of Gunubhai Dave, Genda Aged Road, Junagadh.
8. Shri Kiritkumar Jamnadas Purohit, JE, o/o DET Junagadh R/o Adhyapan Mandir, Junagadh.
9. Shri Kalabhai H. Khambhala, Telephone Operator, Junagadh.
10. Shri Kishore B. Joshi, Telephone Operator, Junagadh.
11. Shri Devayat K. Bakutara, Telephone Operator, Junagadh.
12. Shri Hitendrakumar Ramsinh Solanki, Cashier cum Clerk, State Bank of Saurashtra, Manavadar, R/o "Kaushik", SBS Colony, Junagadh
13. Shri Arshibhai Samatbhai Solanki, R/o Koyalana (Ghed), Taluka Manavadar, Junagadh.
14. Shri Jayantilal J. Sheth, Income Tax Inspector, R/o 15-Khusbu Appts., Opp. Convent School, Gandhigram, Junagadh.
15. Shri Vinodrai J. Joshi, Tax Assistant, o/o ITO, R/o 1-Khusbu Appts., Junagadh.
16. Shri Narendra Singh, Asstt. Government Examiner, GEOD, Hyderabad.

.....

  
J. C. Joshi  
ACR

Annet: A 13

31

From:-

R.P.Vasani,  
Accounts Officer T.R. I  
%General Manager Telecom.District,  
Rajkot Telecom.District, Rajkot.1.  
Date:27.11.1989.

To:

The General Manager Telecom.District,  
Rajkot Telecom.District, Rajkot.360001.

Subject:Representation in connection with release  
of E/B due on 1.8.1988.

Sir,


With due respects, I beg to submit that I am due to cross E/B on 1.8.1988 in the Scale of Rs.2375-75-3200-EB-100-3500 and thus entitled to be paid due increment; i.e. to the stage of Rs.3300 w.e.f. 1.8.1988. This has not been released and paid to me till this time.

If my case is kept pending due to disciplinary case against me, I beg to submit that I am due to cross E.B w.e.f. 1.8.1988 whereas chargesheet is of dated 21.9.88 and served to me on 3.10.1988. As per full bench judgement of Central Administrative Tribunal(Extract) Para 32 and 39(4) enclosed the date of initiating proceedings is the date on which chargesheet is served and not the date on which action to initiate the proceedings is taken. Thus, there was no disciplinary case against me on 1.8.1988. Thus, I am entitle to get my increment to the stage of Rs.3300/- with effect from 1.8.1988.

Kindly to themanndful and oblige.

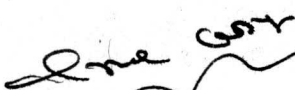
Thanking you,

Yours faithfully,

  
(R.P.Vasani)

Encls:As above.

Accounts Officer (T.R.I)  
%General Manager Telecom.District,  
Rajkot Telecom.District, Rajkot.1

  
Acw.

Annex. A 14

Copy of D.O. letter No. LEG/5-1/90 dtd. 30-1-90 from Shri N.K. Mangla,  
DGM (A), O/O. CGMT Ahmedabad address to Shri T.L. Bhatia, GMTD Rajkot. 32

.....

Kindly refer to your D.O.No. X-3/DEP (A)/42 dtd. 3-1-90 regarding  
E/B Crossing case of Shri R.P. Vasani, AO (TR) of your office.

The matter was examined at length in this office. We may not give  
any cognizance to the judgement delivered by the Madras Tribunal in the  
absence of any administrative instructions to follow the judgement. Your  
contentions on the subject are, therefore, correct.

It is presumed that Department of Personnel and training is studying  
the judgement issued by various courts and issuing modified instructions  
from time to time. The latest amendment on Sealed Cover Procedure was  
issued on 12.1.88 vide Memo No. 22011/2/86-Estt. (A) much after the  
deliverance of C.A.T Judgement. While issuing this order, they would have  
gone through the judgement of the Supreme Court in Civil Appeal No.294/86  
filed by the Union of India and others V/s Rajender Singh decided on  
26.9.86 and also must have applied their mind to the judgement of  
of Madras Bench.

As such, we may not attach any weight to the point raised in the  
appeal of Shri Vasani since the judgement of Madras Tribunal can not be  
applied universally.

A copy of the latest instructions issued by the Department of  
personnel and Training on 12th January, 1988 is enclosed for your guidance.

Sd/-

Yours sincerely,

( N.K. Mangla, )

DGM(A) O/O. CGMT Ahmedabad.

.....

Enclst No. X-3/DEP (A)/

Dated at Rajkot the 2-7-90.

Copy forwarded to. Shri R. P. Vasani, AO (TR)-I, O/O The GMTD Rajkot  
for information.

( D. C. VORA ),

A.C.M. (Admn),  
O/O. The GMTD Rajkot.

*True copy  
for  
Adv.*



T.L. BHATIA  
General Manager

अ. स. प. म.

D. O. No. ①-3/37-33

कार्यालय :

महा प्रबंधक दूरसंचार जिला,  
अमृता एस्टेट, एम. जी. रोड, राजकोट.

OFFICE OF THE  
GENERAL MANAGER  
TELECOM DISTRICT RAJKOT.  
Amruta Estate, M. G. Road, RAJKOT-360 001

दिनांक

Dated 26th March, 1990

Dear Shri Vasani,

The work of land acquisition for Rajkot Telecom District for constructing office building, staff quarters and other telephone exchanges has been going on for a very long time. The progress achieved was not very significant. Recently, the Department could acquire land measuring about 8 acres at a cost of Rs. 62 lacs from Rajkot Municipal Corporation. This has been achieved as a result of sincere efforts put up by you and a team of other officers. You have played a very significant role in pursuing the case with Municipal and District Revenue authorities. You have utilised all your resources for furthering the interest of the Department. I greatly appreciate your sense of devotion to duty. I also hope that you will continue to work with same sincerity, vigour and devotion for further developments of the Department.

With best wishes,

Yours sincerely

(T.L. BHATIA)

To:  
Shri R.P. Vasani  
Accounts Officer  
Telephone Revenue  
Telecom District  
Rajkot

cc:

1. Shri P. Shukla, DEM, ① SH TO Rajkot
2. Shri K.S. Raghavan, CAD ② SH TO Rajkot

Adv.



Annex. A/C

अहमदाबाद दूरसंचार जिला 34

वासना टेलीफोन एक्चेंज, वासना,  
अहमदाबाद-380 007.

D.R.KAMAL

महाप्रबंधक (प्रचालन-अनुक्षण)

GENERAL MANAGER (OPN & MTCE)

Tele. No. 421515

AHMEDABAD TELECOM. DISTRICT

Vasna Telephone Exchange Building,

Vasna, Ahmedabad-380 007.

DO No.AT/GM(O&M)/STA/91-92

25.4.91

My dear Vasani,

I am extremely happy to place on record my appreciation for your commendable performance in the last financial year. Your leadership in running the section in satisfactory manner has resulted in increased level of subscriber satisfaction and minimization of complaints from the subscriber. Whenever complaint occurred they were cleared upto subscriber satisfaction and in shortest time. All these have contributed to a large extent in obtaining a score of 72.4 for the Ahmedabad Telecom District in the recently conducted fifth assessment of QOTS by the administrative staff college of Hyderabad. Thus the Ahmedabad Telecom District has not only been adjudged as best in India but the score it has got is the highest ever achieved by any Telecom District in India.

Please convey my congratulations to your staff for this distinctive achievement.

I hope you will continue to work with the same zeal and would continue leading your staff to greater achievements.

With best wishes,

Yours sincerely,

*[Signature]*  
(D.R. KAMAL) 25/4

Shri R.P.Vasani,  
Accounts Officer(TR-V)  
Ahmedabad Telecom District,  
Ahmedabad.

Copy to: A.M.(W)

*[Signature]*  
A.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD

ORIGINAL APPLICATION NO. 254 OF 1991

Shri R. P. Vasani ..... APPLICANT

V E R S U S

1. The Union of India  
and Others ..... OPPONENTS

WRITTEN REPLY ON BEHALF  
OF THE RESPONDENTS

I, Shri J. L. KHARE working  
as AGM (D.I.) of CGMT AM., the  
respondent No. 2 herein, do hereby verify and  
state as follows:

1. I state that I have read a copy of  
Original Application No. 254 of 1991 filed by

.....

R. Patel  
Asst. Secy  
Clerk  
J & A  
19-8-91

by the present applicant and have perused the official record pertaining to the subject matter on hand and as such, I am conversant with the facts and circumstances of the present case and in reply thereto, I state as follows.

2. I state that I am filing this Written reply for the purpose of opposing admission of the present application by the applicant and grant of any of the reliefs/  
interim-reliefs as prayed for by the applicant in the application and I reserve my right to file a detailed and further reply if and when need so arises.

3. I state that the present application is thoroughly misconceived in law as well as in facts by the present applicant, is neither maintainable nor tenable at law and hence the same deserves to be dismissed by this Hon'ble Tribunal.

4. At the outset, I deny all the allegations, contentions and submissions raised in the present application, individually and collectively, save and except those specifically admitted by me hereinafter and those averments which are not replied to by me hereinafter may not be treated as to have been admitted by me.

5.1 The contents of Para Nos. I and II of the application are only formal and do not call for any comment.

5.2 As regards the contents of Para No. III of the application, I state that there are no administrative instructions to follow the Judgement delivered by the Madras C.A.T. As such, no weight has been given to the appeal of Shri Vasani since the Madras Tribunal decision cannot be applied universally. The letter dated 30-1-1990, in question, is self explanatory and the instructions on the subject have been strictly followed. I crave leave to annex herewith a copy of the instructions issued from the D.O.T. No.1-1/88-vig.I dated 1-1-1988. Hereto annexed and marked Annex-I is a copy of the same.

Annex-I

5.3 I deny the averments made in Para No. IV of the application. I deny that the subject matter of the present application is within the jurisdiction of the Hon'ble Tribunal. I submit that the applicant has not exhausted all the remedies available to him at law and has directly approached this Hon'ble Tribunal for the redressal of his grievances. Hence the applicant's application is premature and does not deserve to be entertained by this Hon'ble

.....

Tribunal.

5.4 I am not aware of the averments made in Para No. V of the application. However, I state that the Counsel appearing on behalf of the respondents may deal with these averments at the time of hearing of this application.

5.5 With reference to the averments made in Para No. VI (1) of the application, I submit that the decision to initiate disciplinary proceedings was taken before the due date of E.B. and hence due to this reason, the applicant was not allowed to cross the E.B. Hereto annexed and marked Annexure-II is a copy of the decision taken by the competent authority before the due date of the E.B. *letter dated 6-4-1989 No. 9-92-84-vig.I. from DOT N.D. Dh regarding date of decision 20-7-88*

Annex-II

5.6 With reference to the averments made in Para No. VI (2) of the application, I state that the respondents have complied with the orders under Fundamental Rules 25, as referred to by the applicant in this para. However, I reiterate that the applicant was not allowed to cross the E.B. in view of the decision taken dated ~~20-7-1988~~ 20-7-88.

5.7 With reference to the averments made in Para No. VI (3) of the application,

I state that the decision of the competent authority to initiate disciplinary action was taken on 20-7-1988 and issue of the memorandum of charges ~~has~~ nothing to do in the case.

5.8 As regards the averments made in Para No. VI (4) of the application, I reiterate that the disciplinary/vigilance case was contemplated against the officer.

5.9 The contents of the Para No. VI (5) of the application are true.

5.10 I deny the averments made in Para No. VI (6) <sup>& (7)</sup> of the application. I deny that the action of the respondents is illegal, arbitrary, or contrary to the judgement of the Tribunal or violative of Articles 14 or 16 of the Constitution of India. I state that the applicant has been chargesheeted due to lack of devotion to duty and acted in a manner unbecoming of a Government servant and in contravention of Rules 3(1)(i) and (iii) of C.C.S. (Conduct) Rules 1964, vide No.8/24/88-(iii)/vig.II dated 21-9-1988. Further I state that the action of the respondent department ~~XXXX~~ is strictly in accordance with the Rules and Regulations prevalent.

5.11 I deny the averments made in Para No. 7-1 of the application. I deny that the action of the respondents is illegal, arbitrary, violative of Fundamental rights guaranteed under Articles 14 or 16 of the Constitution of India. I state that the impugned action of the respondent authorities is in accordance with the prescribed norms of the Rules.

5.12 I deny the averments made in Para No. 7-2 of the application. I deny that the applicant has been discharging his duty sincerely, efficiently and diligently. I deny that the applicant has not misconducted. I deny that the impugned action of the respondent authorities is arbitrary, contrary to the Judgement of the decision rendered by other Benches of this Hon'ble Tribunal. I state that the E.B. was not allowed to the applicant since the decision to initiate a disciplinary action had already been taken on 20-7-1988 and hence he was debarred for crossing of the E.B.

5.13 I deny the averments made in Para No. 7-3 of the application. I deny that the impugned order of the respondent authorities is illegal or arbitrary. I deny that the respondent No. 2 herein has misled or misdirected himself, as alleged by the

applicant herein. I deny that the respondent No. 2 herein is contemptuous. I deny that the action and orders of the respondents are contrary to the judgment rendered by the full bench of this Hon'ble Tribunal. I state that the action by the respondent authorities is taken is within the frame work of the Rules and it is not obligatory to follow the instructions issued by the Hon'ble Tribunal till it is vetted by the Ministry of Law and conveyed in the respondent Departments.

5.14 I deny the averments made in Para No. 7.4 of the application. I deny that prima facie the impugned orders cannot be sustained or that the same are arbitrary, etc. I deny that the applicant has made out a prima facie case or that the balance of convenience is in favour of the applicant or that the applicant is entitled to any of the interim reliefs as prayed for by him. I deny that the applicant would suffer irreparable loss if the interim reliefs as prayed for is not granted. I state that the decision taken in the matter of the applicant was kept in a sealed cover as per the departmental rules. Hence in view of the submissions made in the foregoing paras of this reply, I submit that the present applicant is not entitled to any

of the interim reliefs as prayed for by him.

5.15 With reference to the averments made in para No. 7(A) to (C) of the application, I deny that the applicant is entitled to any of the reliefs as sought for by him in this para, in view of the facts and circumstances narrated hereinabove in the foregoing paras of this reply. I respectfully submit that this Hon'ble Tribunal will not interfere in the findings of fact arrived at by the Departmental proceedings. Hence in view of these submissions, the applicant should not be granted any of the reliefs as prayed for by him in this para.

5.16 I deny the averments made in para No.8 of the application. I deny that prima-facie, the applicant has made out a strong case. I deny that the impugned orders of the respondents are arbitrary, contrary to the judgment of the Full Bench of the Hon'ble Tribunal, illegal, or bad in law. I state that the impugned orders are just, legal, in accordance with the Rules applicable in the case, as already pointed out in the foregoing paras of this reply. I state that the impugned orders passed are quite in order and fair.

I state that the petitioner is not entitled for crossing the E.B., refixation of the salary and arrears. I therefore pray that the present application of the applicant be rejected and dismissed.

5.17 I am not aware of the averments made in Para No. 9 of the application that the applicant has not filed any other petition or or application in this Hon'ble Tribunal or in any Court of law in India including Supreme Court of India, etc. I hereby call upon the applicant to strict proof of the averments made in this para.

5.18 I deny the averments made in Para No. 10 of the application. I deny that the applicant has exhausted all the remedies available to him for redressal of his grievances. I state that the applicant should have made appeals and petition to the competent authority. I state that the applicant, without preferring this, has directly approached this Hon'ble Tribunal with an application and hence the same is pre-mature and deserves to be dismissed by this Hon'ble Tribunal.

5.19 The contents of Para Nos. 11 to 13 are only formal and do not call for any comments.

....

In view of the facts and circumstances narrated hereinabove in the foregoing paras of this reply, it is evidently clear that the present application of the applicant is not maintainable and deserves to be dismissed by this Hon'ble Tribunal. I, therefore, pray that this Hon'ble Tribunal will be pleased not to grant any of the reliefs/interim-reliefs as prayed for by the applicant and further be pleased to dismiss the present application in limine.

*Sekhar*  
सहायक महाप्रबंधक (वि. जांच)  
Asstt. General Manager (D. I.)

कार्यालय: मुख्य महाप्रबंधक दूरसंचार  
O/O the Chief General Manager Telecom  
गुजरात सर्किल, अहमदाबाद-380009  
Gujarat Circle, Ahmedabad-380009

### VERIFICATION

I, Shri J. L. KHARE

as Agm (DE) O/O C.G.M.T. Am., the respondent No. 2 herein, do hereby verify and state that what has been stated hereinabove is true and correct to the best of my knowledge, information and belief and I believe the same to be true and that I have not concealed any material information.

Verified at Ahmedabad on this 16th day of August 1991.

For P.M. RAVAL  
*G. Samra*  
Advocate

*Sekhar*  
सहायक महाप्रबंधक (वि. जांच)  
Asstt. General Manager (D. I.)  
कार्यालय: मुख्य महाप्रबंधक दूरसंचार  
O/O the Chief General Manager Telecom  
गुजरात सर्किल, अहमदाबाद-380009  
Gujarat Circle, Ahmedabad-380009

Before me :-

✓ Reply/Rejoinder/written submissions filed by Mr. P. M. Raval, learned advocate for respondent. Copy served, not served.

DI. 17/8/91 Dy. Registrar C.A.T. (J)  
Ahmad Bench

15/12/2  
Two  
Copies

Sale  
1988/11

(4) ANNEXURE  
-1  
45

C O P Y of communication No. 1-1/86-Vig.I  
dated 1st January, 1988 from Shri A.K. Trikha,  
Director General (Vig.T), D.O.T., New Delhi  
addressed to all General Managers Telecom., all  
General Managers Telephones etc. etc. - - - -

Subject : Issue of Vigilance clearance in case of  
promotion or deputation, crossing of E.B.  
etc.

Sir,

In modification to this office circular No. 56/7/79-  
Disc.I dated 13-12-'77 and No. 1-1/86-Vig.I dated 3-12-'87  
the following guide lines shall henceforth be followed for  
issuing vigilance clearance in case of promotion, confirmation,  
deputation, crossing of E.B. etc.

2. It is hereby clarified that in case a vigilance  
clearance is requested in respect of an officer/official for  
above purpose vigilance clearance may be with-held under the  
following circumstances:-

- i) Where an officer/official is placed under suspension  
by competent disciplinary authority or
- ii) Where a charge-sheet has been issued by competent  
disciplinary authority or
- iii) Where the competent disciplinary authority has decided  
in writing to institute disciplinary proceedings  
although the charge sheet has not been actually issued  
or
- iv) Where the officer/official has been prosecuted in the  
Court of Law or competent disciplinary authority has  
decided in writing to prosecute the accused  
Government servant for a criminal offence or offence  
involving moral turpitude.

3. Where vigilance clearance is with-held, the date of  
decision of competent disciplinary authority to initiate  
disciplinary proceedings or the date of current suspension  
should be intimated to authority requesting vigilance clearance.

4. In respect of cases where a case has been under  
investigation/or under process against a suspect officer,  
vigilance clearance may be with-held only when the competent  
disciplinary authority take a decision in writing to with-hold  
vigilance clearance after considering the allegations and  
facts disclosed till then against the accused Government  
servant. Such case should be put up to the competent  
disciplinary authority immediately for a decision.

Contd.....P/2.

5. The contents of this letter may please be brought to the notice of all concerned working in your control.
6. Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-  
( A.K. Trikha )  
Dy. Director General (Vig.T)  
Phone : 380960

Endst. No. Vig/Rlg/II

Dtd. at AM the 8th February, 1988

Forwarded for information and necessary action to :-

1. The Telocom. District Manager, Surat/Baroda/Rajkot.
2. The Area Manager Telecom., Ahmedabad/Rajkot/Baroda.
3. The Asstt. Engineer (Vig.), O/o: T.D.M., Surat/Baroda/Rajkot.
4. The Asstt. General Manager (S), O/o. G.M. Telecom., Ahmedabad.

This is in continuation to this office endorsement of even number dated 17-12-1987

5. All T.D.M.s in circle / DCTA and / AE RTSD  
Principal Circles

*(Signature)*  
(Om Sharma), 8/2/88  
Vigilance Officer,  
Gujarat Telecom. Circle,  
Ahmedabad 380 009.

ANNEXURE-16

3

Confidential/Regd.

216

No. 9-92/84-vig-I  
Government of India  
Ministry of Communication  
Department of Telecommunications  
New Delhi- 110001.

Dated: 6.4.1989.

To

Shri Om Sharma  
Vigilance Officer,  
Gujarat Telecom. Circle,  
Ahmedabad- 380009.

Subject: EC-14/86- ABD registered by S.P., CBI, Ahmedabad  
against Shri J.I. Vaswada, formerly DEP Junagadh,  
now DEP (Admn.) O/o. TDM Rajkot and others.

.....

Sir,

Kindly refer to your letter No. VO/Conf./83/104  
dt. 14.3.89 on the above mentioned subject. The decision  
to institute disciplinary proceedings against Shri R.P.  
Vasani, ACAO was taken on 20.7.88.

Yours faithfully

*B.B. Anand*  
(B.B. Anand)  
Section Officer (Vig-I)

13.4.